

SECOND DIVISION

[G.R. No. 194106, June 18, 2012]

**MANILA ELECTRIC COMPANY (MERALCO), PETITIONER, VS.
HERMINIGILDO H. DEJAN, RESPONDENT.**

DECISION

BRION, J.:

Before the Court is the present petition for review on *certiorari*^[1] which seeks the reversal of the decision^[2] dated February 3, 2010 and the resolution^[3] dated October 12, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 105428.

The Facts

The facts are well set out in the assailed CA decision and are summarized below.

Respondent Herminigildo Dejan commenced employment with the Manila Electric Company (*Meralco*) on July 7, 1992. He was then Meralco's branch representative in its San Pedro, Laguna branch, with a monthly salary of P30,500.00. His work consisted of accepting payments of the required fees from applicants for electric service installation and issuing the corresponding meter sockets/bases after payment of a deposit, preceded by an inspection of the premises to be energized by a Meralco field personnel.

In the mid-afternoon of March 18, 2005, the security guard on duty at the branch, Warlito Silverio, noticed a certain Estanislao Gozarin a.k.a. Mang Islao, a private electrician, take out from the branch premises 20 pieces of meter sockets which were then loaded into a parked Meralco contracted jeep belonging to one Cesar Reyes. Reyes brought the meter sockets to his house. The meter sockets were thereafter allegedly picked up by Gil Duenas, a Meralco field representative. Dejan was asked to explain the incident.

In his letter-explanation, dated March 23, 2005, to a certain Emilia SJ Reaso,^[4] Dejan admitted that he released the meter sockets in question because the deposit fees had already been paid. The payor, a certain Antonio A. Depante a.k.a. Bruce, also an electrician, asked for the release of the items. Allegedly, he had several contracts for service installation with the branch. Dejan indicated the list of contracts covering the released meter sockets. Sometime in September, October and November 2005, Meralco asked Gozarin,^[5] Dejan,^[6] and Reyes^[7] to give their sworn statements on the incident.

On February 10, 2006, Dejan received a letter from Marcelino Rosario, head of Meralco's Investigation-Paralegal Services, charging him with the unauthorized taking of 20 meter sockets, in violation of Section 7, paragraphs 4 and 11 of the Company Code of Employee Discipline, in relation to Article 282 of the Labor Code.

On February 17, 2006, Meralco conducted a formal investigation where Dejan admitted issuing the meter sockets without the authorization of the applicants for electric connection. He alleged that he released the items even without authorization as it had been the accepted practice in the office, provided the deposit fee had been paid. He claimed that he talked with Depante, through the cell phone of Duenas, about it, after Duenas himself requested him (Dejan) to release the meter sockets to Gozarin. When Dejan released the meter sockets, Duenas instructed Gozarin to take them out of the Meralco premises and load them in Reyes' jeep.

Also testifying at the investigation, Depante corroborated Dejan's account of the incident. He alleged that he made the request for the release of the meter sockets due to his inability to pick up the items himself as he was busy with another project at the time. He and Duenas retrieved the meter sockets from Reyes' house the next day.^[8]

Unconvinced with Dejan's explanation, Meralco served Dejan a letter on April 6, 2006,^[9] terminating his employment effective the following day, with forfeiture of all rights and privileges. On April 20, 2006, Dejan filed his complaint with the National Labor Relations Commission (NLRC).

The Compulsory Arbitration Rulings

In his decision^[10] dated January 15, 2007, Labor Arbiter Antonio R. Macam dismissed the complaint for lack of merit, holding that Dejan "undoubtedly transgressed the company rules on unauthorized taking of the company property[.]"^[11] Labor Arbiter Macam declared Dejan's dismissal as a valid exercise of Meralco's management prerogative.

Dejan appealed the labor arbiter's decision to the NLRC. On April 24, 2008, the NLRC rendered a decision reversing the labor arbiter.^[12] It found that Dejan's release of the meter sockets did not constitute an unauthorized taking or stealing of company property. It believed that the release of the meter sockets was done in good faith as it was in accordance with an accepted company practice. It held Dejan liable only for simple negligence. Giving recognition to Dejan's unblemished and dedicated service to the company, the NLRC ordered his reinstatement without loss of seniority rights, but without backwages. It penalized Dejan, however, with a one-month suspension for his negligence.

Both Meralco and Dejan moved for reconsideration, but the NLRC denied the motions in its July 31, 2008 resolution.

Both parties sought relief from the CA through their respective petitions for *certiorari* under Rule 65 of the Rules of Court; Meralco charging the NLRC with grave abuse of discretion for setting aside the labor arbiter's decision; and Dejan, for the NLRC's failure to award him backwages despite its illegal dismissal finding.

The CA Decision

On February 3, 2010, the CA affirmed, with modification, the NLRC dispositions. It found no grave abuse of discretion in the NLRC ruling that Dejan is not guilty of

unauthorized taking or of stealing of company property. Like the NLRC, the CA believed that Dejan acted in good faith as the release of the meter sockets was upon the request, although verbally, of Depante, the owner of the meter sockets whom he knew and who had already paid the deposit fees for the items. It pointed out that Dejan, in so acting, relied upon Meralco's long-standing practice on the release of company property without authorization.

The CA, however, found irregular the NLRC's failure to award Dejan backwages considering that it declared him to have been illegally dismissed. It pointed out that under Article 279 of the Labor Code, a dismissed employee is entitled to backwages, in addition to reinstatement. Accordingly, it awarded Dejan backwages from the time he was separated from the service until his actual reinstatement, less the amount corresponding to his one-month suspension for simple negligence. Its motion for reconsideration denied by the CA, Meralco is now before the Court through its petition for review on *certiorari*.

The Petition

Meralco contends that the appellate court committed patent and serious error in holding that Dejan is liable only for simple negligence. It maintains that he should have been made liable for the stealing or unauthorized taking (constituting dishonesty) of company property under Section 7(4) of the Company Code of Employee Discipline, which warrants his dismissal from the service. It posits that the CA misapprehended the facts. It argues as follows:

First. Dejan himself admitted or was aware that as a matter of branch procedure, field representatives are prohibited from personally taking meter sockets from the branch and delivering them directly to customers who applied for electrical connection or to their authorized agents or representatives. Meter sockets are issued only after payment of the required meter deposit fee and submission of the required documents. In case a meter socket is to be issued to the customer's authorized representative, a letter of authority or special power of attorney (*SPA*) from the owner/customer is required, together with the customer's valid ID. After the meter socket is issued, a field inspection is conducted to determine whether the meter socket and service entrance have been installed. Once the service entrance is ready, the branch then issues a "field order" for the installation of the meter and to energize the account.

The procedure is mandatory for all branch employees, to prevent the commission of fraud like the unauthorized taking of meter sockets, to be sold at a lower price or to be used by an employee's private electrical service contracting activities. The fraud could easily be done because a meter socket does not have a control number to identify the particular account where it is assigned.

Second. There is substantial evidence showing that Dejan issued the meter sockets in concert with another Meralco employee, Duenas, who was found to be engaged in private contracting (for electric connection) with Meralco customers.

During the administrative investigation, Dejan admitted that he issued the meter sockets to Gozarin, without written authorization, upon the request of Depante, a private electrician. Dejan confirmed the request for the release of the meter sockets from Depante himself, through Duenas' cell phone. Reyes, the driver of the Meralco

contracted jeep on which Duenas loaded the meter sockets, belied Dejan's and Duenas' claims that Depante made the request. Reyes stressed that it was Duenas who requested him to bring home the meter sockets and it was Duenas himself who retrieved the meter sockets.

While Dejan claimed that the 20 meter sockets were all accounted for and were issued for Depante's service applications, there is evidence showing that the service identification numbers (*SINs*) or accounts for which the meter sockets were to be allegedly installed had already been inspected, approved and installed with meters even before the meter sockets were released.

In fine, Meralco posits that the CA committed serious error and/or grave abuse of discretion in holding Dejan liable only for simple negligence and ordering his reinstatement with backwages, given the gravity of his misconduct and its negative effect on Meralco's reputation as a public utility firm.

The Case for Dejan

Through his comment^[13] (to the petition) filed on March 31, 2011, Dejan prays that the petition be dismissed for "utter lack of merit." He argues that the petition has no basis in fact and in law as the CA did not commit serious error and/or grave abuse of discretion in modifying the NLRC ruling and awarding him full backwages.

Procedurally, Dejan questions the propriety of the petition, on account of its failure to point to any provision of law that has been erroneously applied. The petition, he argues, contravenes Rule 45 of the Rules of Court which provides that only a question of law is appealable to this Court.

The Court's Ruling

We find merit in the petition.

Dejan is liable as charged. More specifically, he is liable for violation of Section 7, paragraphs 4 and 11 of the Company Code of Employee Discipline, constituting serious misconduct, fraud and willful breach of trust of the employer, just causes for termination of employment under the law.^[14] The facts and the evidence on record clearly bear this out and we wonder how the CA could have missed the seriousness or gravity of Dejan's transgressions.

There is no dispute about the release of the meter sockets.^[15] Also, the persons involved were clearly identified – Dejan; Gozarin or Mang Islao, a private electrician who received the meter sockets; Reyes, the owner of the jeep where the meter sockets were loaded by Gozarin; Duenas, a Meralco field representative; and Depante, another private electrician who purportedly owned the meter sockets.

There is also no question that Dejan released the meter sockets to Gozarin without the written authority or SPA from the customer or customers who applied for electric connection^[16] (as a matter of company policy). Dejan released the meter sockets to Gozarin on the mere say-so of Depante, as he claimed, through a call to Duenas' cell phone,^[17] and justified his act to be in accord with accepted company practice.
^[18]