

**UNITRAN/BACHELOR EXPRESS, INC., ABELARDO CONCEL, BRANCH
MANAGER, UNITRAN/VALLACAR TRANSIT, INC., PETITIONERS, VS.
JOSE OLVIS, ENGRACIO RELOS, BIENVENIDO RELOS, BENONIE
ESPIRITU,...**

G.R. Nos. 76724-6. August 31, 1988

Ponente: PARAS, J.

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PARAS, J.:

This petition seeks the review and reversal of the Decision of respondent National Labor Relations Commission which affirmed on appeal the Decision of the Labor Arbiter, the disputed dispositive portion of the Arbiter's judgment reading -

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

x x x x x x x x

“3. Ordering respondent to pay complainants Engracio Relos, Pastor Cangrejo, Bienvenido Relos, Benonie Espiritu and Romeo Meneses their separation pay equivalent to one (1) month for every year of service.

x x x x x x x x

(p. 12, Decision)

on the lone issue of whether or not private respondents herein, namely Engracio Relos, Pastor Cangrejo, Bienvenido Relos, Benonie Espiritu and Romeo Meneses, who were inspectors of petitioner in its bus line plying Davao City-Mati, Davao Oriental and vice-versa until their termination on December 2, 1982 were illegally dismissed and therefore entitled to separation pay equivalent to one (1) month for every year of service because their reinstatement was no longer feasible.

The law governing the dismissal of private respondents is Batas Pambansa Blg. 130, Section 1 of Rule XIV of the rules implementing Batas Pambansa Blg. 130 provides:

“Section 1. Security of tenure and due process. No worker shall be dismissed except for a just or authorized cause provided by law and after due process.”

Under Section 5 of the same Rule, private respondents have the right to answer and be heard on the charges levelled against them.

“Sec. 5. 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.”

Petitioner claims that it terminated the services of private respondents because of dishonesty, loss of confidence and connivance with fellow inspectors in misappropriating company funds. This being the case, private respondents' dismissal was justified.

This claim of petitioner was found by the Labor Arbiter to be unsubstantiated. This finding was affirmed on appeal by respondent Commission which ruled that the evidence submitted by petitioner did not constitute concrete and competent proof of misappropriation of company funds.

In the absence of any showing that the findings of the Labor Arbiter and the NLRC are not supported by substantial evidence, such findings are conclusive with this Court. (Reyes vs. Phil. Duplicators, 109 SCRA 489)

Anent petitioner's compliance with the required notice and ample opportunity to be heard, as mandated by Batas Pambansa Blg. 130, the record shows that private respondents received their corresponding notices of dismissal on December 1, 1982 which petitioner implemented right away without giving the former a chance to answer the allegations stated therein. While the right to dismiss or lay-off an employee is management's prerogative, it must be done without abuse of discretion, for what is at stake is not only private respondents' position but also their means of livelihood. (Bachiller vs. NLRC, 98 SCRA 393)

ACCORDINGLY, We find that respondent NLRC committed no error in affirming the decision of the Labor Arbiter declaring private respondents' dismissal to be illegal and awarding them separation pay after their reinstatement was no longer possible because their respective positions had already been filled up. This petition is ordered DISMISSED and the decision appealed from is AFFIRMED.

SO ORDERED.

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

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