

## SECOND DIVISION

**[ G.R. No. 106947, February 11, 1999 ]**

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,  
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,  
AND ENRIQUE GABRIEL, RESPONDENTS.**

### D E C I S I O N

#### **QUISUMBING, J.:**

This petition for *certiorari* under Rule 65 of the Rules of Court assails the Resolution<sup>[1]</sup> dated June 29, 1992 of the National Labor Relations Commission ordering petitioner to reinstate private respondent, Enrique Gabriel, "with full backwages, benefits, and proportionate privileges"; as well as the Order<sup>[2]</sup> dated August 19, 1992, denying the motion for reconsideration. The challenged ruling reversed the decision<sup>[3]</sup> of the Labor Arbiter dated May 3, 1991, which dismissed the complaint for lack of merit.

The facts of the case are as follows:

Private respondent, Enrique Gabriel, was employed by petitioner Philippine Long Distance Telephone Company (PLDT), as a foreman in Dansalan Area 2, M-3. As a supervisor, his territorial responsibility covered Camp Crame's First to 20th Avenues and portions of Project 4, all in Quezon City.

On September 5, 1989, Enrique Gabriel ordered Medel Mercado, an installer, to set-up two telephone units at Unit R, Facilities Center Building, located at Shaw Boulevard, Mandaluyong, Metro Manila. The telephone numbers of the units were 78-88-41 and 79-98-46, in favor of a certain Mr. Marlon Aquino.

On October 16, 1989, private respondent, again ordered Juancho Jocson, another installer, to set-up additional units with telephone numbers 78-40-70 and 79-40-98 for the same subscriber.

Later, both installation activities were investigated because (a) the Facilities Center Building had no entrance cable facilities or conduit wires for telephone connection, (b) Mandaluyong was not within respondent's area of jurisdiction, and (c) installers Mercado and Jocson were not under his direct supervision.

In the administrative investigation conducted by PLDT, where a confrontation between private respondent and installers Mercado and Jocson took place, private respondent tried to explain his side to clear certain issues taken against him, adding that his intention in ordering the installation of the telephone units was to provide customer satisfaction. However, on February 1, 1990, the petitioner still required the private respondent to submit a written report of the incident. He submitted his explanation and, although admitting the responsibility of his actions, reiterated his

rationalization that his sole intention was to serve the customer, thereby earning goodwill for the company.

On September 3, 1990, private respondent was dismissed from employment on the ground that he committed grave misconduct, breach of trust, and violations of company rules and regulations when he ordered the unwarranted installation activities.

On September 6, 1990, private respondent, as complainant below filed an illegal dismissal case<sup>[4]</sup> against herein petitioner, PLDT.

On May 3, 1991, the Labor Arbiter rendered his decision finding the dismissal justified, viz.:

"The complainant's action were irregular because there was no entrance cable facilities or conduit wires in the said building during those times for telephone connections. Nonetheless, to achieve his purpose, the complainant himself secured OK numbers for the telephones and performed call back at the panel box representing himself to the Dispatch Clerk as the subscriber. He then instructed Medel and Joscon (sic) to turnover the telephone instruments to him and made them to enter in the Consumption and Work Report that the telephone units have been actually installed. Such proddings for misrepresentation has placed Medel's and Joscon's (sic) employment in jeopardy of termination.

The complainant's infractions were aggravated by the fact that his intervention in the works of the two (2) installers were made in Mandaluyong, which area, is not within the sphere of his assignment and authority. x x x

The defense he put up, that his actuations did not involve any monetary considerations is unavailing. The infractions he committed merited disciplinary action. Mere violation of the company rules need not be qualified with the involvement of money considerations. Existing company regulations were defied, his authority was exceeded which even put to risk the employment and livelihood of the two (2) workers whom he forced to perform chores contrary to company rules and against their will. The tendency to commit infraction against the company has been demonstrated not only once, but twice, in favor of one subscriber has, actually, no doubt made him unworthy to stay further on his job.

x x x x x x x x

WHEREFORE, the respondent is hereby ordered to pay the complainant his proportionate 13th month pay for the year 1989. The rest of the claims, including the complaint for illegal dismissal, are dismissed for lack of merit.

SO ORDERED."<sup>[5]</sup>

Private respondent appealed to the public respondent, National Labor Relations Commission. The NLRC reversed the decision of the labor arbiter, *to wit.*:

"Simply put, what we have here is a situation where a concerned supervisor whose help was sought by an impatient subscriber, conscious of the seemingly irremediable handicap in respondent's coming to par with the consuming public's demands particularly in the field of telephone installation, accedes to the request for help and thus contributed whatever facilitation help he could, after all as what complainant afore-stressed (an explanation overlooked by the Labor Arbiter), the subject telephones could only be `installed after the documents of approval were issued by PLDT,' mechanics for which approval while certainly beyond his means and capacity, nonetheless serve as effective check against real, and not merely imaginary, irregularities PLDT personnel may conceive.

All told, respondent's charge cannot even qualify as misconduct on the part of complainant. That the respondent used as ground for terminating complainant's service `serious misconduct' (Art. 282 [a] of Labor Code), a matter far from what we see on record, we cannot but reverse the decision of the Labor Arbiter on this point.

Accordingly, the decision of the Labor Arbiter insofar only as concerns the issue of dismissal is hereby set aside. The respondent is thus directed to reinstate complainant to his position held as at the time of the complained dismissal, with full backwages, benefits and proportionate privileges.

SO ORDERED"<sup>[6]</sup>

Petitioner's motion for reconsideration was denied by the NLRC in an Order dated August 19, 1992. Thus, PLDT elevated the case to this Court, raising one basic question:

WHETHER OR NOT GABRIEL IS GUILTY OF SERIOUS MISCONDUCT AND/OR BREACH OF TRUST ANENT THE IRREGULAR INSTALLATION OF THE AFORE-NUMBERED TELEPHONES.

However, more appropriately phrased for our consideration by virtue of Rule 65, the sole issue to be resolved here is whether the public respondent, NLRC, abused its discretion amounting to lack or excess of jurisdiction in reversing the decision of the Labor Arbiter, and ordering the reinstatement of private respondent with full backwages and other benefits.

Petitioner anchors the validity of private respondent's dismissal on two grounds: (1) his acts constituted breach of trust when he intervened in the anomalous installation of four telephone lines, and (2) he violated the standard operating procedures (SOP) on telephone installation activities.

At the outset, it must be recalled that the basic requisite for dismissal on the ground of loss of confidence is that the employee concerned must be one holding a position of trust and confidence.<sup>[7]</sup> However, loss of confidence must not be indiscriminately used as a shield by the employer against a claim that the dismissal of an employee was arbitrary.<sup>[8]</sup>

Likewise, it must be noted that willful defiance of company rules must be