

SECOND DIVISION

[G.R. Nos. 164684-85, November 11, 2005]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,
PETITIONER, VS. ANTONIO Q. TIAMSON, RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Being questioned in this petition for review on *certiorari* is the Decision^[1] of the Court of Appeals (CA) dated April 16, 2004 in CA-G.R. SP Nos. 51855 and 52247, and the Resolution dated July 27, 2004 denying the motion for reconsideration thereof.

On April 16, 1986, the Philippine Long Distance Telephone Company, Inc. (PLDT) employed Antonio Q. Tiamson as a Radio Technician II (JG4). He was assigned at the company's North Luzon Toll Network Division, Clark Transmission Maintenance Center (Clark-TMC) in Pampanga. After the expiration of the probationary period, he was extended regular appointment for the same position.

In a Letter^[2] dated July 29, 1994, Anthony Dy Dee, the President of the Angeles City Telephone System and Datelcom Corporation, informed PLDT of his complaint against its employees assigned in Clark-TMC, stating therein that he suspected them to be in cohorts with the local subscribers in effecting illegal overseas calls. Acting on the letter-complaint, PLDT immediately dispatched a team of inspectors and investigators from its Quality Control and Inspection Department (QCID) and Security Division to conduct surveillance operations in the area. On August 2, 1994, Vidal Busa, a radio technician, was caught *in flagrante delicto* while monitoring an illegally connected overseas call using the radio facilities of the company's Clark-TMC Radio Room.^[3]

The QCID, likewise, requested the Switching Network Division at PLDT's Sampaloc National Toll Center to print the CAMA^[4] tape recording of all long distance calls originating from the PLDT Clark Exchange Traffic for the period of July 29 to August 2, 1994. The printout revealed that a total of 469 fraudulent overseas and local calls were connected and completed at the PLDT Clark-TMC Radio Room for the said period. Three overseas calls to Saudi Arabia made on August 1, 1994 were imputed to Tiamson who appeared to be on duty from 10:00 p.m. to 6:00 a.m.^[5]

The QCID conducted its initial investigation on August 2, 1994, where Busa readily admitted his involvement in the illegal connection of overseas calls. In his sworn statement, he specifically named Arnel Cayan, his Shift Supervisor, Antonio Tiamson and Paul Cruzada, both radio technicians, as the other employees actively engaged in the illegal practice. He stated that he knew about this because whenever he would relieve them from their tour of duty, he would see that the circuit was

engaged.^[6]

On August 3, 1994, during a confrontation between Busa and Tiamson, the former reiterated his earlier statement that the latter was involved in the illegal act of connecting overseas calls.^[7] For his part, Tiamson admitted that he knew how to make an overseas call using the company's radio equipment and that he learned how to do so through hands-on experimentation and intensive reading of operating manuals. He, however, denied having actually made an illegal connection of overseas calls. He declared that he knew of the wrongdoings of Busa and even disconnected the latter's overseas telephone calls whenever he (Tiamson) was on duty. Tiamson claimed that he failed to report the actuations of Busa because the latter was his supervisor and was afraid to antagonize him.^[8]

On August 5, 1994, there was another confrontation proceeding between Busa, Tiamson, Cruzada and Cayan. In their sworn statements, Busa and Cruzada testified that, sometimes when they relieve Cayan from his duty, they would discover an illegal connection and an on-going conversation in the line.^[9] Tiamson maintained that he disconnected the illegal calls of Busa, while Cayan implicated his subordinates.

The QCID recommended that administrative action for serious misconduct be instituted against the said employees. Consequently, the company issued to Tiamson an Inter-Office Memorandum dated August 12, 1994, charging him with violation of the company's disciplinary rules and regulations. He was, likewise, required to explain within 72 hours why he should not be dismissed, thus:

Investigation of the complaint indicated hereunder disclosed that:

1. Complainant – Mr. Anthony Dy, President DATELCOM Corp.
2. The decrease of toll revenue for DATELCOM Angeles/Mabalacat Exchange due to fraudulent overseas call scam was complained and notified by Mr. A. Dy to Mrs. B. G. Gendrano – Clark Exchange Division Head on July 26, 1994.
3. The complainant requested assistance to NBI and PLDT QCI to apprehend the personnel responsible for the illegal connection.
4. A clue was provided by Mr. Anthony Dy that the illegal overseas call was coming from Clark-TMC through taped and equipment monitoring.
5. In the QCI investigation, you were implicated by your fellow Radio Technician Mr. Vidal C. Busa as involved in the case. You admitted you know how to operate the Lenkurt 26600 Signalling Test Set to initiate a call but denied doing it for personal gain or interest but you failed to report the anomaly to your superior as one of your supervisors was involved in the fraudulent case.

The acts described above are in violation of the Company's rules and regulations and is punishable with dismissal from the service.

In view of the above, please explain in writing within 72 hours from receipt hereof why you should not be dismissed from the service for the acts described above. You may elect to be heard if you so desire. ...^[10]

Meanwhile, Tiamson was placed under preventive suspension on August 16, 1994.^[11]

On August 18, 1994, Tiamson submitted his written explanation denying any participation in the illegal activities at PLDT's Clark-TMC. He averred that Busa's statement against him was malicious and untrue and that he was the one relieving Busa from his tour of duty and not the other way around. He insisted that on August 1, 1994, his tour of duty was from 6:00 a.m. to 10:00 p.m.^[12]

PLDT found his explanation unsatisfactory and inadequate in substance. Thus, it issued an Inter-Office Memo^[13] dated October 5, 1994, terminating Tiamson's employment effective October 7, 1994 on the ground of serious misconduct and/or fraud.

Tiamson filed a complaint against PLDT for illegal suspension, illegal dismissal, damages and other monetary claims, docketed as NLRC Case No. RAB-III-07-6414-95.

The Labor Arbiter resolved the case in favor of Tiamson:

WHEREFORE, premises considered, judgment is hereby rendered declaring respondent PLDT guilty of illegal dismissal and it is hereby ordered to reinstate complainant to his former position without loss of seniority rights and with full backwages reckoned from the date of his dismissal up to his actual or payroll reinstatement at the option of the respondent, which as of this date is in the amount of Three Hundred Seventy-Two Thousand Eight Hundred Twenty-Five and 32/100 (P372,825.32) Pesos.

Further, respondent is ordered to pay complainant attorney's fee in the amount of Thirty-Seven Thousand Two Hundred Eighty-Two and 53/100 (P37,282.53) Pesos.

The claims for moral and exemplary damages are dismissed for lack of evidence.

SO ORDERED.^[14]

The Labor Arbiter declared that the complainant could not have made any illegal connection on August 1, 1994 from 10:00 p.m. to 6:00 a.m. because he was off-duty.

PLDT elevated the case to the National Labor Relations Commission (NLRC). On August 31, 1998, the NLRC ruled that while there was just cause for Tiamson's dismissal, the penalty of dismissal was too harsh. Hence, the NLRC ordered that Tiamson be reinstated to his former position without loss of seniority rights, but without backwages.^[15]

Both parties moved to reconsider the decision, but the NLRC denied the motions for lack of merit.^[16]

PLDT filed a petition for *certiorari* before the CA, assailing the NLRC's order of reinstatement despite a categorical finding that Tiamson was guilty of illegal connection of overseas calls. The petition was docketed as CA-G.R. SP No. 51855. Tiamson filed a similar petition, assailing the deletion of the award of backwages and attorney's fees. This was docketed as CA-G.R. SP No. 52247. The CA, thereafter, ordered the consolidation of the two petitions.

On April 16, 2004, the CA reinstated the decision of the Labor Arbiter, thus:

WHEREFORE, the petition by the PLDT under CA-G.R. SP No. 51855 is **DENIED DUE COURSE** and **DISMISSED** while the petition by Antonio Tiamson under CA-G.R. SP No. 52247 is **GIVEN DUE COURSE** and **GRANTED**, and the Decision dated October 15, 1997 of the Labor Arbiter which was set aside by the NLRC, is hereby REINSTATED in its fullness and without modifications.

SO ORDERED.^[17]

The CA held that Busa's sworn statement was not worthy of credence, a mere afterthought, the contents of which were seriously flawed. The appellate court found it difficult to believe Busa's assertion that, on several occasions when he came to relieve the respondent, a circuit was in use which the latter would turn off before leaving. In this regard, the appellate court noted that Busa's work shift preceded that of the respondent, such that it would be impossible for him to see the respondent make an illegal connection.^[18]

The CA likewise opined that the respondent was denied due process when he was not apprised of nor given the opportunity to confute the charge that during his duty on August 1, 1994, three overseas calls to Saudi Arabia were recorded in the CAMA tape.^[19]

The petitioner timely filed a motion for reconsideration, which the CA denied in its Resolution^[20] dated July 27, 2004.

The petitioner now comes before this Court, alleging that:

... THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN REINSTATING THE DECISION OF THE ARBITER A QUO AS SAID DECISION WAS NOT IN ACCORD WITH LAW AND CONTRARY TO THE EVIDENCE ON RECORD.^[21]

The petitioner submits that it has presented more than substantial evidence to prove that the respondent was involved in the illegal connection of overseas calls. The petitioner avers that the CA erred in holding that Busa's sworn statement was not credible. According to the CA, it would have been impossible for Busa to see the respondent making an illegal connection since his tour of duty preceded that of the respondent. The petitioner, however, asserts that there was a rotation of the employees' tour of duty such that, at times, it was Busa who would take over from the respondent; hence, Busa had the occasion to personally see the respondent

connecting illegal calls. In support of this, the petitioner proffers the copy of logbook entries from July 13 to August 3, 1994, which was attached to its Memorandum of Appeal filed with the NLRC. The logbook shows that on several occasions, it was Busa who took over from the respondent.^[22]

The petitioner further asserts that the respondent failed to show that Busa was actuated and impelled by improper motive and bad faith in executing his sworn statement.^[23] The records show that Busa, from the very start, had categorically and unequivocally named the respondent as one of those engaged in the illegal connection of overseas calls.^[24] Moreover, Busa's sworn statement had been corroborated by the printout of the CAMA tapes (which disclosed that during the respondent's August 1, 1994 duty, three fraudulent calls to Saudi Arabia were illegally made),^[25] as well as Cayanan's sworn statement implicating the respondent.^[26]

The petitioner submits that the respondent's offense was serious in character and merits the penalty of dismissal from employment. It contends that the respondent was accorded the full measure of due process before he was dismissed: he was given a notice which apprised him of the charge against him and required him to explain why he should not be dismissed, and later, a notice of termination. The petitioner claims that the Labor Code simply requires that the employee be given a written notice containing a statement of the causes of termination. It insists that the printout of the recording of the CAMA tapes showing that three illegal connections were made on August 1, 1994 is a mere evidentiary matter that need not be mentioned in the notice.^[27]

For his part, the respondent avers that Busa's statement was uncorroborated and hearsay for lack of cross-examination. He insists that Busa could not have seen him make illegal connections since the latter's shift came before his.^[28]

The petitioner replies that an affidavit may be admissible even if the witness is not presented during trial because technical rules are not strictly followed in proceedings before the Labor Arbiter and the NLRC.^[29]

The petition has no merit.

It is a settled rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality.^[30] Moreover, in a petition for review on *certiorari* under Rule 45, the Supreme Court reviews only errors of law and not errors of facts.^[31] However, where there is divergence in the findings and conclusions of the NLRC, on the one hand, from those of the Labor Arbiter and the Court of Appeals, on the other, the Court is constrained to examine the evidence.^[32]

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for just and valid cause; failure to do so would necessarily mean that the dismissal was illegal.^[33] The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of