



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY,
Petitioner,

G.R. No. 197402

Present:

GESMUNDO, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, *and*
GAERLAN, JJ.

- versus -

CECILIO Z. DOMINGO,
Respondent.

Promulgated

JUN 30 2021

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DECISION

GAERLAN, J.:

Before this Court is a Petition for Review on *Certiorari*¹ dated August 12, 2011 filed by petitioner Philippine Long Distance Telephone Company (PLDT) praying for the reversal of the Decision² dated January 31, 2011 and the Resolution³ dated June 22, 2011 of the Court of Appeals (CA) in the case entitled, "*Cecilio Z. Domingo v. National Labor Relations Commission*," docketed as CA-G.R. SP No. 107672.

The Factual Antecedents

Respondent Cecilio Z. Domingo (Domingo) has been employed by PLDT as an Installer/Repairman since October 14, 1980.⁴ In May 2001, Domingo was assigned as a temporary Storekeeper in one of PLDT's Data Services Installation Maintenance Divisions (DSIM), located in Tambo, Pasay

¹ *Rollo*, pp. 10-72.

² *Id.* at 74-89; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevarra-Salonga and Mariflor P. Punzalan Castillo.

³ *Id.* at 91-92.

⁴ *Id.* at 114.

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City (DSIM Tambo Warehouse). Thereafter, he was appointed as permanent Storekeeper of the DSIM Tambo Warehouse in June 2001.⁵

As Storekeeper, Domingo's responsibilities included ensuring an adequate inventory of supplies in the DSIM Tambo Warehouse. Thus, whenever the inventory went below a certain level, Domingo, as Storekeeper, was tasked to requisition replenishment stock from PLDT's warehouses. For this purpose, Storekeepers accomplish specific requisition forms where the materials to be requested are listed, and such forms are brought to PLDT's warehouses so that such materials can be withdrawn and brought to the different DSIM warehouses.⁶

Particularly, Storekeepers are required to accomplish requisition form **PLD 140**, whenever their base stock modems, required for the installation and maintenance of PLDT's data services, went below a certain limit. Accomplished PLD 140 forms must be approved by the authorized representative and then brought to the DSIM warehouse where the materials needed may be withdrawn. Meanwhile, to order materials such as parallel wires, connectors, clamps, and electrical tapes, DSIM personnel called Combination Men must accomplish requisition form **PLD 158**, where they must list the particular materials and the number of units required. The Combination Men must likewise specify the name of the project for which such materials will be used. Upon accomplishing the PLD 158 forms, the Combination Men must have the same approved by their Supervisor/Team Leader, and thereafter, the Combination Men must submit the accomplished PLD 158 forms to the Storekeeper. The Storekeeper will then bring the PLD 158 forms to regular PLDT warehouses and withdraw the materials for use by the Combination Men.⁷

In 2001, the first year Domingo was assigned to the DSIM Tambo Warehouse, the DSIM Tambo Warehouse transacted only a total of three PLD 140 forms. In 2002, however, the DSIM Tambo Warehouse showed a drastic increase in DSIM requisitions, from **merely three PLD 140 form transactions to a total of 102 PLD 140 form transactions**. On the other hand, for PLD 158 form transactions, the **DSIM Tambo Warehouse had a total of 277 transactions for 2001, which likewise drastically increased to 1,336 PLD 158 form transactions in 2002**. Relevantly, the materials requisitioned using the PLD 158 forms in 2002, which were withdrawn from the DSIM Sucat and Reposo Satellite Warehouses, amounted to **₱17,081,848.31**, which is significantly greater than the **₱1,069,285.36** spent for materials requisitioned under PLD 158 forms in 2001.⁸

⁵ Id. at 17.

⁶ Id. at 16.

⁷ Id. at 16-17.

⁸ Id. at 17-18.

Because of the drastic increase in materials requisitioned, PLDT conducted a materials inventory in December 2002. Upon audit, PLDT discovered that there was a huge discrepancy between the total volume of materials requisitioned, and those materials actually used in PLDT's projects and the remaining inventory in the DSIM Tambo Warehouse. Because of such anomaly, PLDT decided to conduct an investigation.⁹

During the investigation, PLDT was able to retrieve 88 out of the 102 original warehouse copies of the 2002 PLD 140 forms, and 1,121 out of the 1,336 original warehouse copies of the 2002 PLD 158 forms. Notably, a simple examination of these PLD forms reveals that the signatures of the supposed "authorized by" and "received by" personnel were forged and glaringly different from the specimen signatures of the same employees on file. Thus, PLDT invited these employees for investigation where they disclaimed that those signatures were theirs. Particularly, the Team Leaders who supposedly signed the "authorized by" portion of the forged PLD forms, namely, Vicente Ramos, Ernesto Alejandro, Ramir Espeno, and Alfred May (DSIM Team Leaders), all submitted sworn affidavits strongly denying that they have authorized or signed the PLD forms. These DSIM Team Leaders further contended that the quantity of materials listed under the PLD forms were abnormally large, and that it was impractical for them to requisition materials from warehouses located in Metro Manila when there are PLDT warehouses which are nearer to their respective areas in Davao, Zamboanga, Butuan City, Panay, and Negros.¹⁰

Further, PLDT likewise invited eight of its employees whose signatures appeared in the "received by" portion of the forged PLD forms, namely, Agripino Rivera, Wilfredo Salvador, Antonio Aquino, Fracel Gammad, Bernardo Neria, Renato Romero, Romeo Cayabyab, and Luciano Cambronero. Similarly, they all stated that the signatures appearing in the PLD forms are not theirs.¹¹

During the investigation, PLDT likewise interviewed Nimrod Paradero (Paradero), the Storekeeper of the DSIM Reposo Satellite Warehouse, to determine who received the requisitioned materials listed in the PLD forms. Relevantly, in his sworn affidavit, Paradero positively identified Domingo as the person who presented the forged PLD forms, and received the materials listed therein.¹² Paradero's statements were likewise validated by the DSIM Reposo Satellite Warehouse Vehicle Security Registry, which showed that on the dates mentioned by Paradero, Domingo indeed went to the DSIM Reposo Satellite Warehouse using a PLDT service vehicle, with Fleet No. 96-450.

⁹ Id. at 18-19.

¹⁰ Id. at 19-20.

¹¹ Id.

¹² Id.

Likewise, the DSIM Sucat Satellite Warehouse Vehicle Security Registry showed that Domingo went to the DSIM Sucat Satellite Warehouse on at least 65 separate occasions when the forged PLD forms were presented.¹³

Moreover, clerks of PLDT submitted sworn statements that Domingo asked them to prepare the forged PLD forms. Particularly, Maritess Mendoza (Mendoza) stated that Domingo, on several occasions, handed her pieces of papers with handwritten notes of the materials needed and their corresponding quantities. Thereafter, Domingo instructed her to type the same on the PLD forms. Notably, Mendoza's statements were corroborated by Sheryl Marie Magahis (Magahis) in her affidavit, where she testified that she once helped Mendoza type and prepare the PLD 158 forms upon the instruction of Domingo.¹⁴

Because of the claims of Domingo's involvement in the above-stated anomalies, PLDT issued a Memorandum dated May 14, 2004 (*First Invitation*) inviting Domingo to appear at a formal inquiry scheduled on May 19, 2004.¹⁵ The *First Invitation* reads:

You are hereby requested to personally appear together with a Union Council Representative or a Counsel of your preference at Field Operations Division office located at 4th Floor, PLDT Garnet Building, Emerald Avenue corner Garnet Street, Ortigas Center, Pasig City on May 19, 2004 (Wednesday) or three (3) working days upon receipt of this invitation at about 9:00 o'clock in the morning.

This is in connection with the **formal inquiry in your issuance of outside plant materials to personnel of Data Services Installation and Maintenance (DSIM) Division covering January to October 2002** in line with your special function as internal custodian of DSIM Satellite Warehouse at Tambo, Pasay Exchange during the period January to October 2002.

Specific inquiries shall be based on **materials requisitions that were allegedly transacted to you by your colleagues or personnel at DSIM using accomplished and signed PLD 158 (Requisitions for Materials and Supplies), PLD 22 (Requisitions for Reserved materials) and PLD 140 (Requisitions for Department Accountabilities) covering the year 2002.**

This invitation is issued for your compliance.¹⁶ (Emphasis supplied)

¹³ Id. at 24-25.

¹⁴ Id. at 25-27.

¹⁵ Id. at 27.

¹⁶ Id. at 452.

Notably, Domingo refused to receive the *First Invitation*, and failed to attend the scheduled formal inquiry.¹⁷ Nevertheless, in PLDT's hopes of acquiring the cooperation of Domingo in determining the truth of the anomalous transactions involving the forged PLD forms, PLDT again issued another Memorandum dated May 25, 2004 (*Second Invitation*), inviting Domingo to attend another formal inquiry scheduled on May 28, 2004, which reads:

This is in relation to our memo with Ref. No. 045-02-FOD with subject INVITATION TO APPEAR dated May 14, 2004, wherein you chose not to acknowledge receipt during the formal issuance to you by our Mr. Maliksi last May 18, 2004 and again by your immediate supervisor in Mr. Espeno last May 24, 2004.

We are inviting you for the 2nd time to personally appear together with a Union Council Representative or a Counsel of your preference at Field Operations Division office located at 4th Floor, PLDT Garnet Building, Emerald Avenue corner Garnet Street, Ortigas Center, Pasig City on May 28, 2004 (Friday) or three (3) working days upon receipt of this invitation at about 9:00 o'clock in the morning.

This is in connection with the **formal inquiry in your issuance of outside plant materials to personnel of Data Services Installation and Maintenance (DSIM) Division covering January to October 2002** in line with your special function as internal custodian of DSIM Satellite Warehouse at Tambo, Pasay Exchange during the period January to October 2002.

Specific inquiries shall be based on **materials requisitions that were allegedly transacted to you by your colleagues or personnel at DSIM using accomplished and signed PLD 158 (Requisitions for Materials and Supplies, PLD 22 (Requisitions for Reserved materials) and PLD 140 (Requisitions for Department Accountabilities) covering the year 2002.**

This invitation is issued for your compliance.¹⁸ (Emphasis supplied)

Again, Domingo did not acknowledge receipt of the *Second Invitation*. Domingo likewise did not attend the scheduled formal inquiry on May 28, 2004. Thus, PLDT was constrained to issue a third Memorandum dated June 7, 2004 (*Third Invitation*), which provides:

Regarding your election not to receive and acknowledge our 1st and 2nd INVITATION TO APPEAR memos with Ref. Nos. 045-02-FOD dated May 14, 2004 and 051-02-FOD dated May 25, 2004 which, were correspondingly and formally issued to you by our Mr. Maliksi and Mr. Espeno, your immediate supervisor.

¹⁷ Id. at 28.

¹⁸ Id. at 453.

We are requesting you for the 3rd and final time to personally appear most preferably with a Union Council Representative or a Counsel of your preference at Field Operations Division office located at 4th Floor, PLDT Garnet Building, Emerald Avenue corner Garnet Street, Ortigas Center, Pasig City on June 10, 2004 (Thursday) or three (3) working days upon receipt of this invitation at about 9:00 o'clock in the morning.

This is in connection with the **formal inquiry in your issuance of outside plant materials to personnel of Data Services Installation and Maintenance (DSIM) Division covering January to October 2002** in line with your special function as internal custodian of DSIM Satellite Warehouse at Tambo, Pasay Exchange during the period January to October 2002.

Specific inquiries shall be based on **materials requisitions that were allegedly transacted to you by your colleagues or personnel at DSIM using accomplished and signed PLD 158 (Requisitions for Materials and Supplies, PLD 22 (Requisitions for Reserved materials) and PLD 140 (Requisitions for Department Accountabilities) covering the year 2002.**

Failure to attend to our 3rd and final Invitation to Appear shall compel us to prepare investigation report based on evidence at hand without you being heard.

This invitation is issued for your compliance.¹⁹

For a third time, Domingo failed to appear at the formal inquiry scheduled on June 10, 2004. As such, PLDT proceeded with the investigation without the cooperation of Domingo. However, due to the invariably voluminous documents required to be reviewed, and the number of personnel interviewed, PLDT was only able to conclude its investigation after three years in its Investigation Report²⁰ dated January 19, 2005 (Investigation Report). The Investigation Report ultimately recommended that an administrative action for serious misconduct be instituted against Domingo as he used his knowledge, skills, and authority as Storekeeper in making various fraudulent requisitions of outside plant materials which were verified to be unaccounted for, based on the following:

First, all DSIM Team Leaders, submitted sworn testimonies stating that their signatures appearing in the "authorized by" portion of the forged PLD forms were **falsified**. In fact, the DSIM Team Leaders, who are **all assigned in areas outside of Metro Manila**, stated that it is impractical and even ridiculous for provincial employees to requisition materials from warehouses in Manila since there are several PLDT warehouses located near their areas. Even more, the DSIM Team Leaders contended that requisitioning materials

¹⁹ Id. at 454.

²⁰ Id. at 456-470.

from Metro Manila is violative of PLDT's warehousing procedure, which requires that provincial employees must requisition materials and supplies only at warehouses serving their areas.²¹

Second, the DSIM Team Leaders testified that the materials requisitioned under the forged PLD forms were **in excess of the typical requirements needed for PLDT's private line's installation and maintenance.**²²

Third, based on audit and inventory conducted at the DSIM Tambo Warehouse, it was discovered that the materials requisitioned under the forged PLD forms were unaccounted for.²³

Fourth, the sworn testimonies of Mendoza and Magahis confirm that **Domingo was the one who instructed them to type and prepare the forged PLD forms.**²⁴

Fifth, the Vehicle Security Registry reports for both the DSIM Sucat and Reposo Satellite Warehouses show that **Domingo personally went to these locations on the dates when the materials under the forged PLD forms were requisitioned.**²⁵

Sixth, Paradero, the Storekeeper of the DSIM Reposo Satellite Warehouse, **positively identified Domingo** as the person to whom he issued the materials listed under the forged PLD forms.²⁶

Because of the findings in the Investigation Report, PLDT issued a Request for Explanation²⁷ dated February 21, 2005 requiring Domingo to explain in writing why he should not be dismissed from service. The Request for Explanation reads:

Investigative findings show that as the designated internal storekeeper of DSIM during the period of January to November 2002, you made voluminous requisition of outside plant materials, which, when verified in the DSIM internal warehouse, were unaccounted for. These unaccounted materials would cost the Company 17,115,796.34 in material losses. Moreover, the investigation findings also show that you withdrew and received outside plant materials from the 3 Company warehouses when

²¹ Id. at 468.

²² Id.

²³ Id.

²⁴ Id. at 469.

²⁵ Id.

²⁶ Id.

²⁷ Id. at 471.

the employee requisitioning (as evidenced by the attached requisitioning forms) is either on vacation leave or assigned in the regional offices, and that the authorized signatories were forged.

The acts described above constitute Serious Misconduct, the penalty of which is dismissal from the service.

In view of the above, you are required to explain in writing why you should not be dismissed from the service on the above-mentioned acts. Submit your explanation within seventy-two (72) hours upon receipt of this communication. You may elect to be heard if you so desire.

Your failure to reply to this letter within the time required shall be considered as a waiver of your right to be heard on this matter. Accordingly, the Company shall proceed with the evaluation of the case on the basis of the evidence on hand.²⁸ (Emphasis in the original)

On February 24, 2005, Domingo, with the assistance of counsel, submitted a three-page letter,²⁹ whereby he denied the allegations made against him. In his letter, Domingo questioned why he is being made to explain alleged wrongdoings which were committed three years earlier. He likewise stated that he was never informed that an investigation was being conducted, and that he was never furnished with copies of the documents and records which form part of the evidence against him.

After review and perusal of all the available evidence, including Domingo's response, PLDT found that Domingo is guilty of serious misconduct and issued a Notice of Termination³⁰ dated May 18, 2005, which provides:

This has reference to your administrative case that as the designated internal storekeeper of DSIM during the period of January to November 2002, you made voluminous requisition of outside plant materials, which, when verified in the DSIM internal warehouse, were unaccounted for. These unaccounted materials amounted to ₱17,115,796.34 in losses for the Company. Moreover, it was shown that during the above-mentioned period, you withdrew and received outside plant materials from 3 Company warehouses when the employee requisitioning is either on vacation leave or assigned in the regional offices, and that the signatures of authorized personnel in the requisitioning forms were forged. Said acts constitute **Serious Misconduct**.

After careful evaluation of your case including your written explanation, we find you liable as charged.

²⁸ Id.

²⁹ Id. at 472-474.

³⁰ Id. at 194.

In view of the above, Management has decided to dismiss you from the service for **Serious Misconduct** [effective at] the close of business hours of May 18, 2005.

This is without prejudice to such other action as this Company may take including court action to recover whatever amount is due from under your accountabilities.³¹

Proceedings before the Labor Tribunals

Aggrieved of the decision of PLDT to terminate his employment based on serious misconduct, Domingo filed a Complaint for Illegal Dismissal before the Labor Arbiter (LA), with prayer for reinstatement and the payment of full backwages.³²

On July 25, 2006, the LA rendered his Decision³³ which dismissed Domingo's Complaint for lack of merit. The LA's Decision found that PLDT was able to establish, by **substantial evidence**, that Domingo was indeed involved in the anomalous and fraudulent transactions concerning the forged PLD forms, and that the same constitutes serious misconduct, which is a just and valid ground for termination of employment.

Unsatisfied with the LA's Decision, Domingo appealed the same before the National Labor Relations Commission (NLRC).³⁴ However, in its Resolution³⁵ dated June 27, 2007, the NLRC denied Domingo's appeal:

WHEREFORE, premises considered, Complainant-Appellant's Appeal is DISMISSED for lack of merit. Accordingly, the Decision appealed from is SUSTAINED *in toto*.

SO ORDERED.³⁶

Petition before the Court of Appeals

Because of the adverse rulings of the LA and the NLRC, Domingo assailed the NLRC's Resolution before the CA via Petition for *Certiorari*³⁷ dated March 5, 2009 under Rule 65 of the Rules of Court.

³¹ Id. at 482.

³² Id. at 33.

³³ Id. at 517-531.

³⁴ Id. at 34.

³⁵ Id. at 93-107.

³⁶ Id. at 107.

³⁷ Id. at 113-131.

In Domingo's Petition for *Certiorari* dated March 5, 2009, he alleged that the NLRC committed grave abuse of discretion in finding that he was validly dismissed from employment, and that he was not denied due process of law.³⁸ Particularly, Domingo argued the following:

First, the NLRC committed grave abuse of discretion when it found that the charges against Domingo have not yet been condoned, considering that the Collective Bargaining Agreement (CBA) between PLDT and its employees provides that offenses are deemed condoned if no show cause memorandum is issued within two years from discovery of the offense:

An offense shall be deemed condoned if no "show-cause" memorandum is issued by the COMPANY to the concerned employee within two (2) years from date of discovery of the offense if punishable by termination; or within one (1) year from date of discovery of the offense, for all offenses not punishable by termination.³⁹

Considering that the Request for Explanation was issued in 2005, or three years since the discovery of the supposed anomalies, such offense has already been condoned by virtue of the above-cited provision.⁴⁰

Second, the NLRC erred when it considered the *First*, *Second*, and *Third Invitations* as the "show cause" notices contemplated in the above-cited provision because the Labor Code itself provides that such notices must contain the statement of the causes for termination.⁴¹

Third, even assuming that the *First*, *Second*, and *Third Invitations* can be considered as the "show cause" notices, the NLRC still committed grave abuse of discretion when it held that Domingo was validly dismissed, considering that PLDT presented no proof that Domingo was properly furnished with copies of the same.⁴²

Fourth, the NLRC committed grave abuse of discretion in finding that PLDT was able to demonstrate by substantial evidence Domingo's participation in the falsification of the forged PLD forms since the sworn statements relied on by PLDT failed to attach original copies of the forged PLD forms, and the mere testimonies of PLDT's personnel must not be readily believed.⁴³

³⁸ Id. at 118.

³⁹ Id.

⁴⁰ Id. at 120-121.

⁴¹ Id. at 119.

⁴² Id. at 121.

⁴³ Id. at 122-126.

Fifth, the NLRC committed a grave error when it found that procedural due process was observed, considering that no hearing or conference was conducted, and Domingo was not furnished with copies of the investigative findings, nor was he confronted with all of the evidence against him.⁴⁴

On January 31, 2011, the CA rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, in the light of the foregoing, the instant Petition is hereby GRANTED. The assailed Resolutions of public respondent NLRC dated June 27, 2007 and November 28, 2008 are hereby SET ASIDE. Petitioner is hereby declared illegally dismissed. Consequently, private respondent PLDT is hereby ordered to reinstate petitioner to his former position without loss of seniority or diminution of benefits with full backwages from the time of his dismissal up to the time of his reinstatement. Likewise, PLDT is directed to pay attorney's fees equivalent to 10% of the monetary award.

SO ORDERED.⁴⁵

In reversing the Resolution of the NLRC, the CA found that PLDT failed to overcome the quantum of substantial evidence needed to establish that Domingo was guilty of serious misconduct.⁴⁶

In this regard, the CA was unconvinced with the testimonies presented by PLDT. Likewise, the CA found that there was no malicious intent on the part of Domingo in using the forged PLD forms, and as such, his dismissal is illegal.⁴⁷ Furthermore, the CA found that no proof was submitted to show that the *First, Second and Third Invitations* were presented and actually rejected by Domingo. Finally, the CA stated that there was no clear showing that Domingo was furnished with a copy of the Investigation Report.⁴⁸

Aggrieved, PLDT filed its Motion for Reconsideration which was denied by the CA in the Resolution dated June 22, 2011.⁴⁹

The Instant Petition

In view of the adverse rulings of the CA, PLDT came before this Court

⁴⁴ Id. at 128.

⁴⁵ Id. at 88-89.

⁴⁶ Id. at 83.

⁴⁷ Id. at 84-87.

⁴⁸ Id. at 81-82.

⁴⁹ Id. at 91-92.

by way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, where PLDT raised the following issue:

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN GIVING DUE COURSE TO DOMINGO'S PETITION FOR CERTIORARI, NOTWITHSTANDING THE FACT THAT HE WAS NOT ABLE TO ESTABLISH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION THAT WOULD JUSTIFY THE NULLIFICATION OF THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION.⁵⁰

In fine, in the instant Petition, PLDT principally argued the following:

First, the CA committed a grave error when it annulled the Resolution of the NLRC considering that Domingo failed to demonstrate that the NLRC committed grave abuse of discretion in issuing the said Resolution.⁵¹

Second, the findings of the NLRC are supported by testimonial and documentary evidence which is sufficient to overcome the quantum of substantial evidence required in illegal dismissal cases.⁵²

Third, the NLRC was correct when it found that Domingo was not denied due process because Domingo was given an ample opportunity to be heard.⁵³

Fourth, considering that Domingo was validly dismissed, the CA erred when it ordered PLDT to reinstate Domingo, and to pay him backwages and attorney's fees.⁵⁴

Our Ruling

We find the Petition meritorious.

***The Court Of Appeals Can Reverse
And Modify The Findings Of Fact Of***

⁵⁰ Id. at 36.

⁵¹ Id. at 36-39.

⁵² Id. at 39-49.

⁵³ Id. at 61-64.

⁵⁴ Id. at 64-65.

The NLRC Only If Grave Abuse Of Discretion Exists.

Preliminarily, it must be stressed that findings of fact of quasi-judicial agencies such as those of the NLRC must be accorded great respect and even finality when supported by substantial evidence.⁵⁵ Still, the CA is granted limited jurisdiction under Rule 65 to review, reverse, and modify the factual findings of the labor tribunals when grave abuse of discretion exists:

We have ruled in a litany of cases that resort to judicial review of the decisions of the NLRC under Rule 65 of the Rules of Court is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the tribunal rendering them. It does not include an inquiry on the correctness of the evaluation of evidence, which served as basis for the labor official in determining his conclusion. Findings of fact of administrative officers are generally given finality. x x x.⁵⁶

Grave abuse of discretion has been defined as “a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough, it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.”⁵⁷

Notably, this Court has had numerous occasions when it found that the NLRC had committed grave abuse of discretion and allowed the modification and reversal of its factual findings, such as when there is an arbitrary disregard of the evidence on record, or when the labor tribunals have misappreciated the evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.⁵⁸

Clearly, therefore, before the CA may reverse and modify the factual findings of the labor tribunals, there must be a clear showing of grave abuse of discretion on the part of the NLRC. Otherwise stated, the CA’s inquiry in

⁵⁵ *Cabalan Pastulan Negrito Labor Association v. National Labor Relations Commission*, 311 Phil. 744, 755-756 (1995); *Castillo v. National Labor Relations Commission*, 367 Phil. 605, 615 (1999); *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007)

⁵⁶ *Libres v. National Labor Relations Commission*, 367 Phil. 180, 187-188 (1999).

⁵⁷ *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association*, 552 Phil. 432, 448 (2007).

⁵⁸ *Loadstar Shipping Co., Inc. v. Gallo*, 299 Phil. 699 (1994); *Colegio De San Juan De Letran-Calamba v. Villas*, 447 Phil. 692 (2003).

petitions for *certiorari* under Rule 65 must be limited to whether the NLRC committed grave abuse of discretion in arriving at its factual findings.⁵⁹

Applying the foregoing in the present case, We fail to see any grave abuse of discretion on the part of the NLRC to justify the CA's modification and reversal of the NLRC's factual findings, considering that the NLRC judiciously reviewed the records of the case and based its ruling on the substantial evidence presented by both parties.

***The Quantum of Proof Required In
Illegal Dismissal Cases Is Merely
Substantial Evidence.***

As correctly pointed out by PLDT, the quantum of proof required in illegal dismissal cases is **substantial evidence**.⁶⁰ This Court has already clarified that substantial evidence is only such evidence as a reasonable mind might accept as adequate to support a conclusion:

In this regard, it is a well-established rule that the party-litigant who alleges the existence of a fact or thing necessary to establish his/her claim has the burden of proving the same by the amount of evidence required by law, which, in labor proceedings, is **substantial evidence**, or "such **relevant evidence as a reasonable mind might accept as adequate to support a conclusion**." To be clear, in the hierarchy of evidentiary values, "proof beyond reasonable doubt is placed at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order." Thus, **in the hierarchy of evidence, it is the least demanding**. "Corollarily, the ground for the dismissal of an employee does not require proof beyond reasonable doubt." The quantum of proof required is merely substantial evidence — **which only entails evidence to support a conclusion, "even if other minds, equally reasonable, might conceivably opine otherwise."**⁶¹ (Emphasis supplied, citations omitted)

Thus, in illegal dismissal cases, the employer need only present evidence which is adequate to support a conclusion, and not evidence which will establish moral certainty of guilt on the part of the employee.

In the present case, the cause of Domingo's dismissal is serious misconduct. Relevantly, in *Maula v. Ximex Delivery Express, Inc.*,⁶² this Court has explained what the Labor Code contemplates as serious misconduct:

⁵⁹ *Hubilla v. HSY Marketing Ltd.*, 823 Phil. 358, 375 (2018).

⁶⁰ *Rollo*, p. 10.

⁶¹ *JR Hauling Services v. Solamo*, G.R. No. 214294, September 30, 2020.

⁶² 804 Phil. 365 (2017).

Misconduct is improper or wrong conduct; it is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. The misconduct, to be serious within the meaning of the Labor Code must be of such a **grave and aggravated character and not merely trivial or unimportant**. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be **serious**; (b) it must **relate to the performance of the employee's duties**; and (c) it must show that **the employee has become unfit to continue working for the employer**.⁶³ (Emphasis supplied, citations omitted)

This means that in justifying Domingo's dismissal, PLDT had the burden to prove, with substantial evidence, that the acts of Domingo: (1) were of a serious nature; (2) related to his duties as a Storekeeper of the DSIM Tambo Warehouse; and (3) has made him unfit to continue working for PLDT.

In this regard, both the LA and the NLRC found that PLDT was able to overcome the burden of proving, with substantial evidence, that Domingo committed serious misconduct, and as such, the dismissal of Domingo was justified.

To recall, PLDT presented numerous witnesses, documentary evidence, and a complete Investigation Report which concluded that Domingo was indeed involved in a fraudulent scheme in using forged PLD forms to requisition outside plant materials, which, when audited, were found to be unaccounted for. The records likewise bear that Domingo undisputedly used and presented the forged PLD forms. Such possession and use of the said forged PLD forms already gives rise to the presumption that Domingo was involved in the fraudulent scheme against PLDT. As succinctly ruled by the NLRC:

We hold that since Complainant-Appellant was found in possession of forged PLD 158s which he used, as substantially evidenced by the foregoing pieces of evidence, and since he failed to make a satisfactory explanation of his involvement in the anomalous requisitions, he is guilty of falsification.

As aptly held on the matter by the Supreme Court, in the case of *Alarcon vs. Court of Appeals*, No. L-21846, March 31, 1967 "(I)n the absence of satisfactory explanation, a person who is found in possession of a forged document and who used the same, is the forger thereof, or the one who caused the forgery, and therefore, he is guilty of falsification."⁶⁴

⁶³ Id. at 378-379.

⁶⁴ *Rollo*, p. 103.

In stark contrast to the overwhelming evidence presented by PLDT, Domingo merely presented bare denials. He mentioned that he was merely following instructions, and that he could not have known about the proper procurement procedures because Domingo supposedly never received formal training for his position as a Storekeeper.

We are unconvinced with Domingo's bare denials and self-serving evidence. While it may be true that he did not receive any training for his position as Storekeeper, it must be recalled that he was assigned to that position as early as May 2001, and any and all anomalies only commenced in 2002. This means that for at least six months, he learned and properly followed PLDT's procurement procedure. Furthermore, as the Storekeeper beginning May 2001, he was personally aware that the DSIM Tambo Warehouse only had a total of three PLD 140 form transactions and 277 PLD 158 form transactions in 2001. Clearly, it is incredulous to claim that he was unaware of any anomaly since the amount of transactions involving both PLD 140 and PLD 158 forms had an unusual, drastic, and sharp increase in 2002. Thus, he cannot feign ignorance and pretend to have only been following instructions when, as Storekeeper, he was personally involved in all of the said transactions.

Given the foregoing, this Court finds that PLDT was able to prove, with substantial evidence, that Domingo's termination based on serious misconduct is valid, considering that:

First, the act of knowingly using the forged PLD forms to requisition materials is of a serious matter that cost PLDT ₱17,115,796.34 in material losses.

Second, the offense committed by Domingo relates to his functions as the Storekeeper of the DSIM Tambo Warehouse. As Storekeeper, his functions required the full trust and confidence of PLDT since he was in charge with the custody of materials and equipment. Evidently, as a Storekeeper, Domingo was able to utilize his knowledge and access to PLDT's materials when he engaged in the fraudulent transactions.

Third, because of Domingo's acts, he is no longer fit to continue his employment with PLDT, considering the latter's loss of trust and confidence in Domingo, and the monetary losses PLDT endured because of the fraudulent scheme.

In sum, We find that the CA erred when it disturbed the factual findings of the NLRC as PLDT sufficiently established with substantial evidence Domingo's valid cause for termination.

Domingo Was Not Denied Due Process Of Law.

Contrary to the ruling of the CA, We find that Domingo was not denied due process of law.

In a plethora of cases, this Court has already elucidated the requirements to observe procedural due process in termination cases. In *Distribution & Control Products, Inc./Tiamsic v. Santos*,⁶⁵ it has been explained that two written notices are required to be furnished to the employee before his or her termination of employment. In the same case, it has likewise been ruled that a formal hearing is not necessary so long as the employee was granted an opportunity to be heard:

[T]he settled rule is that in termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with **two written notices** before the termination of employment can be effected: (1) the first apprises the employee of the **particular acts or omissions for which his dismissal is sought**; and (2) the second **informs the employee of the employer's decision to dismiss him**. The requirement of a hearing is complied with as long as there was an **opportunity to be heard**, and not necessarily that an actual hearing was conducted.⁶⁶ (Emphasis supplied, citations omitted)

Here, Domingo was furnished **two written notices before his employment was terminated**: (1) the Request for Explanation; and (2) the Notice of Termination.

As recited above, in the Request for Explanation, PLDT outlined the particular acts which were the subject of the serious misconduct charge against Domingo. The Request for Explanation likewise asked Domingo to respond and explain his side within 72 hours from his receipt of the same. Finally, the Request for Explanation informed Domingo that a hearing may be had if he so desires.

Domingo did respond to the Request for Explanation by submitting a three-page letter where he unsatisfactorily explained his defense. **Notably**,

⁶⁵ 813 Phil. 423 (2017).

⁶⁶ Id. at 436.

nowhere in his response did he request that a formal hearing be conducted.

Upon review of all the evidence on record, as well as Domingo's response, PLDT issued the Notice of Termination where Domingo was informed that he was being dismissed from service.

With the foregoing, it is clear that all the requisites of procedural due process were complied with. Nevertheless, while this Court is satisfied that procedural due process was observed in the present case, We deem it best to resolve the other arguments that Domingo raised to supposedly show that he was deprived of his right to due process.

The Offense Committed Has Not Yet Been Condoned.

In his submissions, Domingo insists that his offense has supposedly already been condoned pursuant to the provision in the CBA, considering that the Notice to Explain was only issued to him three years after the supposed discovery of the offense. On this note, we cannot fault PLDT for the delay in the issuance of the Request for Explanation precisely because Domingo was also at fault when he intentionally failed to cooperate in the investigation being conducted by PLDT.

As discussed above, PLDT issued three invitations – the *First, Second, and Third Invitations* – asking Domingo to appear in a formal inquiry. During the scheduled formal inquiries, Domingo could have already explained his side and presented his defense, which would have enabled PLDT to unravel the truth and conclude its investigation with more haste. However, and as seen in the annotations written in the *First, Second, and Third Invitations*, Domingo refused to acknowledge receipt of the same, which resulted in further delays in the investigation. It must be stressed that We cannot subscribe to Domingo's view that no proof was presented with regard to his receipt of these invitations. Such view is not only self-serving, but likewise appears to be ridiculous when juxtaposed to the fact that PLDT attempted to serve a copy of the invitation to appear three times, on three separate occasions. Thusly, PLDT's narrative that Domingo refused to receive the same holds more water.

We likewise echo the view of the NLRC that these invitations were already akin to the "show cause" memorandum required under the CBA, considering that the same already informed Domingo that a formal inquiry will be conducted whereby he will be asked about his involvement in the fraudulent use of the forged PLD forms. Prescinding from this discussion, it

is clear that the offense committed by Domingo cannot be considered to have been already condoned.

***A Formal Hearing Is Not Required
In Illegal Dismissal Cases.***

In Domingo's submissions, he also argues that a formal hearing is required to ensure that procedural due process is observed. He likewise contends that since a formal hearing was not conducted, he was deprived of the opportunity to cross-examine PLDT's witnesses, and make an intelligent defense.

These arguments are devoid of merit.

As stated above, jurisprudence is clear that a formal hearing is not necessary as long as the employee is given an ample opportunity to be heard. Our ruling in *Perez v. Philippine Telegraph and Telephone Company*,⁶⁷ is instructive:

Article 277(b) of the Labor Code provides that, in cases of termination for a just cause, an employee must be given "ample opportunity to be heard and to defend himself." Thus, the opportunity to be heard afforded by law to the employee is qualified by the word "ample" which ordinarily means "considerably more than adequate or sufficient." In this regard, the phrase "ample opportunity to be heard" can be reasonably interpreted as extensive enough to cover actual hearing or conference. To this extent, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code is in conformity with Article 277(b).

Nonetheless, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code **should not be taken to mean that holding an actual hearing or conference is a condition *sine qua non* for compliance with the due process requirement in termination of employment.** The test for the fair procedure guaranteed under Article 277(b) cannot be whether there has been a formal pretermination confrontation between the employer and the employee. **The "ample opportunity to be heard" standard is neither synonymous nor similar to a formal hearing.** To confine the employee's right to be heard to a solitary form narrows down that right. It deprives him of other equally effective forms of adducing evidence in his defense. Certainly, such an exclusivist and absolutist interpretation is overly restrictive. *The "very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."*

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⁶⁷ 602 Phil. 522 (2009).

Significantly, Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code itself provides that the so-called standards of due process outlined therein shall be observed “*substantially*”, not strictly. **This is a recognition that while a formal hearing or conference is ideal, it is not an absolute, mandatory or exclusive avenue of due process.**⁶⁸ (Emphasis supplied, citations omitted)

In the present case, Domingo cannot validly aver that his right to due process was violated because a hearing was not conducted considering that the conduct of a formal hearing is not even essential in the first place. Even more, PLDT, in the Request for Explanation, expressly gave Domingo the opportunity to request for a formal hearing, which Domingo failed to do. Hence, Domingo cannot be allowed to blame PLDT when he himself is at fault.

The Right To Cross-Examine Is Not Indispensable Since The Technical Rules Of Evidence Need Not Be Strictly Applied In Labor Cases.

Notably, in his submissions before this Court, Domingo likewise argued that he was denied due process because he was unable to cross-examine PLDT’s witnesses. In support of his argument, Domingo cited the case of *Caltex (Phils.), Inc. v. Agad*,⁶⁹ where this Court considered as hearsay evidence the testimonies of the witnesses therein since no cross-examination was held.

To clarify, in *Caltex (Phils.), Inc. v. Agad*, We did not categorically declare that the right to cross-examine witnesses in illegal dismissal cases is indispensable in order to satisfy the requirements of due process. At best, such statement was mere *obiter dictum* since it did not pertain to the key issue in the said case. In this regard, the settled doctrine that the technical rules of evidence are not strictly applied in labor cases⁷⁰ still stands.

In fact, this Court has already had the occasion of applying this well-settled doctrine vis-à-vis the right to cross-examine witnesses in labor cases:

[J]urisprudence is replete with rulings that **administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law.** Hence, whatever merit C.F. Sharp’s

⁶⁸ Id. at 537-538.

⁶⁹ 653 Phil. 216, 229 (2010).

⁷⁰ *Associated Labor Unions (ALU) v. Ferrer-Calleja*, 255 Phil. 171, 179 (1989); *Philippine Airlines, Inc. v. Tongson*, 459 Phil. 742 (2003); *Sasan, Sr. v. National Labor Relations Commission*, 590 Phil. 685, 701 (2008); *Millennium Erectors Corporation v. Magallanes*, 649 Phil. 199 (2010).

argument might have in the context of ordinary civil actions, where the rules of evidence apply with greater rigidity, disappears when adduced in connection with labor cases.

The claim of denial of due process on the part of C.F. Sharp must also be rejected. The essence of due process lies in the reasonable opportunity afforded a party to be heard and to submit any evidence in support of its defense. **What is vital is not the opportunity to cross-examine an adverse witness, but an opportunity to be heard.**⁷¹ (Emphasis supplied, citations omitted)

Further, in the recent case of *Smart Communications, Inc. v. Solidum*,⁷² this Court explicitly stated that cross-examination is **not necessary** in labor cases:

It is not necessary that witnesses be cross-examined by counsel of the adverse party in proceedings before the labor arbiter

Solidum further alleges that he was denied the right to cross-examine the witnesses who submitted affidavits in favor of Smart; thus, the affidavits must be considered hearsay and inadmissible. In support of such contention, Solidum cites *Naguit v. National Labor Relations Commission*.

Such contention is misplaced.

The controlling jurisprudence on the matter is the ruling in the more recent *Philippine Long Distance Telephone Company v. Honrado*, where the Court ruled:

It is hornbook in employee dismissal cases that “[t]he essence of due process is an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one’s side x x x. A formal or trial type hearing is not at all times and in all instances essential to due process, the requirements of which are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy.” **Neither is it necessary that the witnesses be cross-examined by counsel for the adverse party.**

The Court explained the reason why cross-examination is not required in the proceedings before the labor arbiter in *Reyno v. Manila Electric Company*, citing *Rabago v. National Labor Relations Commission* where the Court ruled:

x x x. The argument that the affidavit is hearsay because the affiants were not presented for cross-examination is not persuasive because the rules of evidence are not strictly observed in proceedings before

⁷¹ *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, 559 Phil. 826 (2007).

⁷² 774 Phil. 289 (2015).

administrative bodies like the NLRC where decisions may be reached on the basis of position papers only. x x x.

Clearly, the alleged denial of Solidum's request to cross-examine the witnesses of Smart does not render their affidavits hearsay. Thus, these pieces of evidence were properly considered by the labor tribunal.⁷³ (Emphasis in the original, citations omitted)

Given the foregoing, it is apparent that Domingo's argument is devoid of merit, considering that he was granted an ample opportunity to be heard, even though he was unable to cross-examine PLDT's witnesses.


On another note, the rule that the technical rules of evidence may be relaxed in labor cases is similarly applicable in resolving Domingo's claim that the evidence attached to PLDT's affidavits are mere photocopies, and thus, should not be given credence.

Considering that rules of evidence need not be strictly applied in labor cases, We hold that the NLRC did not err when it gave evidentiary weight to the affidavits presented by PLDT, notwithstanding the fact that the attachments therein are mere photocopies.

All said, this Court grants the instant Petition. We find that the NLRC did not commit grave abuse of discretion when it affirmed the factual findings of the LA that Domingo's dismissal is valid. The termination not being illegal, We likewise overturn the CA's grant of reinstatement, backwages, and attorney's fees.

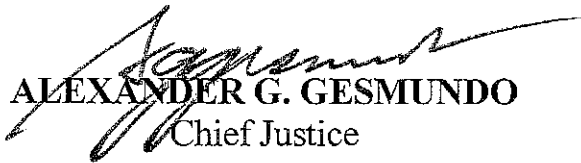
WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* dated August 12, 2011 filed by Philippine Long Distance Telephone Company is **GRANTED**. The Decision dated January 31, 2011 and the Resolution dated June 22, 2011 of the Court of Appeals in CA-G.R. SP No. 107672 are hereby **REVERSED** and **SET ASIDE**, and the Resolution dated June 27, 2007 of the National Labor Relations Commission is **REINSTATED**.

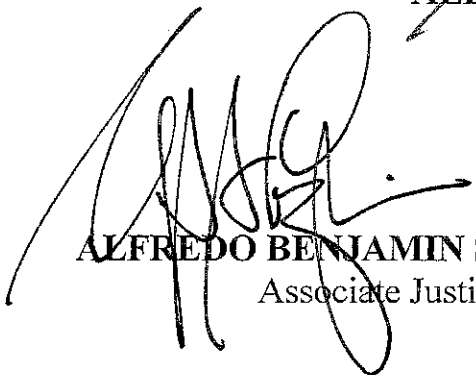
SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

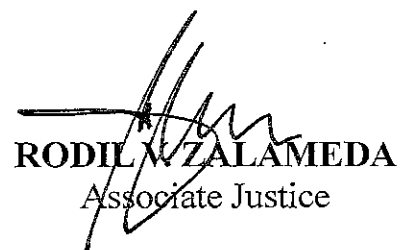
⁷³ Id. at 307-308.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

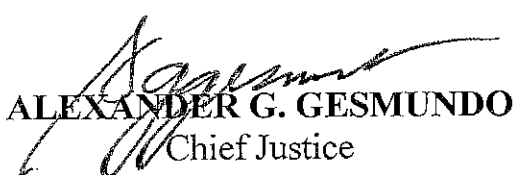

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ROSMARID. CARANDANG
Associate Justice


RODIL W. 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.


ALEXANDER G. GESMUNDO
Chief Justice