

EN BANC

[G.R. No. 189171, June 03, 2014]

**EDILBERTO L. BARCELONA, PETITIONER, VS. DAN JOEL LIM AND
RICHARD TAN, RESPONDENTS.**

D E C I S I O N

SERENO, C.J.:

This case involves a Petition for Review on Certiorari^[1] filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision^[2] of the Court of Appeals (CA) dated 26 September 2008, and its subsequent Resolution^[3] dated 26 August 2009. Both dismissed the Petition for Review^[4] filed by Edilberto L. Barcelona (petitioner) for lack of merit.

The CA affirmed the Civil Service Commission (CSC) Resolutions dated 18 December 2006^[5] and 28 August 2007,^[6] which in turn affirmed the Order dated 27 September 2000 issued by the Chairperson of the National Labor Relations Commission (NLRC), Roy V. Señeres (Chairperson Señeres or simply Chairperson). The Order barred petitioner, who was then the officer-in-charge of the Public Assistance Center of the NLRC, from entering its premises a month before the Efficiency and Integrity Board (Board) could investigate the administrative case for dishonesty and grave misconduct filed against him.

The records disclose that on 14 August 2000, respondent businessman Dan Joel Lim (Lim), the owner of Top Gun Billiards, filed a Sinumpaang Salaysay (sworn statement) with the Criminal Intelligence Division of the National Bureau of Investigation (NBI). Lim claimed as follows: (1) his employees, Arnel E. Ditan and Pilipino Ubante, were influenced by petitioner to file a labor complaint against Lim;^[7] and (2) petitioner, then an NLRC officer, demanded ₱20,000 for the settlement of the labor case filed against Lim. On the strength of this sworn statement, the NBI organized an entrapment operation against petitioner.

On 16 August 2000, Lim informed the NBI that petitioner would drop by Top Gun Billiards around seven o'clock in the evening, expecting to receive the ₱20,000 petitioner was demanding from him; otherwise, petitioner would order that Top Gun Billiards be closed. After Lim handed him the marked bills, petitioner began counting them. The latter was arrested by the NBI right when he was about to put the money in his bag.

After being duly informed of his constitutional rights, petitioner was brought to the NBI office where he was booked, photographed, and fingerprinted. Thereafter, he underwent ultraviolet light examination. The Certification dated 16 August 2000 of the NBI-Forensic Chemistry Division stated that his hands "*showed the presence [of] Yellow Fluorescent Specks and Smudges,*"^[8] and that "[s]imilar examinations made

on the money bills showed the presence of yellow fluorescent specks and smudges x x x.”^[9]

In a letter to the City Prosecutor of Manila, NBI Director Federico M. Opinion, Jr. recommended the prosecution of petitioner for robbery under Article 293 of the Revised Penal Code (RPC) and violation of Republic Act No. (R.A.) 3019 or the Anti-Graft and Corrupt Practices Act. The NBI filed the Complaint. Finding probable cause, the City Prosecutor filed with the Regional Trial Court (RTC) of Manila on 18 August 2000 an Information against petitioner for the crime of robbery.

It was further discovered that while the inquest papers were being prepared by the NBI, Richard Tan (Tan), owner of Tai Hing Glass Supply, had filed a similar extortion Complaint against petitioner. The latter supposedly asked him to pay ₱15,000 in exchange for the settlement of a fabricated case.^[10]

Reports of the circumstances leading to the arrest and filing of the Complaints against petitioner were submitted by Tan and Lim to Chairperson Señeres. On 17 August 2000, copies of the documentary evidence^[11] against petitioner were likewise endorsed to the Chairperson.^[12]

Finding a *prima facie* case against petitioner, Chairperson Señeres issued Administrative Order No. 9-02 Series of 2000 on 1 September 2000, formally charging him with dishonesty and grave misconduct. The Order created a panel (the Board) to look into the present case; require petitioner to file an answer to the charges; conduct an investigation; and thereafter submit its report/recommendation.^[13] The Order also placed petitioner under a 90-day preventive suspension upon receipt thereof.

The Board issued a Summons dated 19 September 2000 directing petitioner to answer the charges against him. Both the Order and the Summons were served on him, but he refused to receive them.^[14] He never filed an Answer.

Lim, Tan, and the NBI agents involved in the entrapment operations appeared at the preliminary investigation conducted by the Board on 28 September 2000 in order to confirm their accusations against petitioner.

On 23 October 2000, the Board conducted a hearing attended by petitioner with three of his lawyers. He manifested therein that he was not subjecting himself to its jurisdiction.^[15] Thus, he left without receiving copies of the Order and other documents pertinent to the case.^[16]

The Board resolved the administrative case *ex parte*. It found that petitioner had been caught red-handed in the entrapment operation. His guilt having been substantially established,^[17] the Board in its 31 October 2000 Report/Recommendation^[18] found him guilty of dishonesty and grave misconduct. Upon approval of this recommendation by NLRC Chairperson Señeres on 14 November 2000, petitioner was dismissed from service.

A copy of the Board’s Decision was received by petitioner on 22 November 2000. On 1 December 2000, he filed a Motion for Extension of Time Within Which to File

the Proper Responsive Pleading, but it was denied.^[19]

Petitioner appealed to the CSC. In his Appeal Memorandum,^[20] he presented his side of the story. He claimed to have visited Lim's establishment to play billiards every now and then. Before going home, he would supposedly drop by the place, which was a mere 5- to 10-minute tricycle ride away from where he lived.^[21] When Lim's employees discovered that petitioner worked for the NLRC, they told him of their employer's labor law violations.^[22] Thus, petitioner assisted them in filing a case against Lim and later scheduled the case for a conference on 10 August 2000.

Two days before the scheduled conference, petitioner was informed by one of the employees that Lim wanted to speak with him. Lim supposedly offered petitioner money to drop the labor case filed against the former. According to petitioner, this offer was "flatly rejected."^[23]

The next day, when petitioner went to Lim's establishment to play billiards, a billiard hustler by the name of Abel Batirzal (hustler) informed him that Lim required everyone playing in the establishment to lay a wager on the games they played.^[24] Since he "abhorred" gambling, petitioner decided to discourage the hustler by raising the amount the latter proposed.^[25]

Petitioner lost to the hustler. As the former was about to leave the establishment, he discovered that his cellular phone and pack of Philip Morris cigarettes were no longer where he left them. The security guard on duty informed him that a certain Ian Gumban had stolen the items.^[26]

Petitioner went straight to the Western Police District Station and filed a Complaint for theft, billiard hustling, syndicated gambling, swindling, and violation of city ordinances against Lim and three of the latter's employees or friends.^[27]

A day after the foregoing incident, or on 10 August 2000, neither Lim nor his employees appeared at the scheduled conference. On the evening of the same day, petitioner went to Lim's establishment to check on the employees. There they told him to consider their Complaint withdrawn, since Lim had already decided to settle the case with them. Accordingly, the case was dropped from the NLRC's calendar.^[28]

Petitioner claims that on 16 August 2000, the day of the alleged entrapment, he received a call from Lim. The person who had stolen petitioner's cellphone was supposedly willing to return it at seven that evening at Lim's billiards hall.^[29]

When petitioner arrived, he saw Lim and one of the latter's employees. Lim approached petitioner and informed him that the thief could no longer return the phone. The thief had allegedly decided to just pay the value of the phone and entrust the money to Lim. The latter tried to give the money to petitioner and urged him to count it, as the former was not sure how much the thief had given. Petitioner supposedly refused to receive and count the cash and, instead, insisted that Lim arrange a meeting with the thief.^[30]

Because petitioner would not take the money, Lim inserted the wad of cash into the

open pocket of the former's shoulder bag.^[31] Just when petitioner was about to pull out the money and throw it back to Lim, the NBI agents appeared and arrested petitioner who recalls the incident as follows:

x x x [W]hile trying to retrieve the unduly incriminating wad of money to throw it back to Mr. Lim, about five or seven burly men accosted petitioner without properly identifying themselves and with strong-arm tactics, hand-cuffed him over his vehement protestations. One of the burly men even pointed his gun at petitioner's face as he and his companions wrestled petitioner to a car. x x x.^[32]

With respect to Tan, petitioner claims that the latter never demanded or received any sum of money from him. Allegedly, Tan was only displeased with petitioner's active assistance to one of Tan's aggrieved employees.^[33]

Petitioner further claims that even before Chairperson Señeres formally charged him with dishonesty and grave misconduct, the former had already filed an urgent request for an emergency leave of absence because of the alarming threats being made against him and the members of his family.^[34]

Petitioner asked the CSC to nullify the 27 September 2000 Order of Chairperson Señeres. The Order barred petitioner from entering the NLRC premises a month before the hearing conducted by the Board. He then questioned its impartiality. As proof of his allegation, he made much of the fact that the Board denied his Motion for Extension of Time Within Which to File a Proper Responsive Pleading.^[35]

Six years after petitioner had filed his Appeal Memorandum, the CSC dismissed it. The dispositive portion of its Resolution^[36] dated 18 December 2006 reads:

WHEREFORE, the appeal of Edilberto S. (sic) Barcelona is hereby **DISMISSED**. Accordingly, the Decision dated November 14, 2000 of Roy R. Seneres, [Chairperson,] (NLRC) finding him guilty of Dishonesty and Grave Misconduct and imposing upon him the penalty of dismissal from the service with the accessory penalties of disqualification from re-entering government service, forfeiture of retirement benefits and bar from taking any civil service examinations is hereby **AFFIRMED**.^[37]

Petitioner filed a Motion for Reconsideration on 15 January 2007.^[38] He questioned the validity of his dismissal by asserting that before its implementation, the NLRC had the legal duty of obtaining its confirmation by the Department of Labor and Employment (Labor) Secretary.^[39]

On 28 August 2007, petitioner's Motion for Reconsideration was denied by the CSC through a Resolution.^[40]

Petitioner filed a Petition for Review, but it was dismissed by the CA in the assailed Decision dated 26 September 2008.^[41]

A Motion for Reconsideration with Motion for Voluntary Inhibition of Honorable Justice Vicente S.E. Veloso (Justice Veloso)^[42] was then filed by petitioner. The latter cited the following reasons for the prayer for inhibition:

- 1) Honorable Justice Veloso was a Commissioner of public respondent NLRC at the time of the subject incident; and
- 2) The undersigned counsel, eldest son of petitioner, just recently resigned from the law firm where the daughter of Justice Veloso is working.^[43]

Justice Veloso, in a Resolution^[44] dated 27 February 2009, stated that while the grounds invoked by petitioner did not constitute valid bases for an inhibition, the former would voluntarily inhibit "to assuage petitioner in whatever fears he may have" over the CA's handling of the Motion for Reconsideration.

Thereafter, the CA issued the assailed Resolution^[45] dated 26 August 2009 denying petitioner's Motion for Reconsideration. In spite of his voluntary inhibition, Justice Veloso still signed the herein questioned Resolution to signify his concurrence.

Hence, this Petition praying for the reversal of the Decision and Resolution of the appellate court and the dismissal of the administrative Complaint filed against petitioner.^[46]

This Court required respondents Lim and Tan to file their respective Comments, but neither of them complied. Since copies of the Resolution ordering them to Comment were personally served upon them, the Court resolved to consider them to have waived their right to comment on the Petition.^[47]

Petitioner comes before this Court raising the following arguments:

1. The CA decided a question of substance "not in accord with the applicable law and jurisprudence" when it:
 - a. Denied petitioner's Motion for Reconsideration with the participation of Justice Veloso, who had earlier voluntarily inhibited himself from the case.
 - b. Ruled that petitioner was not denied due process of law in spite of overwhelming proof that the NLRC chairperson failed to act with impartiality in deciding petitioner's case.
 - c. Ruled that petitioner's appeal to the CSC had not been filed on time, even though the commission itself did not question the timeliness of that.