

## SECOND DIVISION

[ G.R. No. 190436, January 16, 2012 ]

**NORMAN YABUT, PETITIONER, VS. MANILA ELECTRIC COMPANY  
AND MANUEL M. LOPEZ, RESPONDENTS.**

### DECISION

**REYES, J.:**

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure which assails the Decision<sup>[1]</sup> dated August 10, 2009 and Resolution<sup>[2]</sup> dated November 26, 2009 of the Court of Appeals (CA) in the case docketed as CA-G.R. SP No. 96789, entitled "*Manila Electric Company (Meralco) and Manuel M. Lopez v. Norman Yabut and National Labor Relations Commission.*"

#### The Facts

This case stems from a complaint for illegal dismissal and monetary claims filed by herein petitioner Norman Yabut (Yabut) against respondents Manila Electric Company (Meralco) and Meralco officer Manuel M. Lopez (Lopez).

The petitioner had worked with Meralco from February 1989 until his dismissal from employment on February 5, 2004. At the time of said dismissal, he was assigned at the Meralco Malabon Branch Office as a Branch Field Representative tasked, among other things, to conduct surveys on service applications, test electric meters, investigate consumer-applicants' records of Violations of Contract (VOC) and perform such other duties and functions as may be required by his superior.

The circumstances antecedent to his dismissal are as follows:

On October 4, 2003, Meralco's Inspection Office issued a memorandum<sup>[3]</sup> addressed to Meralco's Investigation-Legal Office, informing it of an illegal service connection at the petitioner's residence, particularly at No. 17 Earth Street, Meralco Village 8, Batia, Bocaue, Bulacan. The Inspection Office claimed discovering shunting wires installed on the meter base for Service Identification Number (SIN) 708668501, registered under petitioner Yabut's name. These wires allegedly allowed power transmission to the petitioner's residence despite the fact that Meralco had earlier disconnected his electrical service due to his failure to pay his electric bills.

Given this report, Meralco's Head of Investigation-Litigation Office issued to the petitioner a notice<sup>[4]</sup> dated November 3, 2003, received by the petitioner's wife on the same day and with pertinent portions that read:

Please report to our Mr. Rodolfo C. Serra of the Investigation-Litigation at 8<sup>th</sup> Floor, Lopez Building, Meralco Center, Ortigas Avenue, Pasig City on

**November 11, 2003, at 9:00 a.m.** as the Inspection had found your disconnected electric service with SIN No. 708668501 directly connected by a shunting wire to energize your empty meter base. If proven true, such act constitutes dishonesty in violation of Section 7 (3) of the Company Code on Employee Discipline and/or serious misconduct or an act analogous to fraud or commission of a crime under Article 282 (a) and (e) of the Labor Code of the Philippines.

In this investigation, you are entitled to be assisted by a counsel or an authorized union representative. You are also allowed to present evidence and material witnesses to testify in your favor.

Should you fail to appear on the aforementioned date, we shall take it to mean that you are waiving your right to present your side and refute the aforesaid charge and evidence against you. If you appear alone, we shall take it to mean that you are waiving your right to be represented by such counsel or union representative.<sup>[5]</sup>

The offense under Section 7 (3) of Meralco's Company Code on Employee Discipline referred to in the aforequoted notice is with penalty of dismissal on the first offense and is defined as follows:

**SECTION 7. Dishonesty.**

The following acts shall constitute violation of this Section:

x x x x

3) Directly or indirectly tampering with electric meters or metering installations of the Company or the installation of any device, with the purpose of defrauding the Company.

x x x x<sup>[6]</sup>

In the course of the company's investigations, the petitioner presented his sworn statement<sup>[7]</sup> which was executed with the assistance of Jose Tullo, the Chief Steward and Vice President of Meralco's supervisory union First Line Association of Meralco Supervisory Employees (FLAMES). Yabut admitted being the registered customer of Meralco at No. 17 Earth Street, Meralco Village 8, Batia, Bocaue, Bulacan. The petitioner claimed that his electrical service was disconnected sometime in July 2003 for unpaid electric bills. On October 3, 2003, between 10:00 o'clock and 10:30 o'clock in the morning, he was informed by his wife that Meralco discovered shunting wires on their meter base during an inspection. The petitioner nonetheless claimed that at about 8:00 o'clock in the morning of the same day, prior to his wife's notice upon him of the inspection, he had already given to an officemate the amount of P8,432.35 and requested that the same be paid to Meralco to cover his outstanding electric bills. The amount of P8,432.35 plus P1,540 as service deposit was then paid for the petitioner's account on October 3, 2003 at about 9:30 o'clock in the morning.

Yabut denied knowing the person who installed the discovered shunting wires. While he did not always go home to their house in Bulacan as there were times when he stayed in his sister's residence in Malabon, the petitioner confirmed that he was regularly in his Bulacan house. His residence had electricity even prior to the full settlement of his outstanding bills through a connection made to the line of his neighbor Jojo Clemente.

Photographs taken during Meralco's inspection of Yabut's residence were also presented to and identified by Yabut. He confirmed that the inspected meter base was installed within his lot's premises. Claiming that he had been obtaining electricity from a neighbor, he argued that shunting wires in his meter base could have caused an electrical malfunction. As to Meralco's allegation that Yabut's wife had admitted the petitioner's authorship of the illegal connection, Yabut denied knowing of such admission.

Meralco's Litigation – Investigation Office summarized the results of Meralco's findings in a memorandum<sup>[8]</sup> dated December 30, 2003. It indicated that Yabut's electric service was disconnected on April 3, 2003 for account delinquency. Notwithstanding the disconnection and the fact that Meralco's service had not been reconnected, Yabut's meter registered electric consumption. The memorandum included the following findings:

While Yabut denied responsibility about the illegal connection, the pictures taken specifically showing the shunted wires on the meter base and his wife's admission that he was the one responsible are sufficient proofs of his guilt. We give credit to the admission of his wife as she did it with spontaneity without force or intimidation in our part. His alibi that he seldom stayed in his house is controverted by his admission that within the period in question from July to October 3, 2003, he stayed home for 24 times. It is surprising that, being a field representative who has knowledge about illegal connection, it escaped from his attention the said illegal connection when it could easily be detected since his metering point is installed in front of his house.

We are not inclined to believe that he resorted to flying connection as it is apparent that at the time his electric service was disconnected in April, 2003, the Balagtas Branch found his service to have registered KWHR consumption from 1555 to 2194 for a total of 639 KWHR indicating that although his electric service was disconnected, it continued to register electricity. Moreover, the burden of proof is upon him to present to us the one responsible but he failed to do so. In the absence of such proof, it is concluded that he, being the registered customer and a resident, was the one who installed the illegal connection purposely to alleviate the sickly condition of his wife and two children.<sup>[9]</sup>

In view of these findings, respondent Meralco, through its Senior Assistant Vice President for Human Resources Administration R. A. Sapitula, issued on February 4, 2004 a notice of dismissal<sup>[10]</sup> addressed to the petitioner. The notice cites violation of Section 7, paragraph 3 of Meralco's Company Code on Employee Discipline and

Article 282 (a), (c), (d) and (e) of the Labor Code of the Philippines as bases for the dismissal. The pertinent portions of the notice read:

Administrative investigation duly conducted by Legal established that on October 3, 2003, acting on a tip that you are resorting to illegal service connection, the Company's Inspection Squad 7 team found two (2) shunting wires in an energized empty meter base installed at your residence at #17 Earth Street, Meralco Village, Batia, Bocaue, Bulacan. Your wife admitted that you were the one who installed the shunted wires on your meter base to have power because she and your two children were sick. The illegal connection enabled you to defraud the company by consuming unregistered electricity which makes you liable for violation of Section 7, par. 3 of the Company Code on Employee Discipline, defined as "(d)irectly or indirectly tampering with electric meters or metering installations of the Company or the installation of any device, with the purpose of defrauding the Company," penalized therein with dismissal from the service.

Under Article 282 of the Labor Code of the Philippines, the termination of your employment in Meralco is justified on the following grounds: "(a) Serious misconduct x x x by the employee x x x in connection with his work; "(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or representative; "(d) Commission of a crime or offense by the employee against x x x his employer; and "(e) Other causes analogous to the foregoing."

Based on the foregoing, Management is constrained to dismiss you for cause from the service and employ of the Company, as you are hereby so dismissed effective February 5, 2004, with forfeiture of all rights and privileges.

Aggrieved by the decision of the management, Yabut filed with the National Labor Relations Commission (NLRC) a complaint<sup>[11]</sup> for illegal dismissal and money claims against Meralco and Lopez.

### **The Ruling of the Labor Arbiter**

On December 28, 2004, Labor Arbiter Antonio R. Macam rendered his Decision,<sup>[12]</sup> declaring the petitioner illegally dismissed from the service and hence, entitled to reinstatement plus backwages and attorney's fees. The dispositive portion of his decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered, as follows:

1. Declaring the dismissal of complainant as illegal;
2. Ordering respondents to reinstate complainant to his former position without loss of seniority rights and privileges, immediately upon receipt of this decision, either physically or in the payroll, at the option of the respondent;

3. Ordering the respondents to pay complainant his full backwages from date of dismissal up to actual reinstatement, partially computed as follows:

Backwages = [P]240,420.00

13<sup>th</sup> Mo. Pay = 24,042.00

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**Total [P]264,462.00**

4. Ordering respondents to pay complainant attorney's fees equivalent to 10% of his monetary award.

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[13]</sup>

The labor arbiter observed that there was no clear and direct evidence to prove that Yabut performed the shunting of his metering installation. Furthermore, the act imputed upon Yabut was not related to the performance of his duties as a Meralco employee, but as a customer of the company's electric business. Finally, it was ruled that Meralco failed to observe the twin requirements of due process in termination cases. The records are bereft of any evidence showing that the petitioner was apprised of the particular acts or omissions for which his dismissal was then sought.

Unsatisfied, the respondents appealed from the decision of the labor arbiter to the NLRC.<sup>[14]</sup>

### **The Ruling of the NLRC**

On March 31, 2006, the NLRC rendered its Resolution<sup>[15]</sup> dismissing the herein respondents' appeal for lack of merit. Subsequently, the NLRC denied for lack of merit the respondents' motion for reconsideration *via* a Resolution<sup>[16]</sup> dated August 28, 2006. This prompted the respondents to file a petition for *certiorari* with the CA.

### **The Ruling of the CA**

On August 10, 2009, the CA rendered the now assailed Decision<sup>[17]</sup> reversing the rulings of the NLRC. In finding the petitioner's dismissal lawful, the appellate court attributed unto Yabut authorship of the meter tampering and illegal use of electricity – acts which it regarded as serious misconduct. The Court observed:

The Court notes that the meter base is located inside respondent Yabut's premises. Manila Electric Company vs. Court of Appeals said –

“x x x Metro Concast should bear the responsibility for the tampering of the facilities within its compound, which was totally under its supervision and control. Being within its