

SECOND DIVISION

[G.R. No. 143511, November 15, 2010]

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
PETITIONER, VS. JOEY B. TEVES, RESPONDENT.**

DECISION

PERALTA, J.:

For review on *certiorari* are the Decision^[1] dated April 24, 2000 and the Resolution^[2] dated May 31, 2000 of the Court of Appeals (CA) in CA- G.R. SP No. 50852, affirming the Decision of the National Labor Relations Commission (NLRC) which ordered the reinstatement of respondent Joey B. Teves to his former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until actually reinstated.

The antecedent facts are as follows:

Respondent was employed by petitioner Philippine Long Distance Telephone Company in 1981 as Clerk II until his termination from service on June 1, 1992. Petitioner terminated respondent through an Inter-Office Memorandum^[3] dated May 29, 1992 on account of his three (3) unauthorized leaves of absence committed within three (3) years in violation of petitioner's rules and regulations.

Respondent was absent from August 23 to September 3, 1990 as his wife gave birth on August 25 but was only discharged from the hospital on September 2, 1990 due to complications; since they had no household help, he had to attend to his wife's needs in the hospital, as well as the needs of their four kids, including bringing them to school. Respondent called up through a third party to inform petitioner that he would go on an extended leave. Upon his reporting for work on September 4, 1990, he wrote petitioner a letter^[4] confirming his leave of absence without pay for that period and stating the reasons thereof, with his wife's medical certificate attached. Dissatisfied, petitioner required respondent to submit further explanation which the latter did reiterating his previous explanation. However, in petitioner's Inter-Office Memorandum^[5] dated October 3, 1990, it found respondent's explanation to be unacceptable and unmeritorious for the latter's failure to call, notify or request petitioner for such leave; thus, petitioner suspended respondent from work without pay for 20 days, effective October 8, 1990.

Respondent was absent from May 29 to June 12, 1991. He was sent a Memorandum^[6] reminding him of the July 2, 1990 Memorandum requiring written application prior to a leave of absence without pay and was directed to report for work on June 13, 1991 at ten o'clock in the evening lest he be meted a disciplinary action. Respondent reported for work on even date, and was required to explain in writing why no disciplinary action should be taken against him for his unauthorized

leave of absence. In a Memorandum^[7] dated June 17, 1991, respondent explained that his absences were due to the fact that his eldest and youngest daughter were sick and had to be confined at the nearby clinic; and the medical certificate confirming said confinement was to follow. Further, respondent alleged that he had relayed said message to an officemate, Luis V. Marquez, who unfortunately did not also report for work. As petitioner found respondent's explanation insufficient, respondent was suspended without pay for 45 days effective July 17, 1991.

Eight months thereafter, respondent availed of a seven-day leave of absence and extended such leave to complete his annual vacation leave, which was to end on February 11, 1992. However, respondent failed to report for work from February 11 to February 19, 1992. Petitioner then sent him a Memorandum^[8] dated February 19, 1992, directing him to report for duty within 72 hours, otherwise, his services would be terminated for abandonment of work. Respondent reported for duty and was served another Memorandum requiring him to explain in writing why no disciplinary action should be taken against him for his unauthorized absences. In his explanation, respondent stated that he incurred said absences because he had many accounts in the office which were already due and demandable and thought of prolonging such payment by absenting himself. He further stated that he realized that what he did was wrong and only worsened his situation and asked for another chance. Petitioner found such explanation totally unacceptable. Thus, in an Inter-Office Memorandum^[9] dated May 29, 1992 addressed to respondent, the latter was terminated from service effective June 1, 1992 due to his third unauthorized absence within a three-year period.

On March 9, 1993, respondent filed a Complaint for illegal suspension, illegal dismissal, payment of two Christmas bonuses and monthly rice subsidy. Petitioner filed its Position Paper.

On May 13, 1994, Labor Arbiter (LA) Benigno C. Villarente, Jr. rendered his Decision,^[10] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered declaring that the dismissal of complainant is LEGAL. Conformably with the preceding discussions, however, respondent is hereby directed to extend complainant financial assistance in the amount of TWENTY THOUSAND PESOS (P20,000.00).

Complainant's claims for bonuses and rice subsidy have not been substantiated and are, therefore, hereby DISMISSED.^[11]

In his decision, the LA found that (1) respondent had committed his third unauthorized absence within a three-year period and did not offer an acceptable reason therefor; (2) respondent's repeated unauthorized absences displayed his irresponsibility and lackluster attitude towards work; (3) the reasons for his absences which related to the need to attend to his family cannot mitigate his apparent neglect of duty to his employer; and (4) his absences were in violation of petitioner's rules and regulations. The LA found that respondent was not denied due process, since he was notified of all his infractions and was allowed each time to submit his explanation. The LA awarded financial assistance to respondent as a

measure of compassionate justice taking into consideration respondent's 11 years of service and since the infraction committed did not amount to a serious misconduct nor did it involve moral turpitude.

Respondent interposed an appeal with the NLRC.

On January 30, 1997, the NLRC rendered its Decision^[12] reversing the LA's Decision, the decretal portion of which reads:

WHEREFORE, the instant appeal is hereby given due course. The appealed decision is hereby SET ASIDE. Respondent is hereby declared guilty of illegally terminating complainant Joey B. Teves' employment. As such, respondent Philippine Long Distance Telephone Company is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other privileges appurtenant thereto with full backwages until actually reinstated. Respondents are likewise ordered to pay complainant's unpaid wages for the period covering 15-31 May 1992, 13th month pay, Christmas Bonuses, accrued rice subsidy of one (1) sack a month, or its money equivalent of P350.00 at the time of his dismissal.

[13]

In reversing the LA, the NLRC found that respondent's absences from August 23 to September 3, 1990 was brought to petitioner's attention when respondent called through a third party that respondent would go on an extended leave. Moreover, the reason for his prolonged absence, *i.e.*, the unforeseen complications of his wife's condition after giving birth, supported by a medical certificate, was an eventuality that needed to be attended to with priority which should have been accorded credence and favorably considered; and that dismissing such explanation and placing respondent under suspension, when his leave of absence was without pay, merely exacerbated his family's plight.

The NLRC found that respondent's failure to verify whether his message for petitioner through a co-employee that his (respondent) two daughters were sick and confined at a nearby clinic was duly delivered constituted a neglect of duty. However, the NLRC took into consideration respondent's reason for such absence and stated that certain leniency should have been accorded respondent and that his suspension for 45 days was too harsh for the said offense.

While the NLRC found the reason offered by respondent for his absences from February 11 to 19, 1992 unacceptable and unreasonable, respondent should have only been penalized accordingly. The NLRC found that respondent's dismissal from service was illegal, since he had been heavily punished for each and every offense imputed to him and that in his eleven years of service, this was the first time that he was falsely charged.

The NLRC found that petitioner failed to controvert respondent's claims for unpaid salary from May 15 to 31, 1990, 13th month pay and Christmas bonuses and rice subsidy for one month or its money equivalent.

Petitioner's motion for reconsideration was denied by the NLRC in a Resolution^[14]

dated February 26, 1997.

On May 29, 1997, petitioner filed before us a Petition for *Certiorari* with prayer for the issuance of a temporary restraining order and/or injunction assailing the January 30, 1997 Decision and February 26, 1997 Resolution of the NLRC. Respondent filed his Comment thereto. Petitioner then filed a Reply.

On November 12, 1997, respondent filed a Manifestation^[15] stating that he had already been reinstated by petitioner effective November 10, 1997^[16] in compliance with the NLRC Decision.

Subsequently, in a Resolution^[17] dated December 9, 1998, we referred the petition to the CA in accordance with the *St. Martin Funeral Home v. National Labor Relations Commission*^[18] ruling.

On April 24, 2000, the CA rendered its assailed Decision, which affirmed and reiterated the NLRC decision.

The CA found that (1) petitioner complied with the two-notice requirement which was essential to respondent's right to due process; (2) respondent was given a notice to explain in writing why no disciplinary action should be meted on him for his unauthorized absences from February 11 to 19, 1992; and (3) when respondent's explanation proved unacceptable to petitioner, respondent was sent another notice informing him of his termination by reason of three unauthorized absences within a three-year period, a conduct which was circumscribed in petitioner's rules and regulations. Notwithstanding compliance with the requirement of due process, the CA affirmed the illegality of respondent's dismissal finding that respondent's comportment cannot be characterized as grave so as to constitute grave misconduct; that his first two leaves of absence were satisfactorily justified; and that he should not have been suspended from service by reason of such absences. However, the CA found that respondent's failure to report for work on February 11 to 19, 1992 appeared to be the only unauthorized and unjustified leave of absence during his 11 years of stay with petitioner, and it did not merit the harsh penalty of dismissal.

Petitioner filed a motion for reconsideration, but was denied by the CA in a Resolution dated May 31, 2000.

Hence, this petition. Petitioner raises the following arguments in its Memorandum.

A.

IT IS ALREADY SETTLED THAT RESPONDENT'S PREVIOUS ABSENCES WERE UNJUSTIFIED AND UNAUTHORIZED IN LIGHT OF HIS VOLUNTARY ACCEPTANCE AND COMPLIANCE WITH THE SUSPENSIONS IMPOSED IN CONNECTION WITH SAID ABSENCES. HENCE, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT MERELY COMMITTED ONE INSTANCE OF UNAUTHORIZED ABSENCE.

B.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR AND ABUSE OF DISCRETION IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED CONSIDERING THAT:

1. THE TERMINATION OF RESPONDENT'S SERVICES IS JUSTIFIED APPLYING THE TOTALITY OF INFRACTIONS DOCTRINE.
2. THERE IS SUBSTANTIAL AND UNDISPUTED EVIDENCE ESTABLISHING THAT RESPONDENT IS AN ABSENTEE EMPLOYEE WHO HAS A PROPENSITY TO SIMPLY DISAPPEAR WITHOUT EVEN GIVING HIS EMPLOYER THE COURTESY OF A PRIOR NOTICE.^[19]

Petitioner contends that the CA erred when it found that (1) what was involved in this case was merely one instance of an unauthorized leave of absence as all of respondent's absences where he was previously sanctioned were unauthorized; (2) the imposition of the penalty of suspension to respondent was justified and he had long been estopped from questioning the same; (3) respondent was suspended not so much for the reason behind the absences, but because of the manner by which he incurred the absence, *i.e.*, by not informing petitioner causing undue prejudice to the company's operations; (4) respondent had a propensity to simply disappear without giving petitioner the courtesy of a prior notice; and (5) respondent never questioned the suspensions meted on him, but instead voluntarily complied with the suspensions without protest.

Petitioner argues that respondent's past infractions could be used as supporting justification to a subsequent similar offense which would merit respondent's dismissal; that the CA erred when it did not apply the totality of infractions doctrine but limited respondent's offenses to just one offense; and that respondent's acts of absenting himself without prior notice, despite previous disciplinary actions, should be considered in its totality and not in isolation from one another.

Petitioner contends that the management's right to prescribe rules and regulations cannot be denied and that the employer may justly discharge from employment an employee who violates company rules and regulations. Petitioner avers that respondent's length of service in the company cannot work in his favor, but should be taken against him.

The issue for resolution is whether or not sufficient ground exists for respondent's dismissal from service.

Respondent was terminated from employment by reason of his third unauthorized absence from February 11 to 19, 1992. Respondent absented himself because he had many accounts in the office which were already due and demandable, and he thought that absenting himself from work would prolong the payment of his financial obligations; and that he realized that his action was wrong which worsened his situation and asked for another chance. Such explanation was found by petitioner to be unacceptable; thus, respondent was terminated effective June 1, 1992 for committing three unauthorized absences within a three-year period. Petitioner found respondent to have committed the other two incidents of unauthorized absences