

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

BENECIO D. GUBAC,
Petitioner,

-versus-

G.R. No. 81946
July 13, 1990

**NATIONAL LABOR RELATIONS
COMMISSION, TARLAC ELECTRIC
COOPERATIVE, INC., and/or ERNESTO
R. MADRIAGA, JR., Jointly With Its
Directors,**

Respondents.

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DECISION

GUTIERREZ, JR., J.:

This Petition questions the Decision of the National Labor Relations Commission (NLRC) dated December 9, 1987 reversing the findings of the Labor Arbiter that the petitioner was illegally dismissed.

The facts are as follows:

The petitioner worked as internal auditor of Tarlac Electric Cooperative (TARELCO) which is a non-stock, non-profit cooperative established for the purpose of supplying, promoting and increasing the availability of electricity to its members. In the afternoon of January 27, 1986, as the petitioner was about to leave the cooperative's premises on his motorcycle, he was stopped by the security guard manning the main gate. The security guards requested permission to search his tricycle. The petitioner consented. As a result of the search, the security guards found some jeep spare parts in the compartment of his tricycle consisting of two (2) pieces of "worn out" spring clamps and one (1) "worn-out" bell trunk. A spot report made by the security guard which was later corroborated by another employee indicated that the worn-out parts belong to the TARELCO.

Subsequently, TARELCO's General Manager sent the petitioner a memorandum dated January 29, 1986 informing him of the charge against him and directing him to explain within seventy-two (72) hours why no disciplinary action should be taken against him. On February 3, 1986, the petitioner submitted his written explanation claiming categorically that the recovered spare parts were taken from his own jeep being repaired by TARELCO's mechanic, Mr. Honorio dela Cruz.

Thereafter, an investigation ensued. Six meetings were actually held to hear the petitioner's explanation. The committee, however, found the petitioner's claims uncorroborated and recommended his dismissal. Acting on the result of the committee's investigation TARELCO dismissed the petitioner.

The petitioner thereupon filed a complaint for unfair labor practice and illegal dismissal against the private respondent citing that the real cause of his dismissal was his active role as union officer in the last strike.

On February 20, 1987, the labor arbiter rendered a decision, the dispositive portion of which reads as follows:

X X X

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the petitioner and against respondents ordering the latter to immediately reinstate petitioner to his former or equivalent position without loss of seniority rights and with full backwages and other benefits from the date of his dismissal, until his actual reinstatement. All other issues are hereby DISMISSED for lack of substantial evidence.” (Rollo, p. 48)

On appeal, the NRLC reversed the findings of the Labor Arbiter in its Decision with the following dispositive portion:

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“WHEREFORE, premises considered, the appealed decision is hereby SET ASIDE and a new judgment declaring the dismissal of petitioner to be valid and ordering respondent to pay petitioner separation pay.” (Rollo, p. 33)

Hence, this petition.

The Solicitor General agrees with the petitioner that there was an illegal dismissal in this case. Consequently, a Research Attorney of NLRC filed a comment insisting that the Labor Arbiter erred in his appreciation of the facts.

The petitioner raises the following issues for the resolution of this Court, to wit:

X X X

- “(1) Whether the facts bound by the NLRC were contrary to evidence;
- “(2) Whether the factual and legal conclusions of the NLRC were without basis;

- (3) Whether petitioner was deprived of his constitutional rights to counsel, against self-incrimination, and to presumption of innocence by the TARELCO Investigation Committee.” (Rollo, p. 49)

While it is true that loss of trust or breach of confidence is a valid ground for dismissing an employee, such loss or breach of trust must have some basis (*Galsim vs. Philippine National Bank*, 29 SCRA 293 [1969]; *Piedad vs. Lanao del Norte Electric Cooperative, Inc.*, 153 SCRA 500 [1987])

In the case at bar, TARELCO’s basis for terminating the employment of the petitioner is the latter’s alleged act of pilfering or sneaking out the company’s property consisting of used or “retired” jeepney spare parts. While we recognize theft of company property as a just and valid cause for dismissing an employee (*Philippine Long Distance Telephone vs. National Labor Relations Commission*, 166 SCRA 422 [1988]), such charge imputed to the petitioner must first be sufficiently established. A careful perusal of the records, however, indicates that TARELCO has not established such fact. Except for the self-serving affidavit of Jaime Mendoza, who is the company’s contractual mechanic, TARELCO has not proven that it owns the subject worn-out spare parts. On the other hand, the TARELCO mechanic repairing Gubac’s jeep stated that these parts came from the jeep. At the time the parts were recovered, there was no indication whatsoever that these items were missing. The July 9, 1986 memorandum of the TARELCO General Manager merely relied on the handwritten testimony of another driver-mechanic, Jaime Mendoza, that the spare parts were “retired properties” of the cooperative. No documentary evidence such as inventory lists, purchase slips, scrap lists, etc., was shown which would have established the fact that the cooperative owned these items. It is a presumption of law that a person in possession of a thing or a property whether real or personal, is presumed to be the lawful owner unless it can be shown otherwise. (Sec. 5 (j) Rule 131, Rules of Court). Since the parts were found in the petitioner’s motorcycle, the burden of rebutting the presumption lies on the private respondent which it failed to do.

The respondents capitalize very much on the petitioner's alleged delayed efforts to prove his innocence. This is bolstered by his alleged failure or refusal to attend the investigation committee hearings which according to the respondents is in effect an indirect admission of guilt. Such contention is baseless and false. Contrary to the NLRC's findings, the records disclose that the petitioner actually attended two (2) of the hearings dated May 20, 1986 and June 10, 1986 as evidenced by Annexes "H" and "I". The respondent has filed misleading statements when it says that the petitioner refused to appear before the committee to present his side. Moreover, the NLRC's sweeping conclusion that "one who is truly innocent will not be stopped by anyone or anything from proving that he is not guilty of the charge" is misplaced because the petitioner did in fact appear and defend his side. Aside from the fact that such a finding violates the constitutional presumption of innocence, the respondents have apparently shifted the burden of proof to the petitioner when it is TARELCO which should prove that the worn-out parts really belonged to it.

Moreover, the respondents rely greatly on the declaration of the warehouseman that the spare parts presented by petitioner's witness, Honorio dela Cruz to prove that nothing was actually missing, were not the parts subject of the alleged offense. Such declaration is not sufficient to establish that the worn-out parts in the petitioner's tricycle belonged to TARELCO and that Gubac was guilty of stealing them. We are, therefore, constrained to sustain the factual findings of the labor arbiter that the spare parts found in the possession of the petitioner are owned by him and that this fact "was never controverted or impugned by any evidence presented by the respondents." (Rollo, p. 27)

In the case of *Egyptair vs. National Labor Relations Commission* (148 SCRA 125 [1987]), we held that the burden of proof rests on the employer to show that the dismissal was for just cause. The private respondent's failure to do so necessarily meant that the dismissal of the petitioner was not justified. (*Polymedic General Hospital vs. National Labor Relations Commission*, 134 SCRA 420 [1985])

The supposed dishonesty of the petitioner is not substantiated by any evidence whatsoever. There has to be some kind of proof that the

petitioner was involved in the loss of company property. (Lamsan Trading Inc. vs. Leogardo Jr., 144 SCRA 571 [1986]) Mere accusations or the insistence by the employer that the petitioner failed to present proof of ownership over the questioned spare parts will not suffice. There has to be more convincing evidence. The proofs on hand do not merit the dismissal of the petitioner.

Furthermore, except for this charge, the petitioner has a clean record of employment from July 3, 1975 totalling eleven (11) years. Considering the petitioner's length of service and the attendant circumstances in this case, the penalty of dismissal has no basis. The right of an employee to security of tenure is protected by the Constitution which must be respected unless a just cause exists for the termination of employment. The determination of the existence and sufficiency of just cause must be exercised with fairness and in good faith and after observing due process (Mary Johnston Hospital vs. National Labor Relations Commission, 165 SCRA 110 [1988]). The dismissal based on loss of trust and confidence arising from an alleged misconduct should not be used as a shield to dismiss an employee arbitrarily (Callanta vs. Carnation Phil., 145 SCRA 268 [1986]).

It may be noted that the NLRC found Gubac guilty of taking company property but still ordered the payment of separation pay out of compassion. Where the relationship between employer and employee has so deteriorated that the company would be prejudiced by the worker's continued employment, we do not order reinstatement. Instead, we direct the payment of both backwages and separation pay. In an unfair labor practice case, however, this may not be a correct procedure. Where an employee is unfairly charged, apparently in order to stop or hamper union activities, the employer still gets what he wants even if he pays both backpay and retirement pay. The unfair labor practice is condoned.

Considering that the findings of the NLRC are not supported by substantial evidence, the relief prayed for by the petitioner must be granted which is reinstatement to his former position without loss of seniority rights and backwages not exceeding three years.

WHEREFORE, the Decision of the National Labor Relations Commission is hereby **SET ASIDE** and the Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Fernan, C.J., Feliciano, Bidin and Cortes, JJ., concur.

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