

RURAL TRANSIT CO., LTD., COMPLAINANT AND APPELLANT, VS. CARMELITA VIUDA DE SISON, RESPONDENT AND APPELLEE.

G.R. No. 37795. February 16, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is a petition of the Rural Transit Co., Ltd., for the review of the following decision of the Public Service Commission in case No. 32340:

"La recurrida lo esta de una infraccion de los terminos de su certificado expedido en el Expediente No. 30532.

"Esta probado que la recurrida opero en mayo 26, 1932, sus automoviles PU-662 y 663 cobrando per capita a los pasajeros por las distancias que cada uno de ellos recorriesen, lo cual es en abierta infraccion de su certificado cuanto que ella esta autorizada a cobrar por hora operando como operaba coches PU.

"El testigo que ha declarado por la compania recurrente, Angel Paulmino, ha aseverado de un modo positivo y cierto que el dia mayo 26, 1932, a las 8.30 de la mañana, inspecciono el automovil de la recurrida PU-662 en el kilometro 126 entre Cabanatuan y Talavera y encontro 8½ pasajeros con inclusion del chofer y 'washing' que admitieron ante dicho inspector que pagaban por persona y no por hora. En el mismo dia a las 11.45 de la mañana tambien encontro a bordo del coche de la recurrida PU-663 en el mismo lugar, kilometro 126, 7 pasajeros que venian de distintos sitios pagando por persona y no por hora. Ademas de esos 7 pasajeros iba tambien en el coche el 'washing'. Hay dos infracciones, infraccion en el cobro e infraccion por 'overloading' o por llevar mas de la capacidad fijada del coche que es de 7 pasajeros.

"La recurrida no aporlo prueba ninguna, limitandose a decir que como en la queja se dice que no se habia expedido ticket y habiendose admitido por el inspector Paulmino que habia un ticket taladrado, que por este motivo debe sobreseerse la queja. La defensa interpuesta carece de meritos por la razon de que los hechos han quedado plenamente justificados y sin que hayan sido desvirtuados por pruebas en contrario. Ademas, aceptando que habia un ticket taladrado, es el hecho que no aparece en el mismo lo que se cobraba, y eso no puede afectar los meritos del asunto. Esto es bastante claro y desestimamos la contencion de la recurrida de que bajo ese fundamento debe sobreseerse la queja.

"Siendo esta la primera infraccion en que la recurrida incurre, la condenamos a pagar P25 de multa mas P25 de gastos de investigacion, advirtiendola que otra ulterior infraccion sera penada con mayor rigor.

"Esta decision entrara inmediatamente en vigor y quedara firme a los 30 dias de su notificacion a las partes. Si dentro de ese termino de 30 dias no se ha hecho efectivo el pago aqui requerido, procedase al cobro de dichas cantidades por la via de apremio y suspendase la operacion del servicio de transporte de la recurrida."

In an order, dated July 13, 1932, the fine was reduced to P10.

The appellant makes the following assignments of error:

"I. The commission erred in not cancelling the certificate of the respondent-appellee upon being found guilty of the charges filed against her.

"II. The commission erred in imposing on the respondent-appellee the extremely light penalty of P25 fine and P25 costs, and in further reducing said fine to only P10 in a subsequent order issued ex parte under date of July 13, 1932."

The petition of the appellant may be disposed of in a few words. Although, apparently in pursuance of an agreement between the attorney for the applicant and the attorney for the Rural Transit Co., Ltd., in case No. 3532, it was provided in the decision on the application in that case that for the first violation of the tariff set forth in said decision the commission would cancel the applicant's certificate of public convenience, nevertheless that provision in the decision did not oblige the commission to cancel the applicant's certificate upon the complaint of the appellant, if in the opinion of the commission the facts did not justify or require such action. Under the circumstances of this case, the small fine of P10 imposed by the commission seems a slight punishment for a clear violation of the terms of the certificate, yet that fact does not constitute an abuse of the discretion of the commission, and we do not feel justified in substituting our judgment for that of the commission as to the proper punishment.

For the foregoing reasons, the decision appealed from, as modified, is affirmed, with the costs against the appellant.

Villamor, Villa-Real, Hull, and Imperial, JJ., concur.

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