

FIRST DIVISION

[G.R. No. 174981, May 25, 2009]

**TELECOMMUNICATIONS DISTRIBUTORS SPECIALIST, INC.,
GREGORIO A. ATIENZA, SMART COMMUNICATIONS, INC. AND
NAPOLEON L. NAZARENO, PETITIONERS, VS. RAYMUND
GARRIEL,^[1] RESPONDENT.**

D E C I S I O N

CORONA, J.:

This petition for review on certiorari^[2] assails the June 28, 2006 decision^[3] and September 29, 2006 resolution^[4] of the Court of Appeals (CA) finding that respondent Raymund Garriel was illegally dismissed.

Respondent was a Customer Sales Assistant (CSA)^[5] of petitioner Telecommunications Distributors Specialist, Inc. (TDSI).^[6] He had direct access to company assets and property, in terms of cash collections from subscribers and customers as well as goods and inventory to be sold to subscribers and customers.

Three incidents triggered the filing of this case. The first incident involved one Lourdes Ratcliffe who subscribed to mobile phone services and purchased a mobile phone unit from TDSI through respondent, the attending CSA. Respondent failed to make Ratcliffe sign a coverage waiver.^[7] Days later, respondent called up Ratcliffe and asked her to just answer "yes" in case she was questioned by the company regarding her application.^[8] It was later found that Ratcliffe's signature in the coverage waiver was forged. (Respondent's instruction for Ratcliffe to say "yes" was apparently meant to validate the forged signature he affixed on the coverage waiver.)

A similar incident involving one Mila Huilar occurred. Respondent also failed to ask Huilar to sign the coverage waiver. Huilar's signature was likewise found to have been forged.

In the third incident, a subscriber named Helcon Mabesa purchased a mobile phone unit from TDSI. Respondent attended to him but did not issue an official receipt. It was later discovered that respondent sold a defective mobile phone personally owned by him to Mabesa who eventually demanded a replacement. Respondent replaced the defective unit with a similar unit from one of TDSI's counters. Respondent thereafter attempted to influence Jason Mapa, his co-employee and fellow CSA, to declare a cash shortage of P5,000 as he (respondent) could not pay for the unit he filched to replace Mabesa's defective phone.

These incidents came to the attention of TDSI's human resources department manager, Joann P. Hizon, who lost no time in meeting with Ratcliffe, Huilar and

Mabesa. The latter reiterated their complaints. On October 17, 2000, respondent was issued a notice to explain which served as a formal notice of violation of company rules and procedures.^[9]

In a memorandum dated October 20, 2000,^[10] respondent categorically denied the accusations against him. He relied on Ratcliffe's retraction^[11] to exculpate himself, insisted that Huilar's signature on the coverage waiver was genuine and that no such transaction with Mabesa occurred on the pertinent date.

Respondent was formally investigated. In a notice dated February 7, 2001,^[12] respondent was dismissed on grounds of serious misconduct and loss of trust and confidence.

Respondent filed a complaint for illegal dismissal^[13] in the Regional Arbitration Branch No. VI of Bacolod City. In a decision dated March 23, 2004,^[14] the labor arbiter ruled that respondent was illegally dismissed. Respondent was awarded separation pay in lieu of reinstatement which was no longer possible due to strained relations between the parties. The labor arbiter did not award backwages.

Petitioners appealed to the NLRC. The labor arbiter's finding of illegal dismissal was affirmed, with the observation that due process was not observed in dismissing respondent.

Petitioners elevated the case to the CA. The NLRC decision was affirmed with modification. The CA held that due process had been observed and awarded backwages in favor of respondent.

In this petition, petitioners seek a reversal of the CA decision. They argue that substantial evidence showed that respondent was dismissed for just and lawful causes when he committed acts of dishonesty and disloyalty against petitioners constituting serious misconduct and resulting in loss of trust and confidence.

We agree with petitioners.

As a general rule, the findings of fact of the quasi-judicial agencies are not reviewable in this Court in a petition for review. However, in instances where the judgment was premised on a misapprehension of facts or when certain material facts and circumstances were overlooked and which, if taken into account, would alter the result of the case, a review of the facts by this Court is warranted.^[15]

Respondent's Acts Of Disloyalty And Dishonesty Constituted Serious Misconduct And Loss Of Trust And Confidence

Respondent's tasks included the following:

- (a) efficiently, effectively and accurately screen/validate pertinent cellphone application requirements submitted by the agent dealers, agent coordinators and walk-in subscribers,
- (b) as cashier, ensures the proper reconciliation of stocks and collection

with BA at the end of the day. Submits cash account summary report to BA attached to the DSCR,

(c) prepares Daily Sales Collection Reports (DSCR) for submission to DA, daily,

(d) acceptance of payments from walk-in clients, agents and AC and issues OR/SI (Official Receipts/Sales Invoice) for said payment, and

(e) ensure completeness of remittances received from customers, agents, dealers and agent coordinators.^[16]

An employee's dismissal must be supported by substantial evidence.^[17] This burden of proof is on the employer. This TDSI was able to discharge.

Respondent failed to make Ratcliffe and Huilar sign the coverage waivers. Such failure, in itself, although a misconduct, was not serious enough to warrant dismissal. The serious misconduct was respondent's act of forging the signatures of Ratcliffe and Huilar to cover up his negligence. In fact, he even instructed Ratcliffe to lie and "just say yes" to the questions that may be asked of her by the company.

Respondent claims he cannot be held liable for forgery because the act was not among the forgeries punishable under Articles 161 to 168, Chapter One, Title Four, Book Two of the Revised Penal Code (RPC).^[18] We disagree. The forgery attributed to him was plainly the act of falsely and fraudulently making or altering a writing or other instrument that, if genuine, might apparently be of legal effect on the rights of another.^[19]

When he passed off the signatures in the coverage waiver as those of Ratcliffe and Huilar, respondent committed forgery though not necessarily those in Articles 161 to 168 of the RPC. It might as well have been considered as falsification punishable under Article 172 (2) in relation to Art. 171 of the RPC.^[20] Respondent's defense was therefore off-tangent and failed to squarely refute the overwhelming evidence against him.

Ratcliffe's retraction did not diminish respondent's liability. A retraction does not necessarily negate an earlier declaration.^[21] It is in such instance where the rules of evidence come into play. The court should exercise its discretion on which statement is more credible based on established rules. The reason for this is:

[I]t was more reasonable to believe that the affidavits of retraction were, as claimed by petitioner, a mere afterthought, executed out of compassion to enable private respondent to extricate himself from the consequence of his malfeasance. As such, the affidavits have no probative value.^[22]

This Court is of course aware of the usual ploy of people "caught in the act" of asking for forgiveness and playing on the emotions of the victim or disciplining authority to extract pity. The retraction executed by Ratcliffe was illogical and not credible, coming as it did from out of the blue after her angry complaint against respondent.

With respect to the charge of selling his own (defective) phone and passing it off as brand-new from the company, respondent failed to rebut the overwhelming evidence presented by petitioners. Mabesa testified that respondent, as the attending CSA, did not issue an official receipt when he bought a mobile phone unit. Jasmin Jayme, respondent's immediate supervisor, testified that Mabesa's mobile phone had several defects and irregularities, including the fact that the particular unit was not from the stock sold by their branch. Jason Mapa and Jonalyn Camarista, respondent's co-employees, testified that they saw respondent attending to Mabesa and selling his personally owned mobile phone. In the face of all these testimonies, respondent's denial and evidence failed to rebut evidence that such a transaction took place.

Respondent's acts of forging subscribers' signatures, attempting to cover up his failure to secure their signatures on the coverage waivers, selling a personally owned mobile phone to a company customer (a defective one at that) and attempting to connive with other TDSI employees to cover up his illicit schemes were serious acts of dishonesty, according to TDSI's Code of Discipline:

Item 11. Falsification of other company records, documents or forging signature of company officials.

Item 12. Conniving with employees, superiors, customers, competitors or anybody to defraud the Company or to commit an offense under the established rules and regulations of the Company.

Item 15. Engaging in the same business activities which are part of the same nature with the operations or business of the Company.

Item 18. All other acts of dishonesty which cause or may tend to cause prejudice to the Company shall be subject to disciplinary action depending upon the gravity of the offense.^[23]

In *Philippine Long Distance Telephone Company v. Bolso*,^[24] we held:

Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code must be of such grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.

Respondent's acts clearly constituted serious misconduct which is a ground for termination of employment by an employer.^[25]

Respondent's acts were likewise grounds for loss of trust and confidence, another valid cause for termination of employment.^[26] Only employees occupying positions of trust and confidence or those who are routinely charged with the care and custody of the employer's money or property may be validly dismissed for this reason. Respondent fell within the latter category as the following requisites were met: