

PHILIPPINE RABBIT LINES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COM-MISSION (SECOND DIVISION), LABOR ARBITER VALENTIN GUANIO, AND SEVERINO ESTOQUE, RESPONDENTS.

G.R. No. 100490. August 12, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

At issue in this special civil action of certiorari is whether or not the respondent Commission had acted with grave abuse of discretion in declaring, in its Resolution of April 30, 1991, that Severino Estoque had been illegally dismissed from his employment by Philippine Rabbit Bus Lines, Inc., (hereafter, simply Philippine Rabbit).

The record discloses that Estoque worked for Philippine Rabbit as bus conductor from October 31, 1984 until October 15, 1986, when the company's General Manager sent him a memorandum to the effect that since he (a) "had not reported for work nor been ** heard from since August 31, 1986," (b) had failed to comply with the directive to report for investigation; and (c) as shown by his Service Record, had already been "warned and suspended" for various irregularities committed in the past, his employment was being terminated pursuant to Company rules prescribing, among others, "that employees who went on AWOL or have not been heard from for a period of ONE (1) MONTH are summarily separated from the service **." [1]

Estoque was not thereafter heard from until two years and two months later, when he filed with the Labor Arbiters' Office, National Capital Region, a complaint for illegal dismissal dated November 24, 1988 in which he prayed for reinstatement and payment of back wages, premium pay, 13th month pay, damages and attorneys' fees.

In his position paper, Estoque set forth his version of the events directly leading to his discharge: (a) that his last trip was on August 23, 1986; (b) that he was thereafter no longer given any assignment allegedly because the bus to which he was assigned was undergoing repair; (c) that eleven days later, on September 3, 1986, he went to the company premises and found out that the repair of the bus had not yet been completed; (d) that on September 19, 1986, he received a memorandum from the general manager, Ricardo L. Paras, informing that he had been placed under preventive suspension and directing him to report to Mr. C. V. Cabading for formal investigation of the charge of having abandoned work since August 31, 1986; (e) that Cabading told him however that the papers were already with the General Manager; and (f) that he tried to see the General Manager and when he failed in this effort, he decided to sue.

The evidence presented by Philippine Rabbit, consisting of the sworn statement of its Administrative Investigator C. V. Cabading,[2] and various documents, is in part consistent with that of Estoque. Its evidence tends to establish the following facts:

1. Estoque had indeed been given notice in writing to report to Cabading for formal investigation for having allegedly abandoned his work since August 31, 1986.
2. The notice was dated September 19, 1986 and contained the following cautionary advice: "Failure on your part

to report for investigation will be construed to mean waiver on your part to present your side and the management will render the appropriate decision." [3]

3. Estoque however failed to "submit (himself) for investigation" as directed, and this was reported to the Operations Manager by the investigator's letter dated October 6, 1986. [4]

4. On October 15, 1986, as already mentioned, the company sent Estoque a memorandum stating that since he had not been heard from since August 31, 1986, had failed to report for investigation as directed, and had been punished for violations of company regulations at various times in the past, his employment was being terminated. [5]

5. Estoque's "Employee's Index Card" indeed shows many infractions of company rules on his part for which he had been meted several sanctions. [6] The sanctions thus imposed, numbering no less than eight (8), and the corresponding offenses, are summarized in the Labor Arbiter's Decision dated May 22, 1990, *infra*. [7] The records also show, in this connection, that Estoque had been investigated for said rule violations in writing (in question and answer form) by the company investigator, Cabading, and had in fact signed the reports of investigation. [8]

6. For two (2) years after termination of his employment, Estoque was not seen or heard from. Then, on November 25, 1988, he filed a complaint against Philippine Rabbit Bus Lines, Inc. for "unfair labor practice, illegal dismissal, non-payment of premium pay for holiday and rest day, violation of P.D. 851 and also moral damages and attorney's fees." Another employee, Romulo H. Obispo, also filed a complaint against the company but did nothing else and never bothered to prosecute his claim.

7. On December 23, 1988 -- about a month after filing his complaint with the Office of the Labor Arbiter, as aforesaid -- Estoque presented a written request to the General Manager of the following tenor: "Respectfully request your kind consideration and approval the withdrawal of my cash bond as conductor." [9] This was approved on December 24, 1988 "subject to clearing procedure." [10]

7. The corresponding clearance document was then accomplished. [11] Said document is in the form of a mimeographed letter which is evidently meant to go to various officers of the company -- identified as: "Property incharge;" "Canteen;" "Uniform incharge;" Accounting Section; "SSS incharge;" and "Adm. Officer" -- who are supposed to state in appropriate spaces in the clearance form if the employee concerned has or has no account and if so, how much; and below all these entries, but forming part of the document, is a "certificate of clearance." The form opens with the following sentences:

" I have the honor to tender my resignation as _____ of the Philippine Rabbit Bus Lines, Inc.

I have been cleared of all money, property and other responsibility as stated hereunder.

* * * ."

The clearance form, dated December 27, 1988, did not contain Estoque's signature. Nevertheless, it is clear that it was processed by the different officers concerned. The summary of the officers' action was thereafter entered in the clearance form by the Payroll Clerk after which, at the foot thereof, the General Manager made a declaration that the "certificate of clearance of Ceferino Estoque is issued this 30th day of December, 1988, at Tarlac, Tarlac." [12] Completion of the clearance procedure revealed a refundable amount to Estoque of P847.00. This was paid to and receipted for by him on December 29, 1988. [13]

This clearance document was then used by Philippine Rabbit as basis for a motion to dismiss Estoque's complaint. The motion was however denied by the Labor Arbiter on July 10, 1989 "for the reason that the supposed letter of

resignation did not even bear the signature of the complainant thereby rendering it a mere scrap of paper." [14]

After due proceedings, the Executive Labor Arbiter rendered judgment in Estoque's favor, dated May 22, 1990. [15] The Arbiter rejected Philippine Rabbit's contention that Estoque had abandoned his job. He said: [16]

" **. The records reveal that complainant had no intention to abandon his job. On one occasion, that is, September 3, 1986, he went to the terminal of respondent at McArthur Highway to check on the progress of the repair being undertaken on the bus where he was assigned. After having been informed by the bus driver that the repairs were still on-going and that he was not given any temporary assignment despite the fact that he frequently reported to the terminal for a possible assignment, the complainant must have presumed that he would be subjected to the same treatment: wait-till-the-bus-is-repaired. Moreover, the fact that he went to see Mr. Cabading and even the General Manager himself upon receipt of the memorandum dated September 19, 1986 negates the allegation by respondent that he had abandoned his job."

The following disposition was accordingly made in the judgment, to wit:

"WHEREFORE, respondent is hereby ordered to reinstate complainant Estoque, to his former position as conductor without loss of seniority rights and privileges, and to pay his backwages for one (1) year computed at P112.00 per trip or an approximate average of P3,360 per month for a total of P40,320.00. Attorney's fees equivalent to ten percent (10%) is further awarded.

The other claims of the complainant are hereby dismissed or lack of evidence in support thereof.

As to the complaint of Romulo M. Obispo, the same is hereby dismissed on account of his patent lack of interest to further prosecute his claim."

The employer appealed to the National Labor Relations Commission but failed in its bid to reverse the Arbiter's Decision. In a Resolution dated April 3, 1991 the NLRC Second Division declared that the "appeal is not impressed with merit" and affirmed the Labor Arbiter's decision. [17] Elaborating on the company's claim of abandonment, the Commission's Resolution states the following:

"If the complainant was admittedly dismissed for alleged abandonment on 19 October 1986, and even filed a complaint for illegal dismissal on 25 November 1988, why would he still resign as claimed by the respondent on 27 December 1988?

The truth is, that the complainant did not resign. As conductor, he was required to put up a cash bond for the security of the respondent. Complainant, after his dismissal, would like to withdraw his cash bond. But to be able to do so, he must have to fill up a form-letter addressed to the company tendering his resignation. This letter, when processed and approved by the officers representing the different sections or departments of the company would serve as clearance from any financial or property accountability. Only then would he be allowed to withdraw his cash bond.

Definitely, that sort of resignation born out of necessity was not the kind of resignation that would dispel the existence of any act of dismissal on the part of the respondent. More specially so, where it took place two years after the complainant was actually terminated from his employment on the charge of abandonment.

The foregoing defense of the respondent which is a classic example in contrast fails to convince us."

The company has instituted the certiorari action at bar to annul said resolution of April 3, 1991 and the Arbiter's decision thereby affirmed.

The Court is satisfied that the facts are as Philippine Rabbit's proofs tend to establish, i.e., that Estoque had in truth absented himself from work August 23, 1986, after learning that the bus to which he was usually assigned was under repair; that while he had gone to the employer's premises to inquire about the progress of the repair

work on his vehicle on September 3, 1986, he had not made known to his superiors his willingness to resume work on any other vehicle or in any other position pending completion of said repair work; that he had admittedly received, on or about September 19, 1986, notice to report for investigation on the charge of having abandoned work since August 31, 1986; and that not only did he omit to submit himself to such an investigation, but after once trying to see the General Manager, unsuccessfully, according to him, and receiving, on October 15, 1986, a memorandum from the company dismissing him from the service, he continued to stay away from Philippine Rabbit for more than two (2) years and made no effort whatever to retain his job.. The evidence also satisfactorily establishes that in the course of his employment, Estoque had been accused of about eight (8) violations of company regulations of one sort or another, been given due notice thereof and subjected to formal investigation in connection therewith, and been meted the corresponding administrative sanctions.

The facts are essentially inconsistent with a finding that Estoque "had no intention to abandon his job." On the contrary, they persuasively demonstrate a desire on his part to renounce his work and seek or accept work elsewhere. This explains his utter indifference and lack of reaction to the company's act of terminating his services; why, after refusing to undergo investigation and even after being informed of his discharge from employment, he made no effort to return to his employer, or sue for reinstatement until after two (2) years. It is significant that neither he nor the public respondents attempt to deal with, much less justify such inaction for more than two (2) years.

It is not unreasonable to assume that, having become disenchanted with whatever new venture he had undertaken, or having been unable to keep whatever other work he might have obtained, he had turned his attention back to his former employer in an attempt to get back his old job. Nor is it unreasonable to suppose that having sued for reinstatement, he had changed his mind and applied for a return of his cash bond.

Now, a few words about this cash bond, of which much has been made by the respondent Commission. There is no question that Estoque had indeed applied for a return of his cash bond, that his application was acted upon by several officers of the company in accordance with fixed routine, and that he had in fact been given back, and had duly receipted for, his cash bond. That application for and acceptance of the return of his cash bond are clearly inconsistent with any desire to remain in employment, being on the contrary entirely in accord with an intention to permanently sever connection with his employer. Obviously, the cash bond is required of all employees to answer for any property damage that might be caused to, or indebtedness incurred in favor of, the employer, and is returnable only upon termination of employment. The retrieval by an employee of his cash bond -- or whatever remains of it after deducting therefrom the amount of any indebtedness he might have to the employer -- removes the last of his ties to the company. This is the reason why the application for the return of the cash bond or deposit opens with a declaration by the employee that he is resigning from employment, i.e., of severance of the employment relation; there would otherwise be no occasion for the return of the cash bond.

The foregoing facts and considerations are plain and patent on the record. They were regrettably misread or ignored by the Labor Arbiter and the respondent Commission. They consequently drew conclusions of fact and law without adequate foundation, if not indeed in contradiction of the evidence and the logical inferences necessarily resulting therefrom. In a word, they acted whimsically and capriciously.

WHEREFORE, the challenged Resolution of the respondent Commission dated April 3, 1991, and the Labor Arbiter's decision dated May 22, 1990 thereby affirmed, are NULLIFIED AND SET ASIDE, and the private respondent's complaint is DISMISSED, without pronouncement as to costs.

SO ORDERED.

Padilla, Regalado, and Nocon, JJ., concur.

- [1] Rollo, p. 32
- [2] SEE Rollo, p. 30, for Cabading's Affidavit executed on August 28, 1989
- [3] Rollo, p. 31: Annex F, petition
- [4] Id., p. 32: Annex G, petition
- [5] Id., p. 33
- [6] Id., p. 29: Annex D, petition
- [7] Id., pp. 15, 16-18
- [8] Id., pp. 34-37: Annexes I to L, inclusive
- [9] Id., p. 39: Annex N.
- [10] Per handwritten notation at bottom of Estoque's aforesaid request
- [11] Rollo, p. 38: Annex M, petition
- [12] Id., p. 38
- [13] Id., p. 40
- [14] Id., p. 18
- [15] Id., pp. 15-20
- [16] Id., p. 19
- [17] Id., pp. 21-27

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