

PRIMO E. CAONG, JR., ALEXANDER J. TRESQUIO, AND LORIANO D. DALUYON, PETITIONERS, VS. AVELINO REGUALOS, RESPONDENT.*G.R. No. 179428. January 26, 2011*

Ponente: NACHURA, J.

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Is the policy of suspending drivers pending payment of arrears in their boundary obligations reasonable? The Court of Appeals (CA) answered the question in the affirmative in its Decision [1] dated December 14, 2006 and Resolution dated July 16, 2007. In this petition for review on certiorari, we take a second look at the issue and determine whether the situation at bar merits the relaxation of the application of the said policy.

Petitioners Primo E. Caong, Jr. (Caong), Alexander J. Tresquio (Tresquio), and Lorian D. Daluyon (Daluyon) were employed by respondent Avelino Regualos under a boundary agreement, as drivers of his jeepneys. In November 2001, they filed separate complaints [2] for illegal dismissal against respondent who barred them from driving the vehicles due to deficiencies in their boundary payments.

Caong was hired by respondent in September 1998 and became a permanent driver sometime in 2000. In July 2001, he was assigned a brand- new jeepney for a boundary fee of P550.00 per day. He was suspended on October 9-15, 2001 for failure to remit the full amount of the boundary. Consequently, he filed a complaint for illegal suspension. Upon expiration of the suspension period, he was readmitted by respondent, but he was reassigned to an older jeepney for a boundary fee of P500.00 per day. He claimed that, on November 9, 2001, due to the scarcity of passengers, he was only able to remit P400.00 to respondent. On November 11, 2001, he returned to work after his rest day, but respondent barred him from driving because of the deficiency in the boundary payment. He pleaded with respondent but to no avail. [3]

Tresquio was employed by respondent as driver in August 1996. He became a permanent driver in 1997. In 1998, he was assigned to drive a new jeepney for a boundary fee of P500.00 per day. On November 6, 2001, due to the scarcity of passengers, he was only able to remit P450.00. When he returned to work on November 8, 2001 after his rest day, he was barred by respondent because of the deficiency of P50.00. He pleaded with respondent but the latter was adamant. [4]

On the other hand, Daluyon started working for respondent in March 1998. He became a permanent driver in July 1998. He was assigned to a relatively new jeepney for a boundary fee of P500.00 per day. On November 7, 2001, due to the scarcity of passengers, he was only able to pay P470.00 to respondent. The following day, respondent barred him from driving his jeepney. He pleaded but to no avail. [5]

During the mandatory conference, respondent manifested that petitioners were not dismissed and that they could drive his jeepneys once they paid their arrears. Petitioners, however, refused to do so.

Petitioners averred that they were illegally dismissed by respondent without just cause. They maintained that respondent did not comply with due process requirements before terminating their employment, as they were not

furnished notice apprising them of their infractions and another informing them of their dismissal. Petitioners claimed that respondent's offer during the mandatory conference to reinstate them was an insincere afterthought as shown by the warning given by respondent that, if they fail to remit the full amount of the boundary yet again, they will be barred from driving the jeepneys. Petitioners questioned respondent's policy of automatically dismissing the drivers who fail to remit the full amount of the boundary as it allegedly (a) violates their right to due process; (b) does not constitute a just cause for dismissal; (c) disregards the reality that there are days when they could not raise the full amount of the boundary because of the scarcity of passengers.

In his Position Paper, respondent alleged that petitioners were lessees of his vehicles and not his employees; hence, the Labor Arbiter had no jurisdiction. He claimed that he noticed that some of his lessees, including petitioners, were not fully paying the daily rental of his jeepneys. In a list which he attached to the Position Paper, it was shown that petitioners had actually incurred arrears since they started working. The list showed that Caong's total arrears amounted to P10,315.00, that of Tresquio was P10,760.00, while that of Daluyon was P6,890.00. He made inquiries and discovered that his lessees contracted loans with third parties and used the income of the jeepneys in paying the loans. Thus, on November 4, 2001, he gathered all the lessees in a meeting and informed them that, effective November 5, 2001, those who would fail to fully pay the daily rental would not be allowed to rent a jeepney on the following day. He explained to them that the jeepneys were acquired on installment basis, and that he was paying the monthly amortizations through the lease income. Most of the lessees allegedly accepted the condition and paid their arrears. Petitioners, however, did not settle their arrears. Worse, their remittances were again short of the required boundary fee. Petitioner Daluyon's rent payment was short of P20.00 on November 5, 2001 and P80.00 on November 7, 2001. On November 6, 2001, it was Tresquio who incurred an arrear of P100.00. On November 7 and 9, 2001, petitioner Caong was in arrear of P50.00 and P100.00, respectively. Respondent stressed that, during the mandatory conference, he manifested that he would renew his lease with petitioners if they would pay the arrears they incurred during the said dates. [6]

On March 31, 2003, the Labor Arbiter decided the case in favor of respondent, thus:

WHEREFORE, judgment is hereby rendered, DISMISSING the above-entitled cases for lack of merit. However, respondent Regualos is directed to accept back complainants Caong, Tresquio and Daluyon, as regular drivers of his passenger jeepneys, after complainants have paid their respective arrearages they have incurred in the remittance of their respective boundary payments, in the amount of P150.00, P100.00 and P100.00. Complainants, if still interested to work as drivers, are hereby ordered to report to respondent Regualos within fifteen (15) days from the finality of this decision. Otherwise, failure to do so means forfeiture of their respective employments.

Other claims of complainants are dismissed for lack of merit.

SO ORDERED. [7]

According to the Labor Arbiter, an employer-employee relationship existed between respondent and petitioners. The latter were not dismissed considering that they could go back to work once they have paid their arrears. The Labor Arbiter opined that, as a disciplinary measure, it is proper to impose a reasonable sanction on drivers who cannot pay their boundary payments. He emphasized that respondent acquired the jeepneys on loan or installment basis and relied on the boundary payments to comply with his monthly amortizations. [8]

Petitioners appealed the decision to the National Labor Relations Commission (NLRC). In its resolution [9] dated March 31, 2004, the NLRC agreed with the Labor Arbiter and dismissed the appeal. It also denied petitioners' motion for reconsideration. [10]

Forthwith, petitioners filed a petition for certiorari with the CA.

In its Decision [11] dated December 14, 2006, the CA found no grave abuse of discretion on the part of the NLRC. According to the CA, the employer-employee relationship of the parties has not been severed, but merely suspended when respondent refused to allow petitioners to drive the jeepneys while there were unpaid boundary obligations. The CA pointed out that the fact that it was within the power of petitioners to return to work is proof that there was no termination of employment. The condition that petitioners should first pay their arrears only for the period of November 5-9, 2001 before they can be readmitted to work is neither impossible nor unreasonable if their total unpaid boundary obligations and the need to sustain the financial viability of the employer's enterprise--which would ultimately redound to the benefit of the employees--are taken into consideration. [12]

The CA went on to rule that petitioners were not denied their right to due process. It pointed out that the case does not involve a termination of employment; hence, the strict application of the twin-notice rule is not warranted. According to the CA, what is important is that petitioners were given the opportunity to be heard. The meeting conducted by respondent on November 4, 2001 served as sufficient notice to petitioners. During the said meeting, respondent informed his employees, including petitioners, to strictly comply with the policy regarding remittances and warned them that they would not be allowed to take out the jeepneys if they did not remit the full amount of the boundary. [13]

Dissatisfied, petitioners filed a motion for reconsideration, but the CA denied the motion in its Resolution dated July 16, 2007. [14]

Petitioners are now before this Court resolutely arguing that they were illegally dismissed by respondent, and that such dismissal was made in violation of the due process requirements of the law.

The petition is without merit.

In an action for certiorari, petitioner must prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent. Mere abuse of discretion is not enough. It must be shown that public respondent exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and this must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. [15]

As correctly held by the CA, petitioners failed to establish that the NLRC committed grave abuse of discretion in affirming the Labor Arbiter's ruling, which is supported by the facts on record.

It is already settled that the relationship between jeepney owners/operators and jeepney drivers under the boundary system is that of employer-employee and not of lessor-lessee. The fact that the drivers do not receive fixed wages but only get the amount in excess of the so-called "boundary" that they pay to the owner/operator is not sufficient to negate the relationship between them as employer and employee. [16]

The Labor Arbiter, the NLRC, and the CA uniformly declared that petitioners were not dismissed from employment but merely suspended pending payment of their arrears. Findings of fact of the CA, particularly where they are in absolute agreement with those of the NLRC and the Labor Arbiter, are accorded not only respect but even finality, and are deemed binding upon this Court so long as they are supported by substantial evidence. [17]

We have no reason to deviate from such findings. Indeed, petitioners' suspension cannot be categorized as dismissal, considering that there was no intent on the part of respondent to sever the employer-employee relationship between him and petitioners. In fact, it was made clear that petitioners could put an end to the suspension if they only pay their recent arrears. As it was, the suspension dragged on for years because of petitioners' stubborn refusal to pay. It would have been different if petitioners complied with the condition and

respondent still refused to readmit them to work. Then there would have been a clear act of dismissal. But such was not the case. Instead of paying, petitioners even filed a complaint for illegal dismissal against respondent.

Respondent's policy of suspending drivers who fail to remit the full amount of the boundary was fair and reasonable under the circumstances. Respondent explained that he noticed that his drivers were getting lax in remitting their boundary payments and, in fact, herein petitioners had already incurred a considerable amount of arrears. He had to put a stop to it as he also relied on these boundary payments to raise the full amount of his monthly amortizations on the jeepneys. Demonstrating their obstinacy, petitioners, on the days immediately following the implementation of the policy, incurred deficiencies in their boundary remittances.

It is acknowledged that an employer has free rein and enjoys a wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline on his employees and to impose penalties, including dismissal, if warranted, upon erring employees. This is a management prerogative. Indeed, the manner in which management conducts its own affairs to achieve its purpose is within the management's discretion. The only limitation on the exercise of management prerogative is that the policies, rules, and regulations on work-related activities of the employees must always be fair and reasonable, and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction. [18]

Petitioners argue that the policy is unsound as it does not consider the times when passengers are scarce and the drivers are not able to raise the amount of the boundary.

Petitioners' concern relates to the implementation of the policy, which is another matter. A company policy must be implemented in such manner as will accord social justice and compassion to the employee. In case of noncompliance with the company policy, the employer must consider the surrounding circumstances and the reasons why the employee failed to comply. When the circumstances merit the relaxation of the application of the policy, then its noncompliance must be excused.

In the present case, petitioners merely alleged that there were only few passengers during the dates in question. Such excuse is not acceptable without any proof or, at least, an explanation as to why passengers were scarce at that time. It is simply a bare allegation, not worthy of belief. We also find the excuse unbelievable considering that petitioners incurred the shortages on separate days, and it appears that only petitioners failed to remit the full boundary payment on said dates.

Under a boundary scheme, the driver remits the "boundary," which is a fixed amount, to the owner/operator and gets to earn the amount in excess thereof. Thus, on a day when there are many passengers along the route, it is the driver who actually benefits from it. It would be unfair then if, during the times when passengers are scarce, the owner/operator will be made to suffer by not getting the full amount of the boundary. Unless clearly shown or explained by an event that irregularly and negatively affected the usual number of passengers within the route, the scarcity of passengers should not excuse the driver from paying the full amount of the boundary.

Finally, we sustain the CA's finding that petitioners were not denied the right to due process. We thus quote with approval its discussion on this matter:

Having established that the case at bench does not involve termination of employment, We find that the strict, even rigid, application of the twin-notice rule is not warranted.

But the due process safeguards are nonetheless still available to petitioners.

Due process is not a matter of strict or rigid or formulaic process. The essence of due process is simply the opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial-type hearing is

not at all times and in all instances essential, as the due process requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. x x x.

x x x x

In the case at bench, private respondent, upon finding that petitioners had consistently failed to remit the full amount of the boundary, conducted a meeting on November 4, 2001 informing them to strictly comply with the policy regarding their remittances and warned them to discontinue driving if they still failed to remit the full amount of the boundary. [19]

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals Decision dated December 14, 2006 and Resolution dated July 16, 2007 are AFFIRMED.

SO ORDERED.

Carpio, J., (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Romulo V. Borja, with Associate Justices Sixto C. Marella, Jr. and Mario V. Lopez, concurring; rollo, pp. 38-54.

[2] Id. at 92-96.

[3] Id. at 98-99.

[4] Id. at 100.

[5] Id. at 100-101.

[6] Id. at 112-114.

[7] Id. at 131.

[8] Id. at 128-130.

[9] Id. at 183.

[10] Id. at 186.

[11] Id. at 53.

[12] Id. at 43-48.

[13] Id. at 50-51.

[14] Id. at 58.

[15] *Solvic Industrial Corporation v. NLRC*, 357 Phil. 430, 438 (1998).

[16] *Martinez v. NLRC*, 339 Phil. 176, 182 (1997), citing *National Labor Union v. Dinglasan*, 98 Phil. 649, 652-653 (1956).

[17] *San Miguel Corporation v. National Labor Relations Commission*, G.R. Nos. 146121-22, April 16, 2008, 551 SCRA 410, 422.

[18] *St. Michael's Institute v. Santos*, 422 Phil. 723, 732-733 (2001).

[19] Rollo, pp. 50-51.

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