PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. BELINDA D. BUNA, RESPONDENT.

G.R. No. 143688. August 17, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review on certiorari under Rule 45 assailing the Decision[1] of the Court of Appeals dated February 28, 2000 which annulled and set aside the Decision[2] and Order[3] of the National Labor Relations Commission (NLRC) dated May 25, 1998 and October 12, 1998, respectively, as well as its Resolution[4] dated June 5, 2000 denying the motion for reconsideration.

The facts of the case are as follows.

Respondent Belinda D. Buna was an employee of petitioner Philippine Long Distance Telephone Company (PLDT). She last held the position of Service Representative in the PLDT Business Office in Pasay City from 1993 to 1996, handling applications for service subscriptions involving telephone lines with prefix numbers "831", "832", "833" and "834."

Sometime in 1995, a certain Engr. Danilo Castillano complained about unauthorized overseas calls amounting to P40,000.00 involving his telephone line with number 847-5330. Upon investigation by the PLDT Quality Control and Inspection Division (QCID), it was established that Castillano's phone line was originally denominated as 833-2661 under the name of Olivia L. Eduarte. It was supposed to be inactive since its disconnection on January 26, 1984. But Eduarte purportedly wrote PLDT in June 1993 and requested that the line be transferred to Castillano. Respondent processed the request and recommended its approval. Thus, telephone number 833-2661 was subsequently changed to 847-5330 and a telephone unit was installed in Castillano's home address.

When asked about the alleged letter request, Eduarte denied having written the same and maintained that the signature therein is not hers.[5] For his part, Castillano admitted that he purchased the "rights" over the subject phone subscription for P40,000.00 from a certain "Chito," an employee of PLDT.[6] He subsequently identified "Chito" as Ramoncito Buna, respondent's husband and a former employee of PLDT. On January 17, 1996, PLDT Management sent an Inter-Office Memo[7] to respondent asking her to explain why she should not be dismissed from service for her complicity in the anomalous transaction.

In her explanation,[8] respondent admitted that she processed the request and recommended the approval of the transfer of the subscription to Castillano on the basis of Eduarte's alleged letter request dated June 21, 1993. She also submitted an affidavit[9] purportedly executed by Castillano dated December 11, 1995, where the latter reiterated his complaint for the unauthorized charges; absolved Ramoncito Buna of complicity in the irregular transfer; and admitted knowing Ramoncito.[10]

However, Castillano subsequently submitted a certification[11] dated February 26, 1996 denying execution of the affidavit presented by respondent. He claimed that the signature in said affidavit was not his as well as the

residence certificate therein.

In view of this, PLDT sent a Notice[12] of termination of respondent's services effective March 15, 1996.

Respondent filed a complaint for illegal dismissal with claims for back wages, benefits, damages and attorney's fees against PLDT. After due proceedings, Labor Arbiter Ricardo C. Nora rendered a Decision[13] finding respondent's dismissal legal and justified, thus, her complaint was dismissed for lack of merit.

Buna appealed to the NLRC which affirmed the dismissal in a Decision[14] dated May 25, 1998.

Respondent's motion for reconsideration was denied; hence, she filed a petition for certiorari under Rule 65 of the Rules of Court before the Court of Appeals. The petition was initially denied due course[15] on grounds that the motion for reconsideration was filed before the NLRC only on July 22, 1998 or 10 days late, and the petition for certiorari before the Court of Appeals was likewise filed out of time. It was filed on February 3, 1999 while the last day for filing the petition was on January 12, 1999.

However, upon motion for reconsideration, the petition for certiorari was given due course.

On February 28, 2000, the Court of Appeals rendered a decision in favor of respondent Buna, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the instant petition is hereby GIVEN DUE COURSE, and the writ prayed for GRANTED. Consequently, the assailed Decision of the National Labor Relations Commission dated May 25, 1998 and its Order dated October 12, 1998 in NLRC-NCR CA No. 013470-97 are hereby ANNULLED and SET ASIDE. Respondent Philippine Long Distance and Telephone Co. is hereby ordered to reinstate petitioner Belinda D. Buna to her former position without loss of seniority rights and to pay her full back wages, inclusive of allowances, other benefits and privileges or their monetary equivalent computed from the time her compensation was withheld from her up to the time of actual reinstatement.
>
> No pronouncement as to costs.
>
> SO ORDERED.[16]

PLDT's motion for reconsideration was denied. Hence, the instant petition raising the following issue:

> WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ERROR IN GRANTING BUNA'S PETITION FOR CERTIORARI AND IN SETTING ASIDE THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH HAD ALREADY ATTAINED FINALITY WHEN RESPONDENT FAILED TO COMPLY WITH THE MANDATORY PERIODS NOT ONLY ONCE BUT TWICE.[17]

PLDT claims that the Court of Appeals no longer had jurisdiction to entertain respondent Buna's petition since the latter failed to seasonably file the motion for reconsideration of the NLRC Decision within the 10-day reglementary period. PLDT asserts that even assuming that the remedy of filing a special civil action of certiorari was available to respondent, it will not prosper because it was also filed beyond the 60-day reglementary period. PLDT avers that the Decision rendered by the Court of Appeals is null and void for having been rendered without jurisdiction.

Respondent maintains that she had no participation in the irregular transfer of Eduardo's subscription to Castillano. She contends that the charge against her is merely a ruse and an attempt by PLDT to evade the payment of the benefits due her in the form of redundancy pay.

The petition is impressed with merit.

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Section 1, Rule 65 of the Rules of Court clearly states that in order to avail of the special civil action of certiorari, one must be left with no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, to wit:

> SECTION 1. Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> x x x x. (Emphasis supplied)

A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy expressly available under the law.[18] The general rule is that a motion for reconsideration is indispensable before resort to the special civil action of certiorari to afford the court or tribunal the opportunity to correct its error, if any.[19] Failure to file a motion for reconsideration with the NLRC before availing of the special civil action of certiorari is a fatal infirmity.[20] This rule is subject to certain recognized exceptions, to wit:

> a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
>
> b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
>
> c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
>
> d) where, under the circumstances, a motion for reconsideration would be useless;
>
> e) where petitioner was deprived of due process and there is extreme urgency for relief;
>
> f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
>
> g) where the proceedings in the lower court are a nullity for lack of due process;
>
> h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and,
>
> i) where the issue raised is one purely of law or where public interest is involved.[21]

None of these exceptions are present in the instant case. As such, respondent's failure to timely file a motion for reconsideration of the decision of the NLRC rendered such decision final and executory. Consequently, recourse to the Court of Appeals was no longer feasible or available.

Respondent received the NLRC Decision on July 2, 1998, hence she had 10 days or until July 12, 1998 within which to move for its reconsideration. However, the motion for reconsideration was filed only on July 22, 1998. A motion for reconsideration filed out of time is a pro forma motion which does not toll the running of the reglementary period.[22] Moreover, in the absence of a motion for reconsideration filed within the reglementary period, the assailed order, resolution, or decision of the NLRC becomes final and executory.

At any rate, even on the merits, respondent's cause must fail. In finding that respondent was illegally dismissed, the Court of Appeals ruled that although PLDT may have proven that there was an irregularity in the transfer of the subject phone line, it failed to establish that respondent had something to do with it.

We do not agree.

Respondent was dismissed from employment on the ground of loss of trust and confidence. Loss of trust and confidence, as a valid ground for dismissal, must be substantiated by evidence. Respondent is not a mere rank-and-file employee but a confidential employee. In fact, her position as a Service Representative is classified as "High Priority." She does not only screen and process telephone applications but also recommend them for approval. She likewise handles the transfer of subscriptions from existing clients to new applicants. Her job entails the observance of proper company procedures relating to the evaluation and subsequent recommendation of prospective clients to PLDT. Her assessment of the fitness of such applicants is relied upon by PLDT in giving its approval to the subscription applications which in turn results in a client-provider relationship between PLDT and its subscribers. Thus, her job involves a high degree of responsibility requiring a substantial amount of trust and confidence on the part of PLDT.

Jurisprudence has distinguished the treatment of managerial employees or employees occupying positions of trust and confidence from that of rank-and-file personnel, insofar as the application of the doctrine of trust and confidence is concerned. In Cruz, Jr. v. Court of Appeals,[23] the Court had occasion to explain as follows:

> Thus, with respect to rank-and file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position. (Emphasis supplied)

There is substantial evidence showing that there was valid cause for PLDT to dismiss respondent's employment for loss of trust and confidence. By her own admission, she processed the irregular transfer of phone subscription to Castillano on the basis of a letter request from Eduarte, which proved to be a forgery.

In the sworn statement dated December 4, 1995, Castillano admitted that he bought the subject telephone line from a certain "Chito" whom he later identified in a line-up presented before him as Ramoncito Buna, respondent's husband. Although there were three other affidavits allegedly executed by Castillano absolving the spouses from any participation in the anomalous transaction, none of these documents refuted the certification Castillano issued on February 26, 1996 where he denied authorship of the affidavit dated December 11, 1995 which was attached by respondent to her explanation.

Moreover, Castillano knew respondent's husband and was in fact identified by the latter as the one who sold to him the phone line for P40,000.00. The transfer was facilitated and completed through respondent since the phone number was under her scope of authority.

As correctly pointed out by the Labor Arbiter and subsequently upheld by the NLRC:

> Under the circumstances, we are convinced that complainant was involved in effecting the unauthorized transfer x x x. We take particular note of the fact that the spurious letter request was in favor of someone known to her husband. To us, it is more than pure coincidence that the beneficiary of complainant's act of processing for approval the fake letter request, would be someone known to her husband. Said Mr. Castillano, on the other hand, has never denied having purchased the telephone line for P40,000, a highly irregular transaction. And in the investigation at the QCID on December 4, 1995, Mr. Castillano, in a face to face confrontation with Mr. Buna, pointed to the latter as the PLDT employee who sold to him the line of Ms. Eduarte for P40,000. and in order that the same could be transferred to the former, the fake letter request of

> Ms. Eduarte was processed and recommended for approval by the complainant. Clearly, the confluence of events point to the complainant as a necessary and indispensable participant in a chain of irregularities intended to illegally transfer a telephone from the original owner to Mr. Castillano, a friend of complainant's husband x x x.[24] (Emphasis supplied)

Based on the foregoing, we find that loss of trust and confidence, as a ground for termination, has been clearly established. In Azul v. Banco Filipino Savings and Mortgage Bank,[25] we upheld the employee's dismissal despite lack of proof of actual participation in the anomalous activities because his actuations had sown in his employer "the seed of mistrust and loss of confidence," thus:

> While, indeed, it was not proved that he was the one who made the irregular entries on the tickets, the fact that he did not lift a finger at all to determine who it was is a sad reflection of his job. In fact, even if the petitioner had no actual and direct participation in the alleged anomalies, his failure to detect any anomaly in the passage tickets amounts to gross negligence and incompetence, which are, likewise, justifiable grounds for his dismissal. Be that as it may, to our mind, it is no longer necessary to prove the petitioner's direct participation in the irregularity, for what is material is that his actuations were more than sufficient to sow in his employer the seed of mistrust and loss of confidence.

The aforesaid ruling likewise applies to respondent because of her questionable involvement in the manipulation of company records to facilitate the transfer of a telephone line which was obtained through highly irregular means. Her participation was essential to the consummation of the anomalous transaction.

WHEREFORE, the petition is GRANTED. The February 28, 2000 Decision of the Court of Appeals declaring respondent's dismissal as unlawful and the June 5, 2000 Resolution denying the motion for reconsideration, are REVERSED and SET ASIDE. The May 25, 1998 Decision of the National Labor Relations Commission affirming the Labor Arbiter's Decision dated April 21, 1997 dismissing the complaint for lack of merit, and the October 12, 1998 Order denying the motion for reconsideration, are REINSTATED and AFFIRMED.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 55-59. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Cancio C. Garcia (now a Member of this Court) and Romeo J. Callejo, Sr. (retired Member of this Court).

[2] Id. at 129-146. Penned by Commissioner Vicente S.E. Veloso and concurred in by Commissioners Rogelio I. Rayala and Alberto R. Quimpo.

[3] Id. at 149-150.

[4] Id. at 61-65.

[5] CA rollo, pp. 121-122.

[6] Id. at 55.

[7] Records, p. 58.

[8] CA rollo, p. 108.

[9] Id. at 111.

[10] Id. at 57.

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[11] Records, p. 61.

[12] CA rollo, p. 56.

[13] Id. at 124-142.

[14] Id. at 84-101.

[15] Rollo, p. 152.

[16] Id. at 58-59.

[17] Id. at 24-25.

[18] Madrigal Transport, Inc. v. Lapanday Holdings Corporation, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 136.

[19] Metro Transit Organization, Inc. v. Court of Appeals, G.R. No. 142133, November 19, 2002, 392 SCRA 229, 235.

[20] ABS-CBN Employees Union v. National Labor Relations Commission, G.R. No. 111211, July 24, 1997, 276 SCRA 123, 128.

[21] Cruz, Jr. v. Court of Appeals, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 653.

[22] Tan v. Court of Appeals, G.R. No. 130314, September 22, 1998, 295 SCRA 755, 762.

[23] Supra at 654, citing Caoile v. National Labor Relations Commission, G.R. No. 115491, November 24, 1998, 299 SCRA 76, 82-83.

[24] CA Records, pp. 13-14.

[25] G.R. No. 172401, October 30, 2006, 506 SCRA 290, 298, citing Etcuban, Jr. v. Sulpicio Lines, Inc., G.R. No. 148410, January 17, 2005, 448 SCRA 516, 530-531.

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