

THIRD DIVISION

[G.R. NO. 146762, January 30, 2007]

**CULVER B. SUICO, TERESA D. CENIZA AND RONALD R. DACUT,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
PHILIPPINE LONG DISTANCE TELEPHONE COMPANY
(PLDT)/AUGUSTO G. COTELO, RESPONDENTS.**

[G.R. NO. 153584]

**BENIGNO MARIANO, JR., PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY (PLDT), RESPONDENTS.**

[G.R. NO. 163793]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT),
PETITIONER, VS. ERNESTO BORJE, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

By Resolution dated January 17, 2005,^[1] the Court ordered the consolidation of the Petitions for Review on Certiorari under Rule 45 of the Rules of Court docketed as G.R. No. 146762,^[2] G.R. No. 153584,^[3] and G.R. No. 163793.^[4]

They involve parallel facts and issues:

G.R. No. 146762

Culver B. Suico, Teresa D. Ceniza, and Ronald R. Dacut (complainants) were regular employees of Philippine Long Distance Telephone Company (PLDT) Cebu Jones Exchange and members of *Manggagawa ng Komunikasyon ng Pilipinas* (MKP). In September 1997, MKP launched a strike against PLDT. Complainants participated in the strike by picketing the PLDT.^[5]

Acting Department of Labor and Employment (DOLE) Secretary Crescencio Trajano assumed jurisdiction over the labor dispute and issued a Return-to-Work Order on September 20, 1997.^[6] MKP did not heed said order but merely filed an Opposition^[7] thereto. In an Order^[8] dated September 29, 1997, DOLE Secretary Leonardo A. Quisumbing^[9] denied MKP's Opposition.

Meanwhile, at the PLDT, complainants continued with their strike. On September 29, 1997, Ann Detelou Fernando (Fernando), a PLDT managerial employee, sustained injuries when strikers blocked her way to the premises of PLDT.

Complainants were implicated in said incident. Hence, Emiliano Tanchico (Tanchico), PLDT Vice-President for Personnel Management and Development Center, sent to complainants separate notices dated October 8, 1997, which uniformly read:

Please explain in writing why you should not be terminated for committing the following act:

On September 30, 1997, while participating in an obviously illegal strike, you physically assaulted Ms. A Fernando, a Traffic Supervisor. Attached as Annex "A" is the statement of Ms. Fernando.

x x x x

Your illegal act has seriously prejudiced the company's operations, is a violation of the Code of Conduct and is considered, among others, serious misconduct, which is a ground for termination under Article 282 of the Labor Code.

Kindly submit your notarized explanation to your Division Head within 48 hours from receipt of this Notice. Failure on your part to submit a written explanation within the given period shall constitute a waiver of your right to be heard. ^[10]

Annex "A" to said notices is an unsworn statement in which Fernando gave a detailed account of the illegal act imputed to complainants. ^[11]

Complainants did not file any explanation. Tanchico sent them two other sets of notices dated October 14, 1997^[12] and October 24, 1997. ^[13]

On October 27, 1997, complainants sent Tanchico separate but uniformly-worded letters which read:

This concerns your memo dated October 8, 1997 xxx.

In this regard, I hereby elect to exercise my right to be heard and defend myself in a formal hearing, to be set within five (5) days from my receipt of the documents hereinafter requested, pursuant to my right to due process and par. 2.5 of PLDT Systems Practice re the Handling of Administrative Cases. Moreover, kindly furnish me with the copies of formal (written) complaint filed against me as well as statements of witness(es) and preliminary investigation report(s) regarding the complaint, if any.

My election to exercise my right to be heard and defend myself in a formal hearing is without prejudice to my right to submit a written explanation at a later time, which I hereby expressly reserve. ^[14]

PLDT Division Head Augusto Cotelo (Cotelo) replied on November 3, 1997 that PLDT was deferring action on the request for formal hearing until complainants shall have filed their answers to the charges. Cotelo wrote:

Please submit the notarized explanation that we required in our letters of October 8 & 14, 1997 within forty-eight (48) hours upon receipt of this letter, before we can consider any formal hearing. Please be reminded that we shall consider your failure to comply as a waiver of your right to be heard, and accordingly decide on the charges against you on the basis of the evidence on hand. [15]
(Emphasis ours)

Complainants merely reiterated their request for formal hearing. Thus, Coteló sent them termination notices dated November 19, 1997 which read:

In light of the repeated demands and your consistent failure to provide the required written explanation for the following acts:

On September 30, 1997, while participating in an obviously illegal strike, you physically assaulted Ms. A. Fernando, a Traffic Supervisor. PLDT has proceeded to consider the charges against you for violation of Article 264 of the Labor Code and for serious misconduct.

Based on the available evidence, the written copy of which were duly sent to you, the Company finds you guilty as charged. The Company cannot see any reason why the evidence that the statements we considered were motivated by any purpose other than to bear witness to the truth. We find these evidence direct and positive identification of your participation in and commission of the illegal act charged.

Your act constitutes a just cause for termination under the Labor Code which authorizes an employer to terminate an employee for serious misconduct and which prohibits the commission of any act of violence, coercion or intimidation, or the obstruction of free ingress and egress, during a strike (see Art. 282-A & 264, Labor Code). There is also the additional attendant circumstances that you committed these acts during a strike that was illegally declared and conducted. Your services with Philippine Long Distance Telephone Company are consequently terminated effective upon receipt of this letter. [16]

Complainants filed a Complaint for illegal dismissal and damages with the Labor Arbiter (LA). In a Decision dated July 15, 1998, the LA declared the dismissal of complainants illegal and ordered their reinstatement. [17]

PLDT appealed to the National Labor Relations Commission (NLRC) which, in its January 3, 2000 Decision, reversed and set aside the July 15, 1998 LA Decision, thus:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby SET ASIDE and VACATED and a new one entered DISMISSING the instant complaint.

SO ORDERED. [18]

Complainants filed a Motion for Reconsideration which the NLRC denied in its Resolution dated March 27, 2000. [19]

Thereafter, complainants filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals (CA) but the latter dismissed it in a Decision^[20] dated September 22, 2000, the dispositive portion of which states:

WHEREFORE, premises considered, the petition is DISMISSED and the assailed decision and resolution are affirmed.

SO ORDERED. ^[21]

The Motion for Reconsideration filed by complainants was denied by the CA in its January 11, 2001 Resolution.^[22]

And so, the present Petition for Review where complainants question the CA for its September 22, 2000 Decision and January 11, 2001 Resolution on the sole ground that:

THE COURT OF APPEALS HAS DECIDED THE INSTANT DISPUTE IN A WAY NOT IN ACCORD WITH LAW AND JURISPRUDENCE WHEN IT REFUSED TO CONSIDER THAT THE DISMISSAL OF HEREIN PETITIONNERS WAS MADE IN VIOLATION OF THEIR RIGHT TO PROCEDURAL DUE PROCESS.^[23]

G.R. No. 153584

Benigno Mariano, Jr. (Mariano) was an employee of PLDT Laoag City Sub-Exchange and an officer of MKP. During the September 1997 strike which MKP launched against PLDT, Mariano led a picket of the premises of the PLDT.^[24] In said picket, Melvyn T. Guillermo (Guillermo), a PLDT subscriber, suffered injury and humiliation at the hands of a striker. In his letter to PLDT, Guillermo identified Mariano as the culprit and demanded that the latter be dismissed.^[25]

Acting on the complaint of Guillermo, Tanchico sent Mariano the following notice dated October 13, 1997:

Please explain in writing why you should not be terminated for committing the following act:

On 19 September 1997, at around 11:50 a.m., you verbally and physically assaulted MELVYN T. GUILLERMO, a PLDT subscriber xxx. Attached for your reference as Annex "A" is the letter-complaint of Mr. Guillermo.

This act is illegal and violates express provisions of the Labor Code which among others provide:

ART. 264.

x x x x

(e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress

to or egress from the employer's premises for lawful purposes or obstruct public thoroughfares.

Additionally, as provided in the law, any worker who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.

Your illegal act has seriously prejudiced the company's operations, is a violation of the Code of Conduct and is considered, among others, serious misconduct, which is a ground for termination under Article 282 of the Labor Code.

Kindly submit your notarized explanation to your Division Head within 48 hours from receipt of this Notice. Failure on your part to submit a written explanation within the given period shall constitute a waiver of your right to be heard.^[26]

When Mariano did not reply, Tanchico sent him another notice^[27] dated October 24, 1997, instructing him to submit his notarized explanation otherwise the charges against him will be resolved based on the available evidence.

On November 6, 1997, Mariano wrote Tanchico:

Sir, your memorandum dated 13 October 1997 xxx is a gross violation of my constitutional right as worker and employee to self organization xxx.

Hence, I hereby elect to exercise my right to due process, i.e., to be heard and defend myself in a formal hearing to be set within 5 (FIVE) days from receipt of documents hereinafter requested.

Pursuant to PLDT System Practice #94-016 dated August 10, 1994 (Handling of Administrative Cases), please furnish me a copy of formal (written) complaint filed against me, statement of witness/es and preliminary investigations and/or report/s conducted on the aforesaid incident, if any.

My option to be heard and defend myself in a formal hearing is without prejudice to my right of recourse at a later time which I hereby expressly reserve.^[28]

Hence, Reynaldo Puzon, PLDT Assistant Vice-President for North Luzon, sent Mariano a notice dated November 18, 1997, informing him of the termination of his employment, thus:

xxx You asked in your letter that you be allowed to defend yourself in a formal hearing but you failed to provide a written explanation.

In light of the demands and your failure to provide the required written explanation for the following acts:

On September 19, 1997, at around 11:50 a.m., you verbally and physically assaulted Mr. Melvyn Guillermo, a PLDT subscriber who had just paid his PLDT bill at the company's Laoag Business Office. After