

SECOND DIVISION

[G.R. No. 119509, February 11, 1999]

**ENRIQUE A. ARBOLEDA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND MANILA ELECTRIC COMPANY,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This petition for *certiorari* seeks to reverse and set aside for grave abuse of discretion the decision of respondent National Labor Relations Commission (NLRC) dated 29 November 1994 reversing that of the Labor Arbiter sustaining petitioner.

Enrique A. Arboleda was an employee of Manila Electric Company (MERALCO) for twenty-five (25) years. He served from 1963 to 11 February 1988 when he was dismissed by MERALCO under Sec. 7, par. 1, of its Company Code of Employee Discipline for misappropriating or withholding company funds. His record shows that he rose from the ranks to become branch clerk, and later, radio operator of MERALCO's Novaliches branch.

On 18 July 1986 a certain Antonio D. Sy applied for electrical service for his residence and for his hardware store situated in the premises leased to him by the spouses Renato and Sylvia Cruz. Pending the processing of his application, Sy was found to have illegal electrical connection, first on 6 March 1987, and then on 8 June 1987.

According to Sy, on 9 June 1987 he went to the MERALCO office in Novaliches to pay for his Found Connection (FC) bills.^[1] There he met petitioner Arboleda who told him that he had to pay his FC bills amounting to around P2,000.00 for three (3) months before a meter could be installed. Sy demurred saying he had with him only P1,200.00. Petitioner agreed to accept the amount so Sy handed it to him who received it without issuing any official receipt. Thereafter petitioner sent over Brigido "Adu" Anonuevo and a certain "Mulong" to install the meter.^[2]

Marcelo P. Umali, then branch manager of MERALCO at Novaliches, narrated that on 16 June 1987 he happened to pass by Sy's house and noticed the illegal connection. He immediately confronted Sy who protested that he had paid his FC bills to petitioner.^[3] Umali then interviewed Sylvia Cruz about Sy's claims and she confirmed them.^[4]

Sy immediately settled his FC bills with MERALCO for which he was issued an official receipt. On 18 June 1987, after complying with all the requirements of MERALCO, his application for electrical service was granted. On the same day, Umali submitted his recommendation to his immediate supervisor, R. A. Villanueva, to have Arboleda

investigated.^[5]

On 21 October 1987 Atty. Anecito A. Mejorada of MERALCO's Special Presidential Committee wrote petitioner Arboleda notifying him that on 27 October 1987 an investigation would be conducted against him for misappropriation of FC bills,^[6] but petitioner sought a postponement of the investigation.^[7] On 7 November 1987 he was suspended pending his investigation.^[8] On 9 November 1987 the investigation proceeded with Juanito Rivera, Chief Steward and Vice-President of the employees' labor union, as petitioner's representative. In the investigation, Arboleda made a general denial about knowing Sy, "Adu" and "Mulong."^[9] He claimed that sometime thereafter Brigido Anonuevo went to his house bringing his Affidavit of Justification, Certificate of Attendance at a MERALCO Seminar and Sy's Affidavit of Desistance.^[10] On 21 November 1987 petitioner wrote the MERALCO investigators Jose Benalla and Eligio Reonal, Jr., informing them of the visit of Anonuevo and his wife to Sy's house along with Sylvia Cruz.^[11] Despite his suspension which lasted until his dismissal, petitioner continued to receive his salary of P11,332.50 from 20 December 1987 to 11 February 1988.^[12]

On 20 April 1988 Arboleda filed a case against MERALCO for illegal dismissal. He was subsequently sustained by the Labor Arbiter on three (3) grounds: (a) Sy's accusation against him was only prompted by Umali; (b) Sy's credibility was suspect since he was apprehended thrice for illegal use of electric current; and, (c) Sy's motive was malicious and his testimony was made only to save his own skin.^[13]

On appeal by MERALCO the NLRC reversed the Labor Arbiter on the ground that there was no proof of instigation on the part of Umali; Sy's testimony was credible; and, Anonuevo's exculpatory evidence in favor of Arboleda was a ruse.^[14]

The principle that factual findings of administrative bodies are binding upon this Court may be sustained only when no issue of credibility is raised. But when the findings of fact of the NLRC do not agree with those of the Labor Arbiter, this Court must of necessity review the records to determine which findings should be preferred as more conformable to the evidentiary facts.^[15]

The main issue being the legality of petitioner's dismissal, it may be worth to look into the requisites for the validity of a dismissal, namely, (a) the employee must be afforded due process, i.e., he must be given an opportunity to be heard and to defend himself, and (b) the dismissal must be for a valid cause as provided in Art. 282 of the Labor Code.^[16]

As regards his right to due process, petitioner contends that he was denied such right during the investigation conducted by MERALCO as he did not have the opportunity to confront the witnesses against him.

The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. Before an employee can be validly dismissed, the Labor Code requires the employer to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for termination to afford the

employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and, (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reasons therefor.^[17] This MERALCO more than substantially complied with when it notified Arboleda in a letter dated 21 October 1987 of the charges against him and of his right to be represented by a lawyer or representative, and when it gave him notice by letter dated 11 February 1988 of his dismissal and the reasons therefor.

The requirement of notice and hearing in termination cases does not connote full adversarial proceedings as elucidated in numerous cases decided by this Court. Actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies. This is a procedural right which the employee must ask for since it is not an inherent right, and summary proceedings may be conducted thereon.^[18]

In termination cases the settled rule is that the burden of proving that the termination was for a valid or authorized cause rests on the employer.^[19] Thus, MERALCO must not only rely on the weakness of petitioner's evidence but must stand on the merits of its own defense.

The core of MERALCO's evidence is the testimony of Alberto Sy who identified petitioner Arboleda as the one who received P1,200.00 from him for purposes of paying off his FC arrears and for which Arboleda did not issue an official receipt. This testimony of Sy was discredited by the Labor Arbiter in his belief that Sy did so with the ulterior motive of avoiding criminal prosecution because of his illegal connection and that he only complained due to the instigation of Umali, the Novaliches branch manager. But the NLRC believed that Sy categorically denounced Arboleda without any promptings from Umali and that, despite petitioner's denials, Anonuevo was known to petitioner. For, why else would Anonuevo come out in defense of the latter? In fact, the NLRC explicitly termed the testimony of Anonuevo as a ruse.

We agree with the NLRC. Sy categorically and spontaneously denounced Arboleda without any prodding from Umali.^[20] It may be recalled that Umali only asked Sy why he had an FC.^[21] Perhaps Umali did not even expect Sy to implicate anyone from MERALCO as the culprit, much less think of Arboleda as the guilty party, especially when there was no showing of any enmity between them. Apparently, when Sy mentioned Arboleda's name, it was more out of indignation that the electrical connection should be found to be illegal when he had paid for its proper and legitimate connection. Sy's alarm was understandable in the light of the two (2) instances when he was found to have illegal connections. That the testimony of Sy is credible is shown by the fact that his statements were replete with consistent and positive details congruent with human experience. Testimony is positive when the witness affirms that a fact did or did not occur, and negative when he says that he did not see or know of the factual occurrence. Positive testimony is entitled to greater weight than negative testimony.^[22]

There is nothing on record to indicate any ulterior motive on the part of Sy to fabricate his testimony. The finding of the Labor Arbiter that Sy only denounced Arboleda to save his own skin from possible criminal prosecution may be explained by these questions: Why would Sy implicate Arboleda when, according Arboleda,