

G & S TRANSPORT CORPORATION, PETITIONER, VS. TITO S. INFANTE, MELOR BORBO, AND DANILO CASTAÑEDA, RESPONDENTS.*G.R. No. 160303. September 13, 2007*

Ponente: TINGA, J.

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This petition for review seeks the reversal of the decision[1] and resolution[2] of the Court of Appeals in CA-G.R. SP No. 71472 dated 27 June 2003 and 8 October 2003, respectively. The assailed judgment reversed and set aside the decision[3] of the National Labor Relations Commission (NLRC) which affirmed in toto the decision of the Acting Executive Labor Arbiter for Adjudication Melquiades Sol D. Del Rosario (Labor Arbiter) dated 31 May 1999. The Labor Arbiter had ordered G & S Transport Corporation (petitioner) to pay respondents Tito Infante (Infante), Melor Borbo (Borbo) and Danilo Castañeda (Castaneda) separation pay in lieu of reinstatement without backwages.

Petitioner was the exclusive coupon taxi concessionaire at the Ninoy Aquino International Airport (NAIA) from 1 February 1989 to 31 January 1994 by virtue of a five-year concession contract awarded by the Manila International Airport Authority. Under the terms of the contract, the coupon taxi units assigned to service arriving plane passengers would be dispatched from the garage located at the Duty Free Compound opposite NAIA, whereas units assigned to service departing plane passengers would be given their assignment by the garage dispatcher via a two-way radio system on their way back to the garage after taking arriving passengers to their destination.[4]

Respondents in the employ of petitioner had been drivers since 1 February 1989. At the time of their dismissal, they were assigned at the Domestic Airport from 16 to 31 May 1990 on two (2) the shifts: morning shift which starts from 7:00 a.m. to 4:00 p.m. and the afternoon shift from 4:00 p.m. to 1:00 a.m. Castañeda was assigned to the morning shift[5] while Infante and Borbo were assigned to the afternoon shift.[6]

On 5 May 1990, petitioner claimed to have received from the NAIA Airport Taxi Service Employees Union-TUPAS (Union) a letter-memorandum demanding the dismissal from employment of Ricardo Gonzales (Gonzales) and Ephraim Alzaga (Alzaga), both drivers of petitioner on the ground that they were found guilty of committing acts of disloyalty, conduct unbecoming of a union member and acts inimical to the interest of the Union. The Union based its action on a petition filed by said employees calling for a local election.[7] On 9 May 1990, the two employees were terminated by petitioner.[8]

Upon learning of the incident, several drivers of petitioner stopped driving their taxi cabs apparently in sympathy with their dismissed colleagues. Petitioner alleged that the work stoppage constituted an illegal strike at the work premises. Furthermore, petitioner averred that various illegal acts, such as stopping, barring and intimidating other employees wishing to enter the work premises, were committed by the said drivers that resulted in the paralyzation of petitioner's business operation.[9]

Petitioner ordered the striking workers to return to work but some of the drivers, including respondents, refused to

do so. On 22 May 1990, petitioner filed an action for illegal strike before the Labor Arbiter against thirty-seven (37) drivers. Two days later, said drivers filed a case for illegal dismissal against petitioner.

In a Joint Affidavit dated 18 October 1990, Infante and Borbo denied joining the alleged strike. They narrated that they reported to work at the domestic airport on 16 May 1990 before 4:00 p.m. but did not find their taxi in the area. They proceeded to the garage at the Duty Free shop. The dispatcher and the counter sales clerk were likewise not around. Thereafter, they learned about the protest of their co-workers over the dismissal of Gonzales and Alzaga. They soon found out that the management had stopped company operation that afternoon but they stayed on until 1:00 a.m. They did not report for work on the following day because it was their day-off. On 18 May 1990, they did report for work but were refused entry by the guard because their names did not appear on the list of drivers allowed by petitioner to work on that day. They soon received a copy of the complaint filed by petitioner charging them with illegal strike.[10]

Castañeda, in his Affidavit dated 17 March 1995, stated that he was on sick leave from 11 to 15 May 1990. He reported for work on 16 May 1990 but was not able to perform his duties because of the protest staged by his co-workers. He reported back to work on the following day but he was not allowed entry by the guard for having allegedly participated in the illegal strike.[11]

Out of the 37 complaining drivers, only seven remained as complainants when the case reached the Labor Arbiter, namely: Gener Mendoza (Mendoza), Eduardo Dacanay (Dacanay), Norman Sabiniano (Sabiniano), Mario Daramayo (Daramayo), Borbo, Infante, and Castañeda. Others executed their respective affidavits of desistance and filed the corresponding motion to dismiss.[12] On 31 May 1999, the Labor Arbiter declared respondents' concerted action as a form of an illegal strike, thus:

Anent the issue of illegal strike, the records show that there was a stoppage of work on May 16, 1990 at the premises of the garage of G & S Transport located at the Duty Free Shop just fronting the Ninoy Aquino International Airport (NAIA), brought about primarily by the dismissal of Messrs. Gonzales and Alzaga, on the account of acts of [sic] [inimical] to the interest of G & S union. As pointed out by complainant G & S Transport, its Taxi drivers undertook those collective action without filing any notice of strike and taking a strike vote, and in violation of no strike-no lockout clause embodied in the CBA thus making their action as illegal activity.

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Actually when the stoppage of work occurred, there seemed to be no labor disputes but merely a protest of the dismissal of respondent's leaders. Under Article 212 (D) "any temporary stoppage of work by the concerted action of employees must be a result of an industrial or labor dispute." No industrial or labor dispute, however, was existing on May 16, 1990, since there was no pending case in any legal forum then.[13]

However, finding that Mendoza, Dacanay and Sabiniano had not participated in the strike, the Labor Arbiter declared their dismissal as illegal and ordered petitioner to pay them backwages and separation pay, in lieu of reinstatement, since petitioner had already stopped its operations on 31 January 1995. On the other hand, respondents Daramayo, Borbo, Infante and Castañeda, though found to have participated in the illegal strike, were not meted out the penalty of dismissal; instead, petitioner was ordered to pay them separation pay in lieu of reinstatement but without backwages.[14]

On appeal, the NLRC affirmed in toto the ruling of the Labor Arbiter.

In a petition for certiorari before the Court of Appeals, respondents assailed the NLRC decision affirming the Labor Arbiter's findings: (1) that respondents had joined the illegal strike; (2) that petitioner was no longer in operation and hence, reinstatement could not be ordered; and (3) that respondents were not illegally dismissed, but

were not entitled to reinstatement and backwages.[15]

On 27 June 2003, the Court of Appeals reversed the decisions of the NLRC and the Labor Arbiter, the dispositive portion of which reads:

WHEREFORE, based on the foregoing, the petition is GIVEN DUE COURSE. The assailed Resolution and Order of the National Labor Relations Commission are ANNULLED and SET ASIDE. The matter is remanded to the Labor Arbiter for the computation of backwages and such other monetary benefits awarded in accordance with this Decision.[16]

The appellate court scored the Labor Arbiter because the latter failed to categorically rule on the validity of respondents' dismissal and instead stood content in simply stating that respondents should not have been meted out the severest penalty of dismissal for their inadequacies and wrongful actions.[17] The appellate court went on to declare respondents' dismissal as illegal.

Relying on a certification from the Securities and Exchange Commission (SEC) that petitioner was then still operational, the Court of Appeals further held that the Labor Arbiter and the NLRC gravely abused their discretion in ordering the grant of separation pay instead of reinstatement.[18]

Dissatisfied, petitioner filed a motion for reconsideration of the said decision. On 8 October 2003, the Court of Appeals issued a resolution denying said motion for lack of merit. [19]

In the instant petition, petitioner contends that the Court of Appeals erred when it acted as a trier of facts and ordered the reinstatement of respondents and payment of backwages.[20] Petitioner insists that the appellate court erroneously substituted its decision with that of the Labor Arbiter, whose finding and conclusion are in accordance with judicial precedents.[21] Petitioner reiterates that extensive trial on the merits was held before the Labor Arbiter wherein the parties had been afforded the opportunity to present their respective witnesses and documentary evidence. Petitioner stresses that findings of the Labor Arbiter, therefore, were all based on facts and substantial evidence.[22]

Respondents, for their part, argue that by virtue of the Court's pronouncement in *St. Martin Funeral Homes v. NLRC*,[23] the Court of Appeals is clothed with plenary authority to reverse the factual findings of the NLRC or other quasi-judicial bodies particularly when the latter's judgment is based on a misapprehension of facts when it manifestly overlooked certain relevant facts, which if properly considered would justify a different conclusion, or when it erroneously misapplied a law as is obtaining in the case at bar.[24]

A petition for certiorari is available when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. As a general rule, factual issues are not proper subjects for certiorari which is limited to the issue of jurisdiction and grave abuse of discretion.[25] It does not include an inquiry into the correctness of the evaluation of evidence which was the basis of the labor agency in reaching its conclusion. Neither is it for the Court of Appeals nor this Court to re-examine conflicting evidence, re-evaluate the credibility of witnesses or substitute the findings of fact of an administrative body which has gained expertise in its specialized field.[26]

One question therefore arises did the NLRC commit grave abuse of discretion when it affirmed the findings of the Executive Labor Arbiter? While only questions of law may be entertained by this Court through a petition for review on certiorari, there are, however, well-recognized exceptions such as the instant case where the factual findings of the NLRC and the Court of Appeals are contradictory. A re-evaluation of the records of this case is necessary for its proper resolution.[27]

The issues presented before the Executive Labor Arbiter and the NLRC are the very same issues proffered by the parties before this Court, which may be summed up as follows: (1) whether respondents participated in the illegal strike and (2) whether the order for the payment of separation pay, in lieu of reinstatement without backwages, is proper.

Petitioner maintains that respondents knowingly and deliberately participated in the illegal activities in the course of an illegal strike by the mere fact that they resolutely defied the order directing them to report back to work and continued to stay outside the premises, barricading the gates, heckling and intimidating employees who were returning to work.[28]

Respondents however aver that there was no iota of evidence that would show that they have trooped the line of the illegal strikers.[29] Assuming *arguendo* that they participated in the illegal strike, respondents argue that they should not be dismissed because there was no proof that they committed illegal acts during the strike.[30]

In its Reply, petitioner refutes respondents argument and submits that evidence, such as photographs, affidavits of witnesses, and memoranda/telegrams, were presented during trial to prove that respondents joined the illegal strike.

Article 212 of the Labor Code defines strike as any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. A valid strike therefore presupposes the existence of a labor dispute. The strike undertaken by respondents took the form of a sit-down strike, or more aptly termed as a sympathetic strike, where the striking employees have no demands or grievances of their own, but they strike for the purpose of directly or indirectly aiding others, without direct relation to the advancement of the interest of the strikers.[31] It is indubitable that an illegal strike in the form of a sit-down strike occurred in petitioner's premises, as a show of sympathy to the two employees who were dismissed by petitioner. Apart from the allegations in its complaint for illegal strike filed before the Labor Arbiter, petitioner presented the affidavits and testimonies of their other employees which confirm the participation of respondents in the illegal strike. Petitioner has sufficiently established that respondents remained in the work premises in the guise of waiting for orders from management to resume operations when, in fact, they were actively participating in the illegal strike.

The office telegram sent to individual respondents informing them to return to work went unheeded. Respondents failed to satisfactorily explain their conspicuous absence following the day of the purported illegal strike. No record whatsoever was presented by Borbo and Infante to prove that 17 May 1990 was their day-off. It was convenient to pass the buck on petitioner by alleging that proof of their alibi is in petitioners file.[32] Castañeda could not even present a sick leave form to attest to his absence from 11-15 May 1990.[33] Moreover, the NLRC and the Court of Appeals appeared unanimous in sustaining the findings of the Labor Arbiter with respect to respondents participation in the illegal strike. The appellate court's decision dwelt on the fact that no illegal activities were committed by respondents in the course of the illegal strike, hence, reinstatement is proper.

Respondents participation in the illegal strike having been established, we shall now determine the effects of their proscribed acts.

Article 264 of the Labor Code, in providing for the consequences of an illegal strike, makes a distinction between union officers and members who participated therein. Thus, knowingly participating in an illegal strike is a valid ground for termination of employment of a union officer. The law, however, treats differently mere union members. Mere participation in an illegal strike is not a sufficient ground for termination of the services of the union members.

The Labor Code protects an ordinary, rank-and-file union member who participated in such a strike from losing

his job, provided that he did not commit an illegal act during the strike.[34] It can be gleaned from the aforecited provision of law in point, however, that an ordinary striking employee cannot be terminated for mere participation in an illegal strike. There must be proof that he committed illegal acts during the strike and the striker who participated in the commission of illegal act must be identified. Proof beyond reasonable doubt is not required. Substantial evidence available under the attendant circumstances, which may justify the imposition of the penalty of dismissal, may suffice.[35]

In the case at bar, this Court is not convinced that the affidavits of petitioners witnesses constitute substantial evidence to establish that illegal acts were committed by respondents. Nowhere in their affidavits did these witnesses cite the particular illegal acts committed by each individual respondent during the strike. Notably, no questions during the hearing were asked relative to the supposed illegal acts.

Interestingly, the Labor Arbiter, the proximate trier of fact, also made no mention of the supposed illegal acts in his decision, thus:

As adverted to earlier, no matter by what term the respondents complainants used in describing their concerted action, i.e. [,] protest, sympathy or mere expression, their joint action have successfully paralyzed the operations of G & S Transport, and this is considered a strike.

If at all, what mitigates respondent action is their honest albeit wrong belief that the course of action they have taken is correct because this is the only way they can show their oneness with their dismissed leaders. But as already held, their action is not the correct remedy because they failed to execute their course of action within the ambit and parameters of the law. Respondents complainants should not have been meted out the severest penalty of dismissal for their inadequacies and wrongful action. Had G & S [T]ransport been still operational[,] the four respondents, namely[:] Melo Borbo, Tito Infante, Mario Daramayo and Danilo Castaneda, would have been ord[e]red to return to work sans backwages (the period of time that lapse without wages being considered as penalty). But since, the company is no longer operational, then in lieu of reinstatement, said complainants respondents should be paid a months salary per year of service, a fraction of six (6) months being considered one year.[36]

It can now therefore be concluded that the acts of respondents do not merit their dismissal from employment because it has not been substantially proven that they committed any illegal act while participating in the illegal strike. Petitioner, however, disavows that it terminated respondents employment. It explained that by filing a complaint for illegal strike before the NLRC, it was merely seeking a declaration that respondents have lost their employment status.[37]

Respondents dismissal from work could not be any clearer than the refusal of petitioner to admit them back as they signified their intention to go back to work. In fact, this very act of petitioner precipitated respondents filing of a complaint for illegal dismissal with a prayer for reinstatement.

With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. While it was found that respondents expressed their intention to report back to work, the latter exception cannot apply in this case. In *Philippine Marine Officers' Guild v. Compañia Maritima*,[38] as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*,[39] the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar.

Under the circumstances, respondents' reinstatement without backwages suffices for the appropriate relief. If

reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.

The Court of Appeals, in ordering reinstatement, relied on the SEC certification that petitioner was then still operational, viz:

Petitioners in this petition attached a certification from the Securities and Exchange Commission that private respondent is still operational as of August 6, 1999. Private respondent did not deny the certification. Since petitioners; employment with private respondent was not conditional on private respondents' concession at the NAIA, it is grave abuse of discretion for the Labor Arbiter and the NLRC to order the grant of separation pay instead of reinstatement.[40]

Petitioner asserts that the "belated" certification issued by the SEC bears no value to respondents' reinstatement because the employment of respondents was conditioned on the subsistence of petitioner's concession with NAIA but which had already been terminated in 1995.[41]

Respondents counter that petitioner and Avis Coupon Taxi are one and the same company and that it is of public knowledge that Avis Coupon Taxi still continues to be the exclusive concessionaire of NAIA at that time. Moreover, respondents deny that their employment was conditioned on petitioner's concession with NAIA.

The SEC has certified that G & S Transport Corporation was registered on 5 January 1972 for a period of fifty (50) years and as of 6 August 1999, no document showing its dissolution had been filed.[42] Furthermore, the personnel manager of petitioner verified that Avis Coupon Taxi and G & S Transport Corporation are one and the same.[43] These documents pointedly indicate that petitioner has not ceased operations. Petitioner cannot seek refuge behind the mere assertion that respondents;employment is conditioned on the five-year concession with NAIA. No employment contract was presented to support such fact. Petitioner in fact even admitted that it obtained another concession from NAIA in 2000.

It is of no moment that petitioner's concession was no longer exclusive. No evidence exists that the employment of respondents was in any way conditioned on petitioner's ostention of an exclusive contract from NAIA. The fact remains that petitioner still operates a taxi concession in NAIA and that logically requires the service of taxi drivers, the same position held by respondents back in 1990. Section 4, Rule I of the Rules Implementing Book VI of the Labor Code provides:

SEC. 4. Reinstatement to former position.—(a) An employee who is separated from work without just cause shall be reinstated to his former position, unless such position no longer exists at the time of his reinstatement, in which case he shall be given a substantially equivalent position in the same establishment without loss of seniority rights.

The above-quoted rule enunciates reinstatement as the standard relief. However, in this case, seventeen (17) years have elapsed since respondents were illegally dismissed. In *Association of Independent Unions in the Philippines v. NLRC* [44], where more than eight (8) years have passed since the petitioners therein staged an illegal strike and were found to have been unlawfully terminated, an award of separation pay equivalent to one (1) month pay for every year of service, in lieu of reinstatement, was deemed more practical and appropriate to all the parties concerned. We adopt the same tack in this case.

In sum, the resolution and order of the NLRC, which adopted the findings of the Labor Arbiter, are in accordance with law and jurisprudence. Consequently, the Court of Appeals erred in granting respondents' petition for certiorari, there being no grave abuse of discretion on the part of the NLRC.

WHEREFORE, the petition is GRANTED. The challenged Decision dated 27 June 2003 and Resolution dated 8

October 2003 of the Court of Appeals in CA- G.R. SP No. 71472 are REVERSED AND SET ASIDE. The Decision dated 15 October 2001 of the NLRC, which affirmed that of the Labor Arbiter, is REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 42-49. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid.

[2] Id. at 51.

[3] Id. at 69-78. Presided by Commissioner Roy V. Señeres.

[4] Rollo, p. 62.

[5] CA rollo, p. 5.

[6] Id. at 27.

[7] Records, Vol. I, p. 322-323.

[8] Id. at 318-321.

[9] CA rollo, p. 37.

[10] CA rollo, pp. 23-29.

[11] Id. at 30-32.

[12] Rollo, p. 151.

[13] Id. at 65-68.

[14] Id. at 168.

[15] CA rollo, p. 10.

[16] Rollo, p. 48.

[17] Id. at 46-47.

[18] Id. at 48.

[19] Id. at 51.

[20] Id. at 25.

[21] Id. at 31.

[22] 356 Phil. 811 (1998).

[23] G.R. No. 130866, 16 September 1998.

[24] Rollo, p. 195.

[25] Muaje-Tuazon v. Wenphil Corp., G.R. No. 162447, 27 December 2006, 508 SCRA 87, 99.

- [26] *Cabuyoc v. Inter-Orient Navigation Shipmanagement Inc.*, G.R. No. 166649, 24 November 2006. 489 SCRA 468, 481.
- [27] *Cainta Catholic School v. Cainta Catholic School Employees Union*, G.R. No. 151021, 4 May 2006.
- [28] *Rollo*, p. 30.
- [29] *Id.* at 196.
- [30] *Id.* at 197.
- [31] Azucena, Cesario A., *Everyone's Labor Code*, p. 260.
- [32] *TSN*, 3 July 1995, p. 43.
- [33] *TSN*, 24 May 1995, p. 8.
- [34] *Stamford Marketing v. Julian*, G.R. No. 145496, 24 February 2004, 423 SCRA 633, 648.
- [35] *Asso. of Independent in the Phil. v. NLRC*, 364 Phil. 697, 709 (1999).
- [36] *Rollo*, p. 73.
- [37] *Id.* at 214.
- [38] 131 Phil. 218 (1968).
- [39] *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, G.R. No. 158075, 30 June 2006.
- [40] *Supra* note 15.
- [41] *Id.* at 33.
- [42] *CA rollo*, p. 147.
- [43] *Id.* at 148.
- [44] G.R. No. 120505, 25 March 1999, 305 SCRA 219,235.

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