

DIVINA JABALLAS, PETITIONER, VS. CONSTRUCTION & DEVELOPMENT CORPORATION OF THE PHILIPPINES (NOW PHIL. NATIONAL CONSTRUCTION COMPANY); COMMISSIONERS GUILLERMO MEDINA, GABRIEL GAT...

G.R. No. 77290. September 26, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioner had been a toll teller since December 2, 1969 at the South Luzon Expressway, owned and operated by the Construction and Development Corporation of the Philippines or "CDCP," then a private firm, now government-owned and renamed Philippine National Construction Company, or PNCC for brevity.

Respondent company had instructed its exit toll clerks to detach the receipt-stubs from toll cards issued to, and surrendered to them by, motorists so that they could not be reused or reissued (Records, pp. 171-172). The company considered mere possession used toll cards or tickets by persons other than those duly authorized to collect them as prima facie proof of intent to defraud the company, as well as an act of dishonesty, under Section 7 of the CDCP Code (Records, p. 222).

These stringent company measures were taken in view of reports that there existed a syndicated scheme of some toll tellers to fraudulently reissue used toll cards. By "reissuance" is meant that used toll cards with undetached motorist stubs are collected by some exit toll tellers to be reissued later by them when they are assigned as entry toll tellers, or by other tellers assigned at the entry booths who operate in connivance with them to defraud the company (Records, p. 172).

On November 17, 1978, at 7:40 A.M., Corazon Periquet, an entry toll teller at the Nichols entry gate, was found to be in possession of twelve (12) used toll cards dated "Nov. 9, 1978," with undetached motorist stubs (Annexes I to I-1). The cards were among those which had been issued on November 6, 1978 to seven (7) entry toll tellers who were all on duty from 6:30 A.M. to 2:30 P.M. at the Nichols entry booths on that day (Annexes F, G, H, I, J, K & L). The toll cards were sold to motorists travelling the Nichols-Sucat portion of the South Superhighway. Since the petitioner Divina Jaballas was stationed at the only exit toll booth in Sucat on November 6, 1978 at 6:30 A.M. to 2:30 P.M., it was assumed that the toll cards were surrendered to her by the motorists exiting through the Sucat Interchange.

On November 18, 1978, Faustino E. De Guzman, Chief Cashier of the South Luzon Expressway, required the petitioner to explain within 48 hours why no disciplinary action should be taken against her on account of the fact that used toll-tickets were confiscated from toll teller Corazon Periquet on November 17, 1978 which had been "issued on November 6, 1978 at Nichols Terminal and you were the exit teller assigned at Sucat 2 last November 6, 1978" (Annex D-5, p. 138, Rollo).

In her written explanation dated November 21, 1978, petitioner stated that she had "nothing to do whatsoever

about the toll tickets" confiscated from Periquet; that she was assigned at the Alabang 4 Exit Booth on November 17, 1978, and that she had never met Periquet. She suggested that Periquet "should be investigated and asked where she got them" (Annex D-5, p. 139, Rollo).

On November 21, 1978, the administrative officer, Florante De Guzman, requested her to appear before the Security Officer, the Chief Cashier, and himself on November 23, 1978 at 10:00 A.M. at his office in Carmona to shed light on Periquet's case. He also required her to explain within 24 hours why no disciplinary action may be taken against her "for losing or misplacing company property which cause prejudice to the company" because as exit teller at Sucat No. 2, she was supposed to be responsible for those toll tickets which found their way to Periquet "in violation of Section 5, b-7 of the CDCP Code on Employee Discipline (Annex D-4, p. 135, Rollo).

Jaballas did not appear for investigation as requested because she suffered from high blood pressure and had just been released from the hospital (Annex D-4-b, p. 137, Rollo). Moreover, her father, who wanted to be present as her counsel, was indisposed and she did not wish to go to the investigation without him. However, she sent a written Explanation dated November 22, 1978, denying the charge of misplacing company records. She further stated:

"The actual tour of duty of the second shift Toll Tellers start at 6:30 A.M. daily. Those assigned at the interchanges are transported to their respective stations by personnel bus service which is supposed to leave earlier than 6:30 A.M. so that at the time the second shift Toll Tellers assigned at Nichols start issuing toll tickets, the Toll Tellers assigned at the interchange exits can receive them. However, the service bus always leave the Nichols Compound at 7:00 A.M., more or less, so that the second shift Toll Tellers at the interchange exits could not receive the toll tickets issued early at Nichols before they reach their stations.

"Last November 6, 1978, I was assigned at Sucat Interchange 2 Exit. Upon my arrival there, I saw toll tickets scattered at the exit and also inside the booth. There were cards from the first to the third shifts and I could not manage to pick them up due to heavy flow of traffic at the time. Because I was alone at the exit, motorists opened the other exit lane and just threw their cards as they exit. The reliever was then busy, together with the security guard, at the entry. As usual, I gathered all the toll ticket cards I received that day, together with some belonging to the first and third shifts which I retrieved, and I left them all at the booth when I left the place at the end of my tour of duty. It's only lately that we were required to turn over our cards to the collection supervisor.

"Who could have taken some of those cards from the booth which were later found with Mrs. Periquet? As I have explained earlier, I never saw or met Mrs. Periquet that day or any day thereafter. I never gave her those cards. And I vehemently DENY your charge that I lost or misplaced company properties (records) simply because those cards were allegedly found in the possession of Mrs. Periquet. That accusation is purely a product of your imagination and maliciously intended to cast aspersion to blemish my integrity, honor, and reputation. Besides, if those toll ticket cards are company records at all why were they left merely at the booths before, later [to be] thrown away or burned by the janitors?" (p. 136, Rollo.)

On November 23, 1978, the Administrative Officer sent her another memorandum (Annex D-3, p. 134, Rollo) requiring her to explain within 48 hours why no administrative/disciplinary actions may be taken against her for the following additional violations:

"1.1

Willfully refusing, without valid reason, to comply with or obey official orders or specific instructions given by superior authority, an act constituting violation of Section 10, a-1 of the CDCP Code on Employee Discipline.

"1.2

Refusal to give testimony in an investigation, a violation of the Code of Discipline dated Sept. 22, 1976 and which has been made a part of the current Collective Bargaining Agreement." (p. 134, Rollo.)

In her Explanation dated November 24, 1978 (Annex D-3-a), she pointed out that she had already submitted two (2) explanations, and that she did not willfully refuse without valid reason to appear at the hearing:

"x x x. It is stressed that I was acting on the advice of my counsel that I should not appear at said hearing without the assistance of a lawyer and that he was not available to represent me on that scheduled date and time. I did not therefore willfully refuse, without valid reason, to comply or obey your said directive. Because of your series of harassing unfounded charges against me, I feel the need of being represented at the hearing by my counsel to protect my rights. I failed to appear because my lawyer gave notice that he was not available at said hearing, not because I refuse to give testimony in an investigation, nor do I refuse to comply with or obey your order. Besides, your directive did not require me to appear to testify for or against Mrs. Periquet in the investigation of her case. You merely requested me to appear to 'shed light' on her case, hence my failure to appear thereat cannot be considered a 'refusal to give testimony in an investigation.'" (p. 134-A, Rollo.)

On November 27, 1978, she received from the company a notice of termination effective December 15, 1978 for the following causes:

"1.

Willfully refusing, without valid reason, to comply with or obey official orders or specific instructions of superior authority in violation of Sec. 10, a-1 of the CDCP Code on Employee Discipline.

"2.

Refusal to give testimony in an investigation in violation of Sec. 3, Par. 10 of the Code of Discipline as embodied in the current CBA.

"3.

Act of negligence or carelessness committed during working time or on company premises resulting in loss or prejudice to company interest in violation of Sec. 5, b-7 & b-13 of the CDCP Code on Employee Discipline.

"4.

Subject to the submission of Clearance Certificate to the company." (p. 133, Rollo.)

On the same date, the company filed with the NLRC a "REQUEST FOR CLEARANCE/REPORT OF TERMINATION" of the petitioner-employee (Annex D-2, p. 131, Rollo).

On December 15, 1978, petitioner filed an opposition to the request for clearance to terminate her employment. She denied the charges against her and accused the company of taking unfair and arbitrary actions against her. She asked to be reinstated to her position immediately (Annex C-1, pp. 129-130, Rollo).

On December 22, 1978, she filed in the Ministry of Labor a complaint for unjust termination and unfair labor practice against CDCP (Annex D, pp. 124-128, Rollo).

On September 18, 1980, Labor Arbiter Miguel P. Soriano, Jr. rendered a decision finding that she was unlawfully dismissed "in the absence of just and sufficient causes" (Annex A, p. 21, Rollo) or, for "flimsy, trumped-up or fabricated charges" arising from the toll tickets anomaly involving Corazon Periquet who was later absolved as the NLRC was convinced that she was the victim of a frame-up. The Labor Arbiter noted that Periquet never mentioned the petitioner as the source of the toll cards found in her possession. He opined that the charge that petitioner willfully refused to obey official orders was "unwarranted." Accordingly, he denied the company's application for clearance to terminate her employment and, instead, ordered it to reinstate her "to her present position with full backwages from termination up to actual reinstatement, computed at P672.50 per month, and without loss of seniority rights and other benefits" (Annex B, pp. 20-23, Rollo).

Upon appeal by CDCP, the NLRC, Third Division, on January 17, 1986, set aside the Labor Arbiter's decision and granted CDCP clearance to terminate the petitioner's employment. The NLRC found that petitioner was "the origin of the confiscated toll cards with undetached stubs" as proven by the following circumstances:

"1.

Complainant was the Exit Toll Teller assigned at the Sucat Booth No. 2, South Luzon Expressway on 6 November 1978 from 6:30 a.m. to 2:30 p.m.;

"2.

Exit Booth No. 2 was the only exit point available to all motorists bound for Sucat coming from the Nichols Toll Terminal;

"3.

The daily time sheet of complainant attests that she was on duty from 6:30 a.m. to 2:30 p.m. on 6 November 1978;

"4.

The questioned toll cards were issued by the Entry Toll Tellers stationed at the Nichols Toll Terminal on 6 November 1978 and whose tour of duty was from 6:30 a.m. to 2:30 p.m. on this date; and

"5.

The daily time sheets of the Entry Toll Tellers bore this fact." (p. 18, Annex A, p. 14, Rollo.)

It found her "grossly negligent in the discharge of her duties" which was a valid cause for her dismissal.

The petitioner filed a petition for review in this Court.

Directed to comment on the petition, the Office of the Solicitor General, as counsel for the NLRC, took up the cudgels for the petitioner. It noted that the petitioner's explanations showed that her reasons for not attending the investigation set by Florante de Guzman were "not without merit," and, if the respondent CDCP had only given her ample time and opportunity to defend herself, the "railroading of petitioner's dismissal could have been avoided" (p. 253, Rollo). The charge of conspiring with Periquet to defraud the company by reissuing used toll

tickets received by her on November 6, 1978 was disproved by the fact that the toll tickets all bear the date stamped thereon: November 9, 1978, not November 6, 1978. The Solicitor General observed:

"x x x. Verily, therefore, said toll tickets could not have possibly been received by petitioner from motorists at the Sucat Exit Toll Gate because she was assigned thereto on November 6, 1978, and not on November 9, 1978. To insist that they were issued on November 6, 1978 with the date November 9, 1978 plainly stamped thereon is even more anomalous than the anomaly imputed to petitioner." (p. 255, Rollo.)

Finally, the Solicitor General argued that the acquittal of Periquet of the charge of possessing used toll cards in NLRC Case No. AB-2365-79, on the ground that the cards were "planted" in her handbag, is "proof positive that no conspiracy between Periquet and the petitioner transpired" (p. 257, Rollo). He opined that:

"x x x. Under these circumstances, it is highly absurd [sic.] and the height of injustice that Periquet, the main suspect in the alleged syndicated reissuance of toll cards, was exonerated whereas petitioner, against whom no proof was presented would be held guilty." (p. 257, Rollo.)

However, in its Reply to the Solicitor General's Comments, CDCP explained that the date "Nov. 9, 1978" on the toll cards came about because:

"x x x. The tickets issued to motorists were not stamped or dated at the ENTRY BOOTH where the same were issued. These tickets issued at the entry booth were stamped at the exit. Should the teller at the Exit intend to reissue the same tickets to motorists, all she has to do is not to stamp or validate the tickets at the Exit when presented by motorists. This explains the stubs of the reissued tickets which were not detached and were not validated by the Exit Teller (Jaballas) when she received the same on November 6, 1978. The stamp date of November 9, 1978 will only show that these tickets were reissued on that date, November 9, 1978, but found inside the bag of Corazon Periquet on November 17, 1978, by Mr. Laurina." (p. 280, Rollo.)

After deliberating on the arguments and issues raised in the pleadings of both parties and considering the petitioner's Explanations (not contradicted by any witness for the Company) that, generally, the employees in the 6:30 to 2:30 P.M. shift are dropped by the company bus at their assigned booths half an hour late, or at seven o'clock in the morning; that oftentimes motorists, in their hurry to drive off, simply toss their toll cards into the exit toll booth without bothering to detach the receipt-stub therefrom; and that as a matter of procedure, used toll cards were not collected by the tellers but left in the booths to be gathered and burned by the janitor and security guards, it may not be said with 100% certainty that the petitioner received the toll cards in question and neglected to detach the stubs therefrom. The toll cards might have come in before the petitioner arrived at the booth and while it was still being manned by the teller of the immediately preceding shift. Petitioner's statement that toll cards from three (3) previous shifts were strewn on the floor of the booth and that she left them there for the janitors and security guards to sweep out and burn, was not disputed by the company. If true, then the source of the used toll cards (Exhs. I to I-11) was not necessarily the petitioner. It could have been the teller of the previous shift, or the janitor, or the security guards, or the supervisors who had access to the booths.

As the toll cards were stamped with the date "Nov. 9, 1978" they could not have come from the petitioner for on that date she was assigned at the Alabang 4 Exit Booth. Having been used and stamped with the date of issue, it is doubtful if the toll cards could be of any further use to Corazon Periquet in whose handbag they were found on November 17, 1978 and who vehemently insisted that they were planted there by the supervisors as part of their scheme to ease out the old toll tellers and replace them with new ones.

We, therefore, find that the decision of the Labor Arbiter was correct, and that the NLRC gravely abused its discretion in setting it aside and in granting CDCP clearance to dismiss the petitioner. Petitioner is entitled to be reinstated to her former position at CDCP, now PNCC, with full backwages from date of termination (December

15, 1978), computed at P672.50 per month, and without loss of seniority rights and other benefits. However, her back salaries shall be limited to a period of three (3) years as fixed by this Court in earlier similar cases (People's Industrial & Commercial Employees & Workers Organization [FFW] vs. People's Industrial & Commercial Corporation, 112 SCRA 440; Lepanto Consolidated Mining Co. vs. Encarnacion, 136 SCRA 256; Mercury Drug Co., Inc. vs. Court of Industrial Relations, 56 SCRA 694).

WHEREFORE, the decision dated September 18, 1980 of the National Labor Relations Commission is hereby set aside. The private respondent Construction Development Corporation of the Philippines, now the Philippine National Construction Company, is ordered to reinstate the petitioner, Divina Jaballas, to her former position in the company with full backwages beginning December 15, 1978, for a period of three (3) years therefrom. Costs against the private respondent.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ., concur.

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