

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**QUEZON ELECTRIC COOPERATIVE,
*Petitioner,***

-versus-

**G.R. No. 79718
April 12, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION, MAYNARDO TAÑADA,
RENATO BACUBE, FLAVIANO O.
AGUBANG, PETRONIO R. POBEDA,
and RAMON A. PAREJA,
*Respondents.***

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DECISION

CORTES, J.:

Private respondents were employees of petitioner Quezon Electric Cooperative, holding the following positions:

Maynardo Tañada	— Disconnecting Officer
Renato Bacube	— Lineman
Flaviano Agubang	— Groundman
Petronio Pobeda	— Housewiring Estimator/Inspector
Ramon Pareja	— Bill Collector

In 1984, petitioner undertook the tracking down of pilferages of electricity. Among those investigated were its own employees. Fourteen (14) employees, including private respondents herein, were found to have tampered meters and illegal connections in their houses resulting in the pilferage of electricity. Of said fourteen (14) employees, nine (9) agreed to resign and thereafter claimed the benefits due them. The five (5) private respondents did not, and were subsequently dismissed. Consequently, private respondents filed separate cases for illegal dismissal and non-payment or underpayment of benefits against petitioner.

In support of private respondents' dismissal, petitioner presented the following evidence:

MAYNARDO TAÑADA

Of the service wires (neutral and live), only the neutral wire could be pulled out from the built-in pipe in concrete, hence it is suspected there is an illegal tapping to the wire inside the conduit pipe installed in time of concreting leading to load side without passing through the meter. (Memorandum from Meter Calibration/Replacement Crew, Annexes 5 & 5-A, Position Paper of the Petitioner). This is confirmed by the great disparity between estimated monthly KWH consumption of 127.8 per load survey and the actual registered consumption ranging from 32 to 45 KWH per month. (Annexes 6 & 7, Id.)

RENATO BACUBE

There was a trace that his house was jumpered because duplex wire was peeled off and a splice was left. (Annexes 5 and 5-A, Id.). He was also found using a different meter from the one issued for this house. (Memorandum from Chief Technical Services Section, Annex 10, Id.). The estimated monthly KWH consumption was 52 KW, while the registered consumption is 25 KWH per month. (Annexes 8 & 9, Id.).

FLAVIANO AGUBANG

Appliances that require large amount of electricity were directly tapped to the service drop. Thus, consumption does not register in the meter. (Annex 10, Id.).

PETRONIO R. POBEDA

His KWH meter was positioned upside down in such a way that the meter disc could hardly move, causing minimal registration of electricity consumed. (Annex 1-C, Id.).

RAMON A. PAREJA

Service drop was pelled off (Annex 1-D, Id.) where it could be reached easily by hand from a hole in the wall of his house. (Rollo, pp. 12-13; 63-64.)

The Labor Arbiter, while finding that there was basis to suspect private respondents of pilferage, nevertheless found that private respondents had been illegally dismissed and ordered their reinstatement with backwages, as the evidence proved insufficient to warrant their dismissal. The claims for unpaid or underpaid benefits were dismissed.

On appeal, public respondent National Labor Relations Commission dismissed petitioner's appeal and affirmed the decision of the Labor Arbiter. Petitioner's motion for reconsideration was subsequently denied. Hence, the instant petition.

In its petition, Quezon Electric Cooperative assails the finding of the Labor Arbiter, affirmed by the NLRC, that the evidence against private respondents was insufficient to warrant their dismissal, and thus ascribes to the NLRC grave abuse of discretion amounting to lack or excess of jurisdiction for sustaining the Labor Arbiter's decision to order their reinstatement with backwages.

In his comment, the Solicitor General expressed his agreement with the petitioner and recommended "that the petition be given due course and that the decision of the Labor Arbiter as affirmed by respondent NLRC be reversed and set aside and the dismissal of private respondents be ordered." (Rollo, p. 70.) He was of the view that there was sufficient basis to justify private respondents' dismissal.

The parties filed their respective memoranda and, in view of the Solicitor General's position, the NLRC was required to designate another lawyer to file its memorandum (Rollo, p. 101). After the NLRC complied and filed its memorandum, the case was deemed submitted for decision.

After considering the facts as found by the Labor Arbiter and adopted by the NLRC, the arguments of the parties, the law and the jurisprudence on the matter, the Court finds that petitioner has failed to show that the NLRC gravely abused its discretion, amounting to lack or excess of jurisdiction, when it affirmed the decision of the Labor Arbiter.

Both petitioner and the Solicitor General argue that private respondents may be legally dismissed on the ground of loss of confidence. In support thereof, they cite the leading cases of *Galsim vs. Philippine National Bank* (G.R. No. L-23921, August 29, 1969, 29 SCRA 293) and *Reyes vs. Zamora* (G.R. No. L-46732, May 5, 1979, 90 SCRA 92).

In *Reyes*, supra, the Court stated:

Loss of confidence is a valid ground for dismissing an employee, and proof beyond reasonable doubt of the employee's misconduct — apparently demanded by the Minister of Labor — is not required to dismiss him on this charge. It is sufficient if there is "some basis" for such loss of confidence; or if the employer has reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of the trust and confidence demanded by his position. (at p. 111.)

The Court finds petitioner's and the Solicitor General's reliance on the above-quoted rule misplaced. The facts of the instant case negate the application of the doctrine cited.

The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of

confidence in the employee. Thus, in *Galsim*, supra, the employee dismissed was a paying teller, while in *Reyes*, supra, the employee was the company's credit and collection manager. In both cases, the loss or misappropriation of money under their custody or control was involved. Similarly, in *Nevans vs. Court of Industrial Relations* (G.R. No. L-21510, June 29, 1968, 23 SCRA 1321), another case cited by the Solicitor General, the employee dismissed on the ground of loss of confidence was the head checker of the company and the loss involved merchandise under his management and supervision.

Under the Labor Code, as amended, loss of confidence would be the result of "fraud or willful breach by the employee of the trust reposed on him by his employer or duly authorized representative," a just cause for termination under Article 282. It cannot be gainsaid that the breach of trust must be related to the performance of the employee's functions.

In the instant case, private respondents held no position involving trust and confidence, with the possible exception of Ramon Pareja who was a bill collector. But even then, Pareja was not being charged with the loss of money he had collected.^(*) Respondents were actually being accused by petitioner with the pilferage of electricity as consumers of the electric power it provided. This is clear from the report of petitioner's investigators who found the pilferage to have been effected through the electric wires leading to private respondents' residences and the meters attached thereto. Essentially, private respondents were dismissed for their non-payment of the electricity they allegedly consumed or, more graphically, for cheating on their electric bill. That the pilferage could have been effected even if private respondents were not employees of petitioner but were ordinary consumers is undisputed. Thus while the pilferage could have been facilitated by their employment with petitioner, in that the knowledge necessary to effect the alleged meter-tampering and illegal connections could have been acquired in their employment, such did not necessarily make the alleged offense work-related.

Petitioner and the Solicitor General, however, point to a company policy (Policy No. 35) which makes pilferage by employees punishable with dismissal, to wit:

Coop employee-consumers found knowingly using tampered meters at his own residence, rented apartment or houses and using other devices in the pilferage of electricity should be punished by dismissal from the service (Comment, p. 4; Rollo, p. 64.)

However, the Court finds that even under this company policy, the dismissal of private respondents cannot be sustained. As a found by the Labor Arbiter, whose decision was affirmed by the public respondent:

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(R)espondent (petitioner herein) has still to prove by clear and convincing evidence that the complainants (private respondents herein) were knowingly using the tampered meters or using other devices to pilfer electricity. This is the import of the company's policy. In the ease at bar, there is no evidence to show that complainants have been knowingly using the alleged devices to pilfer electricity. There is no evidence that the complainants were the ones who installed, made or caused the connection of the devices used in pilfering electricity.

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(Rollo, p. 29; Italics supplied.)

The insufficiency of the evidence relied upon by petitioner is particularly apparent with regard to private respondents Tañada and Bacube. As found by the Labor Arbiter, the sole basis of petitioner in concluding that they have pilfered electricity was the disparity between their estimated monthly consumption and their actual consumption but petitioner had failed to show that the disparity could have resulted only if they had pilfered electricity (Rollo, p. 28.) On the other hand, in the case of Flaviano Agubang, there is even evidence to show that the alleged illegal connection was done by a lessee of the lower floor of his house ("silong") without his knowledge or consent (Ibid., pp. 23-24.) Then, that Petronio Pobeda caused the installation of the defective meter in his residence is not conclusive, as he had allegedly just recently transferred thereto (Ibid., p. 25.) Finally, in Ramon Pareja's case, while it was suspected that he used a

“jumper” since the service drop connection leading to his house was peeled off, no such illegal contraption was actually found (Ibid., p. 26.) In sum, the evidence in support of petitioner’s position that private respondents knowingly used tampered meters or devices to effect the pilferage of electric power is inconclusive.

It is a basic principle in the dismissal of employees that the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause, and failure to do so would necessarily mean that the dismissal is not justified (Polymedic General Hospital vs. NLRC, G.R. No. 64190, January 31, 1985, 134 SCRA 420; Asphalt and Cement Pavers, Inc. vs. Leogardo, et al., G.R. No. 74563, June 20, 1988.) Should the employer fail in discharging this duty, the dismissal of the employee cannot be sustained. This is consonant with the constitutional guarantee of security of tenure, as implemented in what is now Sec. 279 of the Labor Code, as amended.

In the instant case, public respondent NLRC and the Labor Arbiter have both found that petitioner had failed to prove a just cause for the dismissal of private respondents. After a careful consideration of the pleadings filed and the arguments raised by the parties and the Solicitor General, the Court finds no cogent reason to disturb this finding. As the Court had emphasized in *Dangan vs. NLRC* (G.R. Nos. 63127-28, February 20, 1984, 127 SCRA 706):

It is perhaps timely to reiterate well-settled principles involving, decisions of administrative agencies. Findings of quasi-judicial agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence. (*Special Events and Central Shipping Office Workers Union vs. San Miguel Corporation*, 122 SCRA 557 citing *International Hardwood and Vener Co. of the Philippines vs. Hon. Vicente Leogardo, et al.*, 117 SCRA 967; *Genconsu Free Workers Union vs. Inciong*, 91 SCRA 311; *Dy Keh Beng vs. International Labor and Marine Union of the Phil.*, 90 SCRA 162). And in a catena of cases, this Court has held that the findings of facts of the National Labor Relations Commission are binding on the Court (*Philippine Labor Alliance Council (PLAC) vs. Bureau of Labor Relations*,

75 SCRA 162; Pan-Phil. Life Insurance Co. vs. NLRC, 114 SCRA 866; Pepsi-Cola Labor Union-BFLU-TUPAS Local Chapter No. 896 vs. NLRC, 114 SCRA 960) if supported by substantial evidence (Reyes vs. Philippine Duplicators, Inc., 109 SCRA 438). (at pp. 711-712.)

Ordinarily, an employee who is illegally terminated be entitled to reinstatement to his former position with backwages. However, the Court is of the view that the circumstances of the instant case would render the reinstatement of private respondents inappropriate. Thus, in the recent case of Citytrust Finance Corporation vs. NLRC (G.R. No. 7574, January 15, 1988, 157 SCRA 87), where the employer similarly failed to establish sufficient basis for the dismissal of the employee on the ground of lack of confidence, the Court awarded separation pay equivalent to one (1) month pay for every year of service instead of ordering reinstatement “so that he (the employee) can be spared the agony of having to work anew with petitioner (the employer) under an atmosphere of antipathy and antagonism and the petitioner does not have to endure the continued services of private respondent in whom it has lost confidence.” (at p. 96.)

WHEREFORE, the instant Petition is hereby **DISMISSED**. The Resolution of the NLRC dismissing the appeal from the Labor Arbiter’s Decision is **AFFIRMED**, with the modification (a) that private respondents shall be paid separation pay equivalent to one (1) month pay for every year of service in lieu of reinstatement and (b) that, in accordance with the Court’s pronouncements, the award of backwages shall be limited to three (3) years, without qualification or deduction. This decision shall be **IMMEDIATELY EXECUTORY**.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr. and Bidin, JJ., concur.

[*] See Piedad vs. Lanao del Norte Electric Cooperative, Inc. (G.R. No. 73735, August 31, 1987, 153 SCRA 500) where the Court held that a bill collector of an electric cooperative who repeatedly incurred unexplained shortages in his

collections could be dismissed on the ground of loss of confidence, the position of bill collector being one of trust and confidence.

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