

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ELMER TAWAY, RESPONDENTS.

G.R. No. 99030. July 31, 1997

Ponente: PUNO, J.

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PUNO, J.:

This petition for certiorari seeks to annul two Resolutions of the National Labor Relations Commission dated November 22, 1990[1] and August 24, 1991[2] directing petitioner Philippine Long Distance Telephone Company to reinstate private respondent Elmer Taway to his former position without loss of seniority rights and to pay him backwages.

Private respondent was employed as Facility Man JG-5 at the Lexal Office of petitioner. One of his duties was to assign telephone lines to telephone applicants. This includes conducting field surveys and preparing the necessary documents for the installation of telephone facilities.

In February 1986, Mr. Tomas Enriquez, a resident of Sambahayan Condominium Building No. 5 in Makaturing Street, Mandaluyong, Metro Manila, filed a complaint to petitioner that his application for a telephone line was by-passed when DJ Sambahayan Fastfood which was also located in the same building was provided with a telephone line on February 23, 1986, thus violating the company's first-come-first-serve policy.

After investigating on the complaint, petitioner discovered that: (1) Mr. Enriquez's application (numbered RA-75-1984) enjoyed higher priority than that of DJ Sambahayan Fastfood (numbered RA-76-17797); (2) there were three other telephone applications in the same building having higher priority than that of DJ Sambahayan Fastfood and they were also by-passed when a telephone line was installed at DJ Sambahayan Fastfood; (3) Sambahayan Condominium Building No. 5 had no entrance cable facility; and (4) DJ Sambahayan Fastfood was provided with a telephone line using the entrance cable facilities of Sambahayan Condominium Building No. 3. Petitioner also found that it was private respondent who processed and assigned telephone facilities to DJ Sambahayan Fastfood.

On September 9, 1986, petitioner, through its manager, Mr. R.S. Caoyonan, sent private respondent an Inter-office Memorandum stating:

x x x

Subject: Administrative case re: Assignment of telephone facilities for DJ Sambahayan Fastfood (RA 76-17797)

Investigation of the case conducted by QCI Department disclosed that:

1. You assigned cable facilities for above subject RA 76-17797 at Sambahayan Condominium Building No. 5 by utilizing the entrance cable facilities at Sambahayan Condominium Building No. 3.

2. A telephone was installed at DJ Sambahayan Fastfood on February 22, 1986 to the prejudice of older telephone applications at Sambahayan Condominium Building No. 5.

3. The other telephone applications at Sambahayan Condominium Building No. 5 which were by-passed as a result of said assignment of cable facilities remain unserved due to the absence of entrance cable facilities at subject building No. 5.

In view of the above, please explain in writing within seventy-two (72) hours upon receipt hereof why no disciplinary action be instituted against you, for violation of Company rules and regulation.

If no written explanation is received from you within the said 72 hours, this case will be decided on the basis of the documents on hand.[3]

On March 11, 1987, private respondent submitted his explanation stating:

"This has reference to RA #76-17797 under the name of D. J. Sambahayan Fastfood at Sambahayan Condominium Building #5 along Makaturing Street, Mandaluyong, Metro Manila.

Please be informed that:

a) On October 2, 1985, installation of entrance cafac (J) 860-85) was completed at Sambahayan Condm. Bldg. #3 to serve pending request at said building only (Ref.: BICS-M-1126-85);

b) Subject RA #76-17797 was given assignment (both cafac & cofac) on November 12, 1985 based from the sketch and address given by the owner-proprietor, Mr. Manuel Mendoza x x x;

c) On February 23, 1986, Mr. Tomas V. Enriquez, Jr., a tenant at building #5, filed a complaint in the Ofc. of Mr. D. M. Ifurung on the allegation that his application is much ahead (RA #75-19864 with address at 408 Sambahayan Condm. Bldg. #5);

d) Upon verification, it was found out that application of #76-17797 with assigned tel. # 786248 was installed at Sambahayan Condm. Building #5 by Mr. de la Torre (I & R) using cable 1046 G 16, T-9830 (assigned cable by FASS was 1046 G 24, T-9830 inside Sambahayan Cond. Building # 3). x x x

e) During installation of said application, no coordination was made by the I & R personnel concerned that said request will be served at building #5 of Sambahayan Condm. How was this installed, the undersigned will never know x x x.

Prior to the above incidents, please be advised for (sic) the following:

1) FASS received IOM of Mr. S.A. Saez addressed to Mr. R.S. Caoyonan (Ref. # BICS-M-1126-85) containing information that JO 860-85 is already completed with only 10 pairs created. Attached in the IOM is a letter from the Homeowner Association President requesting for proper distribution of telephone lines from first (1st) floor up to fifth (5th) floor to avoid jealousy and misunderstanding among the 45 applicants.

2) On October 18, 1985 the undersigned sent a memo to Mr. R.S. Caoyonan informing him that the letter-request of the President of the Homeowner Association is contrary to our standard operating procedure which is the "first-come-first-serve basis". Nevertheless, a list of pending application in Sambahayan Condominium Bldg. #3 was submitted with request for the Manager to please mark the applications to be served should the President insist on proper distribution of telephone lines.

3) On October 31, 1985 the same IOM with attachment was returned with instruction to serve on party line basis in accordance to priorities limiting one telephone per address. Likewise, the 1st twelve (12) applications in the attachment were "marked" - meaning "to be served," and RA # 76-17797 was included.

4) Moreso, the application of Mr. Tomas V. Enriquez, Jr. (RA # 75-19864) was not included in the list to be served due to his different address which is at Sambahayan Condominium Building # 5." x x x[4]

Finding private respondent's explanation unsatisfactory, petitioner terminated his employment on September 16, 1987.

Private respondent filed a complaint against petitioner for illegal dismissal.

On June 10, 1988, Labor Arbiter Eduardo G. Magno dismissed the complaint for lack of merit.[5] This was, however, reversed by the NLRC on appeal. It held:

x x x

"Again, from the foregoing facts alone, which we lifted from no less than the assailed decision, it is already clear that appellant Elmer Taway cannot be held liable for the complained bypassing in the installation of subject telephone line. It was "de la Torre", and not appellant Taway who "installed" the questioned telephone line; and worse, neither de la Torre nor Taway could stop it, as the installation was made upon instructions of "Mr. R.S. Caoyonan", their Manager. Of course, the line of reasoning of respondent-appellee, which was given controlling weight by the labor Arbiter, is that such installation by "de la Torre" could have been avoided if the appellant was not negligent in his work, particularly if he ordered "a field survey on RA 76-17797 when there is no indication on the exact address". But what could such survey have accomplished when advised, precisely, by appellant in his memorandum of October 18, 1985, that they follow the "standard operating procedure which is 'first-come-first-serve'," Mr. R.S. Caoyonan, his manager, instead (disregarding said policy) directed the installation of twelve telephone lines, including the subject bypassing telephone line.

x x x

WHEREFORE, the appealed decision is hereby set aside and a new one entered directing the reinstatement of complainant to his former position without loss of seniority rights with payment of two (2) years backwages, in view of complainant's conformity to such amount of backwages manifested during the conciliation conference of April 4, 1990."[6]

Hence this petition.

Petitioner contends that private respondent was validly dismissed for violating the company's first-come-first-serve policy when he assigned telephone facilities to DJ Sambahayan Fastfood ahead of the other applicants having higher priority and despite the absence of entrance cable facilities at Sambahayan Condominium Building No. 5.

We are not convinced.

An employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence.[7] The employer has the burden of proving that the dismissal was indeed for a valid and just cause.[8]

In the case at bar, petitioner failed to establish private respondent's culpability by clear and convincing evidence. It does not appear from the facts that private respondent deliberately by-passed the applications of the other tenants of Sambahayan Condominium Building No. 5 when he assigned telephone facilities to DJ Sambahayan Fastfood. The application filed by Mr. Manuel Mendoza, owner of DJ Sambahayan Fastfood, indicates that the fastfood is located in Sambahayan Condominium Building No. 3. Believing such representation, private respondent approved its application and assigned telephone facilities thereto, as telephone lines were already being installed in Sambahayan Condominium Building No. 3. The assignment and installation of telephone facilities at DJ Sambahayan Fastfood were approved by petitioner's manager, Mr. R.S. Caoyonan. There was,

therefore, no intention to by-pass the application of Mr. Tomas Enriquez or those of the three other applicants as their applications show that their addresses are in Sambahayan Condominium Building No. 5 which had no entrance cable facility yet.

Moreover, petitioners failed to prove that private respondent authorized the use of the entrance cable facilities of Sambahayan Condominium Building No. 3 to provide DJ Sambahayan Fastfood with a telephone line. The facts show that it was Mr. De la Torre from petitioner's I & R Department who installed the telephone line at DJ Sambahayan Fastfood. It does not appear from the facts that Mr. De la Torre coordinated with private respondent or informed him that he would use the cables assigned to Sambahayan Condominium Building No. 3 to install telephone lines at DJ Sambahayan Fastfood.

Respondent NLRC, therefore, did not err in finding that private respondent was illegally dismissed. We, however, modify the decision of respondent NLRC as regards the amount of backwages to be awarded to private respondent. We ruled in the recent case of *Bustamante v. NLRC*[9] that the amount of backwages to be awarded to an illegally dismissed employee must be computed from the time he was dismissed to the time he is actually reinstated, without deducting the earnings he derived elsewhere pending the resolution of the case.

IN VIEW WHEREOF, the assailed resolutions of the NLRC are AFFIRMED WITH MODIFICATION. Petitioner is hereby ordered to reinstate private respondent without loss of seniority rights and to pay him full backwages from the time of his dismissal until his actual reinstatement. Costs against the petitioner.

SO ORDERED.

Regalado, (Chairman), Romero, and Mendoza, JJ., concur.

Torres, Jr., J., on official leave.

[1] Annex "A" of the Petition, Rollo, pp. 16-26.

[2] Annex "B" of the Petition, Rollo, pp. 26-36.

[3] Annex "5" of Private Respondent's Comment, Rollo, p. 85.

[4] NLRC Resolution, Rollo, pp. 18-20.

[5] Annex "F" of the Petition, Rollo, pp. 53-58.

[6] NLRC Resolution, Rollo, pp. 23-24, 26.

[7] *Pili v. NLRC*, 217 SCRA 338 (1993); *San Miguel Corporation v. NLRC*, 180 SCRA 281 (1989); *Garcia v. NLRC*, 180 SCRA 618 (1989).

[8] *Pacific Timber Export Corporation v. NLRC*, 224 SCRA 860 (1993).

[9] G.R. No. 111651, November 28, 1996.

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