PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. THE LATE ROMEO F. BOLSO, REPRESENTED BY HIS HEIRS, RESPONDENT. AUGUST 17, 2007

G.R. No. 159701. August 17, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] of the 27 November 2002 Decision[2] and the 19 August 2003 Resolution[3] of the Court of Appeals in CA- G.R. SP No. 53911. The Court of Appeals dismissed the petition of Philippine Long Distance Telephone Company (PLDT) and affirmed the 26 March 1999 Decision of the National Labor Relations Commission (NLRC)

finding the dismissal of Romeo F. Bolso (Bolso) illegal.[4]

The Facts

Bolso was an Installer/Repairman II of PLDT since February 1982 until PLDT dismissed him on 20 July 1997.

On 5 February 1996, Samuel Mabunga (Mabunga), a PLDT subscriber, sold the rights to his telephone line to Ismael Salazar (Salazar) for P20,000. Mabunga received P15,000 for the transfer. Then, for the installation of this telephone line, Salazar paid P2,500 to a PLDT installer who introduced himself as Boy Negro and the remaining P2,500 to Boy Negro's two companions.

On 20 May 1996, Salazar wrote PLDT complaining about Mabunga's continued usage of the telephone line through an extension, despite the transfer. Salazar requested PLDT to check out the problem and immediately cut-off the extension line.[5]

On 28 June 1996, Salazar went to PLDT's Quality Control and Inspection Division (QCID) office where he affirmed having paid P2,500 to Boy Negro and another P2,500 to Boy Negro's two companions for installing the telephone line at his residence. During the investigation, Salazar positively identified a photograph of Bolso as that of Boy Negro. Salazar voluntarily executed a Sinumpaang Salaysay[6] narrating the circumstances surrounding the installation of the illegal extension line and a Certification[7] that the man he had identified in the photograph was the one who actually went to his residence and installed the telephone line.

On 29 June 1996, the QCID personnel inspected the telephone installation at Salazar's residence and confirmed that Mabunga was using the telephone line through an outside extension installed at Salazar's house. PLDT informed Salazar and Mabunga that it was an unofficial installation, and invited them to its QCID office to enlighten it on the matter.

On 23 July 1996, PLDT issued an Inter-Office Memo requesting the appearance of Bolso, together with his immediate supervisor or union council representative, at PLDT's Sampaloc Office for the investigation of his alleged participation in the illegal installation.

On 26 July 1996, both Salazar and Bolso appeared at the QCID investigation. Salazar reaffirmed his earlier Sinumpaang Salaysay and Certification, and at the same time, positively picked out and identified Bolso from among those present as the installer of the unofficial telephone line. Bolso denied the allegations against him.

Subsequently, Bolso submitted to PLDT what appears to be a recantation of Salazar's previous statements, alleging that he did not personally know Bolso and that Bolso was not Boy Negro. The letter dated 5 August 1996 reads:

> QUALITY CONTROL
> INSPECTION DIVISION PLDT
> SA KINAUUKULAN,
>
> SA NAGANAP PONG IMBISTIGASYON NI G. FERNANDO R. ARAMBULO, IMBISTIGADOR NG (Q.C.I.D.) QUALITY CONTROL AND INSPECTION DIVISION PLDT NOONG IKA-26 NG HULYO, 1996 GANAP NA ALA UNA 'Y MEDYA NG HAPON, ARAW NG BIYERNES.
>
> NA ANG BUONG KATOTOHANAN AY HINDI KO KILALA SI ROMEO BOLSO AT SIYA AY NAITURO KO LAMANG NOONG MAGHARAP- HARAP KAMI NOONG IKA-26 NG HULYO, 1996 DAHIL NGA SA KABIGLAAN KO AT INIT NG ULO AT SA TOTOO IYON "BOY NEGRO" NA SINASABI AY HINDI SIYA.
>
> AKO PO AY BINABAGABAG NG AKING KONSENSIYA AT DAMDAMIN SA PAGTUTURO NG ISANG TAONG WALA NA MANG KINALAMAN AY MALAKI PO ANG NAGAWANG KASALANAN.
>
> ANG SA INYO AY LUBOS NA GUMAGALANG NA SANA AKO AY INYONG MAUNAWAAN.
>
> Sgd.
>
> ISMAEL G. SALAZAR[8]

On 20 January 1997, the Manggagawang Komunikasyon ng Pilipinas, Bolso's union, requested the withdrawal of the complaint against Bolso since the "complainant [sic] failed to satisfy the standard basis for it to merit further investigation x x x."[9]

On 10 July 1997, Bolso's counsel demanded the immediate dismissal of the administrative case against Bolso based on Salazar's retraction and the release of Bolso's benefits under PLDT's early retirement/redundancy program.[10]

Giving no credence to the recantation letter and finding that Salazar's previous statements established Bolso's culpability, PLDT, through an Inter-Office Memo, terminated Bolso effective 20 June 1997 for serious misconduct.

On 15 August 1997, Bolso filed with the Labor Arbiter a complaint against PLDT for illegal dismissal, backwages, and damages, docketed as NLRC NCR Case No. 00-08-05842-97.

On 6 August 1998, the Labor Arbiter[11] issued his decision dismissing the case for lack of merit.[12] The Labor Arbiter found Bolso's evidence "too speculative and conjectural." Bolso's denial of the charges of serious misconduct, fraud, and breach of trust was not supported by convincing evidence except the retraction made by Salazar of his previous statement pointing to Bolso as the one who installed the illegal extension line. The Labor Arbiter further held that "while there is no direct evidence that Bolso exacted money from Salazar in consideration of the installation of the unofficial extension line," there is substantial evidence against him for serious misconduct.

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On 28 September 1998, Bolso appealed to the NLRC.

Ruling in favor of Bolso, the NLRC held that PLDT failed to prove that Bolso committed the infraction imputed against him. The recantation of Salazar of his previous statement regarding Bolso's installation of the illegal extension line "totally established Bolso's innocence." The NLRC also stated that this was the first time PLDT charged Bolso with an offense and that "it would have been foolhardy on the part of Bolso to risk and lose his only source of livelihood at the cost of a measly amount of P2,500." The NLRC further noted that Salazar voluntarily gave his recantation letter, and he did it in his own handwriting and in a language very well known to him. The NLRC also found that Bolso was denied of his right to due process.

The NLRC disposed of the case as follows:

> WHEREFORE, in the light of the foregoing, the appeal is hereby GRANTED. The assailed Decision dated August 6, 1998 is hereby VACATED and SET ASIDE and a new one is hereby entered ordering respondent Philippine Long Distance Telephone Co. to reinstate complainant Romeo F. Bolso to his former position as Installer/Repairman II without loss of seniority rights and other employee benefits with full backwages counted from the time of his dismissal on June 20, 1997 up to the time of actual reinstatement.
>
> All other reliefs herein sought and prayed for are hereby DENIED for lack of merit.
>
> SO ORDERED.[13]

On 26 April 1999, PLDT filed a motion for reconsideration, which the NLRC denied in its 30 April 1999 Resolution.

On 23 July 1999, PLDT filed with the Court of Appeals a petition for certiorari to nullify the NLRC decision and resolution.

On 27 November 2002, the Court of Appeals issued a Decision dismissing the petition for certiorari.

PLDT filed a motion for reconsideration on 22 January 2003, which the Court of Appeals denied in its Resolution of 19 August 2003.

Hence, this petition.

The Ruling of the Court of Appeals

Sustaining the NLRC, the Court of Appeals ruled that "special circumstances exist which raise serious doubt as to the accountability of Bolso." Salazar's recantation letter rendered "some truth" to Bolso's innocence. Salazar reasoned out that confusion coupled with indignation drove him to implicate an innocent person, which bothered his conscience. The Court of Appeals held that Salazar's retraction was a declaration against his own interest under Section 38, Rule 130 of the Rules of Court.[14] The Court of Appeals also found no evidence that Bolso committed the breach attributed to him. "Other than Salazar's inadvertence, the alleged incident involving Bolso was unsupported by relevant and convincing evidence."[15]

The Court of Appeals went on to say that assuming the recantation was invalid and that Bolso did commit serious misconduct, "dismissal is too harsh a penalty considering the length of his service in PLDT and the infraction was his first offense."

The Court of Appeals likewise ruled that there was no hearing where Bolso had a reasonable opportunity to air his side and confront his accuser. "If there was any, it was surely not the kind of investigation that would suffice to comply with the procedural requirement." Hence, Bolso was denied of his right to due process, rendering his dismissal illegal.

The Issue

The issue in this case boils down to whether Bolso's dismissal for serious misconduct was lawful.

The Ruling of this Court

The petition is meritorious.

On the issue of just cause

The Labor Code provides that an employer may terminate the services of an employee for a just cause.[16] Among the just causes in the Labor Code is serious misconduct. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct to be serious within the meaning of the Labor Code must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[17]

An employee's dismissal due to serious misconduct must be supported by substantial evidence.[18] Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[19]

In this case, there is no question that PLDT installers, such as Bolso, repairmen, and linemen provide services but cannot collect or receive any personal fees for such services. Violating this company rule constitutes serious misconduct.[20] Did Bolso accept payment for the installation of an unauthorized PLDT telephone line, which would constitute serious misconduct warranting his dismissal?

Based on the records, Salazar's initial statements given to PLDT QCID narrated how he gave Bolso P2,500 for the installation of the telephone line which he purchased from Mabunga. The telephone line turned out to be an illegal extension line. Salazar gave separate but similar statements in the course of the investigation, the first was on 28 June 1996 and another was on 26 July 1996. During the first instance he went to PLDT QCID's office, Salazar easily, immediately, and unhesitatingly identified Bolso's photograph as the man who went to his house to install the extension line. During the 26 July 1996 investigation, while Salazar was facing Bolso, Salazar pointed to him as the installer of the illegal extension line.

There was also evidence that Bolso received money in exchange for the installation of the extension line. Salazar added during the 26 July 1996 investigation the following statements:

> T25 : Ano ang gusto ninyong idagdag, ibawas o baguhin?
>
> S : Hindi ko talaga siya kilala dahil iyong dalawang taong nauna sa kanya ang talagang may kilala sa kanya. Kilala ko lang siya sa alyas niyang "BOY NEGRO". At nung nagbayad ako ng pera, ay siya talaga ang pinagbigyan ko, doon sa loob ng bahay ko, kasama iyong dalawa.[21] (Emphasis supplied)

The standard of substantial evidence is met where the employer, as in this case, has reasonable ground to believe that the employee is responsible for the misconduct and his participation in such misconduct makes him unworthy of the trust and confidence demanded by his position.[22]

However, Salazar retracted his statement pointing to Bolso as Boy Negro who installed the illegal extension line. Salazar's recantation, Bolso now claims, clearly established his innocence of the offense charged. Hence, Bolso's fate as a PLDT employee lies solely on Salazar's statements. Does Salazar's subsequent retraction of his previous statement convincingly prove Bolso's non- participation in the offense charged?

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We rule in the negative.

In a similar case involving PLDT and one of its installers,[23] the Court held that it was more "reasonable to believe that the affidavits of retraction were, as claimed by petitioner, a mere afterthought, executed out of compassion to enable private respondent to extricate himself from the consequence of his malfeasance." As such, the affidavits had no probative value.

Moreover, a retraction does not necessarily negate an earlier declaration. For this reason, courts look with disfavor upon retractions. Hence, when confronted with a recanting witness, in this case the complainant, courts must not automatically exclude the original statement based solely on the recantation. Courts should determine which statement should be given credence through a comparison of the original and the new statements, applying the general rules of evidence.[24]

In this case, Salazar did not expressly repudiate his earlier statement that he paid Bolso P2,500 for the installation of the illegal telephone line. What Salazar stated in his recantation letter was that Bolso was not Boy Negro. Therefore, only Bolso's identity as Boy Negro was retracted. Salazar's original statement that Bolso received P2,500 for the installation of the outside extension line remains undisputed.

Even assuming that Salazar retracted fully his original statements given during the PLDT investigation, Salazar did not swear or subscribe to his recantation letter. Salazar never identified it himself or affirmed its veracity. Bolso also submitted the letter to PLDT.

Further, Bolso did not offer any reason for Salazar's initial imputation against him. In fact, Bolso stated during the 26 July 1996 investigation that he did not know of any motive on the part of Salazar for accusing and pointing him as the installer of the illegal extension line.

> T22 : Sa iyong pagkakaalam, ano ang maaaring motibo ni G. Salazar para paratangan ka niya ng ganito?
>
> S : Wala akong alam na dahilan dahil, unang-una hindi ko siya kilala at nakikita. Pangalawa, ay hindi ko area iyong lugar na iyan, at hindi ako nagagawi roon.
>
> T23 : Kung gayon, ano sa palagay mo ang malaking dahilan kung bakit sa dinami-dami ng empleyado sa PLDT Sampaloc ay ikaw pa ang naituro ni G. Salazar na isa sa mga nagkabit sa kanyang tirahan ng telepono bilang 742-5015?
>
> S : Hindi ko alam talaga.[25]

The Court is mindful that Bolso's employment with PLDT was his main source of income and that the infraction imputed on him was his first offense in his 15 years of service to PLDT. However, the Court cannot close its eyes to the fact that Salazar positively identified Bolso as the installer of the illegal extension line for which he was paid P2,500. The Court has held that the longer an employee stays in the service of the company, the greater is his responsibility for knowledge and compliance with the norms of conduct and the code of discipline in the company.[26] An employee's length of service with the company even aggravates his offense.[27] Bolso should have been more loyal to PLDT from which he had derived his income for 15 years.

Upholding the employee's interest in disregard of the employer's right to dismiss and discipline does not serve the cause of social justice. Social justice ceases to be an effective instrument for the "equalization of the social and economic forces" by the State when it is used to shield wrongdoing.[28]

Moreover, it is worthy to note that Bolso applied for benefits under PLDT's early retirement/redundancy program. Bolso's counsel even wrote PLDT for the withdrawal of the administrative complaint against Bolso and for the release of the benefits under this program. Therefore, Bolso's plea for reinstatement in this case conflicts with his

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application for early retirement, which PLDT denied due to the then pending complaint against him. Reinstatement is plainly irreconcilable with retirement.

At any rate, since Bolso was dismissed for a just cause, neither he nor his heirs can avail of the retirement benefits.

On the issue of due process

Bolso's claim that he was denied of his right to due process when PLDT dismissed him is untenable.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[29] A formal or trial-type hearing is not at all times and in all circumstances essential.[30]

In the present case, Bolso was notified by way of an Inter-Office Memo[31] dated 23 July 1996 of an investigation, specifically, on his alleged participation in the installation of an illegal outside extension found on telephone number 742-5015. He was advised to appear at the investigation to be conducted on 26 July 1996 with his immediate supervisor or union council representative.

At the investigation conducted on 26 July 1996, Bolso did appear during which he was apprised of the charges against him, as well as his rights:

> Tanong 16: Ginoong Bolso, narinig mo ba ang mga sinabi ni G. Salazar laban sa iyo. Ngunit bago ka sumagot, nais ko munang ipaalam sa iyo ang mga karapatan mo sa ilalim ng Bagong Saligang Batas. Una, ikaw ay may karapatan hindi sumagot o magsawalang kibo sa mga katanungan ko. May karapatan ka ring sumangguni muna sa isang abogado o Union Council rep na siyang pili mo upang makatulong sa pagsisiyasat na ito. Dahil lahat ng sasabihin mo ay maaari naming gamitin ebidensya laban o pabor sa iyo sa lahat ng hukuman dito sa Philipinas. Naiintindihan mo ba ang iyong mga nabanggit na karapatan?
>
> S: Oo.[32]

During this investigation, Bolso was allowed to confront his accuser Salazar face-to-face, and was given adequate opportunity to immediately respond to the charges against him. Thereafter, Bolso's union, Manggagawang Komunikasyon ng Pilipinas, interceded on his behalf. Bolso's counsel also moved for "the immediate dismissal of the pending administrative case against Bolso." Clearly, Bolso was afforded ample opportunity to air his side and defend himself. Hence, there was no denial of his right to due process.

WHEREFORE, we GRANT the petition. We REINSTATE the Decision of the Labor Arbiter dated 6 August 1998.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 55-65. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Elvi John S. Asuncion and Sergio L. Pestaño, concurring.

[3] Id. at 68.

[4] Id. at 126-140. Penned by Commissioner Ireneo B. Bernardo with Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo, concurring.

[5] Id. at 176.

[6] Id. at 177 and 182.

[7] Id. at 178.

[8] Id. at 218.

[9] Id. at 219.

[10] Id. at 220.

[11] Vicente R. Layawen.

[12] Rollo, p. 195.

[13] Id. at 139-140.

[14] Sec. 38. Declaration against interest. - The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.

[15] Rollo, p. 63.

[16] Article 282 of the Labor Code provides:

> Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:
>
> - Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> - Gross and habitual neglect by the employee of his duties;
>
> - Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> - Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> - Other causes analogous to the foregoing.

[17] Dept. of Labor Manual, Sec. 4343.01, cited in C.A. AZUCENA, The Labor Code with Comments and Cases, Volume Two, (Fifth Edition, 2004) p. 604.

[18] See Salvador v. Philippine Mining Service Corp., 443 Phil. 878, 888 (2003) citing Pili v. National Labor Relations Commission, G.R. No. 96895, 21 January 1993, 217 SCRA 338.

[19] Id. at 888-889 citing In the Matter of the Petition for Habeas Corpus of Lansang, et al., 149 Phil. 547 (1971) and Ang Tibay v. CIR, 69 Phil. 635 (1940). See also Caurdanetaan Piece Workers Union v. Laguesma, G.R. No. 113542, 24 February 1998, 286 SCRA 401.

[20] See records, p. 61.

[21] Rollo, p. 158.

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[22] Reyno v. Manila Electric Company, G.R. No. 148105, 22 July 2004, 434 SCRA 660.

[23] Philippine Long Distance Telephone Company v. National Labor Relations Commission, No. L- 74562, 31 July 1987, 152 SCRA 702.

[24] See People v. Ballabare, 332 Phil. 384 (1996).

[25] Rollo, p. 157.

[26] Supra note 22 at 668-669 citing Central Pangasinan Electric Cooperative, Inc. v. Macaraeg, 443 Phil. 866 (2003).

[27] Id. at 669 citing United South Dockhandlers, Inc. v. NLRC, G.R. No. 119935, 3 February 1997, 267 SCRA 401, 407.

[28] Jamer v. NLRC, 344 Phil. 181, 201 (1997).

[29] Id. at 205-206.

[30] See Philippine Savings Bank v. NLRC, G.R. No. 111173, 4 September 1996, 261 SCRA 409.

[31] Rollo, p. 154.

[32] Id. at 156-157.

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