

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

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

-versus-

**G.R. No. 74562
July 31, 1987**

**THE NATIONAL LABOR RELATIONS
COMMISSION and LAZARO R.
SANTOS,**
Respondents.

X-----X

D E C I S I O N

PARAS, J.:

This is a Petition for Review on *Certiorari* of the April 30, 1986 Decision of the National Labor Relations Commission in Case No. NLRC-NCR-2-636-85 entitled Lazaro R. Santos vs. Philippine Long Distance Telephone Company, reversing the July 16, 1985 Decision of the Labor Arbiter by reinstating Lazaro R. Santos with three (3) months back wages.

On March 28, 1983, herein private respondent was employed by the herein petitioner as a Junior Telephone Installer with a monthly

salary of P810.00 plus P350.00 monthly living allowance. His duties, among other things, were to install and repair telephones.

On May 20, 1984, private respondent was assigned to repair telephone No. 50-34-06 installed at 1639 Neptune Street, Fabie Estate, Paco, Manila, subscribed by Mr. Remigio Perez. After inspecting the telephone wirings, respondent allegedly told Mrs. Remedios Perez that it would take time to repair the telephone since the defect involves cable replacement. When asked by Mrs. Remedios Perez how the cable can be repaired, he answered that there are personnel duly assigned to work on cables but expressed willingness to make the repair himself provided he is paid P160.00 for cable replacement and service charges. Unable to decide for herself, Mrs. Remedios Perez requested respondent to come back the next day at 7:00 p.m., but as it was beyond private respondent's office hours, the latter gave Mrs. Perez his telephone number with the advice that he could be contacted between 12:00 p.m. to 1:00 p.m. and that such transaction should not be divulged to anybody because it is confidential.

Subsequently, Mr. Remigio Perez sent a letter complaint dated May 24, 1984 to the petitioner denouncing respondent for demanding P160.00 from his daughter-in-law, Mrs. Remedios Perez, for the immediate repair of their telephone. This prompted the petitioner to dispatch Engineers Melanio Poce and Fidel Paulino to conduct an on the spot inspection of telephone No. 50-34-06 and it was ascertained that the real trouble was a slash on the portion of the inside wire which was easily restored by connecting the jumper wire to the terminal and by changing a portion of the inside wire.

Mrs. Remedios Perez appeared before petitioner's Quality Control and Inspection Department (QCID) in the afternoon of May 24, 1984 and gave a sworn statement pointing to the respondent as the person who demanded P160.00 from her for cable replacement and service charge in connection with the repair of telephone No. 50-34-06; and executed a "KATUNAYAN" dated May 24, 1984 where she positively identified respondent as the person who demanded P160.00 for repair of their telephone.

On May 29, 1984, a confrontation among private respondent, Mrs. Remedios Perez, Mr. Reynaldo Perez and Mr. Rufino dela Cruz was conducted and during the confrontation, Mr. and Mrs. Reynaldo Perez reiterated that respondent demanded P160.00 for the repair of their telephone. Subsequently, Mr. Nicanor Sacdalan, petitioner's OPSIM I Manager, sent a letter dated July 9, 1984 to respondent requiring the latter to explain within 72 hours from receipt thereof why he should not be dismissed from the service for demanding personal compensation for the services rendered to the subscriber in connection with his telephone. In reply thereto, respondent submitted a written explanation dated July 13, 1984 denying the accusation against him. However, petitioner having been convinced that respondent committed the offense imputed against him, terminated the services of the latter effective October 6, 1984. But three (3) weeks after petitioner had terminated the services of respondent, Messrs. Remigio Perez and Reynaldo Perez, and Mrs. Remedios Perez executed affidavits of retraction dated November 2, 1984, November 12, 1984 and November 8, 1984, respectively.

On February 26, 1985, private respondent filed a complaint for illegal dismissal against petitioner before the Arbitration Branch of the National Labor Relations Commission, docketed therein as NLRC-NCR-2-636-85 (Rollo, pp. 2-14).

In a Decision dated July 16, 1985, Labor Arbiter Bienvenido Hernandez dismissed the complaint for lack of merit (*Ibid.*, pp. 16-22). The dispositive portion of the said Decision, reads:

“WHEREFORE, judgment is hereby rendered holding and adjudging complainant’s dismissal from the service of respondent legal and must be, as it is hereby sustained. The dismissal of complainant should therefore receive the seal of approval by this Office. The case is dismissed for lack of merit with prejudice.

“SO ORDERED.”

On appeal, the National Labor Relations Commission in a Decision dated April 30, 1986, reversed the Labor Arbiter (Rollo, pp. 23-25). The dispositive portion of which, reads:

“WHEREFORE, respondent is hereby directed to reinstate complainant Lazaro R. Santos with three (3) months back wages within ten (10) days from finality thereof.

“SO ORDERED.”

Hence, the present petition (*Ibid.*, pp. 2-14).

The Second Division of this Court, in a Resolution dated June 2, 1986, resolved to require the respondents to comment; and to issue a temporary restraining order (*Ibid.*, p. 26).

In compliance with the above-said Resolution, private respondent filed his Comment on June 20, 1986 (*Ibid.*, pp. 32-34); while public respondent filed its Comment on September 25, 1986 (*Ibid.*, p. 45-53).

Petitioner filed its Reply on November 24, 1986 (Rollo, pp. 58-63) in compliance with the Resolution of October 15, 1986 (*Ibid.*, p. 55).

The petition was given due course in the Resolution of February 9, 1987 and the parties were required to file their respective memoranda (*Ibid.*, p. 64).

On March 2, 1987, public respondent, through counsel, filed a Manifestation and Motion praying that its Comment of September 19, 1987 be considered as its memorandum (*Ibid.*, pp. 67-88).

On March 6, 1987, private respondent filed his Memorandum (*Ibid.*, pp. 69-73) while petitioner filed its Memorandum on April 1, 1987 (*Ibid.*, pp. 77-78).

The sole issue in this case is —

WHETHER OR NOT PRIVATE RESPONDENT WAS
ILLEGALLY DISMISSED FROM HIS EMPLOYMENT BY
PETITIONER.

The instant petition is impressed with merit.

NLRC, in ordering the reinstatement of private respondent with three (3) months back wages, relied solely on the affidavits of retraction of Mr. Remigio Perez, Mr. Reynaldo Perez and Mrs. Remedios Perez, which were executed nearly one (1) month after petitioner terminated private respondent's services.

NLRC's pronouncement was to the effect that what transpired between private respondent and Mr. and Mrs. Reynaldo Perez was a simple case of misunderstanding; that the said spouses overly reacted by the frequent trouble in their telephone line and the failure of private respondent to immediately bring the same to its normal operation, so that, in view of the fact that the charge was not true, private respondent's detractors executed the affidavits of retraction. On the whole, NLRC found private respondent's discharge to be without a solid foundation.

After a careful review of the records, it appears more reasonable to believe that the affidavits of retraction were, as claimed by petitioner, a mere afterthought, executed out of compassion to enable private respondent to extricate himself from the consequence of his malfeasance. As such, this Court ruled in People vs. Rojo, that said affidavits have no probative value (114 SCRA 304, May 31, 1982).

More specifically, in the case of People vs. Galicia (123 SCRA 556, July 25, 1983, citing the case of People vs. Ubina, 97 Phil. 515), this Court in sustaining the action of the lower court in brushing aside the affidavit of retraction executed by complaining witness, ruled:

"It would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them later on changed their mind for one reason or another for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses."

Accordingly, full faith and credit should have been given to the letter-complaint of Mr. Remigio Perez, to the sworn statement of Mr. Reynaldo Perez and Mrs. Remedios Perez, and the "KATUNAYAN"

executed by Mrs. Remedios Perez. Conversely, their affidavits of retraction should have been disregarded.

The other pronouncement of public respondent that private respondent's dismissal from his employment was effected without petitioner complying with the provisions of Sections 1, 2 and 5 of Rule XIV of the Rules implementing Batas Pambansa Blg. 130, is likewise devoid of merit. Said Rule provides:

“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 case 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 desire.”

From the evidence presented it was established that private respondent was dismissed from the service for a just cause - he willfully committed a serious act of misconduct by demanding P160.00 for the repair of telephone No. 56-34-06. Among others, it was shown that the letter-complaint of Mr. Remigio Perez was followed by an investigation conducted by Engineers Melanio Poce and Fidel Paulino who ascertained that the trouble was a mere slash on the portion of the inside wire, contrary to private respondent's assertion that it was cable trouble necessitating cable replacement and other expenses. Subsequently, Mrs. Remedios Perez appeared before petitioner's Quality Control and Inspection Department in the afternoon of May 24, 1984 and gave a sworn statement pointing to

the private respondent as the person who demanded P160.00 from her for cable replacement and service charge. She executed further a "KATUNAYAN" dated May 24, 1984 where she positively identified respondent as the person who demanded P160.00 for the repair of their telephone. Still later on May 29, 1984, it was followed by a confrontation among private respondent, Mrs. Remedios Perez, Reynaldo Perez and Mr. Rufino dela Cruz wherein Mr. and Mrs. Reynaldo Perez reiterated their charge against private respondent. Finally, giving private respondent his chance to be heard, Mr. Nicanor Sacdalan, petitioner's OPSIM I Manager, sent a letter dated July 9, 1984 to the respondent requiring him to explain within 72 hours from receipt thereof why he should not be dismissed from the service for demanding personal compensation for service rendered to the subscriber in connection with the latter's telephone, to which private respondent in a letter dated July 13, 1984, merely denied the accusation without submitting the affidavits of retraction in question until much later, after he was dismissed from the service.

Moreover, he never requested for a formal investigation; so that petitioner, convinced that private respondent committed the offense imputed against him, terminated his services effective October 16, 1984.

It is thus apparent, that the justness of the cause of the dismissal as well as compliance with procedural requirements, is beyond dispute. The disciplinary action of dismissal against private respondent is legally justified considering that his continuance in the service is patently inimical to the interest of the petitioner. As held by this Court, an employer cannot be legally compelled to continue with the employment of a person guilty of malfeasance (National Service Corporation vs. Leogardo Jr., 130 SCRA 502, July 20, 1984). Reinstatement of an employee dismissed due to breach of trust and confidence would be oppression (University of the East vs. NLRC, 140 SCRA 296, November 22, 1985).

Moreover, the alleged illegality of private respondent's dismissal because of petitioner's failure to secure clearance from the Department of Labor before effecting his dismissal, no longer holds true in this case.

Article 278 (b) of the Labor Code of the Philippines, as amended by Sections 13 and 14, Batas Pambansa Blg. 130, now provides:

“Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 284 of this Code, Clearance To Terminate employment shall no longer be necessary.”

As the above-mentioned amendment took effect on August 21, 1981, and private respondent's dismissal from the service was on October 16, 1984, it is clear that petitioner is no longer bound to secure clearance from the Department of Labor before it can validly dismiss private respondent.

PREMISES CONSIDERED, the April 30, 1986 Decision of the National Labor Relations Commission is hereby **REVERSED** and the July 16, 1985 Decision of the Labor Arbiter is hereby **REINSTATED**.

SO ORDERED.

Yap, J., (Chairman), Melencio-Herrera, Padilla and Sarmiento, JJ., concur.