

**TELECOMMUNICATIONS DISTRIBUTORS SPECIALIST, INC.,
GREGORIO A. ATIENZA, SMART COMMUNICATIONS, INC. AND
NAPOLEON L. NAZARENO, PETITIONERS, VS. RAYMUND GARRIEL,
RESPONDENT.**

G.R. No. 174981. May 25, 2009

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[2] assails the June 28, 2006 decision[3] and September 29, 2006 resolution[4] of the Court of Appeals (CA) finding that respondent Raymund Garriel was illegally dismissed.

Respondent was a Customer Sales Assistant (CSA)[5] of petitioner Telecommunications Distributors Specialist, Inc. (TDSI).[6] He had direct access to company assets and property, in terms of cash collections from subscribers and customers as well as goods and inventory to be sold to subscribers and customers.

Three incidents triggered the filing of this case. The first incident involved one Lourdes Ratcliffe who subscribed to mobile phone services and purchased a mobile phone unit from TDSI through respondent, the attending CSA. Respondent failed to make Ratcliffe sign a coverage waiver.[7] Days later, respondent called up Ratcliffe and asked her to just answer "yes" in case she was questioned by the company regarding her application.[8] It was later found that Ratcliffe's signature in the coverage waiver was forged. (Respondent's instruction for Ratcliffe to say "yes" was apparently meant to validate the forged signature he affixed on the coverage waiver.)

A similar incident involving one Mila Huilar occurred. Respondent also failed to ask Huilar to sign the coverage waiver. Huilar's signature was likewise found to have been forged.

In the third incident, a subscriber named Helcon Mabesa purchased a mobile phone unit from TDSI. Respondent attended to him but did not issue an official receipt. It was later discovered that respondent sold a defective mobile phone personally owned by him to Mabesa who eventually demanded a replacement. Respondent replaced the defective unit with a similar unit from one of TDSI's counters. Respondent thereafter attempted to influence Jason Mapa, his co-employee and fellow CSA, to declare a cash shortage of P5,000 as he (respondent) could not pay for the unit he filched to replace Mabesa's defective phone.

These incidents came to the attention of TDSI's human resources department manager, Joann P. Hizon, who lost no time in meeting with Ratcliffe, Huilar and Mabesa. The latter reiterated their complaints. On October 17, 2000, respondent was issued a notice to explain which served as a formal notice of violation of company rules and procedures.[9]

In a memorandum dated October 20, 2000,[10] respondent categorically denied the accusations against him. He relied on Ratcliffe's retraction[11] to exculpate himself, insisted that Huilar's signature on the coverage waiver was genuine and that no such transaction with Mabesa occurred on the pertinent date.

Respondent was formally investigated. In a notice dated February 7, 2001,[12] respondent was dismissed on grounds of serious misconduct and loss of trust and confidence.

Respondent filed a complaint for illegal dismissal[13] in the Regional Arbitration Branch No. VI of Bacolod City. In a decision dated March 23, 2004,[14] the labor arbiter ruled that respondent was illegally dismissed. Respondent was awarded separation pay in lieu of reinstatement which was no longer possible due to strained relations between the parties. The labor arbiter did not award backwages.

Petitioners appealed to the NLRC. The labor arbiter's finding of illegal dismissal was affirmed, with the observation that due process was not observed in dismissing respondent.

Petitioners elevated the case to the CA. The NLRC decision was affirmed with modification. The CA held that due process had been observed and awarded backwages in favor of respondent.

In this petition, petitioners seek a reversal of the CA decision. They argue that substantial evidence showed that respondent was dismissed for just and lawful causes when he committed acts of dishonesty and disloyalty against petitioners constituting serious misconduct and resulting in loss of trust and confidence.

We agree with petitioners.

As a general rule, the findings of fact of the quasi-judicial agencies are not reviewable in this Court in a petition for review. However, in instances where the judgment was premised on a misapprehension of facts or when certain material facts and circumstances were overlooked and which, if taken into account, would alter the result of the case, a review of the facts by this Court is warranted.[15]

Respondent's Acts Of Disloyalty

And Dishonesty Constituted Serious Misconduct And Loss Of Trust
And Confidence

Respondent's tasks included the following:

- (a) efficiently, effectively and accurately screen/validate pertinent cellphone application requirements submitted by the agent dealers, agent coordinators and walk-in subscribers,
- (b) as cashier, ensures the proper reconciliation of stocks and collection with BA at the end of the day. Submits cash account summary report to BA attached to the DSCR,
- (c) prepares Daily Sales Collection Reports (DSCR) for submission to DA, daily,
- (d) acceptance of payments from walk-in clients, agents and AC and issues OR/SI (Official Receipts/Sales Invoice) for said payment, and
- (e) ensure completeness of remittances received from customers, agents, dealers and agent coordinators.[16]

An employee's dismissal must be supported by substantial evidence.[17] This burden of proof is on the employer. This TDSI was able to discharge.

Respondent failed to make Ratcliffe and Huilar sign the coverage waivers. Such failure, in itself, although a misconduct, was not serious enough to warrant dismissal. The serious misconduct was respondent's act of forging the signatures of Ratcliffe and Huilar to cover up his negligence. In fact, he even instructed Ratcliffe to lie and "just say yes" to the questions that may be asked of her by the company.

Respondent claims he cannot be held liable for forgery because the act was not among the forgeries punishable under Articles 161 to 168, Chapter One, Title Four, Book Two of the Revised Penal Code (RPC).[18] We

disagree. The forgery attributed to him was plainly the act of falsely and fraudulently making or altering a writing or other instrument that, if genuine, might apparently be of legal effect on the rights of another.[19]

When he passed off the signatures in the coverage waiver as those of Ratcliffe and Huilar, respondent committed forgery though not necessarily those in Articles 161 to 168 of the RPC. It might as well have been considered as falsification punishable under Article 172 (2) in relation to Art. 171 of the RPC.[20] Respondent's defense was therefore off-tangent and failed to squarely refute the overwhelming evidence against him.

Ratcliffe's retraction did not diminish respondent's liability. A retraction does not necessarily negate an earlier declaration.[21] It is in such instance where the rules of evidence come into play. The court should exercise its discretion on which statement is more credible based on established rules. The reason for this is:

[I]t 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 have no probative value.[22]

This Court is of course aware of the usual ploy of people "caught in the act" of asking for forgiveness and playing on the emotions of the victim or disciplining authority to extract pity. The retraction executed by Ratcliffe was illogical and not credible, coming as it did from out of the blue after her angry complaint against respondent.

With respect to the charge of selling his own (defective) phone and passing it off as brand-new from the company, respondent failed to rebut the overwhelming evidence presented by petitioners. Mabesa testified that respondent, as the attending CSA, did not issue an official receipt when he bought a mobile phone unit. Jasmin Jayme, respondent's immediate supervisor, testified that Mabesa's mobile phone had several defects and irregularities, including the fact that the particular unit was not from the stock sold by their branch. Jason Mapa and Jonalyn Camarista, respondent's co-employees, testified that they saw respondent attending to Mabesa and selling his personally owned mobile phone. In the face of all these testimonies, respondent's denial and evidence failed to rebut evidence that such a transaction took place.

Respondent's acts of forging subscribers' signatures, attempting to cover up his failure to secure their signatures on the coverage waivers, selling a personally owned mobile phone to a company customer (a defective one at that) and attempting to connive with other TDSI employees to cover up his illicit schemes were serious acts of dishonesty, according to TDSI's Code of Discipline:

Item 11. Falsification of other company records, documents or forging signature of company officials.

Item 12. Conniving with employees, superiors, customers, competitors or anybody to defraud the Company or to commit an offense under the established rules and regulations of the Company.

Item 15. Engaging in the same business activities which are part of the same nature with the operations or business of the Company.

Item 18. All other acts of dishonesty which cause or may tend to cause prejudice to the Company shall be subject to disciplinary action depending upon the gravity of the offense.[23]

In *Philippine Long Distance Telephone Company v. Bolso*,[24] we held:

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 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.

Respondent's acts clearly constituted serious misconduct which is a ground for termination of employment by an employer.[25]

Respondent's acts were likewise grounds for loss of trust and confidence, another valid cause for termination of employment.[26] Only employees occupying positions of trust and confidence or those who are routinely charged with the care and custody of the employer's money or property may be validly dismissed for this reason. Respondent fell within the latter category as the following requisites were met:

- (a)
the loss of confidence must not be simulated;
- (b)
it should not be used as a subterfuge for causes which are illegal, improper or unjustified;
- (c)
it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary;
- (d)
it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith and
- (e)
the employee involved holds a position of trust and confidence.[27]

DUE PROCESS WAS NOT VIOLATED

Respondent was given ample opportunity[28] to explain and rebut the evidence against him. A full adversarial hearing was not required. The essence of due process is simply the opportunity to be heard. As applied in administrative proceedings, it is merely an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[29] As held in *Perez and Doria v. Philippine Telegraph and Telephone Company and Santiago*:[30]

After receiving the first notice apprising him of the charges against him, the employee may submit a written explanation xxx and offer evidence in support thereof xxx and the sworn statements of his witnesses. For this purpose, he may prepare his explanation personally or with the assistance of a representative or counsel. He may also ask the employer to provide him copy of records material to his defense. His written explanation may also include a request that a formal hearing or conference be held. In such a case, the conduct of a formal hearing or conference becomes mandatory, just as it is where there exist substantial evidentiary disputes or where company rules or practice requires an actual hearing as part of employment pretermination procedure.

This interpretation of Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code reasonably implements the "ample opportunity to be heard" standard under Article 277 (b) of the Labor Code without unduly restricting the language of the law or excessively burdening the employer. This not only respects the power vested in the Secretary of Labor and Employment to promulgate rules and regulations that will lay down the guidelines for the implementation of Article 277 (b). More importantly, this is faithful to the mandate of Article 4 of the Labor Code that "[a]ll doubts in the implementation and interpretation of the provisions of [the Labor Code], including its implementing rules and regulations shall be resolved in favor of labor."

In sum, the following are the guiding principles in connection with the hearing requirement in dismissal cases:

- (a)

"ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way.

(b)

A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(c)

The "ample opportunity to be heard" standard in the Labor Code prevails over the "hearing or conference" requirement in the implementing rules and regulations. (emphasis supplied)

Petitioners complied with the twin-notice requirement.[31] The notice dated October 17, 2000 served on respondent was the written notice specifying the charges against him. The subsequent notice dated February 7, 2001 (notice of adjudication specifying therein the causes for respondent's termination and the decision to dismiss him) served as the written notice of termination.

In view of respondent's valid dismissal due to serious misconduct and loss of trust and confidence, respondent is not entitled to separation pay. As held in *Ha Yuan Restaurant v. NLRC*:[32]

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. xxx Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals dated June 28, 2006 and its resolution dated September 29, 2006 in CA-G.R. CEB-SP No. 01567 finding that respondent Raymund Garriel was illegally dismissed are REVERSED and SET ASIDE. The National Labor Relations Commission-Cebu City (Fourth Division) is likewise ordered to discharge and/or release Supersedeas Bond No. JCL (15)-0503/04 dated June 17, 2004 posted by petitioners.

SO ORDERED.

Puno, C.J., (Chairperson). Carpio, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] The National Labor Relations Commission was originally impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

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

[3] Penned by Associate Justice Isaias P. Dicdican (retired) and concurred in by Associate Justices Apolinario D. Brusuelas, Jr. and Agustin S. Dizon (retired) of the Nineteenth Division of the CA. Rollo, pp. 631-640.

[4] *Id.*, pp. 649-651.

[5] In other parts of the rollo, the position was referred to as Counter Sales Assistant.

[6] TDSI and Smart are corporations duly established and existing under Philippine laws. Petitioner Gregorio A.

Atienza was TDSI president while petitioner Napoleon L. Nazareno was the president of Smart Telecommunications, Inc. (Smart). TDSI was engaged in the business of selling mobile phone products and accessories. Smart was and still is engaged in the business of providing telecommunication services. In the last quarter of 2002, TDSI sold substantially all its assets to Smart. Consequently, the employees of TDSI were absorbed by Smart.

[7] The waiver provided: "I am aware that there are areas where SMART has no coverage yet. However, this will not be detrimental to my application for subscription to the SMART Gold GSM service, as I plan to use my cellphone as a mobile where SMART has coverage." Petitioners averred that it was imperative that this waiver be signed by the subscriber because it was obviously intended to protect petitioners from any complaints for breach of contract in view of the fact that there were then areas not yet served by petitioners or areas which had no service.

[8] Affidavit of Lourdes Ratcliffe dated October 3, 2000.

[9] Rollo, p. 689.

[10] Id., p. 695.

[11] Dated October 20, 2000.

[12] Rollo, pp. 702-704.

[13] Docketed as NLRC RAB VI CASE NO. 06-05-10311-01.

[14] Rollo, pp. 783-786.

[15] *Nombrefia v. People*, G.R. No. 157919, 30 January 2007, 513 SCRA 368, 375-376. Other exceptions include: (1) When the conclusion is a finding grounded entirely on speculations, surmise or conjecture; (2) When the inference made is manifestly absurd, mistaken or impossible; (3) When there is grave abuse of discretion in the appreciation of facts; (4) When the judgment is premised on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals in making its findings went beyond the issues of the case and the same are contrary to the admission of both appellants and appellees; (7) When the findings of fact of the Court of Appeals are at variance with those of the trial court, the Supreme Court has to review the evidence in order to arrive at the correct findings based on the record; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The findings of fact of the Court of Appeals are premised on the supposed absence of evidence and are contradicted by the evidence on record.

[16] Rollo, p. 688.

[17] *PLDT v. Bolso*, G.R. No. 159701, 17 August 2007, 530 SCRA 550, 560.

[18] The forgeries contemplated in this chapter of the RPC are:

- (a) Art. 161 - Counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive;
- (b) Art. 162 - Using forged signature or counterfeit seal or stamps;
- (c) Art. 163 - Making and importing and uttering false coins;
- (d) Art. 164 - Mutilation of coins;
- (e) Art. 165 - Selling of false or mutilated coin;
- (f) Art. 166 - Forging treasury or bank notes or other documents payable to bearer, importing and uttering such

false or forged notes and documents;

(g) Art. 167 - Counterfeiting, importing and uttering instruments not payable to bearer;

(h) Art. 168 - Illegal possession and use of false treasury or bank notes and other instruments of credit.

[19] WEBSTER'S THIRD INTERNATIONAL DICTIONARY, 1993 ed., p. 891.

[20] Art. 172 (2) of the RPC provides: " Art. 172. Falsification by private individuals and use of falsified documents. - xxx (2) Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article." In this case, the act of falsification is counterfeiting or imitating any handwriting or signature, punishable under Art. 171 (1).

[21] Supra note 17 at 562.

[22] PLDT v. NLRC, L-74562, 31 July 1987, 152 SCRA 702, 707.

[23] Rollo, p. 777.

[24] Supra note 17 at 560.

[25] LABOR CODE, Book VI, Title I, Art. 282 (a).

[26] LABOR CODE, Book VI, Title I, Art. 282 (c).

[27] Ballao v. CA, G.R. No. 162342, 11 October 2006, 504 SCRA 227, 236.

[28] LABOR CODE, Book V, Title IX, Art. 277(b) which provides: "Art. 277. Miscellaneous provisions. - xxx (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause xxx, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires xxx" (emphasis supplied).

[29] Supra note 17 at 564-565.

[30] G.R. No. 152048, 7 April 2009.

[31] Omnibus Rules Implementing the Labor Code, Book V, Rule XXIII, Sec. 2(b), as amended by Department of Labor and Employment Order No. 9 (1997).

[32] G.R. No. 147719, 27 January 2007, 480 SCRA 328, 332 citing PLDT v. NLRC, L-80609, 23 August 1988, 164 SCRA 671, 682.

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