

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. VOLUNTARY ARBITRATOR ALBERTO MONTEMAYOR, MA. EMMA
J. TOTESORA, MIRICAR A. MARCOS AND MA. LOURDES U.
MACABENTA, RESPON...**

G.R. No. 88626. October 12, 1990

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-88626/>

REGALADO, J.:

This petition for certiorari impugns the resolution dated February 14, 1989 of Voluntary Arbitrator Alberto Montemayor, and his order dated May 12, 1989 denying petitioner's motion for the reconsideration thereof, in the case entitled "Re: Voluntary Arbitration of the Complaints of Ma. Emma J. Totesora, Miricar A. Marcos and Maria Lourdes U. Macabenta."

The factual backdrop of the case is summarized by the Solicitor General, which summary we quote with approval, thus:

"The case at bar concerns the complaints of three Traffic Operators of petitioner Philippine Long Distance Telephone Company at its Davao Exchange. Herein private respondents Ma. Emma J. Totesora and Miricar A. Marcos were regular employees who were dismissed for allegedly placing free long distance calls from Davao to Manila. The employment of private respondent Maria Lourdes U. Macabenta, allegedly on probationary status was terminated on the ground that she failed to meet the minimum requirements for permanent employment.

"As regular Traffic Operators at petitioner's Davao Office, it was the main function of respondents Totesora and Marcos to process long distance calls. It appears that, on different dates, said respondents were caught passing free long distance calls to Manila. Asked to explain, Ms. Totesora stated that it was not altogether a free call; that she just allowed the parties to talk a little longer without timing the entire call. For her part, Ms. Marcos admitted placing a free call to her brot(h)er in Manila whom she had not heard of for some time. Finding their explanations unsatisfactory, petitioner company terminated their services.

"With respect to respondent Macabenta, petitioner claimed that she was employed by the Company effective June 2, 1986 as probationary Traffic Operator at its Davao Exchange; that her probationary status was for three months; that Ms. Macabenta failed to meet the minimum requirement for regularization; that as a result thereof, her employment was terminated effective June 17, 1986. Ms. Macabenta, on the other hand, claimed that she worked continuously for petitioner from April 1985 to August 18, 1986, and that, consequently, she should have been regularized long before. Hence, her termination from the service was illegal.

"The Union to which the dismissed employees belong and petitioner company agreed in writing to submit their dispute to voluntary arbitration and be bound by the decision of the Voluntary Arbitrator." [1]

After hearing, Voluntary Arbitrator Montemayor issued the assailed resolution which reads as follows:

"A. - On the issue of the validity of the dismissal of Ma. Emma Totesora and Ms. Miricar Marcos - In my

personal observation based on the records submitted, I found Ms. Totesora and Ms. Marcos to have violated company regulations. However, it is my opinion, that outright dismissal is too drastic for a first offense. I recommended, instead, a transfer of assignment in the company. This arrangement, I believe, is a good compromise considering that while the company is for outright dismissal of the employees concerned, the union is asking for the return of the said employees to their original positions.

"B. - On the legality of the termination of the probationary employment of Ms. Maria Lourdes Macabenta - I cannot understand why the company waited for a year before they decided that Ms. Macabenta should undergo probationary employment. The records showed that she was employed since April 1985 and yet she did not undergo probationary employment until June 2, 1986. I also noted that during her employment for that period there were no serious complaints about her performance. Personally, I find the delay of the probation period unusual. Because of this dilemma I believe that justice and fair play can only be attained by retaining Ms. Macabenta as an employee but not necessarily as a traffic operator."[2]

Petitioner's motion for reconsideration having been denied, the instant petition was filed with the following assignment of errors:

"I

Respondent Atty. Montemayor committed a grave abuse of discretion when it (sic) ordered for the reinstatement of respondents Totesora and Marcos who committed acts inimical to the interest of the petitioner which were valid causes for their dismissal, and to the positions other than that from which they were dismissed.

"II

Respondent Atty. Montemayor committed a grave abuse of discretion when it (sic) considered respondent Macabenta as a regular employee and ordered her reinstatement not to her former position."[3]

Arbitrator Montemayor made a finding that private respondents Totesora and Marcos did violate company regulations consisting of their acts of passing free calls. A finding was also made of private respondent Macabenta being a regular employee. We are inclined not to disturb these findings which are uncontroverted and supported by the evidence on record. Basic is the rule that judicial review by this Court in labor cases does not go so far as to evaluate the sufficiency of the evidence upon which the labor officer or office based his or its determination but are limited to issues of jurisdiction or grave abuse of discretion.[4]

The only issues, therefore, that are to be resolved in this petition are (1) whether or not there was grave abuse of discretion on the part of public respondent in ordering the reinstatement of private respondents, taking into consideration the aforementioned findings; and (2) whether or not the resolution of public respondent is, first and foremost, subject to judicial review.

Apropos of the power of judicial review, while decisions of voluntary arbitrators are given the highest respect and accorded a certain measure of finality, this does not preclude the exercise of judicial review over such decisions.[5] A voluntary arbitrator, by the nature of his functions, acts in a quasi-judicial capacity. There is no reason why his decisions involving interpretations of law should be beyond the Supreme Court's review. Administrative officials are presumed to act in accordance with law and yet the Court does not hesitate to pass upon their work where a question of law is involved or where there is a showing of abuse of authority or discretion in their official acts.[6]

In the case at bar, we hold that the voluntary arbitrator gravely abused his discretion in ordering the reinstatement of private respondents Totesora and Marcos. Petitioner was legally justified in dismissing the latter. Private

respondents' conduct rendered them unworthy of the trust and confidence demanded of them by their employer. Considering that an employer is entitled to terminate the services of employees for just cause and acts of dishonesty have been held to be sufficient grounds for dismissal, private respondents Totesora and Marcos did not have any right to be reinstated.[7] The employer's obligation to give his workers just compensation and treatment carries with it the corollary right to expect from the workers adequate work, diligence and good conduct.[8]

While, as a rule, the Supreme Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in handling company property are a different matter.[9] As aptly pointed out by petitioner:

"x x x Long distance call is the very lifeblood of the petitioner, there is no doubt about this. To fraudulently and dishonestly deprive the petitioner of long distance calls, therefore, is not only clearly inimical to the petitioner, but very destructive as well.

x x x

"Petitioner agrees that there are times when outright dismissal is too drastic for a first offense. In fact, petitioner's rules and regulations on certain offenses like tardiness, drinking, fighting, etc. provide dismissal only on the second and third infraction. But there should be a distinction as to the nature of the offense. On pet(t)y offenses as cited above, petitioner is one with Atty. Montemayor that dismissal is too drastic for the first offense. But definitely not if the nature of the offense goes to the very heart and essence of the company, as in the case at bar, and especially if the offender has shown propensity for dishonesty.

"Kindly please take note that Ms. Totesora when she committed the act for which she was dismissed was only barely two (2) years after becoming a regular employee. On the other hand, Ms. Marcos was barely a month a regular employee when she was caught passing (a) free long distance call. And to think that these two were thoroughly drilled on Company procedures and regulations before being hired.

"Furthermore, petitioner respectfully submits that Atty. Montemayor in effect is encouraging the petitioner's traffic operators to defraud the petitioner of legitimate revenues by passing free long distance calls since anyway they will not be dismissed outright if they will be caught for the first time, assuming they will be caught at all. This should not be allowed."[10]

In the ultimate analysis, dismissal of a dishonest employee is in the best interest not only of management but also of labor. As a measure of self-protection against acts inimical to its interest, a company has the right to dismiss its erring employees. The law never intended to impose unjust situations on either labor or management.[11]

With respect to private respondent Macabenta's case, on the other hand, we hold that her dismissal was not justified and, therefore, her reinstatement is in order. Her, reinstatement should, however, be to the position she was occupying before her dismissal. Having been employed by petitioner for more than a year, she automatically became a regular employee regardless of the fact that her status at the commencement of her employment was supposedly that of a casual employee as claimed by petitioner.

Article 280 of the Labor Code is clear on the matter, to wit:

"ART. 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

"An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists" (Emphasis supplied).

Besides, we believe that private respondent Macabenta is also circumstanced under the first paragraph of the aforequoted provision. Being a traffic operator, she was assigned to perform tasks which are necessary or desirable in the usual business or trade of petitioner company which is engaged in the telecommunications industry. On both considerations, her employment should, therefore, be deemed to be that of a regular employee.

WHEREFORE, the petition for certiorari is GRANTED in part in the sense that the directive of the labor arbiter for the reinstatement of private respondents Totesora and Marcos is set aside, and DENIED with respect to petitioner's complaint against private respondent Macabenta's reinstatement. Petitioner is hereby ordered to reinstate private respondent Macabenta to her former position or to a substantially equivalent position without loss of seniority rights, and to pay her backwages not exceeding three (3) years without qualification or deduction conformably with case law prevailing during the period involved in this case.

This judgment is immediately executory.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.

Paras, J., on leave.

[1] Rollo, 36-38.

[2] Ibid., 38-39.

[3] Ibid., 6.

[4] A. M. Oreta & Co., Inc. vs. National Labor Relations Commission, et al., G.R. No. 74004, August 10, 1989; Special Events & Central Shipping Office Workers Union vs. San Miguel Corporation, et al., 122 SCRA 557 (1983).

[5] Blue Bar Coconut Phils., Inc. vs. Minister of Labor, et al., 174 SCRA 25 (1989); Oceanic Bic Division (FFW), et al., vs. Romero, etc., et al., 130 SCRA 392 (1984); Mantrade/FMMC Division Employees and Workers Union, etc. vs. Bacungan, et al., 144 SCRA 510 (1986); Continental Marble Corp., et al. vs. National Labor Relations Commission, et al., 161 SCRA 151 (1988).

[6] Liberty Flour Mills Employees, et al. vs. Liberty Flour Mills, Inc., et al., G.R. Nos. 58768-70, December 29, 1989.

[7] Auxilio, Jr. vs. National Labor Relations Commission, et al., G.R. No. 82189, August 2, 1990.

[8] Coca-Cola Bottlers Philippines Incorporated vs. National Labor Relations Commission, et al., 172 SCRA 751 (1989).

[9] Id.

[10] Rollo, 81-82.

[11] Coca-Cola Bottlers Philippines Incorporated vs. National Labor Relations Commission, et al., supra.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.