

THIRD DIVISION

[G.R. NO. 154078, May 06, 2005]

**EDGARDO D. MILLARES, PETITIONER, VS. PHILIPPINE LONG
DISTANCE TELEPHONE CO., INC. AND AMBROSIO HUGO,
RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For resolution is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated April 16, 2002 and the Resolution^[2] dated June 26, 2002 rendered by the Court of Appeals in CA-G.R. SP No. 66611, entitled "*Edgardo D. Millares vs. National Labor Relations Commission, Philippine Long Distance Telephone Co., Inc. and Ambrosio Hugo.*"

The facts as borne by the records are:

Sometime in May, 1989, Edgardo D. Millares, *petitioner*, was employed by the Philippine Long Distance Telephone Co., Inc. (PLDT), *respondent company*, as cable splicer helper. At the time of his dismissal from the service, he was a junior cable splicer at the OPSIM II, Tondo Exchange, receiving a monthly salary of P7,300.00.

On August 8, 1995, Ambrosio B. Hugo, Manager of respondent company's Tondo Exchange, received a complaint from Celestina Ignacio, a prospective telephone subscriber residing at 91-R Mahomas Compound, Tondo, Manila. She reported that on May 10, 1995, petitioner, for a service fee of P3,800.00, promised to install a telephone line at her residence but that he failed to do so; and that despite her demand, he refused to return to her said amount.

During the clarificatory hearing conducted by respondent company on August 19, 1995, petitioner denied that he knew Celestina Ignacio and that he received P3,800.00 from her. But eventually, he admitted his offense and promised to repay her the amount.

Thereafter, respondent company sent him two (2) separate inter-office memoranda (IOM) dated August 28, 1995 and September 6, 1995, charging him with willful violation of company rules and regulations and directing him to submit a written explanation. However, he refused and remained obstinate.

Meantime, on September 26, 1995, petitioner paid Celestina the amount of P3,800.00. Consequently, she executed a written retraction stating that she was forced to file a complaint against petitioner when he failed to pay his loan of P3,800.00.

Respondent company found petitioner guilty of extortion and serious misconduct.

Consequently, he was dismissed from the service effective July 19, 1996.

Aggrieved, petitioner filed with the Labor Arbiter a complaint for illegal dismissal and damages against respondent and Ambrosio B. Hugo, docketed as NLRC NCR Case No. 00-10-06367-96.

In due course, the Labor Arbiter rendered a Decision dated April 30, 1999 holding that petitioner was illegally dismissed from employment and ordering respondent company to reinstate him to his former position and to pay him P263,901.08 representing his backwages, allowances and other benefits. The dispositive portion of the Decision reads:

"WHEREFORE, above premises duly considered, we find the dismissal of complainant as illegal.

Accordingly, respondent PLDT is hereby ordered to immediately reinstate complainant to his position as Junior Cable Splicer without loss of seniority and other privileges and to pay his full backwages inclusive of allowances and other benefits from the time of his dismissal on July 19, 1996 up to the date of his actual reinstatement, the award being tentatively computed as follows:

1. Backwages:

7/19/96 – 4/30/99 = 33.37 months	
P 7,300.00 x 33.37	P243,601.00

2. 13th Month Pay:

1/12 of P243,601.00	20,300.08

	P263,901.08

The claim for damages is dismissed for lack of merit.

Individual respondent Ambrosio Hugo is absolved of any liability for he only acted in his official capacity as Manager.

SO ORDERED."

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated September 29, 2000 reversing the Arbiter's assailed Decision, thus:

"We find the instant appeal to be impressed with merit.

The act of soliciting money from a prospective telephone subscriber in exchange for an expeditious installation of telephone line is inherently unlawful and immoral, regardless of whether the solicitor has the capacity to make good his undertaking or not for as long as he is an employee of the telephone company, as what obtained in the case at bar. It constitutes grave misconduct by all standards, a just cause for

termination under Article 281 of the Labor Code.

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It is reversible error to rely heavily on the recantation made by Mrs. Ignacio. From all indications, the belated change of heart of Mrs. Ignacio was an afterthought purposely designed to facilitate the defense of appellee after she received full payment from him. Her recantation did not obliterate the liability of the appellee in the light of the investigation report of Mr. Reyes which deserves and should have been accorded full faith and credit being the result of an impartial and honest to goodness investigation conducted based on Mrs. Ignacio's letter-complaint. To honor the recantation is tantamount to condoning mockery of the law. At most, it may be treated as an instrument of falsehood, hence, must be ignored.

We likewise decline to yield to the claim of denial of due process. The issuance of the twin Inter Office Memoranda (IOM) dated August 28 and September 6, 1995, both of which herein appellee have refused to honor, readily impeach the veracity of this particular issue. These IOM's contained a detailed information relevant to the complaint of Mrs. Ignacio which are sufficient to apprise the appellee of the nature of the accusation against him. He was given the opportunity to explain in writing his side of the controversy by virtue of those IOM's but he opted to remain silent. Due process does not require actual hearing but mere opportunity to be heard.

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WHEREFORE, the decision appealed from is REVERSED and SET ASIDE. The appeal is GRANTED. The dismissal of complainant is affirmed.

SO ORDERED."

Petitioner then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated May 31, 2001. Hence, he filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 66611.

On April 16, 2002, the Appellate Court rendered a Decision affirming the assailed Decision of the NLRC, thus:

"The pivotal question is whether or not the NLRC gravely abused its discretion in finding that petitioner was validly terminated for a just cause.

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Petitioner was given every opportunity to defend himself. He was asked to submit a written explanation why he should not be held liable for violating company regulations by negotiating with a subscriber for the facilitation of telephone installation in consideration of the amount of P3,800.00. IOM was given to him not just once but twice before he was