

METRO TRANSIT ORGANIZATION, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND FERNANDO DIZON, RESPONDENTS.*G.R. No. 121574. October 17, 1996*

Ponente: DAVIDE, JR., J.

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This is a special civil action for certiorari to set aside the resolutions of 2 May 1995[1] and 13 July 1995[2] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR 00-09-05220-92 (NCR CA No. 005718-93). The former affirmed the decision of 10 August 1993[3] of Labor Arbiter Eduardo J. Carpio ordering the reinstatement of private respondent Fernando Dizon with the modification that back wages was awarded in favor of Dizon. The latter denied the petitioner's motion for reconsideration.

The antecedent facts of the case are as follows:

Private respondent was employed as an LRV Technician by Metro Transit Organization, Inc. (hereinafter METRO). He had been with METRO for eight years until his questioned dismissal from employment on 27 April 1992. His salary as of the time of his dismissal was P6,200.00 a month.[4]

On 29 February 1992, the private respondent was assigned to conduct testing on LRV 1061 (train) for various repairs done to it. In the process of testing the same, the train overshot the bunker and collided with gantry 33A thereby causing major damage on the catenary line and injuries to a passing pedicab driver and a security guard. The damage caused was estimated at P12,089,350.36. A formal investigation was conducted. Thereafter, the private respondent was found guilty of gross negligence of duty and was ordered dismissed from the service.[5] The letter of dismissal states:

It has been established after formal investigation that on February 29, 1992, a single LRV 1061 stabled at Track 9 was maneuvered by you for testing of a reported fault. While approaching the test track, you noticed an intermittent fault indication (CL4) and upon reaching the mid-section of the test track, you again noticed that the LRV's speed was apparently not indicative of the speedometer reading prompting you to apply PB6 but this failed so you stepped on the brake pedal (position 5) which again did not function. As a last resort, you then activated PB7 (pantodown) to cut the power supply on the wrong notion that said LRV would stop which, however, proved to be a disastrous mistake. The pantodown command you executed only contributed to the loss of the train's braking system.

As a consequence, the LRV overshot the bunker ballast and collided with gantry 33A inflicting major damage on the catenary line and causing injuries to a passing pedicab driver and another security guard who was thrown out of the guard house upon impact. In the summation, damage was placed at P12,089,350.56 (taxes and custom duties included) which covers the restoration works on catenary, civil and tracks and rolling stock and claim for damages of those injured in the mishap.

On the basis of the foregoing considerations, you have been found guilty of gross negligence in the

performance of your duties and responsibilities and for violating the Safety Code to the prejudice of the Company.

In view thereof, Management is compelled to dismiss you from the service of the Company for a cause, in accordance with law, effective immediately.[6]

The private respondent assailed his dismissal and filed a complaint for illegal dismissal before Labor Arbiter Eduardo J. Carpio. He argued as follows:

[T]he train (LRV 1061) had just undergone repairs prior to the incident of February 29, 1992. It is precisely to test its traction and brake system that it was moved to Track 9 that morning. In fine, such testing was to ascertain if LRV 1061 could be cleared of defect/s after such testing. If during such testing, its systems break and after applying all precautions and emergency measures believed proper and appropriate under the circumstances, one cannot be lawfully charged for "gross negligence" in the discharge of duties and meted the supreme penalty of dismissal".

x x x

Clearly, the train had, admittedly, several defects at the time of the incident as registered in its CL4. Its speedometer was not also registering its correct speed at the time. So after noticing these, the complainant did or took steps which at that very critical and emergency situation appeared to him to be proper and appropriate to stop the train to prevent any damage to it. He applied PB6 immediately and when this failed, he stepped on the brake pedal, which also failed. He knew there was not much time as it (train) was then nearing the bunker ballast and could not be stopped so, as a last resort, he thought of activating PB7 to cut-off the train's power supply, but this did not likewise prove successful as it did not also stop the train. This explains why the train overshot the bunker ballast and caused damage to it.

Clearly, Dizon did all he could and took all steps he believe[d] could have stopped the train which, unfortunately, proved futile. It was an emergency situation for which he could not be blamed for alleged "gross negligence". If at all, the defects of the train caused the incident and these were beyond the control of the complainant. He could not even be charged of contributory negligence precisely because of the steps he did to stop the train. Assuming he committed a mistake in the process, it must be excusable because of the critical and emergency nature in which he found himself in at the time.[7]

In his decision of 10 August 1993, the Labor Arbiter ruled that the private respondent could not be held liable for gross negligence in the performance of his duties and that the penalty of dismissal was not justified.[8] The Labor Arbiter made the following findings:

It is not disputed that train LRV 1061 had just undergone repairs prior to the incident. It was taken out from Track 9 by complainant to test if it was already cleared of defects. To discover if there are still defects, the train has to undergo the testing process. It is in this process that defects, causing the accident, were uncovered. If damages resulted therefrom, complainant, as the person in charge of the testing, cannot be made to answer for it. As LRV Technician, he merely employed what he believe[d] are means proper and appropriate under such emergency and critical situation. What he did [were] not indicative of "gross negligence". Complainant herein [was] in good faith when he performed his duties as LRV Technician. He had no intention to commit so grave a wrong so as to prejudice the interest of respondent company. Nothing on record and on the investigation report taken by respondents where we can find that such bad intention of complainant to prejudice the company is established by evidence. If ever there was negligence on the part of complainant, the same was excusable.[9]

Accordingly, the Labor Arbiter ordered the immediate reinstatement of the private respondent. However, he made no award for back wages.[10]

This decision was unacceptable to both parties. They appealed therefrom to the NLRC with the petitioner

imputing upon the Labor Arbiter the following errors: (a) in not finding the private respondent negligent and reckless in the performance of his duties and functions that resulted in the over-shooting of LRV 1061; (b) in holding that the incident in question was unexpected and beyond the control of the private respondent; and (c) in holding that the private respondent acted in good faith and that the steps and measures taken by him were proper and appropriate. The private respondent, on the other hand, assailed the failure of the Labor Arbiter to grant him back wages despite the finding that he was illegally dismissed from his employment.

In its resolution of 2 May 1995, the NLRC upheld the Labor Arbiter on the issue of illegal termination. But it disagreed with the Labor Arbiter on the issue of back wages, and ruled for the private respondent.

Since its motion for a reconsideration of the resolution was denied in the resolution of 13 July 1995, the petitioner instituted the instant special civil action for certiorari alleging that the NLRC gravely abused its discretion in totally discarding uncontroverted evidence and in relying merely on conjectures and assumptions not supported by facts.

Upon a meticulous consideration of the arguments of the parties as amplified in their respective Memoranda, we are led to no other conclusion but to affirm the challenged resolutions.

The assigned error actually raises a factual issue. Findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but even finality and are binding upon the Court if they are supported by substantial evidence.[11] Only substantial, not preponderance of evidence is necessary. Section 5, Rule 133 of the Rules of Court provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

The finding of the Labor Arbiter and the NLRC that the accident was caused by mechanical defects in the train, not by the private respondent's gross negligence, is supported by the records. In fact, in the Memorandum[12] submitted by the General Manager on 19 March 1992 to the Board of Directors of METRO, the following findings and conclusions were arrived at:

B. SAFETY AND SECURITY OFFICE

Our Safety Office found that LRV 1061 had no pneumatic brake when tested at the test track as a result of the isolation of cocks 26 & 29. On the other hand, track brake was found to be functioning when brake and traction test was conducted even before the dynamic testing.

Further investigation disclosed that due to loose connection of tachymetry module, speedometer reading was erratic. Hence, reading was not reflective of the actual speed.

x x x

C. ENGINEERING TECHNICAL INVESTIGATION

Engineering technical investigation team found out that only 95% of the total LRV 1061 braking force was available before the accident; track brakes of TT2 was found non-operational. All other major brake equipment were found in good working condition. As long as all isolating devices and bypass switches are in normal position, a total brake failure is impossible.

The tachymetry module was discovered with loose connections on BWS6 terminal #18 that causes intermittent speed indicator. In this case, the measured speed will be lower than the actual speed due to meter fluctuation.

x x x

VI. CONCLUSION

Based on the results of the investigation, the following are the violations/conditions established that lead to the accident.

1. Overspeeding of the LRV being operated by Mr. F. Dizon.

It is imminent that there was overspeeding. However, we cannot directly penalize Mr. Dizon, the operator, since it was established by the Engineering investigation team that there was a loose connection in the tachymetry module. Mr. Dizon was not aware of the actual speed of the train since he was monitoring the speedometer reading.

It is recommended that the tachymetry module be checked or inspected prior to dynamic testing.

2. Non-checking of cocks 26 and 29 and bulbs H205 to H208 condition before testing.

It was established that cocks 26 & 29 was bypassed on February 26, 1992 by LMD and was not normalized up to the time the accident had occurred.

3. Negligence on the part of HMD Supervisor.

As the head of the testing team, Mr. Cabanilla should have assured that controls and switches vital to the nature of the testing are in good working condition.

4. Unsafe act -- wrong judgment on the part of Mr. Dizon.

The decision of Mr. Dizon to activate PB7 (pantodown command) only contributed to loss of the LRV's braking system.[13]

In justifying its termination of the private respondent, the petitioner relied on Article 282 (b) of the Labor Code, which provides that an employer may terminate an employment for gross and habitual neglect by the employee of his duties. Gross negligence has been defined to be the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property.[14] It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[15]

The actions of the private respondent hardly qualify as gross negligence. They were not attended by bad faith, nor were they unreasonable given the factual milieu under which he acted. As found in the investigation report quoted earlier, his decision to activate PB7 in his desire to stop the speeding train only contributed to the loss of the braking system, which were defective to begin with. It could not even be unequivocally said to have been the only cause of the accident. Even before the private respondent activated PB7, he had already taken measures to try to stop the train, but to no avail. Moreover, nowhere in the investigation reports[16] can we find any intimation of gross negligence on the part of the private respondent.

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to discharge that burden would result in a finding that the dismissal is unjustified.[17] In the instant case, the just cause relied upon by the petitioner in dismissing the private respondent was not proved.

We find the award by the NLRC of back wages to be in order in view of various rulings by this Court in such cases as *Sigma Personnel Services vs. NLRC*;^[18] *Escareal vs. NLRC*;^[19] and *Torillo vs. Leogardo, Jr.*^[20]

WHEREFORE, the instant petition is hereby DISMISSED and the challenged resolutions of public respondent National Labor Relations Commission of 2 May 1995 and 13 July 1995 in NLRC NCR. 00-09-05220-92 (NCR CA NO. 005718-93) are hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban. JJ., concur.

[1] Original Record (OR), 249-254; Rollo, 24-29. Per Aquino, Pres. Comm., with Rayala and Calaycay, Comms., concurring.

[2] Id., 266; Id., 36.

[3] OR, 131-135.

[4] Id., 4.

[5] OR, 250.

[6] Id., 78.

[7] OR, 15-17.

[8] Id., 133.

[9] Id., 134.

[10] Id., 135.

[11] Sebuguero vs. NLRC, 248 SCRA 532, 544 [1995]; Maya Farms Employees Organization vs. NLRC, 239 SCRA 508, 512 [1994]; Tiu vs. NLRC, 215 SCRA 540, 549-550 [1992]; San Miguel Corp. vs. Javate, Jr., 205 SCRA 469, 475 [1992].

[12] OR, 43-46.**[13] OR, 44-46.**

[14] Amedo v. Rio y Olabarrieta, Inc., 95 Phil. 33, 37 [1954]

[15] Citibank, N.A. vs. Gatchalian, 240 SCRA 212, 218 [1995]

[16] OR, 99-104 (Memorandum of 5 March 1992); 72-77 (Memorandum of 9 March 1992); 66-71 (Memorandum of 14 March 1992); 43-46 (Memorandum of 19 March 1992).

[17] Reno Foods, Inc. vs. NLRC, 249 SCRA 379, 386 [1995].

[18] 224 SCRA 181, 188 [1993].**[19] 213 SCRA 472, 491-492 [1992].****[20] 197 SCRA 471, 477 [1991].**

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