

SECOND DIVISION

[G.R. No. 165199, November 27, 2009]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
PETITIONER, VS. INOCENCIO B. BERBANO, JR., RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the Court of Appeals' Decision^[2] dated 21 January 2004 and Resolution dated 9 September 2004 in CA-G.R. SP No. 75125. The Court of Appeals reversed the Decision^[3] dated 29 May 2002 and Resolution dated 29 October 2002 of the National Labor Relations Commission (NLRC).

The Antecedent Facts

The facts, as summarized by the Labor Arbiter and adopted by the NLRC and the Court of Appeals, are as follows:

In his position paper, complainant [Inocencio B. Berbano, Jr.] alleged that he was hired by the respondent Philippine Long Distance [Telephone] Company (PLDT, for brevity) on June 1, 1988 as Engineering Assistant. After his probationary period of three months, he was issued an appointment letter with a status of a regular employee of respondent. After several promotions, complainant finally held the position of Computer Assistant M-2 on June 16, 1993 in the Sampaloc Exchange Department/Operation and Maintenance Center of the respondent. Although his function is "Computer Assistant M-2," complainant further alleges that he performed the functions of a Specialist for EWSD who was responsible for handling, operations and maintenance of the whole EWSD Network handling network database, fault clearance, database modification alarm monitoring, traffic routing, trunk administration, password and tariff administration and others.

Being trained as EW[S]D OMC Specialist, complainant claims that respondent expected him to have "depth of understanding" in continuous painstaking research and study. Thus, he initiated a study of "hi-tech EWSD Switching Equipment," a part of which is the software installation of various subscriber service features and control operation. It is at this time that complainant tapped his brother-in-law's number (911-8234) without the latter's knowledge and installed service features in it for study. Such service features included:

1. Security Code

2. Conference Call Three (Three-way calling)
3. Abbreviated Dialing
4. Hot Line Delayed
5. Call Diversion Immediate
6. Call Diversion Don't Answer
7. Call Hold
8. Non-Changeable

Later, on April 21, 1994, complainant learned that the phone number 911-8234 is under investigation by the Quality Control Inspection Office due to the unauthorized installation of service features thereto. Complainant admitted that he was responsible for such installation for purposes of study and testing.

Formal investigation ensued on April 22, 1994 and subsequently, on July 6, 1994, complainant received a Memorandum from the Department Head of the Sampaloc Exchange asking him to explain within 72 hours upon receipt why an [a]dministrative [a]ction should not be taken against complainant regarding the matter of the unauthorized installations mentioned at the phone number 911-8234.

On July 11, 1994, complainant submitted a written explanation claiming that the aforementioned installation of service features was for purposes of study and research.

Finding unacceptable the complainant's explanation, respondent PLDT dismissed complainant from the service effective August 16, 1994.

On the other hand, respondent submits that upon discovery of the installation of service features to the phone number 911-8234 without the authorization and approval of the respondent, and after investigation, complainant readily admitted having programmed the said features and that this installation was without prior authorization. Respondent's position paper further avers that having worked as [a] Computer Assistant, complainant took advantage of his position and his access to respondent company's computer to favor his brother-in-law's telephone by irregularly providing it with special features. Such special features included the following:

1. Push Button
2. Test Call Only
3. Malicious Call Identification
4. Non-chargeable (Calls to subscriber with this class of service are free of charge for the caller)
5. Three-way Calling (Allows a third party to be linked to an existing call)
6. Call Hold
7. Abbreviated dialing 90 numbers
8. Hotline delay
9. Pin Code
10. Call Diversion Immediate
11. Call Diversion to Fixed Announcement
12. Traffic Restr. Class Act Auth. (Authorization to activate traffic

restriction classes)

13. Call Diversion Don't Answer (Authorization to enter a destination no. for call diversion on no answer)

14. Traffic Restriction Class 1

15. Abbreviated Dial Number Mod. Auth. (Authorization for subs controlled entry and and modification of abbreviated nos.)

16. Call Diversion Immediate (Modification Authorization)

17. Hotline Delay Mod. Auth.(Modification Authorization)

Respondent also found complainant's explanation that the installment was for testing purposes, unmeritorious and unjustified considering that said special features were only deleted upon discovery, two months after their installations. Further, testings, according to the respondent company's rules should only last for one day.^[4]

On 28 September 1998, the Labor Arbiter^[5] rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the reinstatement of the complainant to his previous position of Computer Assistant M-2 without loss of seniority rights. Furthermore, respondent is hereby ordered to pay to the complainant the amount of FIVE HUNDRED THIRTY SEVEN THOUSAND FOUR HUNDRED TWENTY PESOS (P537,420.00) representing the backwages of the complainant from the time that he was terminated in August 1994 up to the present, minus any possible income earned elsewhere since complainant's dismissal. The equivalent ten (10%) percent attorney's fees of the total award in the amount of P53,742.00 is also granted.

SO ORDERED.^[6]

On 29 May 2002, the NLRC rendered a Decision reversing that of the Labor Arbiter, with the following dispositive portion:

WHEREFORE, premises considered, the assailed decision is hereby reversed and set aside. Respondents are adjudged not guilty of illegal dismissal. Accordingly, the award of backwages and attorney's fees is hereby deleted from the decision.

SO ORDERED.^[7]

On 15 August 2002, Berbano filed a Motion for Reconsideration, but this was denied by the NLRC in its Resolution dated 29 October 2002.^[8]

The Court of Appeals' Ruling

Berbano filed with the Court of Appeals a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure. On 21 January 2004, the Court of Appeals rendered judgment granting the petition and reversing the NLRC decision. We quote the dispositive portion of the Court of Appeals' decision below.

WHEREFORE, premises considered, the petition is **GRANTED**. The decision of the public respondent NLRC promulgated on May 29, 2002 is **REVERSED** and **SET ASIDE** and the decision dated September 28, 1998 of the Honorable Labor Arbiter Romulus S. Prota[s]io is hereby **REINSTATED** in all respect. Private respondent PLDT is ordered to pay the backwages to which the petitioner is entitled from January 15, 2003, the date of his dismissal, until his actual reinstatement.

SO ORDERED.^[9]

PLDT filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 9 September 2004.^[10]

Hence, this appeal.

The Issues

Petitioner PLDT raises the following issues for our consideration:

1. Whether the Court of Appeals erred in reversing the NLRC decision despite its finding that respondent committed the infraction that caused his dismissal;
2. Whether the Court of Appeals erred in ordering petitioner to pay respondent backwages and attorney's fees;
3. Whether respondent Inocencio Berbano, Jr. was denied due process of law; and
4. Whether the Court of Appeals had jurisdiction over the Petition for Certiorari filed by respondent.

The Court's Ruling

We find the appeal without merit.

On whether the Court of Appeals had jurisdiction over the Petition for Certiorari filed by respondent

We first consider the issue on jurisdiction raised by petitioner. Petitioner contends that the NLRC Decision dated 29 May 2002 was received by respondent on 29 June 2002; hence, respondent had only ten (10) days, or up to 09 July 2002, to file a motion for reconsideration of the NLRC decision. Without a motion for reconsideration timely filed, the NLRC decision would become final and executory, pursuant to Section 2, paragraphs (a), (b) and (c) of Rule VIII [now Section 14 of Rule VII] of the New Rules of Procedure of the NLRC. Petitioner claims that when respondent filed a motion for reconsideration of the NLRC decision on 15 August 2002, which was beyond the 10-day reglementary period imposed by law, the decision was already final and executory. Consequently, the Court of Appeals had no jurisdiction over the petition for certiorari (assailing the NLRC decision) filed by respondent on 10 February 2003.

The New Rules of Procedure of the NLRC mandate that a motion for reconsideration of the NLRC decision must be filed within 10 calendar days from receipt of said decision, otherwise, the decision shall become final and executory.^[11] A motion for reconsideration of the NLRC decision must be filed before the remedy of a petition for certiorari may be availed of, to enable the commission to pass upon and correct its mistakes without the intervention of the courts.^[12] Failure to file a motion for reconsideration of the decision is a procedural defect that generally warrants a dismissal of the petition for certiorari.^[13] However, in *Surima v. NLRC*,^[14] we held that despite procedural lapses, fundamental consideration of substantial justice may warrant this Court to decide a case on the merits rather than dismiss it on a technicality. In so doing, we exercise our prerogative in labor cases that no undue sympathy is to be accorded to any claim of procedural misstep, the idea being that our power must be exercised according to justice and equity and substantial merits of the controversy.^[15] In the instant case, we are persuaded that the rigid rules of procedure must give way to the demands of substantial justice, and that the case must be decided on the merits. Moreover, the petition filed with the Court of Appeals sought the issuance of a writ of certiorari which is a prerogative writ, not demandable as a matter of right, but issued in the exercise of judicial discretion.^[16] Thus, the Court of Appeals committed no error when it admitted the petition for certiorari filed by respondent, and had jurisdiction over said petition.

On whether the Court of Appeals erred in reversing the NLRC decision despite its finding that respondent committed the infraction that caused his dismissal

Petitioner contends that the Court of Appeals erred when it found respondent to have committed an infraction, i.e., programming and installing special features in his (respondent's) brother-in-law's telephone line without prior authorization from petitioner, but nonetheless ruled that the infraction was not serious enough to warrant respondent's dismissal from service. Petitioner also asserts that, contrary to respondent's claim, due process was observed in the dismissal of respondent.

Well-settled is the rule that no employee shall be validly dismissed from employment without the observance of substantive and procedural due process. The minimum standards of due process are prescribed under Article 277(b) of the Labor Code of the Philippines (Labor Code) to wit:

Art. 277. Miscellaneous Provisions.--

x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires, in accordance with company rules and