

VICENTE VILLANUEVA, JR., PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION THIRD DIVISION, MANILA ELECTRIC COMPANY, MANUEL LOPEZ, CHAIRMAN AND CEO, AND FRANCISCO COLLANTES...*G.R. No. 176893. June 13, 2012*

Ponente: MENDOZA, J.

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This petition for review on certiorari assails the December 13, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 95826 which dismissed the petition challenging the November 30, 2004[2] and June 20, 2006[3] Resolutions of the National Labor Relations Commission (NLRC) holding that petitioner Vicente Villanueva (Villanueva) was validly dismissed by respondent company Manila Electric Company (Meralco) on account of serious misconduct and loss of trust and confidence.

The Facts

Since 1990, Villanueva had been employed with Meralco as bill collector, teller and branch representative. Sometime in June 2002, Francisco Collantes, Manager of Meralco Branch Office, Novaliches, Quezon City, referred to the company's Investigation Office a report dated June 10, 2002 regarding "unusual contract modifications" in the transactions handled by Villanueva. The report claimed that there were customers who were issued Contracts for Electric Service by Villanueva which indicated their payment of P930.00 (service deposit of P520.00 and meter deposit of P410.00) as deposit payment when they actually gave him a total amount of P1,240.00. The discrepancy amounting to P310.00 was not covered by any receipt. Pursuant to the complaints, a field investigation was conducted by the company-designated investigator who was able to obtain sworn statements from nine (9) out of twenty four (24) complaining customers.[4] The said complainants identified Villanueva as the person they have transacted with, from a line-up of pictures of several individuals. Further, the complaints were corroborated by the sworn statements of Ben-Hur C. Nepomuceno (Nepomunceno) and Merle S. Santos (Santos), office team leader and assistant office team leader of the Novaliches branch, respectively.

Nepomuceno stated that in the course of the routine checking of his men for March 2002, he found the unusual additional deposit payments accepted by Villanueva. When he made further verification on the collection reports of the latter, he also discovered additional deposits he received from other customers. Upon confirming Villanueva's act of "contract modification" with a customer named Sherwin Borja, Nepomuceno requested the Customer Process Management to suspend Villanueva's CMS-User ID. Corporate Audit was also asked to investigate his irregular transactions. In his statement, Nepomuceno described the additional payments as irregular because customers normally paid for deposit payments on a one-time basis. With Villanueva's transactions, however, customers who paid P1,240.00 complained of getting receipts reflecting only P930.00 as the amount paid, constraining Villanueva to issue another receipt for an additional deposit of P310.00. Nepomuceno clarified that additional deposits were meant to increase the contracted capacity of customers after a considerable period of

time from their initial electric service application.

For her part, Santos, whose duties included the preparation of summary reports in overages of tellers and branch representatives, stated that the existing practice was for the personnel concerned to report excess collections on the same day they were collected. Santos claimed that Villanueva had never reported a case of overage in his collections since 2001.

In a letter[5] dated August 1, 2002, Villanueva was informed of the investigation to be conducted by the company. On the date of the scheduled hearing indicated in the letter, Villanueva appeared with counsel who requested for time within which to submit a responsive paper. In his counter-affidavit,[6] he denied demanding payment in excess of the minimum deposit charged from applicants for electric service connection. He admitted that there were times that “Modification of Contract” was done because of the recommendations of a Meralco fieldman who, upon inspection, approved a higher load of electricity than that applied for. Villanueva explained that if ever there was error or discrepancy in the preparation of the contract, this would have to be balanced at the end of the day. He claimed that there were instances when initial entries of applied loads were erroneous prompting him to modify the contract in order that the customers’ deposit payment could be entered. In cases when the customer was no longer in the office premises, he would just record them as pre-payment so as to reflect the same in their billing upon installation of the electric meter.

In a letter[7] dated August 28, 2002, Meralco denied the request of Villanueva’s counsel to cross-examine the witnesses (complaining customers) who were not Meralco employees. Management maintained that it was not the proper place to grill a witness on cross-examination which should be done in an appropriate proceeding. Villanueva was then advised that the case would be considered submitted for decision as the issues had already been joined with the submission of his counter-affidavit.

On January 9, 2003, Villanueva received the Notice of Termination[8] which reads:

Formal administrative investigation duly conducted by Legal established that on several occasions in the year 2002, you, as Branch Representative of Novaliches Branch, misappropriated for your own personal purposes and benefits the excess service and meter deposits you charged and exacted from several electric service applicants in the aggregate amount of ONE THOUSAND SIX HUNDRED PESOS (P1,600.00), to the damage and prejudice of the said customers and the Company.

Your aforesaid act constitute willful and gross violations of Section 6, par. 11 of the Company Code on Employee Discipline which penalizes ‘(a)ll other acts of dishonesty which cause or tend to cause prejudice to the Company,’ subject to disciplinary action depending upon the gravity of the offense.

Under the Labor Code of the Philippines, Article 282 thereof, the termination of your employment in Meralco is justified on the following grounds: “(a) Serious misconduct x x x by the employee x x x in connection with his work;” “(c) Fraud x x x or willful breach by the employee of the trust reposed in him by his employer or representative;” “(e) Other causes analogous to the foregoing.”

Based on the foregoing, Management is constrained to dismiss you for cause from the service and employ of the Company effective January 10, 2003 with forfeiture of rights and privileges. [Emphasis supplied]

On January 21, 2003, Villanueva filed a complaint[9] for illegal dismissal before the Regional Arbitration Branch. He alleged that he was denied both substantive and procedural due process because there was no formal charge yet when Meralco effected his termination. He argued that the proceeding taken by the company was akin to a preliminary investigation subject to further evaluation by the legal division and only upon findings of probable cause would it ripen to an administrative charge. He thus waited for the formal charge against him as signed by the Chairman.

Anent the charge of misappropriation of company funds, Villanueva claimed that the amount was intact with the office and it was only during the preparation of forms that sometimes confusion would occur, but this was promptly corrected upon discovery to reflect the correct amount for the kind of service paid for. He further claimed that even assuming that the error was committed, the offense could not have warranted a penalty of dismissal because the Company Code of Employee Discipline failed to make mention of his case in a specific manner. At most, his case was one of simple negligence because the company was not prejudiced financially. Lastly, Villanueva asserted that the management committed a grievous error for not giving him a chance to confront the customers who stood as witnesses against him. There being no financial report relied on during the investigation save for mere affidavits executed by said customers, the investigative process was a sham, entitling him not only to backwages but also moral and exemplary damages.

For its part, Meralco defended Villanueva's dismissal as valid and for a just cause. The evidence consisting of sworn statements of the customers, corporate audits, field reports, and affidavits of Nepomuceno and Santos sufficiently substantiated the case against him. After evaluating the pieces of evidence and the merits of Villanueva's defense, the assigned investigator arrived at the recommended penalty of dismissal which was approved by management. The evidence presented exposed Villanueva's modus operandi in the processing of customer applications. Clearly, the issuance of receipts for purported additional deposits was Villanueva's way to thwart the suspicion of customers regarding excessive payments they had made. Having defrauded customers and tarnished Meralco's good name, Villanueva was justly terminated from employment.

Ruling of the Labor Arbiter

On June 30, 2004, the Labor Arbiter (LA) rendered a decision[10] in favor of Villanueva ordering his reinstatement with backwages. The LA found no violation of procedural due process despite the denial of Villanueva's request to confront the affiants because he was already given ample opportunity to be heard by way of his counter-affidavit. On the matter of substantive due process, however, the LA explained thus:

x x x although there is substantial evidence to show that complainant committed the acts as charge[d] in the notice dated August 1, 2002 but the extreme penalty of dismissal given to him should not be meted under the penalty for violation of Section 7, par. 11 of the Company Code subject to disciplinary action depending upon the gravity of the offense considering the following mitigating factors, such as:

- a) first offender in his 13 years of service with the company;
- b) the minimal amount involved (P1,600.00)
- c) failure of the company to reasonably establish that the act of the employee is inimical to its interest or has caused undue prejudice to its operation.

x x x

WHEREFORE, premises considered, respondent Manila Electric Company is hereby ordered to take back within ten (10) days from receipt hereof, herein complainant Vicente Villanueva, Jr. to any substantially equivalent position not dependent on the use of CMS, or by payroll reinstatement, at the option of the former, without loss of seniority rights but without backwages.

Complainant's prayer for damages is hereby dismissed for lack of merit.[11] [Emphasis supplied]

Ruling of the NLRC

In its Resolution[12] dated November 30, 2004, the NLRC Third Division reversed the ruling of the LA and declared Villanueva's dismissal as valid. It held that Villanueva's vehement denial of the offense could not stand

against substantial evidence on record pointing to his guilt. Absent any suspicion of ill motive against Villanueva, the sworn statements of the customers had bearing that could not be ignored. Worse, Villanueva never presented proof that he indeed reported his overages to his superiors. Santos likewise discredited him for this.

With respect to the propriety of the penalty of dismissal, the NLRC refused to appreciate the mitigating circumstances outlined by the LA in Villanueva's favor. Instead, it found Villanueva liable for dishonesty, warranting his dismissal on the ground of serious misconduct and loss of trust and confidence. The dispositive portion of the NLRC Resolution reads:

WHEREFORE, the appealed Decision of Labor Arbiter a quo dated June 30, 2004 is hereby ordered VACATED and SET ASIDE, and a new one entered declaring complainant's dismissal from service as VALID and JUSTIFIED.

All other claims are hereby DENIED for lack of merit.[13]

Ruling of the Court of Appeals

After having filed his Motion for Reconsideration,[14] Villanueva moved for the execution of the LA's decision alleging that while he had been reinstated in the payroll of Meralco effective July 16, 2004, he was not given the full benefits to which he was entitled prior to his dismissal, like one (1) sack of rice per month and bonuses for two (2) months. Consequently, the LA ordered the issuance of a Writ of Execution and Alias Writ of Execution on February 15, 2005.[15] On June 20, 2006, the NLRC denied Villanueva's motion for reconsideration rendering its decision as final.[16]

On appeal to the CA, Villanueva's petition was dismissed. The CA ruled that Meralco had established just cause for the dismissal of Villanueva by substantial evidence of his fraudulent and dishonest acts resulting in the loss of trust and confidence that Meralco had reposed on him. The CA said:

There can be no dispute that as Branch Representative petitioner occupies a position of trust and confidence. He transacts daily with applicants for new and reactivated electric service connections and directly receives from them amounts intended for the required deposit charges. Indeed utmost honesty is expected of petitioner in the discharge of his functions not only because of his duty to handle funds belonging to the company but also for the reason that as front line personnel for MERALCO's customers, he carries the image of the company and his interactions with them leave a lasting impression on the consuming public.

x x x

xxx in this case, the amount of discrepancy or money misappropriated by petitioner may be minimal, even inconsequential (P1,600.00). But what is reprehensible is petitioner's irregular and anomalous practice of requiring applicants for electric service connection to pay amounts in excess of the minimum deposit charge but indicating only the said minimum charge in the "Contract of Electric Service," making it appear later that the omission was only a mistake if the customer comes back to the office and asks about the discrepancy and substituting another contract with the full payment tendered already reflected therein, and not reporting any overage at all to the branch supervisor with respect to those excess payments which were no longer questioned by the customers.

x x x

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The challenged Resolutions dated November 30, 2004 and June 20, 2006 of the National Labor Relations Commission in NLRC-NCR CA No. 040992-04 (NLRC-NCR Case No. 00-01-00977-03) are hereby AFFIRMED.[17]

Hence, this petition.

GROUND

I.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE PUBLIC RESPONDENT'S ACT OF REVERSING THE DECISION OF THE LABOR ARBITER A QUO, AND DECLARING PETITIONER'S DISMISSAL AS VALID AND JUSTIFIED, AND SUBSEQUENTLY DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT ACTING UPON THE MOTION FOR ISSUANCE OF WRIT OF EXECUTION FOR THE CONTINUATION OF THE PAYMENT OF SALARIES BY WAY OF PAYROLL REINSTATEMENT, DURING THE PENDENCY OF PETITIONER'S MOTION FOR RECONSIDERATION, AND UNTIL ITS RESOLUTION MORE THAN ONE (1) YEAR AND A HALF THEREAFTER AND UNTIL THE FINALITY OF THE DECISION. [18]

The Court's Ruling

The petition is without merit.

Dismissal from employment has two aspects: 1) the legality of the act of dismissal per se, which constitutes substantive due process, and 2) the legality of the manner of dismissal, which constitutes procedural due process.

As to the first, the legal provision in point is Article 282 of the Labor Code which provides:

Art. 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) 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
- (e) Other causes analogous to the foregoing.

In the case of *Cruz v. Court of Appeals*,^[19] the Court had the occasion to enumerate the essential elements for "willful breach by the employee of the trust reposed in him by his employer":

Xxx the loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Moreover, it must be based on substantial evidence and not on the employer's whims or caprices or suspicions otherwise, the employee would eternally remain at the mercy of the employer. Loss of confidence must not be

indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue working for the employer. In addition, loss of confidence as a just cause for termination of employment is premised on the fact that the employee concerned holds a position of responsibility, trust and confidence or that the employee concerned is entrusted with confidence with respect to delicate matters, such as handling or case and protection of the property and assets of the employer. The betrayal of this trust is the essence of the offense for which an employee is penalized.[20] [Underscoring supplied]

As a safeguard against employers who indiscriminately use “loss of trust and confidence” to justify arbitrary dismissal of employees, the Court, in addition to the above elements, came up with the following guidelines for the application of the doctrine: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought, to justify an earlier action taken in bad faith.[21]

In this case, the above requisites have been met. Meralco’s loss of trust and confidence arising out of Villanueva’s act of misappropriation of company funds in the course of processing customer applications has been proven by substantial evidence, thus, justified. Verily, the issuance of additional receipts for excessive payments exacted from customers is a willful breach of the trust reposed in him by the company.

One. Villanueva worked for Meralco as a Branch Representative whose tasks included the issuance of Contracts for Electric Service after receipt of the amount due for service connection from customers. Obviously, he was entrusted not only with the responsibility of handling company funds but also to cater to customers who intended to avail of Meralco’s services. This is nothing but an indication that trust and confidence were reposed in him by the company, although his position was not strictly managerial by nature. Loss of confidence generally applies only to: (1) cases involving employees occupying positions of trust and confidence; or (2) situations where the employee is routinely charged with the care and custody of the employer’s money or property. To the first class belong managerial employees, that is, those vested with the powers and prerogatives to lay down management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or effectively recommend such managerial actions. To the second class belong cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[22] Villanueva falls in the latter category.

Two. Villanueva’s acts of issuing contracts indicating therein an amount less than the actual payment made by the customers and, thereafter, issuing a receipt in an attempt to document the discrepancy are certainly work-related. This is, in fact, the core of his position as a Branch Representative.

Three. Meralco’s charge against Villanueva was adequately proven by substantial evidence. The records provide an extensive showing of evidence against Villanueva. The affidavits of co-employees and, more especially those of the customers themselves, bear weight in establishing the specific acts constituting the charge against him. In fact, no inconsistencies among these statements were found. Villanueva likewise failed to pose a plausible defense

Four. The breach of the company’s trust in Villanueva was shown to have been committed knowingly and willfully. Although the amount of discrepancy or money misappropriated may be considered minimal and even inconsequential to an established company such as Meralco, it is the anomalous practice of requiring applicants for electric service connection to pay amounts higher than required that is the crux of Villanueva’s offense. The conscious design of issuing another receipt to make it appear that there was a mistake in the initial transaction with the customers exhibits a culpable act bordering on dishonesty and deceit. If not for personal gain, why did

Villanueva exact from customers amounts in excess of what was required by the company? What would have Villanueva done had the customers failed to discover the discrepancy between the amount they paid and that appearing in the receipts issued to them? Why were there no overages reported to his branch supervisor with respect to excess payments which were no longer questioned by the customers? These questions arise out of the practice which unfortunately corrupted an employee like Villanueva. These doubts sway the Court away from Villanueva's claim that his errors were promptly corrected upon discovery.

Villanueva's insistence, that the act which triggered his dismissal did not justify his separation from the service because the Company Code of Employee Discipline failed to make mention of his case in a specific manner, fails to persuade the Court. The established facts do not constitute a mere case of simple negligence. The acts performed were without the slightest connotation of inadvertence which Villanueva could have demonstrated during the proceedings a quo.

Besides, the Court is not unmindful of the prerogatives available to Meralco as an employer. The company has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[23] So long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, the employer's exercise of its management prerogative must be upheld.[24] The law imposes many obligations on the employer such as providing just compensation to workers and observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to its interests. [25]

In his case, no indication of bad faith can be attributed to Meralco as there was no dispute that it had lost trust and confidence in Villanueva and his abilities to perform his tasks with utmost efficiency and honesty expected of an employee trusted to handle customers and funds. With substantial evidence presented and Villanueva's failure to proffer plausible explanation denying the charges against him, there can be no other conclusion for the Court but to affirm his dismissal.

Lastly, Villanueva argued that management committed a grievous error for not giving him a chance to confront the customers who stood as witnesses against him. To this, the Court disagrees. As the NLRC and the CA found, Villanueva was afforded due process when he was given the required notices. More importantly, he was actually given the opportunity to be heard. On the date of the scheduled hearing, Villanueva was assisted by counsel who requested for time within which to submit a counter-affidavit. He was able to submit it, where he denied the charges against him. Undoubtedly, Villanueva was afforded procedural due process even if the cross-examination of the witnesses was not permitted by Meralco. Where a party is given the opportunity to explain his side of the case, the right to due process is deemed recognized for what is frowned upon is the denial of the right to be heard.

The Court commiserates with the heirs of Villanueva for his death last 2007. The Court, as dispenser of justice, however, has to apply the law based on the facts of the case. Considering that the employer has proved a just and valid cause for Villanueva's termination, the Court has no option but to dismiss the case.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Peralta, (Acting Chairperson),[*] Abad, Perez,[**] and Perlas-Bernabe, JJ., concur.

[*] Per Special Order No. 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229-A dated June 6, 2012.

[1] Rollo, pp. 25-44. Penned by Associate Justice Martin S. Villarama, Jr. (now member of this Court) and concurred into by Associate Justice Lucas P. Bersamin (also present member of this Court) and Associate Justice Monina Arevalo-Zenarosa, of the then Seventh Division of the Court of Appeals.

[2] Id. at 57-67.

[3] Id. at 68-82.

[4] Id. at 123-137.

[5] Id. at 121-122.

[6] Id. at 138.

[7] Id. at 139.

[8] Id. at 140.

[9] Id. at 148-149.

[10] Id. at 71-82.

[11] Id. at 81-82.

[12] Id. at 57-67.

[13] Id. at 66-67.

[14] Id. at 95-100.

[15] Id. at 175-176.

[16] Id. at 69-70.

[17] Id. at 39-43.

[18] Id. at 17.

[19] 527 Phil. 230, 242-245 (2006).

[20] Id.

[21] *Nokom v. NLRC*, 390 Phil. 1228, 1244 (2000).

[22] *Mabeza v. NLRC*, 338 Phil. 386 (1997).

[23] *Deles, Jr. v. NLRC*, 384 Phil. 271, 281-282 (2000).

[24] *Meralco v. NLRC*, 331 Phil. 838, 847 (1996).

[25] Agabon v. National Labor Relations Commission, 485 Phil. 248, 279 (2004).

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