EDGARDO D. MILLARES, PETITIONER, VS. PHILIPPINE LONG DISTANCE TELEPHONE CO., INC. AND AMBROSIO HUGO, RESPONDENTS.

G.R. NO. 154078. May 06, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For resolution is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated April 16, 2002 and the Resolution[2] dated June 26, 2002 rendered by the Court of Appeals in CA-G.R. SP No. 66611, entitled "Edgardo D. Millares vs. National Labor Relations Commission, Philippine Long Distance Telephone Co., Inc. and Ambrosio Hugo."

The facts as borne by the records are:

Sometime in May, 1989, Edgardo D. Millares, petitioner, was employed by the Philippine Long Distance Telephone Co., Inc. (PLDT), respondent company, as cable splicer helper. At the time of his dismissal from the service, he was a junior cable splicer at the OPSIM II, Tondo Exchange, receiving a monthly salary of P7,300.00.

On August 8, 1995, Ambrosio B. Hugo, Manager of respondent company's Tondo Exchange, received a complaint from Celestina Ignacio, a prospective telephone subscriber residing at 91-R Mahomas Compound, Tondo, Manila. She reported that on May 10, 1995, petitioner, for a service fee of P3,800.00, promised to install a telephone line at her residence but that he failed to do so; and that despite her demand, he refused to return to her said amount.

During the clarificatory hearing conducted by respondent company on August 19, 1995, petitioner denied that he knew Celestina Ignacio and that he received P3,800.00 from her. But eventually, he admitted his offense and promised to repay her the amount.

Thereafter, respondent company sent him two (2) separate inter-office memoranda (IOM) dated August 28, 1995 and September 6, 1995, charging him with willful violation of company rules and regulations and directing him to submit a written explanation. However, he refused and remained obstinate.

Meantime, on September 26, 1995, petitioner paid Celestina the amount of P3,800.00. Consequently, she executed a written retraction stating that she was forced to file a complaint against petitioner when he failed to pay his loan of P3,800.00.

Respondent company found petitioner guilty of extortion and serious misconduct. Consequently, he was dismissed from the service effective July 19, 1996.

Aggrieved, petitioner filed with the Labor Arbiter a complaint for illegal dismissal and damages against respondent and Ambrosio B. Hugo, docketed as NLRC NCR Case No. 00-10-06367-96.

In due course, the Labor Arbiter rendered a Decision dated April 30, 1999 holding that petitioner was illegally

dismissed from employment and ordering respondent company to reinstate him to his former position and to pay him P263,901.08 representing his backwages, allowances and other benefits. The dispositive portion of the Decision reads:

> "WHEREFORE, above premises duly considered, we find the dismissal of complainant as illegal.
>
> Accordingly, respondent PLDT is hereby ordered to immediately reinstate complainant to his position as Junior Cable Splicer without loss of seniority and other privileges and to pay his full backwages inclusive of allowances and other benefits from the time of his dismissal on July 19, 1996 up to the date of his actual reinstatement, the award being tentatively computed as follows:
>
> 1.
>
> Backwages:
>
> 7/19/96 – 4/30/99 = 33.37 months
> P 7,300.00 x 33.37
>
> P243,601.00
>
> 2.
>
> 13[th] Month Pay:
>
> 1/12 of P243,601.00
>
> 20,300.08
>
> ----------
>
> P263,901.08
>
> The claim for damages is dismissed for lack of merit.
>
> Individual respondent Ambrosio Hugo is absolved of any liability for he only acted in his official capacity as Manager.
>
> SO ORDERED."

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated September 29, 2000 reversing the Arbiter's assailed Decision, thus:

> "We find the instant appeal to be impressed with merit.
>
> The act of soliciting money from a prospective telephone subscriber in exchange for an expeditious installation of telephone line is inherently unlawful and immoral, regardless of whether the solicitor has the capacity to make good his undertaking or not for as long as he is an employee of the telephone company, as what obtained in the case at bar. It constitutes grave misconduct by all standards, a just cause for termination under Article 281 of the Labor Code.
>
> x x x x x x
>
> It is reversible error to rely heavily on the recantation made by Mrs. Ignacio. From all indications, the belated change of heart of Mrs. Ignacio was an afterthought purposely designed to facilitate the defense of appellee after she received full payment from him. Her recantation did not obliterate the liability of the appellee in the light of the investigation report of Mr. Reyes which deserves and should have been accorded full faith and credit being the result of an impartial and honest to goodness investigation conducted based on Mrs. Ignacio's

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> letter-complaint. To honor the recantation is tantamount to condoning mockery of the law. At most, it may be treated as an instrument of falsehood, hence, must be ignored.
>
> We likewise decline to yield to the claim of denial of due process. The issuance of the twin Inter Office Memoranda (IOM) dated August 28 and September 6, 1995, both of which herein appellee have refused to honor, readily impeach the veracity of this particular issue. These IOM's contained a detailed information relevant to the complaint of Mrs. Ignacio which are sufficient to apprise the appellee of the nature of the accusation against him. He was given the opportunity to explain in writing his side of the controversy by virtue of those IOM's but he opted to remain silent. Due process does not require actual hearing but mere opportunity to be heard.
>
> x x x x x x
>
> WHEREFORE, the decision appealed from is REVERSED and SET ASIDE. The appeal is GRANTED. The dismissal of complainant is affirmed.
>
> SO ORDERED."

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated May 31, 2001. Hence, he filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 66611.

On April 16, 2002, the Appellate Court rendered a Decision affirming the assailed Decision of the NLRC, thus:

> "The pivotal question is whether or not the NLRC gravely abused its discretion in finding that petitioner was validly terminated for a just cause.
>
> x x x
>
> Petitioner was given every opportunity to defend himself. He was asked to submit a written explanation why he should not be held liable for violating company regulations by negotiating with a subscriber for the facilitation of telephone installation in consideration of the amount of P3,800.00. IOM was given to him not just once but twice before he was served the termination letter. Notwithstanding that there was a ten-month gap between said notices, respondent PLDT validly effected petitioner's dismissal.
>
> The denunciation of Mrs. Ignacio against the petitioner on separate occasions were given candidly, spontaneously and before she was influenced to recant after petitioner was compelled to return the money after receiving the IOM. While there is no hard and fast rule to determine the truthfulness of one's testimony, that which conforms, however, to the quotidian knowledge, observation and experience of man is often deemed to be reliable (People vs. Niño, 290 SCRA 155).
>
> The State guarantees a worker's security of tenure which can well be his most precious economic right – thus, all efforts must be exerted to protect him from unjust deprivation of his job (Quijano vs. Mercury Drug Corp., 292 SCRA 109). However, the act of demanding monetary consideration in exchange for the promise to facilitate telephone transfer is, aside from being contrary to PLDT policies, constitutes serious misconduct punishable by dismissal under Article 282 of the Labor Code. Needless to say, PLDT has the right to protect itself against employees whose continued employment is detrimental to its interest.
>
> x x x x x x
>
> WHEREFORE, premises considered, the petition is DENIED for lack of merit.
>
> SO ORDERED."

On May 8, 2002, petitioner filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated June 26, 2002.

Hence, this petition for review on certiorari.

Petitioner contends, among others, that the Court of Appeals seriously erred (1) in finding that there is substantial evidence to support his dismissal from the service; (2) in disregarding the retraction of Celestina Ignacio; and (3) in holding that respondent company's inter-office memoranda dated August 28, 1995 and September 6, 1995 show that he was not deprived of his right to due process.

The fundamental issue here is whether respondent company was able to prove by substantial evidence that petitioner is liable for gross misconduct by demanding from Celestina Ignacio a service fee of P3,800.00 for the installation of a telephone line. The issue raised is factual. It is basic that the findings of fact by the Court of Appeals, when supported by substantial evidence, are conclusive and binding upon the parties and are not reviewable by this Court, unless the case falls under any of the exceptions to the rule, such as when the findings by the Appellate Court are not supported by evidence. [3] This exception is being relied upon by petitioner.

Here, we find there is substantial evidence to support the findings of the Court of Appeals that petitioner's dismissal from the service is valid. Well-entrenched is the rule that substantial proof is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, as in this case, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position.[4] That petitioner violated respondent PLDT's rules and regulations and committed serious misconduct in the performance of his duties, have been proved by Celestina Ignacio. Respondent thus lost its trust and confidence in petitioner. Under Article 282 of the Labor Code, as amended, these are just causes for dismissing him from the service.

Moreover, the Appellate Court did not err in rejecting Celestina's retraction. A careful perusal of the minutes of the clarificatory hearing reveals that she retracted her complaint only after respondent paid her, thus:

> "ATTY. OLITOQUIT:
> When this Mr. Reyes went to your residence to investigate regarding your complaint, you did not make any letter retraction or affidavit of retraction?
>
> WITNESS:
>
> Wala sir.
>
> ATTY. OLITOQUIT:
>
> And after that meeting in your residence, there was still another meeting between you, Mr. Reyes and the complainant at the PLDT office?
>
> WITNESS:
>
> Yes, sir.
>
> ATTY. OLITOQUIT:
> And in that meeting Madam witness you did not write any letter or filed any sinumpaang salaysay staing that the money Mr. Millares got from you was only a loan?
>
> WITNESS:
> Wala, sir.
>
> ATTY. OLITOQUIT:
> In other words, the first retraction you made was this document dated September 27, 1995?
>
> WITNESS:

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Yes, sir.

ATTY. OLITOQUIT:
In other words, Madam witness, you made this retraction including the sinumpaang salaysay which was earlier marked as Exhibit "5", after you were paid by Mr. Millares?

WITNESS:
Oho, pagkatapos niyang magbayad, wala na siyang kasalanan sa akin."

Retractions are frowned upon by the courts. A retraction of a testimony is exceedingly unreliable, for there is always the probability that it may later on be repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration. A retraction does not necessarily negate an earlier declaration.[5]

Finally, there is no cogent reason why we should not accord deference and finality to the Appellate Court's finding that petitioner was accorded his right to due process. In Santos vs. San Miguel Corporation,[6] we reiterated the well-entrenched rule that "(p)rocedural due process requires the employer to give the employee two notices. First is the notice apprising him of the particular acts or omissions for which his dismissal is sought. Second is the subsequent notice informing him of the employer's decision to dismiss him." In the case at bar, respondent company sent petitioner the required notices. Clearly, he was not deprived of his right to due process.

WHEREFORE, the petition is DENIED. The assailed Decision dated April 16, 2002 and the Resolution dated June 26, 2002 of the Court of Appeals in CA-G.R. SP No. 66611 are hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Corona, Carpio-Morales, and Garcia, JJ., concur.
Panganiban, (Chairman), J., no part, former counsel of a party.

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[1] Penned by Justice Eliezar R. Delos Santos, and concurred in by Justices Buenaventura J. Guerrero (ret.) and Rodrigo V. Cosico. Annex "A", Petition for Review, Rollo at 31-37.

[2] Annex "B", Ibid, Rollo at 39-40.

[3] Siasat vs. Court of Appeals, G.R. No. 129382, January 23, 2002, 374 SCRA 326, cited in Philtread Tire & Rubber Corporation vs. Alberto Vicente, G.R. No. 142759, November 10, 2004 at 6-7

[4] Philippine Airlines, Inc. vs. Tongson, G.R. No. 153157, October 13, 2003, 413 SCRA 344, 353, cited in Reyno vs. Manila Electric Company, G.R. No. 148105, July 22, 2004, 434 SCRA 660, 668.

[5] People vs. Nardo, G.R. No. 133888, March 1, 2001, citing People vs. Navarro, 297 SCRA 331, 348 (1998).

[6] G.R. No. 149416, 399 SCRA 172, 185, citing Manuel vs. NC Construction, 282 SCRA 326, 335 (1997); and Wallem Maritime Services, Inc. vs. NLRC, 263 SCRA 174, 186 (1996).

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