

RDS TRUCKING

G.R. No. 123941. August 27, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J. :

The instant petition assails the Decision dated 29 June 1995 of the National Labor Relations Commission in NLRC NCR-00-11-07301-93[1] affirming the conclusion of the Labor Arbiter that respondent Charlie A. Aldus was illegally dismissed, as well as its Resolution dated 21 November 1995 denying reconsideration.

Charlie A. Aldus was employed by RDS Trucking (formerly Vill-Trade Trucking) as trailer driver on 14 January 1991 with salaries payable on a per trip basis. His average salary was P340.00 per trip or P6,800.00 monthly at an average of 20 trips per month. However instead of a 13th month pay he was given monthly bonuses in varying amounts.

On 16 November 1993 Aldus was driving a truck with Plate No. PKK-470 belonging to his employer when its engine suddenly conked out. The cause of the breakdown was traced to a leak in the radiator. Consequently, the truck had to be towed but in the course thereof it sustained additional damage when the towing vehicle suddenly stopped upon reaching Ortigas, San Juan, Metro Manila, causing the towed truck to bump its rear. As a result, the cowl of the truck was damaged in addition to its engine.

When Aldus reached their office he was unceremoniously ordered by Remigio S. de Silva, General Manager of RDS Trucking, to go home and just look for another job.[2] This was immediately followed by a letter dated 20 November 1993 terminating his services effective immediately due to past infractions wherein the company allegedly sustained damage by reason of private respondent's gross negligence and inefficiency to wit: (1) leaving on a trip in 1992 without a helper contrary to company policy and, on the same occasion, hitting a house in Canlubang, Laguna, due to careless driving resulting in damage to the trailer truck and its cargo; (2) exceeding the cargo limit by 15 metric tons causing damage to the truck with Plate No. PCC-876 in November 1992; and, (3) causing damage to the truck with Plate No. PKK-470 requiring the total replacement of its engine.

On 23 November 1993 Charlie Aldus sued Vill-Trade and/or RDS Trucking for illegal dismissal before the NLRC National Capital Region Arbitration Branch. A preliminary conference was held but the parties could not settle their differences; hence, Labor Arbiter Melquiades Sol del Rosario ordered the filing of position papers. Aldus did so on 15 February 1994 alleging that he was dismissed without valid or authorized cause and without due process. He likewise claimed underpayment of his 13th month pay.

On the other hand, General Manager Remigio S. de Silva representing RDS Trucking filed his corresponding position paper on 3 March 1994 insisting that complainant was dismissed because of past infractions amounting to gross misconduct. Complainant filed his "Reply to Respondents' Position Paper"[3] specifically denying the violations imputed to him, as follows: on the charge that he went on a trip without a helper, complainant alleged that he was allowed to do so by Luis de Silva, brother of Remigio S. de Silva, because it was difficult to get a helper; that the accident in Canlubang, Laguna, was caused by the defective clutch of the second-hand truck he

was driving; that the trailer truck with Plate No. PKK-470 was already a slightly damaged second-hand truck; and, that the damage sustained on 16 November 1993 was caused by the company mechanic who started the engine despite his (complainant's) warning that it had been drained due to leaks and that mechanic was also the one driving the truck when it bumped the towing vehicle.

In addition to the foregoing pleadings, the following were submitted to the Labor Arbiter, to wit: "Reply to Complainant's Position Paper" filed by RDS Trucking,[4] "Rejoinder to Respondent's Reply to Complainant's Position Paper"[5] by Charlie Aldus, and finally, "Comment on Complainant's Rejoinder to Respondents' Reply to Complainant's Position Paper" by RDS Trucking.[6]

In an order dated 19 August 1994 the Labor Arbiter declared the case submitted for decision on the basis of the pleadings on record without need of a formal hearing.[7]

On 7 December 1994 decision was rendered in favor of complainant.[8] The Labor Arbiter ruled that infractions imputed to complainant allegedly committed prior to the incident of 16 November 1993 could no longer be cited by RDS Trucking to justify his dismissal since he had already been punished for them. As for the incident of 16 November 1993, complainant was adjudged negligent only insofar as he failed to check the truck before taking it on a trip thus overlooking the leak in the radiator. However, instead of dismissal imposed upon him by the company, the Labor Arbiter declared forfeiture of a month's salary as sufficient penalty under the circumstances thus -

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant's dismissal to be illegal. Consequently he should immediately be reinstated physically or through payroll and paid his backwages, less one month penalty, reckoned from December 20, 1993 up to his reinstatement, at P6,800.00 a month less whatever income he has received at the time this case is pending. As of December 20, 1994, complainant's backwages have accumulated in the sum of P82,410.00. Attorney's fees equivalent to 10% of the awarded claims. All awards should be paid by respondents in solidum x x x x

Remigio de Silva and RDS Trucking[9] appealed to the National Labor Relations Commission (NLRC) on the ground that Charlie Aldus was validly dismissed and that the Labor Arbiter committed grave abuse of discretion in concluding otherwise on the basis of mere pleadings without even conducting a formal hearing.

On 29 June 1995 the NLRC affirmed the finding of illegal dismissal but modified the Labor Arbiter's decision by deleting the award of attorney's fees.[10] The NLRC ruled that RDS Trucking failed to show valid cause for Aldus' dismissal as it failed to prove that the latter deliberately caused damage to the truck he was driving. Anent the issue of due process, the NLRC pointed out that labor arbiters are in a better position to decide cases on the basis of mere position papers and other documents submitted to them without resorting to the technical rules of evidence observed by regular courts. A subsequent motion for reconsideration filed by RDS Trucking was denied in a resolution dated 21 November 1995.[11] Hence, this petition.

Petitioners now concede that labor arbiters are vested with the discretion to determine whether formal trials or hearings are necessary in cases before them and that their determination on the matter deserves great respect.[12] However, petitioners contend that labor arbiters are mandated by Sec. 4, Rule V, of the New Rules of Procedure of the National Labor Relations Commission to first propound clarificatory questions to the parties in the process of determining such necessity for a formal trial or hearing. Failure on their part to ask clarificatory questions is a procedural lapse amounting to grave abuse of discretion correctible by certiorari.

There is no merit in the argument. A reading of Sec. 4, Rule V, of the New Rules of Procedure of the National Labor Relations Commission readily shows that clarificatory questions may be propounded to the parties at the discretion of the Labor Arbiter. Sec. 4 provides:

Sec. 4 Determination of Necessity of Hearing. - Immediately after the submission of the parties of their position papers/memorandum, the Labor Arbiter shall motu proprio determine whether there is need for a formal trial or hearing. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any, from any party or witness (underscoring supplied).

Aside from employing the word "may" which denotes discretion negating a mandatory or obligatory effect,[13] the provision expressly states that it is discretionary on the part of the Labor Arbiter to propound clarificatory questions to the parties for the purpose of determining the necessity of a formal trial or hearing. Hence there is absolutely no legal justification for the mandatory interpretation accorded by herein petitioners to the provision.

On the issue of illegal dismissal, petitioners contend that the NLRC committed grave abuse of discretion in affirming that private respondent was illegally dismissed. On the contrary, petitioners assert that the latter was validly dismissed for serious misconduct, willful disobedience of lawful orders and habitual neglect of duties on past occasions culminating in the 16 November 1993 fiasco wherein the engine and cowl of the truck with Plate No. PKK-470 were damaged.

On the other hand, private respondent insists that petitioners failed to establish the validity of his dismissal.

We agree with private respondent. It is a well-settled rule that to constitute a valid dismissal two (2) requisites must concur, namely: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code, and (b) the employee must have been accorded due process, basic of which is the opportunity to be heard and to defend himself.[14]

Petitioners cite serious misconduct, willful disobedience of lawful orders, and gross and habitual neglect of duties as grounds for dismissing private respondent. Specifically, they mention instances when private respondent allegedly left on a trip without a helper contrary to company policy, hit a house and damaged the truck and its trailer because of careless driving, and twice caused damage to an efficient truck equipped with a powerful engine. However, apart from merely citing those grounds, petitioners completely failed to prove culpability on the part of private respondent, both with respect to the incident of 16 November 1993 for which he was dismissed, as well as to alleged past breaches supporting his dismissal. On the contrary, the inescapable conclusion that private respondent was dismissed on 20 November 1993 on mere suspicions is bolstered by the fact that petitioners were at that time "still gathering x x x evidences, facts about this (sic) breakdowns whether they were accidents or deliberately done x x x x"[15] The rule is that unsubstantiated accusations without anything more are not synonymous with guilt[16] and that an employer is duty-bound to establish the existence of a clear, valid, just or authorized ground for dismissing an employee;[17] otherwise, the dismissal shall be considered unfounded.[18] Of course, another glaring defect in the dismissal of private respondent was the complete absence of due process. This is a classic example of the "[f]ire-the-employee-let-him-explain-later" policy[19] which is totally reprehensible and violative of due process.

But on 28 July 1998, after this case was already submitted for decision, petitioners filed a "Supplemental Pleading" alleging that respondent Charlie Aldus was convicted on 5 June 1997 by the Metropolitan Trial Court (MeTC), Pasig City, in a criminal case for malicious mischief which they caused to be instituted after this petition was filed.[20] Petitioners thus try to convince us that private respondent's dismissal on 20 November 1993 was valid.

Our findings and conclusion in this labor case are not affected by the outcome of that criminal case. A mere reading of the MeTC decision clearly reveals that private respondent was in fact acquitted of the charge of malicious mischief. The trial court categorically found that there was "no direct evidence to show that the accused

deliberately caused damage" to the truck of petitioners.[21] Although private respondent was held liable for simple imprudence resulting in damage to property from the mere fact that he was not able to satisfactorily explain the cause of damage to the truck, such is not sufficient to validate his illegal dismissal. Under the Labor Code simple negligence is not a ground for the dismissal of an employee.[22] Article 282 (b) explicitly provides that negligence must not only be gross but must be both "gross and habitual" in character to justify depriving an employee of his means of livelihood.[23] In this case, the alleged negligence of private respondent cannot be considered "gross and habitual." As already discussed the infractions imputed against private respondent, who has not been accorded any semblance of due process prior to his termination, have not been substantially proven by petitioners to the satisfaction of the labor arbiter, public respondent NLRC, and finally, this Court.

Although it did not produce the intended effect, private respondent's criminal prosecution nevertheless confirms the existence of "strained relations" between the parties rendering private respondent's reinstatement highly undesirable. In such a case payment of separation pay in lieu of reinstatement is in order.[24] In addition, we modify the date from which the payment of back wages must be reckoned; instead of "20 December 1993" mentioned in the dispositive portion of the Labor Arbiter's decision, the back wages should be computed from "20 November 1993," the date of the letter terminating him "effective immediately," as clearly shown in the records and confirmed in the body of the same decision.

WHEREFORE, premises considered, the impugned Decision dated 29 June 1995 and Resolution dated 21 November 1995 of the National Labor Relations Commission in NLRC NCR-00-11-07301-93 affirming the conclusion of the Labor Arbiter that private respondent Charlie A. Aldus was illegally dismissed are AFFIRMED. However, in lieu of reinstatement, RDS Trucking is ordered to pay separation pay to private respondent in an amount equivalent to his one month's pay for every year of service plus back wages which should be reckoned from 20 November 1993 to the date of promulgation of this decision, without qualification or deduction.

SO ORDERED.

Davide, Jr. (Chairman), Vitug, Panganiban and Quisumbing, JJ., concur.

[1] Entitled "Charlie A. Aldus v. RDS Trucking Services, et al."

[2] Original Records, p. 15.

[3] Original Records, pp. 48-51.

[4] Id., pp. 40-43.

[5] Id., pp. 57-59.

[6] Id., pp. 68-73.

[7] Id., p. 79.

[8] Id., pp. 82-87.

[9] By then known as RD Silva Trucking Service Corporation; Memorandum of Appeal, p. 3, Original Records, p. 93.

[10] Rollo, pp. 21-30.

[11] Id., pp. 19-20.

- [12] Petition, p. 9; Rollo, p. 11. See also Petitioners' Memorandum, pp. 7-8; Rollo, pp. 111-112.
- [13] Republic Planters Bank v. Agana, Sr., G. R. No. 51765, 3 March 1997, 269 SCRA 1.
- [14] Mirano v. National Labor Relations Commission, G.R. No. 121112, 19 March 1997, 270 SCRA 96; Magcalas v. National Labor Relations Commission, G.R. No. 100333, 13 March 1997, 269 SCRA 453; Ala Mode Garments v. National Labor Relations Commission, G.R. No. 122165, 17 February 1997, 268 SCRA 497.
- [15] Letter of Termination dated 20 November 1993, Original Records, pp. 37-38.
- [16] Pepsi-Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission, G.R. No. 106831, 6 May 1997.
- [17] Samar II Electric v. National Labor Relations Commission, G.R. No. 116692, 21 March 1997, 270 SCRA 290.
- [18] Reformist Union of R.B. Liner, Inc. v. National Labor Relations Commission, G.R. No. 120482, 27 January 1997, 266 SCRA 713, 726; Dela Cruz v. National Labor Relations Commission, G.R. No. 119536, 17 February 1997, 268 SCRA 458.
- [19] De Vera v. National Labor Relations Commission, G.R. No. 93070, 9 August 1991, 200 SCRA 439.
- [20] Crim. Case No. 11954, MeTC-Br. 71, Pasig City.
- [21] Decision dated 5 June 1997, p. 3.
- [22] Caraan v. National Labor Relations Commission, G.R. No. 106454, 21 October 1993, 227 SCRA 337.
- [23] Id.; National Sugar Refineries Corporation v. National Labor Relations Commission, G.R. No. 122277, 24 February 1998.
- [24] Equitable Banking Corporation v. National Labor Relations Commission, 273 SCRA 352.

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