

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 06819, February 17, 2015 ]**

**PACIWU-TUCP, LEO OMISON AND LORENZO QUINIQUITO,  
PETITIONERS, VS. VALLACAR TRANSIT, INC., RESPONDENT.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

#### **THE CASE**

A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person, with due regard for all the circumstances.<sup>[1]</sup>

For review under Rule 43 of the Rules of Court is the Decision<sup>[2]</sup> dated April 27, 2012 of the Office of the Voluntary Arbitrator in Case No. AC-777-RB6-01-01-03-2012 which upheld the dismissal of the herein petitioners from their employment. In its *fallo*, the Voluntary Arbitrator declared, thus:

“WHEREFORE, IN VIEW OF THE FOREGOING PREMISES, judgment is hereby rendered:

1. Declaring that the dismissal of Private Complainants Leo Omison and Lorenzo Quiniquito is based on the law and the Company Rules and Regulations, and therefore not illegal;
2. Declaring that Private Complainants Leo Omison and Lorenzo Quiniquito are not entitled to reinstatement, back wages or monetary benefit under the CBA or Company rules and policies;
3. Directing the Respondent to give Private Complainant Leo Omison financial assistance equivalent to two (2) months of his average monthly wages during the last twelve (12) months of his employment with VTI.

SO ORDERED.”

#### **THE ANTECEDENT**

Petitioner Philippine Agricultural, Commercial and Industrial Workers Union-Trade Union Congress of the Philippines (PACIWU-TUCP) is a legitimate labor federation, the sole and exclusive collective bargaining representative of all the regular employees of the respondent company. It has a newly signed Collective Bargaining Agreement with the respondent which is valid for five (5) years, from 2012-2017, but had not been filed yet with the Department of Labor and Employment.<sup>[3]</sup>

Respondent Vallacar Transit, Inc. (VTI) is a corporation duly organized and existing under the laws of the Republic of the Philippines as a public utility operator engaged in the transportation of passengers and goods in the different areas of the Philippines, most particularly in Visayas region. As a common carrier, VTI has adopted rules and regulations designed to govern the conduct of its employees in the performance of their duties, as well as to safeguard its passengers and cargo to prevent any loss of life or injury and damage to property in the course of its operation.<sup>[4]</sup>

Both individual petitioners Leo Omison and Lorenzo Quiniquito were employed as regular bus drivers of respondent VTI on separate dates – Omison on May 25, 2004 and Quiniquito on April 19, 2002. They worked for the respondent company until their dismissal on January 20, 2012 and January 4, 2012 respectively. During their employment with VTI, both petitioners were bona-fide members of PACIWU-TUCP.

On January 9, 2012, at about 2:30 in the afternoon, Omison's driven bus sideswiped the road railings along Nabulay, Sipalay City, Negros Occidental that resulted in damage to properties including Omison's driven bus. Before the aforementioned incident, petitioner posited that the bus suffered an engine trouble causing the bus to stop at the middle of the highway. After securing the bus, Omison went home which happened to be near at the site of the incident. Thinking that it would take sometime before the bus could be fixed since the spare parts had to be ordered from Bacolod City, he stayed in his house and took three (3) bottles of beer to pass the time for waiting. After he was informed that his bus was already repaired, he drove it but allegedly the steering wheel got stuck and so he lost control of the bus and sideswiped the railing of the highway.<sup>[5]</sup>

Insofar as the case of Quiniquito is concerned, petitioner alleged that around 12:30 pm of November 10, 2011, while Quiniquito was driving his bus unit to Bacolod City, he collided with a tricycle coming from the opposite direction. The tricycle was dragged about 100 meters before the bus completely stopped which resulted to the death of the passenger and driver of the tricycle.<sup>[6]</sup>

On the other side of the spectrum, respondent VTI averred that despite proper orientation, individual petitioners Omison and Quiniquito continued and repeatedly committed infractions against the provisions of the company rules and regulations. Accordingly, Omison's reckless driving had led to injuries, death and damage to properties. On April 6, 2005, he hit a 6-year old child pedestrian who died instantly. On December 5, 2009, the bus he was driving collided with another vehicle, resulting in injuries and damage to properties. Then, on May 17, 2011, his bus sideswiped a motorcycle, resulting in injuries and damage to properties.<sup>[7]</sup>

Respondent pointed out that the accident on January 9, 2012 where Leo Omison sideswiped the road railings was his fourth (4th) time involvement in a vehicular accident. He was under the influence of liquor at the time of the accident as admitted by his conductor, Archie Gustilo. Attached to respondent VTI's position paper is a document<sup>[8]</sup> listing down a total of eighteen (18) offenses committed by Omison.

Like his co-driver, Quiniquito likewise committed eighteen (18) violations for which he was repeatedly charged including the latest incident as aforestated. On

November 1, 2003, he hit the rear portion of an Isuzu pick-up which was running ahead of him. He bumped another vehicle on November 15, 2007. Then on August 8, 2008, a passenger who was disembarking from Quiniquito's bus fell down and suffered injuries because he moved the bus before the passenger had completely disembarked and on April 12, 2011, he bumped a bus which was parked, causing damage to property.<sup>[9]</sup>

Subsequent to the aforesaid incidents, Notices of Preventive Suspensions and Notices to Investigate were issued to petitioners Omison and Quiniquito informing of the offenses charged against them. Omison was found guilty of the offense charged, vehicular accident coupled with driving under the influence of liquor and was meted the penalty of dismissal by the Department Head. Quiniquito, on the other hand, was likewise dismissed from employment since he was found guilty of reckless driving resulting to vehicular accident, damage to property and death.

Pursuant to the grievance machinery provided for in the CBA, petitioners elevated their case to the Branch Manager but nonetheless their dismissal were sustained. Then, petitioner union raised the issue of the dismissals before the National Conciliation and Mediation Board (NCMB). For failure to reach an amicable settlement, the parties agreed to have the problem solved through voluntary arbitration. Later, the case was submitted for decision after both the contending parties had submitted its position paper. The voluntary arbitrator a quo upheld the dismissal of petitioners; hence, this case.

THE CORE OF THE CONTROVERSY IS WHETHER OR NOT THE PETITIONERS WERE ILLEGALLY DISMISSED.

### **RULING OF THIS COURT**

After a conscientious view, We hold that the petition lacks merit.

In its position paper, petitioner Union posited that Omison's termination from employment on the ground of driving under the influence of liquor is illegal because the Company Rules and Regulations provide that "if the property damage and/or cost of treatment/hospitalization is more than P50,000.00 but not more than P100,000.00 – a penalty of 30 days suspension shall be imposed", thus, there is a violation of substantive due process because the penalty is excessive and not commensurate with the offense. Unperturbed, petitioner further argued that the primary cause of the incident was a mechanical defect in the steering wheel, a cause independent of his control; hence, not a sufficient ground warranting dismissal under Article 282 of the Labor Code.<sup>[10]</sup>

On Quiniquito's part, petitioner Union averred that the proximate cause of the accident on November 10, 2011 was the absence of a professional driver's license of the tricycle driver who violated RA 4136 by absolutely and totally neglecting his duty to get the required professional training and a professional driver's license before driving a motor vehicle along a public highway.<sup>[11]</sup>

We do not subscribe to petitioner's postulates.

Article 1733 of the New Civil Code provides that common carriers from the nature of their business and for reasons of public policy, are bound to observe extraordinary