

**PAMPANGA II ELECTRIC COOPERATIVE, INC., AND JESUS S. NICDAO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND RAFAEL TIGLAO, RESPONDENTS.**

*G.R. No. 107541. November 16, 1995*

Ponente: MENDOZA, J.

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**MENDOZA, J.:**

This is a petition for certiorari to set aside the resolution of the National Labor Relations Commission, affirming with modification the decision of the Labor Arbiter, finding petitioners guilty of the illegal dismissal of respondent Rafael Tiglao.

Petitioner Pampanga II Electric Cooperative, Inc. (PELCO II) is an electric cooperative serving the municipalities of Lubao, Sasmuan, Sta. Rita, Mabalacat, Porac and Bacolor in the province of Pampanga. Petitioner Jesus Nicdao is its General Manager, while private respondent Rafael Tiglao was its bill collector until November 7, 1990 when he was dismissed for failure to account for P75,238.87 which he had allegedly collected from electric consumers. The Labor Arbiter and the National Labor Relations Commission found the facts to be as follows:

On or about 30 April 1990, while complainant was on his way home after the usual collection of electric bills somewhere at Barangay Sta. Ursula, Betis, Guagua, Pampanga, the place of his official assignment, three (3) men under the influence of liquor met his path and then invited him to join them in a drinking session in a nearby small store. Since complainant recognized these men by their faces as among the few from the bunch of resident-consumers keen in connecting "electric jumper" whom he previously warned, he politely turned down the invitation. Sensing that trouble may erupt due to complainant's turning down the invitation, he ran away from them to a safer direction. However, although complainant successfully eluded the three men inviting him for a drinking session unnoticed, he lost his clutch bag that contains personal things, like a cash money in the sum of P5,000.00 and several receipts of collectible electric bills in the amount of more or less P70,000.00 which he reported on the same date to Mr. Leonardo Calma, the Barangay Captain, who, together with some councilmen have accompanied him in the place where he came from but their efforts to locate the missing clutch bag turned futile.

On 02 May 1990, the following working day, complainant immediately informed Mr. Virgilio Yambao, respondent's Area Manager, about what happened to him, and suggested that he will continue anyway to collect the amount indicated in those missing duplicated receipts based on his personal record which are the listing of names and respective accounts of resident-consumers in the total sum of P75,238.87. But, in spite of complainants' suggestion, the Area Manager ordered the auditing personnel to conduct an internal audit against him and the audit confirmed that he has an unremitted payments for electric power consumed by several residents in his place of assignment in the amount of P75,238.87. Based on the audit report, Area Manager Virgilio Yambao sent a Memorandum to complainant on 27 July 1990 directing him to settle immediately his obligation.

On 08 August 1990, complainant replied on the Memo of Mr. Yambao proposing settlement of the alleged obligation under the following schedules: starting 15 August 1990, to pay the amount of P500.00 and the same amount on the 30th of said month by way of salary deduction on each pay day, and for every succeeding month thereafter, until the total obligation is fully settled and paid; or, in the alternative, to execute in favor of PELCO II a Deed of Conveyance over his real property with an area of not less than 11,000 square meters or more than one (1) hectare with a total assessed market value in the amount of not less than P100,000.00 in satisfaction of the above-stated obligation. Together with the proposal, complainant also stated that he has been in the company for more than eighteen (18) years of service with untarnished record of performance and it is only now that this happened to him which was not entirely due to his own fault; that he has a family with seven children to feed and who are still attending school; and that this offer was made to show his good faith and loyalty to the company.

On 23 August 1990, Area Manager Virgilio Yambao wrote a letter to complainant stating that his proposal was not acceptable to the Management of respondent Company, and he was advised, to avoid the possibility of criminal liability, to finally settle his obligation within five (5) days from receipt of said letter or be terminated from his services without prejudice to the necessary action warranted under the circumstances.

On 31 August 1990, respondent Engr. Jesus S. Tiglao, General Manager of respondent Cooperative, wrote complainant the following observations:

- You are indeed accountable with the amount of P75,238.87 representing collection money that were not remitted to the office as should have been the case and which you now propose to pay on salary deduction but that the office is not amendable;
- that up to this time of writing you have not settled said obligation despite the lapse of 5-days period given you in the afore-mentioned letter;
- that this not the only instance of such non-remittance incident in your having been a collector in the office of Pelco II but on previous similar actuations before;
- that aside from non-remittance of your collections you were also an absentee;
- that your records would show your deliberate disregard to Memorandum and reprimand of your supervisors calling for your actuations in employment.

and meted him with a suspension from work without pay for an indefinite period of time from 03 September 1990. On the same date, upon receipt of his suspension-notice, complainant referred his case to the Union Grievance Committee thru Mr. Remigio Palo, Union President, but days passed and no words from the union was ever communicated to him. Also, complainant lost no time and opportunity to appeal his case to respondent Jesus Nicdao and a letter-appeal was written by him on 15 September 1990 but it was not attended to.

Between the period that complainant was instructed to stop collecting bills up to November 1990, there were several consumers who voluntarily paid their accounts but respondents merely deducted said amount to his alleged obligation and, on 07 November 1990, he was handed a termination letter by respondent General Manager, Engr. Jesus Nicdao, to take effect immediately, for failure to settle his alleged money accountabilities with the Cooperative in the remaining amount of P72,278.87.

On the basis of these facts, the Labor Arbiter found the petitioner PELCO guilty of illegal dismissal and unfair labor practice. Accordingly he ordered PELCO II as follows:

WHREFORE, in view of all the foregoing considerations, judgment is hereby rendered:

1. Declaring respondents to be guilty of illegal dismissal and unfair labor practice act, as charged;

2. Ordering respondents to cease and desist from further committing the acts complained of;
3. Ordering respondents to reinstate complainant immediately to his former position under the same terms and conditions obtaining at the date of his dismissal, without loss of seniority rights and other benefits, either physically or in the payroll, at the option of respondents, as mandated by R.A. 6715;
4. Ordering respondent to pay the full backwages and other benefits of complainant, moral and exemplary damages, as well as, attorney's fees, as follows:

a.

Backwages (parties) - P57,280.00

b.

other benefits:

1) 13th month pay for 1990 and 1991

-P 7,160.00

2) Sick leave and vacation leave benefits for 1990 and 1991

-P 7,160.00

c.

Moral damages

-P20,000.00

d.

Exemplary damages

-P10,000.00

e.

Attorney's fees (partial)

-P10,160.00

or in the grant total of

P101,600.00

=====

**SO ORDERED.**

On appeal, the NLRC affirmed with modification as follows:

IN VIEW OF THE FOREGOING, the appealed Decision is hereby Affirmed, with Modification, recomputing the backwages which should not exceed three (3) years, deleting the award of moral and exemplary damages, reducing the amount of attorney's fees to P1,432.00 and absolving the respondent from the unfair labor practice charge.

**SO ORDERED.**

Hence, this petition by PELCO II and its general Manager Jesus S. Nicdao.

Petitioners contend that the NLRC erred in finding "that there was no single iota of evidence establishing the fact that private respondent was involved in any anomaly," because in fact private respondent had admitted in his letter dated August 8, 1990 liability for the payment of the amount of P75,238.87 representing unremitted collection and for this reason proposed a schedule of payment. Petitioners argue that pursuant to §26 of Rule 130 of the Rules of Court, which states that "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him," private respondent's letter is evidence against him and that in disregarding this evidence the NLRC acted with grave abuse of discretion.

The petitioners claim that they have a valid ground to dismiss the private respondent based on loss of faith and confidence in him because the nature of the job of the private respondent requires the highest degree of honesty. They contend:

Under Art. 283 (now 281) of the Labor Code, an employer may terminate an employment for "serious misconduct" or for "fraud or willful breach by employee of the trust reposed in him employer or represented." Loss of confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. It is enough that there be "some basis" for such loss of confidence or that the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position. (Reyes v. Zamora, L-46732 May 5, 1979, 90 SCRA 92, and Caluin v. PNB, L-23931, August 29, 1969, 29 SCRA 293 cited in the Dole Phils., Inc. v. NLRC, et. al, G.R. No. 55413, July 25 1983, 19 SCD 417).[1]

With respect to the finding of the NLRC that what were lost were merely "unremitted bills" but that there was no evidence that private respondent had actually collected the electric bills, petitioners contend:

It would be contrary to human experience to pay or to execute a deed of conveyance in payment of said electric bills, if they have not yet been COLLECTED. If the intention of the PRIVATE RESPONDENT was to guarantee the collections of said electric bills, then he would not have propose to pay the said amount by way of SALARY DEDUCTION OR DEED OF CONVEYANCE. A mere mortgage would have instead serve the purpose of guaranteeing the collections of said electric bills.[2]

Petitioners further aver that the NLRC erred in finding that the private respondent had been denied due process[3]

because as a matter of fact a series of communication and correspondence between the parties preceded the private respondent's dismissal.

The Office of the Solicitor General (OSG), appearing for the NLRC, defends its decision, contending that petitioners' evidence was insufficient to prove that the private respondent misappropriated the amount he was being made to pay.

The OSG claims that, consistently with the finding that there was no proof that private respondent failed to account for his collection, the NLRC correctly disallowed the Labor Arbiter's grant of moral and exemplary damages to private respondent because it was the latter's own negligence which resulted in the loss of the receipts.

We find the petitioners' contentions to be well taken.

First. The employer has a right to dismiss an employee on the ground of loss of trust or confidence.[4] The condition for the exercise of this right is that it must be based "on just and lawful causes, duly substantiated, otherwise it could easily be used as a pretext to reduce to a barren form of words the constitutional guarantee of security of tenure." [5]

In the case at bar, it is not true, as the Labor Arbiter and NLRC held, that there was not "an iota of evidence establishing the fact that [herein private respondent] was involved in any anomaly, particularly an act which can be the basis of fraud or dishonesty that will lead [herein petitioners] to lose trust and confidence on him." There was evidence to show that private respondent collected P75,238.87 from member-consumers of the PELCO II, and that evidence was supplied by private respondent himself.

Private respondent claimed that he lost the receipts he was carrying as he fled from people he had previously found installing "jumpers" [6] for fear that they might harm him. Obviously the management of PELCO II did not believe his story because on July 27, 1990, PELCO II sent him a memorandum stating that per audit he had "unremitted bills in the amount of P75,238.87" which he should "settle immediately." Instead of insisting on his story, private respondent acknowledged his obligation and proposed to pay it through payroll deductions or, if this was not acceptable to petitioners, by conveying to the cooperative a parcel of land which he owned.

Thus in reply to the memorandum sent to him private respondent wrote petitioners on August 8, 1990:

MEMO

FOR

:

MR. VIRGILIO M. YAMBAO

Guagua Area Manager

FROM

:

MR. RAFAEL TIGLAO

Collector, Pampanga II

Electric Cooperative, Inc.

Guagua Sub-Office

RE

:

UNREMITTED BILLS TOTALLING

P75,238.87

SIR:

With regard to your letter of July 27, 1990 wherein you directed the undersigned to settle immediately the afore-mentioned obligation, I have the honor to propose that the said obligation be paid under the following schedule, namely:

Starting the month of August 15, 1990, to pay the amount of P500.00 and the same amount on the 30th of the said month by way of salary deduction due to me on each pay day; and for every succeeding month thereafter until the total obligation is fully settled and paid.

In the alternative, sir, I am also willing to execute in favor of PELCO II a Deed of Conveyance over my real property with an area of not less than 11,000 sq. meters, or more than one (1) hectare with a total market value assessed in the amount of not less than P100,000.00 in satisfaction of the above-stated obligation.

Sir, this modest proposal is prompted by the following considerations, to wit: Although I have been for more than eighteen (18) years in the service of the company with untarnished record of performance but only now, which was not, however, entirely due to my own fault, and with a family of seven to feed and who are all attending school I am making this offer of payment to show my good faith and loyalty to the company that I served for more than eighteen (18) years.

Anticipating that this message will merit your favorable action.

Very truly yours,

**RAFAEL TIGLAO**

Such evidence is admissible against private respondent.[7] With such evidence it became unnecessary for petitioners to show that private respondent had in fact collected the electric bills but failed to remit his collection. Indeed, both the Labor Arbiter and the NLRC found that private respondent "was [already] on his way home after the usual collection of electric bills somewhere at Barangay Sta. Ursula, Betis, Guagua, Pampanga, the place of his official assignment" when he allegedly saw the three men from whom he feared harm. It is therefore clear that he had already made collections.

That nine consumers ? not 12 as the Labor Arbiter and the NLRC said ? made an affidavit attesting to the fact that private respondent had not yet collected their bills and that after private respondent's suspension the petitioners were able to collect a total of P3,000.00 from some of the consumers merely shows, if at all, that private respondent had not collected from such individuals. It does not prove at all that he had not collected from the rest of the consumers under his charge.

The cause of social justice is not served by upholding the interest of private respondent in disregard of the right of petitioners. Social justice ceases to be an effective instrument for the "equalization of the social and economic forces"[8] by the State when it is used to shield wrongdoing. For private respondent was no ordinary worker. He was a bill collector whose job depended on the utmost trust and confidence of his employer. We have affirmed the dismissal of bill collectors found guilty of misappropriation of money in their custody on precisely this ground.[9] Private respondent admitted a breach of that confidence, but despite that the Labor Arbiter and the NLRC insisted

"there was not an iota of evidence establishing" culpability on the part of the employee. This calls for reversal where normally respect for findings of administrative agencies is the rule.

Second. The Labor Arbiter and the NLRC held that private respondent had been dismissed without due process because

[1] [U]pon receipt by the Area Manager, Virgilio Yambao, of the audit report showing that complainant's alleged 'unremitted bills' in the amount of P75,238.87, the former immediately concluded that the latter was liable for it and directed him to settle his obligation immediately (Complainant's Annex "C"/Respondents' Annex "1"), without first affording the complainant his right to notice of dismissal and to know the reason for the proposed dismissal.

[2] Respondent Jesus Nicdao, the General Manager of respondent Cooperative, reacting to the letter of the Area Manager, placed complainant under indefinite period of suspension effective 03 September 1990 pursuant to his Memorandum dated 31 August 1990 (complainant's Annex "F"/Respondents' Annex "4"), thereby preventing complainant from reporting for work starting that even date.

[3] And, without prior investigation being conducted wherein complainant should have been afforded the right to be heard, to examine the basis of the audit report, to confront witnesses or the audit personnel, to produce evidence in his behalf, except allowing, he was summarily terminated allegedly on the basis of 'loss of trust and confidence' reposed upon him by the respondents, apparently due to his failure to settle the 'unremitted bills' in the amount of P75,238.87.

In *Tiu v. NLRC*,<sup>[10]</sup> this Court, considering the provisions of Art. 277 of the Labor Code and those of Book V, Rule XIV, §§2-6 of the Rules Implementing the Labor Code, held that two written notices must be given to an employee before he may be dismissed. The first is notice apprising him of the particular acts or omissions for which his dismissal is sought. This is the equivalent of a charge. The second is notice informing him of his dismissal, to be issued after the employee has been given reasonable opportunity to answer and to be heard on his defense. The decision to dismiss must be in accord with the law and the evidence and not the whim or caprice of the employer. These requirements were observed by petitioners.

The following were had before private respondent was finally dismissed on November 7, 1990.

(1) On July 27, 1990, the management of PELCO II issued the following memorandum to private respondent:

As per audit shows that you have unremitted bills in the amount of P75,238.87 at the barrio of Sta. Ursula, Betis, Guagua, Pampanga.

In view of this, you are hereby directed to settle your obligation immediately.

This is the notice to private respondent of the charge. The Labor Arbiter and the NLRC say that there was prejudgment because the memorandum right away requires him to pay the amount of P75,238.87. Necessarily management must first conclude that he should pay before it can give him notice of the charge.

(2) Private respondent answered this memorandum by sending the following memorandum to the Area Manager of PELCO II on August 8, 1990:

MEMO

FOR

:

MR. VIRGILIO M. YAMBAO

Guagua Area Manager

FROM

:

MR. RAFAEL TIGLAO

Collector, Pampanga II

Electric Cooperative, Inc.

Guagua Sub-Office

RE

:

UNREMITTED BILLS TALLING

P75,238.87

SIR:

With regard to your letter of July 27, 1990 wherein you directed the undersigned to settle immediately the afore-mentioned obligation, I have the honor to propose that the said obligation be paid under the following schedule, namely:

Starting the month of August 15, 1990, to pay the amount of P500.00 and the same amount on the 30th of the said month by way of salary deduction due to me on each pay day; and for every succeeding month thereafter until the total obligation is fully settled and paid.

In the alternative, sir, I am also willing to execute in favor of PELCO II a Deed of Conveyance over my real property with an area of not less than 11,000 sq. meters, or more than on one (1) hectare with a total market value assessed in the amount of not less than P100,000.00 in satisfaction of the above-stated obligation.

Sir, this modest proposal is prompted by the following considerations, to wit: Although I have been for more than eighteen (18) years in the service of the company with untarnished record of performance but only now, which was not, however, entirely due to my own fault, and with a family of seven to feed and who are all attending school I am making this offer of payment to show my good faith and loyalty to the company that served for more than eighteen (18) years.

Anticipating that this message will merit your favorable action.

Very truly yours,

RAFAEL TIGLAO

Private respondent was thus given a reasonable opportunity to answer. As noted earlier, the answer contains an admission of liability for the amount of P75,238.87.

(3) On August 23, 1990, the Area Manager of PELCO II replied as follows:

Mr. Rafael Tiglao

Paralaya, Del Pilar

San Fernando, Pampanga

Dear Mr. Tiglao:

Your letter dated August 8, 1990 Re-Unremitted Bills Totalling P75,238.87 has been referred to the Management of the cooperative.

With regret, you are hereby advised that your proposal on how to pay your obligation is not acceptable. Neither the alternative one.

Please be advised further that in order to avoid the possibility of a criminal liability on account of such obligation, you are finally afforded five (5) days from receipt of this letter to settle said obligation to the cooperative to terminate your services without prejudice to necessary action warranted under the circumstances.

Very truly yours,

VIRGILIO YAMBAO  
Area Manager  
Guagua Sub-Office

(4) Considering the admission of private respondent, it became unnecessary to hold any formal investigation. More particularly, it became unnecessary for PELCO II to allow private respondent to go over the audit report because he admitted his liability. All that was needed was to inform him of the findings of the management. In his letter of August 31, 1990, PELCO II's General Manager stated:

MR. RAFAEL TIGLAO  
Paralaya, Del Pilar  
San Fernando, Pampanga

Dear Mr. Tiglao:

A copy of the letter sent to you by your Manager, Mr. Virgilio Yambao, which you acknowledged received August 24, 1990 Re-Unremitted Bills totaling P75,238.87 is referred to the office of the undersigned.

Having gone through the letter and your files within the office, the following observations are established:

- 1) you are indeed accountable with the Cooperative in the amount of P75,238.87 representing collection money that were not remitted to the office as should have been the case and which you now propose to pay on salary deduction but that office is not amenable;
- 2) that up to this time you have not settled said obligation despite the lapse of 5 days period given you in the aforementioned letter;
- 3) that this is not only the instance of such non-remittance incident in your having been a collector in the office of PELCO II but on previous similar actuations before;
- 4) that aside from non-remittance of your collections you were also an absentee;
- 5) that your records would show your deliberate disregard to Memorandum and reprimand of your supervisors calling for you actuations;

All these and more irregularities attributable to your person as an employee of the cooperative without satisfactory explanation despite the opportunities given you, are detrimental to the interest of the Cooperative.

In view of the foregoing therefore, you are hereby meted with a suspension from work without pay for an indefinite period of time effective September 3, 1990, which may lead to the termination of your services without prejudice to necessary charges against you.

Very truly yours,

ENGR. JESUS NICDAO  
General Manager

(5) On November 7, 1990 private respondent was given the final notice of termination:

Please be advised that your services as an employee of the Cooperative is hereby terminated, effective immediately.

There is therefore no basis for the finding of the Labor Arbiter and the NLRC that private respondent had been given no notice and hearing before he was dismissed. That there was basis for his dismissal has already been discussed in the first section of this decision.

WHEREFORE, the decision of the Labor Arbiter and the resolution of the NLRC affirming it are SET ASIDE and the complaint of private respondent in NLRC Case No. L-00045 (RAB-III-01-1949-91) is DISMISSED.

**SO ORDERED.**

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.  
Francisco, J., on leave.

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[1] Petition, p. 9 (Rollo, p. 14).

[2] Ibid., p. 11 (Rollo, p. 16).

[3] Ibid., pp. 13-14 (Rollo, pp. 18-19).

[4] Art. 282 of the Labor Code (P.D. No. 442) provides:

Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

[5] *Bagong Bayan Corp. v. NLRC*, 178 SCRA 107 (1989).

[6] Device for stealing electricity.

[7] Rule 130, §26.

[8] *Calalang v. Williams*, 70 Phil. 726, 734 (1940).

[9] *Piedad v. Lanao del Norte Electric Cooperative, Inc.*, 153 SCRA 500 (1987).

[10] 215 SCRA 540 (1992). See also *Kingsize Manufacturing Corporation v. NLRC*, 238 SCRA 349 (1994).

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