

TWELFTH DIVISION

[CA-G.R. SP NO. 133640, November 18, 2014]

JULIUS NIOSCO, SILVERIO T. DUMARAOS, AND RONALD F. ALVIOR, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), PCI WORLDWIDE, INC., JOHN WEE/JOHN L. WEE, ROSCO T. BARREDO, LESLIE C. GAMAY AND ANNALIZA H. LORIN, RESPONDENTS.

D E C I S I O N

DIMAAMPAO, J.:

Called to fore in this *Petition for Certiorari*^[1] filed under Rule 65 of the 1997 Rules of Civil Procedure are two *Resolutions* dated 16 September 2013^[2] and 25 October 2013^[3] of the National Labor Relations Commission (NLRC) modifying the *Decision* of the Labor Arbiter by ordering payment of separation pay in lieu of reinstatement as well as limited backwages to petitioners, and denying for lack of merit the *Motions for Reconsideration* filed by the parties, respectively, in NLRC LAC NO. 05-001634-13.

The record divulges the following material operative facts:

Petitioners Julius Niosco (Julius), Silverio Dumaraos (Silverio), and Ronald Alvior (Ronald) filed *Complaints* for illegal suspension and dismissal against private respondents PCI Worldwide, Inc. (PCI) and its officers, John Wee, Rosco Barredo, Leslie Gamay and Annaliza Lorin (private respondents). In their *Pinagsamang Sinumpaang Salaysay*, petitioners asseverated—

- "1. Kami ay mga regular na manggagawa ng PCI WORLDWIDE, INC. (PCI), isang kompanya na nagmamanupaktura ng iba't-ibang produkto na gawa sa carrageenan o seaweeds; ito ay matatagpuan at may pahatirang sulat sa Mountview 1 Industrial Complex, Brgy. 14, Bancal, Carmona, Cavite; si John L. Wee ang tumatayong Presidente (sic) ng kompanya, si Rosco T. Barredo bilang VP-Operation & Production, Leslie C. Gamay bilang Plant Manager at Annaliza H. Lorin bilang HR Supervisor; inilakip namin dito and aming mga ID bilang EXHIBIT 'A' SERIES bilang patunay na kami ay mga manggagawa ng PCI;
2. Kami ay dating mga manggagawa ng RICO CARRAGEENAN, isang kompanya na matatagpuan sa PTC Complex, Cabilang-Baybay, Carmona, Cavite kung saan isa sa mga nagmamay-ari ay ang kasalukuyang nagmamay-ari ng PCI;

3. Nagkaroon diumano ng hindi pagkakaunawaan ang magkapatid na nagmamay-ari ng RICO CARRAGEENAN, kung kaya't bumukod at nagtayo ng sariling planta, and (sic) PCI WORLDWIDE, INC. (s)a Mountview 1 Industrial Complex, and (sic) ama ni John Wee;
4. Kami ay ilan sa mga manggagawang sumama sa PCI mula sa RICO, at ang ipinangako sa min ng PCI ay magtutuloy-tuloy ang aming length of service mula sa RICO kung kami ay sasama sa PCI;
5. Nang kami ay sumamang lumipat sa PCI ay hindi pa tapos ang ibang bahagi ng planta nito sa Bancal, Carmona, Cavite, kay(a) nang kami ay mapapunta doon ay paghahakot ng mga materyales at paghahalo ng semento ang aming mga naging unang trabaho;
6. Si Ismael Restrivera o Mang Maeng ang may-ari ng lote na katabi ng PCI at doon siya nakatira, kaya siya ang ginawang tagabantay ng mga construction materials ng PCI noong panahong ito ay ginagawa pa lamang;
7. Kami ay unang tumira ng libre sa bahay ni Mang Mael at kalaunan ay doon na rin kami nangupahan sa kanyang pinaupahang bahay katabi sa kanyang tinitirhan;
8. Dahil si Mang Mael ay itinalaga ng PCI na tagabantay ng mga construction materials nito, siya ay binigyan ng kompanya ng libreng linya ng kuryente;
9. Kami rin na mga empleyado ng PCI na nakatira sa pinaupahang bahay ni Mang Mael ay binigyan ng PCI ng libreng linya ng kuryente; and linyang ito ng kuryente ay dumadaan sa bahay ni Mang Mael papunta sa aming tinitirhan;
10. Noong March 23, 2012, ayon sa utos ni Leslie Gamay, ikinabit ko (Silverio Dumaraos) and 30 amperes na breaker na binili ng PCI (si Joseph Malinis, production operator, ang inutusan ng kompanya na bumili); ibinalik ko at pinapalitan ang nasabing breaker dahil mali and nabilim (sic) ni Joseph; hindi bolt type ang kanyang nabili; pinapalitan din nila ang wire subalit hindi ko muna pinalitan para makita nila kung ano ang ipapalit;
11. March 24, 2012, day-off ko (Dumaraos), pagpasok ko kinabukasan, March 25, 2012, ako ay binabaan ng EMPLOYEE EXPLANATION form xxx na may petsang 23 March 2012 dahil diumano'y paglabag ko sa Section 2 ng Company Rules and Regulations ng PCI kasabay ng PREVENTIVE SUSPENSION notice xxx nas (sic) may petsang March 24, 2012; kagyat kong isinulat ang aking explanation letter xxx at isinumite sa kompanya; mula noon ay hindi na ako pinapasok sa akint (sic) trabaho;
12. April 1, 2012 ako ay binigyan ng termination notice xxx ng PCI;

13. Ayon sa kwento ni Mang Mael sa amin, March 24, 2012 ay nagpunta sa bahay niya si Annaliza Lorin, at pinapipirma diumano siya ng kasulatan na hanggang April 15, 2012 na lamang ang pagbibigay ng libreng kuryente sa kaniya ng PCI; hindi diumano niya pinirmahan ang nasabing kasulatan bagkus ay sinabi niya kay Annaliza Lorin na papuntahin sa kanya si Rosco Barredo dahil sila ang mag-uusap;
14. Bandang alas-3:00 – alas 4:00 ng hapon nang araw na iyon, March 24, 2012, hinintay umano ni Mang Mael si Rosco Barredo subalit sa halip na dumaan ay pinaharurot pa nito ang kanyang sasakyan nang makita nitong naghihintay sa kanya si Mang Mael.
15. March 26, 2012, kami (Julius Niosco at Ronald Alvior) ay kinausap ng pangasiwaan ng PCI at pinaalis sa aming inuupahang bahay dahil diumano sa nangyari noong March 24, 2012, bagamat hindi namin alam kung ano ang nangyari noong araw na iyon; kami diumano ay tutlunagn (sic) sa paglilipat at doon nila kami pinalilipat sa MY HOME project na proyekto ng PCI; nang tiningnan namin ang nasabing lugar, ito ay bakanteng lote pa lamang at walang istrakturang nakatayo kayat nagpasya kami na manatiling nangungupahan kay Mang Mael kaysa lumipat doon o kaysa maghanap ng ibang malipatan dahil di hamak na mas mura ang paupa ni Mang Mael kung ikumpara sa ibang nagpapaupa ng bahay;
16. Noong April 3, 2013, kami ay nakatanggap ng sulat mula sa HR ng PCI na nag-uutos sa amin na umalis sa aming inuupahang bahay ay binibigyan kami hanggang April 10, 2012 para makalipat ng tirahan;xxx
17. April 10, 2012, dahil hindi kami lumipat ng tirahan, kami ay binabaan ng EMPLOYEE EXPLANATION notice xxx na may petsang April 3, 2012 na amin namang sinagot kaagad xxx;
18. Kasabay ng pagbigay sa amin ng EMPLOYEE EXPLANATION notice ay binigyan din kami ng noong araw ding iyon, April 10, 2012, ng NOTOCE (sic) OF DISCIPLINARY ACTION xxx na naglalagay sa amin sa PREVENTIVE SUSPENSION mula April 11 hanggang April 17, 2012 at noong April 17, 2012 kami ay nakatanggap ng termination notice xxx mula sa PCI na nagtatanggal sa amin sa trabaho sa April 18, 2012;
19. Dahil naniniwala kaming tatlo ang pagtanggap sa amin ay walang legal na batayan dahil wala kaming nagawang kasalanan laban sa PCI, at hindi nagkaroon ng pagdinig sa aming kaso, kami at nagharap ng demanda laban dito at sa mga indibiduwal na may kinalaman sa ilegal na pagtanggap sa amin sa NLRC;
20. Dahil sa pagkatanggal namin sa trabaho, kami ay nabalisa at hindi makatulog sa pag-iisip kung saan kami kukuha ng

pangtustos sa pang araw-araw na pangangailangan ng aming mga pamilya na naging dahilan upang sila ay magutom;

21.Sa mga naganap na mandatory conference sa NLRC; hindi nagkakaroon ng pagkakasundo ang aming posisyon at ang posisyon ng kompanya kung kaya't kami at pinagsumite ng position papers ng Labor Arbiter; kaya napilitan kaming kunin ang serbisyo ng isang abogado upang ipagtanggol ang aming mga karapatan at ipaglaban ang aming kaso;

22.Isinagawa namin ang salaysay na ito upang patotohanan ang lahat ng mga nakasaad sa itaas batay sa aming personal na pagkakaalam sa mga pangyayari at sa mga tunay na dokumento."^[4]

With the foregoing avowals, petitioners clamored for reinstatement with payment of full backwages as well as moral and exemplary damages.

Taking umbrage at petitioners' assertion, private respondents maintained that petitioners were validly suspended and legally dismissed.

In March 2012, petitioners were separately investigated for the illegal tapping of PCI's electric supply which they used for their residences located adjacent to the latter's property line. In collusion with one Ismael Restrivera (Ismael), they allegedly abused PCI's generosity when they used more than 10 amperes of electricity given them. Ismael was the owner of the property they rented. Petitioners having illegally tapped PCI's electric supply, the company suffered great loss and high electricity bill resulting in damages.

In the case of Silverio, PCI sent a *Written Notice*^[5] directing him to explain why no disciplinary action should be meted against him for tapping more than 10 amperes of electric supply in connivance with Ismael. Silverio explained that— "*xxx Hindi ko alam kung may naka-tapping sa linya namin kasi hindi naman ako nakapasok sa pamamahay ng Restrivera ng walang pahintulot kaya hindi ko na bibisita ito. xxx*"^[6]

Thereafter, he was placed under preventive suspension^[7] from 26 to 31 March 2012.^[8] This was intended to prevent the further stealing of electric supply. During the period of preventive suspension, further investigation was conducted and in the interregnum, Silverio was ordered to cut the illegal tapping of electricity.

Inevitably, PCI found Silverio's explanation meritless. He knew fully well that the line of Ismael was illegally tapped and therefore his use thereof without paying any charges or rentals was causing damage to PCI. Whence, a *Notice of Termination*^[9] was served upon Silverio on 3 April 2012 for violation of the company's Code of Conduct particularly the illegal use of company property as well as tampering with company equipment tantamount to serious misconduct.

With regard to Ronald, PCI discovered that he connived with Silverio. Both were roommates; Ronald could have easily informed the management about the illegal tapping of electricity but he kept mum. PCI spoke with him several times to stop the illegal tapping, and discussed his possible transfer of residence to prevent further stealing. PCI wrote him on 3 April 2012 informing him that his continued stay at

Ismael's place was tantamount to a conflict of interest pursuant to the company's Code of Conduct, and that it would be best for him to transfer residence at its MYHOME project.^[10] Ronald having refused to do so, PCI sent him a *Notice*^[11] to explain why no disciplinary action should be imposed against him. Thence, he was placed under preventive suspension from 11 to 17 April 2012.^[12] After careful consideration of the infractions against Ronald, PCI decided to dismiss him. Accordingly, PCI sent him a *Notice of Termination*^[13] dated 17 April 2012.

Julius' case was similar to that of Ronald. Julius was also caught in collusion with Silverio and Ismael in the illegal tapping of electricity. PCI sent Julius a letter^[14] directing him to transfer his residence since, like Ronald, his continued stay in the residence of Ismael constituted conflict of interest. Still and all, Julius refused. PCI then served to Julius a *Notice*^[15] to explain why he should not be disciplined for willfully refusing to obey its instructions "resulting in damages to company welfare and security."^[16] Julius explained: "*wala akong ginagawa para sa kasiraan ng company.*"^[17] Thereafter, he was placed under preventive suspension^[18] together with Ronald.

PCI claimed that a month before this illegal tapping activity, Julius was remiss in his duty as a warehouseman,^[19] a position imbued with a high degree of trust and confidence. This lapse on his part caused PCI to suffer shortage in the production of its food products. Indeed, this incident when taken together with this illegal tapping activity, resulted in PCI's loss of trust and confidence on him. Consequently, PCI severed Julius's employment on 17 April 2012 based on two grounds: 1) loss of trust and confidence; and, 2) willful refusal to accept legitimate instructions.^[20]

On 22 March 2013, the Labor Arbiter rendered a *Decision*,^[21] the *fallo* of which reads:

"WHEREFORE, in view of the foregoing, the complainants are declared to have been illegally dismissed by the respondent PCI Worldwide(,) Inc. (.) Hence, it is ordered to reinstate complainants to their former position or substantially equivalent position with full backwages in the total amount of **P409,213.90** and ten percent (10%) attorney's fees.

The reinstatement of the complainants is immediately executory and respondents are directed to report compliance thereof within ten (10) days from receipt of this decision.

All other claims are dismissed for lack of merit.

SO ORDERED."^[22]

In arriving at the foregoing disposition, the Labor Arbiter ratiocinated in this prose—

"In the case at bar, the dismissal of complainant Dumaraos is not substantially proven. The charges contained in his notice of termination