

SECOND DIVISION

[G.R. NO. 160404, June 08, 2005]

**ROGELIO L. TOLENTINO, PETITIONER, VS. PHILIPPINE LONG
DISTANCE TELEPHONE COMPANY, INC. AND ERNESTO V.
VILLAREAL, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 64234 which affirmed the Resolution^[2] of the National Labor Relations Commission (NLRC) finding that the petitioner was legally dismissed; hence, not entitled to be reinstated to his former position without loss of seniority rights and privileges, as well as the payment of full backwages.

Rogelio L. Tolentino, a resident of Lucena City, had been employed by the Philippine Long Distance Telephone Company, Inc. (PLDT) since November 3, 1980. The PLDT sponsored his study-training as a digital electronic switching operator and maintenance technician in Munich, Germany. He was responsible for the establishment of the Mauban Sub-Exchange at Mauban, Quezon. He had been given no less than 28 achievement awards. As of April 15, 1999, he was a management employee occupying the position of Testboard Man II JG-5 at the PLDT Lucena Exchange in Lucena, Quezon.

After almost 19 years of employment with the PLDT, Tolentino received a Memorandum on April 15, 1999 from Ernesto V. Villareal, the Senior Manager of the PLDT at its Lucena Exchange dismissing him effective April 16, 1999 for serious misconduct and loss of trust and confidence, more specifically for:

1. Cash shortage in the amount of **THIRTY-SIX THOUSAND TWO HUNDRED SIXTY-EIGHT PESOS and 29/100 (P36,268.29)** and unaccounted change fund amounting to **ONE THOUSAND PESOS (P1,000.00)** which took place in our Tayabas Sub-Exchange on **May 25 & May 26, 1998.**
2. Illegal jumpering of TOBS Line Numbers 042-714300 and 042-712273 and the corresponding pairs at DP 1356 Cable 5E which took place at our Lucena Exchange and was discovered sometime on **May 25, 1998.** ^[3]

On July 14, 1999, Tolentino filed a complaint for illegal dismissal against the PLDT and Villareal before the NLRC, and sought his reinstatement, backwages, moral damages and attorney's fees.^[4]

The Case for the Complainant

The complainant alleged that there was no factual and legal basis for his dismissal by the respondent PLDT from his employment. Worse, the complainant insists that his former employer denied him his right to due process. He posits that the charges against him were concocted by the respondents in connivance with its employees, Ferrer G. Punto, Pedrito Oblea, Ricardo Jimenez, Jr. and Rosalito M. Quismundo, solely because he executed, on April 29, 1998, an affidavit in favor of a co-worker, Saludin Mijares, who was charged by the respondent PLDT for stealing empty cable reels. In the said affidavit, he alleged that Villareal allowed its employees to take and bring home empty cable reels.^[5] The alleged shortage took place after his recall to the Lucena Exchange. The complainant alleged that the jumper was found at the Lucena Exchange at a time when he was already assigned at the Tayabas Sub-Exchange. He could not have committed any tapping because his key access to the MDF Room had long been surrendered; one of the drop wires was open-continuity, while the other was for his Telephone Line 714-567 which had already been disconnected. Moreover, the complainant averred, PLDT linemen installed the telephone cable to create a valid ground for his dismissal.

The Case for the Respondents

It appears that on May 1, 1998, Villareal transferred the complainant as Acting Coordinator of the PLDT Tayabas Sub-Exchange in Tayabas, Quezon, replacing Amado Cabaña who left the company on April 30, 1998. The complainant assumed office on May 1, 1998 and took custody of the safety digital vault in the sub-station as well as the contents thereof. As an acting coordinator, the complainant was tasked, among others, to receive collections from PLDT customers, record the said collections in the office columnar book, and keep the same in the vault.

On May 23, 1998, a Saturday afternoon, Switching Engineer Pedro Oblea, along with other personnel were cleaning up and transferring their Toll On-Line Billing System (TOBS) at the Lucena Exchange. Oblea discovered that Booths 3 and 4 (TOBS Line Numbers 042-714300 and 042-712273) had no dial tone and were in use. He was dumbfounded because based on the cable records, Booths 3 and 4 had no assigned subscribers and were still open for applicants. Noticing that the dial tones assigned to Booths 3 and 4 were illegally connected, Oblea decided to deactivate the illegal tapping and to maintain the illegal jumper to find out who would remove the same. However, the jumper was still in place as of 8:00 p.m. When Oblea inspected the jumper at 1:00 p.m. the next day, May 25, 1998, the jumper wires had already been removed. Upon inquiry from the security guard, Oblea learned that the complainant had earlier arrived at the exchange at 10:00 a.m. and left at 10:20 a.m.^[6] It was surmised that since the complainant was the only one who visited the MDF office, he was the culprit.^[7]

Oblea reported the matter to Villareal, who referred the matter to the Quality Control and Inspection (QCI) Division at the head office for investigation. Quismundo and Jimenez were assigned to conduct the investigation.^[8]

Villareal decided to replace the complainant with Punto and, on May 26, 1998, issued a Memorandum to the complainant recalling the latter to the Lucena Exchange and directing him to report directly to Patricio C. Esquieres, Switching Engineer S-2, for further instruction.^[9] The complainant was also ordered *via* a

Memo of even date to turn over all the keys of the Tayabas Sub-Exchange to Punto.
[10]

Punto assumed office at the sub-exchange on May 27, 1998 in the morning. He then asked the complainant to turn over the keys to the lockers and the vault, but the complainant refused to do so. Punto was able to ascertain from Cabaña the number combination of the vault. The two opened the vault and discovered that based on the company columnar book, the total collection for May 25 and 26, 1998 was P57,728.29; however, Punto found only P21,460.00 in the vault, P36,268.29 short of the total collection which Tolentino was supposed to keep therein.^[11] Punto reported the matter to Remegio Co, the Assistant for Operations in the Lucena Exchange. Both of them counted the money anew and confirmed the shortage. Punto executed an affidavit on May 29, 1998, narrating his discovery and the amount of the shortage.^[12]

In the meantime, on May 26, 1998, Quismundo and Jimenez, in the company of the complainant, conducted an ocular inspection of the place where Oblea found the jumper; they were able to confirm that the jumper wires had already been removed. They also found that the jacketed wires were used and tapped at DP 1356 CA 5E (Direct Feed/Rehab. Cable), approximately one block away from the residence of the complainant.^[13] They also conducted an ocular inspection of the complainant's house in Lucena City in the presence of the latter, and found that cable pairs and corresponding drop wires terminated at the said residence. They also found one protector, two inside-wirings, and a telephone set. The complainant explained that one of the drop wires was for his telephone line bearing Number 714-567 which was already disconnected.^[14]

Jimenez and Quismundo also verified that from May 5, 1998 to May 22, 1998, numerous calls to different countries were made through telephone line Number 712-273 between 8:00 a.m. to 5:00 p.m. On June 1, 1998, they submitted an Inter-Office Memorandum containing their findings and recommendation.^[15]

On June 4, 1998, the complainant received a Memorandum from Villareal, directing him to explain in writing within 72 hours why no disciplinary action should be taken against him for the shortage of P36,268.29, and the unaccounted charge fund of P1,000.00, as per the findings of the Provincial Audit Team.^[16] A copy of the findings of the said audit team was appended to the Memorandum. He was also informed that he was under preventive suspension effective June 5, 1998 pending the resolution of the case against him.

On June 8, 1998, Tolentino submitted his written explanation to the charge of collection shortage. He vehemently denied the charge. He claimed that he received the collections on May 25 and 26, 1998 from Cristy Ella, the casual worker of the Tayabas Exchange on May 26, 1998. He placed the same in the vault in the presence of other employees. He averred that when shown the Memorandum of Villareal recalling him and designating Punto in his place, he turned over the keys and the number combination of the vault to Punto. When he learned of Villareal's Memorandum, he talked to the latter but was told to report to the Lucena Exchange and to prepare. Tolentino insisted that he was the victim and not the culprit.^[17] He lamented that after serving the company for many years, he had to be charged for

shortage of funds.

On August 28, 1998, an investigation was conducted by James D. Mallari in the presence of union representatives on the matter of the tapping of TOBS Telephone Lines 714-300 and 712-273. The complainant was asked regarding his whereabouts on May 24 and 26, 1998, and he replied, based on the Vehicle Security Registry of the Lucena Exchange, that he was at the Tayabas Sub-Exchange on May 24, 1998 at 10:15 a.m. and left 10:20 a.m. He claimed that he did not enter the exchange. The complainant added that with reference to the dropwires, the same were covered by "S.O." and claimed that he did not commit any wrongdoing.^[18] Without any further investigation, the complainant received, on March 15, 1999, a Memorandum from Villareal informing him of the Report Recommendation of Jimenez and Quismundo, and requiring him to explain the findings contained therein within 72 hours.^[19] The complainant complied and submitted his explanation on March 17, 1999, quoted, *infra*, to wit:

Until now, for almost a year, I can't think of the possibility which made people on my side then, believed and turned their back on me. But sad to say this negative issues against me exists only in their mind. How can I be responsible for the jumpering or TOBS line tapping! My key access to the MDF room was surrendered upon security guard asking long before; I am aware that TOBS line during that period is being re-arranged due to my BOP daily transmittal for Tayabas at Lucena Commercial which ended at around 6:30pm; as far as I'm concerned with the two dropwires stringing to our house, one is open-continuity troubled and the other is for the existing telephone which was TD then, and with Cable 10 direct-feed assignment not on said DP 1356 Cable 5E to which, if true, was maneuver at outside terminal with multiple access, work which I am not capable of. Not even a single step in participation to this predicament would satisfy my availability considering my stature during those period.

Truth will only be my shield to this spear (*sic*). In behalf of my family, together all throughout, we'll challenge this life's trial and most with empty stomach, we will prove to the company we are one and will always be ... with you.^[20]

On April 17, 2000, the Labor Arbiter rendered judgment in favor of Tolentino. The *fallo* of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant ROGELIO L. TOLENTINO, and against the respondents PHILIPPINES LONG DISTANCE CO., (PLDT) and/or ERNESTO V. VILLAREAL, as follows:

- a) Declaring the dismissal of complainant to be illegal;
- b) Ordering respondents to pay complainant of full backwages inclusive of allowances, and other benefits or their monetary equivalent computed April 16, 1999, up to the time of this decision;
- c) Ordering respondents to immediately reinstate

complainant to his former position without loss of seniority rights or other privileges, or at the option of the respondent, payroll reinstatement.

All other charges and claims are DISMISSED for lack of merit.

SO ORDERED.^[21]

The Labor Arbiter declared that the respondents failed to adduce substantial evidence to prove that Tolentino was dismissed for a lawful cause. On the charge for shortages, the Labor Arbiter declared:

... Likewise, there is no evidence on record whatsoever that would cast an undeniable postulation that complainant had done such putative acts in a willful manner, or that there was wrongful intent. Contrarily, what we did not fail to see was the suasion that respondents' charges of cash shortages and illegal jumpering against complainant rest on speculations and conjectures.

On the charges for installation of a jumper and for illegal tapping, the Labor Arbiter declared that:

Secondly, the Vehicle Security Registry shows that on May 24, 1998, at least five (5) persons were listed therein, but which fact again was contrary to the allegation contained in the Inter-Office Memo dated June 1, 1998 executed by Engineers Ricardo C. Jimenez, Jr. and Rosalito M. Quismundo that "[i]t is alleged that certain Mr. Ding Tolentino, a frameman, was the one who removed the terminations since he was the only one who visited the MDF Office at 10:15am-10:20am of May 24, 1998 (sun.), as recorded in security registry." Incidentally, nowhere in the records was the testimony to Security Guard Vicente R. Quenita, who could have substantiated the report, as it appears that he was the one who accomplished the security registry.

The respondents appealed the decision to the NLRC which rendered judgment on December 15, 2000 setting aside the appealed decision. The NLRC held that there were just causes for the dismissal of the complainant-appellee, based on the affidavit of Punto, the report of Oblea, the June 1, 1999 Report of Jimenez and Quismundo, as well as the Security Guard Logbook for May 25, 1998 and the explanation of the complainant-appellee:

Initially, on 29 May 1998, Coordinator Ferrer G. Punto opened PLDT's office vault at Tayabas Sub-Exchange, made a reconciliation of the collections for 22 and 23 May 1998 with office records and discovered a cash shortage of P36,268.29, in the presence of Security Guard Danilo Verano and casual Employee Cristy Ella. The fact that Complainant-Appellee was the accountable officer of the collections kept in the vault positively links him to the cash shortage. This fact is substantially evidenced by Mr. Punto's Sworn Statement dated 29 May 1998 annexed to Respondents-Appellants' Position Paper.

Likewise, on 23 May 1998, Switching Engineer Pedrito C. Oblea, upon close inspection, discovered that PLDT's two (2) telephones of Booths 3 and 4 had illegal jumpers. Tracing the telephone wires used in jumping,