

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION,
ROLANDO S. ANGELES AND RICARDO P. PABLO, JR., RESPONDENTS.**

G.R. No. 128345. May 18, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is a special civil action for certiorari to annul the Decision of the National Labor Relations Commission (NLRC) dated July 31, 1996[1] and its Resolution dated November 4, 1996[2] in NLRC Case No. RAB III-06-5735-94. The NLRC granted separation pay to the private respondents inspite of its finding that they were validly dismissed for committing bribery.

Private respondents Rolando S. Angeles and Ricardo P. Pablo, Jr. were employed by petitioner corporation as tollway guards. They were posted at the North Luzon Tollway, Sta. Rita, Guiguinto, Bulacan interchange. Their services, however, were terminated effective close of office hours of June 15, 1994 on the ground of serious misconduct.

The circumstances leading to the termination of private respondents' employment are as follows:

On September 8, 1993, Rosario C. Maravilla complained to the Tollway General Manager, Mr. Ibarra G. Paulino, about the "mulcting activities" of some security personnel at the North Luzon Tollway. Acting on the complaint, Mr. Paulino formed an investigating team composed of Rolando Hidalgo, Vicente del Rosario, Salvador Bautista and Luisito Alvarez.

On September 11, 1993, the investigating team staged an entrapment. They marked one P500.00 bill and two P100.00 bills with an asterisk and recorded their serial number. They handed the marked money to Maravilla with instruction to give it to whoever demands money from her. Thus, the team, together with Maravilla, boarded the latter's passenger jeepney driven by Eustaquio Paa. The jeepney was then carrying a cargo of dogs destined for Baguio City.

Before reaching the Plaza Santa Entry, the jeepney was stopped by Angeles who was on duty at that time. He allegedly suspected them of illegally transporting dogs. Angeles approached the driver, asked for his driver's license and told him to park at the shoulder of the road. After the jeepney had parked, the driver alighted and talked to the guards on duty, Angeles and Pablo Maravilla also got off the vehicle to talk to them.

The members of the investigating team saw private respondents accept cash and a sack containing a dog from Maravilla, after which they allowed the jeepney to leave.

As private respondents walked toward the toll plaza, they were accosted by the members of the investigating team headed by Hidalgo. Surprised, Angeles dropped the bills he was holding. Upon verification, Hidalgo found that these were the same bills they had previously marked. The team also confiscated the dog from Pablo. They were brought to the Sta. Rita Field Office for initial investigation.

On April 25, 1994, Mr. Ibarra issued a Notice of Dismissal to private respondents requiring them to answer the charge of serious misconduct. After private respondents filed their respective answers, a formal investigation was held. Hidalgo, del Rosario and Bautista testified against private respondents.

After the formal investigation, the investigating officer submitted his findings to Mr. Ibarra and recommended the dismissal of private respondents. Adopting the findings and recommendation of the investigating officer, Mr. Ibarra issued a Notice of Termination to private respondents informing them that their employment shall cease effective close of office hours of June 15, 1994.

On June 17, 1994, private respondents filed a complaint for illegal dismissal against petitioner. They alleged that they were dismissed without just or authorized cause and without due process. They claimed that the entrapment staged on September 11, 1993 was mastermind by Hidalgo, former manager of the North Luzon Tollway, in retaliation, as they have been very critical of his administration. The complaint prayed for reinstatement plus payment of backwages and mid-year bonus for the year 1994.

The Labor Arbiter ruled that private respondents' dismissal was illegal. He held that petitioner failed to prove by clear and convincing evidence that private respondents committed serious misconduct. However, instead of ordering their reinstatement, the Labor Arbiter ordered the payment of separation pay because of strained relations. He also ordered petitioner to pay private respondents their backwages and mid-year bonus. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby entered in favor of the complainants and against the respondent, ordering the latter, as follows:

"1. To pay the sum of P7,185.00 representing the midyear bonus of complainants for the year 1994;

"2. To pay the sum total of P215,550.00 as backwages of the complainants from June 15, 1994 up to this writing; and

"3. To pay the sum total of P206,542.00 representing the separation pay of both complainants from the date of their employment up to this writing.

"So Ordered."[3]

On appeal, the NLRC modified the decision of the Labor Arbiter. It held that private respondents' act of receiving a sum of money and a dog from motorists constituted bribery which was a sufficient ground for their dismissal. The NLRC nonetheless ordered petitioner to pay private respondents their separation pay on the ground of equity. It also retained the award of private respondents' mid-year bonus for 1994. The dispositive portion of the decision states:

"WHEREFORE, premises considered, the appealed decision is hereby MODIFIED, to read as follows:

"1. Declaring the dismissal of complainants to be legal as falling under the provision of Article 282 of the Labor Code, as amended;

"2. Ordering respondent Philippine National Construction Corporation (PNCC) to pay complainants Rolando Angeles and Ricardo Pablo their separation pay in the amount of P70,609.00 and P143,118.00, respectively;

"3. Ordering respondent PNCC to pay complainants Rolando Angeles and Ricardo Pablo their mid-year bonus in the amount of P3,209.50 and P3,975.50, respectively.

"All other claims of both parties are DIMISSED for lack of merit.

"So ordered."[4]

Petitioner filed a motion for reconsideration but it was denied by the NLRC for lack of merit.[5]

On March 13, 1997, petitioner filed the petition at bar raising the sole assignment of error:

"Public respondent, through its Second Division, committed grave abuse of discretion amounting to lack of jurisdiction in ordering petitioner to pay private respondents their separation pay and mid-year bonus notwithstanding its finding that private respondents committed grave and serious misconduct." [6]

On June 18, 1997, we required the respondents to comment on the petition.[7]

Private respondents filed their comment on September 2, 1997. They raised the following arguments.

"1. The National Labor Relations Commission erred in not finding the Philippine National Construction Corporation guilty of estoppel and laches when the herein private respondents (complainants in the Labor Arbiter) were required to answer the charges against them only on April 25, 1994 while the act complained of occurred on September 11, 1993;

"2. Even assuming without admitting that the modification by the Honorable NLRC was correct, yet the assailed decision of said court has become final and executory as this instant petition was unreasonably and belatedly filed;

"3. The assailed decision of the Honorable NLRC is in accord with law and jurisprudence." [8]

The Solicitor General, on the other hand, filed its comment on May 4, 1998. It submitted that the NLRC erred in awarding separation pay to private respondents although it was correct in awarding mid-year bonus to them. The Solicitor General thus recommended that the decision of the NLRC be modified by deleting the award of separation pay to private respondents.[9]

In view of the recommendation of the Solicitor General, we required the NLRC to file its own comment if it so desires within ten days from notice.[10] The NLRC, however, failed to file its own comment within the prescribed period.

We shall first resolve the issues raised by private respondents.

First, on the issue of estoppel and laches. Private respondents contend that petitioner is already barred by laches from charging them with serious misconduct because more than seven (7) months have lapsed since the commission of the act complained of. We disagree.

Laches, in a general sense, is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier.[11] Estoppel by laches arises from the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[12] It does not merely speak of delay but unreasonable delay, which is absent in this case. An employer is not expected to dismiss an erring employee instantly because it may opt to give the employee the chance to reform and to regain his confidence.

Second, as regards the timeliness of the petition. The petition was filed on March 13, 1997. At that time, the prevailing rule was that petitions for certiorari may be filed within reasonable time from receipt of the resolution denying the motion for reconsideration. There was no fixed standard to determine the reasonableness of the period, but the Court generally considered the period of three (3) months to be reasonable.[13]

The records show that petitioner received the resolution of the NLRC denying its motion for reconsideration on December 16, 1996 and the petition at bar was filed two (2) months and twenty-seven (27) days later. We thus find that the instant petition was filed on time.

We now go to the primary issue in this case - whether private respondents are entitled to separation pay and mid-year bonus.

We rule in the negative.

An employee who is dismissed for just cause is generally not entitled to separation pay. In some cases, however, the Court awards separation pay to a legally dismissed employee on the grounds of equity and social justice. This is not allowed, though, when the employee has been dismissed for serious misconduct or some other cause reflecting on his moral character.[14]

We stated in the leading case of *Philippine Long Distance Telephone Co. vs. NLRC*:[15]

"We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

"A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment in his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

"The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be a refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their character."

In the case at bar, private respondents were caught in the act of accepting bribe in the form of cash and a dog from a motorists who was suspected of illegality transporting dogs. As tollway guards, private respondents had the duty to maintain peace and order at the North Luzon Expressway and to ensure that tollway rules and regulations are followed. But private respondents did the contrary by yielding to bribery. They were the first to violate the rules they were tasked to enforce. Undoubtedly, private respondents' act constituted serious misconduct which warranted their dismissal from service. It is for this reason that we find private respondents undeserving of the comparison accorded by the law to workers who are bound to join the ranks of the unemployed.

Likewise, private respondents are not entitled to the mid-year bonus they are claiming. We do not agree with the Solicitor General's contention that private respondents have already earned their mid-year bonus at the time of their dismissal. A bonus is a gift from the employer and the grant thereof is a management prerogative. Petitioner may not be compelled to award a bonus to private respondents whom it found guilty of serious misconduct.

We held in *Trader's Royal Bank vs. NLRC*:[16]

"A bonus is a gratuity or an act of liberality of the giver which the recipient has no right to demand as a matter of right. It is something given in addition to what is ordinarily received by or strictly due the recipient. The granting of a bonus is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages." (citations omitted)

We further held in *Metro Transit Organization, Inc. vs. NLRC*[17] that a bonus becomes a demandable or enforceable obligation only when it is made part of the wage or salary or compensation of the employee, thus:

"The general rule is that a bonus is a gratuity or an act of liberality which the recipient has no right to demand as a matter of right. A bonus, however, is a demandable or enforceable obligation when it is made part of the wage or salary or compensation of the employee. Whether or not a bonus forms part of wages depends upon the circumstances and conditions for its payment. If it is additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or if a certain level of productivity is achieved, it cannot be considered part of the wage. Where it is not payable to all but only to some employees and only when their labor becomes more efficient or more productive, it is only an inducement for efficiency, a prize therefor, not a part of the wage."

Private respondents in this case neither alleged nor adduced evidence to show that the bonus they are claiming is a regular benefit which has become part of their compensation. Thus, the presumption is that it is not a demandable obligation from the employer and the latter may not be compelled to grant the same to undeserving employees.

IN VIEW WHEREOF, the petition is GRANTED. The assailed decision and resolution of the NLRC are hereby SET ASIDE.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Quisumbing, JJ., concur.

Buena, J., on leave.

[1] Rollo, pp. 56-76.1

[2] Rollo, p. 83.2

[3] Decision penned by Labor Arbiter Dominador D. Saldares, p. 15, Rollo, p. 31.3

[4] Decision penned by Commissioner Rogelio I. Rayala, p. 21, Rollo, p. 76.4

[5] Rollo, p. 83.5

[6] Petition, p. 7, Rollo, p. 9.6

[7] Rollo, p. 84.7

[8] Private Respondents' Comment, p. 1, Rollo, p. 103.8

[9] Rollo, pp. 217-223.9

[10] Rollo, p. 229.10

[11] *Tijam vs. Sibonghanoy*, 23 SCRA 29 (1968).11

[12] *Medija vs. Patcho*, 132 SCRA 540 (1984).12

[13] Philgreen Trading Corporation Corp. vs. Court of Appeals, 271 SCRA 719 (1997).¹³

[14] United South Dockhandlers, Inc. vs. NLRC, 267 SCRA 401 (1997); Philippine Airlines vs. NLRC, 282 SCRA 536 (1997); San Miguel Corporation vs. NLRC, 255 SCRA 580 (1996); CJC Trading, Inc. vs. NLRC, 246 SCRA 724 (1995).¹⁴

[15] 164 SCRA 671 (1998).¹⁵

[16] 189 SCRA 274 (1990).¹⁶

[17] 245 SCRA 767 (1995).¹⁷

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