

## EN BANC

[ G.R. No. 171434, April 23, 2010 ]

### **NATIONAL POWER CORPORATION, PETITIONER, VS. ALAN A. OLANDESCA, RESPONDENT.**

### **D E C I S I O N**

#### **PERALTA, J.:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>[1]</sup> dated February 9, 2006 of the Court of Appeals in CA-G.R. SP No. 54839, entitled *Alan A. Olandesca v. Civil Service Commission and National Power Corporation*, which set aside the Resolution dated August 10, 1999 of the Civil Service Commission and the Decision dated March 9, 1998 of the Regional Board of Inquiry and Discipline of the National Power Corporation.

Petitioner National Power Corporation is a government-owned and controlled corporation created under Republic Act No. 6395, as amended, with the mandate to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power, on a nationwide basis.<sup>[2]</sup>

Respondent Alan A. Olandesca was first employed by petitioner as an Extension Aide and was assigned at the Tiwi Watershed. Thereafter, he held various positions in petitioner's corporation, which included the following: Senior Forest Ranger, Extension Services Officer, Watershed Management Officer, Procurement Officer B, Senior Property/Supply Officer, Senior Property Officer. At the time of the alleged commission of acts of dishonesty, respondent held the position of Supervising Property Officer of the Angat River Hydroelectric Plant (HEP), San Lorenzo, Norzagaray, Bulacan.<sup>[3]</sup>

While an employee of petitioner, respondent was allowed to stay in a house within petitioner's premises. As Supervising Property Officer, respondent had custody of all the materials and supplies stored at the property office of Angat River HEP and was accountable for those properties which were turned over to him under his Property Accountability Report. In addition, respondent was also tasked to monitor the proper documentation of the receipt and release of all items, materials, and supplies in his custody. It was petitioner's policy that the receipt and release of any item from the property office be covered by a Warehouse Requisition Slip (WRS) and duly approved by higher authorities.

On several occasions, from November 17, 1996 to January 25, 1997, respondent withdrew several items from the warehouse/property office, without the required WRS. Among these items were barbed wires, interlink wires, nails, and G.I. wires.

On three occasions, respondent transported the items during nighttime. On some occasions, he even used the petitioner's corporate vehicle to transport the materials he took from the property office. Respondent even used an outsider to withdraw interlink wires from the warehouse.

Upon respondent's directive, all items he withdrew from the property office were duly recorded on the security logbook of the security guard on duty.

Thereafter, respondent used the foregoing items to fence two (2) development areas which are part of the NPC Angat Watershed Areas and Reservations. On January 28, 1997, three days after the last withdrawal, respondent replaced all the said items he took at his own initiative.

The following month, the management team held a meeting, wherein the issue of respondent's withdrawal of items from the property office was raised. However, since the items withdrawn were already replaced, the management team considered the case closed and terminated. Nevertheless, Teodulo V. Largo, Section Chief of the Angat River HEP, filed with the Officer-In-Charge of the Angat River HEP a Complaint against respondent for acts inimical to the government and for violation of Article VI, Section 3(f) and 3.15 of the NPC Code of Conduct and Discipline.<sup>[4]</sup> He charged respondent with grave misconduct, and alleged that respondent maliciously withdrew several materials and supplies from the Angat River HEP warehouse without the approved WRS from the Angat HEP Management.

After evaluating the complaint, Lino S. Cruz, petitioner's Vice-President from the Northern Luzon Regional Center, administratively charged respondent with Acts of Dishonesty/Getting Supplies, Materials for Personal Use/Acts Prejudicial to the Interest of the Corporation (Administrative Case No. 97-20). The charge states:

That sometime and during the periods from November 17, 1996 until January 25, 1997, taking advantage of your present position as SUPERVISING PROPERTY OFFICER of Angat Hydro Electric Plant of the National Power Corporation and with intent of gain, have maliciously and personally withdrawn materials and supplies at Angat HE Plant Warehouse without the Approved Warehouse Requisition Slip (WRS), as follows:

| DATE/DAY              | TIME  | QUANTITY | ITEM<br>DESCRIPTION            | AMOUNT        |
|-----------------------|-------|----------|--------------------------------|---------------|
| 11/17/96<br>Sunday    | 1645H | 3 Rolls  | Interlink 8Ft. x<br>50Ft.      | P<br>3,750.00 |
| 11/23/96<br>Sunday    | 2130H | 5 Rolls  | Barbed Wire 50<br>Kgs./Roll    | 3,900.00      |
| 12/12/96<br>Thursday  | 2045H | 5 Rolls  | -do-                           | 3,900.00      |
| 01/04/97<br>Saturday  | 1425H | 3 Rolls  | -do-                           | 2,340.00      |
|                       |       | 1/4 kl.  | Nails - 3"                     | 8.75          |
| 01/07/1997<br>Tuesday | 0745H | 2 Rolls  | Barbed Wires -<br>50 Kgs./Roll | 1,560.00      |
|                       |       | 2 ½ kls. | Nails - 3"                     | 87.50         |
| 01/08/1997            | 1100H | 1 Roll   | Barbed Wires -                 | 780.00        |

|           |       |         |                        |                 |
|-----------|-------|---------|------------------------|-----------------|
| Wednesday |       |         | 50 Kgs./Roll           |                 |
|           |       | 1 Roll  | G.I. Wires             | 800.00          |
| 01/17/97  | 1000H | 1 Roll  | Interlink 8Ft. x 50Ft. | 1,250.00        |
| Friday    |       |         |                        |                 |
| 01/18/97  | 1845H | 3 Rolls | -do-                   | 3,750.00        |
| Saturday  |       |         |                        |                 |
| 01/23/97  | 1130H | 4 Rolls | -do-                   | 5,000.00        |
| Thursday  |       |         |                        |                 |
| 01/25/97  | 1155H | 2 Rolls | -do-                   | <u>2,500.00</u> |
| Saturday  |       |         |                        |                 |
|           |       |         |                        | P               |
|           |       |         |                        | 29,626.00       |

and for which the above supplies/materials withdrawn, carried and taken away from the warehouse were personally used by you in your clearing and planting activities within the Angat Watershed Area covered by Proclamation No. 55 and P.D. No. 599, but to the great damage and prejudice of the Corporation.

CONTRARY TO LAW.<sup>[5]</sup>

Respondent was directed to submit his answer to the foregoing charges, as well as supporting evidence in his defense.

Petitioner's Regional Board of Inquiry and Discipline (RBID) heard the case. Thereafter, the RBID issued its findings and recommended that respondent suffer the penalty of dismissal with forfeiture of all cash and non-cash benefits due him by virtue of his employment.<sup>[6]</sup> The recommendation was adopted by the Vice-President of the Northern Luzon Regional Center (NLRC) and petitioner's President.<sup>[7]</sup>

Respondent moved for the reconsideration of the decision, but the Board denied his motion.<sup>[8]</sup> His appeal to the Civil Service Commission (CSC) was also denied through Resolution No. 991764<sup>[9]</sup> dated August 10, 1999.

Aggrieved, respondent filed a petition for review<sup>[10]</sup> with the Court of Appeals (CA). The CA granted the petition and ordered respondent's reinstatement. The dispositive portion of the CA's decision provides:

WHEREFORE, under the premises, the petition is GRANTED. The assailed Resolution of the CSC and the March 9, 1998 Decision of the NPC are SET ASIDE and respondent is ordered to REINSTATE petitioner to his former position without loss of seniority rights and PAY him backwages.

SO ORDERED.<sup>[11]</sup>

Frustrated by this turn of events, petitioner filed herein petition, raising the following issues, to wit:

## **I**

**THE COURT OF APPEALS ERRED IN REVERSING THE FACTUAL FINDINGS OF THE CIVIL SERVICE COMMISSION AND NATIONAL POWER CORPORATION ON THE ACTS OF DISHONESTY COMMITTED BY RESPONDENT WHICH ARE SHOWN BY THE UNDISPUTED FACTS.**

## **II**

**THE COURT OF APPEALS ERRED IN RULING THAT THE FACTS ESTABLISHED DO NOT SHOW INTENT TO CHEAT, DECEIVE OR DEFRAUD NATIONAL POWER CORPORATION.**

## **III**

**THE PRESENT PETITION FALLS UNDER THE WELL-ESTABLISHED EXCEPTIONS TO THE GENERAL RULE REGARDING RULE 45 OF THE RULES OF COURT.**

Petitioner alleges that respondent's act of taking materials without the required WRS during Saturdays and Sundays, and even during nighttime, proved his lack of moral principle and integrity as a public employee. His acts clearly proved his intention to cheat his employer by deliberately and maliciously taking undue advantage of his position as Supervising Property Officer. He took advantage and gravely abused his position of trust by ignoring the usual and normal procedure for taking out properties from the warehouse which amounts to bad faith and malice. According to petitioner, respondent's intent to cheat is manifested by the following acts:

- a. The ten separate and distinct acts of taking clearly indicate habituality;
- b. The unlawful withdrawals during Saturdays and Sundays and even during nighttime evince taking undue advantage of the absence of other employees;
- c. The connivance with an outsider (a certain Canlas) to take some of the items on one occasion makes his intent doubly suspicious;
- d. The instruction to the security guard to record the withdrawals in the logbook instead of showing the required WRS or MIV is a clear abuse of authority;
- e. The subsequent replacement of the items taken with inferior quality place the NPC at a clear disadvantage; and
- f. The subsequent taking of items even after the instruction/advice of his immediate supervisor to stop and desist from making any further withdrawals shows a clear disregard of lawful order.

Petitioner submits that respondent's instruction to the security guard on duty to

record all the items he brought out from the warehouse served as a cover up to avoid detection or possible suspicion that the taking was unauthorized.

Petitioner further alleges that the area fenced by respondent was exactly the same area which he occupied for his own personal benefit. He enclosed the said area to protect his own interest. Moreover, by replacing the items he withdrew, respondent, in effect, admitted that the withdrawals were indeed unauthorized. Although the two developmental areas fenced by respondent were part of the Angat Watershed Areas and reservations and, thus, belonging to petitioner, it did not necessarily imply that respondent did not have the intent to enrich himself because he was the occupant and usufructuary thereof.

Respondent, on the other hand, maintains that the various materials he took from the warehouse were used to fence the mango seedlings which were planted on petitioner's watershed areas. Respondent said that he did not realize any personal gain, as it was petitioner who benefited from his initiative. This was admitted by the parties in their stipulation of facts, which provides that the watershed areas fenced by respondent, with the materials taken from petitioner's warehouse, are properties of petitioner. In 1989, respondent, as then Extension Services Officer, planted mango seedlings in the said areas in line with the mango seedlings dispersal program which he initiated. It was also stipulated that the materials were borrowed from petitioner's property warehouse and that the withdrawal was duly recorded in the security logbook by the security guard on duty. Respondent also replaced all the materials taken three days after the last withdrawal even without any demand from any of petitioner's officers or personnel. Due to the foregoing, respondent maintains that there was lack of intent to conceal the truth or to defraud the government in taking the property from the warehouse.

Anent the allegation that respondent purposely selected nighttime and Saturdays and Sundays to conceal his act of taking materials from the warehouse, respondent explained that he was forced to take the properties from the warehouse during nighttime and on weekends because he had to attend to his official duties during office hours. Respondent also alleges that he committed an honest mistake in replacing the materials withdrawn. He claims that he should not have replaced the withdrawn materials, considering that they have never ceased and have continued to remain petitioner's properties, as the same were used for the protection of the mango seedlings found in petitioner's property.

The petition is without merit.

The CA ruled that respondent did not commit dishonesty. It said that respondent acted in complete good faith, and was motivated only by a desire to serve the public beyond the call of duty. The CA justified its ruling when it noted that, while the recording of the withdrawn items in the logbook by the security guard fell short of the documentary requirement of petitioner, the initiative taken by the respondent to have the withdrawals logged negated any intention to deceive or defraud petitioner. Respondent displayed his honesty when he promptly and voluntarily replaced the items he withdrew. Moreover, respondent did not misappropriate the subject items for his own personal use or benefit. Instead, he used them to fence a project of petitioner which he thought was in peril at that time.

The CA acknowledged that, while respondent initiated the planting of trees in the