

**MELENCIO GABRIEL, REPRESENTED BY SURVIVING SPOUSE,
FLORDELIZA V. GABRIEL, PETITIONER, VS. NELSON BILON, ANGEL
BRAZIL AND ERNESTO PAGAYGAY, RESPONDENTS.**

G.R. No. 146989. February 07, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari[1] assailing the Decision and Resolution of the Court of Appeals, respectively dated August 4, 2000 and February 7, 2001, in CA-G.R. SP No. 52001 entitled "Nelson Bilon, et al. v. National Labor Relations Commission, et al."

The challenged decision reversed and set aside the decision[2] of the National Labor Relations Commission (NLRC) dismissing respondents' complaint for illegal dismissal and illegal deductions, and reinstating the decision of the Labor Arbiter finding petitioner guilty of illegal dismissal but not of illegal deductions subject to the modification that respondents be immediately reinstated to their former positions without loss of seniority rights and privileges instead of being paid separation pay.

Petitioner, represented by his surviving spouse, Flordeliza V. Gabriel, was the owner-operator of a public transport business, "Gabriel Jeepney," with a fleet of 54 jeepneys plying the Baclaran-Divisoria-Tondo route. Petitioner had a pool of drivers, which included respondents, operating under a "boundary system" of P400 per day.

The facts[3] are as follows:

On November 15, 1995, respondents filed their separate complaints for illegal dismissal, illegal deductions, and separation pay against petitioner with the National Labor Relations Commission (NLRC). These were consolidated and docketed as NLRC-NCR Case No. 00-11-07420-95.[4]

On December 15, 1995, the complaint was amended, impleading as party respondent the Bacoor Transport Service Cooperative, Inc., as both parties are members of the cooperative.

Respondents alleged the following:

- 1) That they were regular drivers of Gabriel Jeepney, driving their respective units bearing Plate Nos. PHW 553, NXU 155, and NWW 557, under a boundary system of P400 per day, plying Baclaran to Divisoria via Tondo, and vice versa, since December 1990, November 1984 and November 1991, respectively, up to April 30, 1995,[5] driving five days a week, with average daily earnings of P400;
- 2) That they were required/forced to pay additional P55.00 per day for the following: a) P20.00 police protection; b) P20.00 washing; c) P10.00 deposit; and [d)] P5.00 garage fees;
- 3) That there is no law providing the operator to require the drivers to pay police protection, deposit, washing, and garage fees.

- 4) That on April 30, 1995, petitioner told them not to drive anymore, and when they went to the garage to report for work the next day, they were not given a unit to drive; and
- 5) That the boundary drivers of passenger jeepneys are considered regular employees of the jeepney operators. Being such, they are entitled to security of tenure. Petitioner, however, dismissed them without factual and legal basis, and without due process.

On his part, petitioner contended that:

- 1) He does not remember if the respondents were ever under his employ as drivers of his passenger jeepneys. Certain, however, is the fact that neither the respondents nor other drivers who worked for him were ever dismissed by him. As a matter of fact, some of his former drivers just stopped reporting for work, either because they found some other employment or drove for other operators, and like the respondents, the next time he heard from them was when they started fabricating unfounded complaints against him;
- 2) He made sure that none of the jeepneys would stay idle even for a day so he could collect his earnings; hence, it had been his practice to establish a pool of drivers. Had respondents manifested their desire to drive his units, it would have been immaterial whether they were his former drivers or not. As long as they obtained the necessary licenses and references, they would have been accommodated and placed on schedule;
- 3) While he was penalized or made to pay a certain amount in connection with similar complaints by other drivers in a previous case before this, it was not because his culpability was established, but due to technicalities involving oversight and negligence on his part by not participating in any stage of the investigation thereof; and
- 4) Respondents'½ claim that certain amounts, as enumerated in the complaint, were deducted from their day's earnings is preposterous. Indeed, there were times when deductions were made from the day's earnings of some drivers, but such were installment payments for the amount previously advanced to them. Most drivers, when they got involved in accidents or violations of traffic regulations, managed to settle them, and in the process they had to spend some money, but most of the time they did not have the needed amount so they secured cash advances from him, with the understanding that the same should be paid back by installments through deductions from their daily earnings or boundary.

On the other hand, Bacoor Transport Service Cooperative, Inc. (BTSCI) declared that it should not be made a party to the case because: 1) [I]t has nothing to do with the employment of its member-drivers. The matter is between the member-operator and their respective member-drivers. The member-drivers' tenure of employment, compensation, work conditions, and other aspects of employment are matters of arrangement between them and the member-operators concerned, and the BTSCI has nothing to do with it, as can be inferred from the Management Agreement between BTSCI and the member-operators; and 2) [T]he amount allegedly deducted from respondents and the purpose for which they were applied were matters that the cooperative was not aware of, and much less imposed on them.

On September 17, 1996, respondents filed a motion to re-raffle the case for the reason that the Labor Arbiter (Hon. Roberto I. Santos) failed "to render his decision within thirty (30) calendar days, without extension, after the submission of the case for decision."

On September 18, 1996, said Labor Arbiter inhibited himself from further handling the case due to "personal reasons."

On November 8, 1996, Labor Arbiter Ricardo C. Nora, to whom the case was re-raffled, ordered the parties to file their respective memoranda within ten days, after which the case was deemed submitted for resolution.

On March 17, 1997, the Labor Arbiter (Hon. Ricardo C. Nora) handed down his decision, the dispositive portion

of which is worded as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring the illegality of [respondents'] dismissal and ordering [petitioner] Melencio Gabriel to pay the [respondents] the total amount of ONE MILLION THIRTY FOUR THOUSAND PESOS [P1,034,000,] representing [respondents'] backwages and separation pay as follows:

1.

Nelson Bilon

Backwages P 284,800

Separation Pay

26,400 P 321,200

2.

Angel Brazil

Backwages P 294,800

Separation Pay

96,800 391,600

3. Ernesto Pagaygay

Backwages P 294,800

Separation Pay 26,400 321,200

P 1,034,000

[Petitioner] Melencio Gabriel is likewise ordered to pay attorney's fees equivalent to five percent (5%) of the judgment award or the amount of P51,700 within ten (10) days from receipt of this Decision.

All other issues are dismissed for lack of merit.

SO ORDERED.[6]

Incidentally, on April 4, 1997, petitioner passed away. On April 18, 1997, a copy of the above decision was delivered personally to petitioner's house. According to respondents, petitioner's surviving spouse, Flordeliza Gabriel, and their daughter, after reading the contents of the decision and after they had spoken to their counsel, refused to receive the same. Nevertheless, Bailiff Alfredo V. Estonactoc left a copy of the decision with petitioner's wife and her daughter but they both refused to sign and acknowledge receipt of the decision.[7]

The labor arbiter's decision was subsequently served by registered mail at petitioner's residence and the same was received on May 28, 1997.

On May 16, 1997, counsel for petitioner filed an entry of appearance with motion to dismiss the case for the reason that petitioner passed away last April 4, 1997.

On June 5, 1997, petitioner appealed the labor arbiter's decision to the National Labor Relations Commission, First Division, contending that the labor arbiter erred:

- In holding that [petitioner] Gabriel dismissed the complainants, Arb. Nora committed a serious error in the findings of fact which, if not corrected, would cause grave or irreparable damage or injury to [petitioner]

Gabriel;

- In holding that 'strained relations' already exist between the parties, justifying an award of separation pay in lieu of reinstatement, Arb. Nora not only committed a serious error in the findings of fact, but he also abused his discretion;

- In computing the amount of backwages allegedly due [respondents] from 30 April 1995 to 15 March 1997, Arb. Nora abused his discretion, considering that the case had been submitted for decision as early as 1 March 1996 and that the same should have been decided as early as 31 March 1996;

- In using 'P400.00' and '22 days' as factors in computing the amount of backwages allegedly due [respondents], Arb. Nora abused his discretion and committed a serious error in the findings of fact, considering that there was no factual or evidentiary basis therefor;

- In using '33.5 months' as factor in the computation of the amount of backwages allegedly due [respondents], Arb. Nora committed a serious error in the findings of fact[,] because even if it is assumed that backwages are due from 30 April 1995 to 15 March 1997, the period between the two dates is only 22 ½ months, and not 33 ½ months as stated in the appealed decision; and

- In not dismissing the case[,] despite notice of the death of [petitioner] Gabriel before final judgment, Arb. Nora abused his discretion and committed a serious error of law.[8]

On July 3, 1997, respondents filed a motion to dismiss petitioner's appeal on the ground that the "surety bond is defective" and the appeal was "filed out of time," which move was opposed by petitioner.

Subsequently, on April 28, 1998, the NLRC promulgated its first decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed decision is hereby reversed and set aside. The above-entitled case is hereby dismissed for lack of employer-employee relationship.

SO ORDERED.[9]

Respondents filed a motion for reconsideration. They claimed that the decision did not discuss the issue of the timeliness of the appeal. The lack of employer-employee relationship was mentioned in the dispositive portion, which issue was not raised before the labor arbiter or discussed in the body of the questioned decision. In view of the issues raised by respondents in their motion, the NLRC rendered its second decision on October 29, 1998. The pertinent portions are hereby quoted thus:

... In the case at bar, [petitioner] Melencio Gabriel was not represented by counsel during the pendency of the case. A decision was rendered by the Labor Arbiter a quo on March 17, 1997 while Mr. Gabriel passed away on April 4, 1997 without having received a copy thereof during his lifetime. The decision was only served on April 18, 1997 when he was no longer around to receive the same. His surviving spouse and daughter cannot automatically substitute themselves as party respondents. Thus, when the bailiff tendered a copy of the decision to them, they were not in a position to receive them. The requirement of leaving a copy at the party's residence is not applicable in the instant case because this presupposes that the party is still living and is just not available to receive the decision.

The preceding considered, the decision of the labor arbiter has not become final because there was no proper service of copy thereof to [petitioner]

Undoubtedly, this case is for recovery of money which does not survive, and considering that the decision has not become final, the case should have been dismissed and the appeal no longer entertained....

WHEREFORE, in view of the foregoing, the Decision of April 28, 1998 is set aside and vacated. Furthermore, the instant case is dismissed and complainants are directed to pursue their claim against the proceedings for the

settlement of the estate of the deceased Melencio Gabriel.

SO ORDERED.[10]

Aggrieved by the decision of the NLRC, respondents elevated the case to the Court of Appeals (CA) by way of a petition for certiorari. On August 4, 2000, the CA reversed the decisions of the NLRC:

...

Article 223 of the Labor Code categorically mandates that "an appeal by the employer may be perfected only upon the posting of a cash bond or surety bond x x x." It is beyond peradventure then that the non-compliance with the above *conditio sine qua non*, plus the fact that the appeal was filed beyond the reglementary period, should have been enough reasons to dismiss the appeal.

In any event, even conceding *ex gratia* that such procedural infirmity [were] inexistent, this petition would still be tenable based on substantive aspects.

The public respondent's decision, dated April 28, 1998, is egregiously wrong insofar as it was anchored on the absence of an employer-employee relationship. Well-settled is the rule that the boundary system used in jeepney and (taxi) operations presupposes an employer-employee relationship (*National Labor Union v. Dinglasan*, 98 Phil. 649)

The NLRC ostensibly tried to redeem itself by vacating the decision April 28, 1998.... By so doing, however, it did not actually resolve the matter definitively. It merely relieved itself of such burden by suggesting that the petitioners "pursue their claim against the proceedings for the settlement of the estate of the deceased Melencio Gabriel...."

In the instant case, the decision (dated March 17, 1997) of the Labor Arbiter became final and executory on account of the failure of the private respondent to perfect his appeal on time....

Thus, we disagree with the ratiocination of the NLRC that the death of the private respondent on April 4, 1997 ipso facto negates recovery of the money claim against the successors-in-interest Rather, this situation comes within the aegis of Section 3, Rule III of the NLRC Manual on Execution of Judgment, which provides: SECTION 3. Execution in Case of Death of Party. - Where a party dies after the finality of the decision/entry of judgment of order, execution thereon may issue or one already issued may be enforced in the following cases:

- a) x x x ;
- b) In case of death of the losing party, against his successor-in-interest, executor or administrator;
- c) In case of death of the losing party after execution is actually levied upon any of his property, the same may be sold for the satisfaction thereof, and the sheriff making the sale shall account to his successor-in-interest, executor or administrator for any surplus in his hands.

Notwithstanding the foregoing disquisition though, We are not entirely in accord with the labor arbiter's decision awarding separation pay in favor of the petitioners. In this regard, it [is] worth mentioning that in *Kiamco v. NLRC*,^[11] citing *Globe-Mackay Cable and Radio Corp. v. NLRC*,^[12] the Supreme Court qualified the application of the "strained relations" principle when it held --

"If in the wisdom of the Court, there may be a ground or grounds for the non-application of the above-cited provision (Art. 279, Labor Code) this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and employee.

In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer, and that it is likely that if reinstated, an atmosphere of antipathy and

antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned x x x Obviously, the principle of 'strained relations' cannot be applied indiscriminately. Otherwise, reinstatement can never be possible simply because some hostility is invariably engendered between the parties as a result of litigation. That is human nature.

Besides, no strained relations should arise from a valid legal act of asserting one's right; otherwise[,] an employee who shall assert his right could be easily separated from the service by merely paying his separation pay on the pretext that his relationship with his employer had already become strained."

Anent the award of backwages, the Labor Arbiter erred in computing the same from the date the petitioners were illegally dismissed (i.e. April 30, 1995) up to March 15, 1997, that is two (2) days prior to the rendition of his decision (i.e. March 17, 1997).

...

WHEREFORE, premises considered, the petition is GRANTED, hereby REVERSING and SETTING ASIDE the assailed decisions of the National Labor Relations Commission, dated April 28, 1998 and October 29, 1998. Consequently, the decision of the Labor Arbiter, dated March 17, 1997, is hereby REINSTATED, subject to the MODIFICATION that the private respondent is ORDERED to immediately REINSTATE petitioners Nelson Bilon, Angel Brazil and Ernesto Pagaygay to their former position without loss of seniority rights and privileges, with full backwages from the date of their dismissal until their actual reinstatement. Costs against private respondent.

SO ORDERED.[13]

Petitioner filed a motion for reconsideration but the same was denied by the CA in a resolution dated February 7, 2001.

Hence, this petition raising the following issues:[14]

I

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER'S APPEAL TO THE NATIONAL LABOR RELATIONS COMMISSION WAS FILED OUT OF TIME.

II

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ALLEGED DEFECTS IN PETITIONER'S APPEAL BOND WERE OF SUCH GRAVITY AS TO PREVENT THE APPEAL FROM BEING PERFECTED.

III

THE COURT OF APPEALS ERRED IN GRANTING RESPONDENTS' PETITION FOR CERTIORARI DESPITE THE FACT THAT THE SAME ASSAILED A DECISION WHICH HAD BEEN VACATED IN FAVOR OF A NEW ONE WHICH, IN TURN, HAS SOLID LEGAL BASIS.

IV

THE COURT OF APPEALS ERRED IN APPLYING SECTION 3, RULE III, OF THE MANUAL ON EXECUTION OF JUDGMENT OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH, BY ITS OWN EXPRESS TERMS, IS NOT APPLICABLE.

A resolution of the case requires a brief discussion of two issues which touch upon the procedural and substantial

aspects of the case thus: a) whether petitioner's appeal was filed out of time; and b) whether the claim survives.

As regards the first issue, the Court considers the service of copy of the decision of the labor arbiter to have been validly made on May 28, 1997 when it was received through registered mail. As correctly pointed out by petitioner's wife, service of a copy of the decision could not have been validly effected on April 18, 1997 because petitioner passed away on April 4, 1997.

Section 4, Rule III of the New Rules of Procedure of the NLRC provides:

SEC. 4. Service of Notices and Resolutions. - (a) Notices or summons and copies of orders, resolutions or decisions shall be served on the parties to the case personally by the bailiff or authorized public officer within three (3) days from receipt thereof or by registered mail; Provided, That where a party is represented by counsel or authorized representative, service shall be made on such counsel or authorized representative; Provided further, That in cases of decision and final awards, copies thereof shall be served on both parties and their counsel

For the purpose of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record.

(b) The bailiff or officer personally serving the notice, order, resolution or decision shall submit his return within two (2) days from date of service thereof, stating legibly in his return, his name, the names of the persons served and the date of receipt which return shall be immediately attached and shall form part of the records of the case. If no service was effected, the serving officer shall state the reason therefore in the return.

Section 6, Rule 13 of the Rules of Court which is suppletory to the NLRC Rules of Procedure states that: "[s]ervice of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein."

The foregoing provisions contemplate a situation wherein the party to the action is alive upon the delivery of a copy of the tribunal's decision. In the present case, however, petitioner died before a copy of the labor arbiter's decision was served upon him. Hence, the above provisions do not apply. As aptly stated by the NLRC:

... In the case at bar, respondent Melencio Gabriel was not represented by counsel during the pendency of the case. A decision was rendered by the Labor Arbiter a quo on March 17, 1997 while Mr. Gabriel passed away on April 4, 1997, without having received a copy thereof during his lifetime. The decision was only served on April 18, 1997 when he was no longer around to receive the same. His surviving spouse and daughter cannot automatically substitute themselves as party respondents. Thus, when the bailiff tendered a copy of the decision to them, they were not in a position to receive them. The requirement of leaving a copy at the party's residence is not applicable in the instant case because this presupposes that the party is still living and is not just available to receive the decision.

The preceding considered, the decision of the Labor Arbiter has not become final because there was no proper service of copy thereof to party respondent....[15]

Thus, the appeal filed on behalf of petitioner on June 5, 1997 after receipt of a copy of the decision via registered mail on May 28, 1997 was within the ten-day reglementary period prescribed under Section 223 of the Labor Code.

On the question whether petitioner's surety bond was defective, Section 6, Rule VI of the New Rules of Procedure of the NLRC provides:

SEC. 6. Bond. - In case the decision of a Labor Arbiter ... involves monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.

The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. (As amended on Nov. 5, 1993).

The Court believes that petitioner was able to comply substantially with the requirements of the above Rule. As correctly pointed out by the NLRC:

While we agree with complainants-appellees that the posting of the surety bond is jurisdictional, We do not believe that the "defects" imputed to the surety bond posted for and in behalf of respondent-appellant Gabriel are of such character as to affect the jurisdiction of this Commission to entertain the instant appeal.

It matters not that, by the terms of the bond posted, the "Liability of the surety herein shall expire on June 5, 1998 and this bond shall be automatically cancelled ten (10) days after the expiration." After all, the bond is accompanied by the joint declaration under oath of respondent-appellant's surviving spouse and counsel attesting that the surety bond is genuine and shall be in effect until the final disposition of the case.

Anent complainants-appellees contention that the surety bond posted is defective for being in the name of BTSCI which did not appeal and for having been entered into by Mrs. Gabriel without BTSCI's authority, the same has been rendered moot and academic by the certification issued by Gil CJ. San Juan, Vice-President of the bonding company to the effect that "Eastern Assurance and Surety Corporation Bond No. 2749 was posted for and on behalf appellant Melencio Gabriel and/or his heirs" and that "(T)he name "Bacoor Transport Service Cooperative, Inc." was indicated in said bond due merely in (sic) advertence."

At any rate, the Supreme Court has time and again ruled that while Article 223 of the Labor Code, as amended requiring a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from for the appeal to be perfected, may be considered a jurisdictional requirement, nevertheless, adhering to the principle that substantial justice is better served by allowing the appeal on the merits threshed out by this Honorable Commission, the foregoing requirement of the law should be given a liberal interpretation (*Pantranco North Express, Inc. v. Sison*, 149 SCRA 238; *C.W. Tan Mfg. v. NLRC*, 170 SCRA 240; *YBL v. NLRC*, 190 SCRA 160; *Rada v. NLRC*, 205 SCRA 69; *Star Angel Handicraft v. NLRC*, 236 SCRA 580).[16]

On the other hand, with regard to the substantive aspect of the case, the Court agrees with the CA that an employer-employee relationship existed between petitioner and respondents. In *Martinez v. National Labor Relations Commission*,[17] citing *National Labor Union v. Dinglasan*,[18] the Court ruled that:

[T]he relationship between jeepney owners/operators and jeepney drivers under the boundary system is that of employer-employee and not of lessor-lessee because in the lease of chattels the lessor loses complete control over the chattel leased although the lessee cannot be reckless in the use thereof, otherwise he would be responsible for the damages to the lessor. In the case of jeepney owners/operators and jeepney drivers, the former exercises supervision and control over the latter. The fact that the drivers do not receive fixed wages but get only that in excess of the so-called "boundary" [that] they pay to the owner/operator is not sufficient to withdraw the relationship between them from that of employer and employee. Thus, private respondents were employees ... because they had been engaged to perform activities which were usually necessary or desirable in the usual business or trade of the employer.[19]

The same principle was reiterated in the case of *Paguio Transport Corporation v. NLRC*. [20]

The Court also agrees with the labor arbiter and the CA that respondents were illegally dismissed by petitioner. Respondents were not accorded due process.[21] Moreover, petitioner failed to show that the cause for termination falls under any of the grounds enumerated in Article 282 (then Article 283)[22] of the Labor Code.[23] Consequently, respondents are entitled to reinstatement without loss of seniority rights and other privileges and to their full backwages computed from the date of dismissal up to the time of their actual reinstatement in accordance with Article 279 of the Labor Code.

Reinstatement is obtainable in this case because it has not been shown that there is an ensuing "strained relations" between petitioner and respondents. This is pursuant to the principle laid down in *Globe-Mackay Cable and Radio Corporation v. NLRC*[24] as quoted earlier in the CA decision.

With regard to respondents' monetary claim, the same shall be governed by Section 20 (then Section 21), Rule 3 of the Rules of Court which provides:

SEC. 20. Action on contractual money claims. - When the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner provided in these Rules for prosecuting claims against the estate of a deceased person. (21a)

In relation to this, Section 5, Rule 86 of the Rules of Court states:

SEC. 5. Claims which must be filed under the notice. If not filed, barred ; exceptions. - All claims for money against the decedent arising from contract, express or implied, whether the same be due, not due, or contingent, ... and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants....

Thus, in accordance with the above Rules, the money claims of respondents must be filed against the estate of petitioner Melencio Gabriel.[25]

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated August 4, 2000 and February 7, 2001, respectively, in CA-G.R. SP No. 52001 are AFFIRMED but with the MODIFICATION that the money claims of respondents should be filed against the estate of Melencio Gabriel, within such reasonable time from the finality of this Decision as the estate court may fix.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] In NLRC-NCR Case No. 00-11-07420-95 entitled "Nelson Bilon, et al. v. Melencio Gabriel, et al."

[3] Rollo, pp. 39-45, CA Decision, pp. 2-8.

[4] Case entitled "Nelson B. Bilon, Angel Brazil and Ernesto Pagayagay. v. Melencio Gabriel, Operator, and Bacoar Transport Service Cooperative, Inc."

[5] Nelson B. Bilon was hired by petitioner in December 1990, Angel Brazil in November 1984, and Ernesto Pagayagay in November 1991.

[6] Rollo, pp. 82-83.

[7] Id. at pp. 53-54.

[8] Records, pp. 143-144.

[9] CA Rollo, pp. 44-45.

[10] Id. at 57- 58.

[11] G.R. No. 129449, June 29, 1999, 309 SCRA 424.

[12] G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711-712.

[13] Rollo, pp. 48-51.

[14] Id. at pp. 150-151; Petitioner's Memorandum, pp. 8-9.

[15] CA Rollo, pp. 56-57.

[16] CA Rollo, pp. 40-41.

[17] G.R. No. 117495, May 29, 1997, 272 SCRA 793, 799-800.

[18] 98 Phil 648 (1956).

[19] Art. 280 of The Labor Code of the Philippines; *Zanotte Shoes v. NLRC*, G.R. No. 100665, February 13, 1995, 241 SCRA 261.

[20] G.R. No. 119500, August 28, 1998, 294 SCRA 657.

[21] Article 277(b) of the Labor Code of the Philippines provides: "Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires...Any decision taken by the employer shall be without prejudice to the right of the workers to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the dismissal was for a valid or authorized cause shall rest on the employer..."

[22] ART. 282. TERMINATION BY EMPLOYER - An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and,
- (e) Other causes analogous to the foregoing.

[23] Section 1 of Rule XXIII (then Rule XIV) of the Implementing Regulations of the Labor Code of the Philippines also provides that no worker shall be dismissed except for a just or authorized cause provided by law

and after due process.

[24] Supra note at 12.

[25] Robledo v. National Labor Relations Commission, G.R. No. 110358, November 9, 1994, 238 SCRA 52.

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