

RICHARD N. RIVERA, PETITIONER, VS. GENESIS TRANSPORT SERVICE, INC. AND RIZA A. MOISES, RESPONDENTS.

G.R. No. 215568. August 03, 2015

Ponente: LEONEN, J.

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LEONEN, J.:

This resolves a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure praying that the July 8, 2014 Decision[1] and the November 20, 2014 Resolution[2] of the Court of Appeals Fifth Division in CA-G.R. SP No. 130801 be reversed and set aside, and that new judgment be entered finding petitioner Richard N. Rivera to have been illegally dismissed and awarding to him his monetary claims.

The assailed July 8, 2014 Decision of the Court of Appeals dismissed the Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by Richard N. Rivera (Rivera) and affirmed the February 28, 2013[3] and April 30, 2013[4] Resolutions of the National Labor Relations Commission Second Division. These Resolutions sustained the ruling of Labor Arbiter Gaudencio P. Demaisip, Jr. who, in his June 26, 2012 Decision,[5] dismissed Rivera's Complaint[6] for illegal dismissal.

The assailed November 20, 2014 Resolution of the Court of Appeals denied Rivera's Motion for Reconsideration.

Rivera was employed by respondent Genesis Transport Service, Inc. (Genesis) beginning June 2002 as a bus conductor, assigned to the Cubao-Baler, Aurora route. As part of the requisites for his employment, he was required to post a cash bond of P6,000.00. Respondent Riza A. Moises is Genesis' President and General Manager.[7]

In his Position Paper before the Labor Arbiter, Rivera acknowledged that he was dismissed by Genesis on account of a discrepancy in the amount he declared on bus ticket receipts. He alleged that on June 10, 2010, he received a Memorandum[8] giving him twenty-four (24) hours to explain why he should not be sanctioned for reporting and remitting the amount of P198.00 instead of the admittedly correct amount of P394.00 worth of bus ticket receipts. He responded that it was an honest mistake, which he was unable to correct "because the bus encountered mechanical problems." [9]

The discrepancy between the reported and remitted amount as against the correct amount was detailed in the "Irregularity Report" prepared by Genesis' Inspector, Arnel Villaseran (Villaseran).[10]

According to Villaseran, on May 25, 2010, he conducted a "man to man" inspection on the tickets held by the passengers on board Bus No. 8286 who had transferred from Bus No. 1820 in San Fernando, Pampanga. (Bus No. 1820 broke down.) In the course of his inspection, he noticed that Ticket No. 723374 VA had a written corrected amount of P394.00. However, the amount marked by perforations made on the ticket, which was the amount originally indicated by the bus conductor, was only P198.00. Upon inquiring with the passenger holding the ticket, Villaseran found out that the passenger paid P500.00 to Rivera, who gave her change in the amount of P106.00.[11]

Subsequently, Villaseran conducted verification works with the Ticket Section of Genesis' Cubao Main Office. Per his inquiries, the duplicate ticket surrendered by Rivera to Genesis indicated only the unconnected amount of P198.00. It was also found that Rivera remitted only P198.00.[12]

On July 20, 2010, Genesis served on Rivera a written notice[13] informing him that a hearing of his case was set on July 23, 2010. Despite his explanations, Rivera's services were terminated through a written notice dated July 30, 2010.[14] Contending that this termination was arbitrary and not based on just causes for terminating employment, he filed the Complaint[15] for illegal dismissal, which is subject of this Petition.[16]

For their defense, Genesis and Riza A. Moises claimed that Rivera's misdeclaration of the amount in the bus ticket receipts and failure to remit the correct amount clearly violated Genesis' policies and amounted to serious misconduct, fraud, and willful breach of trust; thereby justifying his dismissal.[17]

In a Decision[18] dated June 26, 2012, Labor Arbiter Gaudencio P. Demaisip gave credence to respondents' appreciation of the gravity of Rivera's acts of misdeclaring the amount of bus ticket receipts and failing to remit the correct amount. Thus, he dismissed Rivera's Complaint.

In a Resolution[19] dated February 28, 2013, the National Labor Relations Commission Second Division affirmed the Decision of Labor Arbiter Demaisip. In a Resolution[20] dated April 30, 2013, the National Labor Relations Commission denied Rivera's Motion for Reconsideration.

Thereafter, Rivera filed a Rule 65 Petition before the Court of Appeals. In the assailed July 8, 2014 Decision,[21] the Court of Appeals Fifth Division sustained the rulings of Labor Arbiter Demaisip and the National Labor Relations Commission. In the assailed November 20, 2014 Resolution,[22] the Court of Appeals denied Rivera's Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the issue of whether petitioner Richard N. Rivera's employment was terminated for just cause by respondent Genesis Transport, Inc.

As Riza A. Moises, Genesis' President and General Manager, has been impleaded, this court must also rule on her personal liability, should the termination of petitioner's employment be found invalid.

I

Our laws on labor, foremost of which is the Labor Code, are pieces of social legislation. They have been adopted pursuant to the constitutional recognition of "labor as a primary social economic force"[23] and to the constitutional mandates for the state to "protect the rights of workers and promote their welfare"[24] and for Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, [and] reduce social, economic, and political inequalities." [25]

They are means for effecting social justice, i.e., the "humanization of laws and the equalization of social and economic forces by the State so that justice in the rational and objectively secular conception may at least be approximated." [26]

Article XIII, Section 3 of the 1987 Constitution guarantees the right of workers to security of tenure. "One's employment, profession, trade or calling is a 'property right,'" [27] of which a worker may be deprived only upon compliance with due process requirements:

It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a

person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code. Dismissal is not justified for being arbitrary where the workers were denied due process and a clear denial of due process, or constitutional right must be safeguarded against at all times.[28] (Citations omitted)

Conformably, liberal construction of Labor Code provisions in favor of workers is stipulated by Article 4 of the Labor Code:

Art. 4. Construction in favor of labor. All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

This case is quintessentially paradigmatic of the need for the law to be applied in order to ensure social justice. The resolution of this case should be guided by the constitutional command for courts to take a preferential view in favor of labor in ambitious cases.

This case revolves around an alleged discrepancy between the amounts indicated on a single ticket. For the paltry sum of P196.00 that petitioner failed to remit in his sole documented instance of apparent misconduct, petitioner's employment was terminated. He was deprived of his means of subsistence.

II

Misconduct and breach of trust are just causes for terminating employment only when attended by such gravity as would leave the employer no other viable recourse but to cut off an employee's livelihood.

The Labor Code recognizes serious misconduct, willful breach of trust or loss of confidence, and other analogous causes as just causes for termination of employment:

Article 282. Termination by employer. An employer may terminate an employment for any of the following just 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.

Serious misconduct as a just cause for termination was discussed in *Yabut v. Manila Electric Co.*:[29]

Misconduct is defined as the "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For serious misconduct to justify dismissal, the following requisites must be present: (a) it must be serious; (b) it must relate to the performance of the employee's duties; and (c) it must show that the employee has become unfit to continue working for the employer.[30] (Emphasis supplied, citation omitted)

Thus, it is not enough for an employee to be found to have engaged in improper or wrongful conduct. To justify termination of employment, misconduct must be so severe as to make it evident that no other penalty but the termination of the employee's livelihood is viable.

In *Philippine Plaza Holdings v. Episcopo*,[31] we discussed the requisites for valid dismissal on account of willful breach of trust:

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 296 (c) (formerly Article 282 [c]) of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. But in order for the said cause to be properly invoked, certain requirements must be complied with[,] namely[:] (1) the employee concerned must be holding a position of trust and confidence and (2) there must be an act that would justify the loss of trust and confidence.[32]

Relating to the first requisite, *Philippine Plaza Holdings* clarified that two (2) classes of employees are considered to hold positions of trust:

It is noteworthy to mention that there are two classes of positions of trust: on the one hand, there are managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; on the other hand, there are fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[33] (Emphasis supplied)

The position an employee holds is not the sole criterion. More important than this formalistic requirement is that loss of trust and confidence must be justified. As with misconduct as basis for terminating employment, breach of trust demands that a degree of severity attend the employee's breach of trust. In *China City Restaurant Corporation v. National Labor Relations Commission*,[34] this court emphasized the need for caution:

For loss of trust and confidence to be a valid ground for the dismissal of employees, it must be substantial and not arbitrary, whimsical, capricious or concocted.

Irregularities or malpractices should not be allowed to escape the scrutiny of this Court. Solicitude for the protection of the rights of the working class [is] of prime importance. Although this is not [a] license to disregard the rights of management, still the Court must be wary of the ploys of management to get rid of employees it considers as undesirable.[35] (Emphasis supplied)

III

The social justice suppositions underlying labor laws require that the statutory grounds justifying termination of employment should not be read to justify the view that bus conductors should, in all cases, be free from any kind of error. Not every improper act should be taken to justify the termination of employment.

Concededly, bus conductors handle money. To this extent, their work may be analogous to that of tellers, cashiers,

and other similarly situated rank-and-file employees who occupy positions of trust and confidence. However, even granting that the first requisite for termination of employment on account of willful breach of trust has been satisfied, we find it improper to sustain the validity of the termination of petitioner's employment.

We take judicial notice of bus conductors' everyday work. Bus conductors receive, exchange, and keep money paid by passengers by way of transportation fare. They keep track of payments and make computations down to the last centavo, literally on their feet while a bus is in transit.

Regardless of whether a bus is driving through awkward spaces—through steep inclines, rugged roads, or sharp turns—or of whether a bus is packed with standing passengers, the lonesome task of keeping track of the passengers' payments falls upon a bus conductor.

Thus, while they do handle money, their circumstances are not at all the same as those of regular cashiers. They have to think quickly, literally on their feet. Regular cashiers, on the other hand, have the time and comfort to deliberately and carefully examine the transactions of their employer.

However, handling passengers' fare payments is not their sole function. Bus conductors assist drivers as they maneuver buses through tight spaces while they are in transit, depart, or park. They often act as dispatchers in bus stops and other such places, assist passengers as they embark and alight, and sometimes even help passengers load and unload goods and cargo. They manage the available space in a bus and ensure that no space is wasted as the bus accommodates more passengers. Along with drivers, bus conductors commit to memory the destination of each passenger so that they can anticipate their stops.

There are several ways to manifest the severity that suffices to qualify petitioner's alleged misconduct or breach of trust as so grave that terminating his employment is warranted. It may be through the nature of the act itself: spanning an entire spectrum between, on one end, an overlooked error, made entirely in good faith; and, on another end, outright larceny. It may be through the sheer amount mishandled. It may be through frequency of acts. It may be through other attendant circumstances, such as attempts to destroy or conceal records and other evidence, or evidence of a motive to undermine the business of an employer.

We fail to appreciate any of these in this case.

To reiterate, what is involved is a paltry amount of P196.00. All that has been proven is the existence of a discrepancy. No proof has been adduced of ill-motive or even of gross negligence. From all indications, petitioner stood charged with a lone, isolated instance of apparent wrongdoing.

The records are bereft of evidence showing a pattern of discrepancies chargeable against petitioner. Seen in the context of his many years of service to his employer and in the absence of clear proof showing otherwise, the presumption should be that he has performed his functions faithfully and regularly. It can be assumed that he has issued the correct tickets and given accurate amounts of change to the hundreds or even thousands of passengers that he encountered throughout his tenure. It is more reasonable to assume that—except for a single error costing a loss of only P196.00—the company would have earned the correct expected margins per passenger, per trip, and per bus that it allowed to travel.

Absent any other supporting evidence, the error in a single ticket issued by petitioner can hardly be used to justify the inference that he has committed serious misconduct or has acted in a manner that runs afoul of his employer's trust. More so, petitioner cannot be taken to have engaged in a series of acts evincing a pattern or a design to defraud his employer. Terminating his employment on these unfounded reasons is manifestly unjust.

To infer from a single error that petitioner committed serious misconduct or besmirched his employer's trust is

grave abuse of discretion. It is an inference that is arbitrary and capricious. It is contrary to the high regard for labor and social justice enshrined in our Constitution and our labor laws.

The Court of Appeals committed an error of law correctible by a petition for review under Rule 45. It erred when it held that the National Labor Relations did not commit grave abuse of discretion when the latter did not engage in the requisite scrutiny to review the inference and its bases.

IV

As his employment was illegally and unjustly terminated, petitioner is entitled to full backwages and benefits from the time of his termination until the finality of this Decision. He is likewise entitled to separation pay in the amount of one (1) month's salary for every year of service until the finality of this Decision, with a fraction of a year of at least six (6) months being counted as one (1) whole year.

As he was compelled to litigate in order to seek relief for the illegal and unjust termination of his employment, petitioner is likewise entitled to attorney's fees in the amount of 10% of the total monetary award.[36]

"Moral damages are awarded in termination cases where the employee's dismissal was attended by bad faith, malice or fraud, or where it constitutes an act oppressive to labor, or where it was done in a manner contrary to morals, good customs or public policy." [37] Also, to provide an "example or correction for the public good," [38] exemplary damages may be awarded.

However, we find no need to award these damages in favor of petitioner. While the termination of his employment was invalid, we nevertheless do not find respondent Genesis to have acted with such a degree of malice as to act out of a design to oppress petitioner. It remains that a discrepancy and shortage chargeable to petitioner was uncovered, although this discrepancy and shortage does not justify a penalty as grave as termination of employment.

V

Respondent Riza A. Moises may not be held personally liable for the illegal termination of petitioner's employment.

As we explained in *Saudi Arabian Airlines v. Rebesencio*: [39]

A corporation has a personality separate and distinct from those of the persons composing it. Thus, as a rule, corporate directors and officers are not liable for the illegal termination of a corporation's employees. It is only when they acted in bad faith or with malice that they become solidarity liable with the corporation.

In *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical*, this court clarified that "[b]ad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud." [40]

Petitioner has not produced proof to show that respondent Riza A. Moises acted in bad faith or with malice as regards the termination of his employment. Thus, she did not incur any personal liability.

WHEREFORE, the Petition for Review on Certiorari is **PARTIALLY GRANTED**. The assailed Decision dated July 8, 2014 and the assailed Resolution dated November 20, 2014 of the Court of Appeals Fifth Division in CA-G.R. SP No. 130801, which dismissed the Petition for Certiorari filed by petitioner Richard N. Rivera and affirmed the February 28, 2013 and April 30, 2013 Resolutions of the National Labor Relations Commission Second Division, as well as the June 26, 2012 Decision of Labor Arbiter Gaudencio P. Demaisip, Jr., are

REVERSED and SET ASIDE. Accordingly, respondent Genesis Transport Service, Inc. is ordered to pay petitioner:

(1)

Full backwages and other benefits computed from July 30, 2010, when petitioner's employment was illegally terminated, until the finality of this Decision;

(2)

Separation pay computed from June 2002, when petitioner commenced employment, until the finality of this Decision, at the rate of one (1) month's salary for every year of service, with a fraction of a year of at least six (6) months being counted as one (1) whole year; and

(3)

Attorney's fees equivalent to ten percent (10%) of the total award.

The case is REMANDED to the Labor Arbiter to make a detailed computation of the amounts due to petitioner, which respondents should pay without delay.

The case is DISMISSED with respect to respondent Riza A. Moises.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Mendoza, JJ., concur.

[1] Rollo, pp. 45-59. The Decision was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Hakim S. Abdulwahid and Romeo F. Barza.

[2] Id. at 61-62.

[3] Id. at 95-103. The Resolution was penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Erlinda T. Agus.

[4] Id. at 92-93. The Resolution was penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Erlinda T. Agus.

[5] Id. at 188-193.

[6] Id. at 105-106.

[7] Id. at 46.

[8] Id. at 125.

[9] Id. at 46.

[10] Id. at 127.

[11] Id.

[12] Id.

[13] Id. at 126.

[14] Id. at 127-131.

[15] Id. at 105.

[16] Id. at 46-47.

[17] Id. at 47.

[18] Id. at 188-193.

[19] Id. at 95-103.

[20] Id. at 92-93.

[21] Id. at 32-43.

[22] Id. at 61-62.

[23] Const., art. II, sec. 18.

[24] Const., art. II, sec. 18.

[25] Const., art. XIII, sec. 1.

[26] *Calalang v. Williams*, 70 Phil. 726 (1940) [Per J. Laurel, First Division].

[27] *Callanta v. Carnation Phil., Inc.*, 229 Phil. 279, 288-189 (1986) [Per J. Fernan, Second Division].

[28] *Ranee v. National Labor Relations Commission*, 246 Phil. 287, 292-293 (1988) [Per J. Paras, Second Division].

[29] 679 Phil. 97 (2012) [Per J. Reyes, Second Division].

[30] Id. at 110-111.

[31] G.R. No. 192826, February 27, 2013, 692 SCRA 227 [Per J. Perlas-Bernabe, Second Division].

[32] Id. at 235.

[33] Id. at 235-236, citing *M+WZander Philippines, Inc. v. Enriquez*, 606 Phil. 591 (2009) [Per C.J. Puno, First Division].

[34] G.R. No. 97196, January 22, 1993, 217 SCRA 443 [Per J. Campos, Jr., Second Division].

[35] Id. at 453-454.

[36] *Aliling v. Manuel*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 220 [Per J. Velasco, Third Division], citing *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142 (2011) [Per J. Del Castillo, First Division] and *Lambert Pawnbrokers and Jewelry Corporation*, 639 Phil. 1 (2010) [Per J. Del Castillo, First Division].

[37] *San Miguel Properties Philippines, Inc. v. Gucaban*, 669 Phil. 288, 302 (2011) [Per J. Peralta, Third Division], citing *Mayon Hotel and Restaurant v. Adana*, 497 Phil. 892, 922 (2005) [Per J. Puno, Second Division]; *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 643 (2001) [Per J. Gonzaga-Reyes, Third Division]; *Equitable Banking Corp. v. National Labor Relations Commission*, 339 Phil. 541, 565 (1997) [Per J. Vitug, First Division]; *Airline Pilots Association of the Philippines v. National Labor Relations Commission*, 328 Phil. 814, 830 (1996) [Per J. Francisco, Third Division]; and *Maglutac v. National Labor Relations Commission*, 267 Phil.

816 (1990) [Per J. Medialdea, First Division].

[38] CIVIL CODE. art. 2229.

[39] G.R. No. 198587, January 14, 2015, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/198587.pdf>> [Per J. Leonen, Second Division].

[40] Id. at 28, citing Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical, G.R. No. 194795, June 13, 2012, 672 SCRA 562, 572 [Per J. Mendoza, Third Division].

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