MANILA ELECTRIC COMPANY, PETITIONER, VS. COURT OF APPEALS AND METRO CONCAST STEEL CORPORATION, RESPONDENTS.

G.R. No. 108301. July 11, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Basic is the general rule that the factual findings of the Court of Appeals (CA) affirming those of the trial court are binding on this Court. A factual review, however, may be proper in case such appellate findings reverse those of the court below. In the present case we hold that the CA committed no reversible error in differing from the findings of fact of the regional trial court (RTC).

Statement of the Case

Before this Court are two consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court. The Petition in GR No. 108301[1] (henceforth referred to as the "First Case"), filed by the Manila Electric Company (Meralco), seeks the reversal of the October 16, 1992 Decision[2] of the Court of Appeals[3] in CA-GR CV No. 32287 and the December 21, 1992 CA Resolution[4] denying reconsideration. The dispositive portion of the assailed Decision reads as follows:

> "WHEREFORE, the decision appealed from is hereby MODIFIED by deleting therefrom the award of P50,000.00 as attorney's fees in favor of the appellee, but is AFFIRMED in all other respects. Costs against the appellant."[5]

The Petition[6] in GR No. 132539 (henceforth referred to as the "Second Case"), filed by Metro Concast Steel Corporation, challenges the June 30, 1997 Decision[7] of the Court of Appeals[8] in CA-GR CV No. 45933 and the subsequent CA Resolution[9] dated January 28, 1998 denying reconsideration. The dispositive portion of the Decision reads thus:

> "WHEREFORE, the decision appealed from being against the law and unsupported by, if not contrary to, the evidence on record, is hereby REVERSED and the complaint is ordered DISMISSED.
>
> Consequently, plaintiff-appellee Metro Concast is ordered to pay to defendant-appellant MERALCO, on its counterclaim, (a) the amount of P44,470,441.22 with legal interest thereon from the date of defendant-appellant's demand until said amount is fully paid; (b) attorney's fees and litigation expenses in the amount of P100,000.00; and, (c) the costs. The writ of preliminary injunction issued on 31 July 1987 is likewise ordered dissolved."[10]

The Facts

GR No. 108301

The facts in the First Case are summarized by the Court of Appeals as follows:

> "The records show that on October 19, 1987, appellee Metro Concast Steel Corporation (hereinafter referred to

as Concast for brevity) filed with the court a quo a complaint for injunction docketed therein as Civil Case No. 55158 alleging among others that:
`The defendant is a utility company supplying electricity in the Metro Manila area;

`That the plaintiff is a consumer of electric current supplied by the defendant under the letter's Account No. 09489-2122-18 with Meter No. 41 GW 12 installed at the plaintiff's plant at Barangay Lawang Bato, Valenzuela, Metro Manila;

`That the plaintiff has been religiously paying the regular monthly [bills] for its electric consumption and even up to the present has never been delinquent in the payment of its electric consumption;

`That on or about October 15, 1987, the plaintiff received from the defendant a letter dated October 5, 1987, Annex `A' hereof, demanding payment of P6,753,192.85 representing the value of electric current, allegedly `used but not registered in the meter';

`That in the letter, Annex `A' hereof, the defendant has threatened to disconnect its electric service to the plaintiff if the latter should fail to pay the sum demanded therein within three (3) days from receipt of such letter;

`That owing to the very short notice granted to the plaintiff and the astronomical amount demanded from it, the plaintiff has no reasonable chance and opportunity to verify and/or otherwise dispute such demand and the astronomical amount demanded [--] along with the allegation that electric current had been used without having been registered in the meter [--] without being under the threat of disconnection of its electrical service;

`That the plaintiff is engaged in steel manufacturing and its plant is heavily dependent upon the electric supply from the defendant for its daily operation and the threatened disconnection of electric supply to the plaintiff which has already become very imminent will cause it great and irreparable damage and injury as not only will its various machinery for steel making and processing will grind to a halt, but various ingredients in the steel making process stand to be spoiled and the steel making process itself will be ruined; not to mention the fact that the plaintiff will be needlessly exposed to public ridicule on account of a contested billing by the defendant;

`That to allow the defendant to disconnect the supply of electricity to the plaintiff's steel making plant for the purpose of compelling it to pay the defendant's contested electric billing, despite the fact that the plaintiff is up to date in the payment of the defendant's regular billings and is not delinquent, is to abandon not just the plaintiff but the whole consuming public as well to the mercy of the defendant whose arbitrariness should not be allowed to go on a rampage unchecked;

`That the plaintiff has absolutely no knowledge at all of or participation in the alleged defect of or tampering with its installation mentioned [in] the said letter, Annex `A' hereof;

`That as a consequence of the defendant's threatened action to cut off the electric supply to the plaintiff's steel making plant, the plaintiff has been constrained to institute the present action to defend itself from the evidently strong-arm tactics of the defendant, and thus incur expenses and attorney's fees in the sum of P50,000.00'

and praying that judgment be rendered:

`1. IMMEDIATELY ENJOINING the defendant and all persons acting for and [o]n its behalf from discontinuing and/or disconnecting the supply of electricity to the plaintiff's steel manufacturing plant at Barangay Lawang Bato, Valenzuela, Metro Manila;

`2. AFTER TRIAL, making the injunction above-mentioned permanent, ordering the defendant and all persons acting for and [o]n its behalf to refrain from discontinuing and/or disconnecting the said supply of electric

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curre[n]t;

`3. ORDERING the defendant to pay the plaintiff the sum of P50,000.00 for and as attorney's fees; and

`4. ORDERING the defendant to pay the costs of litigation;

`PLAINTIFF in the meantime urgently prays of this Honorable Court that a temporary restraining order be immediately issued against the defendant and against all parties under its direct supervision and control for them to cease and desist from discontinuing and/or disconnecting the supply of electricity to the plaintiff's steel manufacturing plant at Barangay Lawang Bato, Valenzuela, Metro Manila.

`PLAINTIFF likewise prays for such other and further remedy as may be just and equitable under the premises.'

On the same date, the Court a quo issued a temporary restraining order in an order which reads as follows:

`Before this Court is a Petition for Injunction with prayer for issuance of a restraining order filed by petitioner thru its counsel, Atty. Fregillana, Jr., D.D., against the defendant, Manila Electric Company.

`Acting on the prayer for issuance of a restraining order, x x x the Court, after considering the verified petition and the allegations in support of the prayer for [a] restraining order, [deems them] to be sufficient in form and substance[;] and without necesssarily implying that petitioner has a clear legal right to the reliefs prayed for, but solely to preserve the status quo of the parties until after the prayer for a writ of preliminary injunction shall have been heard and resolved, x x x [the Court is issuing] a temporary restraining order x x x for a period of twenty (20) days, enjoining the party-defendant and all persons acting for and [o]n its behalf from discontinuing and/or disconnecting the supply of electricity to the plaintiff's steel manufacturing plant at Barangay Lawang Bato, Valenzuela, Metro Manila, until further orders from this Court.

`Let [a] copy of this Order as well as copies of the complaint, its annexes and summons be served by the Process Server of this Court, Mr. Felix de Belen, upon the defendant, who [is] hereby directed to appear before this Court on October 29, 1987 at 2:00 o'clock in the afternoon, to show cause why the writ of preliminary injunction prayed for should not be granted.

SO ORDERED.'

"On October 23, 1987, defendant Manila Electric Company filed its Answer with compulsory counterclaim and opposition to pray for preliminary injunction to which a Reply and [an] Answer to counterclaim was filed by plaintiff on November 2, 1987.

"In the meantime, the court a quo conducted hearings on plaintiff's prayer for a writ of preliminary injunction on October 29, 1987 and on November 2, 1987. Plaintiff filed its formal offer of exhibits on November 2, 1987 while defendant filed its offer of evidence on November 3, 1987. After both parties simultaneously filed their respective memoranda on November 4, 1987, the court a quo issued an order granting plaintiff's application for a writ of preliminary injunction, the decretal portion of which reads;

`WHEREFORE, petitioner/plaintiff's application for the issuance of the writ of preliminary injunction is GRANTED, conditioned upon the filing of a bond in the amount of P100,000.00 approved by this Court issued in favor of defendant MERALCO to answer for whatever damages that the defendant may suffer and sustain if it is later on found out, after final determination of this case[,] that the petitioner/plaintiff is not entitled thereto.

`Upon compliance there[with], let the writ of preliminary injunction be issued directing the defendant MERALCO, its agents, representatives or employees acting [on] its behalf to cease and desist and refrain from disconnecting the electric supplies and services to the petitioner/plaintiff at its premises, METRO CONCAST STELL CORPORATION located at Barangay Lawang Bato, Valenzuela, Metro Manila, until further order

from this Court.

SO ORDERED.'

"After the plaintiff presented its bond for P100,000.00 pursuant to the aforecited order, a writ of preliminary injunction was issued on Nov. 6, 1987.

"During the pre-trial conference held on February 9, 1988, both counsels manifested that the parties [could] not arrive at an amicable settlement[;] hence both jointly moved for the termination of the pre-trial conference in view of which the court a quo required both counsels to file their respective pre-trial briefs within fifteen (15) days. The trial briefs were filed by plaintiff and defendant on February 23, 1988 and February 24, 1988 respectively, after which the case was set for trial."[11]

After trial on the merits, the RTC rendered its Decision dated April 11, 1991, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant making the preliminary injunction permanent and, ordering defendant to pay plaintiff the sum of P50,000.00 for and as attorney's fees.

"Costs against defendant.

"SO ORDERED."

GR No. 132539

The facts in the Second Case are narrated by the Court of Appeals as follows:

"On 22 January 1982, the Metro Concast Steel Corporation (Metro Concast, for brevity) entered into a service agreement with the Manila Electric Company (MERALCO, for brevity) whereby MERALCO obligated itself for a fee to supply Metro Concast with electric energy at the latter's manufacturing plant in Bgy. Lawang Bato, Valenzuela, Metro Manila, under Account No. 09489-2122-18. The terms and conditions of the agreement were embodied in a prepared standard form denominated `AGREEMENT FOR THE SALE OF ELECTRIC ENERGY' (Exh. `1').

"On 02 April 1987, MERALCO inspectors led by Chito Parto, an electrical engineer, went to the manufacturing plant of Metro Concast at Bgy. Lawang Bato, to inspect the electric meter installations in the premises. After the inspection, the inspectors accomplished Service Inspection Report VOC Case No. 801-87-05-9036 (Exh. `M'), stating `all secondary leads with bare portions inside conduit' (Exh. `M-1'). The same report, Exhibit `M', included a sketch (Exh. `M-2') showing that the alleged tampering had taken place inside the one-inch metal conduit (Exh. `N') through which ran the secondary lead wires with bare portions. Said report further alleged that the tampering consisted of the use of removable short-circuiting devise inside the conduit. Based on this finding, inspector Parto concluded that the secondary lead wires were being short-circuited at their bare portions.

"On 04 June 1987, MERALCO conducted another inspection (Service Inspection Report VOC Case No. 801-87-06-9015, Exh. `12'), the details of which [are] no longer the subject of this appeal as the same was already disposed of in the court below upon a compromise agreement. (Orig. Record, p. 306).

"Subsequently, on 09 July 1987, Metro Concast received a demand letter from MERALCO, dated 11 June 1987, seeking to collect a differential billing in the amount of P44,470,441.22 representing an unspecified amount of electric energy allegedly consumed but not registered in the electric meters for [an] unspecified period of time, upon the alleged finding that in the inspection of its metering installation on 02 April 1987, `all secondary current leads were found with bare portion[s] inside the conduit indicating the use of removable

> short-circuiting devices' (Exh. `I').
>
> "Metro Concast disclaimed any knowledge of the alleged tampering of MERALCO's metering installation and refused to pay the said differential billing, prompting MERALCO to give notice to Metro Concast of eventual disconnection of its electric power supply should it fail to settle and pay the said billing within a given period.
>
> "On 13 July 1987, in a tactical move to ward off the threat of disconnection, Metro Concast filed Civil Case No. 54752 with the Regional Trial Court, Branch 166, Pasig, Metro Manila, to enjoin MERALCO from disconnecting the supply of electricity to Metro Concast's plant at Bgy. Lawang Bato, Valenzuela, Metro Manila.
>
> "On 28 July 1987, MERALCO filed its answer with counterclaim for the sum of P45,836,886.78 representing the alleged actual electrical consumption from June 1982 to June 1987, and for damages, attorney's fees and litigation expenses.
>
> "On 31 July 1987, the court a quo granted Metro Concast's application for a writ of preliminary injunction to enjoin MERALCO [from] carrying out its threat of disconnection of the electric power supply of Metro Concast (Records, p. 126). Thereafter, or on 05 March 1992, after a full-blown trial, the court a quo rendered its now disputed decision stated x x x."[12]

The RTC Decision dated March 5, 1992, disposed thus:

> "WHEREFORE, judgment is hereby rendered:
>
> - Granting the instant petition and declaring the writ of injunction earlier issued as permanent: and,
>
> - Dismissing the counterclaim for lack of merit.
>
> No pronouncement as to costs."

Rulings of the Trial Court

In the First Case, the trial court[13] held that Meralco failed to sufficiently establish by preponderance of evidence that Metro Concast had tampered with the secondary lead wires and forcibly pulled out the conduit pipes inside its compound. Without sufficient evidence of electricity pilferage, Meralco had no legal ground for disconnecting and discontinuing its supply of electricity to Metro Concast. Thus, judgment[14] in favor of the latter was rendered by the trial court, making the preliminary injunction permanent and ordering Meralco to pay P50,000 as and for attorney's fees.

In the Second Case, the trial court[15] did not give credit to the testimonies of the witnesses presented by Meralco. It held that Witness Chito Parto, who on April 2, 1987 had testified to his actual findings on the state of the electrical facilities of Metro Concast, lacked the expertise and the skill necessary to determine whether there had indeed been pilferage resulting from the splicing of the secondary lead wires. His testimony was supposedly based on mere inferences. He also failed to preserve the evidence from which he had drawn his conclusions.

As regards Witnesses Ruben Benosa and Johnson Alano, their testimonies concerning the supposedly unregistered energy consumption of Metro Concast were based merely on reports prepared by other Meralco personnel, who were not presented in court, however. Thus, the testimonies of the two were classified as hearsay and without probative value.

With respect to Witness Berdio Jambalos, who was presented to establish Meralco's losses arising from Metro Concast's tampering of its electric meter, the trial court said that he failed to fully explain the method[16] he had used in computing Metro Concast's billing differential. More important, he failed to explain why the differential was computed beginning June 25, 1982, only six (6) months after the service contract with Meralco had been

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entered into.

Rulings of the Court of Appeals

In the First Case, the Court of Appeals accorded great weight to the findings of the trial court that Meralco failed to adduce sufficient evidence to establish that Metro Concast had tampered with the wirings inside its compound. Thus, it upheld the trial court but deleted the award of attorney's fees, since no justification for the award had been indicated.

In the Second Case, the CA reversed the trial court. It concluded that Meralco had presented enough evidence to establish sufficiently that Metro Concast had tampered with the metering facilities installed inside its compound. Based on the evidence presented by the witnesses who had conducted the on-site inspection on April 2, 1987, it was obvious that the physical condition of the metering facilities inside the Metro Concast compound had definitely been tampered with, because some parts were either new or replaced with fake ones. The Court of Appeals noted that the trial court had apparently failed to consider the fact that the equipment had been installed inside the premises of Metro Concast and put under the complete control of the latter. Thus, responsibility for the tampering devolved upon the corporation.

Issues

In the First Case, Meralco presents the following issues:

> "I
>
> Respondent Court of Appeals committed grave error as to constitute [sic] when it considered itself bound by the obviously erroneous findings of the trial court, particularly as such findings are not sustained by the evidence o[n] record.
>
> II
>
> The grave error committed by respondent Court of Appeals is further aggravated by the fact that other than mere denial, private respondent presented no controverting evidence at all.
>
> III
>
> Respondent Court of Appeals' inference that private respondent was not responsible for the tampering discovered at the 19 August 1987 inspection is manifestly absurd and contrary to the evidence on record.
>
> IV
>
> Respondent Court of Appeals decided a question of substance contrary to law and settled jurisprudence in dismissing petitioner's counterclaims for differential bills in the amount of P6,753,192.85, for the unregistered electric energy consumption of private respondent.
>
> V
>
> Respondent Court of Appeals acted contrary to law and settled jurisprudence in not finding that petitioner [was] entitled to moral and exemplary damages, including attorney's fees and reimbursement of other expenses of litigation as a consequence of the false and frivolous action of private respondent."[17]

In the Second Case, the issues raised by Metro Concast are the following:

> "A. The Court of Appeals committed serious error in rendering the decision and resolution in question (Annexes A and B, petition) in defiance of law and jurisprudence by finding that the evidence presented by the

respondent sufficiently established that petitioner tampered with the metering facilities in its premises.

- The trial court determines the weight to be given to the evidence presented.

- The appreciation of the evidence and the assessment of the credibility of witnesses rest primarily with the trial court.

"B. The Court of Appeals committed serious error in concluding that petitioner tampered with its metering installation in order to prevent and control the registration of energy consumption.

- No evidence was shown by respondent that petitioner was instrumental in the destruction of PD stickers and the tampering of the secondary lead wires.

- Respondent failed to establish that petitioner was responsible for the alleged tampering of its metering facilities in the latter's plant by clear and convincing evidence.

"C. The Court of Appeals committed serious error in sustaining the right of respondent to discontinue the electric service to petitioner on the ground that petitioner did not violate the provisions of the service contract, (Annex C, Petition).

"D. The Court of Appeals committed serious error when the decision of the Regional Trial Court was not affirmed in toto.

"E. The Court of Appeals committed serious error in awarding damages to respondent.

- Respondent failed to prove that it suffered actual damages in the amount of P44,470,441.22 representing the unspecified amount of electric energy consumed by the petitioner[, an amount] which was not registered in the latter's meter.

- Respondent is not entitled to its claim for attorney's fees."[18]

A close examination of the issues presented in both cases shows that the controversy can be resolved on the main issue of whether the evidence presented by Meralco in each case is sufficient to show that Metro Concast tampered with the metering facilities installed inside the latter's compound, so as to register less energy consumption.

The Court's Ruling

Both Petitions are not meritorious.[19]

Main Issue:
Tampering of Metering Facilities

At the outset, the Court clarifies that while the two cases involve the same parties and essentially the same issues, the factual circumstances in each case occurred in different periods of time. In the First Case, the period of alleged tampering by Metro Concast of its metering facilities, is from June 4, 1987 to August 19, 1987. This fact was discovered during Meralco's inspection of facilities on August 19, 1987. However, the period contemplated in the Second Case is from June 25, 1982 to April 2, 1987. The alleged tampering during this period was discovered following a routine inspection of Metro Concast's plant on April 2, 1987.

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An examination of the evidence on record shows that both the trial court and the CA are correct in holding that Meralco had failed to establish adequately that Metro Concast was guilty of tampering with the metering equipment installed inside the corporation's compound during the period June 4, 1987 to August 19, 1987. We

quote the trial court's evaluation of Meralco's evidence:

> "x x x. Fourth, at the hearing of the application for a writ of preliminary application, Talusan testified that at the inspection of August 4, 1987 he did not find the conduit pipe ajar [with] the cabinet. On the contrary it fitted well [in]to the back of the cabinet (Tsn., p. 55, 2 Nov. 1987). However, at the trial on the merit he claimed that during his 3 inspections within 6 months before August 19, 1987, he had already seen the conduit pipe ajar [with] the cabinet. (Tsn., pp. 11-13, 5 Feb. 1990). Aside from the evident and material contradiction in his testimony, Talusan, who by his recitation of his credentials appears to be well versed and equally well-trained in taking appropriate steps to correct abnormalities found in the metering facilities did not bother to explain why he did not institute the necessary measures to correct the x x x conduit pipe [that was ajar].
>
> "It should be noted that there is no official record in whatever form that the inspectors had indeed found plaintiff's metering facilities in such condition.
>
> "The Court is not at all persuaded to join the defendant in its theory that the conduit pipe had been forcibly pulled out at the back of the ARMC since physical evidence and the incredibility of Talusan's testimony gravely militate against such theory. The Court is likewise hard put to lend credence to defendant's proposition that the secondary lead wires with pricked holes in its insulation could be short circuited while inside the locked and sealed ARMC. x x x [I]n fact, there is no evidence at all to show how the suspected [short-circuiting] of the said wires [was] being done.
>
> "x x x x x x x x x
>
> "It is pertinent to state that the recorded evidence shows that the last inspection of plaintiff's metering facility before August 19, 1987 was on August 4, 1987, as per Power Metering Field Order No. 1734-01-86, dated August 4, 1987 (Exh. 11) at the inspection of August 4, 1987. Talusan himself confirmed that he did not find the conduit pipe in question ajar [with] the meter cabinet[;] on the contrary it fitted well [in]to the back[, contrary] to adverse findings on the metering facility. Nonetheless, the detailed differential billing that Jambalos prepared was made to retroact from August 9, 1987 to June 4, 1989."

Virgilio Talusan, Meralco's sole witness to the alleged tampering, obviously gave contradictory statements that damaged Meralco's contention. During the application for the Writ of Preliminary Injunction, he said that on August 4, 1987, he did not find the conduit pipe ajar with the meter cabinet. But during the trial on the merits, he said the opposite - during 3 inspections within 6 months before August 19, 1987, he did find the conduit pipe ajar with the meter cabinet, an indication of willful tampering. Yet, he did not make any official report on the supposed meddling with the facility. Worse, Meralco took no immediate steps to seal it so as to avoid further losses. Without explanation, Talusan had to wait for a fourth occasion before conducting further inspections.

On the other hand, if Talusan's first statement was true, no tampering or pilferage could have been done prior to August 4, 1987. But why is Meralco now charging alleged losses from June 4, 1987 to August 19, 1987?

With such convoluted evidence, Meralco indeed failed to substantiate its allegations of tampering and pilferage against Metro Concast during the period June 4 to August 19, 1987. Thus, we find no reversible error in the assailed CA Decision.

In any event, basic is the rule that the findings of facts of the Court of Appeals affirming those of the trial court are binding on this Court.[20] Petitioner has failed to show that it is entitled to any of the exceptions to this principle.

GR No. 132539

An examination of the issues presented in the Second Case reveals that, being also factual in nature, they call for a reassessment of the testimonies of the witnesses presented by both parties to the case.

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We repeat the general rule in our jurisprudence that this Court reviews only questions of law and not of facts. There are, however, exceptions to this rule, one of which is applicable when the factual findings of the trial court are different from those of the Court of Appeals.[21] Such is the situation in the Second Case. After a careful review of the evidence on record, we hold that the CA did not commit any reversible error in its assailed Decision. Its findings and conclusions are substantiated by the evidence on record and are more in accord with law and reason.

Indeed, a closer examination of the testimony of Meralco's principal witness reveals that there was actual tampering of the metering facilities inside the Metro Concast compound. First, Engineer Chito Parto categorically declared that the PD stickers originally securing the secondary terminal cover of the transformer, had been destroyed and replaced with fake ones. Upon a thorough inspection, his team found that there were bare portions of wiring inside the conduit pipe, indicating that those wires had been tampered with. He gave a detailed testimony in this wise:

> "Q
>
> So you and your squad entered the sub-station after the gate was opened by Willy Salas what did you do then?
>
> A
>
> Upon occular inspection o[f] our devices, we found out that the presidential decree sticker was destroyed [and] was placed on the current transformer, sir.
>
> Q
>
> You mentioned x x x current transformer, where is this located within the sub-station?
>
> A
>
> It is located six to seven meters above the ground[,] sir.
>
> Q
>
> And where is the presidential decree sticker which was torn?
>
> A
>
> It is located on the secondary terminal of the current, sir[.]
>
> Q
>
> This secondary terminal transformer, where is it located?
>
> A
>
> At the base of the current transformer inside the substation, sir.
>
> Q
>
> When you say that the current transformer is six to seven feet above the ground, on what structure was it installed?
>
> A
>
> Steel structure, sir.
>
> Q

What is the base of the steel structure?

A

It is cemented, sir.

Q

Incidentally, how many current transformer[s] were there?

A

Two, sir.

Q

When you discovered that the Presidential Decree sticker on the secondary transformer was torn, what did you and your squad do?

A

We informed Willie Salas about the condition of the presidential decree sticker.

Q

What did Salas say?

A

He just nod and looked at the sticker.

Q

And with that finding, what did you and your squad do[?]

A

We again told Mr. Salas that we [were] going to open the cover of the secondary transformer and he agreed to that, sir.

Q

And after Mr. Salas gave his permission, what did you and your squad do?

A

We removed the cover and pulled out the secondary leads inside the wires that [were] leading to the meter. When we pulled out the wires, we found out that there was a splice on the current lead[`]s bare portion.

Q

How many bare portions did you discover?

A

Two sir, on its current transformer.

Q

You said that you opened the cover of this secondary current transformer and you pulled out the lead wires[;] what are these lead wires that you mentioned?

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A

These are the secondary lead wires which are connected from the current transformer to the [meter] itself, sir.

Q

How are these wires connected from the current transformer to the metering facility?

A

They run inside a rigid conduit, sir.

Q

What is this rigid conduit you mentioned?

A

That is a metal tubing, sir.

Q

How large is this metal?

A

One inch in diameter, sir.

Q

When you and your men pulled out this secondary current lead wires, where was the representative of Metro Concast Corporation Mr. Willie Salas?

A

Right beside me sir when my men were pulling this secondary current lead wires.

Q

When you saw this splice portion on the secondary current lead wires, what did you do?

A

I immediately informed Mr. Salas about our findings, sir.

Q

What did he say?

A

He agreed [with these], sir.

Q

Now, you mentioned that you found this bare portion on the secondary current leads which made you [inform] Salas that you would take them out and replace them[;] what did this bare portion on the secondary lead wires indicate to you?

ATTY. FRIGILLANA:

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We will object to that, that calls for an opinion.

ATTY. BODEGON:

We have fully qualified the witness as expert.

COURT:

Witness may answer.

A

When there is a bare portion or splice on leads, they try to put a wire together, so they touched each other and this will immediately short the current transformer as I have explained in one of the tamperings. When you short these leads, the current which is supposed to go to the meter will just pass here, with the bare portion touching, the current will pass there going back and by passing the meter.

Q

What will happen to the registration of the meter?

A

It can be controlled depending when you are going to short it or how you are going to short it.

Q

What happens to the registration of the actual consumption?

A

It will be reduced, sir.

Q

You explained that you removed this secondary lead wires with bare portions, what was the purpose of taking them?

A

So that we can replace it, so we can put current leads which has no bare portion or any abnormalities, sir.

Q

What were you supposed to do with the one you removed?

A

We brought it to the office and kept it there so that if anything might happen, we can present it and show it to anybody who would want to see what we have removed, sir.

Q

If shown to you a secondary curent leads which you removed at the site during the inspection on April 2, 1987 at the Metro Concast Corporation, will you be able to identify them?

A

Yes, sir.

Q

I am showing to you these colored wires, one of them is colored white, yellow, green and the last one is blue, would you kindly look at them and tell the Honorable Court if these were the secondary current lead wires which you found with the bare portion during that inspection that you conducted at the Metro Concast Steel Corporation?

A

Yes, sir.

x x x x x x x x x

ATTY. BODEGON

The back portion reads: DB, Evidence, Tag nature of DB description, Evidence TMI secondary-leads, who made this entry here?

A

My men.

Q

What does TMI mean?

A

Tampered metering installation, sir.

ATTY. BODEGON:

Q

I am showing to you this secondary current leads, would you kindly point to the Honorable Court where those portions are which you found during the inspection on April 2, 1987 at the Metro Concast Steel Corporation?

A

Here, sir.

ATTY. BODEGON:

Witness pointing to these bare portions on the white and blue secondary current leads, exhibits 3-B and 3-C. The bare portions on these secondary current leads measure about one inch more or less. x x x.

x x x x x x x x x

ATTY. BODEGON:

The bare portions on these secondary leads, your Honor, colored yellow and green respectively is about one half inch.

ATTY. FRIGILLANA:

It is actually partially bare, not totally bare. A good portion is still with the insulation.

Q

Counsel for the plaintiff invited your attention to these bare portions on the White secondary lead portions on

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which is exhibit 3-C, actually, I notice Engineer Parto under that, there are other portions with red and black tapes, are these already there when you pulled out these secondary current lead wires?

A

Yes, sir.

Q

Do you know who caused or placed these red and black insulation tapes on the secondary current lead wires?

A

No, sir.

Q

Would it be MERALCO personnel?

ATTY. FRIGILLANA:

The witness would be incompetent?

COURT:

May answer.

A

No, sir.

ATTY. BODEGON:

Q

Why do you say that it could not be MERALCO personnels who place these red and black insulation tape on these bare portions of the secondary current lead wires?

A

Hmmm. (The witness is not answering)

Q

Why do you say that Meralco personnels were not the ones who placed these tapes or insulation tapes on the wires?

COURT:

He does not know who placed these insulation tapes.

ATTY. FRIGILLANA:

Precisely we are objecting to the question.

ATTY. BODEGON:

He said it was not Meralco personnels.

A

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Yes, sir.

COURT:

Q

What is you basis in saying that?

A

Because everytime a Meralco crew places a secondary current lead wire, we do not allow any secondary current lead wire with bare portion or tapes inside the conduit. We do not make joints inside the conduit, sir.

x x x x x x x x x

COURT:

Clarificatory.

Q

You stated a while ago that the Meralco crew will not install these secondary current lead wires with tapes inside the conduit?

A

Yes, your Honor.

Q

What is the reason why Meralco do not install wires with tapes inside the conduit?

A

Because it will automatically mean that the customer is doing something with it. That is one way where to make our installation marking for tampering, your Honor.

Q

So if you have wires inside the conduit that have tapes, the tapes could not be placed by the Meralco people?

A

Yes, your Honor.

Q

And according to you, that is an indication of tampering?

A

Yes, your Honor.

Q

Now, why would somebody do that to that wires and then place tapes in the wires?

A

You see sir, when they make a shorting, it is not permanent, because if you remove the tape and you short the meter, it would facilitate non-registration and it will reduce the consumption."[22]

The CA further noted that in discovering the tampering of the metering facilities, the Meralco inspection team "had to open the secondary terminal cover at the potential transformer to be able to inspect the secondary current leads inside the conduits x x x."[23] The bare portions found on the secondary leads provided the means for stealing electric current and preventing the meter from fully registering the actual consumption of Metro Concast. In turn, this fact translated into losses on the part of Meralco.

The Court also finds no reversible error in the CA's ruling that Metro Concast should bear the responsibility for the tampering of the facilities within its compound, which was totally under its supervision and control.[24] Being within its control, any resultant breach in the integrity of the equipment is indeed attributable to it. Besides, the Meralco inspection was done in the presence of the officers of Metro Concast, specifically Willy Salas, to whom the irregularities were pointed out upon discovery. Being in the employ of Metro Concast, he could have been presented by the corporation to rebut Parto's testimony. The fact that he was not presented only shows that he had really nothing to say to controvert the evidence presented by Meralco.

WHEREFORE, both Petitions in these consolidated cases are DENIED, and both assailed Decisions AFFIRMED. Costs against petitioners in both cases.

SO ORDERED.

Melo (Chairman), Vitug, and Sandoval-Gutierrez, JJ., concur.
Gonzaga-Reyes, J., on leave.

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[1] Rollo (GR No. 108301), pp. 2-37. The Petition was signed by Attys. Joel L. Bodegon and Maria Yvette O. Navarro of Sobrevinas Diaz Hayudini & Bodegon.

[2] Ibid., pp. 41-52.

[3] Twelfth Division. Written by J. Arturo B. Buena, then Division chairman and currently a member of this Court; concurred in by JJ Asaali S. Isnani and Ricardo P. Galvez.

[4] Rollo (GR No. 108301), p. 54.

[5] Assailed Decision in the First Case, p. 12; ibid., p. 52.

[6] Rollo (GR No. 132539), pp. 10-35. The Petition was signed by Atty. Mylene T. Marcia-Creencia of Fortun Narvasa & Salazar.

[7] Ibid., pp. 39-57.

[8] Eighth Division. Written by J. Buenaventura J. Guerrero; concurred in by JJ Jaime M. Lantin (Division chairman), and Oswaldo D. Agcaoili (member).

[9] Rollo (GR No. 132539), p. 59.

[10] Assailed Decision in the Second Case, p. 19; ibid., p. 57.

[11] Assailed Decision, First Case, pp. 1-6; rollo (GR No. 108301), pp. 41-46.

[12] Assailed Decision, Second Case, pp. 1-2; rollo, pp. 39-40.

[13] RTC, Branch 168, Pasig, Metro Manila; presided by Judge Benjamin Pelayo.

[14] Rollo (GR No. 108301), pp. 55-76

[15] RTC, Branch 166, Pasig, Metro Manila.

[16] "Modified version of the percentage method." (See RTC Decision, p. 7; rollo (GR No. 132539), p. 159.

[17] Memorandum for Petitioner, p. 9; rollo (GR No. 108301), p. 249. The Memorandum was signed by Atty. Joel L. Bodegon.

[18] Memorandum for Petitioner, pp. 5-6; rollo (GR No. 132539), pp. 570-571. The Memorandum was signed by Atty. Mylene T. Marcia-Creencia.

[19] To eradicate its backlog of old cases, the Court on February 27, 2001 resolved to redistribute long-pending cases to justices who had no backlog, and who were thus tasked to prioritize them. Consequently, this case was raffled and assigned to the undersigned ponente for study and report.

[20] Compania Maritima, Inc. v. Court of Appeals, 318 SCRA 169, November 16, 1999.

[21] Fuentes v. Court of Appeals, 208 SCRA 703, February 26, 1997.

[22] Assailed Decision, Second Case, pp. 4-11; citing TSNs, October 17, 1987, pp. 11-17; and February 9, 1990, pp. 25-30. Rollo (GR No. 132539), pp. 42-49.

[23] Assailed Decision, p. 11; rollo (GR No. 132539), p. 49.

[24] Citing Africa v. Caltex Phils, 16 SCRA 448, March 30, 1966.

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