

THIRD DIVISION

[CA-G.R. SP No. 127967, March 23, 2015]

RUBEN ALBIS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND CAMARINES SUR I ELECTRIC COOP, INC., RESPONDENTS.

DECISION

CARANDANG, J.:

The instant case is a petition for certiorari under Rule 65, assailing the Resolution dated September 19, 2012^[1] of public respondent National Labor Relations Commission (NLRC), which upheld the dismissal of petitioner's complaint for illegal dismissal with claims for damages, reinstatement, backwages and attorney's fees. The petition was initially dismissed for the failure of petitioner to file a motion for reconsideration first before resorting to a petition for certiorari under Rule 65,^[2] but the same was reinstated upon petitioner's motion for reconsideration^[3] in view of the employment of petitioner with respondent for almost 25 years. Hence, the Court deemed it proper to resolve the case based on its merits.^[4]

The following antecedents are undisputed:

Petitioner Ruben Albis was initially employed on July 31, 1986, as a casual employee by private respondent Camarines Sur I Electric Cooperative, Inc. (CASURECO I), and was regularized on January 25, 1989. Rising from the ranks, petitioner last held the position of a Lineman under Field Operation Department-CAO-V of private respondent since 1996.^[5]

On April 19, 2011, private respondent issued to petitioner a Notice of Violation of EC Rules and Regulation, charging the latter for dishonesty on three (3) counts for "installing illegal connection and tampered/defective meter and soliciting/receiving money from Conelia Lurcha of Zone 6, Dungcal, Josephine Vergara of Zone 2, Sitio Gogon, and Paul Antonio of Zone 1, Sitio Gogon, Camaligan, Camarines Sur (henceforth referred to as Lurcha, Vergara, and Antonio, for brevity) without remitting the same to the Coop". The notice required petitioner to explain in writing why no disciplinary action shall be taken against him for the said offenses and further informed him of an investigation to be held at the FOD Office of private respondent's headquarters to which he may attend, warning him that private respondent shall act on the case based on the evidence on hand should petitioner fail to attend the investigation.^[6]

Having received the notice on April 25, 2011, petitioner complied by submitting his written explanation dated May 2, 2011, thus:^[7]

"xxx xxx xxx"

"My intention was not to commit the alleged offenses as described in NVECRB but to accede to the request of the applicants named therein and who had their "forced" statements signed. It was not the undersigned who approached them for the electric connections but it was the other way round. This happened in the time when I was transferred to CAO IV and also when my FOREMAN was transferred somewhere else. Actually, I had also sought the assistance of the Barangay Electrician, Mr. Antonio Valencia because I know that the Barangay Electrician has the authority for housewiring installations.

The applicants then were in dire need of electricity...

There were cases of the same nature but were not given due sanctions and this gave me the courage to cause the applicant to be granted with the benefits of electricity, just like what the others did.

xxx xxx xxx"

On April 19, 2011, an investigation was conducted which was attended by petitioner who was able to explain his side.^[8]

On July 6, 2011, petitioner's immediate supervisor, Roberto Ruy, who also conducted the investigation, submitted the investigation report finding petitioner guilty of violating the Manual of Discipline and Code of Ethics of Coop Employees, particularly Item 18 of Article VII, Section 4 (Honesty and Integrity) for illegally connecting defective and tampered meters to 3 doubtful consumers and recommended disciplinary action as provided in the Code of Ethics.^[9] Two other reports followed on July 7, 2011^[10] and August 15, 2011,^[11] to the General Manager of private respondent, who issued the Notice of Disciplinary Action dated October 5, 2011, dismissing petitioner from service effective notice thereof.^[12] Petitioner refused to receive the notice of disciplinary action per handwritten note on the notice dated October 25, 2011.

During private respondent's Board Meeting on September 3, 2011, petitioner sought the reconsideration of his dismissal when his request to be given the floor was granted. Petitioner admitted the acts complained of, but explained that the consumers insisted on the connections and at that time he was in financial trouble. The Board deliberated thereon but for lack of authority to act on disciplinary matters, no action was taken on petitioner's request for reconsideration.^[13]

Petitioner likewise submitted a letter of appeal to private respondent's General Manager dated November 14, 2014, but this time he averred that private respondent extended temporary connections on the condition that their application and documents shall be completed; that the consumers had been billed, thus, private respondent suffered no loss or prejudice; that he denied soliciting or receiving any consideration for the alleged illegal connections; that he denied the irregularity of the turn-on reports that had not followed the normal work flow for billing; and that he was denied due process for failure to confront private respondent's witnesses who executed affidavits on petitioner extracting money from them.^[14] In support thereof, petitioner attached to his letter affidavits of Antonio

and Vergara, retracting their earlier statements against petitioner.^[15]

But, petitioner's appeal was denied by private respondent in its letter dated November 25, 2011.^[16]

Aggrieved, petitioner filed a complaint for illegal dismissal with claims for damages, reinstatement, backwages with attorney's fees.

On May 28, 2012, Labor Arbiter Jose C. Del Valle, Jr., dismissed petitioner's complaint for lack of merit, ratiocinating as follows:^[17]

“Complainant was charged of violating Article VIII, Section 4 (Honesty and Integrity), Item No. 18 of the Manual of Discipline and Code of Ethics of CASURECO I employees. In support of its accusations against complainant, respondents presented substantial evidence which clearly and convincingly prove the same. xxx

xxx xxx xxx

The gravity of complainant's offense must be considered, as he was not dismissed for a minor or unimportant infraction. As stated above, the importance of the rule, which was violated by complainant should not be disregarded because it is intended for the protection not only of the respondent cooperative but also of all its members-consumers. Also, the long years of service of complainant should be taken against him. If an employee's length of service is to be regarded as justification for moderating the penalty of dismissal, it will actually become a prize for disloyalty perverting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of all undesirables (PAL vs. NLRC, G. R. No. 87353, July 3, 1991).

As regards the requirements of due process, this Office believes and so holds that respondent strictly complied with its requirements. First, complainant was served of the notice of violation of EC Rules and Regulations dated April 19, 2011. This notice clearly informed him of the charges and the description of his offense and required him to explain in writing within ten (10) days from receipt why no disciplinary action should be taken against him. As answer thereto, complainant submitted his written explanation dated 2 May 2011. A formal hearing an/or investigation was also conducted wherein complainant was given ample opportunity to explain and defend his side. Thus, he was furnished again of the Notice of Disciplinary Action date 5 October 2011, wherein he was informed of respondent's decision to dismiss him from the service (respondent's Annexes “7”, “8”, “9”, “10”, “11”, “12” and “13”, respectively). Respondent's compliance with the requirement of due process did not end here. Complainant was still allowed to file his Appeal with respondent's Board of Directors, wherein during its meeting on September 3, 2011, complainant was allowed to appear and defend himself, as regards his motion for reconsideration. And finally, complainant was furnished again of respondent's action on his motion for reconsideration. In its memorandum dated 25 November 2011,

complainant was informed that his appeal was denied and he was ordered dismissed from service effective upon service of the notice of termination (Annexes "14" to "16" to respondent's position paper). All the foregoing are clear and convincing proofs that respondent strictly complied with the requirements of due process.

Complainant's assertion that he was deprived of his right to due process because he was not given opportunity to confront Cornelia Lurcha, Josephine Vergara and Paul Antonio, is also devoid of merit. Due process merely contemplates "opportunity to be heard." Formal "trial type" hearing, although preferred is not absolutely necessary to satisfy the employee's right to be heard.

xxx xxx xxx

Wherefore, premises considered, judgment is hereby rendered dismissing the complainant for illegal dismissal, for lack of merit.

xxx xxx xxx

SO ORDERED."

On appeal, petitioner insisted that the findings of the investigation resulting in his dismissal had not been supported by convincing evidence; that it was the consumers who approached petitioner for temporary connection and that there was no showing petitioner demanded, collected or received amounts, or that there was no showing that the same were not remitted if petitioner received the same; and that he was denied due process since he was not given the opportunity to confront private respondent's witnesses.^[18]

Giving credence to private respondent's handwritten statements of its witnesses, petitioner's admissions per his explanation to the notice of violation and letter of appeal, and even the affidavits of Antonio and Vergara in support of his appeal, public respondent upheld the Labor Arbiter's Decision as follows:^[19]

"Indeed, the electrical connections which were made possible by the complainant and without authority of Respondents, are all illegal. The crux of complainant's offense is his act of connecting or installing electric service to Antonio, Lurcha and Vergara (sic) without authority from Respondents.

Complainant's attempts to downplay his wrongdoing, by stating that there is no proof of corruption (that he did not solicit and receive moneys from certain persons) will not lie to exculpate him from administrative liability. That there is money involved, is just icing on the cake. In short, there is even no need for us to determine whether money exchanged hands in the subject transaction. The undisputed and admitted fact that he installed the electric connection without the usual application requirements, and without the knowledge and consent of the respondents, is enough justification for the respondents to terminate his services. In the process, the use of defective or tampered or retired electric meter, was means employed by the complainant to implement his