

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,**
Petitioner,

-versus-

**G.R. No. 106947
February 11, 1999**

**NATIONAL LABOR RELATIONS
COMMISSION, AND ENRIQUE
GABRIEL,**
Respondents.

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DECISION

QUISUMBING, J.:

This Petition for *Certiorari* under Rule 65 of the Rules of Court assails the Resolution^[1] dated June 29, 1992 of the National Labor Relations Commission ordering petitioner to reinstate private respondent, Enrique Gabriel, “with full backwages, benefits, and proportionate privileges”; as well as the Order^[2] dated August 19, 1992, denying the motion for reconsideration. The challenged ruling reversed the Decision^[3] of the Labor Arbiter dated May 3, 1991, which dismissed the complaint for lack of merit.

The facts of the case are as follows:

Private respondent, Enrique Gabriel, was employed by petitioner Philippine Long Distance Telephone Company (PLDT), as a foreman in Dansalan Area 2, M-3. As a supervisor, his territorial responsibility covered Camp Crame's First to 20th Avenues and portions of Project 4, all in Quezon City.

On September 5, 1989, Enrique Gabriel ordered Medel Mercado, an installer, to set-up two telephone units at Unit R, Facilities Center Building, located at Shaw Boulevard, Mandaluyong, Metro Manila. The telephone numbers of the units were 78-88-41 and 79-98-46, in favor of a certain Mr. Marlon Aquino.

On October 16, 1989, private respondent, again ordered Juancho Jocson, another installer, to set-up additional units with telephone numbers 78-40-70 and 79-40-98 for the same subscriber.

Later, both installation activities were investigated because (a) the Facilities Center Building had no entrance cable facilities or conduit wires for telephone connection, (b) Mandaluyong was not within respondent's area of jurisdiction, and (c) installers Mercado and Jocson were not under his direct supervision.

In the administrative investigation conducted by PLDT, where a confrontation between private respondent and installers Mercado and Jocson took place, private respondent tried to explain his side to clear certain issues taken against him, adding that his intention in ordering the installation of the telephone units was to provide customer satisfaction. However, on February 1, 1990, the petitioner still required the private reiterated his rationalization that his sole intention was to serve the customer, thereby earning goodwill for the company.

On September 3, 1990, private respondent was dismissed from employment on the ground that he committed grave misconduct, breach of trust, and violations of company rules and regulations when he ordered the unwarranted installation activities.

On September 6, 1990, private respondent, as complainant below filed an illegal dismissal case^[4] against herein petitioner, PLDT.

On May 3, 1991, the Labor Arbiter rendered his decision finding the dismissal justified, viz.:

“The complainant’s action were irregular because there was no entrance cable facilities or conduit wires in the said building during those times for telephone connections. Nonetheless, to achieve his purpose, the complainant himself secured OK numbers for the telephones and performed call back at the panel box representing himself to the Dispatch Clerk as the subscriber. He then instructed Medel and Joscon (sic) to turnover the telephone instruments to him and made them to enter in the Consumption and Work Report that the telephone units have been actually installed. Such proddings for misrepresentation has placed Medel’s and Joscon’s (sic) employment in jeopardy of termination.

The complainant’s infractions were aggravated by the fact that his intervention in the works of the two (2) installers were made in Mandaluyong, which area, is not within the sphere of his assignment and authority.

The defense he put up, that his actuations did not involve any monetary considerations is unavailing. The infractions he committed merited disciplinary action. Mere violation of the company rules need not be qualified with the involvement of money considerations. Existing company regulations were defied, his authority was exceeded which even put to risk the employment and livelihood of the two (2) workers whom he forced to perform chores contrary to company rules and against their will. The tendency to commit infraction against the company has been demonstrated not only once, but twice, in favor of one subscriber has, actually, no doubt made him unworthy to stay further on his job.

WHEREFORE, the respondent is hereby ordered to pay the complainant his proportionate 13th month pay for the year 1989. The rest of the claims, including the complaint for illegal dismissal, are dismissed for lack of merit.

SO ORDERED.”^[5]

Private respondent appealed to the public respondent, National Labor Relations Commission. The NLRC reversed the decision of the labor arbiter, to wit:

“Simply put, what we have here is a situation where a concerned supervisor whose help was sought by an impatient subscriber, conscious of the seemingly irremediable handicap in respondent’s coming to par with the consuming public’s demands particularly in the field of telephone installation, accedes to the request for help and thus contributed whatever facilitation help he could, after all as what complainant aforestressed (an explanation overlooked by the Labor Arbiter), the subject telephones could only be ‘installed after the documents of approval were issued by PLDT,’ mechanics for which approval while certainly beyond his means and capacity, nonetheless serve as effective check against real, and not merely imaginary, irregularities PLDT personnel may conceive.

All told, respondent’s charge cannot even qualify as misconduct on the part of complainant. That the respondent used as ground for terminating complainant’s service ‘serious misconduct’ (Art. 282 [a] of Labor Code), a matter far from what we see on record, we cannot but reverse the decision of the Labor Arbiter on this point.

Accordingly, the decision of the Labor Arbiter insofar only as concerns the issue of dismissal is hereby set aside. The respondent is thus directed to reinstate complainant to his position held as at the time of the complained dismissal, with full backwages, benefits and proportionate privileges.

SO ORDERED.”^[6]

Petitioner’s motion for reconsideration was denied by the NLRC in an Order dated August 19, 1992. Thus, PLDT elevated the case to this Court, raising one basic question:

WHETHER OR NOT GABRIEL IS GUILTY OF SERIOUS MISCONDUCT AND/OR BREACH OF TRUST ANENT THE IRREGULAR INSTALLATION OF THE AFORE-NUMBERED TELEPHONES.

However, more appropriately phrased for our consideration by virtue of Rule 65, the sole issue to be resolved here is whether the public respondent, NLRC, abused its discretion amounting to lack or excess of jurisdiction in reversing the decision of the Labor Arbiter, and ordering the reinstatement of private respondent with full backwages and other benefits.

Petitioner anchors the validity of private respondent's dismissal on two grounds: (1) his acts constituted breach of trust when he intervened in the anomalous installation of four telephone lines, and (2) he violated the standard operating procedures (SOP) on telephone installation activities.

At the outset, it must be recalled that the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned must be one holding a position of trust and confidence.^[7] However, loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary.^[8]

Likewise, it must be noted that willful defiance of company rules must be characterized by perverse attitude that would be considered as inimical to the interest of his employer. Even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employ.^[9]

Dismissal is the ultimate penalty that can be meted to an employee.^[10] Where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not to be visited with a consequence so severe such as dismissal from employment.^[11] For, the Constitution guarantees the right of workers to "security of tenure."^[12] The misery and pain attendant to the loss of jobs then could be avoided if there be acceptance of the view that under certain

circumstances of the case the workers should not be deprived of their means of livelihood.^[13]

In the present case, there is no dispute that the private respondent ordered the installation of the telephone units in favor of Marlon Aquino, a telephone subscriber. As found by the Labor Arbiter, private respondent's orders were irregular. The orders of telephone connection were pursued even if there were no entrance cable facilities for telephone connection. Moreover, Mandaluyong was not within the area of private respondent's jurisdiction. The installers, Mercado and Jocson, were not under his direct supervision. Yet based on his instruction, he secured "OK numbers" for the telephones and performed "call back" at the panel box while misrepresenting himself to the dispatch clerk as the subscriber.

Despite these circumstances, the NLRC reversed the Labor Arbiter's order of dismissal imposed against private respondent Enrique Gabriel. According to the NLRC, it found no written rule of PLDT which provides that such unwarranted installation of telephone lines is subject to the penalty of dismissal. Nor was there any proof that the private respondent profited from the said setting up of telephone lines. Neither was there a showing that PLDT suffered losses from the telephone service in favor of Mr. Marlon Aquino. Finally, as claimed by the private respondent in his memorandum, which was not rebutted on this point by the petitioner, the subject telephones were installed only after the documents of approval were issued by PLDT. Given these circumstances, a substantial doubt as to the validity of the termination appears, and the employee's claim of illegal dismissal accordingly gains credence because such doubt must be resolved in his favor.

In *MERALCO vs. NLRC*,^[14] a case that also involved a supervisor but involved an illegal installation of power line, clearly prejudicial to the economic activity of his employer, this Court has held:

“There is no question that herein respondent Signo is guilty of breach of trust and violation of company rules, the penalty for which ranges from reprimand to dismissal depending on the gravity of the offense. However, as earlier stated, the respondent Commission and the Labor Arbiter found that

dismissal should not be meted to respondent Signo considering his twenty (20) years of service in the employ of petitioner, without previous derogatory record, in addition to the fact that petitioner company had awarded him in the past, two (2) commendations for honesty.

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This Court has held time and again, in a number of decisions, that notwithstanding the existence of a valid cause for dismissal, such as breach of trust by an employee, nevertheless, dismissal should not be imposed, as it is too severe a penalty if the latter has been employed for a considerable length of time in the service of his employer (Citation omitted).

Further, in carrying out and interpreting the Labor Code's provisions and its implementing regulations, the workingman's welfare should be the primordial and paramount consideration. This kind of interpretation gives meaning and substance to the liberal and compassionate spirit of the law as provided for in Article 4 of the New Labor Code which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations shall be resolved in favor of labor" (Citation omitted).

In view of the foregoing, reinstatement of respondent Signo is proper in the instant case, but without the award of backwages, considering the good faith of the employer in dismissing the respondent."^[15]

In the case at bar, we have to concede that in ordering the reinstatement of private respondent, Gabriel, the public respondent, NLRC, is not entirely without good and justifiable reason. Thus it could not be said that this portion of the assailed Resolution of the NLRC is tainted with grave abuse of discretion.

Now, since Gabriel's dismissal has been found to be of doubtful justification in law and policy, the award by the NLRC of full backwages in his favor could not be said as erroneous. It has to be sustained, but only from the date of the NLRC's promulgation of its Resolution on June 29, 1992.

Backwages including thirteenth month pay are a form of relief that restores the income that was lost by reason of unlawful dismissal.^[16] Note that in contrast to the MERALCO case, *infra*, where the award of backwages was not granted because the employer was in good faith when it dismissed the employee who received P7,000.00 purportedly in consideration of his facilitation of the electrical connection in favor of an applicant, in the case at bar the installation of four telephone units was not per se illegal because of the previous approval by the PLDT of these units for installation. The connections were only irregular because they violated certain standard operating procedures of PLDT. Private respondent in this case had facilitated the service connections of the telephone units irregularly but he was apparently of the wrong impression that he was cultivating a customer's goodwill. He did not receive any monetary or other material benefit at all for the facilitation. Thus, on one hand, the cited irregularity here could not justify the ultimate penalty of dismissal from employment. And, in our view, reinstatement (with full backwages and thirteenth month pay computed beginning June 29, 1992 until actual reinstatement) would provide sufficient relief for the loss suffered by him.

On the other hand, the award of unspecified other benefits and proportionate privileges to the private respondent by the NLRC appears to us already unwarranted. Private respondent is not entirely faultless. As a supervisor, he is required to act judiciously and to exercise his authority in harmony with company policies. When he jeopardized the status of the rank-and-file employees whom he ordered to by-pass the standard operating procedures of the company, to the detriment of his employer, he was not entirely blameless. The irregularity attributable to him could not be entirely disregarded. He must not be further rewarded, in fairness to the employer's own legitimate concerns such as company morale and discipline.

WHEREFORE, the assailed NLRC Resolution is **AFFIRMED** with **MODIFICATION**. Petitioner is directed to reinstate the private respondent to his position held at the time of the complained dismissal. Petitioner is likewise ordered to pay private respondent his full backwages including thirteenth month pay due him based on his

last salary, computed from the date of promulgation of the NLRC Resolution on June 29, 1992, until his actual reinstatement. The other awards of unspecified “benefits and proportionate privileges” in the said Resolution are set aside for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Puno, Mendoza and Buena, JJ., concur.

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- [1] Penned by Commissioner Vicente S.E. Veloso and concurred in by Commissioner Romeo Putong; Presiding Commissioner Edna Bonto Perez took part, First Division; Rollo, pp. 32-39.
 - [2] Rollo, pp. 41-42.
 - [3] Penned by Labor Arbiter Manuel P. Asuncion; Rollo, pp. 71-76.
 - [4] Case No. NLRC-NCR-09-04802-90.
 - [5] *Supra*, see note 3, pp. 75-76.
 - [6] *Supra*, see note 1, at pp. 37-38.
 - [7] *Madlos vs. NLRC*, 254 SCRA 248 (1996); *Zamboanga City Electric Cooperative vs. Buat*, 243 SCRA 47 (1995).
 - [8] *Callanta vs. Carnation Philippines, Inc.*, 15 SCRA 268 at p. 280 (1996); citing, *Central Textile Mills, Inc. vs. NLRC*, 95 SCRA 9 (1979).
 - [9] *Tanduay Distillery Labor Union vs. NLRC*, 239 SCRA 1 (1994).
 - [10] *Pantranco North Express, Inc. vs. National Labor Relations Commission*, 252 SCRA 237 (1996).
 - [11] *Supra*, see note 7.
 - [12] *Judy Philippines, Inc. vs. National Labor Relations Commission*, G.R. No. 111934, April 29, 1998.
 - [13] *Ibid.*, citing *Almira vs. B.F. Goodrich Phils., Inc.*, 58 SCRA 120 (1974).
 - [14] 175 SCRA 277 (1989).
 - [15] *Ibid.*, at pp. 282-283.
 - [16] *Escareal vs. National Labor Relations Commission*, 213 SCRA 472 (1992); *Gold City Integrated Port Services, Inc. vs. National Labor Relations Commission*, 245 SCRA 627 (1995).