

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. THE NATIONAL LABOR RELATIONS COMMISSION, NOEL
SEVILLA AND MELQUIADES ALFONSO, RESPONDENTS.**

G.R. No. 63191. April 30, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to set aside the decision of the respondent National Labor Relations Commission dated December 29, 1982 in NLRC Case No. AB-6-7104-80 which affirmed on appeal the decision of Labor Arbiter Porfirio E. Villanueva, ordering the petitioner to reinstate private respondents Melquiades Alfonso and Noel Sevilla with full backwages plus other benefits.

This petition involves two separate applications for clearance to terminate employment.

The first, filed on January 22, 1980, is the application for clearance to terminate the employment of private respondent Melquiades Alfonso on the ground of misappropriation of company properties.

The second, filed on May 23, 1980, concerns the application for clearance to terminate the services of private respondent Noel Sevilla on the ground of commission of fraudulent acts.

Private respondents Noel Sevilla and Melquiades Alfonso were employed by petitioner Philippine Long Distance Telephone Company as Cable Splicer Headcrews (SJ-5). Their job involved principally fieldwork. They worked on aerial platforms and in manholes or basements of large buildings connecting lines within the cables to keep the circuit continuous. They changed lines, wrapped insulations around wires, and sealed or closed joints. They were also charged with the responsibility of securing from the warehouses of petitioner company the necessary materials for the work which their team was assigned to perform. They were authorized for this purpose to requisition whatever materials were necessary for the work assigned to them. They also prepared the Plant and Daily Work Reports which are submitted at the end of each working day.

On August 8, 1983, we issued a resolution giving partial due course to the petition as to respondent Noel Sevilla and dismissing the petition as to respondent Melquiades Alfonso for lack of merit. The decision ordering Alfonso's reinstatement with full backwages plus other benefits is final and partial entry of judgment in his favor was made on October 7, 1983.

Private respondent Noel Sevilla was arrested and detained on March 8, 1980 by virtue of the same Arrest, Search and Seizure Order No. 4764 which formed the basis of Melquiades Alfonso's arrest. After the arrest the petitioner company conducted its own investigation and found the following anomalies committed by private respondent Sevilla -

"1. Requisition Slip No. 93388 dated February 28, 1980 -

"Under this Requisition Slip, respondent Sevilla requisitioned materials from the petitioner for a fictitious and

non-existing work order, a copy of the requisition slip is attached hereto as Annex 'O'.

"For the information of this Honorable Tribunal work assignments of cable splicers are designated by the number assigned to the particular telephone cables to be worked on. For purposes of identifying the telephone cables of the petitioner, each cable has been assigned numbers and work on any of them is identified by designating the number of cable. In the requisitioning of materials, the cable number representing the work order to where the materials are to be used are required to be stated at the right side of the requisition slip. For example, in the subject requisition slip the cable number is written on the right side thereof as follows: '602-02-MTCE: 1038 A-R. To be used in closing (1) one 909 pairs (trouble splice) along Lakandula near corner A. Luna'. The figures '602-02' represents the account number of the department to which respondent Sevilla as cable splicer belongs. 'MTCE-1038-A-R' refers to the cable number to be worked on, otherwise referred to as the work order. MTCE simply means that the materials requisitioned shall be used on cable no. 1038-A-R for purposes of closing one 909 pairs splice along Lakandula Street near corner A. Luna Street.

"The number of the cable actually worked on is also required to be indicated in the Plant and Daily Work Report (PDWR) submitted by each headcrew at the closing of each work day. The PDWRs serve as the basis of the time records of cable splicers whenever they are on field work and as such it is important that they indicate therein the work done for the day, the description of materials used and the hours spent working. All work to be done or performed by each team is pre-determined and assigned by their respective foremen. Accordingly, what should appear in the PDWR should be that work assignment made by the respective foremen. Through the PDWRs, the respective foremen of each team are able to determine if the work done pertains to the work order properly assigned to them.

"In the subject requisition slip, dated February 28, 1980, the work order appearing is MTCE 1038-A-R. which means that the purpose of the requisition was to use the materials in the said work order. However, in the PDWR submitted by respondent Sevilla on February 27 and 28, 1980, it appears that no such work was existing at the time, a copy of the PDWR, dated February 27, 1980, is attached hereto as Annex 'P' while copy of the PDWR, dated February 28, 1980, is attached hereto as Annex 'Q'. For February 27, 1980, the work performed as indicated in the PDWR for the day was on cable no. 1040 and the materials used therein were covered by Requisition Slip No. 88131, a copy of which is attached hereto as Annex 'R', while on February 28, 1980, the work performed as indicated in the PDWR for the day was on cable No. 1030.

"From the foregoing, it is evident that respondent Sevilla requisitioned materials for a fictitious work order and which offense can be properly described as a 'fictitious requisition'.

"2. Requisition Slip Nos. 78130 and 88141 both dated February 29, 1980 -

"Under these receipts, respondent Sevilla made a double requisition of materials for the same work order: Cable No. 1030-A-L, a copy of the Requisition Slip No. 78130 is attached hereto as Annex 'S' while a copy of Requisition Slip No. 88141 is attached hereto as Annex 'T'.

"In the Plant and Daily Work Report (PDWR) of respondent Sevilla for February 28, 1980, he indicated that the work on cable no. 1030 was actually done on February 28, 1980 which is one day previous to the date of requisition and that no materials were used in the completion of the work. (Please refer to Annex 'Q').

"Considering that the subject requisitions were made on February 29, 1980, i.e., one day after the supposed work on cable no. 1030 was completed on February 28, 1980, there was deceit on the part of respondent Sevilla when he made such requisitions inasmuch as no materials were used in the completion of the work.

"3. Requisition Slip Nos. 78143 and 88147 both dated March 3, 1980 -

"There were two requisitions made by respondent Sevilla on this date (March 3, 1980). Under Requisition Slip No. 78143, the work order (cable no. 1034) from where the materials requisitioned were indicated as to be used is fictitious, a copy of the Requisition Slip is attached hereto as Annex 'U'. While under Requisition Slip

No. 88147, the materials requisitioned were in excess of what was actually used but the excess was never returned to the petitioner, a copy of the requisition slip is attached hereto as Annex 'V'.

"As indicated under Requisition Slip No. 78143, the work order from where the materials were to be used was on Cable No. 1034. This work order (Cable No. 1034) is fictitious for the reason that there was no such work assignment to respondent Sevilla. Previous to the date of the subject requisition, that is, on March 1 and 2, 1980, respondent Sevilla was off-duty and therefore he could not have possibly worked on Cable No. 1034. On the date of requisition, that is, on March 3, 1980, the work he performed was on Cable No. 1008 as shown in his Plant and Daily Work Report (PDWR) for March 3, 1980, a copy of the PDWR is attached hereto as Annex 'W'. Clearly, Requisition Slip No. 78143 was again a fictitious requisition.'

"As to Requisition Slip No. 88147, while the work order from where the materials were to be used tallies with the work performed under the PDWR for March 3, 1980 (Annex 'W' hereof), the materials requisitioned were more than what were actually used. In the said requisition slip, the materials withdrawn from the company bodega were, among others: C-cement (1 can) and cable support (16" - 12 pieces). In the report of the materials used, as stated in Annex 'W', no mention was made on the use of the items which means that the said items were not used. However, notwithstanding the non-use thereof, respondent Sevilla never returned the items to the company."

The total value of the materials covered by Requisition Slips Nos. 93388, 78130, 88141, 78143 and 88147 which were allegedly withdrawn and misappropriated by private respondent Sevilla is Three Thousand Two Hundred and Twenty-One Pesos and Thirty Seven Centavos (P3,221.37).

On May 23, 1980, the petitioner company filed an application to terminate the employment of private respondent Sevilla. On the same date, Sevilla was placed under preventive suspension leading to his dismissal.

The applications for clearance to terminate Alfonso and Sevilla were consolidated and designated as NCR- Case No. AB-7104-80. The two applications were also heard jointly and submitted for resolution on the basis of the parties' position papers.

On June 29, 1981, labor arbiter Porfirio E. Villanueva dismissed the applications for clearance to terminate the employment of respondents Alfonso and Sevilla and ordered the petitioner to reinstate them to their former positions with full backwages plus other benefits from the time they were illegally dismissed. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered ordering the dismissal of applicant's clearance to terminate oppositors' employment for devoid of merit.

"Applicant is also ordered to reinstate oppositors Noel Sevilla and Melquiades Alfonso to their former positions with full backwages plus other benefits from the time they were illegally dismissed on May 23, 1980 and January 22, 1980, respectively, to be reckoned from their latest salaries up to actual reinstatement."

The petitioner appealed to the respondent National Labor Relations Commission. On December 29, 1982, the respondent commission affirmed the decision of the Labor Arbiter. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the appeal is, as it is hereby DISMISSED for lack of merit. Consequently, applicant-appellant is, as it is hereby directed to show proof of immediate compliance to the mandate of the AFFIRMED DECISION after ten (10) days from receipt of this Decision."

On February 14, 1983, the petitioner filed the instant petition for certiorari.

The petitioner assigns the following errors in pleading for the grant of the petition:

"1. Respondent National Labor Relations Commission erred in treating the two cases as one and the same, and

applying only a part of petitioner's evidence in the formulation of the decision. By its failure to fully appreciate the distinct and separate causes of action against the two respondents, the National Labor Relations Commission miserably failed to properly appreciate the evidence submitted in the case.

"2. Respondent National Labor Relations Commission erred in utilizing and using as the basis for the decision the alleged testimony of a certain Ruben Reyes which was not even a part of the records of the case and therefore non-existent.

"3. Respondent National Labor Relations Commission erred in completely ignoring the other evidence submitted by the petitioner.

"4. Respondent National Labor Relations Commission erred in ordering the reinstatement of the individual respondents notwithstanding clear and convincing evidence as to the offense of both respondents; and

"5. Respondent National Labor Relations Commission erred in using as a basis for the denial of the application for clearance to dismiss respondent-employees the dismissal by the Court of First Instance of Rizal of the criminal case, for qualified theft filed against respondent-employees by the Military Authorities in connection with their arrest and detention by virtue of ASSO No. 4764 dated December 13, 1979."

On February 18, 1983, we issued a restraining order enjoining the respondents from enforcing the decision of the respondent Commission dated December 12, 1982.

As earlier stated, in giving only partial due course to the petition we dismissed the case as to respondent Melquiades Alfonso and the decision of the Commission as to him is now final and executory. We now deal with the case against Noel Sevilla.

According to the petitioner, it is clear from the records that the respondent Commission's decision actually covers two cases which are separate and distinct from each other with different causes of action occurring on different occasions.

We agree with the petitioner. A perusal of the records shows that the application for clearance to terminate the services of respondent Alfonso was for misappropriation of company properties. On the other hand, the case against respondent Sevilla was for termination of employment on the ground that he committed fraudulent acts resulting in the loss of the petitioner's trust and confidence in him. Furthermore, the application for clearance to terminate the services of Alfonso was filed on January 22, 1980 or less than two (2) months before his arrest on March 8, 1980, while the application for clearance to terminate the employment of respondent Sevilla was filed only on May 23, 1980 or more than two and a half (2-1/2) months after his arrest on March 8, 1980. Respondent Alfonso was placed under preventive suspension on January 24, 1980 by the petitioner company while respondent Sevilla was placed under preventive suspension only on May 23, 1980 or four (4) months after respondent Alfonso was placed under preventive suspension.

Petitioner contends that there is sufficient evidence to warrant the dismissal of private respondent Sevilla.

The Solicitor General finds that just cause for the dismissal of Sevilla exists and disagrees with the decision of the labor arbiter and the respondent commission ordering his reinstatement with full backwages and benefits. The Solicitor General states that the records convincingly show that respondent Sevilla is guilty of acts inimical to the interests of his employer company.

Respondent commission on the other hand, through Atty. Linda P. Ilagan, its Chief Legal and Research Services, argues that the company conducted its investigation only after the arrest of respondent Sevilla, and that the military had no evidence against him when he was suddenly arrested. Respondent commission further submits that since the application for clearance to terminate the services of Sevilla was filed only two (2) months after his

arrest, this indicates that petitioner company did not suspect Sevilla of any irregularity.

We agree with the petitioner that private respondent Sevilla is guilty of acts inimical to the interests of his employer. The records show that Sevilla took advantage of his position as Cable Splicer Headcrew (SJ-5) to withdraw company properties which should never have been issued to him on the strength of double and/or fictitious requisition slips. By means of Requisition Slip No. 93388 dated February 28, 1980 respondent Sevilla was able to withdraw company materials for a fictitious and non-existing work order. Requisition Slips Nos. 78130 and 88141, both dated February 29, 1980 are double requisitions for the same work order. Requisition Slip No. 78143 dated March 3, 1980 was for a fictitious and non-existing work order while under Requisition Slip No. 88147, also dated March 3, 1980, the materials requisitioned exceeded what was actually needed, and despite non-use of the excess materials, respondent Sevilla never returned the same to the petitioner company.

These evidences of double or fictitious requisitions were not successfully controverted by respondent Sevilla. The fact that evidence against him was gathered only after his arrest does not mean that he was not guilty of wrongdoing. The petitioner had valid and legitimate reasons to lose its confidence in respondent Sevilla and to order his dismissal.

Relative to the fifth assignment of error, the petitioner argues that the dismissal of the criminal case filed against both respondents does not ipso facto mean that the basis of their dismissal has similarly lost its meaning and effect. It states that the applications for clearance to dismiss the respondents stand separate and independent from the criminal case filed against them.

On the other hand, the respondent commission, represented by the Chief of its Legal and Research Services, argues that if an employee is being terminated from the service for acts constituting a crime, the evidence against him must not only be substantial but should be evidence beyond reasonable doubt. It must be positive and concrete.

The arguments of the public respondent have, in the past, been rejected by this Court. Acquittal from criminal charges does not necessarily mean that loss of confidence is automatically eliminated as a basis for administrative action.

Loss of confidence is a valid ground for dismissing an employee (*Valladolid v. Inciong*, 121 SCRA 205). In *San Miguel Corporation v. The Deputy Minister of Labor and Employment, et al.*, G. R. Nos. 61232-33, December 29, 1983, which quoted with approval the ruling in *Reyes v. Zamora* (90 SCRA 92), we held that:

"Loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct — apparently demanded by the Minister of Labor — is not required to dismiss him on this charge. (See *National Organization of Laborers and Employes v. Roldan*, 95 Phil. 727; *Phil. Refining Co. v. Garcia*, 18 SCRA 107; *Gatmaitan v. MRR*, 21 SCRA 191) It is sufficient if there is 'some basis' for such loss of confidence; (*Galsim v. PNB*, 29 SCRA 293) or if the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position. (*Nevans v. CIR*, 23 SCRA 1321)"

In cases where the acts of misconduct amount to a crime, a dismissal may still be properly ordered notwithstanding that the employee is not criminally prosecuted or is acquitted after a criminal prosecution.

The fiscal's dismissal of the charge of qualified theft against Sevilla does not justify his reinstatement to his employment. We find from the records adequate evidence that Sevilla committed fraud or breach of trust which is a statutory ground for his dismissal.

We held in *Philippine Geothermal, Inc. v. National Labor Relations Commission* (117 SCRA 692) that:

"'The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer.' If there is sufficient evidence to show that the employee has been guilty of a breach of trust, or that his employer has ample reason to distrust him, the labor tribunal 'cannot justly deny to the employer the authority to dismiss such an employee.' The fact that a criminal complaint for theft against an employee was dropped by the fiscal is not binding and conclusive on the labor tribunal (*National Labor Union, Inc. v. Standard Vacuum Oil Company*, 73 Phil. 279)."

Again in *Dole Philippines, Inc. v. National Labor Relations Commission* (123 SCRA 673) we held that the acquittal of an employee in the criminal case filed against him does not guarantee his reinstatement if the employer has validly lost confidence in him.

WHEREFORE, the decision of the respondent Commission is hereby MODIFIED. The petition is granted insofar as private respondent Noel Sevilla is concerned. The termination of his employment is sustained. The restraining order issued on February 18, 1983 enjoining the respondents from enforcing the Decision dated December 29, 1982 is made permanent as to respondent Sevilla.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and De la Fuente, JJ., concur.

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