

NEGROS NAVIGATION CO., INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COM-MISSION AND FELIPE BUYCO, RESPONDENTS.*G.R. No. 78207. December 06, 1988*

Ponente: PARAS, J.

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It all started in the morning of December 31, 1984, when a group of 48 persons headed by Reverend Benjamin Amar of the Sibalon Fundamental Baptist Church boarded the M/V Princess of Negros which was then bound for Bacolod City. M/V Princess of Negros is one of the passenger-cargo vessels, owned and operated by petitioner Negros Navigation, plying the Iloilo City-Bacolod City route. Among the petitioner's crew members employed in the vessel M/V Princess were Felipe Buyco, Felipe Baluarte and Rodolfo Espina as Purser, Vessel Checker and Watchman, respectively.

Since the vessel was scheduled to leave port that same afternoon, Reverend Amar asked permission from Espina if group could have their luggage brought aboard said vessel. Unable to decide by himself, Espina introduced to the group Felipe Baluarte. Baluarte then gave Reverend Amar's group permission to have their luggages brought aboard provided that they look after them themselves. He further told the group that they could buy their tickets on board.

The M/V Princess left port as scheduled. Soon thereafter, as the vessel's complement went about collecting their passenger tickets, an employee dressed in white uniform (who was later identified as Felipe Buyco) approached Reverend Amar for their tickets. The latter informed Buyco that they had none and that there were 48 of them. Buyco then said "Ah, those 48." (COMMENT, Solicitor General, p. 2) Buyco then left them. Subsequently, Espina passed by and Reverend Amar asked the former for their tickets but were told to wait awhile.

About ten (10) minutes later, Mr. Espina signalled to Reverend Amar and so the latter approached the former near the entrance of the engine room. Espina then handed Reverend Amar what appeared to be 48 "good for passage" tickets at the price of P28.20 each or the total sum of P1,353.60.

Convinced that there was an irregularity in the transaction, Reverend Amar decided to report the matter to the office of the petitioner. The office however was already closed that day. Reverend Amar left for Kabankalan, Negros Occidental where he later learned that the tickets issued to him were passenger coupons which were "not good for passage."

Bothered by his conscience, Reverend Amar reported the matter to Mr. Manuel Villa, petitioner's Iloilo Branch Manager where the former's affidavit was taken and an investigation was conducted on the matter. During the investigation, Espina admitted his participation in the matter as well as those of Baluarte and Buyco. It turned out that the proceeds were divided among Espina, Baluarte and Buyco. Petitioner Negros Navigation terminated the services of the three.

Thereafter, Buyco, Baluarte and Espina filed a case for illegal dismissal against petitioner Negros Navigation,

namely, NLRC Case No. RAB-VI-0153-85 (Felipe Baluarte vs. Negros Navigation Co., Inc.); NLRC Case No. RAB-VI-0164-85 (Felipe Buyco vs. Negros Navigation Co., Inc.), and NLRC Case No. RAB-VI-0183-85 (Rodolfo Espina vs. Negros Navigation Co., Inc.).

On December 12, 1985, the Executive Labor Arbiter dismissed for lack of merit Rodolfo Espina's complaint for illegal dismissal but ordered Negros Navigation Co., Inc. to pay complainants Felipe Buyco and Felipe Baluarte separation pay in lieu of reinstatement in the amount equivalent to one half month basic salary for every year of service. In his decision, the Labor Arbiter found:

“As gleaned from the affidavit of Benjamin Amar, it is apparent that the person who played a very important role in the anomaly is Rodolfo Espina. He was the one to whom Amar delivered the money to pay for the tickets at the rate of P28.20 a piece for the fare of 48 passengers. He was also the person who gave to Amar the 48 passenger coupons which were not valid for passage (Annexes "14" and "15"). The participation of Felipe Baluarte and Felipe Buyco appears to be incidental, yet we could not completely rule out the possibility of their involvement. Although Buyco and Baluarte were implicated by Espina, the former denied the same.

“From the evidence adduced, we believe that there indeed is a just cause for the dismissal of Rodolfo Espina on the ground of willful breach of the trust reposed in him by his employer (Article 283, Labor Code). As for Felipe Baluarte and Felipe Buyco, there is no dispute that they occupy positions of trust and confidence. Because of having been implicated by Espina, their employer now doubts their integrity. It is therefore not advisable to have them reinstated due to this strained relationship. We would rather consider them dismissed from the service but upon payment of separation pay in lieu of reinstatement to tide them over until they land another job.” (Decision of Executive Labor Arbiter, Annex “B”, pp. 11-12, Rollo)

Petitioner Negros Navigation and Felipe Buyco appealed the December 12 decision while Baluarte and Espina did not interpose any appeal. On March 23, 1987, the NLRC rendered the decision appealed from with the following dispositive part:

“WHEREFORE, the decision appealed from is accordingly modified by ordering the reinstatement of complainant Felipe Buyco to his former position without loss of seniority rights and other related benefits and with full backwages. All other dispositions stand.” (Decision of NLRC, Annex “A” p. 4)

Hence, this petition for review on certiorari of the NLRC decision.

Petitioner submits the following assignments of error allegedly committed by respondent National Labor Relations Commission, to wit:

"I

IN ORDERING THE REINSTATEMENT OF RESPONDENT BUYCO, THE NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AND IN BLATANT VIOLATION OF THE APPLICABLE DECISIONS OF THE SUPREME COURT. OTHERWISE STATED, IT COMMITTED AN ERROR OF LAW CONSISTING OF INCORRECT APPLICATION OF THE LAW TO THE FACTS.” (Petition, pp. 5-6, Rollo)

"II

THE NLRC GRAVELY ABUSED ITS DISCRETION IN ORDERING REINSTATEMENT WITH FULL BACKWAGES DESPITE ITS CONCLUSION THAT RESPONDENT BUYCO HAD PARTICIPATED IN THE ANOMALY, ALTHOUGH IT TERMS HIS PARTICIPATION AS "ONLY INCIDENTAL.” (Petition, p. 16, Rollo)

On the other hand, the Solicitor General prays that this Court modify the NLRC's March 23, 1987 decision by setting aside that portion thereof ordering the reinstatement of Felipe Buyco and instead ordering Buyco's

dismissal subject to payment of his separation pay. (Comment, p. 9, Rollo)

We uphold the Solicitor General's recommendation.

The Solicitor General correctly pointed out that Buyco's and Baluarte's participation in the anomalous transaction was not merely incidental as found by the Labor Arbiter in his decision which was adopted by respondent NLRC. The Solicitor General reasons out that since Buyco was the purser of the M/V Princess of Negros, he had custody of the passenger tickets as well as the passenger coupons. Such passenger coupons could have come only from one person - the purser. "There existed therefore, a fiduciary relationship between petitioner and Buyco. Buyco owed petitioners' utmost fidelity." (Comment, p. 8, Rollo)

In the case of *Riker v. Ople*, G.R. 50492, October 27, 1987, We held that an employer cannot be compelled to continue in employment, an employee guilty of acts inimical to the interests of the employer and justifying loss of confidence in him. But while it is the management's prerogative to dismiss or lay off an employee, the same must be done without abuse of discretion, for what is at stake is not only the employee's position but also his means of livelihood. (*International Harvester v. Macleod*, G.R. 73287, May 18, 1987)

It is reversible error on the part of respondent NLRC to order the reinstatement of Buyco especially when viewed from the fact that the fraudulent act complained of, which precipitated Buyco's termination, was committed in relation to his employment - that is - Buyco could not have issued these "passenger coupons" in lieu of "good for passage" tickets were it not for the fact that he had access to and custody of said items because of his position as the M/V Princess of Negros Purser. (Comment, pp. 8-9, Rollo)

While it is true that in *PLDT Co. vs. NLRC & Marilyn Abucay*, G.R. No. 80609, August 23, 1988, the Court ruled that in case an employee is dismissed on account of dishonesty, he is entitled neither to reinstatement nor to separation pay, still in the instant case, the petitioner states in its prayer "in the alternative, as a measure of compassionate justice, that the decision of the Executive Labor Arbiter granting respondent Buyco separation pay be revived," We hereby grant said separation pay.

WHEREFORE, premises considered, the petition is hereby GRANTED and the ruling of the respondent National Labor Relations Commission is hereby MODIFIED, by setting aside that portion thereof ordering the reinstatement of Felipe Buyco, and ordering that Buyco be dismissed subject to payment of his separation pay, equivalent to one-half month per year of service, considering his 9-year length of service.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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