



Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

JIMMY PAEZ,  
 Petitioner,

G.R. No. 211185

- versus -

Present:

MARINDUQUE ELECTRIC  
 COOPERATIVE, INC.,  
 WILLIAM BOBIS,  
 BEETHOVEN AREVALO,  
 JOEL PALATINO, and  
 CARMENCITA GAAN,  
 Respondents.

PERALTA, C.J.,  
 CAGUIOA,  
 CARANDANG,  
 ZALAMEDA, and  
 GAERLAN, JJ.

Promulgated:  
 DEC 09 2020

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DECISION

GAERLAN, J.:

Subject to review under Rule 45 of the Rules of Court at the instance of Jimmy Paez (petitioner) is the February 25, 2013 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 112151, affirming with modification the May 29, 2009 Decision<sup>2</sup> of the National Labor Relations Commission (NLRC) in NLRC Case No. RAB-IV-05-00149-05-MA.

The Antecedents

Petitioner was hired by respondent Marinduque Electric Cooperative, Inc. (MARELCO) on March 16, 1984. At the time of his alleged illegal termination on March 21, 2005, he occupied the position of Sub-Office Chief.<sup>3</sup>

Sometime in 2004, MARELCO discovered certain highly irregular activities committed by some of its employees regarding the Smart and Globe Projects. It came to its knowledge that several Globe cell sites were illegally tapped to the service connection of member-consumers near the area. MARELCO, thus, made an inquiry through an Ad-hoc Committee created for such purpose. The Committee invited petitioner, among others, to shed some

<sup>1</sup> *Rollo*, pp. 38-63; penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier (now a Member of this Court), concurring.

<sup>2</sup> *Id.* at 114-153; penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino, concurring.

<sup>3</sup> *Id.* at 118.

light on the matter.<sup>4</sup> It specifically asked him for the name of the person who ordered or approved the energization of the Globe cell sites and the installation of the KWH Meter at Brgy. San Antonio, Sta. Cruz. Petitioner, however, answered that the go signal was given by someone from the Technical Services Department but he could not remember who the person was considering that the approval was made through a telephone conversation and he failed to identify the voice of the person he was then talking to.<sup>5</sup>

Later, petitioner received three letters of invitation dated January 24, 2005, February 10, 2005 and February 15, 2005. He was invited to attend a further investigation regarding the irregularities in the Globe and Smart Projects.<sup>6</sup> Unfortunately, he failed to do so for certain reasons. For failure to attend, the investigating committee deemed it as a waiver of his right to be heard and to present evidence.<sup>7</sup>

After the inquiry was terminated, petitioner was placed under floating status pending completion of the investigation on the ground that he was "concealing information apparently designed for whatever favor either or both yourself and any party/ies which may be classified as collusion or conspiracy including conflict of interest x x x."<sup>8</sup>

On March 21, 2005, MARELCO terminated the services of petitioner based on the ground above-quoted. On March 28, 2005, petitioner made an appeal stating that he had nothing to do with the Globe and Smart Construction. This time, petitioner averred that, at that time, he was already recalled as Area Supervisor of Sta. Cruz and was assigned to three Islands (Polo, Maniwaya, Mogpog); and he decided to have the cell sites energized because "I thought there were no more problems as the documents were complete and the required payments have been paid."<sup>9</sup> Notwithstanding, MARELCO did not reverse its earlier decision terminating petitioner. Thus, petitioner filed a complaint for illegal dismissal before the Labor Arbiter, which was docketed as NLRC RAB IV-04-00104-05-MA.<sup>10</sup>

Several of MARELCO's employees, who were likewise terminated for their alleged participation in the irregularities in the Smart and Globe projects, also filed illegal dismissal complaints against MARELCO.

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<sup>4</sup> Id. at 41-42.

<sup>5</sup> Id. at 42.

<sup>6</sup> Id. at 127.

<sup>7</sup> Id. at 103.

<sup>8</sup> Id. at 90.

<sup>9</sup> Id. at 91.

<sup>10</sup> Id. at 103.

For its part, MARELCO, averred that petitioner violated Section 7.2.9 of the Code of Employees Conduct for knowingly giving untruthful statements or concealing material facts to the Ad-hoc Committee and the Executive Committee.<sup>11</sup> Thus, it meted the penalty of dismissal.

### **The Labor Arbiter Ruling**

Labor Arbiter Robert A. Jerez rendered the June 30, 2008 Decision<sup>12</sup> dismissing petitioner's and his co-complainants' consolidated complaints for lack of merit. The Labor Arbiter ratiocinated that petitioner, in particular, committed serious misconduct and fraud or willful breach of trust reposed in him by his employer, MARELCO, when he refused to divulge the name of the person who allegedly approved the energization of the Globe cell sites and the installation of the KWH Meter at Brgy. San Antonio, Sta. Cruz.<sup>13</sup> Hence, there was just cause for his termination. In other words, the termination was with factual and legal bases. The Labor Arbiter, thus, disposed the case in this wise:

WHEREFORE, premises considered, the instant consolidated Complaints are DISMISSED for lack of merit.

SO ORDERED.<sup>14</sup>

Undaunted, petitioner and his co-complainants filed an appeal to the NLRC.

### **The NLRC Ruling**

On appeal, the NLRC reversed the dismissal of the consolidated complaints. In its Decision<sup>15</sup> promulgated on May 29, 2009, the NLRC ruled that petitioner and the other terminated employees were illegally dismissed. In ruling in favor of petitioner, the NLRC concluded that petitioner's failure to answer the question during the inquiry did not constitute fraud and dishonesty. The *fallo* of the NLRC's Decision reads:

WHEREFORE, prescinding from the foregoing, the appeal is hereby given due course. The decision appealed from is REVERSED and SET ASIDE and a NEW ONE ENTERED finding the dismissal illegal and ordering Marinduque Electric Cooperative, Inc. to pay the complainants their backwages and retirement pay.

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<sup>11</sup> Id. at 99.

<sup>12</sup> Id. at 79-112.

<sup>13</sup> Id. at 109.

<sup>14</sup> Id. at 112.

<sup>15</sup> Id. at 114-153.

SO ORDERED.<sup>16</sup>

MARELCO then moved for reconsideration. It was, however, denied. Hence, MARELCO filed a petition for *certiorari* with the CA.

### The CA Ruling

In the assailed Decision<sup>17</sup> promulgated on February 25, 2013, the CA affirmed with modification the NLRC's Decision, the decretal portion of which reads:

WHEREFORE, the assailed Decision dated May 29, 2009 of the National Labor Relations Commission is hereby AFFIRMED with MODIFICATIONS, as follows:

1. Considering the illegality of their dismissal, Laudilino Los Baños, Collin Mananzares and Geoffrey Lingon are entitled to payment of backwages from the time they were illegally dismissed until the finality of this Decision and separation pay, in lieu of reinstatement, equivalent to one month pay for every year of service.
2. The dismissal of Jimmy Paez is valid hence, the monetary awards granted to him by the NLRC are hereby deleted.

SO ORDERED.<sup>18</sup>

In modifying the NLRC's Decision, the CA concluded that petitioner failed to ensure that Globe's application had gone through the proper procedure before acting thereon. He approved Globe's request for power connection without instruction from the Technical Services Department and without prior approval from the Board of Directors. These, according to the Court of Appeals, are sufficient bases for the loss of trust and confidence reposed on him by MARELCO.<sup>19</sup>

Aggrieved, petitioner moved for reconsideration. It was, however, denied in a Resolution<sup>20</sup> dated February 5, 2014.

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<sup>16</sup> Id. at 153.

<sup>17</sup> Id. at 38-63.

<sup>18</sup> Id. at 62-63.

<sup>19</sup> Id. at 61-62.

<sup>20</sup> Id. at 65-69.

Hence, the instant petition for review on *certiorari*<sup>21</sup> interposing a lone issue:

### Issue

**THE HONORABLE CA HAS ISSUED THE ASSAILED DECISION DATED 25 FEBRUARY 2013 AND ASSAILED RESOLUTION DATED 5 FEBRUARY 2014 IN A WAY THAT IS NOT IN ACCORD WITH THE LAW AND THE APPLICABLE DECISION OF THE SUPREME COURT, AND GROUNDED ON GRAVE MISAPPREHENSION OF FACTS BECAUSE:**

#### I.

**THE COPY OF THE AMENDED PETITION FOR CERTIORARI SERVED TO PETITIONER DOES NOT CONTAIN ANY CAUSE OF ACTION AGAINST HIM;**

#### II.

**THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING ITS DECISION DATED 29 MAY 2009;**

#### III.

**PETITIONER WAS UNJUSTLY AND ILLEGALLY DISMISSED FROM SERVICE; HENCE, HE IS ENTITLED TO BACKWAGES AND SEPARATION PAY; [AND]**

#### IV.

**ASSUMING ARGUENDO THAT PETITIONER HAS COMMITTED AN INFRACTION, A LESS SEVERE PENALTY THAT DISMISSAL FROM SERVICE WILL SUFFICE.<sup>22</sup>**

### The Court's Ruling

The petition is meritorious.

Petitioner insists that the only ground for his dismissal, that is, his failure to reveal the name of the person who approved the energization of the Globe cell sites, is not tantamount to willful disobedience and fraud or loss of trust and confidence reposed on him by MARELCO. The CA, therefore, made a reversible error when it reversed the NLRC decision based on a misconception that petitioner was dismissed because of his failure to abide by the proper procedure of the company. Petitioner likewise contends that assuming that he committed an infraction, a less severe penalty than dismissal from service will

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<sup>21</sup> Id. at 10-34.

<sup>22</sup> Id. at 19-20.

suffice considering the length of service (21 years) that he had rendered for MARELCO.<sup>23</sup>

MARELCO, on the other hand, while admitting that petitioner was dismissed due to his willful concealment of facts during investigation, avers that subsequent development and evidence prove that petitioner failed to comply with the proper company procedure, such as failure to wait for the approval of the Board of Directors before pushing through with the energization of the cell sites. This, per MARELCO, is a valid ground for the termination of petitioner's employment.<sup>24</sup>

This Court rules in favor of the petitioner.

At the outset, records show that petitioner was terminated from employment on the ground of failure to identify the person who allegedly approved and instructed him to energize the San Antonio Globe cell sites and to install the KWH Meter during the inquiry. The Labor Arbiter even concluded that such omission is tantamount to fraud or willful breach of the trust reposed on him, and/or willful disobedience which are just causes for termination of employment.

This Court disagrees.

Under Article 297 (formerly Article 282) of the Labor Code, an employer may terminate the services of an employee for the following just causes:

Article 297. [282] *Termination by Employer.* - An employer may terminate an employment for any of the following causes:

**(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;**

(b) Gross and habitual neglect by the employee of his duties;

**(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;**

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

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<sup>23</sup> Id. at 25-31.

<sup>24</sup> Id. at 206-207.

(e) Other causes analogous to the foregoing. (Emphasis supplied)

To warrant termination of employment under Article 297(a) of the Labor Code, particularly for willful disobedience, it is required that: (a) the conduct of the employee must be willful or intentional; and (b) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge.<sup>25</sup> Willfulness must be attended by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.<sup>26</sup> It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer.<sup>27</sup>

Meanwhile, for fraud or loss of trust and confidence to be valid a ground for termination, the employer must establish that: (1) the employee holds a position of trust and confidence; and (2) the act complained against justifies the loss of trust and confidence.<sup>28</sup> The first requisite mandates that the erring employee must be holding a position of trust and confidence.<sup>29</sup> It is the breach of this trust that results in the employer's loss of confidence in the employee.<sup>30</sup>

The law contemplates two classes of positions of trust. The first class consists of managerial employees. They are those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.<sup>31</sup>

Under the foregoing standards, the disobedience attributed to petitioner, which, to reiterate, is his refusal to divulge the name of the person who instructed him to push through with the energization of Globe cell sites and the installation of the KWH Meter, could not be justly characterized as willful within the contemplation of Article 297 of the Labor Code. He neither benefited from it, nor thereby prejudiced the business interest of MARELCO. In fact, despite his failure to name the person who instructed him to push through with the project, MARELCO was able to finish the investigation and arrive at a conclusion.

<sup>25</sup> *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW*, 492 Phil. 570, 585 (2005).

<sup>26</sup> *Dongon v. Rapid Movers and Forwarders Co., Inc.*, 716 Phil. 533, 543-544 (2013).

<sup>27</sup> *Id.* at 544.

<sup>28</sup> *Lagahit v. Pacific Concord Container Lines*, 778 Phil. 168, 184-185 (2016).

<sup>29</sup> *PJ Lhuiller, Inc. v. Camacho*, 806 Phil. 413, 426 (2017).

<sup>30</sup> *Cruz v. Bank of the Philippine Islands*, 703 Phil. 504, 516 (2013).

<sup>31</sup> *PJ Lhuiller, Inc. v. Camacho*, *supra*.

Furthermore, for the past 21 years that he had been in the service of MARELCO, records reveal that he had yet to be charged for any offense or infraction. This only shows his lack of propensity to disobey his superiors and the company rules. Otherwise stated, there could be no wrong or perversity on his part that warrants the termination of his employment based on willful disobedience.

Neither can petitioner be charged of fraud or loss of trust and confidence.

To recall, only managerial employees and fiduciary rank-and-file employees may be charged with fraud or loss of trust and confidence. Now, managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.<sup>32</sup>

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, etc., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.<sup>33</sup>

In the instant case, petitioner was neither a managerial nor a fiduciary rank-and-file employee. While having the position of Sub-Office Chief of MARELCO at the time of his dismissal, records show that he was not vested with powers to lay down management policies and recommend managerial actions. Likewise, he was not in charged with the care and custody of his employer's money or property. Simply put, petitioner did not hold a position of trust and confidence. Thus, Article 297(c) of the Labor Code will never apply to petitioner's case.

From the foregoing, this Court holds and so rules that petitioner's failure to divulge the identity of the person who instructed him to energize the cell sites does not constitute willful disobedience, and fraud or willful breach of trust and confidence as to warrant his termination.

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<sup>32</sup> *Wesleyan University-Philippines v. Reyes*, 740 Phil. 297, 311 (2014).

<sup>33</sup> *Id.*



Furthermore, while during his appeal with MARELCO after his termination, petitioner admitted to energizing the cell sites because "I thought there were no more problems as the documents were complete and the required payments have been paid,"<sup>34</sup> such admission was not made the basis for his termination. The CA, therefore, committed a reversible error when it concluded that such was the ground for petitioner's dismissal. To raise this, his failure to ensure that Globe's application had gone through the proper procedure before acting thereon, as a ground for petitioner's dismissal, the CA had deprived petitioner of due process.

It bears stressing at this point that MARELCO, in its comment,<sup>35</sup> admits that the only basis for petitioner's dismissal is his failure to name and identify the person who approved the energization of cell sites and the installation of the KWH meter. In fact, the Labor Arbiter and the NLRC made no mention as to petitioner's failure to await for the approval of the Board of Directors before pushing through with the energization of the cell sites. This Court is, thus, baffled, why the CA based petitioner's dismissal on a ground different from the established facts.

As things are, while petitioner indeed committed an infraction or dishonesty when he refused to identify the person who instructed him to energize the cell site, his outright dismissal from service is not commensurate to his misdemeanor. Likewise, it is settled that in determining the penalty to be imposed on an erring employee, due consideration must be given to the employee's length of service and the number of violations he committed during his employ.<sup>36</sup>

In the case at bench, considering that petitioner has been in the service of MARELCO for 21 years prior to his dismissal, and nowhere in the records does it appear that he committed any previous infractions of company rules and regulations, this Court holds and so rules that the decision of the NLRC declaring him illegally dismissed, despite his infraction, is just and equitable. Petitioner's dismissal from work would be too severe a penalty under the circumstances.

All told, this Court concludes that the findings of the NLRC are supported by substantial evidence. Clearly, petitioner's allegation of illegal dismissal has legal and factual bases. The CA, therefore, committed reversible error when it ruled that petitioner was legally dismissed. A reversal thereof is, thus, warranted in this case.

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<sup>34</sup> *Rollo*, p. 91.

<sup>35</sup> *Id.* at 203-211.


<sup>36</sup> *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 204 (1999).

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**WHEREFORE**, in view of the foregoing premises, the instant petition is **GRANTED**. The February 25, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 112151, is **REVERSED and SET ASIDE**.

The May 29, 2009 Decision of the National Labor Relations Commission is **REINSTATED**.

**SO ORDERED.**

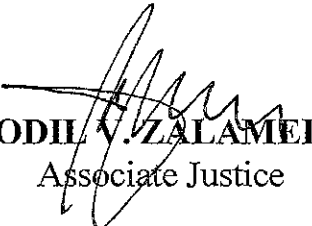
  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
Chief Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Chief Justice