

BENCIO CARAAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COM-MISSION AND BATANGAS LAGUNA TAYABAS BUS COMPANY (BLTBCO), RESPONDENTS.

G.R. No. 106454. October 21, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioner seeks, by this petition for certiorari, to annul the Resolutions dated January 31, 1992 and April 21, 1992, of the National Labor Relations Commission (NLRC) dismissing his complaint for illegal dismissal. He invokes the compassionate implementation of the social justice provisions of the Constitution rather than the strict application of his employer's harsh rules and regulations.

Bencio Caraan was employed by BLTBCO on April 19, 1984 as a bus conductor, with a salary of P103.00 per day plus five (5%) percent commission on ticket sales. On September 30, 1989, he was dismissed from the service for having incurred a cash shortage of P98.55 on his fare collections for the preceding day, September 29, 1989.

The records show that on September 29, 1989, Caraan was assigned as bus conductor of BLTBCO Aircon Bus No. DL-749 which left Plaza Lawton at 7:30 in the evening with 100 passengers, more or less, all of whom were issued tickets. A group of three passengers did not have enough money for the fare and pleaded with Caraan that they be allowed to pay their fares of P32.85 each upon reaching the Chavez Pharmacy in Batangas City. Taking pity on them, Caraan acceded to their request. However, upon reaching Batangas City, another passenger who got off requested Caraan's assistance with his baggage. Caraan went up the bus to retrieve the passenger's baggage. He was dismayed to discover later that while he was so occupied, the three passengers who promised to pay their fares upon reaching Batangas City had already left the bus. Caraan immediately submitted a "shortage slip" for P100.00 to the company's pre-audit section in Batangas City, after which he went home to Talisay to procure money to enable him to redeem his shortage slip from the company's main office in San Pablo City. Upon reaching the office, he was informed by the administrative officer, Mr. Escaño, that the payroll had already been prepared, hence, the corresponding deduction for his shortage would just be effected in the next payroll.

An investigation of Caraan was conducted in writing in the form of questions and answers. Caraan explained the cause of his shortage. But thereafter, Caraan was no longer given any trip assignment.

On November 25, 1989, an official termination letter signed by Max Potenciano, Jr., Vice-President for Operations of BLTBCO, was received by Caraan. It mentioned the fact that his shortage of P100.00 on September 29, 1989 was his 33rd offense, the thirty-two other shortages, involving minimal amounts, totalled P146.80.

Caraan filed NLRC Case No. SRB-IV-2-3229-91 in the Department of Labor and Employment, charging the company with unfair labor practice and illegal dismissal.

On July 25, 1991, the labor arbiter rendered a decision declaring that complainant's dismissal was illegal and

unjustified, and ordering his reinstatement to his former position effective August 1, 1991, with full backwages in the total sum of P26,951.60. The respondent bus company was further ordered to pay his attorney's fees.

BLTBCO appealed the decision in Case No. RAB-IV-2-3229-91 to the NLRC. It alleged that the labor arbiter erred in not finding that Caraan's dismissal was lawful for breach of trust and confidence because he had been found guilty of several offenses of misappropriation and/or dishonesty by reason of recurring shortages in his fare collections, the last of which occurred on September 29, 1989. The company argued that granting that malice may not be imputed to his shortage of P100.00, he should, nevertheless, be dismissed for grave misconduct and/or gross negligence because of recurring shortages in his daily collections.

In the meantime, the complainant has been actually reinstated by the respondent company to his former position as bus conductor starting August 29, 1991.

The NLRC rendered a Resolution on January 31, 1992, setting aside the labor arbiter's decision. A new one was entered "dismissing the illegal dismissal case x x x for lack of merit, however, directing respondent to pay complainant the amount of Two Thousand Six Hundred Ninety-Five and 17/100 (P2,695.17) Pesos as financial assistance" (p. 23, Rollo).

Caraan filed a Motion for Reconsideration while BLTBCO asked for a Partial Reconsideration of the January 31, 1992 decision. Both motions were denied for lack of merit.

Petitioner filed the instant petition, alleging that the NLRC gravely abused its discretion in upholding his dismissal from employment as penalty for a minor offense, thereby violating his right to security of tenure.

We find merit in the petition.

While it is clear that the petitioner incurred a shortage of P100.00 in his fare collections on September 29, 1989 for failure to collect the fares of three (3) absconding passengers to whom he had issued tickets, or for failure to remit the full fares corresponding to the number of tickets issued during that particular trip, Caraan was not guilty of misappropriation or dishonesty meriting the company's loss of trust and confidence in him.

The labor arbiter correctly observed that the nature of Caraan's work as a bus conductor involves inherent or normal occupational risks of incurring money shortages and uncollected fares. A conductor's job is to collect exact fares from the passengers and remit his collections to the company. While, ordinarily, failure to do that may look like a case of misappropriation of funds, or gross neglect of duty on the part of the employee, resulting in his employer's loss of trust and confidence in him, in the particular circumstances of this case, we find only a case of simple negligence not deserving the severe penalty of dismissal from the service.

Caraan was not guilty of misappropriation because the proceeds of the tickets which he gave to the three passengers had not yet come into his hands. He had received nothing from them that he could misappropriate. The most that he was guilty of was that he was a poor judge of the character of his passengers and that he neglected to do his duty to discharge them from the bus when they could not pay their fares. Caraan had no dishonest intent to defraud the bus company as shown by the following facts:

1. upon arrival in Batangas, he immediately disclosed the circumstances of his failure to collect the fares of 3 passengers by submitting a shortage slip for P100.00 (instead of P98.55 which was the actual cost of the tickets);
2. he went home in order to get money to reimburse the uncollected value of the unpaid tickets; and
3. he went to the bus company's head office in San Pablo City where he again disclosed the uncollected amount with the intention of remitting it directly, but he was advised by the administrative officer that the payroll for the preceding day had already been prepared and so the corresponding deduction would just be made in the next

payroll.

All these circumstances indicate his clear and honest purpose to make good the company's loss. The management's act of reinstating him on August 29, 1991, as ordered by the labor arbiter, even though it had appealed that decision to the NLRC, indicates that his previous infractions were not so serious as to be unforgivable from the company's viewpoint.

It is the policy of the State to assure the right of workers to security of tenure (Art. XII, Sec. 3, 1987 Constitution), as an act of social justice. In the present case, although Caraan asserts this right without the support of a union in pressing his claim, he nevertheless speaks no less forcefully for he has the Constitution behind him (*Dagupan Bus Co., Inc. vs. NLRC*, 191 SCRA 328).

While we do not condone Caraan's neglect of duty, we believe his negligence deserves a commensurate penalty short of the loss of his job.

WHEREFORE, the assailed resolutions of the National Labor Relations Commission are hereby set aside and the Labor Arbiter's decision is reinstated. Considering that the order for his reinstatement to his former position, without loss of seniority rights and benefits, has already been complied with by his employer as of August 28, 1991, the latter is hereby ordered to pay him his full back wages from September 30, 1989 to August 28, 1991, plus ten (10%) percent of the judgment as attorney's fees. Costs against the private respondent.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

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