

SECOND DIVISION

[G.R. No. 98137, September 15, 1997]

**PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR
ARBITER ROLANDO D. GAMBITO, AND REYNATO B. AGUINALDO,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to set aside the decision of the NLRC dated October 29, 1990 and the resolution dated February 28, 1991, holding petitioner Philippine Rabbit Bus Lines, Inc. liable to private respondent Reynato B. Aguinaldo for one year backwages and for reinstatement.

The facts of the case are as follows:

Private respondent was a bus conductor of the Philippine Rabbit Bus Lines, Inc. His duty, among other things, was to issue freight and passenger tickets and to collect the corresponding payment.

On September 18, 1988, private respondent and bus driver Conrado Collado were scheduled to make a trip from Baguio City to Manila on Bus No. 575 at 10 p.m. Private respondent arrived at the terminal thirty (30) minutes before the start of the trip. He saw bundles of flowers already loaded on the bus. He inquired from the freight clerk whether the freight fare for the flowers had been paid and was told that it had been paid. Private respondent was handed a bill of lading indicating payment of the amount of P800.00. Based on the bill of lading, he issued a freight ticket.

As the bus was already full, it left Baguio City fifteen minutes ahead of schedule. When it was nearing Camp 6 at Tuba, Benguet, inspectors Jessie C. Sy and Silverio Mendoza boarded the bus and found that two passengers, one bound for Camp 5 and the other bound for Manila, had not been issued tickets. Upon the inspectors' instruction, private respondent issued tickets to the two passengers.

At the Tarlac terminal, the inspectors counted the number of bundles of flowers on the bus and found that eight bundles had not been accounted for in the bill of lading. Hence, private respondent Aguinaldo issued an additional freight ticket for the extra baggage and paid the freight fare from his own money.

Because of these incidents, private respondent was told that he was being placed under preventive suspension on that day. On September 21, 1988, a memorandum was issued to him by the company, confirming his suspension and stating the grounds for his suspension and requiring him to report for investigation within three days.

On September 26, 1988, Ricardo J. Castañeda, Jr., operations manager, conducted an investigation during which private respondent admitted the violations alleged in the memorandum.

After the lapse of 30 days, Aguinaldo reported for work, but he was refused admission into the company compound. Hence on April 26, 1989, he filed a complaint for illegal dismissal. On May 3, 1989, a notice of termination dated April 11, 1989 was served on him by petitioner.^[1]

On December 20, 1989, the Labor Arbiter rendered a decision, finding petitioner guilty of dismissing private respondent without just cause and denying his right to due process. The dispositive portion of the decision states: ^[2]

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent to reinstate the complainant to his former position as bus conductor and to pay his backwages from September 18, 1988 up to his actual reinstatement. In case reinstatement is no longer possible, respondent is ordered to pay his separation pay computed at one month salary including other benefits/commissions, for every year of service.

Thus, respondent should pay the complainant the following:

BACKWAGES

Period covered: September 18, 1988 up to

November 30, 1989 or an

equivalent of 382 working days.

I. Working Days Covered 382 days

II. Multiplied by the basic rate of..... x P77.35

III. Equals backwages due..... P29,547.00

NOTE: Computation of backwages does not include

backwages from November 30, 1989 up to

actual reinstatement by respondent.

SEPARATION PAY IN CASE

REINSTATEMENT IS NOT POSSIBLE

I. Salary per day P 77.35 per day

II. Multiplied by working days per month..... x 26 days
III. Equals salary per month..... P 2,011.00
IV. Multiplied by years of service x 21 years
V. Equals separation pay of..... P42,231.00

NOTE: A fraction of at least six (6) months

considered as one whole year (Section

9, Rule I, Book VI, Implementing Rules

and Regulations of the Labor Code).

S U M M A R Y

A.	
Backwages	P29,547.00
B.	
Separation	42,231.00
Pay	
TOTAL	P71,778.00

Respondent is likewise ordered to pay P5,000.00 as attorney's fees to complainant's counsel whose services he was forced to engage to assist him in this case.

Petitioner appealed to the NLRC which, on October 29, 1990, affirmed the Labor Arbiter's decision with the modification that the alternative reliefs of separation pay and attorney's fees were deleted and, instead, petitioner's reinstatement with backwages for one year was ordered. [3] Petitioner moved for reconsideration, but its motion was denied on February 28, 1991. [4] Hence this petition.

Petitioner contends that it complied with the twin requirements of showing just cause and due process before dismissing private respondent. With respect to the requirement of due process, it claims that private respondent was notified of the charges against him by means of a memorandum dated September 20, 1988, and that he was duly heard during a formal investigation held on September 26, 1988. Petitioner alleges that private respondent was dismissed on May 3, 1989, upon the service on him of a termination notice.

With respect to the finding of the NLRC and the Labor Arbiter that dismissal was a harsh penalty and that imposition of the penalty was unreasonable and baseless, petitioner points to Aguinaldo's record of violations of company rules for which he was reprimanded and warned, thus justifying a finding that petitioner was guilty of (1) serious misconduct or willful disobedience; (2) gross and habitual neglect of duties; and (3) willful breach of trust. [5]

It is argued that Aguinaldo's error in relying on the freight clerk for information as to the number of bundles of flowers loaded on the bus on September 18, 1988 should

not be considered an occupational risk, as the NLRC held, because, as conductor, his duty was to count the bundles. Petitioner claims that the evidence shows that Aguinaldo was incorrigible and justifies its loss of confidence in him. Contending that because its income depends primarily on the efficient, effective, and honest-to-goodness collection of transportation fares, petitioner asserts that private respondent's habitual failure to do his duties cannot be taken lightly.

First. Petitioner's claim that the memorandum given on September 21, 1988 to private respondent was sufficient compliance with the following requirements of law and regulations:

Labor Code, Art. 277(b):

(b) . . . The employee 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. . .

Omnibus Implementing Rules, Book V, Rule XIV:

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 representatives, if he so desires.

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

The memorandum issued to private respondent, while stating the violations charged against him, did not say that the violations were being charged as grounds for dismissal but rather for preventive suspension. Thus the memorandum reads:^[6]

Date: Sept. 20, 1988

Memo to

CONDUCTOR REYNATO AGUINALDO

Bus No. 575 - Baguio - Mla. Line

1. In connection with the reported violation/s of company rules and regulations you have committed (sic) are herein below enumerated, you are hereby paced (sic) under preventive suspension and directed to report to TRAFFIC DEPT. at the Main Office during office hours within three (3) days from receipt hereof, wherein you will be given opportunity to explain your side in formal investigation.