

BATANGAS LAGUNA TAYABAS BUS COMPANY, PETITIONER, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSIONS, NATIONAL FEDERATION OF LABOR UNIONS (NAFLU) AND ARNEL A. SAMONTE, RESPON...*G.R. No. 94429. May 29, 1992*

Ponente: PARAS, J.

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This is a petition for the annulment of two (2) resolutions, (1) promulgated on February 19, 1990, affirming the Labor Arbiter's decision dated September 20, 1988 issued in NLRC Case No. 2-1949-88 (National Federation of Labor Unions (NAFLU) and Arnel Samonte, Complainants versus Batangas Laguna Tayabas Bus Company): and (2) promulgated on March 30, 1990, denying respondent's motion for reconsideration, both issued by the National Labor Relations Commission in SRB-IV-2-1949-88 (National Federation of Labor Union (NAFLU) and Arnold A. Samonte. Complainants-Appellees versus Batangas Laguna Tayabas Bus Company, Respondent-Appellant), for having been rendered with grave abuse of discretion amounting to absence or excess of jurisdiction.

The antecedent facts of the case are as follows: –

On June 16, 1981 (p. 24, rollo), private respondent Arnel B. Samonte, was hired as one of the regular drivers of petitioner bus company. Seven (7) years thereafter, on February 24, 1988, he figured in an incident (which incidentally led to his dismissal) while driving Bus BL-425 in its Pasay City/Batangas/Pier trip. Along the way, particularly in Tanauan, Batangas, bus inspector Renante Sandoval got aboard to conduct the routinary ticket inspection. A little later, another inspector, named Danilo Manalo signaled his bus to stop but he flashed his headlights to indicate that an inspector was already aboard, yet still slowed down to let said inspector get on the bus. Immediately however, inspector Danilo Manalo waved for private respondent to go on with his driving.

In the bus, there were sixty-five (65) passengers from which the bus conductor named Graciano Sibulo collected fares and issued corresponding tickets. Private respondent learned later on that the bus conductor would not give the ticket stubs for inspection to inspector Renante Sandoval and the latter had to make a head count of the passengers and was forced to collect the original tickets from the sixty-five passengers to know how much amount the conductor was able to collect. When the duplicate copies of the tickets were finally surrendered by the conductor, it was found out that they were not punched, purportedly to facilitate future punching for lesser and shorter distances.

The conductor and inspector got into an argument and the conductor requested private respondent to convince the inspector not to report anymore the misdemeanor he committed. Private respondent tried to make the two settle the matter amicably for two (2) reasons: - first, they are both members of a union called Tinig at Lakas ng Manggagawa sa BLTB (p. 42. rollo); and second, the inspector is not totally blameless, having been seen by private respondent about to receive money from the conductor but who immediately returned the same when he (private respondent) laughed (pp. 32 and 37, rollo). The inspector did not disembark at once but accompanied the

bus to the terminal purportedly in line with the company's policy that "an inspector who discovers an irregularity, and as a matter of course conducts and accompanies the bus to the terminal especially where the violation is flagrant" (p. 96, rollo).

On January 9, 1988 or two days before the investigation that was conducted on January 11, 1988 - private respondent was dismissed on the accusations that he was in conspiracy with the bus conductor, Graciano Sibulo, in cheating petitioner bus company and in detaining or "kidnaping" inspector Renante Sandoval inside the bus itself.

On February 24, 1988 private respondent filed with the Labor Arbiter, DOLE, a complaint for illegal dismissal against petitioner bus company with prayer for backwages and reinstatement, among others.

On September 30, 1988, Labor Arbiter Emilio E. Cordova, Jr., issued a decision with the following dispositive portion: –

"WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering respondent BATANGAS LAGUNA TAYABAS BUS COMPANY:

1. to reinstate complainant Arnel Samonte to his former position with full backwages and other benefits he is entitled to, from the date of his dismissal up to his actual reinstatement: computed on the basis of his last monthly salary received;
2. To pay complainant's attorney's fees equivalent to 5% of the monetary awards due to complainant.

Respondent is further ordered to pay complainant the above benefits within fifteen (15) days from receipt of this Decision thru this Office.

SO ORDERED." (pp. 44-45, Rollo)

A Motion for Reconsideration was filed by petitioner which was dismissed for lack of merit in the questioned resolution of March 30, 1990, hence this petition.

In its petition, petitioner bus company avers that the primary issue is "WHETHER OR NOT RESPONDENT SAMONTE WAS LEGALLY DISMISSED" (p. 6, petition). Then three sub-issues in resolving this primary issue are pleaded to be discussed, thus:

- 1) Whether or not the NLRC gravely abused its discretion in holding that the ground for termination should be proved by more than prima facie evidence.
- 2) Whether or not there is sufficient ground to dismiss respondent Samonte.
- 3) Whether or not respondent Samonte was accorded due process.

The two (2) first sub-issues being interrelated will be discussed together.

The defalcation that was committed by bus conductor, Graciano Sibulo, is his own wrongdoing. The alleged conspiracy between him and private respondent is unfounded and merely based on inferences, surmises and conjectures. Private respondent was at the wheels and it would be impossible for him to know and take part in whatever misdeeds the conductor was doing. Driving a public vehicle most especially where many lives are at stake needs undivided attention and concentration. Besides, there was no evidence adduced proving the meeting of the minds of the conductor and the private respondent. Private respondent went on with his own duty of driving and it was only when the conductor came to him during his argument with the inspector that private respondent learned what the conductor did.

The statements of inspector Renante Sandoval and trainee-inspector Danilo Manalo are not reliable, since during the investigation and hearing of this case in the Labor Arbiter's Office, the allegations and accusations against private respondent were adjudged to be without basis and therefore should be dismissed.

As to the accusation that private respondent flashed his headlights to several inspectors as a sign that there was an inspector aboard while driving, although there was no inspector yet inside the bus, this was aptly rebutted by private respondent, in the Solicitor General's Comment on the petition, thus: -

"Petitioner alleges that private respondent Samonte misled the inspectors of BLTB into believing that an inspector was on board the bus by flashing the bus headlights, thus enabling him to pass through Alabang, Calamba, Laguna and Santo Tomas, Batangas, without being subjected to the routinary inspection. If this is true, why is it that petitioner was only able to present the lone testimony of Inspector Manalo? What about the other inspectors who were stationed along the route from Alabang to Santo Tomas, Batangas? Why were they not presented, or otherwise their testimonies taken, to confirm that Samonte used misleading signals to avoid inspection. Even inspector Sandoval did not state in his affidavit that Samonte made similar misleading signals before reaching the bus stop at Tanauan, Batangas, where he was waiting to board the bus, and that he was only able to board because the bus had to stop to allow the passengers to get down.

'The failure of the petitioner to present the testimonies of the other inspectors who were alleged to have been similarly deceived by the signals of Samonte only proves that there is absolutely no factual basis for the conclusion that Samonte made the misleading signals to evade inspection.

'Also, doubt may be raised regarding the veracity of the testimony of inspector Manalo. Respondent Samonte in his affidavit stated:

T. Sinabi mo na si Insp. Sandoval ay sumampa sa Tanauan, Batangas, ang ibig mo bang sabihin ay nakaabot kayo ng Tanauan, Batangas, ng wala man lamang isang inspector ang nakasampa sa inyo mula Pasay hanggang sa Sto. Tomas, Batangas?

S. Mayroon pong isang Inspector akong nakita sa Makiling hindi ko lamang kakilala kung sino ito, ng aktong titigilan ko na siya ay binusinahan ko siya ngunit ang naging senyas niya sa akin ay umabante na ako, kaya dumiretso na ako (Petition, Annex "J", p. 2)." (pp. 91-92, Rollo)

It would also be suitable to quote from the Labor Arbiter's decision dated September 30, 1988: -

"While respondent claimed that complainant mislead the inspectors by allegedly flashing the bus headlight to indicate that an inspector was already on board, yet respondent was able to cite Inspector Danilo Manalo only who was then still on-the-job training. But even then, complainant was able to explain right away that when he saw Inspector Danilo Manalo, he stopped the bus he was then driving to give Inspector Manalo an opportunity to board the bus and do his job of inspecting. However, Inspector Manalo signaled complainant to proceed, positively implying that he is not going to inspect the conductor anymore." (p. 41, Rollo)

As to the other argument that private respondent stopped his bus and tried to convince inspector Sandoval not to report the matter to the management which is a sign of conspiracy between private respondent and conductor, the Labor Arbiter continues:

"As regards the second argument that complainant stopped his bus and tried to force Inspector Sandoval to reconsider his stand and not to report the case, even if true, is not a clear and fair indication that conspiracy existed between complainant and his conductor. Complainant's intercession is but understandable if we have to consider the fact that he is an officer of the union and the seeming protagonists (Conductor Sibulo and Inspector Sandoval) are also union members. Besides, this Arbiter could not believe the allegation of Sandoval that he was practically held captive by complainant and Conductor Sibulo. Records show that the said inspector boarded BL-425 at Tanauan, Batangas, (Km. 63) and yet he tried to alight from the bus only at

Batangas City (Km. 105)." (pp. 41-42, Rollo)

In addition, the Resolution promulgated February 19, 1990 states: –

"x x x The complainant's explanation that he tried to save the conductor because he is a responsible member of the union and that it is natural for him to help the members in any way possible can be appreciated; especially that he only supported the conductor, appealing to his sense of mercy, and did not suggest a cover-up. In fact, as such member of the union he could have likewise looked for a lesser disciplinary measure to be imposed on the conductor; but he was perhaps prevented from doing this when he found himself in hot water." (pp. 17-18, Rollo)

As an addendum, the offense with which private respondent was charged partakes of the nature of a crime and should be proved by more than ordinary prima facie evidence. (p. 3 of NLRC resolution dated February 19, 1990). Mere accusation of dishonesty will not suffice to dismiss an employee. Dishonesty charge against the employee must be substantiated by evidence (*Lamsan Trading vs. Leogardo, Jr.*, 145 SCRA 571).

It is wise to heed the thought that when the conflicting interests of labor and capital are weighed on the scales of social justice, the heavier influence of the latter must be counterbalanced by the sympathy and compassion the law must accord the underprivileged worker. This is only fair if he is to be given the opportunity - and the right - to assert and defend his cause not as a subordinate but as a peer of management, with which he can negotiate on even and equal terms. Whatever doubts may still remain regarding the rights of the parties in this case are resolved in favor of the private respondent, in line with the express mandate of the Labor Code and the principle that those with less in life should have more in law. (*Eastern Shipping Lines, Inc. vs. POEA*, 166 SCRA 533).

It was also established that private respondent, in his more than seven (7) years of service with petitioner bus company has never been reported to have committed infractions, misdemeanors, violations of company rules and regulations, or disrespect towards his superiors, and only figured in this unpleasant incident.

As to whether or not private respondent was illegally dismissed, Section 13 of Batas Blg. 130, has this to say: –

"Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just or authorized cause and without prejudice to the requirement of notice under Article 284 of this Code, the clearance to terminate employment shall no longer be necessary."

"However, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Ministry of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Ministry may suspend the effects of the termination pending resolution of the case in the event of a prima facie finding by the Ministry that the termination may cause a serious labor dispute or is in implementation of a mass lay-off."

and under the rules implementing the provision, the following sections are pertinent: –

Sec. 2. Notice of dismissal. – Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

Sec. 5. Answer and hearing. – The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample

opportunity to be heard and to defend himself with the assistance of his representative, if he so desires. (Underscoring supplied).

Sec. 6. Decision to dismiss. – The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.

Sec. 7. Right to contest dismissal. – Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission.

Quoting from *Ruffy vs. NLRC*, 182 SCRA 365: –

"As we can see, the law lays down the procedure prior to the dismissal of an employee. It need not be observed to the letter, but at least, it must be done in the natural sequence of notice, hearing and judgment.

'In the case at bar, there is no doubt that at the very outset, that is, prior to investigation, the petitioner was informed that his services had been terminated. He was made to air his side subsequently, it is true, yet the stubborn fact remains that notwithstanding such an opportunity, if an opportunity it was, he had been dismissed from the firm.

'We have held that the procedure under Batas Blg. 130 and the rules implementing it are conditions sine qua non, before dismissal may be validly effected."

By "ample opportunity" as Section 5 above provides, is meant every kind of assistance that management must accord to the employee to enable him to prepare adequately for his defense. Under the rules indeed, the worker may be provided with at representative. In this case, although the interregnum between the date or the notice of dismissal and the date of its effectivity ostensibly provided the petitioner time within which to defend himself, there really was nothing to defend, because the fact is, he had been fired. We can not countenance such a situation.

We repeat that the process set forth by the law need not be obeyed according to its letter, but rather, according to its spirit, as a due process measure. "Fire the employee, and let him explain later" is not in accord with that expedient.

Furthermore, it is imperative that We reiterate the time-honored principle in jurisprudence that the conclusions of facts of the Labor Arbiter, sufficiently supported by undisputed evidence must be given respect and much weight by appellate tribunals because the hearing officer was placed in a unique position of observing the demeanors of the witnesses and therefore more competent in judging the credibility of the contending parties. Moreover, it was shown in this case that the conclusions were reached after an exhaustive assessment and evaluation of the evidence adduced by the feuding sides. (*Tropical Hut Employees Union - CGW vs. Tropical Hut Food Market, Inc.*, 181 SCRA 173).

WHEREFORE, the petition is DISMISSED and the assailed resolutions are AFFIRMED. Costs against petitioner bus company.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

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