

## FIRST DIVISION

[ G.R. NO. 153144, October 16, 2006 ]

**VMC RURAL ELECTRIC SERVICE COOPERATIVE, INC.,  
PETITIONER, VS. THE HON. COURT OF APPEALS AND JOEL A.  
GUSTILO, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before Us is a Petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure, assailing the Decision<sup>[1]</sup> of the Court of Appeals which reversed the Decision<sup>[2]</sup> of the National Labor Relations Commission (NLRC), affirming the Decision<sup>[3]</sup> of Labor Arbiter Ray Alan T. Drilon, Regional Arbitration Branch No. VI, Bacolod City, which dismissed private respondent's complaint for illegal dismissal and money claims, and held that private respondent was validly terminated, as well as the Resolution dated 19 March 2002 denying petitioner's Motion for Reconsideration and modifying its Decision to include an award for attorney's fees.

Petitioner VMC Rural Electric Service Cooperative, Inc. (VRESCO) is an electric cooperative supplying and selling electricity within the northern part of Negros Occidental, particularly the contiguous cities of Victorias, Cadiz, Escalante, San Carlos, and the municipalities of E.B. Magalona, Manapla, Toboso, and Calatrava. In May 1986, VRESCO hired private respondent Joel A. Gustillo as driver-lineman.

Private respondent himself is an electric consumer serviced by petitioner VRESCO. On 21 February 1995, while private respondent was on official vacation leave, the electric line carrying electricity to his house was allegedly disconnected by Julio Prino, an employee of VRESCO, for non-payment of electric bills. At the time of the alleged disconnection, respondent and his wife were not at their residence and only private respondent's father-in-law was at the house. According to Julio Prino, he went to the house of private respondent upon instruction of the Head of Collection (of VRESCO) to demand payment for the unpaid electric bills, with further instruction to cause the disconnection should the consumer fail to pay upon demand.<sup>[4]</sup>

On 2 March 1995, the inspection team of VRESCO surveying the Manapla area found that there was electricity in the house of private respondent despite the supposed disconnection. This prompted the inspection team to conduct an ocular inspection on the line. It was purportedly discovered that the electrical line was reconnected without official permission from VRESCO. According to the inspection team, the tape covering the spliced ends of the wire leading to private respondent's house were scrapped off and the spliced ends were intentionally bent like a hook and made to touch or connect to the secondary line. This supposed illegal connection caused electrical current to flow directly from the secondary lines to private respondent's house without passing the meter where the alleged disconnection was effected.

After taking pictures of the purported illegal connection and making an inspection report, the inspection team proceeded to inform private respondent's wife of the illegal connection. Private respondent's wife denied any knowledge of said illegal connection; nonetheless, the inspection team gave her a copy of their inspection report.

After the submission of the inspection team of its official report to management, private respondent was sent a memorandum directing him to explain in writing why he should not be dismissed from employment. Subsequently, an Investigating Committee was formed to conduct a formal investigation on the matter. After the proceedings before the Investigating Committee, private respondent was served a written notice of termination on 28 August 1995. In connection with the discovery of the alleged illegal connection, private respondent was charged by the Provincial Prosecutor for pilferage and theft of electricity under Republic Act No. 7832 (Anti-electricity and Electric Power Transmission Lines/Materials Pilferage Act of 1994) before the Regional Trial Court of Silay City.

Aggrieved by his dismissal from employment, private respondent filed a complaint for illegal dismissal with claim for moral and exemplary damages before the Regional Arbitration Branch No. VI, National Labor Relations Commission, Bacolod City. After submission of the parties' respective position papers, a Decision dated 12 January 1998 was rendered by Labor Arbiter Ray Alan T. Drilon dismissing the complaint for lack of merit, to wit:

We are firmly convinced that complainant has committed serious misconduct, if not, fraud and willful breach of trust, to justify his termination. And there is substantial and reasonable basis to support the conclusion that complainant was responsible for the illegal tapping and reconnection of his electrical connection which was officially disconnected for his failure to pay electrical bills. As correctly observed by the respondent, complainant was the only one who stand to benefit from the illegal connection; he has the technical and practical knowledge about electrical works in view of his job; he was potentially capable of making out the electrical connection; actual inspection reveals that the illegal connection was made and deliberately done thru the agency of human will because of the following observable facts: first, the wire from the meter going to the house of the complainant was dead because it was already officially disconnected for non-payment of bills; second, the connecting sides of both wires were spliced together and connected by electrical tapes; third, the spliced ends were so positioned below and away from the live secondary wire; fourth, when found by the inspection team, the spliced ends were already bent and forward into hooks and the electrical tape already scraped off at the lower portion of the hook to make it bare and the wire was raised to come into contact with the secondary live wire. This could not have happened without somebody making and shaping the hook, scraping the electrical tape and making the connection by hooking up the wire.

Despite his strong denial, the Assistant Provincial Prosecutor in his resolution was convinced that there is prima facie evidence to warrant the prosecution of the complainant for violation of RA 7832, the law on Pilferage of Electricity and Theft of Electricity power.

The absence of any direct testimony or eyewitness account pointing to the complainant as the one responsible for the illegal connection is not a strong argument to exculpate him viewed in the light of the strong and positive circumstantial evidence which point to the complainant as the only person who has the motive to commit the act.

In our jurisdiction, proof beyond reasonable doubt is not required. All that is needed is sufficient basis to support the conclusion of loss of trust and confidence.

It has been repeatedly held that an employer could not be legally compelled to continue with the employment of a person who admittedly is guilty of breach of trust towards his employer and whose continuance in the service of the latter is patently inimical to its interests. It has also been held that theft by the employee of the very same property which the employee was entrusted to service is a valid ground for the dismissal of said employee, as he committed the very act which he was supposed to work or guard against.

Complainant's position as line-man should have made him all the more aware that the theft of electric power and pilferage of electricity through illegal tapping is a serious offense which is penalized by law. He should have all the more realized, and definitely he does, that as an employee of the electric cooperative, he was expected to watch and be vigilant against theft of electricity and yet it appears that he was the first to commit the very same act, which he was supposed to look out for.

There is therefore ample basis to justify the termination of complainant's employment and his weak denials cannot overcome the evidence presented against him.

It is sufficient if the employer has reasonable grounds to believe, if not entertain the moral conviction, that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered dismissing the complaint for lack of merit.<sup>[5]</sup>

Private respondent appealed the above-quoted Decision before the Fourth Division of the NLRC, Cebu City, which affirmed the findings of the Labor Arbiter in a Decision dated 22 December 1999. The NLRC dismissed the appeal for lack of merit maintaining that VRESCO was able to carry out its burden of proof that just cause existed for the termination of private respondent. According to the NLRC, there is probable cause that private respondent was guilty of misconduct after it was found that electricity was still flowing into private respondent's house despite the disconnection on 21 February 1995. The NLRC further explained that in the light of the evidence presented by VRESCO and the fact that an Information for violation of Section 2 of Republic Act No. 7832 was filed against private respondent, puts into naught his denial of any knowledge as to who installed the electric supply to his

house. Furthermore, such bare denial is insufficient to overcome VRESCO's substantial evidence to sustain the validity of private respondent's dismissal.

Thereafter, private respondent elevated the case to the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court. On 25 September 2001, the assailed Decision was rendered by the appellate court setting aside the Decision of the Labor Arbiter and ordering the reinstatement of private respondent to his original position with payment of backwages. According to the Court of Appeals:

Public respondent's basis in affirming the decision of the Labor Arbiter is based on the following evidence, to wit: petitioner Gustilo's skill and position as a lineman made him a suspect that he could have climbed and illegally tapped the wire indirectly to his house since he incurred a two-month arrears from his payment of electric bills with private respondent cooperative, and that only petitioner Gustilo and his family benefited from said act.

We are not convinced.

This Court is mindful of the fact that in administrative proceedings like illegal dismissal cases, the guilt of a party need not be shown by proof beyond reasonable doubt. What is required is mere substantial evidence. In this connection, the ruling in *Ang Tibay v. CIR* becomes relevant anew, to wit:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

What remains uncontroverted is that when petitioner Gustilo and his wife arrived at 7:00 p.m. on February 21, 1995, electricity had been restored inside his house. It is noteworthy that petitioner Gustilo, despite being an employee of public respondent cooperative, was not notified of the disconnection. Petitioner was not aware nor did he have an idea, that earlier that day the electric power was cut-off and immediately reconnected when his brother-in-law Bienvenido Clamiano promptly paid, that same afternoon his arrears to Julio Prino, private respondent cooperative's representative. Therefore, petitioner Gustilo was not in the premises of his residence when power was restored. Petitioner Gustilo could not have physically performed the illegal connection alleged by the private respondent cooperative. In addition, on the very same day that the disconnection was effected by Prino, the latter received payment for the arrears amounting to a measly Eight Hundred Five Pesos and Sixty-two centavos (P805.62) and then restored back the power. This act obliterates the defense of the private respondent cooperative that it was petitioner Gustilo who climbed the electric post and illegally connected the electric line. Petitioner Gustilo had no reason to illegally reconnect the electric line since he did not even know that it was disconnected earlier.

Corrolarily, We find that there was no just cause to terminate the employment of petitioner Gustilo. x x x

x x x x

Private respondent cooperative acted on mere conjecture and speculation just because petitioner Gustilo is a lineman and he has the skill to do the act charged. But no evidence or witness could prove the same.

Consequently, there being no just cause for petitioner Gustilo's removal from service, he is entitled to reinstatement with backwages.<sup>[6]</sup>

With the reversal of the NLRC and Labor Arbiter's Decisions, VRESCO filed a Motion for Reconsideration before the appellate court, which was subsequently denied in a Resolution dated 19 March 2002. Hence, the instant Petition for *Certiorari* questioning the Court of Appeals' Decision and Resolution on the ground of grave abuse of discretion.

In a Resolution dated 17 July 2002, the Court dismissed the instant petition for being a wrong mode of appeal, the proper being a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioner VRESCO sought the reconsideration of said Resolution contending that what are raised in the present petition are not questions of law but the grave abuse of discretion amounting to want or excess of jurisdiction committed by the Court of Appeals. VRESCO maintains that the Court of Appeals should not have reviewed the findings of facts of both the Labor Arbiter and the NLRC since the ambit of a petition for *certiorari* under Rule 65 is confined to issues involving the administrative bodies' grave abuse of discretion. Thus, VRESCO contends that the appellate court committed grave abuse of discretion through its unwarranted re-examination and correction of the evidence presented before the labor Arbiter and the NLRC. On 26 March 2003, the Court granted petitioner VRESCO's Motion for Reconsideration and reinstated the instant petition.

For his part, private respondent expounded in his Memorandum that:

Rule 45 of the Rules of Court, as a mode of appeal, cannot be substituted with Rule 65.

It is the humble submission of private respondent that whether petitioner is raising a question of fact or law, or mixed questions of fact and law, the mode of appeal from the Decision of the Court of Appeals would still be Rule 45, and not Rule 65.

Even assuming arguendo that petitioner erroneously captioned its pleading under Rule 65 instead of Rule 45, still the present petition is dismissible outright for being **filed beyond the 15-day period to file an appeal**.

x x x x

Moreover, private respondent Gustilo reiterates his posture that he was illegally dismissed on the following grounds:

**FIRST.** The alleged infraction committed by private respondent is COMPLETELY UNFOUNDED, BASELESS, and MALICIOUS. As can be borne