

RUBEN ALBIS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CAMARINES SUR I ELECTRIC COOP, INC., RESPONDENTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

The instant case is a petition for certiorari under Rule 65, assailing the Resolution dated September 19, 2012[1] of public respondent National Labor Relations Commission (NLRC), which upheld the dismissal of petitioner's complaint for illegal dismissal with claims for damages, reinstatement, backwages and attorney's fees. The petition was initially dismissed for the failure of petitioner to file a motion for reconsideration first before resorting to a petition for certiorari under Rule 65,[2] but the same was reinstated upon petitioner's motion for reconsideration[3] in view of the employment of petitioner with respondent for almost 25 years. Hence, the Court deemed it proper to resolve the case based on its merits.[4]

The following antecedents are undisputed:

Petitioner Ruben Albis was initially employed on July 31, 1986, as a casual employee by private respondent Camarines Sur I Electric Cooperative, Inc. (CASURECO I), and was regularized on January 25, 1989. Rising from the ranks, petitioner last held the position of a Lineman under Field Operation Department-CAO-V of private respondent since 1996.[5]

On April 19, 2011, private respondent issued to petitioner a Notice of Violation of EC Rules and Regulation, charging the latter for dishonesty on three (3) counts for “installing illegal connection and tampered/defective meter and soliciting/receiving money from Conelia Lurcha of Zone 6, Dungcal, Josephine Vergara of Zone 2, Sitio Gogon, and Paul Antonio of Zone 1, Sitio Gogon, Camaligan, Camarines Sur (henceforth referred to as Lurcha, Vergara, and Antonio, for brevity) without remitting the same to the Coop”. The notice required petitioner to explain in writing why no disciplinary action shall be taken against him for the said offenses and further informed him of an investigation to be held at the FOD Office of private respondent's headquarters to which he may attend, warning him that private respondent shall act on the case based on the evidence on hand should petitioner fail to attend the investigation.[6]

Having received the notice on April 25, 2011, petitioner complied by submitting his written explanation dated May 2, 2011, thus:[7]

“xxx xxx xxx

“My intention was not to commit the alleged offenses as described in NVECRR but to accede to the request of the applicants named therein and who had their “forced” statements signed. It was not the undersigned who approached them for the electric connections but it was the other way round. This happened in the time when I was transferred to CAO IV and also when my FOREMAN was transferred somewhere else. Actually, I had also sought the assistance of the Barangay Electrician, Mr. Antonio Valencia because I know that the Barangay Electrician has the authority for housewiring installations.

The applicants then were in dire need of electricity...

There were cases of the same nature but were not given due sanctions and this gave me the courage to cause the applicant to be granted with the benefits of electricity, just like what the others did.

xxx xxx xxx”

On April 19, 2011, an investigation was conducted which was attended by petitioner who was able to explain his side.[8]

On July 6, 2011, petitioner's immediate supervisor, Roberto Ruy, who also conducted the investigation, submitted the investigation report finding petitioner guilty of violating the Manual of Discipline and Code of Ethics of Coop Employees, particularly Item 18 of Article VII, Section 4 (Honesty and Integrity) for illegally connecting defective and tampered meters to 3 doubtful consumers and recommended disciplinary action as provided in the Code of Ethics.[9] Two other reports followed on July 7, 2011[10] and August 15, 2011,[11] to the General Manager of private respondent, who issued the Notice of Disciplinary Action dated October 5, 2011, dismissing petitioner from service effective notice thereof.[12] Petitioner refused to receive the notice of disciplinary action per handwritten note on the notice dated October 25, 2011.

During private respondent's Board Meeting on September 3, 2011, petitioner sought the reconsideration of his dismissal when his request to be given the floor was granted. Petitioner admitted the acts complained of, but explained that the consumers insisted on the connections and at that time he was in financial trouble. The Board deliberated thereon but for lack of authority to act on disciplinary matters, no action was taken on petitioner's request for reconsideration.[13]

Petitioner likewise submitted a letter of appeal to private respondent's General Manager dated November 14, 2014, but this time he averred that private respondent extended temporary connections on the condition that their application and documents shall be completed; that the consumers had been billed, thus, private respondent suffered no loss or prejudice; that he denied soliciting or receiving any consideration for the alleged illegal connections; that he denied the irregularity of the turn-on reports that had not followed the normal work flow for billing; and that he was denied due process for failure to confront private respondent's witnesses who executed affidavits on petitioner extracting money from them.[14] In support thereof, petitioner attached to his letter affidavits of Antonio and Vergara, retracting their earlier statements against petitioner.[15]

But, petitioner's appeal was denied by private respondent in its letter dated November 25, 2011.[16]

Aggrieved, petitioner filed a complaint for illegal dismissal with claims for damages, reinstatement, backwages with attorney's fees.

On May 28, 2012, Labor Arbiter Jose C. Del Valle, Jr., dismissed petitioner's complaint for lack of merit, ratiocinating as follows:[17]

“Complainant was charged of violating Article VIII, Section 4 (Honesty and Integrity), Item No. 18 of the Manual of Discipline and Code of Ethics of CASURECO I employees. In support of its accusations against complainant, respondents presented substantial evidence which clearly and convincingly prove the same. xxx

xxx xxx xxx

The gravity of complainant's offense must be considered, as he was not dismissed for a minor or unimportant infraction. As stated above, the importance of the rule, which was violated by complainant should not be disregarded because it is intended for the protection not only of the respondent cooperative but also of all its members-consumers. Also, the long years of service of complainant should be taken against him. If an

employee's length of service is to be regarded as justification for moderating the penalty of dismissal, it will actually become a prize for disloyalty perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables (PAL vs. NLRC, G. R. No. 87353, July 3, 1991).

As regards the requirements of due process, this Office believes and so holds that respondent strictly complied with its requirements. First, complainant was served of the notice of violation of EC Rules and Regulations dated April 19, 2011. This notice clearly informed him of the charges and the description of his offense and required him to explain in writing within ten (10) days from receipt why no disciplinary action should be taken against him. As answer thereto, complainant submitted his written explanation dated 2 May 2011. A formal hearing and/or investigation was also conducted wherein complainant was given ample opportunity to explain and defend his side. Thus, he was furnished again of the Notice of Disciplinary Action dated 5 October 2011, wherein he was informed of respondent's decision to dismiss him from the service (respondent's Annexes "7", "8", "9", "10", "11", "12" and "13", respectively). Respondent's compliance with the requirement of due process did not end here. Complainant was still allowed to file his Appeal with respondent's Board of Directors, wherein during its meeting on September 3, 2011, complainant was allowed to appear and defend himself, as regards his motion for reconsideration. And finally, complainant was furnished again of respondent's action on his motion for reconsideration. In its memorandum dated 25 November 2011, complainant was informed that his appeal was denied and he was ordered dismissed from service effective upon service of the notice of termination (Annexes "14" to "16" to respondent's position paper). All the foregoing are clear and convincing proofs that respondent strictly complied with the requirements of due process.

Complainant's assertion that he was deprived of his right to due process because he was not given opportunity to confront Cornelia Lurcha, Josephine Vergara and Paul Antonio, is also devoid of merit. Due process merely contemplates "opportunity to be heard." Formal "trial type" hearing, although preferred is not absolutely necessary to satisfy the employee's right to be heard.

xxx xxx xxx

Wherefore, premises considered, judgment is hereby rendered dismissing the complainant for illegal dismissal, for lack of merit.

xxx xxx xxx

SO ORDERED."

On appeal, petitioner insisted that the findings of the investigation resulting in his dismissal had not been supported by convincing evidence; that it was the consumers who approached petitioner for temporary connection and that there was no showing petitioner demanded, collected or received amounts, or that there was no showing that the same were not remitted if petitioner received the same; and that he was denied due process since he was not given the opportunity to confront private respondent's witnesses.[18]

Giving credence to private respondent's handwritten statements of its witnesses, petitioner's admissions per his explanation to the notice of violation and letter of appeal, and even the affidavits of Antonio and Vergara in support of his appeal, public respondent upheld the Labor Arbiter's Decision as follows:[19]

"Indeed, the electrical connections which were made possible by the complainant and without authority of Respondents, are all illegal. The crux of complainant's offense is his act of connecting or installing electric service to Antonio, Lurcha and Vergar (sic) without authority from Respondents.

Complainant's attempts to downplay his wrongdoing, by stating that there is no proof of corruption (that he did not solicit and receive moneys from certain persons) will not lie to exculpate him from administrative liability. That there is money involved, is just icing on the cake. In short, there is even no need for us to determine

whether money exchanged hands in the subject transaction. The undisputed and admitted fact that he installed the electric connection without the usual application requirements, and without the knowledge and consent of the respondents, is enough justification for the respondents to terminate his services. In the process, the use of defective or tampered or retired electric meter, was means employed by the complainant to implement his illegal act and provide some semblance of legality to the connection, because the users would be billed thereafter. Hence, even if it is considered for the sake of argument, that the statements of Antonio and Vergara that they gave Complainant money, is false in view of their retractions, complainant's dishonesty was already proven with substantial evidence.

xxx xxx xxx

Complainant's avowal of concern for the emergency need for electric service to the persons whom he individually dealt with, is merely an alibi, and a false charm of heroism. Again, as an employee of the respondents for more than twenty years, Complainant knows he cannot and should not act on his own on any application for electric service, much less act on them covertly under anomalous circumstances. The complainant's long years in service does not by itself, mitigate or lessen the penalty to one of suspension, in view of the gravity and seriousness of the charge, it in fact aggravates his act."

Thus, petitioner filed the instant petition for certiorari with the following grounds:[20]

"1. The NLRC gravely erred in upholding the Labor Arbiter's decision with grave abuse of discretion tantamount to lack or excess of jurisdiction, in rendering that the Petitioner was legally dismissed by the Respondent on the grounds of dishonesty which was not proven with substantial evidence. The NLRC, with grave abuse of discretion and undue haste of deciding the case, failed to consider and ignored other pertinent pieces of evidence on record negating allegations of the respondents.

2. The NLRC gravely abused his discretion which amounted to lack or excess of jurisdiction in holding that the Petitioner's claim of deprivation of due process cannot be given due course because the requirement of due process was satisfactorily met. The Petitioner, however, was never accorded and given ample opportunity to defend himself, adduce his evidence or rebut the evidence against him, through confrontation with the witness or witnesses of Respondents."

Petitioner essentially reiterates the arguments raised on appeal before public respondent. In insisting that private respondent failed to show clear and convincing evidence of his dishonesty, petitioner argues that the conclusions of public respondents are based on self-serving allegations, false and fabricated charges; that in petitioner's employment with private respondent for more than 20 years without violation or infraction of private respondent's rules and regulations, he has maintained good relationship with the consumers, which is why the latter sought for his help to expedite their request for electrical connection; that in acceding to provide temporary connections to Antonio, Lurcha and Vergara, it was not only out of compassion, but also to better serve private respondent, confident that said connections were legitimate considering that the requirement were being prepared and completed; that by submitting the "turn-on" reports, petitioner ensured that such connections would be billed accordingly; that private respondent did not suffer any loss or prejudice when the three connections were billed and duly paid by said consumers; and that the affidavits of Antonio, Vergara and Lurcha on which the complaint against him had been based were doubtful, questionable and made under threat and intimidation.[21]

We are not convinced.

Petitioner in the guise of being compassionate in expediting the request for an electrical connection of pending applicants and taking his so-called "proactive stance to better serve his employer,"[22] has caused more prejudice to private respondent. Being a lineman, petitioner had no business making the electrical connections without the knowledge and approval of private respondent. By making such electrical connections without proper

documentation, approval and other requisites such as fees or charges attendant thereto, which are to be completed even before the connection is made, petitioner acted beyond his authority as a lineman. And petitioner's insistence that private respondent suffered no prejudice considering that he submitted the "turn-on reports" for the billing of the 3 "temporary" consumers, without informing private respondent of such temporary connections which were later discovered by the latter, is utterly without merit and is in itself an act of dishonesty. Contrary to petitioner's picture of compassion, an examination of the affidavits of Antonio and Vergara, purporting to be retractions in support of his appeal, shows that the temporary connections were done sometime in 2010 when they were allegedly in the process of completing their application for electrical connection.[23] But, the initial investigation showed that the documents for application have been submitted to petitioner by Antonio, and not to private respondent; that the meter installed for Lurcha was retired and intended for another, yet no documents exist as to its reconditioning; and that meter installed for Vergara was likewise intended for another and application thereof had not been submitted.[24] These meant that said consumers had no intention of completing their applications, if there were any, and that petitioner had no intention of reporting such temporary connections since to his mind they were being billed anyway. Such twisted reasoning is not compassion, but an unfair practice not only to the private respondent, but also to other consumers who have gone through the legitimate process and have been paying their bills based on the legitimately installed electric meters.

Carefully examining the records on hand, We agree with public respondent and find substantial evidence to support petitioner's cause for dismissal. The investigation reports made by petitioner's supervisor consistently reported that all 3 doubtful meters turned out to be defective, tampered with, intended for another consumer, or retired; that such connections had been facilitated by or referred to petitioner; and that each paid a certain amount (from P7,000 to P12,000) to petitioner.[25] And to make some color of legitimacy, turn-on reports were submitted so as to bill the connections made by petitioner, which were found to violate the workflow in the billing process.[26] More importantly, petitioner admitted the violations charged against him from the start in reply to the notice of violation of EC rules and regulations;[27] then during the hearing of his case on April 19, 2011;[28] and as recorded in the minutes of the Board meeting on September 3, 2011, where petitioner was given the floor to explain himself as per request.[29] As the last straw, petitioner attempted to use subsequent affidavits of Antonio and Vergara, purportedly as retractions, but which upon careful reading thereof supported even more the conclusions of the investigation of private respondent, that petitioner indeed caused the connections without authority from it.[30]

As to due process, We likewise find no merit to petitioner's argument that he was denied thereof for failure to confront private respondent's witnesses, i.e. Antonio, Vergara, and Lurcha. The Supreme Court has consistently ruled in labor cases that the essence of due process does not mean a full blown, trial-type hearing, but an opportunity to explain one's side. Thus, the Supreme Court ruled in *PLDT vs. The Late Romeo F. Bolso*: [31]

"The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[32] A formal or trial-type hearing is not at all times and in all circumstances essential.[33]

In this case, petitioner had been given all the opportunity to be heard through his reply letters to the notices issued to him and even during private respondent's Board Meeting upon his request. The affidavits attached to his letter appeal, intended as retractions of private respondent's witnesses, were by analogy a confrontation of said witnesses, which, unfortunately, supported private respondent's cause of petitioner's dismissal since they admitted that they approached petitioner to facilitate the temporary connections and even paid him the cost of the materials for the connection thereof.

It must be emphasized that petitioner, while admitting the violations levelled against him, has been appealing for a

lesser penalty than dismissal from service considering that he has been employed with private respondent for more than 20 years. Sadly, however, petitioner has not stood loyal to private respondent as he claims. On that point, the Supreme Court has this to say:[34]

“xxx The Court has held that the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company.[35] An employee's length of service with the company even aggravates his offense.[36] xxx xxx xxx

Upholding the employee's interest in disregard of the employer's right to dismiss and discipline does not serve the cause of social justice. Social justice ceases to be an effective instrument for the "equalization of the social and economic forces" by the State when it is used to shield wrongdoing.”

In fine, the dishonesty committed by petitioner was the act of making the electrical connections to private respondent, without the latter's authority, approval and knowledge thereof. Whether or not he received consideration for facilitating the connection, and whether or not private respondent suffered loss or prejudice, are mere consequences for petitioner's wrongdoing and in violation of private respondent's rules.

WHEREFORE, the instant petition for certiorari is DENIED for lack of merit. The assailed Resolution dated September 19, 2012 of the National Labor Relations Commission (NLRC) in LAC No. 07-002066-12 is AFFIRMED.

SO ORDERED.

Barza, R. F., and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 39-60.

[2] Resolution dated February 7, 2013. Rollo, pp. 102-103.

[3] Rollo, pp. 110-115.

[4] Rollo, pp. 122-123.

[5] Rollo, pp. 9-10.

[6] Rollo, p. 85.

[7] Rollo, p. 86.

[8] Transcript of Hearing of the Case of Ruben B. Albis (in local dialect), rollo, pp. 165-169.

[9] Rollo, p. 170.

[10] Rollo, p. 171.

[11] Rollo, p. 173

[12] Rollo, p. 174.

[13] Rollo, p. 151 and pp. 175-186.

[14] Rollo, pp. 187-191.

[15] Rollo, pp. 190-192.

[16] Rollo, p. 193.

- [17] Rollo, pp. 31-36.
- [18] Rollo, pp. 66-71.
- [19] Rollo, pp. 56-59.
- [20] Rollo, pp. 14-15.
- [21] Rollo, pp. 16-19.
- [22] Rollo, p. 16.
- [23] Rollo, pp. 91-93.
- [24] Rollo, p. 157 and p. 176.
- [25] Rollo, p. 157 and 159.
- [26] Ibid.
- [27] Rollo, p. 86.
- [28] Rollo, pp. 165-169.
- [29] Rollo, pp. 175-178.
- [30] Rollo, pp. 91-93.
- [31] G. R. No. 159701, August 17, 2007
- [32] Ibid., Citing *Jamer v. NLRC*, 344 Phil. 181, 201, 205-207 (1997).
- [33] Ibid., Citing *Philippine Savings Bank v. NLRC*, G.R. No. 111173, 4 September 1996, 261 SCRA 409.)
- [34] *PLDT vs. The Late Romeo F. Bolso*, supra., citing *Jamer v. NLRC*, 344 Phil. 181, 201 (1997).
- [35] Ibid., citing *Reyno v. Manila Electric Company*, G.R. No. 148105, 22 July 2004, 434 SCRA 660, citing *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg*, 443 Phil. 866 (2003)
- [36] Id. at 669 citing *United South Dockhandlers, Inc. v. NLRC*, G.R. No. 119935, 3 February 1997, 267 SCRA 401, 407.

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