

[G.R. No. 180888, September 18, 2009]

**ROLANDO PLACIDO AND EDGARDO CARAGAY, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND PHILIPPINE
LONG DISTANCE TELEPHONE COMPANY, INCORPORATED,
RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioners Rolando Placido (Placido) and Edgardo Caragay (Caragay) had been employed since January 22, 1981 and June 1, 1983, respectively, both as cable splicers by respondent Philippine Long Distance Telephone Company, Incorporated (PLDT).

It appears that since August 2000, PLDT had been receiving reports of theft and destruction of its cables.^[1] On March 13, 2001, PLDT Duty Inspector Ricardo Mojica (Mojica) and PLDT Security Guard/Driver Mark Anthony Cruto (Cruto), responding to a report that cables were being stripped and burned in one of the residences along Alley 2 Street, Project 6, Quezon City, proceeded to the said area where they saw petitioners' service vehicle parked in front of the house at No. 162. They likewise saw petitioners stripping and burning cables inside the compound of the house which turned out to belong to Caragay's mother. With the assistance of police and barangay officials, PLDT recovered the cables bearing the "PLDT" marking.

The incident spawned the filing, on complaint of PLDT, of an Information for Qualified Theft against petitioners before the Regional Trial Court (RTC) of Quezon City, docketed as Criminal Case No. 99467.

In a related move, PLDT required petitioners to explain within 72 hours why no severe disciplinary action should be taken against them for Serious Misconduct and Dishonesty.^[2] After several requests for extension to submit their explanations, petitioners submitted a joint explanation^[3] on June 11, 2001 denying the charges against them. By their claim, they were on their way back from the house of one Jabenz Quezada (Quezada) from whom they were inquiring about a vehicle when they were detained by Mojica.

On petitioners' request, a formal hearing was scheduled. Their request for a copy of the Security Investigation was denied, however, on the ground that they are only entitled to "be informed of the charges, and they cannot demand for the report as it is still on the confidential stage."

During the June 25, 2001 formal hearing scheduled by PLDT, representatives from petitioners' union *Manggagawa ng Komunikasyon sa Pilipinas* (MKP) were present. As petitioners' counsel could not attend the hearing due to a previously scheduled hearing at the RTC Makati, petitioners requested for another setting^[4] but it was

denied. Petitioners were, however, given a non-extendible period of three days to submit their evidence.^[5]

Mojica testified during the hearing that when petitioners saw him as they were stripping and burning the cables, they fled but surfaced thirty minutes later from Alley 6 Street wearing different clothes; and that according to Rodolfo R. Anor, PLDT Work Order Supervisor, the cables could be dead cables that were not recovered by contractors.^[6]

Petitioners' counsel later reiterated the request for a setting of a hearing and an audiotape of the June 25, 2001 hearing, but the same was denied. A third time request for another hearing was likewise denied.^[7]

On May 17, 2002, PLDT sent notices of termination^[8] to petitioners, prompting them to file on May 24, 2002 a complaint^[9] for illegal dismissal before the Labor Arbiter.

By Decision of January 12, 2004, Labor Arbiter Catalino R. Laderas held that petitioners were illegally dismissed, there being no provision in PLDT's rules and regulations that stripping and burning of PLDT cables and wires constitute Serious Misconduct and Dishonesty; that PLDT's seeming lack of urgency in taking any disciplinary action against petitioners negates the charges;^[10] and that dismissal is too harsh, given petitioners' years of service and lack of previous derogatory record.

On appeal,^[11] the National Labor Relations Commission (NLRC), by Decision dated February 28, 2005, *reversed* the Labor Arbiter's Decision and *dismissed* petitioners' complaint for lack of merit,^[12] it holding that they were validly dismissed for just cause â€œtheft of company property."^[13]

In brushing aside petitioners' disclaimer of the acts attributed to them, the NLRC noted that, *inter alia*, they failed to present any affidavit of Quezada to prove that they were indeed at his house inquiring about a vehicle.

Petitioners appealed to the Court of Appeals.

In the meantime or on February 15, 2007, Branch 104 of the Quezon City RTC acquitted petitioners in Criminal Case No. 99467 on the ground of reasonable doubt, it holding that the prosecution failed to prove that the cables were in fact stolen from PLDT.^[14]

By Decision of September 28, 2007, the appellate court affirmed the NLRC Decision,^[15] it holding that since the cables bore the "PLDT" marking, they were presumed to be owned by PLDT, hence, the burden of evidence shifted on petitioners to prove that they were no longer owned by PLDT, but they failed.

Ruling out petitioners' claim that they were denied due process, the appellate court held that they were given ample opportunity to defend themselves during the administrative hearing during which they were furnished with written invitations for their appearance before the investigating unit on several dates, but they refused to submit themselves to the investigation. Petitioners' motion for reconsideration

having been denied by Resolution^[16] of December 17, 2007, the present petition was filed.^[17]

Petitioners insist that the presence of the "PLDT" marking on the cables does not prove that PLDT owned them at the time. They aver that PLDT disposes of used and unserviceable materials, including cables and telephone wires which had been declared junked and classified as scrap --- a substantial amount of which remains insulated ---, and once disposed of, these cables, although still bearing the "PLDT" marking, are no longer its property .

In fine, petitioners contend that PLDT's ownership of cables or wires bearing the "PLDT" marking on the insulation cannot be presumed, hence, a person's possession thereof does not give rise to the presumption that he obtained or stole them from PLDT.^[18]

Additionally, petitioners aver that they were denied due process when PLDT refused to furnish them a copy of the Investigation Report and grant them a formal hearing in which they could be represented by counsel of their choice.

The petition is bereft of merit.

As did the NLRC and the Court of Appeals,^[19] the Court finds that as the cables bore the "PLDT" marking, the presumption is that PLDT owned them. The burden of evidence thus lay on petitioners to prove that they acquired the cables lawfully. This they failed to discharge.

And as also did the NLRC and the Court of Appeals, the Court finds that petitioners were not denied due process.

Article 277 of the Labor Code provides:

x x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, **the employer shall furnish the workers whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and defend himself with the assistance of his representative if he so desires** in accordance with company rules and regulations promulgated pursuant to the guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. (Emphasis supplied)

And the Omnibus Rules Implementing the Labor Code *require a hearing and*