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controlled corporations. Her retirement benefits, except accrued leaves credits, are *FORFEITED*.

The Office of the Court Administrator is directed to initiate the criminal prosecution of respondent.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Corona, J., on official leave.

SECOND DIVISION

[G.R. Nos. 142732-33. December 4, 2007]

MARILOU S. GENUINO, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, CITIBANK, N.A., WILLIAM FERGUSON, and AZIZ RAJKOTWALA,** *respondents.*

[G.R. Nos. 142753-54. December 4, 2007]

CITIBANK, N.A., WILLIAM FERGUSON, and AZIZ RAJKOTWALA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and MARILOU GENUINO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO-NOTICE REQUIREMENT; EXPLAINED.— In a string of cases, we have repeatedly said that the requirement of twin notices must

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be met. In the recent case of *King of Kings Transport, Inc. v. Mamac*, we explained: "To clarify, the following should be considered in terminating the services of employees: (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees. (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement. (3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment."

2. ID.; ID.; ID.; ID.; FIRST NOTICE; SHOULD STATE THE PARTICULAR ACTS OR OMISSIONS CONSTITUTING

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THE GROUNDS FOR DISMISSAL.— The Implementing Rules and Regulations of the Labor Code provide that any employer seeking to dismiss a worker shall furnish the latter a written notice stating the particular acts or omissions constituting the grounds for dismissal. The purpose of this notice is to sufficiently apprise the employee of the acts complained of and enable him/her to prepare his/her defense. xxx The two-notice requirement of the Labor Code is an essential part of due process. The first notice informing the employee of the charges should neither be *pro-forma* nor vague. It should set out clearly what the employee is being held liable for. The employee should be afforded ample opportunity to be heard and not mere opportunity. As explained in *King of Kings Transport, Inc.*, ample opportunity to be heard is especially accorded the employees sought to be dismissed after they are specifically informed of the charges in order to give them an opportunity to refute such accusations leveled against them.

3. ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; WHEN CONSIDERED A VALID GROUND FOR AN EMPLOYEE'S DISMISSAL.— Art. 282(c) of the Labor Code provides that an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative. In order to constitute as just cause for dismissal, loss of confidence should relate to acts inimical to the interests of the employer. Also, the act complained of should have arisen from the performance of the employee's duties. For loss of trust and confidence to be a valid ground for an employee's dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee's separation from work. We also held that: "[L]oss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt of the employee's misconduct is not required. It is sufficient if there is some basis for such loss of confidence or if the employer has reasonable ground to believe or to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him unworthy of the trust and confidence demanded by his position."

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4. ID.; ID.; ID.; EMPLOYER'S VIOLATIONS OF THE STATUTORY DUE PROCESS RIGHTS OF EMPLOYEES WARRANT THE PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES.— In *Agabon*, we explained: "The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. *Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at ₱30,000.00*. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules."

5. ID.; ID.; APPEALS; THE EMPLOYER IS REQUIRED TO REINSTATE THE EMPLOYEE DURING THE PENDENCY OF THE APPEAL; EFFECT.— Ordinarily, the employer is required to reinstate the employee during the pendency of the appeal pursuant to Art. 223, paragraph 3 of the Labor Code, which states: "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. the employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein." If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

APPEARANCES OF COUNSEL

Benjamin C. Santos & Ofelia Calcetas-Santos Law Offices, Oben Ventura Defensor Abola & Associates and *Santos Parungao Aquino & Santos Law Offices* for M. Genuino.

Romulo Mabanta Buenaventura Sayoc & De los Angeles for Citibank, NA, *et al.*

The Solicitor General for public respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks to set aside the September 30, 1999 Decision[1] and March 31, 2000 Resolution[2] of the Court of Appeals (CA) in the consolidated cases docketed as CA-G.R. SP Nos. 51532 and 51533. The appellate court dismissed the parties' petitions involving the National Labor Relations Commission's (NLRC's) Decision[3] and Resolution,[4] which held that Marilou S. Genuino was validly dismissed by Citibank, N.A. (Citibank). The NLRC likewise ordered the payment of salaries from the time that Genuino was reinstated in the payroll to the date of the NLRC decision. Upon reconsideration, however, the CA modified its decision and held that Citibank failed to observe due process in CA-G.R. SP No. 51532; hence, Citibank should indemnify Genuino in the amount of Php5,000. Both parties are now before this Court assailing portions of the CA's rulings. In G.R. Nos. 142732-33, Genuino assails the CA's finding that her dismissal was

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[1] *Rollo* (G.R. Nos. 142732-33), pp. 66-77. Penned by *J.* Hector L. Hofileña and concurred in by Associate Justices Omar U. Amin and Jose L. Sabio, Jr.

[2] *Id.* at 79-86. Penned by *J.* Jose L. Sabio, Jr. and concurred in by Associate Justices Bernardo P. Abesamis and Remedios S. Fernando.

[3] *Id.* at 88-133.

[4] *Id.* at 135-139.

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valid. In G.R. Nos. 142753-54, Citibank questions the CA's finding that Citibank violated Genuino's right to procedural due process and that Genuino has a right to salaries.

Citibank is an American banking corporation duly licensed to do business in the Philippines. William Ferguson was the Manila Country Corporate Officer and Business Head of the Global Finance Bank of Citibank while Aziz Rajkotwala was the International Business Manager for the Global Consumer Bank of Citibank.[5]

Genuino was employed by Citibank sometime in January 1992 as Treasury Sales Division Head with the rank of Assistant Vice-President. She received a monthly compensation of Php60,487.96, exclusive of benefits and privileges.[6]

On August 23, 1993, Citibank sent Genuino a letter charging her with "knowledge and/or involvement" in transactions "which were irregular or even fraudulent." In the same letter, Genuino was informed she was under preventive suspension.[7]

Genuino wrote Citibank on September 13, 1993 and asked the bank the following:

a. Confront our client with the factual and legal basis of your charges, and afford her an opportunity to explain;
b. Substantiate your charge of fraudulent transactions against our client; or if the same cannot be substantiated;
c. Correct/repair/compensate the damage you have caused our client.[8]

On September 13, 1993, Citibank, through Victorino P. Vargas, its Country Senior Human Resources Officer, sent a letter to Genuino, the relevant portions of which read:

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[5] *Id.* at 406.

[6] *Id.* at 67.

[7] *Id.*

[8] *Id.*

As you are well aware, the bank served you a letter dated August 23, 1993 advising you that ongoing investigations show that you are involved and/or know of irregular transactions which are at the very least in conflict with the bank's interest, and, may even be fraudulent in nature.

These transactions are those involving Global Pacific and/or Citibank and the following bank clients, among others:

1. Norma T. de Jesus
2. Carmen Intengan/Romeo Neri
3. Mario Mamon
4. Vienna Ochoa/IETI
5. William Samara
6. Roberto Estandarte
7. Rita Browner
8. Ma. Redencion Sumpaico
9. Cesar Bautista
10. Teddy Keng
11. NDC-Guthrie
12. Olivia Sy

In view of the foregoing, you are hereby directed to explain in writing three (3) days from your receipt hereof why your employment should not be terminated in view of your involvement in these irregular transactions. You are also directed to appear in an administrative investigation of the matter which is set on Tuesday, Sept. 21, 1993 at 2:00 P.M. at the HR Conference Room, 6th Floor, Citibank Center. You may bring your counsel if you so desire.[9]

Genuino's counsel replied through a letter dated September 17, 1993, demanding for a bill of particulars regarding the charges against Genuino. Citibank's counsel replied on September 20, 1993, as follows:

1.2. [T]he bank has no intention of converting the administrative investigation of this case to a full blown trial. What it is prepared to do is give your client, as required by law and Supreme Court decisions, an opportunity to explain her side on the issue of whether she violated the conflict of interest rule — either in writing (which could be in the form of a letter-reply to the September 13, 1993

[9] *Id*. at 68.

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letter to Citibank, N.A.) or in person, in the administrative investigation which is set for tomorrow afternoon *vis-à-vis* the bank clients/parties mentioned in the letter of Citibank, N.A.

x x x x x x x x x

2.2. You will certainly not deny that we have already fully discussed with you what is meant by the conflict with the bank's interest *vis-à-vis* the bank clients/parties named in the September 13, 1993 letter of Citibank to Ms. Genuino. As we have repeatedly explained to you, what the bank meant by it is that your client and Mr. Dante Santos, using the facilities of their family corporations (Torrance and Global) appear to have participated in the diversion of bank clients' funds from Citibank to, and investment thereof in, other companies and that they made money in the process, in violation of the conflict of law rule. It is her side of this issue that Citibank, N.A. is waiting to receive/hear from Ms. Genuino.[10]

Genuino did not appear in the administrative investigation held on September 21, 1993. Her lawyers wrote a letter to Citibank's counsel asking "what bank clients' funds were diverted from the bank and invested in other companies, the specific amounts involved, the manner by which and the date when such diversions were purportedly affected." In reply, Citibank's counsel noted Genuino's failure to appear in the investigation and gave Genuino up to September 23, 1993 to submit her written explanation. Genuino did not submit her written explanation.[11]

On September 27, 1993, Citibank informed Genuino of the result of their investigation. It found that Genuino with Santos used "facilities of Genuino's family corporation, namely, Global Pacific, personally and actively participated in the diversion of bank clients' funds to products of other companies that yielded interests higher than what Citibank products offered, and that Genuino and Santos realized substantial financial gains, all in violation of existing company policy and the Corporation Code, which for your information, carries a penal sanction."[12]

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[10] *Id*. at 69.

[11] *Id*. at 69-70.

[12] *Id*. at 70.

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Genuino's employment was terminated by Citibank on grounds of (1) serious misconduct, (2) willful breach of the trust reposed upon her by the bank, and (3) commission of a crime against the bank.[13]

On October 15, 1993, Genuino filed before the Labor Arbiter a Complaint[14] against Citibank docketed as NLRC Case No. 00-10-06450-93 for illegal suspension and illegal dismissal with damages and prayer for temporary restraining order and/or writ of preliminary injunction. The Labor Arbiter rendered a Decision[15] on May 2, 1994, the dispositive portion of which reads:

> WHEREFORE, finding the dismissal of the complainant Marilou S. Genuino to be without just cause and in violation of her right to due process, respondent CITIBANK, N.A., and any and all persons acting on its behalf or by or under their authority are hereby ordered to reinstate complainant immediately to her former position as Treasury Sales Division Head or its equivalent without loss of seniority rights and other benefits, with backwages from August 23, 1993 up to April 30, 1994 in the amount of ₱493,800.00 (₱60,000 x 8.23 mos.) subject to adjustment until reinstated actually or in the payroll.
>
> Respondents are likewise ordered to pay complainant the amount of 1.5 Million Pesos and ₱500,000.00 by way of moral and exemplary damages plus 10% of the total monetary award as attorney's fees.[16]

Both parties appealed to the NLRC. The NLRC, in its September 3, 1994 Decision in NLRC-NCR Case No. 00-10-06450-93 (CA No. 006947-94), reversed the Labor Arbiter's decision with the following modification:

> WHEREFORE, Judgment is hereby rendered (1) SETTING ASIDE the appealed decision of the Labor Arbiter; (2) DECLARING the dismissal of the complainant valid and legal on the ground of serious misconduct and breach of trust and confidence and consequently DISMISSING the complaint *a quo*; but (3) ORDERING the respondent

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[13] *Id*.

[14] *Id*. at 143-151.

[15] *Id*. at 184-200.

[16] *Id*. at 199-200.

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bank to pay the salaries due to the complainant from the date it reinstated complainant in the payroll (computed at ₱60,000.00 a month, as found by the Labor Arbiter) up to and until the date of this decision.

SO ORDERED.[17]

The parties' motions for reconsideration were denied by the NLRC in a resolution dated October 28, 1994.[18]

The Ruling of the Court of Appeals

On December 6, 1994, Genuino filed a petition for *certiorari* docketed as G.R. No. 118023 with this Court. Citibank's petition for *certiorari*, on the other hand, was docketed as G.R. No. 118667. In the January 27, 1999 Resolution, we referred these petitions to the CA pursuant to our ruling in *St. Martin Funeral Home v. NLRC*.[19]

Genuino's petition before the CA was docketed as CA-G.R. SP No. 51532 while Citibank's petition was docketed as CA-G.R. SP No. 51533. Genuino prayed for the reversal of the NLRC's decision insofar as it declared her dismissal valid and legal. Meanwhile, Citibank questioned the NLRC's order to pay Genuino's salaries from the date of reinstatement until the date of the NLRC's decision.

The CA promulgated its decision on September 30, 1999, denying due course to and dismissing both petitions.[20] Both parties filed motions for reconsideration and on March 31, 2000, the appellate court modified its decision and held:

WHEREFORE, save for the **MODIFICATION** ordering Citibank, N.A. to pay Ms. Marilou S. Genuino five thousand pesos (₱5,000.00) as indemnity for non-observance of due process in CA-G.R. SP No. 51532, this Court's 30 September 1999 decision is **REITERATED** and **AFFIRMED** in all other respects.

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[17] *Id.* at 132.

[18] *Id.* at 135-138.

[19] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[20] *Rollo* (G.R. Nos. 142732-33), p. 76.

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SO ORDERED.[21]

Hence, we have this petition.

The Issue

WHETHER OR NOT THE DISMISSAL OF GENUINO IS FOR A JUST CAUSE AND IN ACCORDANCE WITH DUE PROCESS

In G.R. Nos. 142732-33, Genuino contends that Citibank failed to observe procedural due process in terminating her employment. This failure is allegedly an indication that there were no valid grounds in dismissing her. In G.R. Nos. 142753-54, Citibank questions the ruling that Genuino has a right to reinstatement under Article 223 of the Labor Code. Citibank contends that the Labor Arbiter's finding is not supported by evidence; thus, the decision is void. Since a void decision cannot give rise to any rights, Citibank opines that there can be no right to payroll reinstatement.

The dismissal was for just cause but lacked due process

We affirm that Genuino was dismissed for just cause but without the observance of due process.

In a string of cases,[22] we have repeatedly said that the requirement of twin notices must be met. In the recent case of *King of Kings Transport, Inc. v. Mamac,* we explained:

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable

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[21] *Id.* at 85.

[22] *Voyeur Visage Studio, Inc. v. CA*, G.R. No. 144939, March 18, 2005, 453 SCRA 731; citing *Colegio de San Juan de Letran-Calamba v. Villas*, G.R. No. 137795, March 26, 2003, 399 SCRA 550, 555; *Kingsize Manufacturing Corporation v. NLRC*, G.R. Nos. 110452-54, November 24, 1994, 238 SCRA 349.

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opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[23]

The Labor Arbiter found that Citibank failed to adequately notify Genuino of the charges against her. On the contrary, the NLRC held that "the function of a 'notice to explain' is only to state the basic facts of the employer's charges, which x x x the letters of September 13 and 17, 1993 in question have fully served."[24]

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[23] G.R. No. 166208, June 29, 2007.

[24] *Rollo* (G.R. Nos. 142732-33), p. 112.

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We agree with the CA that the dismissal was valid and legal, and with its modification of the NLRC ruling that Php5,000 is due Genuino for failure of Citibank to observe due process.

The Implementing Rules and Regulations of the Labor Code provide that any employer seeking to dismiss a worker shall furnish the latter a written notice stating the particular acts or omissions constituting the grounds for dismissal.[25] The purpose of this notice is to sufficiently apprise the employee of the acts complained of and enable him/her to prepare his/her defense.

In this case, the letters dated August 23, September 13 and 20, 1993 sent by Citibank did not identify the **particular acts** or **omissions** allegedly committed by Genuino. The August 23, 1993 letter charged Genuino with having "some knowledge and/or involvement" in some transactions "which have the appearance of being irregular at the least and may even be fraudulent." The September 13, 1993 letter, on the other hand, mentioned "irregular transactions" involving Global Pacific and/or Citibank and 12 bank clients. Lastly, the September 20, 1993 letter stated that Genuino and "Mr. Dante Santos, using the facilities of their family corporations (Torrance and Global) appear to have participated in the diversion of bank clients' funds from Citibank to, and investment thereof in, other companies and that they made money in the process, in violation of the conflict of law rule [sic]." The extent of Genuino's alleged knowledge and participation in the diversion of bank's clients' funds, manner of diversion, and amounts involved; the acts attributed to Genuino that conflicted with the bank's interests; and the circumstances surrounding the alleged irregular transactions, were not specified in the notices/letters.

While the bank gave Genuino an opportunity to deny the truth of the allegations in writing and participate in the administrative investigation, the fact remains that the charges were too general to enable Genuino to intelligently and adequately prepare her defense.

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[25] Book V, Rule XIV, Sec. 2.

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The two-notice requirement of the Labor Code is an essential part of due process. The first notice informing the employee of the charges should neither be *pro-forma* nor vague. It should set out clearly what the employee is being held liable for. The employee should be afforded ample opportunity to be heard and not mere opportunity. As explained in *King of Kings Transport, Inc.*, ample opportunity to be heard is especially accorded the employees sought to be dismissed after they are specifically informed of the charges in order to give them an opportunity to refute such accusations leveled against them. Since the notice of charges given to Genuino is inadequate, the dismissal could not be in accordance with due process.

While we hold that Citibank failed to observe procedural due process, we nevertheless find Genuino's dismissal justified.

Citibank maintains that Genuino was aware of the bank's Corporate Policy Manual specifically Chapter 3 on "Principles and Policies" with regard to avoiding conflicts of interest. She had even submitted a Conflict of Interest Survey to Citibank. In that survey, she denied any knowledge of engaging in transactions in conflict with Citibank's interests. Citibank, for its part, submitted evidence showing 99% ownership of Global stocks by Genuino and Santos. In July 1993, Citibank discovered that Genuino and Santos were instrumental in the withdrawal by bank depositors of Php120 million of investments in Citibank. This amount was subsequently invested in another foreign bank, Internationale Nederlanden Bank, N.V., under the control of Global and Torrance, another corporation controlled by Genuino and Santos.[26] Citibank also filed two criminal complaints against Genuino and Santos for violations of the conflict of interest

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[26] Citibank filed with the RTC of Makati an injunction case against Dante L. Santos and INB. Thereafter, Citibank executed a compromise agreement with Dante L. Santos, Global and Torrance for the latter to return Php120million and the amounts of USD64,500.00 and Php1.1million representing profits from the transfer. Dante L. Santos, Global and Torrance, however, did not pay to Citibank the amount representing profits; hence, Citibank rescinded the compromise agreement.

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rule provided in Sec. 31 in relation to Sec. 144[27] of the Corporation Code.[28]

We note also that during the proceedings before the Labor Arbiter, Citibank presented the following affidavits, with supporting documentary evidence against Genuino:

1) Vic Lim, an officer of Citibank who investigated the anomalies of Genuino and Santos, concluded that Genuino and Santos realized substantial financial gains out of the transfer of monies as supported by the following documents:

1) [S]ome of the Term Investment Applications (TIA), Applications for Money Transfer, all filled up in the handwriting of Ms. Marilou Genuino. These documents cover/show the transfer of the monies of the Citibank clients from their money placements/deposits with Citibank, N.A. to Global and/or Torrance.

2) [S]ome of the checks that were drawn by Global and Torrance against their Citibank accounts in favor of the other companies by which Global and Torrance transferred the monies of the bank clients to the other companies.

3) [S]ome of the checks drawn by the other companies in favor of Global or Torrance by which the other companies remitted back to Global and/or Torrance the monies of the bank clients concerned.

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[27] Sec. 31. x x x When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

Sec. 144. Violations of the Code.— Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court.

[28] *Rollo* (G.R. Nos. 142732-33), pp. 613-655.

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4) [S]ome of the checks drawn by Global and Torrance against their Citibank accounts in favor of Mr. Dante Santos and Ms. Marilou Genuino, covering the shares of the latter in the spreads or margins Global and Torrance had derived from the investments of the monies of the Citibank clients in the other companies.

5) [S]ome of the checks drawn by Torrance and Global in favor of Citibank clients by which Global and Torrance remitted back to said bank clients their principal investments (or portions thereof) and the rates of interests realized from their investment placed with the other companies less the spreads made by Global and/or Torrance, Mr. Dante L. Santos and Ms. Marilou Genuino.[29]

In Lim's Reply-Affidavit with attached supporting documents, he stated that out of the competing money placement activities, Genuino and Santos derived financial gains amounting to Php2,027,098.08 and Php2,134,863.80, respectively.[30]

2) Marilyn Bautista, a Treasury Sales Specialist in the Treasury Department of the Global Consumer Bank of Citibank and whose superiors were Genuino and Santos, stated that:

Based on documents that have subsequently come to my knowledge, I realized that the two (Genuino and Dante L. Santos), with the active cooperation of Redencion Sumpaico (the Accountant of Global) had … brokered for their own benefits and/or of Global the sale of the financial products of Citibank called "Mortgage Backed Securities" or MBS and in the process made money at the expense of the (Citibank) investors and the bank.[31]

3) Patrick Cheng attested to other transactions from which Genuino, Santos, and Global brokered the Mortgage Backed Securities (MBS), namely: ICC/Nemesio and Olivia Sy transaction, San Miguel Corporation/ICC, CIPI/Asiatrust, FAPE, PERAA and Union Bank, and NDC-Guthrie transactions.[32]

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[29] *Id.* at 638.

[30] *Id.* at 639.

[31] *Id.* at 640.

[32] *Id.* at 641.

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In her defense, Genuino asserts that Citibank has no evidence of any wrongful act or omission imputable to her. According to her, she did not try to conceal from the bank her participation in Global and she even disclosed the information when Global designated Citibank as its depositary. She avers there was no conflict of interest because Global was not engaged in Citibank's accepting deposits and granting loans, nor in money placement activities that compete with Citibank's activities; and neither does Citibank invest in the outlets used by Global. She claims that the controversy between Santos and Global had already been amicably resolved in a Compromise Agreement between the two parties.[33]

Genuino further asserts that the letter of termination did not indicate what existing company policy had been violated, and what acts constituted serious misconduct or willful breach of the trust reposed by the bank. She claims that Lim's testimony that the checks issued by Global in her name were profits was malicious, hearsay, and lacked factual basis. She also posits that as to the withdrawals of clients, she could not possibly dictate on the depositors. She pointed out that the depositors even sent Citibank a letter dated August 25, 1993 informing the bank that the withdrawals were made upon their express instructions. Genuino avers the bank's loss of confidence should have to be proven by substantial evidence, setting out the facts upon which loss of confidence in the employee may be made to rest.[34]

Contrary to the Labor Arbiter's finding, the NLRC found the following facts supported by the records:

a) Respondent bank has a conflict of interest rule, embodied in Chapter 3 of its Corporate Policy Manual, prohibiting the officers of the bank from engaging in business activities, situations or circumstances that are in conflict with the interest of the bank.

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[33] *Id*. at 658-724. *See* footnote 26.

[34] *Id*.

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b) Complainant was familiar with said conflict of interest rule of the bank and of her duty to disclose to the bank in writing any personal circumstances which conflicts or appears to be in conflict with Citibank's interest.

c) Complainant is a substantial stockholder of Global Pacific, but she did not disclose fact to the bank.

d) Global Pacific is engaged in money placement business like Citibank, N.A.; that in carrying out its said money placement business, it used funds belonging to Citibank clients which were withdrawn from Citibank with participation of complainant and Dante L. Santos. In one transaction of this nature, ₱120,000,000.00 belonging to Citibank clients was withdrawn from Citibank, N.A. and placed in another foreign bank, under the control of Global Pacific. Said big investment money was returned to Citibank, N.A. only when Citibank, N.A. filed an injunction suit.

e) Global Pacific also engaged in the brokering of the ABS or MBS, another financial product of Citibank. It was the duty of complainant Genuino and Dante L. Santos to sell said product on behalf of Citibank, N.A. and for Citibank N.A.'s benefit. In the brokering of the ABS or MBS, Global Pacific made substantial profits which otherwise would have gone to Citibank, N.A. if only they brokered the ABS or MBS for and on behalf of Citibank, N.A.

Art. 282(c) of the Labor Code provides that an employer may terminate an employment for fraud or willful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative. In order to constitute as just cause for dismissal, loss of confidence should relate to acts inimical to the interests of the employer.[35] Also, the act complained of should have arisen from the performance of the employee's duties.[36] For loss of trust and confidence to be a valid ground for an employee's dismissal, it must be substantial and not arbitrary,

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[35] *Tabacalera Insurance Co. v. NLRC*, No. 72555, July 31, 1987, 152 SCRA 667, 674-675.

[36] *Equitable Banking Corporation v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 378.

and must be founded on clearly established facts sufficient to warrant the employee's separation from work.[37] We also held that:

> [L]oss of confidence is a valid ground for dismissing an employee and proof beyond reasonable doubt of the employee's misconduct is not required. It is sufficient if there is some basis for such loss of confidence or if the employer has reasonable ground to believe or to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him unworthy of the trust and confidence demanded by his position.[38]

As Assistant Vice-President of Citibank's Treasury Department, Genuino was tasked to solicit investments, and peso and dollar deposits for, and keep them in Citibank; and to sell and/or push for the sale of Citibank's financial products, such as the MBS, for the account and benefit of Citibank.[39] She held a position of trust and confidence. There is no way she could deny any knowledge of the bank's policies nor her understanding of these policies as reflected in the survey done by the bank. She could not likewise feign ignorance of the businesses of Citibank, and of Global and Torrance. Assuming that Citibank did not engage in the same securities dealt with by Global and Torrance; nevertheless, it is to the interests of Citibank to retain its clients and continue investing in Citibank. Curiously, Genuino did not even dissuade the depositors from withdrawing their monies from Citibank, and was even instrumental in the transfers of monies from Citibank to a competing bank through Global and Torrance, the corporations under Genuino's control.

All the pieces of evidence compel us to conclude that Genuino did not have her employer's interest. The letter of the bank's

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[37] *Labor v. NLRC,* G.R. No. 110388, September 14, 1995, 248 SCRA 183, 200.

[38] *Reyes v. Minister of Labor*, G.R. No. L-47805, February 9, 1989, 170 SCRA 134, 140.

[39] *Rollo* (G.R. Nos. 142732-33), p. 642.

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clients which attested that the withdrawals from Citibank were made upon their instructions is of no import. It did not explain why they preferred to invest in Global and Torrance, nor did it mention that Genuino tried to dissuade them from withdrawing their deposits. Genuino herself admitted her relationship with some of the depositors in her affidavit, to wit:

> 6. Contrary to the allegations of Mr. Lim in par. 6.1 up to 8.1 concerning the alleged scheme employed in the questioned transactions, insinuating an "in" and "out" movement of funds of the seven (7) depositors, **the truth is that after said "depositors" instructed/authorized us to effect the withdrawal of their respective monies from Citibank to attain the common goal of higher yields utilizing Global as the vehicle for bulk purchases of securities or papers not dealt with/offered by Citibank, said pooled investment remained with Global**, and were managed through Global for over a year until the controversy arose;
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> 10. The **seven (7) "depositors" mentioned in Mr. Lim's Affidavits are the long-time friends of affiant Genuino** who had formed a loosely constituted investment group for purposes of realizing higher yields derivable from pooled investments, and **as the advisor of the group** she had in effect chosen Citibank as the initial repository of their respective monies prior to the implementation of plans for pooled investments under Global. Hence, she had known and dealt with said "depositors" before they became substantial depositors of Citibank. She did not come across them because of Citibank.[40] (Emphasis supplied.)

All told, Citibank had valid grounds to dismiss Genuino on ground of loss of confidence.

In view of Citibank's failure to observe due process, however, nominal damages are in order but the amount is hereby raised to Php30,000 pursuant to *Agabon v. NLRC*. The NLRC's order for payroll reinstatement is set aside.

In *Agabon*, we explained:

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[40] *Id*. at 639.

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The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. *Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at ₱30,000.00.* We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[41]

Thus, the award of Php5,000 to Genuino as indemnity for non-observance of due process under the CA's March 31, 2000 Resolution in CA-G.R. SP No. 51532 is increased to Php30,000.

Anent the directive of the NLRC in its September 3, 1994 Decision ordering Citibank "to pay the salaries due to the complainant from the date it reinstated complainant in the payroll (computed at ₱60,000.00 a month, as found by the Labor Arbiter) up to and until the date of this decision," the Court hereby cancels said award in view of its finding that the dismissal of Genuino is for a legal and valid ground.

Ordinarily, the employer is required to reinstate the employee during the pendency of the appeal pursuant to Art. 223, paragraph 3 of the Labor Code, which states:

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on

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[41] G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617.

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payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices.[42] However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.

Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision.

WHEREFORE, the petitions of Genuino in *G.R. Nos. 142732-33* are *DENIED* for lack of merit. The petitions of Citibank in *G.R. Nos. 142753-54* are *GRANTED*. The September 30, 1999 Decision and March 31, 2000 Resolution in CA-G.R. SP Nos. 51532 and 51533 are *AFFIRMED* with *MODIFICATION* that Genuino is entitled to Php30,000 as indemnity for non-observance of due process. Item (3) in the dispositive portion of the September 3, 1994 Decision of the NLRC in NLRC-NCR Case No. 00-10-06450-93 (CA No. 006947-94) is *DELETED* and *SET ASIDE*, and said NLRC decision is *MODIFIED* as follows:

> WHEREFORE, Judgment is hereby rendered (1) SETTING ASIDE the appealed decision of the Labor Arbiter; (2) DECLARING the dismissal of the complainant valid and legal on the ground of serious misconduct and breach of trust and confidence and consequently DISMISSING the complaint *a quo*; but (3) **ORDERING the respondent bank to pay the complainant nominal damages in the amount of Php30,000.**

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Tinga, JJ.,* concur.

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[42] IMPLEMENTING RULES OF THE LABOR CODE, Book VI, Rule 1, Sec. 7.