

ROMEO P. FLORES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MANILA ELECTRIC COMPANY, RESPONDENTS.

G.R. No. 96969. March 02, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a special civil action under Rule 65 of the Revised Rules of Court to annul and set aside the September 11, 1990 Resolution of the public respondent National Labor Relations Commission (NLRC)[1] affirming the decision of the Labor Arbiter Adolfo V. Creencia in dismissing the complaint filed by petitioner Romeo P. Flores for illegal dismissal.

It appears on record that petitioner was employed by private respondent Manila Electric Company (MERALCO) on May 16, 1967 until his dismissal on July 18, 1988.

At the time of his dismissal, petitioner was a teller of private respondent's San Marcelino (now Malate) branch office whose duty was to collect and receive payments from the customers of private respondent as well as to issue the corresponding Official Receipts to said clients.

Prior thereto, petitioner was a lineman of private respondent responsible for the inspection and installation of electric services to private respondent's customers as well as in disconnecting the same for customers with delinquent accounts or found with tampered electric meters.

Sometime in October 1987, private respondent's senior meter reader, Tommy P. Celi, Jr., found that petitioner and his neighbor, Maria Zapanta, were using electric meters different from the official electric meters issued to them and reported the matter to the Inspection Division Head, Manuel B. de Jesus, who in turn relayed the discovery to the Special Presidential Committee of private respondent.

On October 26, 1987, private respondent's Special Presidential Committee, in coordination with its Inspection Division, conducted an ocular inspection of the premises referred to and discovered the illegal installation of Meter No. 33SLN74263 at the premises of petitioner who was officially issued Meter No. 33SGN30400. The Committee also found that petitioner was using a two line-jumper to defraud private respondent by substituting the official and registered electric meter with the illegal electric meter which was installed in between reading dates in order not to reflect the actual electrical consumption of petitioner's household. The substitution of the official electric meter with an illegal one enabled petitioner to consume electric current without the same passing through the official electric meter as reflected in the Meter Socket Inspection Report No. 129388.[2]

Further investigation revealed that petitioner removed, took and used, without the knowledge and consent of private respondent, Meter No. 33SLN74263 from the demolished house of Mrs. Nemecia C. Rosal.

Thereafter, the illegal electric meters of petitioner and his neighbor were removed and subjected to a laboratory test in the presence of a representative from the Board of Energy and found said meters to be tampered.

On December 14, 1987, private respondent sent a Violation of Contract (VOC) letter to petitioner charging the latter the amount of P2,060.59 which was paid on December 23, 1987 with a 30% discount in the amount of P1,442.41 as evidenced by Receipt No. 43356.[3]

On February 12, 1988, petitioner was served a letter requesting for his appearance at a formal administrative investigation on February 18, 1988[4] which was postponed to February 26, 1988 upon the request of the petitioner.[5]

On February 26, 1988, petitioner assisted by his counsel, Atty. Manuel B. Lorenzo, gave a sworn statement to private respondent's Special Presidential Committee, unqualifiedly admitting all the charges imputed against him and appealing for the imposition of a lesser penalty.[6]

On March 7, 1988, private respondent's Special Presidential Committee rendered a report finding petitioner guilty of violating Section 7 paragraphs 3 and 4 of private respondent's Company Code on Employee Discipline, the pertinent portion of which reads:

"Thus, we submit that Mr. Romeo P. Flores has violated Section 7, Paragraph 3 of the Company Code on Employee Discipline for directly or indirectly tampering with an electric meter or metering installation of the Company or the installation of any device with the purpose of defrauding the Company. Moreover, we also find Mr. Flores liable under Section Paragraph 4 of the same code for the unauthorized taking of an electric meter which is a Company property. The penalty for both offenses is dismissal from the service."[7]

On July 18, 1988, petitioner was dismissed from the service and employ of private respondent.[8]

On September 8, 1988, petitioner filed a complaint against private respondent and its officers for unfair labor practice and illegal dismissal with the National Labor Relations Commission in Manila in NLRC-NCR Case No. 00-09-03782-88 which complaint was dismissed by the Labor Arbiter on October 31, 1989, the pertinent portion of which reads as follows:

"From the foregoing, the issues imposed on our shoulder to resolve, are:

- 1) Whether or not complainant was illegally separated from the service; and
- 2) Whether or not complainant was discriminated in the imposition by respondent of the penalty of dismissal.

"On the first issue, We find that complainant was not illegally dismissed, for such dismissal was for cause. From the records, we can very well infer that complainant had impliedly admitted responsibility in the removal and carting away of Meter No. 33SLN74263 from the premises of customer (Nemesia C. Rosal) without the knowledge and consent of respondent MERALCO and substituting the same with official electric meter (Meter No. 33SGN30400) which defrauded respondent company. Said act of complainant constitute dishonesty which is admittedly a valid ground in terminating complainant's services.

"On the second issue, the records on hand is insufficient or short to determine whether the conditions cited by complainant (case of Numeriano S. Villalibos) are really similar to the case at bar. As such, we can not honestly declare that complainant was really discriminated.

"WHEREFORE, premises considered, the instant complaint is hereby DISMISSED for lack of merit."[9]

On November 24, 1989, petitioner appealed said decision with the public respondent NLRC which appeal, however, was dismissed in a Resolution promulgated on September 11, 1989.[10] The Motion for Reconsideration was also denied on December 17, 1990 for lack of merit.[11]

Hence, petitioner filed this petition alleging grave abuse of discretion on the part of the public respondent NLRC

in dismissing him for loss of trust and confidence considering that he had already paid the differential billings brought about by his alleged tampering with the electric meter and that the penalty of dismissal is too harsh considering that this is only his first offense during his 21 years of service with private respondent.

Article 282 of the Labor Code provides that an employer may legally terminate an employee for "serious misconduct or willful disobedience" and "fraud or willful breach of the trust reposed in him by his employer or duly authorized representative." In the case at bar, petitioner in his sworn statement admitted the charges filed against him by the private respondent and submitted himself to whatever decision the latter would come up to with only an appeal for leniency in the imposition of the corresponding penalty. This admission together with the other documentary evidences on record constitute gross misconduct and breach of trust on the part of the petitioner which would justify his dismissal since private respondent cannot be compelled to retain an employee who is clearly guilty of malfeasance as his continued employment will be prejudicial to the best interest of private respondent.

Inasmuch as petitioner's dismissal was for a valid cause, he is not therefore entitled to any separation pay as embodied in Section 7, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, which provides that separation from work of an employee for a just cause does not entitle him to termination or separation pay.

The fact that petitioner had worked for private respondent for twenty one (21) years, if it is to be considered at all, should be taken against him. The infraction that he committed, vis-a-vis his long years of service with the company, reflects a regrettable lack of loyalty. Loyalty that he should have strengthened instead of betrayed. If an employee's length of service is to be regarded as a justifying circumstance in moderating the penalty of dismissal, it will actually become a prize for disloyalty, perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables.[12] As held by this Court in PLDT vs. NLRC[13] on when separation pay may be allowed:

"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

"x x x."

"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. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. 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 assailed resolution of the National Labor Relations Commission is hereby **AFFIRMED** and the petition **DISMISSED** for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Campos, Jr., JJ., concur.

[1] Penned by the Presiding Commissioner Edna Bonto--Perez with the concurrence of Commissioner Domingo H. Zapanta and Commisioner Rustico L. Diokno.

[2] Original Records, p. 39.

[3] Id., at p. 40.

[4] Id., at p. 41.

[5] Id., at p. 42.

[6] Id., at p. 43.

[7] Id., at pp. 47-48.

[8] Id., at pp. 49-50.

[9] Id., at pp. 60-61.

[10] Original Records, pp. 101-108.

[11] Id., at p. 130.

[12] Philippines Airlines, Inc. vs. NLRC, 198 SCRA 748 (1991).

[13] 164 SCRA 671 (1988).

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