

## TENTH DIVISION

[ CA-G.R. SP NO. 134868, March 31, 2015 ]

**ANTONIO R. ARONGAY, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION, PHILIPPINE LONG DISTANCE  
TELEPHONE COMPANY AND NAPOLEON NAZARENO,  
RESPONDENTS.**

### D E C I S I O N

**DIMAAMPAO, J.:**

Petitioner expostulates with the *Resolutions*<sup>[1]</sup> dated 30 October 2013 and 28 January 2014 of the National Labor Relations Commission (NLRC) dismissing his *Complaint*<sup>[2]</sup> for illegal dismissal and other monetary claims and denying her entreaty for a reconsideration thereof, respectively, in NLRC LAC NO. 08-002343-13.

The precursor facts are quite simple.

Private respondent Philippine Long Distance Telephone Company (PLDT) is a domestic corporation engaged in tele-communications. Co-private respondent Napoleon Nazareno (Nazareno) is the President of PLDT. We shall refer to them collectively as private respondents. On 18 December 1979, PLDT employed petitioner Antonio Arongay (Arongay) as a Cable Splicer. Arongay was dismissed from service on 3 March 2011 for having been found guilty of cutting and stealing portions of the PLDT's new cables which were stored at Grace Park Service Yard.

Private respondents claimed<sup>[3]</sup> that they have meritorious grounds to dismiss Arongay after an investigation was conducted, the results of which disclosed that he was the culprit in the theft of PLDT cable wires.

PLDT recounted that on 2 April 2010, Arongay called Security Guard Ferdinand Buenavista (SG Buenavista), who was stationed at Gate 2 of the yard and informed the latter of his plot to steal reels of cable wires. Arongay intimated this was customarily acceded to by other security guards. He persuaded SG Buenavista to cooperate and to allow him to enter Gate 2 to execute the plan. SG Buenavista assented and immediately exchanged his post with Security Guard Emmanuel De Jesus (SG De Jesus). Moments later, Arongay was allowed entry at Gate 2 together with three unidentified persons. Thereafter, Arongay was able to cut cable wires, approximately nine meters of 1500 pairs and 26 meters of 2100 pairs.

Unknown to the perpetrators, Security Guard Rolando Rosas (SG Rosas) observed that SG Buenavista was acting suspiciously and so he followed him. In pursuing SG Buenavista, SG Rosas was led to the whereabouts of Arongay and immediately noticed cut cable wires under Arongay's feet. Realizing SG Rosas' presence, SG Buenavista uttered, "*Pare ngayon lang naman ito, kelangang kelangan lang, at atin atin nalang ito.*" SG Rosas replied, "*Bahala kayo*" and left.

Arongay loaded the cut cable wires aboard a Suzuki Bravo, a company vehicle, with Fleet Number 02-180 and fled. The three other unidentified men boarded Arongay's Honda City and drove out of the yard. While on his way out, Arongay handed to SG Buenavista P2,500.00 and SG De Jesus P2,000.00<sup>[4]</sup> in exchange for their cooperation. After a few hours, SG Buenavista approached SG Rosas and offered to pay P500.00 saying, "*Ito pre bigay ni Mr. Arongay*". However, SG Rosas refused to accept the money. He reported<sup>[5]</sup> the incident to a certain Clifford Casil (Casil), the commander on duty, at the time of the incident.

Information about the incident reached PLDT management. Forthwith, PLDT asked Arongay to explain<sup>[6]</sup> why no disciplinary action should be taken against him for his alleged participation in the theft of company cable wires. PLDT asserted that Arongay's infraction, if proven, would constitute a ground for his dismissal.

As expected, Arongay denied<sup>[7]</sup> the accusations hurled against him and insisted that he was not in the vicinity of Grace Park Services Yard when the alleged theft took place; rather, he was in Manaoag, Pangasinan. To bolster his claim, Arongay presented affidavits<sup>[8]</sup> of three disinterested persons residing in the said municipality. Moreover, Arongay averred that SG Buenavista had reason to fabricate charges against him since he previously refused to extend a loan of P2,500.00 to the latter.<sup>[9]</sup> All the same, PLDT dismissed Arongay from service for serious misconduct and fraud, and theft and/or misappropriation of company property.<sup>[10]</sup>

Feeling aggrieved, Arongay inevitably filed a *Complaint*<sup>[11]</sup> for illegal dismissal before the Labor Arbiter with prayer for payment of actual, moral and exemplary damages and attorney's fees. In a *Decision*<sup>[12]</sup> dated 23 July 2013, the Labor Arbiter dismissed Arongay's *Complaint*. Ensuingly, he sought recourse before the NLRC which, in the first assailed Resolution affirmed the Labor Arbiter's Decision. Arongay's *Motion for Reconsideration*<sup>[13]</sup> was likewise denied by the NLRC in the second challenged *Resolution*.

Through the instant *Petition for Certiorari*,<sup>[14]</sup> Arongay (now, petitioner) raises the following issues:

## I

WHETHER OF (SIC) NOT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER WITHOUT SUBSTANTIAL EVIDENCE IN VALIDLY DISMISSING THE PETITIONER.

## II

WHETHER OR NOT PRIVATE RESPONDENT PLDT HAS SUBSTANTIAL EVIDENCE TO LEGALLY TERMINATE THE PETITIONER BY MERE ALLEGATION OF THEFT OF (SIC) THE SECURITY GUARDS.

### ***The Petition lacks merit.***

Perceivably, the vortex of the case revolves around the propriety of the NLRC's finding that substantial evidence exists to justify petitioner's dismissal from service.

Petitioner avows that private respondents were not able to prove that he indeed committed the alleged theft on the following grounds: *one*, there was no police report; *two*, no arrest was made on the alleged date of the theft incident; *three*, there was no allegation that he and the three unidentified men could be arrested because they were armed; *four*, no logbook entries of the security guards were presented; *five*, there was no evidence of the bribe money which he allegedly gave to SG Buenavista; *six*, there was no evidence that the security guards on duty were investigated; *seven*, no sufficient proof of the total amount of cable wires stolen was presented; and, *eight*, PLDT did not conduct a thorough investigation. Petitioner maintained that his track record with PLDT was impeccable as he was not charged with any misdemeanor or misconduct in his long years of employment.<sup>[15]</sup>

*Petitioner's avowals fail to sway Us.*

The dismissal of an employee due to serious misconduct and fraud finds a textual hook in **Article 282<sup>[16]</sup> (a) and (c) of the Labor Code**. Misconduct is defined as improper and wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The law is explicit that the misconduct should be serious.<sup>[17]</sup> Upon the other hand, fraud is to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.<sup>[18]</sup>

The burden of proving that there is just cause for termination is on the employer in that he must affirmatively show adequate evidence that the dismissal was for a justifiable cause. Otherwise, failure to show that there was valid or just cause for termination would necessarily mean that the dismissal was illegal.<sup>[19]</sup>

We find and so hold that just cause exists for dismissing petitioner from service for *Serious Misconduct and Fraud, Theft and/or Misappropriation of Company Property*.<sup>[20]</sup>

Substantial evidence to prove petitioner's participation in the theft of cable wires does not call for the same degree of proof needed in criminal cases. The requirement of substantial evidence is satisfied although the evidence is not overwhelming, for as long as there is reasonable ground to believe that the person charged is guilty of the act complained of even if such evidence might not be overwhelming or even preponderant.<sup>[21]</sup>

Here, the evidence adduced by private respondents met the degree of proof necessary to justify petitioner's dismissal from service. We consider the following telling facts—

*First.* SG Buenavista, one of the security guards who acted in conspiracy with

petitioner, admitted in his written statement<sup>[22]</sup> that he connived with petitioner. Even before the incident, petitioner alluded that it had been a practice of other security guards, unknown to the company, to cut the reel of cable wires, load it in a company vehicle and turned it over to petitioner who would then sell it.

On the night of the theft incident, petitioner called SG Bautista and informed him that he needed access to the service yard to get reels of cable wires which he would sell. SG Buenavista signified his acquiescence in the plan. To perpetuate the scheme, petitioner was allowed entry and given the chance to cut the cable wires he desired. He only stopped when he saw that SG Rosas was observing nearby and had caught him red-handed. Soon thereafter, petitioner and his companions fled away from the scene of the crime.

*Second.* SG Rosas, the security guard on duty at the time of the theft, executed a sworn statement<sup>[23]</sup> and attested to the fact that on or about midnight of 3 April 2010, he witnessed SG De Jesus, SG Buenavista and petitioner stealing reels of cable wires at Gracepark Service Yard. The following morning, he made a detailed account of what happened and reported the matter to Casil.

*Third.* SG De Jesus, another security guard on duty at the time of the theft, corroborated the statement of SG Rosas and professed that petitioner left Grace Park Service Yard and used a company vehicle notwithstanding that he was not on duty at the time of the incident. He was allowed to pass by the guards on duty at Gate 2 despite the fact that he did not have a gate pass. Had it not been for SG Rosas, the theft incident would not have reached the knowledge of PLDT management.<sup>[24]</sup>

*Four.* A certain Richard Quiambao, PLDT Section Supervisor, confirmed in his written statement<sup>[25]</sup> that indeed there were missing cable wires from the reels.

*Fifth.* Edgardo Nofuente, PLDT Outside Plant Section Supervisor for 38 years, attested that he authorizes PLDT personnel to get materials according to work assignment and issues the gate pass for the use of company vehicles. When the alleged theft took place, petitioner was not on duty and he was not issued the gate pass requisite for the use of the company vehicle.<sup>[26]</sup>

Indubitably, the categorical statements of PLDT's key employees and security guards carry conviction and weight over petitioner's bare denial that he was not at the vicinity of Grace Park Service Yard when the theft took place. These statements could not be easily swept under the rug. On this account, private respondents were justified in dismissing petitioner from service.

As aptly adjudged by the NLRC—

“Indeed, the pieces of evidence on record is satisfied with proof that the (petitioner) was guilty of having stolen the (private respondent's) property, viz: “nine and twenty six meters of 1500 and 2100 pairs, respectively”. Clearly, herein (petitioner) was dismissed from the service for a just cause, since his dismissal is based on lawful or valid ground for the termination of an employment directly attributable to the fault of the erring employee. Just causes are usually serious or grave in nature which