

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**MANGGAGAWA NG KOMUNIKASYON  
SA PILIPINAS and ANTONIO L. CRUZ,  
*Petitioners,***

***-versus-***

**G.R. No. 90964  
February 10, 1992**

**NATIONAL LABOR RELATIONS  
COMMISSION (1<sup>st</sup> Division) and  
PHILIPPINE LONG DISTANCE  
TELEPHONE COMPANY,  
*Respondents.***

X-----X

**DECISION**

**PADILLA, J.:**

Petitioner Antonio L. Cruz had been an employee of respondent Philippine Long Distance Telephone Company (PLDT) for sixteen (16) years (since 1971) at the time his employment was terminated. He was an Installer/Repairman II tasked to install and repair subscribers' stations.

Sometime in August 1985, petitioner and co-repairman Roberto Moldera were specifically instructed by their supervisor to undertake a routine job of repairing old and sub-standard installations located

at compound No. 325 Acacia Lane, Mandaluyong, Metro Manila. Upon completion of the work, it was reported for inspection. Respondent PLDT claims, as stated in the now assailed NLRC decision, that in the course of a periodic inspection of telephones along Mandaluyong, Metro Manila, conducted by the Quality Control and Inspection Department (QCID), it was discovered that telephone nos. 79-15-43 and 79-69-52 which, according to company records, were installed at No. 325 Acacia Lane, Mandaluyong, were actually installed and functioning in the office of a Mr. Peter Gochiaco located at No. 323 Acacia Lane, Mandaluyong, Metro Manila. This “out-move,” of the telephones was considered illegal by the company, there being no service order issued by it for such “out-move.”

When investigated by the company’s QCID, Peter Gochiaco in whose office the telephone numbers were found installed, declared under oath before QCID investigator Leopoldo Labelin that it was petitioner Cruz who effected the transfer of the telephones to his office at 323 Acacia Lane, for which service he was charged P1,600.00 by Cruz. Gochiaco further declared that Cruz originally asked for P2,000.00 but he was able to convince Cruz to reduce the amount to P1,600.00.

On 1 September 1986, petitioner Cruz received an interoffice memorandum from PLDT’s Quality Control to explain the illegal transfer of the afore-mentioned telephones. His answer, a letter reply on 3 September 1986, invoked the right to remain silent until he shall have received a memorandum from his manager to whom he would explain his side of the matter.<sup>[1]</sup>

When again asked to explain thru a Memorandum on 3 November 1986, petitioner in a written explanation dated 17 March 1987 denied the illegality of the “out-move” or transfer of the subject telephones, as he had merely effected routinary work in compliance with a lawful order; that both telephones were in the same compound; that there was no monetary consideration involved; and that, furthermore, on 1 September 1986, telephone no. 79-69-52 was re-connected.

On 24 March 1987, petitioner Cruz received a letter from his Manager, Edgardo Esteban, terminating his services effective 1 April 1987. PLDT claimed that the act of Cruz constitutes fraud and serious misconduct which are statutory grounds for dismissal under Art. 283

of the Labor Code, since no service order had been issued for the “out-move” of the telephones.

Petitioner Cruz then filed a complaint for illegal dismissal before the Labor Arbiter. Respondent PLDT filed a motion to remand the case to the grievance machinery under the collective bargaining agreement, for further proceedings. Finding merit in the motion, despite petitioners’ objection, an order dated 10 September 1987 remanded the case. However, since no agreement was reached in the grievance machinery, proceedings continued before the Labor Arbiter.

Finding no fraud or serious misconduct in the performance of duties. Labor Arbiter Emerson C. Tumanon ordered the reinstatement of Cruz to his former position with full backwages and other benefits without loss of seniority rights.<sup>[2]</sup>

PLDT appealed to the NLRC, the first division of which on 9 August 1989 reverses the Labor Arbiter’s decision but allowed separation pay of one-half (1/2) month salary for every year of service. Quantified, this would amount to about P33,000.00.

Petitioner Cruz filed a motion for reconsideration, pleading for a re-examination of the evidence presented, as there were discrepancies therein, and he emphasized that there was lack of due process in his dismissal since the affidavit of the complainant, Mr. Gochiaco, was never shown to him and the PLDT legal department did not conduct a formal investigation, which is the usual practice.

A minute resolution of 20 October 1989 denied the motion for reconsideration; hence, the present recourse with two (2) interlocking issues:

1. Did PLDT sufficiently establish the basis for the dismissal?
2. Were the twin requirements of notice and hearing which are essential elements of due process in cases of employee’s dismissal substantially observed?<sup>[3]</sup>

Sections 1, 2, 5 and 6 of Rule XIV, Look V of the Omnibus Rules Implementing the Labor Code lay down the procedure in cases of termination of employment as follows:

“Section 1. Security of Tenure and due process. — No worker shall be dismissed except for a just or authorized cause provided by law and after due process.

“Section 2. Notice of dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker’s last known address.

X X X

“Section 5. Answer and Hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires.

“Section 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.”<sup>[4]</sup>

In the aforesaid Vera case, it is emphasized:

“This court has repeatedly held that the employer is mandated to furnish the employee sought to be dismissed two notices, the written charge, and the notice of dismissal, if, after hearing dismissal is indeed warranted.”<sup>[5]</sup>

As stated in the NLRC decision, the dismissal of petitioner Cruz was effected in this manner:

“Complainant (Cruz) was invited to appear before the QCID to shed light on the matter but he answered on September 3, 1986 that ‘I wish to state that I am invoking my right to remain silent.

Instead, I will just wait for any memorandum from my Manager regarding the same, in which case I will be giving my explanations to him on the matter,' Annex '3', p. 45, rollo.

“On November 3, 1986, Edgardo Esteban, respondent's Greenhills Exchange Manager sent a letter to the complainant, Annex '4', p. 49, rollo, informing him that a QCID investigation disclosed that he committed serious misconduct when he effected an unauthorized out-move of telephone nos. 79-15-43 and 79-69-52 from 325 to 323 Acacia Lane, Mandaluyong for a consideration of P1,600.00. The letter further states that this violation of company regulations is punishable with dismissal from the service. He was given 72 hours, the case will be decided on the basis of the evidence on hand.

“On November 17, 1986, complainant submitted his written explanation, Annex '5', p. 47, rollo, denying the charge particularly the money consideration. He said he merely rerouted wires to a new pole provided by the subscriber with its conduits.

“On March 24, 1987, respondent addressed a letter to complainant, Annex '6', p. 48, rollo, informing him that after a thorough evaluation of his case, it was evident that he had violated the company's rule on serious misconduct in office, the penalty of which is (sic) dismissal and his services were terminated effective April 1, 1987.”<sup>[6]</sup>

The procedure prior to dismissal of an employee need not be observed to the letter, but it must at least follow the natural sequence of notice, hearing and judgment. (Ruffy vs. NLRC).<sup>[7]</sup>

Summarizing the sequence of events in this case:<sup>[8]</sup>

1. inter-office memorandum to petitioner Cruz dated 1 September 1986 — invitation to appear before QCID to shed light on the incident;

2. petitioner Cruz answered on 3 September 1986 invoking the right to remain silent and that he would wait for the memorandum of his manager before explaining.
3. inter-office memorandum letter informing Cruz of his serious misconduct which is punishable with dismissal, gave him 72 hours within which to explain in writing and elect to be heard if he so desired.
4. on 17 November 1986, Cruz submitted his written explanation.
5. 24 March 1987 letter — terminated employment of petitioner Cruz, effective 1 April 1987.

What the law requires, as held in *De Leon vs. NLRC*,<sup>[9]</sup> cited by petitioners, is for the employer to inform the employee of the specific charges against him and to hear his side or defenses. This does not however mean a full adversarial proceeding. Litigants may be heard thru: (1) pleadings, written explanations, position papers, memorandum; (2) oral arguments. In both instances, the employer plays an active role — he must provide the employee the opportunity to present his side and answer the charges, in substantial compliance with due process. Actual adversarial proceeding becomes necessary only for clarification or when there is a need to propound searching questions to unclear witnesses. This is a procedural right which the employee must, however, ask for it is not an inherent right, and summary proceedings may be conducted. This is to correct the common but mistaken perception that procedural due process entails lengthy oral arguments. Hearings in administrative proceedings and before quasi-judicial agencies are neither oratorical contests nor debating skirmishes where cross examination skills are displayed. Non-verbal devices such as written explanations, affidavits, position papers or other pleadings can establish just as clearly and concisely aggrieved parties' predicament or defense. What is essential is ample opportunity to be heard, meaning, every kind of assistance that management must accord the employee to prepare adequately for his defense (see *Ruffy supra*).

Petitioner was given this opportunity. First, he invoked the right to remain silent; then he submitted a written explanation.

NLRC decisions are brought to this Court by way of special civil action for *certiorari* under Rule 65 of the Rules of Court. A questioned judgment will be annulled or modified if the rendering tribunal, board or office has acted without or in excess of its jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

This Court, in a special civil action for *certiorari*, will not review facts as found by the respondent administrative or quasi-judicial body, unless they are wildly distorted, or when two (2) administrative bodies have irreconcilable differences in their factual findings. The accepted practice or general rule is to accord due respect to findings of fact of administrative agencies.

The NLRC cannot, in the case at bar, be faulted for reversing the Labor Arbiter. PLDT complied with procedural due process prior to the termination of petitioner's employment for a serious violation of company rules involving what can be considered fraud and dishonesty. His dismissal has to be sustained.

However, in lieu of separation pay equal to one-half month salary for every year of service or approximately P33,000.00 awarded by the NLRC to petitioner Cruz, a financial assistance of P10,000.00 only is awarded to Cruz.

To obviate confusion with the decision in a previous case (PLDT vs. NLRC & Marilyn Abucay, G.R. No. L-80609, 23 August 1988) which ruled out awards of separation pay when the worker's dismissal is due to dishonesty, it must be pointed out that in the Abucay case, the dismissed employee was a PLDT traffic operator for ten (10) years who impliedly admitted that she received P3,800.00 in consideration of her promise to facilitate approval of application for telephone installation, an amount which she should not have collected or received. Both the Labor Arbiter and the NLRC unequivocally arrived at the conclusion that said employee should be dismissed although with financial assistance. The award of financial assistance was

questioned by PLDT (not by the employee, as in the present case) before the Supreme Court.

In the present case, there was never an admission from petitioner Cruz that he solicited/received money from complainant/phone subscriber Mr. Gochiaco. There is thus some doubt as to petitioner's culpability; in fact he claims he was not shown complainant's affidavit implicating him and that the PLDT legal department did not conduct the usual formal investigation. The Labor Arbiter found him innocent, the NLRC found him guilty. There is a question on the certainty of dishonesty. In criminal law, this could be reasonable doubt. We are, however, dealing here with a quasi-judicial body where substantial evidence suffices and whose factual findings are binding on the Supreme Court absent showing of grave abuse of discretion.

It is also significant that both labor arbiter and the NLRC concur in awarding Cruz monetary assistance, i.e., the arbiter, in the form of backwages, the NLRC, in the form of separation pay of one-half (1/2) month pay per year of service. PLDT did not question the award of financial assistance by the NLRC in the form of separation pay. It was, in other words, willing to pay separation pay had not the employee elevated the case to this Court for review of his dismissal from employment, but with separation pay. Furthermore, Cruz served PLDT for sixteen (16) years without adverse record; the subject telephone line was eventually legalized and re-connected without damage to the company and, in fact, the questioned telephone remained transferred from #325 to 323 Acacia Lane both in the same compound. Unlike in the Abucay case where the employee performed an act completely unrelated to her duties as traffic operator and demanded money from a would-be subscriber, herein petitioner was in fact instructed to repair old and substandard installations. He however, transgressed company rules by effecting an "out-move" of telephones without a company service order. Although dishonesty is a vice or propensity hardly susceptible of gradation, the award of financial assistance to Cruz in the amount of P10,000.00 only for his sixteen (16) years of service is not a condonation of his act which was clearly violative of company rules, but anchored on equitable considerations.

**WHEREFORE**, the Decision appealed from is **AFFIRMED**, with the sole modification that instead of separation pay, petitioner Cruz shall be given by respondent PLDT a financial assistance of P10,000.00 only.

**SO ORDERED.**

**Melencio-Herrera, Paras, Regalado and Nocon, *JJ.*, concur.**

---

[1] Rollo at 61.

[2] Decision of 31 August 1988, Rollo at 28.

[3] Norman de Vera vs. NLRC and PPI, G.R. No. 93070, August 9, 1991.

[4] Ibid., p. 7-8.

[5] Ibid., p. 11.

[6] Rollo at 32 and 33.

[7] G.R. No. 84193, February 15, 1990, 182 SCRA 365.

[8] Rollo at 60, 61, 62, 21 and 63.

[9] G.R. No. L-52056, October 30, 1980, 100 SCRA 691.