

## SECOND DIVISION

[ G.R. No. 215568, August 03, 2015 ]

**RICHARD N. RIVERA, PETITIONER, VS. GENESIS TRANSPORT SERVICE, INC. AND RIZA A. MOISES, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

This resolves a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure praying that the July 8, 2014 Decision<sup>[1]</sup> and the November 20, 2014 Resolution<sup>[2]</sup> of the Court of Appeals Fifth Division in CA-G.R. SP No. 130801 be reversed and set aside, and that new judgment be entered finding petitioner Richard N. Rivera to have been illegally dismissed and awarding to him his monetary claims.

The assailed July 8, 2014 Decision of the Court of Appeals dismissed the Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure filed by Richard N. Rivera (Rivera) and affirmed the February 28, 2013<sup>[3]</sup> and April 30, 2013<sup>[4]</sup> Resolutions of the National Labor Relations Commission Second Division. These Resolutions sustained the ruling of Labor Arbiter Gaudencio P. Demaisip, Jr. who, in his June 26, 2012 Decision,<sup>[5]</sup> dismissed Rivera's Complaint<sup>[6]</sup> for illegal dismissal.

The assailed November 20, 2014 Resolution of the Court of Appeals denied Rivera's Motion for Reconsideration.

Rivera was employed by respondent Genesis Transport Service, Inc. (Genesis) beginning June 2002 as a bus conductor, assigned to the Cubao-Baler, Aurora route. As part of the requisites for his employment, he was required to post a cash bond of P6,000.00. Respondent Riza A. Moises is Genesis' President and General Manager.<sup>[7]</sup>

In his Position Paper before the Labor Arbiter, Rivera acknowledged that he was dismissed by Genesis on account of a discrepancy in the amount he declared on bus ticket receipts. He alleged that on June 10, 2010, he received a Memorandum<sup>[8]</sup> giving him twenty-four (24) hours to explain why he should not be sanctioned for reporting and remitting the amount of P198.00 instead of the admittedly correct amount of P394.00 worth of bus ticket receipts. He responded that it was an honest mistake, which he was unable to correct "because the bus encountered mechanical problems."<sup>[9]</sup>

The discrepancy between the reported and remitted amount as against the correct amount was detailed in the "Irregularity Report" prepared by Genesis' Inspector, Arnel Villaseran (Villaseran).<sup>[10]</sup>

According to Villaseran, on May 25, 2010, he conducted a "man to man" inspection

on the tickets held by the passengers on board Bus No. 8286 who had transferred from Bus No. 1820 in San Fernando, Pampanga. (Bus No. 1820 broke down.) In the course of his inspection, he noticed that Ticket No. 723374 VA had a written corrected amount of P394.00. However, the amount marked by perforations made on the ticket, which was the amount originally indicated by the bus conductor, was only P198.00. Upon inquiring with the passenger holding the ticket, Villaseran found out that the passenger paid P500.00 to Rivera, who gave her change in the amount of P106.00.<sup>[11]</sup>

Subsequently, Villaseran conducted verification works with the Ticket Section of Genesis' Cubao Main Office. Per his inquiries, the duplicate ticket surrendered by Rivera to Genesis indicated only the unconnected amount of P198.00. It was also found that Rivera remitted only P198.00.<sup>[12]</sup>

On July 20, 2010, Genesis served on Rivera a written notice<sup>[13]</sup> informing him that a hearing of his case was set on July 23, 2010. Despite his explanations, Rivera's services were terminated through a written notice dated July 30, 2010.<sup>[14]</sup> Contending that this termination was arbitrary and not based on just causes for terminating employment, he filed the Complaint<sup>[15]</sup> for illegal dismissal, which is subject of this Petition.<sup>[16]</sup>

For their defense, Genesis and Riza A. Moises claimed that Rivera's misdeclaration of the amount in the bus ticket receipts and failure to remit the correct amount clearly violated Genesis' policies and amounted to serious misconduct, fraud, and willful breach of trust; thereby justifying his dismissal.<sup>[17]</sup>

In a Decision<sup>[18]</sup> dated June 26, 2012, Labor Arbiter Gaudencio P. Demaisip gave credence to respondents' appreciation of the gravity of Rivera's acts of misdeclaring the amount of bus ticket receipts and failing to remit the correct amount. Thus, he dismissed Rivera's Complaint.

In a Resolution<sup>[19]</sup> dated February 28, 2013, the National Labor Relations Commission Second Division affirmed the Decision of Labor Arbiter Demaisip. In a Resolution<sup>[20]</sup> dated April 30, 2013, the National Labor Relations Commission denied Rivera's Motion for Reconsideration.

Thereafter, Rivera filed a Rule 65 Petition before the Court of Appeals. In the assailed July 8, 2014 Decision,<sup>[21]</sup> the Court of Appeals Fifth Division sustained the rulings of Labor Arbiter Demaisip and the National Labor Relations Commission. In the assailed November 20, 2014 Resolution,<sup>[22]</sup> the Court of Appeals denied Rivera's Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the issue of whether petitioner Richard N. Rivera's employment was terminated for just cause by respondent Genesis Transport, Inc.

As Riza A. Moises, Genesis' President and General Manager, has been impleaded, this court must also rule on her personal liability, should the termination of

petitioner's employment be found invalid.

## I

Our laws on labor, foremost of which is the Labor Code, are pieces of social legislation. They have been adopted pursuant to the constitutional recognition of "labor as a primary social economic force"<sup>[23]</sup> and to the constitutional mandates for the state to "protect the rights of workers and promote their welfare"<sup>[24]</sup> and for Congress to "give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, [and] reduce social, economic, and political inequalities."<sup>[25]</sup>

They are means for effecting social justice, i.e., the "humanization of laws and the equalization of social and economic forces by the State so that justice in the rational and objectively secular conception may at least be approximated."<sup>[26]</sup>

Article XIII, Section 3 of the 1987 Constitution guarantees the right of workers to security of tenure. "One's employment, profession, trade or calling is a 'property right,'"<sup>[27]</sup> of which a worker may be deprived only upon compliance with due process requirements:

It is the policy of the state to assure the right of workers to "security of tenure" (Article XIII, Sec. 3 of the New Constitution, Section 9, Article II of the 1973 Constitution). The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary deprivation of his job. Article 280 of the Labor Code has construed security of tenure as meaning that "the employer shall not terminate the services of an employee except for a just cause or when authorized by" the code. Dismissal is not justified for being arbitrary where the workers were denied due process and a clear denial of due process, or constitutional right must be safeguarded against at all times.<sup>[28]</sup> (Citations omitted)

Conformably, liberal construction of Labor Code provisions in favor of workers is stipulated by Article 4 of the Labor Code:

Art. 4. Construction in favor of labor. All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

This case is quintessentially paradigmatic of the need for the law to be applied in order to ensure social justice. The resolution of this case should be guided by the constitutional command for courts to take a preferential view in favor of labor in ambitious cases.

This case revolves around an alleged discrepancy between the amounts indicated on a single ticket. For the paltry sum of P196.00 that petitioner failed to remit in his sole documented instance of apparent misconduct, petitioner's employment was terminated. He was deprived of his means of subsistence.

## II

Misconduct and breach of trust are just causes for terminating employment only when attended by such gravity as would leave the employer no other viable recourse but to cut off an employee's livelihood.

The Labor Code recognizes serious misconduct, willful breach of trust or loss of confidence, and other analogous causes as just causes for termination of employment:

Article 282. Termination by employer. An employer may terminate an employment for any of the following just causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
- (e) Other causes analogous to the foregoing.

Serious misconduct as a just cause for termination was discussed in *Yabut v. Manila Electric Co.*:<sup>[29]</sup>

Misconduct is defined as the "transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For serious misconduct to justify dismissal, the following requisites must be present: (a) *it must be serious*; (b) it must relate to the performance of the employee's duties; and (c) *it must show that the employee has become unfit to continue working for the employer.*<sup>[30]</sup> (Emphasis supplied, citation omitted)

Thus, it is not enough for an employee to be found to have engaged in improper or wrongful conduct. To justify termination of employment, misconduct must be so severe as to make it evident that no other penalty but the termination of the employee's livelihood is viable.

In *Philippine Plaza Holdings v. Episcope*,<sup>[31]</sup> we discussed the requisites for valid dismissal on account of willful breach of trust:

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 296 (c) (formerly Article 282 [c]) of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him. But in order for the said cause to be properly invoked, certain requirements must be complied with[,], namely[:]: (1) the employee concerned must be holding a position of trust and confidence and (2) there must be an act that would justify the loss of trust and confidence.<sup>[32]</sup>

Relating to the first requisite, *Philippine Plaza Holdings* clarified that two (2) classes of employees are considered to hold positions of trust:

It is noteworthy to mention that there are two classes of positions of trust: on the one hand, there are managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; *on the other hand, there are fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.*<sup>[33]</sup> (Emphasis supplied)

The position an employee holds is not the sole criterion. More important than this formalistic requirement is that loss of trust and confidence must be justified. As with misconduct as basis for terminating employment, breach of trust demands that a degree of severity attend the employee's breach of trust. In *China City Restaurant Corporation v. National Labor Relations Commission*,<sup>[34]</sup> this court emphasized the need for caution:

For loss of trust and confidence to be a valid ground for the dismissal of employees, *it must be substantial* and not arbitrary, whimsical, capricious or concocted.

Irregularities or malpractices should not be allowed to escape the scrutiny of this Court. Solicitude for the protection of the rights of the working class [is] of prime importance. Although this is not [a] license to disregard the rights of management, still the Court must be wary of the ploys of management to get rid of employees it considers as undesirable.<sup>[35]</sup> (Emphasis supplied)

### III

The social justice suppositions underlying labor laws require that the statutory grounds justifying termination of employment should not be read to justify the view that bus conductors should, in all cases, be free from any kind of error. Not every improper act should be taken to justify the termination of employment.

Concededly, bus conductors handle money. To this extent, their work may be analogous to that of tellers, cashiers, and other similarly situated rank-and-file employees who occupy positions of trust and confidence. However, even granting that the first requisite for termination of employment on account of willful breach of trust has been satisfied, we find it improper to sustain the validity of the termination of petitioner's employment.

We take judicial notice of bus conductors' everyday work. Bus conductors receive, exchange, and keep money paid by passengers by way of transportation fare. They keep track of payments and make computations down to the last centavo, literally on their feet while a bus is in transit.