

SECOND DIVISION

[G.R. No. 99030, July 31, 1997]

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

D E C I S I O N

PUNO, J.:

This petition for *certiorari* seeks to annul two Resolutions of the National Labor Relations Commission dated November 22, 1990^[1] and August 24, 1991^[2] directing petitioner Philippine Long Distance Telephone Company to reinstate private respondent Elmer Taway to his former position without loss of seniority rights and to pay him backwages.

Private respondent was employed as Facility Man JG-5 at the Lexal Office of petitioner. One of his duties was to assign telephone lines to telephone applicants. This includes conducting field surveys and preparing the necessary documents for the installation of telephone facilities.

In February 1986, Mr. Tomas Enriquez, a resident of Sambahayan Condominium Building No. 5 in Makaturing Street, Mandaluyong, Metro Manila, filed a complaint to petitioner that his application for a telephone line was by-passed when DJ Sambahayan Fastfood which was also located in the same building was provided with a telephone line on February 23, 1986, thus violating the company's first-come-first-serve policy.

After investigating on the complaint, petitioner discovered that: (1) Mr. Enriquez's application (numbered RA-75-1984) enjoyed higher priority than that of DJ Sambahayan Fastfood (numbered RA-76-17797); (2) there were three other telephone applications in the same building having higher priority than that of DJ Sambahayan Fastfood and they were also by-passed when a telephone line was installed at DJ Sambahayan Fastfood; (3) Sambahayan Condominium Building No. 5 had no entrance cable facility; and (4) DJ Sambahayan Fastfood was provided with a telephone line using the entrance cable facilities of Sambahayan Condominium Building No. 3. Petitioner also found that it was private respondent who processed and assigned telephone facilities to DJ Sambahayan Fastfood.

On September 9, 1986, petitioner, through its manager, Mr. R.S. Caoyonan, sent private respondent an Inter-office Memorandum stating:

x x x

Subject: Administrative case re: Assignment of telephone facilities for

DJ Sambahayan Fastfood (RA 76-17797)

Investigation of the case conducted by QCI Department disclosed that:

1. You assigned cable facilities for above subject RA 76-17797 at Sambahayan Condominium Building No. 5 by utilizing the entrance cable facilities at Sambahayan Condominium Building No. 3.
2. A telephone was installed at DJ Sambahayan Fastfood on February 22, 1986 to the prejudice of older telephone applications at Sambahayan Condominium Building No. 5.
3. The other telephone applications at Sambahayan Condominium Building No. 5 which were by-passed as a result of said assignment of cable facilities remain unserved due to the absence of entrance cable facilities at subject building No. 5.

In view of the above, please explain in writing within seventy-two (72) hours upon receipt hereof why no disciplinary action be instituted against you, for violation of Company rules and regulation.

If no written explanation is received from you within the said 72 hours, this case will be decided on the basis of the documents on hand.^[3]

On March 11, 1987, private respondent submitted his explanation stating:

"This has reference to RA #76-17797 under the name of D. J. Sambahayan Fastfood at Sambahayan Condominium Building #5 along Makaturing Street, Mandaluyong, Metro Manila.

Please be informed that:

- a) On October 2, 1985, installation of entrance cafac (J) 860-85) was completed at Sambahayan Condm. Bldg. #3 to serve pending request at said building only (Ref.: BICS-M-1126-85);
- b) Subject RA #76-17797 was given assignment (both cafac & cofac) on November 12, 1985 based from the sketch and address given by the owner-proprietor, Mr. Manuel Mendoza x x x;
- c) On February 23, 1986, Mr. Tomas V. Enriquez, Jr., a tenant at building #5, filed a complaint in the Ofc. of Mr. D. M. Ifurung on the allegation that his application is much ahead (RA #75-19864 with address at 408 Sambahayan Condm. Bldg. #5);
- d) Upon verification, it was found out that application of #76-17797 with assigned tel. # 786248 was installed at Sambahayan Condm. Building #5 by Mr. de la Torre (I & R) using cable 1046 G 16, T-9830 (assigned cable by FASS was 1046 G 24, T-9830 inside Sambahayan Cond. Building # 3). x x x
- e) During installation of said application, no coordination was made by the I & R personnel concerned that said request will be served at