

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. THE NATIONAL LABOR RELATIONS COMMISSION AND FREE
TELEPHONE WORKERS UNION, ROMEO ESTEBAN, MARCELINO
MOJICA, RUBENITO D...**

G.R. No. 58004. May 30, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Petitioner questions the decision of Labor Arbiter Lacandola S. Leaño, affirmed by public respondent National Labor Relations Commission (NLRC), denying for lack of merit the application of the petitioner for clearance to dismiss the private respondents from its employ, and ordering their reinstatement to their former positions with full backwages from the date they were preventively suspended until their actual reinstatement, without loss of seniority rights and other privileges formerly appertaining to them. Petitioner assails the said decision as having been rendered in grave abuse of discretion inasmuch as the private respondents allegedly committed serious misconduct and willful breach of trust which are just and valid grounds for dismissal.

The thirteen private respondents were all regular employees of the petitioner at the time of their suspension. Sometime in February 1979, the private respondents were arrested by the military authorities by virtue of an Arrest, Search and Seizure Order (ASSO) issued by the Minister of National Defense. They were detained at Camp Crame, Quezon City, up to April 27, 1979. Their arrest was due to their having been suspected by the petitioner of participation in a so-called "telehygienic" racket consisting of selling hygienic mouthpieces to telephone subscribers, refusal of which by the latter resulted in their telephones turning out of order. The persons behind said mischief were allegedly acting in connivance with certain employees of the petitioner. The arrest was prompted by a public clamor to stop the said racket.

On May 24, 1979, the petitioner informed the private respondents of their preventive suspension leading to their dismissal, effective on the dates of their arrest. On June 1, 1979, three days after the private respondents reported for work but were refused admission by the petitioner, the latter filed an application for clearance to dismiss the private respondents from employment. On June 15, 1979, the private respondents in turn filed their own complaint for illegal dismissal.

On December 28, 1979, Labor Arbiter Lacandola S. Leaño rendered the decision heretofore mentioned. The petitioner appealed the said decision to the public respondent NLRC which, in a resolution promulgated on August 24, 1981, affirmed the same and dismissed the appeal of the petitioner.

In contending that the decision of the Labor Arbiter was rendered with grave abuse of discretion, petitioner argues that its application for dismissal has sufficient basis in law and jurisprudence; that the arrest and detention of the private respondents due to the so-called "telehygienic" racket was based on clear and convincing evidence in the possession of the military authorities; that their culpability is proved by the fact that racket disappeared upon the incarceration of the private respondents in Camp Crame; and that the reinstatement of the private respondents will

disturb industrial harmony inasmuch as the petitioner had already lost its trust and confidence in them which, in itself, is a valid ground for dismissal.

There is no disputing the proposition that if the private respondent really committed serious misconduct and willful breach of trust, the termination of their employment is expressly authorized under Article 283, paragraphs (b) and (d) of the Labor Code, as amended. Sadly enough, however, the record is bereft of any competent showing to prove the imputation that the private respondents acted in connivance with the perpetrators, or participated somehow in the commission of the so-called "telehygienic" racket. The decision of the Labor Arbiter elucidates on this point as follows:

"Applying the foregoing legal precepts into the pertinent facts of this case, we can conclude without fear of successful contradiction, that PLDT's application for clearance to dismiss the herein oppositor employees patently lacks merit. This Labor Arbiter has carefully and minutely examined the evidence presented by the company and what only surfaced as its basis in suspending and subsequently seeking the termination of the employees involved herein was the fact that they were arrested and detained by the military authorities by virtue of an arrest, search and seizure order (ASSO) for their alleged involvement in the 'telehygienic racket.' It bears emphasis to note that the PLDT have not conducted its own investigation for proper determination of whether oppositor employees did have a hand or participation in this alleged racket. As it appears, respondent-applicant merely relied on the action taken by the military authorities. It is sad but pertinent to state however that despite having been detained and incarcerated for more or less (3) months, for which we can safely assume that thorough and rigid investigations were conducted upon the persons of herein oppositors, the record is bare of any showing positively linking any of them with the 'telehygienic racket.' In fact, even when the military authorities referred the case of herein oppositors to the Office of the City Fiscal of Manila which conducted a preliminary investigation on the charges of Malicious Mischief and Damage and Obstruction to Means of Communication pursuant to Article 327 in relation with Article 330 of the Revised Penal Code, still said office found no case against them." (Annex 'B', Petition, pp. 5-6; Rollo, pp. 36-37.)

The petitioner not having conducted its own investigation to determine the truth of the alleged involvement of the private respondents in the alleged racket, it relies merely on the action taken by the military authorities to justify the preventive suspension of the private respondents and their application to terminate their employment. Whatever finding the military authorities may have arrived at was not presented in evidence, nor revealed by the petitioner in its petition.

The failure of the petitioner to substantiate its charge that the private respondents committed willful breach of trust and serious misconduct was also adverted to in the Resolution of the Investigating Fiscal who conducted the preliminary investigation of criminal charges for Malicious Mischief, and Damage and Obstruction to Means of Communication pursuant to Articles 327 and 330 of the Revised Penal Code, which had been filed against the private respondents, a portion of which reads as follows:

"First of all, the respondents bewail the fact that they were not given their 'day in court' before any arrest, search and seizure order could be issued against them. They claimed that they were shown the ASSO only after they were herded to Camp Crame by the military. According to them, they were under detention for about three (3) months before they were temporarily released upon the transfer of the case to the City Fiscal's Office.

Secondly, the respondents wanted to have a confrontation with whomsoever furnished the military with their identities as those involved in the hygienic mouthpiece racket. Obviously, none could be produced to pinpoint the person or persons responsible therefor. If at all, it is only on the basis of mere assumptions, presumptions and suspicions that the respondents were made to answer for the crime charged in the booking sheets and arrest reports prepared by the PC METROCOM agents.

From the totality of their respective written statements submitted to the military and to the undersigned

investigating fiscal, the respondents interposed the defense of specific denial of their alleged involvement in the racket which prejudiced many telephone subscribers. No witness or witnesses having been presented to identify any or some or all of them to have had something to do with the anomaly, the undersigned investigating fiscal cannot see his way clear as to how criminal liability for malicious mischief and for damage and obstruction to means of communication could be fastened to any or some or all of the respondents. Their denial is sufficient to take the case out of a prima facie finding of guilt and precludes this Office from elevating the charges to a court of justice. It may not be amiss to state that they do not even have to explain or prove their innocence for that is constitutionally presumed.

There is no question that public interest is involved in this case. The culprit or culprits must be dealt with mercilessly. However, their identities must first be established by and through competent evidence that can withstand judicial scrutiny. Short of that, the case for the complainant must fail.'" (Annex 'B', Petition, pp. 6-7; Rollo, pp. 37-38.)

The petitioner not having proved nor substantiated any ground to justify its alleged loss of confidence in the private respondents so as to authorize their dismissal based on said ground, We fail to see how the decision complained of may be said to have been rendered in grave abuse of discretion. We have to recognize the constitutional right of the private respondents to "security of tenure" (Article II, Section 9, Constitution); They not having given just and valid causes to warrant the termination of their employment (Article 280, New Labor Code, as amended). Their reinstatement entitles them to the payment of their backwages. Considering, however, that the private respondents have been laid off for over four years during which period they were not prevented from deriving income from some other gainful activity, the Court deems it fair that their backwages should be limited to two years without deduction.

WHEREFORE, the petition is hereby DISMISSED, and the decision of the public respondent appealed from AFFIRMED, with the modification that the backwages to be paid to the private respondents shall be limited to two years without deduction. With costs against the petitioner.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and Gutierrez, Jr., JJ., concur.
Relova, J., on leave.

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