

RE: VEHICULAR ACCIDENT INVOLVING SC SHUTTLE BUS NO. 3 WITH PLATE NO. SEG-357 DRIVEN BY GERRY B. MORAL, DRIVER II-CASUAL.

A.M. No. 2008-13-SC. November 19, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This administrative matter arose from the vehicular accident which occurred on July 7, 2008 involving the Court's Shuttle Bus No. 3 driven by Gerry B. Moral, Driver II-Casual.

Ma. Theresa B. Andal, Legal Researcher III of the Judicial Supervision and Monitoring Division, Office of the Court Administrator and Shuttle Bus No. 3 designated-coordinator, alleged in a sworn statement that at around 5:40 p.m. of July 7, 2008, she and other Supreme Court employees were on board Shuttle Bus No. 3 bound for Antipolo, Rizal. The bus was then traveling on the long stretch of the flyover of Crossing, Shaw Boulevard, Mandaluyong City. Descending from the flyover, the bus accidentally bumped the rear portion of a public utility jeepney with Plate No. DWA-853 on a stop on the same lane and direction. Due to the strong impact, four passengers riding the jeepney were thrown out and injured. Three of those passengers were just clinging to the sides of the jeepney because all seats were taken. The bus' windshield was totally wrecked and its front portion was severely damaged.

Traffic Accident Report No. 07-1759 dated July 7, 2008 stated:

Investigation conducted and as alleged by V1 driver of PUJ Jitney that he was on stop along Shaw blvd and facing east direction because of moderate traffic thereat. At that instance, a Supreme Court shuttle bus driven by Gerry Moral (V2) coming from behind dragged forward with unknown speed and narrated that his driven vehicle brakes malfunction[ed] causing him V2 to accidentally hit/bump the rear end portion of V1 by the front end portion of V2. And due to force of impact V1 surge forward same accident tally hit/bumped the rear end portion of V3 by the front end portion of V1. And again for the third time unaware of the incident the rear end portion of V4 Toyota Corolla driven by female driver also hit/bumped by the front end portion of V3 Toyota Camry, which resulted damage to all four (4) vehicle. Right after the said incident three (3) hitching passengers (male) and one female passenger inside PUJ Jitney sustained injuries and [were] rushed to Polymedic hospital for treatment by immediate arrival of Rescue Ambulance.

The Office of Administrative Services (OAS) stated in its Memorandum dated September 8, 2008 that one person died due to the accident.

The matter was referred to the Shuttle Bus Committee for documentation purposes of insurance coverage. Thereafter, Mr. Moral was directed to make his own narration of the incident.

In compliance, Mr. Moral submitted his sworn statement dated July 9, 2008 which reads:

Ako po si Gerry B. Moral, SC Shuttle Bus Driver II. Pababa po ako ng Crossing Flyover, Shaw Boulevard, papuntang Antipolo City nang di ko inaasahan na biglang nagkaroon ng problema ang preno ng bus. Pag apak

ko ng preno, ayaw kumapit. Pag apak ko uli, wala na. . . ayaw na huminto. Ginawa ko ang lahat para mapahinto ang bus. Naghandbrake na ako. Ang pangyayari ay tumatakbo ako ng humigit kumulang twenty (20) to twenty-five (25) k.p.h. Gumapang po ang bus pababa ng flyover nang maghandbrake ako. Sa kasamaang palad, inabot pa rin ang nakahinto na jeep na may nakasabit sa kanang bahagi na tatlong pasahero. Nasira po ang bumper at salamin sa harapan ng bus. Hindi ko po kagustuhan ang aksidente. Kung hindi lang lumusot ang preno ng bus, wala sanang namatay at nasaktan.

The OAS, as the initiatory authority to discipline shuttle bus drivers, issued a memorandum directing some employees who were on board the bus to submit their respective statements regarding the incident to determine the possibility of recklessness on the part of Mr. Moral as a ground for disciplinary action against him.

The OAS summarized their statements as follows:

Mr. Rolando U. Del Rosario, Typesetter II of the Printing Services, simply concurred with the driver's statements; Mr. Ricardo N. Lai, Jr., SC Supervising Judicial Staff Officer of the MISO stated that he was seated at the second row of the bus. That he saw Mr. Moral flash the bus headlights as a warning while his right foot was stepping heavily on the break pedal. He stated that the bus was running at a speed of approximately 20 kph; Mr. Vicente L. Macafe, Jr., Chauffeur I of the Program Management Office, on the other hand, stated that he was seated at the back of the bus driver. That while the bus was on its way down from the flyover, he noticed that it had an accelerated speed when it hit the passenger jeepney. Some hitching and seated passengers were injured; Mr. Joderick R. Gonzalez, Data Entry Machine Operator, Office of ACA Villaror, submitted his statement and alleged that the bus was not in its normal rate of speed. This was corroborated by Ms. Estrellita R. Gonzales, Court Stenographer III, Office of the Court Administrator, who recalled that before the accident happened the bus was purportedly traversing the flyover at high speed.

After a thorough evaluation of the statements submitted and documents gathered in relation to the vehicular accident, the OAS, in a Memorandum dated September 8, 2008, declared that it was convinced that the accident happened with no fault or negligence on the part of Mr. Moral. It attributed the accident to the malfunctioning of the brake of the bus which was beyond the driver's control. It stated:

After a thorough evaluation of the respective claims, this Office is convinced that the incident was purely accidental with no fault or negligence on our driver so far.

As indicated in the Traffic Accident Report, the bus with unknown speed suddenly lost its brakes which resulted to both damage to properties and injuries to victims. This Office would like to emphasize the roadworthiness of our shuttle buses, i.e. the said bus from the time it left the parking area in the afternoon to pick up its regular employee-passengers had perfect functioning brakes and in good running condition until the accident. It can assure that a driver of a Court's Shuttle Bus conducts an overall check-up on the condition of the bus he is driving. The passengers may just have presumed that the bus was purportedly traversing at high speed because it was descending the flyover making it difficult for Mr. Moral to control the bus due to the malfunctioning of the brakes which is beyond his control. Neither had they any point of comparison at hand whether the speed of the bus at that time it was descending was greater than what is reasonable. Besides, as stated in the police report, there was a moderate traffic before the accident occurred. In doing the alleged negligent act or recklessness, if there was any, on the part of Mr. Moral, no proof has yet been submitted to support this allegation.

In this case, the reasonable care and caution which an ordinary prudent person would have used may be presumed in his favor. In fact, Mr. Moral applied all means within his ability to lessen the degree of damage to the passenger jeepney which may have resulted due to the impact of the impending collision. What clearly happened was an accident with no fault or negligence attached[d] to Mr. Moral.

The OAS stated that Mr. Moral is a casual employee of the Court. He was hired under pertinent civil service rules.

He assumed the position of shuttle bus driver on July 1, 2008, after his appointment was included in the approved list of casual employees hired for the period covering July to December 2008.

The OAS recommends the immediate termination of Mr. Moral on the ground of loss of trust and confidence in him by the shuttle bus riders and that he has no security of tenure as a casual employee; hence, his services can be terminated anytime for cause.

The issue is whether or not Mr. Moral can be terminated from his casual employment due to the vehicular accident.

The pertinent laws applicable in this case are Sec. 2, Article IX (B) of the Constitution and Sec. 46 (a), Chapter 7 of the Civil Service Law, thus:

Article IX (B) of the Constitution

Sec. 2. x x x

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

x x x

(6) Temporary employees of the Government shall be given such protection as may be provided by law.
The Civil Service Law

Sec. 46. Discipline: General Provisions. - (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process.

Further, *Civil Aeronautics Administration v. IAC*[1] held that "the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment."

Hence, a government employee holding a casual or temporary employment cannot be terminated within the period of his employment except for cause.

In this case, Mr. Moral can be dismissed from employment if he is found guilty of gross neglect of duty which is punished with dismissal under Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations.

However, in the Memorandum dated September 8, 2008, OAS Chief Administrative Officer Eden T. Candelaria stated that after a thorough evaluation of the statements and documents regarding the vehicular accident, the OAS "is convinced that the incident was purely accidental with no fault or negligence on our driver so far." The OAS reported that there was no proof submitted that Mr. Moral was negligent or reckless in the performance of his duty. It attributed the accident to the malfunctioning of the brakes which was beyond the control of Mr. Moral.

Malfunction or loss of brake is not a fortuitous event.[2] Between the owner and his driver, on the one hand, and third parties such as commuters, drivers and pedestrians, on the other, the former is presumed to know about the condition of his vehicle and is duty bound to take care thereof with the diligence of a good father of the family.[3]

In this case, the OAS averred that it is the shuttle bus driver who conducts an overall check-up on the condition of the bus he is driving. It pointed out that Shuttle Bus No. 3 was roadworthy because it was in good running condition and its brakes functioned perfectly from the time it left the parking area in the afternoon of July 7, 2008 to pick up its regular employee-passengers until it reached the flyover of Crossing, Shaw Boulevard, Mandaluyong City where the accident happened. According to the OAS, there was no proof submitted showing that Mr. Moral was negligent or reckless in the performance of his duty.

In view of the lack of evidence showing gross neglect of duty on the part of Mr. Moral, the Court cannot sustain the recommendation of OAS for the dismissal of Mr. Moral on the ground that he is merely a casual employee. Even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws. However, Mr. Moral's services may no longer be engaged after termination of his employment contract as a temporary employee.

Further, the Court cannot uphold the recommendation of OAS that Mr. Moral be dismissed for loss of trust and confidence by the passengers of the bus because a driver is not a confidential employee as defined in Civil Service Commission v. Salas, [4] thus:

The occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion, without fear of embarrassment or misgivings of possible betrayal of personal trust or confidential matters of state. Withal, where the position occupied is remote from that of the appointing authority, the element of trust between them is no longer predominant.

WHEREFORE, respondent GERRY B. MORAL is RETAINED as shuttle bus driver until the end of the term of his temporary employment in the Court, i.e., December of 2008, unless he is earlier dismissed for cause in another case.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Ynares-Santiago, J., on leave.

[1] G.R. No. 70120, September 2, 1992, 213 SCRA 277, 280.

[2] Thermochem Incorporated v. Naval, G.R. No. 131541, October 20, 2000, 344 SCRA 76.

[3] Ibid.

[4] G.R. No. 123708, June 19, 1997, 274 SCRA 414, 428.

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