

ANICETO W. NAGUIT, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MANILA ELECTRIC COMPANY, RESPONDENTS.

G.R. No. 120474. August 12, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court is a petition for certiorari under Rule 65 of the Revised Rules of Court seeking to annul and set aside the November 28, 1994 Decision and March 28, 1995 Resolution of the National Labor Relations Commission (NLRC).

The antecedent facts of the case are as follows:

Petitioner Aniceto W. Naguit, Jr., an employee of respondent Manila Electric Company (MERALCO) since August 11, 1959, was dismissed after 32 years of service or on June 13, 1991.[1] At the time of his dismissal, he was Administrative Officer of MERALCO's Sta. Cruz, Laguna Branch.[2]

On June 5, 1987, petitioner informed his Supervisor-Branch head Sofronio Ortega, Jr. that he would render overtime work on June 6, 1987, a Saturday,[3] and that after concluding his field work on that day, he would proceed to Pagbilao, Quezon to accompany his wife who was a principal sponsor to a kin's wedding.[4]

On June 6, 1987, petitioner arrived at the Sta. Cruz office at 7:50 a.m.[5] after which or at around 8:33 a.m.,[6] he proceeded to his field assignment to conduct "supervisory survey on re-sequence of customer's account numbers"[7] at Magdalena and Luisiana, Laguna, and to supervise MERALCO's "Operation FC" (apprehension of customers with illegally connected service).[8] At 12:00 noon, he, along with his co-employee Accounts Representative Fidel Cabuhat who drove his (petitioner's) jeep, proceeded to Pagbilao, Quezon.

On June 8, 1997, the timekeeper of the MERALCO Sta. Cruz office prepared an Overtime Notice and the corresponding Timesheet[9] wherein it was reflected that petitioner worked from 8:00 a.m. to 5:00 p.m. on June 6 and 7, 1987. Petitioner corrected the documents by erasing the entries made for June 7, 1987. The documents were approved by petitioner's supervisor Ortega. Petitioner was thereafter paid for overtime work on June 6, 1987.

Documents including petty cash voucher[10] covering Cabuhat's alleged overtime work on June 6, 1987 were also prepared on account of which petitioner, as custodian of petty cash, released to Cabuhat the amount of P192.00 representing meal allowance and rental for a jeep.

More than two years later, petitioner received from the Legal and Investigation Staffs Head of MERALCO a letter[11] dated February 20, 1990 reading:

x x x

Dear Mr. Naguit,

SPC is in receipt of information that on two occasions, you reportedly caused the reimbursement of transportation expense for alleged work of Mr. Fidel Cabuhat not actually rendered. And that on another occasion, you allegedly left your work assignment without permission from your superior. These acts, if proven true, constitute violation of Section 7, Pars. 7 and 11, and Section 5 Par. 2, of the Company Code on Employee Discipline.

We request that you report to our Mr. Lauro J. Sillesa at the 13th floor, Lopez Building, Ortigas Avenue, Pasig, Metro Manila on February 27, 1990 (Tuesday) at 9:00 a.m. to air your side.

In this connection, you may avail yourself with (sic) the services of a counsel during the proceeding, if you so desire. Should you fail to appear on the aforementioned date, we shall take this to mean that you are waiving your right to such counsel. (Underscoring supplied)

Administrative hearings were thus conducted by MERALCO's Special Presidential Committee on February 27, 1990 and July 16, 1990 during which petitioner expressly waived his right to counsel and gave two sworn statements before the Office of the Investigation Staff of said committee, one dated February 27, 1990[12] and another dated July 16, 1990[13] denying the charges.

Evidence against petitioner consisted primarily of the sworn statements of Cabuhat who was charged along with petitioner with falsification of time card; Olivia Borda, billings clerk; and five customers of MERALCO. The statements tried to establish that, among other things, petitioner induced Cabuhat to prepare a petty cash voucher[14] covering expenses for meal and rental of a jeep in the total amount of P192.00 for the June 6, 1987 alleged conduct by the latter of field verification of "Bill Omissions;" that on petitioner's invitation, Cabuhat also repaired to Pagbilao, Quezon on June 6, 1987;[15] and that petitioner gave the petty cash of P192.00 payable to Cabuhat to Olivia to be "applied" to some "bill omissions" of customers, thereby making it appear that some collections for "bill omissions" were received from customers on June 6, 1987 when in fact no such collections were ever received from the customers in whose name official receipts[16] were issued.[17]

Lauro J. Sillesa of MERALCO's Special Presidential Committee, by Memorandum[18] dated April 22, 1991, found petitioner and Cabuhat guilty of falsification of time cards under Sec. 7, par. 7 of the Company Code on Employee Discipline. Additionally, petitioner was found guilty under Sec. 6, par. 24 of the Code for encouraging Cabuhat to commit an act constituting a violation of the Code.

MERALCO thus informed petitioner by letter[19] dated June 13, 1991 that he was, for falsification of time card and encouraging and inducing another employee to perform an act constituting a violation of the Company Code on Employee Discipline, dismissed from the service with forfeiture of all rights and privileges. The letter reads:

x x x

Dear Mr. Naguit:

Formal administrative investigation duly conducted by the Company's Special Presidential Committee established the following:

- On June 6, 1987, while you were supposed to be on the sixth day work as Administrative Officer of the Sta. Cruz Branch, you accompanied your wife in going to Pagbilao, Quezon where the latter stood as principal wedding sponsor. In the timesheet which you signed, you made it appear that you actually worked on that day and you drew and received your salary for that day. Your aforesaid act constitutes a violation of Section 7, par. 7 of the Company Code on Employee Discipline which proscribes: "(f)alsifying time cards or any other timekeeping records, or drawing salary or allowance by virtue of falsified timecards, vouchers, receipts or the like[.]" penalized therein with suspension to dismissal, depending upon the gravity of the offense.

- On June 6, 1987 and June 17, 1987, you induced Accounts Investigator Fidel Cabuhat to prepare two (2) petty cash vouchers in the amount of P192.00 each, or a total of P304.00, purportedly in payment for the rental of a jeep which was allegedly used in the performance of the latter's duties. Upon your instruction, the said amount was applied to bill omissions to make it appear that the employee who drove for you, actually reported for duty on June 6, 1987. By such act, you have grossly violated Section 6, par. b-24 of the same Code which proscribes "(e)ncouraging, inducing x x x another employee to perform an act constituting violation of this Code or of Company work rules or an offense in connection with the official duties of the latter x x x[," penalized therein with reprimand to dismissal, depending upon the gravity of the offense.

Under Article 282 of the Labor Code of the Philippines, the termination of your employment in Meralco is justified on the following grounds: (a) Serious Misconduct x x x by the employee x x x in connection with his work; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or representative; (d) Commission of a crime or offense by the employee against x x x his employer; and (e) Other causes analogous to the foregoing.

Based on the foregoing, Management is constrained to dismiss you for cause from the service and employ of the Company, as you are hereby dismissed effective June 13, 1991, with forfeiture of all rights and privileges.

x x x (Emphasis and underscoring supplied)

Petitioner thus filed on August 27, 1991 a complaint[20] with the NLRC Sub-Regional Arbitration Branch No. IV of San Pablo City against MERALCO for illegal dismissal, he praying for reinstatement, backwages, damages, attorney's fees and other awards he is entitled to.

Finding for petitioner, the Labor Arbiter rendered a decision on April 7, 1993,[21] the dispositive portion of which is quoted verbatim:

WHEREFORE, judgment is rendered in favor of the complainant and against respondent, ordering the latter:

- to reinstate complainant to his former position with two-year backwages computed on the basis of his monthly salary of P16,491.00 plus P580.00 monthly allowance or the sum of P409,704.00 in addition to 24 cavans/sacks of rice; and

- to pay complainant attorney's fees equivalent to ten per cent (10%) of the adjudged monetary award of the sum [of] P40,970.40

The rest of the claims are dismissed for lack of merit.

SO ORDERED. (Emphasis supplied)

MERALCO appealed the Labor Arbiter's decision to the NLRC upon the following grounds:

I.

THE LABOR ARBITER COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE IGNORED THE MATERIAL FACTS AND THE CLEAR CONVINCING EVIDENCE ADDUCED BY RESPONDENT-APPELLANT MERALCO TO JUSTIFY THE TERMINATION OF COMPLAINANT ANICETO W. NAGUIT, JR.

II.

THE DECISION IS CLEARLY CONTRARY TO LAW AND JURISPRUDENCE.

III.

REINSTATEMENT IS NO LONGER POSSIBLE. TO COMPEL APPELLANT MERALCO TO TAKE BACK APPELLEE NAGUIT WOULD CAUSE IRREPARABLE DAMAGES OR INJURY TO THE

FORMER.

IV.

AWARD OF ATTORNEY'S FEES IS NOT JUSTIFIED.

By Decision of November 28, 1994,[22] the NLRC Third Division reversed that of the Labor Arbiter and accordingly dismissed the complaint.

Hence, this petition alleging:

I.

THAT THE CONCLUSIONS DRAWN FROM FACTS BY THE NATIONAL LABOR RELATIONS COMMISSION ARE CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE[.]

II.

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN MAKING FINDINGS AND CONCLUSIONS WHICH ARE NOT SUPPORTED BY FACTS AND/ OR LAW AND JURISPRUDENCE SUCH AS THAT (a) PETITIONER NAGUIT NOT BEING AN ADMINISTRATIVE OFFICER IS NOT AT ALL COVERED BY RESPONDENT'S POLICIES PERTAINING TO FIELD PERSONNEL; (b) THAT PETITIONER IS GUILTY OF RANK DISHONESTY [.] [23]

The issue in the main is whether petitioner's dismissal is valid.

Petitioner argues that the factual findings of the Labor Arbiter clearly show that he, as an Administrative Officer, is covered by respondent MERALCO's policy pertaining to field personnel, particularly when he is designated to perform field assignments.[24] As such, he did not bother to correct the Overtime Notice which indicated that he worked from 8 a.m. to 5 p.m., albeit he actually worked until 12 noon, the company policy being that even if an employee who had a field assignment did not actually render 8 hours of work, he is deemed to have worked for such duration provided he had completed the assigned task as he claims he did. He draws attention to the affirmance by his supervisor Ortega at the witness stand of the existence of above-said company policy:

x x x

ATTY. ASINAS: With respect to your discretion as branch manager or the team leader in the field, do those personnel working in the field, even if they have only actually rendered six or 4 hours, they can already leave provided the work assigned to them has been done, does that apply only to field personnel or regular office personnel like Mr. Naguit who is on special assignment?

WITNESS: If we take into consideration the material hours, if it is one (1) hour it is okay, but if you worked for three (3) hours and then get paid for eight (8) hours that is not allowed any more . . . the hours are immaterial; four (4) hours can be foregone (sic).

ATTY MARTINEZ: Does that apply to regular office personnel?

WITNESS: I think so.

LABOR ARBITER: What is the factor considered in giving the leeway to field personnel?

WITNESS: When office personnel are assigned or given field assignments, they forego the convenience of the office; they are exposed to the heat of the sun, the rigors of travel, eating places, dust, so that when they are given field assignments, they are given certain considerations.

LABOR ARBITER: Unless the work is satisfactorily done?

WITNESS: Yes, your honor.

LABOR ARBITER: In terms of hours, would you give us your consideration?

WITNESS: One (1) hour or one-and-half (1 ½) hours are not very material. 2/8. . . (sic) I will judge the number of hours that can be foregone according to percentage. ¼ day will be material.

ATTY. MARTINEZ: And when you said that it will be material, ¼ will be material, you mean to say that you cannot dispense or allow ¼ day even for satisfactory work?

WITNESS: (No answer)

LABOR ARBITER: Put otherwise, ¼ day is allowable so long as the work is completed?

WITNESS: Yes, sir.

LABOR ARBITER: Pushing further, how about ½ day?

WITNESS: It will be too much.

ATTY. MARTINEZ: So, ½ day will not be allowed under whatever circumstances?

WITNESS: Yes, sir.[25] (Emphasis and underscoring supplied)

As stated early on, petitioner advised on June 5, 1987 his superior Ortega about his rendering overtime work the following day, June 6, 1987, after which he would head for Pagbilao after concluding his work. If petitioner had intended to do overtime work up to 5:00 p.m., there would have been no need for him to advise Ortega that he would thereafter go to Pagbilao.

Since Ortega never refuted petitioner's claim about his advising him of his proceeding to Pagbilao and in fact the grant and release of petitioner's overtime pay was approved by Ortega, who had the discretion to "judge the number of hours that can be foregone" in light of his (Ortega's) explanation that office personnel on field assignment "forego the convenience of the office, they [being] exposed to the heat of the sun" and the like, this Court would not, as the Labor Arbiter did not, attribute malice to petitioner. Thus, the Labor Arbiter held:

. . . Of course, on further examination, [Ortega] opined that half day would not be allowed. But, the fact remains that such discretion is exercised, the limit of which was not shown to have been disseminated to the employees, the qualifying factor being whether the job was satisfactory or not. If on the contrary, there was indeed no such practice or, that complainant, being an office personnel, is removed from coverage thereof and governed strictly by the time-rule such that he would have been off at the actual completion of the assigned task, he would not have bothered to inform his branch head - in effect a request for permission of his planned trip to Pagbilao, Quezon thereafter. That would have been meaningless gesture on the part of the complainant.

By and large, with the incentive scheme or tolerance of respondent, there is no resulting prejudice to respondent so to speak of nor intention on the part of complainant to cause it. What was done was consistent with management policy on covering the overtime work in the branch. As pointed out by the complainant, if his intention really is to defraud respondent, he would not have erased the work entry for June 7, and could have collected more. [26] (Emphasis and underscoring supplied)

In fine, this Court credits the petitioner with good faith when he did not correct the entry in the Notice of Overtime and Timesheet reflecting that he worked up to 5:00 p.m. on June 6, 1987. The charge of falsification against him does not thus lie.[27]

As to the second charge, petitioner contends that the NLRC committed grave abuse of discretion in giving full credence to the affidavits of Cabuhat claiming that he was induced by petitioner to claim overtime pay despite

Cabuhat's failure to affirm them during the arbitral proceedings, he having failed to show up, thus making them inadmissible under the hearsay rule.[28]

In labor cases, this Court has consistently held that where the adverse party is deprived of opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.[29] Thusly, such affidavits of Cabuhat are inadmissible as evidence against petitioner.

The inadmissibility of these affidavits, notwithstanding, this Court finds that MERALCO had reasonable grounds to fault petitioner.

Thus, in his sworn statements[30] given during MERALCO's investigation, petitioner narrated as follows:

x x x

T:

Kung wala kang nalalaman dito sa nasabing 2 petty cash na ito, at sinabi mo rin na ito ay binayaran kay Fidel Cabuhat. Papano naman nangyari at itong petty cash na may petsang June 6, 1987 sa halagang P192.00 at may control no. 06-0067 ay binayaran mo kay Cabuhat ganoong alam mong hindi naman siya umupa ng jeep ng araw na iyon at hindi naman siya nag-field verification dahil kasama mo si Cabuhat sa Pagbilao, Quezon?

S:

Maaaring iyon po ay ipinalit niya sa akin ng Lunes. At dahil sa may pirma ang hepe niya na si Mr. Rodrigo Samson at may pirma ang hepe namin ay binayaran ko na.

T: Ang ibig mong sabihin ay hindi mo man lang binasa ang petty cash na ito pati ang petsa at basta binayaran mo na lamang dahil may pirma ang hepe?

S: Ta[m]a po dahil sa dami ng gawain ko ay basta ko na lamang binayaran, at nakita ko ang p[irma] ng hepe namin.

x x x

T:

Ang sabi mo ay noong June 6, 1987 ay nagkita kayo ni Cabuhat sa San Pablo at siya ay kasama mo sa kasalan sa Pagbilao, Quezon. Ang sabi mo din ay walang sasakyang dala si Cabuhat noong siya ay makita mo sa San Pablo kasama si Cruz. Bakit mo naman napalitan itong petty cash ni Cabuhat for hired jeep noong petsang iyon alam mo naman na wala siyang inarkilang jeep?

S:

Hindi ko na po nireview itong mga petty cash. Pag nakita kong pirmado ng kanyang hepe at ng branch head ay aking ng binabayaran.

x x x[31] (Emphasis and underscoring supplied)

As clearly established by his own account, petitioner, despite his knowledge that Cabuhat did not hire any jeep nor conduct field verification on June 6, 1987, released the petty cash representing Cabuhat's meal allowance and rental fee for a jeep.

At best, petitioner wants to convey that it was mere oversight on his part not to have "reviewed" the voucher, it having already borne the signature of the approving officer and, therefore, he should not be held culpable.

Petitioner's attempt at exoneration deserves scant consideration. As custodian of the petty cash fund, he had the duty to ascertain that the circumstances which brought about any claim therefrom were in order.[32] He cannot now shirk from this responsibility by indirectly pinning the blame on the approving officer and asserting that the transgression was the result of mere inadvertence, given his admission that he very well knew that Cabuhat did not conduct any field work on June 6, 1987, he (Cabuhat) having merely driven for him to Pagbilao.

Petitioner thus committed dishonesty and breached MERALCO's trust, which dishonesty calls for reprimand to dismissal under MERALCO's rules.

Dismissal is, however, too severe as a penalty in petitioner's case, given his 32 years of service during which he had no derogatory record.

At the time petitioner was dismissed, he was still below the retirement age of employees of MERALCO at 60.[33] To date, however, he is now about 65.[34] Imposing a penalty less harsh than dismissal and ordering his reinstatement are thus *functus officio*, the Labor Arbiter's order for his reinstatement not having been executed.

To this Court, a denial of the award of backwages to petitioner from the time of his dismissal up to his age of retirement suffices as punishment for his dishonesty.[35] He should not, however, be deprived of his retirement benefits.

WHEREFORE, the November 28, 1994 Decision and March 28, 1995 Resolution of the NLRC are hereby SET ASIDE. Respondent MERALCO is, in light of the foregoing discussions, hereby ORDERED to pay petitioner Aniceto W. Naguit, Jr. his retirement benefits to be computed from the inception of his service up to the time he reached 60 years of age, in accordance with its retirement plan.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Records at 184.

[2] Ibid.

[3] Ibid.

[4] Id. at 185.

[5] Id. at 57.

[6] Id. at 58.

[7] Id. at 256.

[8] Ibid.

[9] Id. at 64.

[10] Id. at 67.

[11] Id. at 106.

[12] Id. at 107-111.

[13] Id. at 112-116.

- [14] Id. at 67.
- [15] Id. at 60 and 62.
- [16] Id. at 83-105.
- [17] Id. at 68, 73-82.
- [18] Id. at 117-123.
- [19] Id. at 124-125.
- [20] Id. at 1.
- [21] Rollo at 32-45.
- [22] Id. at 47-60.
- [23] Id. at 19.
- [24] Id. at 20.
- [25] Transcript of Stenographic Notes (TSN), February 20, 1992 at 40-44.
- [26] Rollo at 40.
- [27] *Mabutol v. Maza*, 105 SCRA 564 (1981).
- [28] Rollo at 26-27.
- [29] *Hornales v. NLRC*, 364 SCRA 778 (2001) citing *Midas Touch Food Corp. v. NLRC*, 259 SCRA 652 (1996); *JRS Business Corporation v. NLRC*, 246 SCRA 445 (1996); *Coca-Cola Bottlers Philippines, Inc. v. NLRC*, 180 SCRA 195 (1989).
- [30] Vide Notes 9 and 10.
- [31] Records at 110-114.
- [32] TSN, February 20, 1992 at 20.
- [33] Rollo at 16.
- [34] Id. at 193.
- [35] *Ram v. NLRC*, 257 SCRA 546 (1996); *Manila Electric Company v. NLRC*, 175 SCRA 277 (1989).

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