ROGELIO L. TOLENTINO, PETITIONER, VS. PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC. AND ERNESTO V. VILLAREAL, RESPONDENTS.

G.R. NO. 160404. June 08, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 64234 which affirmed the Resolution[2] of the National Labor Relations Commission (NLRC) finding that the petitioner was legally dismissed; hence, not entitled to be reinstated to his former position without loss of seniority rights and privileges, as well as the payment of full backwages.

Rogelio L. Tolentino, a resident of Lucena City, had been employed by the Philippine Long Distance Telephone Company, Inc. (PLDT) since November 3, 1980. The PLDT sponsored his study-training as a digital electronic switching operator and maintenance technician in Munich, Germany. He was responsible for the establishment of the Mauban Sub-Exchange at Mauban, Quezon. He had been given no less than 28 achievement awards. As of April 15, 1999, he was a management employee occupying the position of Testboard Man II JG-5 at the PLDT Lucena Exchange in Lucena, Quezon.

After almost 19 years of employment with the PLDT, Tolentino received a Memorandum on April 15, 1999 from Ernesto V. Villareal, the Senior Manager of the PLDT at its Lucena Exchange dismissing him effective April 16, 1999 for serious misconduct and loss of trust and confidence, more specifically for:

> - Cash shortage in the amount of THIRTY-SIX THOUSAND TWO HUNDRED SIXTY-EIGHT PESOS and 29/100 (P36,268.29) and unaccounted change fund amounting to ONE THOUSAND PESOS (P1,000.00) which took place in our Tayabas Sub-Exchange on May 25 & May 26, 1998.
>
> - Illegal jumpering of TOBS Line Numbers 042-714300 and 042-712273 and the corresponding pairs at DP 1356 Cable 5E which took place at our Lucena Exchange and was discovered sometime on May 25, 1998. [3]

On July 14, 1999, Tolentino filed a complaint for illegal dismissal against the PLDT and Villareal before the NLRC, and sought his reinstatement, backwages, moral damages and attorney's fees.[4]
The Case for the Complainant

The complainant alleged that there was no factual and legal basis for his dismissal by the respondent PLDT from his employment. Worse, the complainant insists that his former employer denied him his right to due process. He posits that the charges against him were concocted by the respondents in connivance with its employees, Ferrer G. Punto, Pedrito Oblea, Ricardo Jimenez, Jr. and Rosalito M. Quismundo, solely because he executed, on April 29, 1998, an affidavit in favor of a co-worker, Saludin Mijares, who was charged by the respondent PLDT for stealing empty cable reels. In the said affidavit, he alleged that Villareal allowed its employees to take and bring home empty cable reels.[5] The alleged shortage took place after his recall to the Lucena Exchange. The complainant

alleged that the jumper was found at the Lucena Exchange at a time when he was already assigned at the Tayabas Sub-Exchange. He could not have committed any tapping because his key access to the MDF Room had long been surrendered; one of the drop wires was open-continuity, while the other was for his Telephone Line 714-567 which had already been disconnected. Moreover, the complainant averred, PLDT linemen installed the telephone cable to create a valid ground for his dismissal.

The Case for the Respondents

It appears that on May 1, 1998, Villareal transferred the complainant as Acting Coordinator of the PLDT Tayabas Sub-Exchange in Tayabas, Quezon, replacing Amado Cabaña who left the company on April 30, 1998. The complainant assumed office on May 1, 1998 and took custody of the safety digital vault in the sub-station as well as the contents thereof. As an acting coordinator, the complainant was tasked, among others, to receive collections from PLDT customers, record the said collections in the office columnar book, and keep the same in the vault.

On May 23, 1998, a Saturday afternoon, Switching Engineer Pedro Oblea, along with other personnel were cleaning up and transferring their Toll On-Line Billing System (TOBS) at the Lucena Exchange. Oblea discovered that Booths 3 and 4 (TOBS Line Numbers 042-714300 and 042-712273) had no dial tone and were in use. He was dumbfounded because based on the cable records, Booths 3 and 4 had no assigned subscribers and were still open for applicants. Noticing that the dial tones assigned to Booths 3 and 4 were illegally connected, Oblea decided to deactivate the illegal tapping and to maintain the illegal jumper to find out who would remove the same. However, the jumper was still in place as of 8:00 p.m. When Oblea inspected the jumper at 1:00 p.m. the next day, May 25, 1998, the jumper wires had already been removed. Upon inquiry from the security guard, Oblea learned that the complainant had earlier arrived at the exchange at 10:00 a.m. and left at 10:20 a.m.[6] It was surmised that since the complainant was the only one who visited the MDF office, he was the culprit.[7]

Oblea reported the matter to Villareal, who referred the matter to the Quality Control and Inspection (QCI) Division at the head office for investigation. Quismundo and Jimenez were assigned to conduct the investigation.[8]

Villareal decided to replace the complainant with Punto and, on May 26, 1998, issued a Memorandum to the complainant recalling the latter to the Lucena Exchange and directing him to report directly to Patricio C. Esquieres, Switching Engineer S-2, for further instruction.[9] The complainant was also ordered via a Memo of even date to turn over all the keys of the Tayabas Sub-Exchange to Punto.[10]

Punto assumed office at the sub-exchange on May 27, 1998 in the morning. He then asked the complainant to turn over the keys to the lockers and the vault, but the complainant refused to do so. Punto was able to ascertain from Cabaña the number combination of the vault. The two opened the vault and discovered that based on the company columnar book, the total collection for May 25 and 26, 1998 was P57,728.29; however, Punto found only P21,460.00 in the vault, P36,268.29 short of the total collection which Tolentino was supposed to keep therein.[11] Punto reported the matter to Remegio Co, the Assistant for Operations in the Lucena Exchange. Both of them counted the money anew and confirmed the shortage. Punto executed an affidavit on May 29, 1998, narrating his discovery and the amount of the shortage.[12]

In the meantime, on May 26, 1998, Quismundo and Jimenez, in the company of the complainant, conducted an ocular inspection of the place where Oblea found the jumper; they were able to confirm that the jumper wires had already been removed. They also found that the jacketed wires were used and tapped at DP 1356 CA 5E (Direct Feed/Rehab. Cable), approximately one block away from the residence of the complainant.[13] They also conducted an ocular inspection of the complainant's house in Lucena City in the presence of the latter, and found that cable pairs and corresponding drop wires terminated at the said residence. They also found one protector, two

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inside-wirings, and a telephone set. The complainant explained that one of the drop wires was for his telephone line bearing Number 714-567 which was already disconnected.[14]

Jimenez and Quismundo also verified that from May 5, 1998 to May 22, 1998, numerous calls to different countries were made through telephone line Number 712-273 between 8:00 a.m. to 5:00 p.m. On June 1, 1998, they submitted an Inter-Office Memorandum containing their findings and recommendation.[15]

On June 4, 1998, the complainant received a Memorandum from Villareal, directing him to explain in writing within 72 hours why no disciplinary action should be taken against him for the shortage of P36,268.29, and the unaccounted charge fund of P1,000.00, as per the findings of the Provincial Audit Team.[16] A copy of the findings of the said audit team was appended to the Memorandum. He was also informed that he was under preventive suspension effective June 5, 1998 pending the resolution of the case against him.

On June 8, 1998, Tolentino submitted his written explanation to the charge of collection shortage. He vehemently denied the charge. He claimed that he received the collections on May 25 and 26, 1998 from Cristy Ella, the casual worker of the Tayabas Exchange on May 26, 1998. He placed the same in the vault in the presence of other employees. He averred that when shown the Memorandum of Villareal recalling him and designating Punto in his place, he turned over the keys and the number combination of the vault to Punto. When he learned of Villareal's Memorandum, he talked to the latter but was told to report to the Lucena Exchange and to prepare. Tolentino insisted that he was the victim and not the culprit.[17] He lamented that after serving the company for many years, he had to be charged for shortage of funds.

On August 28, 1998, an investigation was conducted by James D. Mallari in the presence of union representatives on the matter of the tapping of TOBS Telephone Lines 714-300 and 712-273. The complainant was asked regarding his whereabouts on May 24 and 26, 1998, and he replied, based on the Vehicle Security Registry of the Lucena Exchange, that he was at the Tayabas Sub-Exchange on May 24, 1998 at 10:15 a.m. and left 10:20 a.m. He claimed that he did not enter the exchange. The complainant added that with reference to the dropwires, the same were covered by "S.O." and claimed that he did not commit any wrongdoing.[18] Without any further investigation, the complainant received, on March 15, 1999, a Memorandum from Villareal informing him of the Report Recommendation of Jimenez and Quismundo, and requiring him to explain the findings contained therein within 72 hours.[19] The complainant complied and submitted his explanation on March 17, 1999, quoted, infra, to wit:

> Until now, for almost a year, I can't think of the possibility which made people on my side then, believed and turned their back on me. But sad to say this negative issues against me exists only in their mind. How can I be responsible for the jumpering or TOBS line tapping! My key access to the MDF room was surrendered upon security guard asking long before; I am aware that TOBS line during that period is being re-arranged due to my BOP daily transmittal for Tayabas at Lucena Commercial which ended at around 6:30pm; as far as I'm concerned with the two dropwires stringing to our house, one is open-continuity troubled and the other is for the existing telephone which was TD then, and with Cable 10 direct-feed assignment not on said DP 1356 Cable 5E to which, if true, was maneuver at outside terminal with multiple access, work which I am not capable of. Not even a single step in participation to this predicament would satisfy my availability considering my stature during those period.
>
> Truth will only be my shield to this spear (sic). In behalf of my family, together all throughout, we'll challenge this life's trial and most with empty stomach, we will prove to the company we are one and will always be ... with you.[20]

On April 17, 2000, the Labor Arbiter rendered judgment in favor of Tolentino. The fallo of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant ROGELIO L.

> TOLENTINO, and against the respondents PHILIPPINES LONG DISTANCE CO., (PLDT) and/or ERNESTO V. VILLAREAL, as follows:
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> a)
>
> Declaring the dismissal of complainant to be illegal;
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> b)
>
> Ordering respondents to pay complainant of full backwages inclusive of allowances, and other benefits or their monetary equivalent computed April 16, 1999, up to the time of this decision;
>
> c)
>
> Ordering respondents to immediately reinstate complainant to his former position without loss of seniority rights or other privileges, or at the option of the respondent, payroll reinstatement.

All other charges and claims are DISMISSED for lack of merit.

SO ORDERED.[21]

The Labor Arbiter declared that the respondents failed to adduce substantial evidence to prove that Tolentino was dismissed for a lawful cause. On the charge for shortages, the Labor Arbiter declared:

> ... Likewise, there is no evidence on record whatsoever that would cast an undeniable postulation that complainant had done such putative acts in a willful manner, or that there was wrongful intent. Contrarily, what we did not fail to see was the suasion that respondents' charges of cash shortages and illegal jumpering against complainant rest on speculations and conjectures.

On the charges for installation of a jumper and for illegal tapping, the Labor Arbiter declared that:

> Secondly, the Vehicle Security Registry shows that on May 24, 1998, at least five (5) persons were listed therein, but which fact again was contrary to the allegation contained in the Inter-Office Memo dated June 1, 1998 executed by Engineers Ricardo C. Jimenez, Jr. and Rosalito M. Quismundo that "[i]t is alleged that certain Mr. Ding Tolentino, a frameman, was the one who removed the terminations since he was the only one who visited the MDF Office at 10:15am-10:20am of May 24, 1998 (sun.), as recorded in security registry." Incidentally, nowhere in the records was the testimony to Security Guard Vicente R. Quenita, who could have substantiated the report, as it appears that he was the one who accomplished the security registry.

The respondents appealed the decision to the NLRC which rendered judgment on December 15, 2000 setting aside the appealed decision. The NLRC held that there were just causes for the dismissal of the complainant-appellee, based on the affidavit of Punto, the report of Oblea, the June 1, 1999 Report of Jimenez and Quismundo, as well as the Security Guard Logbook for May 25, 1998 and the explanation of the complainant-appellee:

> Initially, on 29 May 1998, Coordinator Ferrer G. Punto opened PLDT's office vault at Tayabas Sub-Exchange, made a reconciliation of the collections for 22 and 23 May 1998 with office records and discovered a cash shortage of P36,268.29, in the presence of Security Guard Danilo Verano and casual Employee Cristy Ella. The fact that Complainant-Appellee was the accountable officer of the collections kept in the vault positively links him to the cash shortage. This fact is substantially evidenced by Mr. Punto's Sworn Statement dated 29 May 1998 annexed to Respondents-Appellants' Position Paper.

> Likewise, on 23 May 1998, Switching Engineer Pedrito C. Oblea, upon close inspection, discovered that PLDT's two (2) telephones of Booths 3 and 4 had illegal jumpers. Tracing the telephone wires used in jumping, he found them to terminate at the residence of Complainant-Appellee. This termination, as even admitted by him – when he stated, in his Explanation dated 17 March 1999, that "the alleged illegality is done to create a certain calling-office where possibility suggest connivance with central office, outside plant and caller attendant personnel" – categorically involves him in the illegal wire tapping. This fact is substantially evidenced by Switching Engineer Pedrito C. Oblea's Report, QCI Engineers Rosalito M. Quismundo and Ricardo C. Jimenez's Inter-Office Memorandum dated 1 June 1998 and Complainant-Appellee's Explanation dated 17 March 1999, all annexed to Respondents-Appellants' Position Paper.
>
> Inevitably, these established infractions constitute a legal basis which is more than sufficient to warrant loss by Respondents-Appellants of their trust and confidence reposed in Complainant-Appellee, a just cause for dismissal under Article 282(b) of the Labor Code, as amended.[22]

The complainant-appellee's motion for reconsideration of the decision was denied by the NLRC. Forthwith, the complainant, now the petitioner, filed a petition for certiorari in the CA assailing the decision and resolution of the NLRC. On January 20, 2003, the CA rendered judgment dismissing the petition and affirming the decision of the NLRC. The CA declared that:

> It must be recalled that the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned must be one holding a position of trust and confidence. In the instant case, the petitioner was holding a position of trust and confidence during the time he was appointed as Acting Coordinator at the Tayabas Sub-Exchange, which duties he discharged from May 1 to 27, 1998. He was the accountable officer of the collections kept in the vault. And the discovery of the P36,268.29 cash shortage was automatically charged to him as the officer-in-charge. The fact that there was no personal turnover of the cash will not erase the fact that he was not able to account for the said shortage, as the money was counted in front of witnesses. There already exists a presumption of expropriation on his part relative to the deficiency, which he was not able to rebut in the proceedings before the labor arbiter and the NLRC.
>
> In addition, Ferrer Punto's Sworn Statement narrates the events which led to the discovery of the cash deficiency and gives evidence against petitioner's innocence. His Explanation dated June 10, 1998 also does not give a plausible reason as to why there is a shortage. It only recounted that "many could attest that the collection for the said date was put inside the vault and that was the last time I have touched the vault." This statement, however, was not supported by any affidavit of witnesses who could help uphold his side. As we hold time and time again, mere allegation is not evidence.
>
> Likewise, the petitioner was also charged of illegal jumpering. The following are the pieces of evidence against him: (1) Switching Engineer Pedrito Oblea discovered that PLDT's two telephones of Booths 3 and 4 had illegal jumpers and the same terminated at his residence. (2) The Quality Control Investigation Division (QCID) of PLDT conducted an investigation and the same yielded a result contrary to the protestations of probity by the petitioner. (3) The explanation submitted by the petitioner is a mere denial which is not supported by evidence.[23]

The petitioner's motion for reconsideration of the decision having been denied by the CA, he now seeks relief from this Court via a petition for review on certiorari on the following grounds:

> - WHETHER OR NOT THE COURT OF APPEALS IS CORRECT IN HOLDING THAT RESPONDENTS WERE "ABLE TO PROVE BY SUBSTANTIAL EVIDENCE THAT THE PETITIONER'S DISMISSAL IS VALID."
>
> - WHETHER OR NOT THE EVIDENCE CITED BY THE COURT OF APPEALS IN ITS ASSAILED DECISION (i.e., ANNEX "A" HEREOF) MAY BE CONSIDERED AS SUBSTANTIAL EVIDENCE TO ESTABLISH THE FACTS UPON WHICH PETITIONERS' DISMISSAL ON THE GROUND OF LOSS OF

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TRUST AND CONFIDENCE MAY BE FAIRLY MADE TO REST.

- WHETHER OR NOT THE COURT OF APPEALS IS CORRECT IN HOLDING THAT THE FACTUAL FINDINGS OF THE NLRC "ARE SUPPORTED BY SUBSTANTIAL EVIDENCE."[24]

On the charge of shortage of funds, the petitioner avers that the only evidence adduced by the respondent to prove the P36,268.29 cash shortage, and the unaccounted charge fund of P1,000.00 is the affidavit of Punto executed on May 29, 1998. The petitioner avers that Punto had no personal knowledge of the total collection for May 25 and 26, 1998; hence, the claim of Punto that the total collection for those days was P57,728.29 has no factual basis. The petitioner asserts that the respondents failed to present the Provincial Audit Report of respondent PLDT. Furthermore, Puno's alleged discovery of the cash shortage is unreliable because he (petitioner) was not present when Punto, Cabaña, Ella and Verano allegedly opened the vault. On the charge of the installation of a jumper on Booths 3 and 4, the petitioner avers that the respondents failed to adduce substantial evidence to prove the same.

The petitioner avers that both the NLRC and the CA failed to consider the fact that as shown by the Vehicle Security Registry for May 24, 1998, there were four other employees who were at the Lucena Exchange aside from himself, and the fact that he did not enter the Lucena Exchange but merely allowed Security Guard Tabrilla to bring his vehicle and brought the latter to Lucena town upon request. The petitioner declares he should not be faulted if the telephone wires attached to the illegal tappings terminated at his house, since such lines were installed by linemen of the respondent PLDT; besides, he had only one telephone. He posits that the evidence adduced by the respondent to prove the charges against him was flimsy and unconvincing.

For their part, the respondents aver that the petition ought to be dismissed because: (1) the issues raised by the petitioner are factual; (b) the findings and conclusions of the NLRC, and affirmed by the CA, are conclusive on the Court; and (3) the evidence on record abundantly proves the verity of the charges lodged against the petitioner. As gleaned from the records, the petitioner even unabashedly admitted his negligence and wrongful acts, and pleaded for forgiveness from the respondents.

The petition is denied for lack of merit.

Indubitably, the issues in this case are factual, and under Section 45 of the Rules of Court, only questions of law may be raised in a petition for review on certiorari, the reason being that the Court is not a trier of facts. The Court is not to reexamine the evidence on record and determine the probative weight thereof. However, the Court is not proscribed from determining into and resolving factual issues (a) where, for instance, the findings and conclusions of the Labor Arbiter, on the one hand, and the NLRC and the CA, on the other, are inconsistent on material and substantial points; and (b) when the findings of the NLRC and the CA are capricious and arbitrary. The Court is, likewise, not bound by findings and conclusions of the NLRC which are based on mere surmises, speculations or conjectures.

The respondent PLDT, as the employer of the petitioner, is burdened to prove the validity of the petitioner's termination from employment.[25] The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense.[26] In case of doubt, the same must be resolved in favor of labor, pursuant to the issued justice policy on labor law and the constitution.

The employer, however, needs only to adduce substantial evidence which is such amount of evidence as to induce a belief that the employee is responsible for misconduct and participation therein which renders that employee unworthy of the trust and confidence demanded by the employer.

The petitioner, being a managerial employee, may be dismissed by the respondent PLDT for grave misconduct and/or loss of confidence. In the case of managerial employees, employers are allowed wide latitude of discretion

in terminating their employees because they perform functions which, by their nature, require full trust and confidence.[27] Management has a right to dismiss erring employees on reasons of self-protection.

However, loss of trust and confidence or grave misconduct must not be based on unsubstantiated suspicions, conjectures or surmises.[28] Loss of trust and confidence as a just cause for termination of employee must rest on a breach of duty committed by the employee and not on the caprices of the employer. In China City Restaurant Corporation v. National Labor Relations Commission,[29] this Court issued guidelines for the application of the doctrine of loss of confidence: (a) loss of confidence should not be simulated; (b) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (c) it may not be used arbitrarily in the face of overwhelming evidence to the contrary; and (d) it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith.

The Court rules that the respondent PLDT failed to adduce substantial evidence to prove the charge of shortage of funds, considering that it was burdened to prove that: (1) the collection for May 25 and 26, 1998 in the custody of the petitioner amounted to P57,728.29; and (2) only the amount of P21,460.00 was found in the vault when it was opened by Punto and Cabaï¿½a on May 27, 1998. The only evidence adduced by the respondents to prove that the collection for the said dates amounted to P57,728.29 was the affidavit of Punto. However, he had no personal knowledge that the collection for May 25 and 26, 1998 amounted to P57,728.29 because it was only on May 27, 1998 that he assumed office as Acting Coordinator of the Tayabas Sub-Exchange. The best evidence to prove that the total collection amounted to said amount of P57,728.29 was the Columnar Book (Cash Receipts Registry) in which the amount collected and the particulars thereof are recorded; or copies of receipts of payments to the respondent PLDT. The respondents failed to adduce the said columnar book or receipts as evidence, relying solely on the affidavit of Punto. The respondents failed to explain why they did not adduce the columnar book in evidence despite the fact that the same was in the custody of Punto, the Acting Coordinator. The respondents even failed to adduce in evidence the inventory for the contents of the vault bearing Punto's signature when he opened it on May 27, 1998, as well as those who allegedly helped Punto open the vault, including the Provincial Audit Report. Unless and until the actual amount of the collection for May 25 and 26, 1998 is clearly established, it cannot be said that there was a shortage of funds. And unless such shortage is established, it cannot be presumed that the petitioner took money belonging to respondent PLDT.

On the charge for illegal tapping and installation of jumper on Telephone Lines Nos. 714-300 and 712-273, we agree with the findings of the NLRC and the CA that, indeed, the respondents were able to adduce substantial evidence to prove the same.

Based on their ocular inspection of the petitioner's house in the presence of the latter, Jimenez and Quismundo discovered that cable pairs and the corresponding DP and drop wires terminated therein. Also found in the petitioner's house were one protector, two drop wires and a telephone instrument:

> - On the same day, extra jumper wires were found tapped on both pairs of said TOBS lines at MDF's cable and equipment sides, as per SPC CO personnel. This was further confirmed based on line parameter tests, and generated toll call observation data from SPC CO.
>
> - In the morning of May 25, 1998, however, the jumper wires could no longer be traced including its termination at both cable and equipment sides. It is alleged that certain Mr. Ding Tolentino, a frameman, was the one who removed the terminations since he was the only who visited MDF Office at 10:15 a.m.-10:20 a.m. of May 24, 1998 (Sun.), as recorded in security registry.
>
> This suspicion was further confirmed when cable pairs and corresponding DP and drop wires (2) were found terminated at the residence of Mr. Tolentino during field inspection initiated by exchange personnel.

> - Likewise, our ocular inspection last May 26, 1998 confirmed similar observation except that line determinations at DP and protectors were already removed. The jacketed wires were used and tap at DP 1356 CA 5-E (Direct Feed/Rehab. Cable) which is approximately one block away from the residence of Mr. Tolentino.
>
> - Also, one (1) protector, two (2) inside wirings and one telephone instrument were found at the residence of Mr. Tolentino who was also present during ocular visits of telephone installations in the area. Mr. Tolentino explained that the drop wire was for their telephone line (#71-4567) which was already disconnected.[30]

The only telephone set of the petitioner bearing Number 714-567 was already disconnected on account of unpaid bills amounting to P12,336.94 as of March 20, 1998.[31] The jacketed wires were used and tapped at DP 1356 CA 5E, approximately one block away from the said house. The petitioner failed to give a credible explanation why such cable pairs and corresponding two drop wires terminated at his residence. His claim that he had no involvement in the installation of the cable pairs and two drop wirings is incredible, considering that he had only one telephone line – Number 714-567. It is incredible that PLDT linemen would install two drop wiring lines in the house of the petitioner since he had only one line, which, even if already disconnected, was not a deterrent for him to tap the illegal connections and use Telephone Line Nos. 714-300 and 712-273. Moreover, his denial is incongruent with his claim in his sworn statement dated August 28, 1998 that the drop wires were covered by an "S.O."

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.
Puno, Chairman, J., on official leave.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Andres B. Reyes, Jr. and Regalado Maambong, concurring.

[2] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring.

[3] Rollo, p. 123.

[4] CA Rollo, p. 95.

[5] CA Rollo, pp. 113-114.

[6] CA Rollo, p. 151.

[7] Rollo, p. 148.

[8] CA Rollo, p. 142.

[9] Rollo, p. 102.

[10] Id. at 103.

[11] Id. at 230-231.

[12] Rollo, pp. 220-231.

[13] CA Rollo, p. 148.

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[14] Id. at 148-150.

[15] Id. at 149.

[16] CA Rollo, p. 121.

[17] Rollo, pp. 112-113.

[18] CA Rollo, pp. 131-132.

[19] Id. at 120.

[20] Id. at 134-135.

[21] Rollo, pp. 86-87.

[22] Rollo, pp. 94-95.

[23] Rollo, p. 72.

[24] Rollo, p. 50.

[25] Article 277, paragraph (b), Labor Code of the Philippines.

[26] National Sugar Refineries Corporation v. NLRC, G.R. No. 112539, 21 June 1999, 308 SCRA 599.

[27] Mendoza v. NLRC, G.R. No. 131405, 20 July 1999, 310 SCRA 846.

[28] Jamer v. National Labor Relations Commission, G.R. No. 112630, 5 September 1997, 278 SCRA 632.

[29] G.R. No. 97196, 22 January 1993, 217 SCRA 443.

[30] CA Rollo, p. 148.

[31] Rollo, p. 180.

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