

FIRST DIVISION

[G.R. No. 182114, April 05, 2010]

**GENESIS TRANSPORT SERVICE, INC. AND RELY L. JALBUNA,
PETITIONERS, VS. UNYON NG MALAYANG MANGGAGAWA NG
GENESIS TRANSPORT (UMMGT), AND JUAN TAROY,
RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Respondent Juan Taroy was hired on February 2, 1992 by petitioner Genesis Transport Service, Inc. (Genesis Transport) as driver on commission basis at 9% of the gross revenue per trip.

On May 10, 2002, Taroy was, after due notice and hearing, terminated from employment after an accident on April 20, 2002 where he was deemed to have been driving recklessly.

Taroy thus filed on June 7, 2002 a complaint ^[1] for illegal dismissal and payment of service incentive leave pay, claiming that he was singled out for termination because of his union activities, other drivers who had met accidents not having been dismissed from employment.

Taroy later *amended* ^[2] his complaint to implead his herein co-respondent *Unyon ng Malayang Manggagawa ng Genesis Transport* (the union) as complainant and add as grounds of his cause of action unfair labor practice (ULP), reimbursement of illegal deductions on tollgate fees, and payment of service incentive leave pay.

Respecting the claim for refund of illegal deductions, Taroy alleged that in 1997, petitioner started deducting from his weekly earnings an amount ranging from P160 to P900 representing toll fees, without his consent and written authorization as required under Article 113 of the Labor Code and contrary to company practice; and that deductions were also taken from the bus conductor's earnings to thus result to double deduction.

Genesis Transport countered that Taroy committed several violations of company rules for which he was given warnings or disciplined accordingly; that those violations, the last of which was the April 20, 2002 incident, included poor driving skills, tardiness, gambling inside the premises, use of *shabu*, smoking while driving, insubordination and reckless driving; ^[3] and that Taroy's dismissal was on a valid cause and after affording him due process.

In support of its claim that Taroy was afforded due process, Genesis Transport cited his preventive suspension; the directive for him to explain in writing ^[4] his involvement in the April 20, 2002 accident; and the conduct of a hearing during

which the expert opinion of its Maintenance Department, as well as an independent entity - the Columbian Motors Corporation,^[5] was considered in the determination of whether the accident was due to his reckless driving or, as he contended, to faulty brakes.

Genesis Transport went on to claim that as the result of the investigation^[6] showed that the cause of the accident was Taroy's reckless driving, and his immediate past infraction of company rules on January 25, 2001 - smoking inside the bus - already merited a final warning,^[7] it validly terminated^[8] his employment.

By Decision^[9] of June 30, 2004, the Labor Arbiter found that Genesis Transport discharged the burden of proof that Taroy's dismissal was on a valid cause; that while Taroy's past infractions can not be used against him, still, they showed habituality; and that Genesis Transport complied with the twin requirements of notice and hearing, hence, Taroy's dismissal was effected with due process.

As to the charge of ULP, the Labor Arbiter ruled that the respondent union failed to prove that Taroy's dismissal was due to his union membership and/or activities.

On the claim for service incentive leave pay, the Labor Arbiter ruled that Taroy was not entitled thereto since he was a field personnel paid on commission basis.

With respect to Taroy's claim for refund, however, the Labor Arbiter ruled in his favor for if, as contended by Genesis Transport, tollgate fees form part of overhead expense, why were not expenses for fuel and maintenance also charged to overhead expense. The Labor Arbiter thus concluded that "it would appear that the tollgate fees are deducted from the gross revenues and not from the salaries of drivers and conductors, but certainly the deduction thereof diminishes the take home pay of the employees."

Thus, the Labor Arbiter disposed:

WHEREFORE, premises considered, judgment is hereby rendered dismissing instant complaint for illegal dismissal for lack of merit. However, respondents are hereby ordered to refund to complainant the underpayment/differential due him as a result of the deduction of the tollgate fees from the gross receipts. Actual computation shall be based on and limited to the evidence at hand, which is in the amount of P5,273.16. For having been compelled to litigate, respondents are hereby also ordered to pay complainant 10% attorney's fees. (underscoring supplied)

Both parties appealed to the National Labor Relations Commission (NLRC), petitioners questioning the order for them to refund "underpayment" and pay attorney's fees, and respondents questioning the Labor Arbiter's failure to pass on the propriety of his preventive suspension, dismissal of his complaint for constructive dismissal and ULP, and failure to award him service incentive leave pay.

By Resolution of December 29, 2005, the NLRC affirmed the Labor Arbiter's decision with modification. It deleted the award to Taroy of attorney's fees. It brushed aside

Taroy's claim of having been illegally suspended, it having been raised for the first time on appeal.

The parties filed their respective motions for reconsideration which were denied.

On respondents' appeal, the Court of Appeals, by the assailed Decision of August 24, 2007, partly granted the same, it ruling that petitioner Genesis Transport violated Taroy's statutory right to due process when he was preventively suspended for more than thirty (30) days, in violation of the Implementing Rules and Regulations of the Labor Code.

The appellate court thus held Taroy to be entitled to nominal damages in the amount of P30,000. And it reinstated the Labor Arbiter's order for petitioners to refund Taroy "the underpayment."

Their motion for reconsideration having been denied by Resolution of March 13, 2008, petitioners filed the present recourse.

On the issue of refund of "underpayment," petitioners aver that cases of similar import involving also the respondent union have been decided with finality in their favor by the NLRC, viz: *UMMGT v. Genesis Transport Service, Inc.* (NLRC RAB III Case No. 04-518-03) and *Reyes v. Genesis Transport Service, Inc.* (NLRC CA No. 04862-04); and *Santos v. Genesis Transport Service, Inc.* (NLRC CA No. 041869-04).

Petitioners thus pray that the Court accord respect to the rulings of the NLRC in the above-cited cases and apply the principle of *res judicata vis-à-vis* the present case.

On the appellate court's award of nominal damages, petitioners reiterate that Taroy was not entitled thereto, his dismissal having been based on a valid cause, and he was accorded due process.

Further, petitioners note that the issue of preventive suspension, on which the appellate court based its ruling that it violated Taroy's right to due process, was raised only on appeal to the NLRC, hence, it should not be considered.

Finally, petitioners assert that the delay in the service of the Notice of Dismissal (dated May 10, 2002, but received by Taroy only on June 4, 2002) was due to Taroy's premeditated refusal to acknowledge receipt thereof.

The petition is partly meritorious.

Absent proof that the NLRC cases cited by petitioners have attained finality, the Court may not consider them to constitute *res judicata* on petitioners' claim for refund of the "underpayment" due Taroy.

Neither may the Court take judicial notice of petitioners' claim that the deduction of tollgate fees from the gross earnings of drivers is an accepted and long-standing practice in the transportation industry. *Expertravel & Tours, Inc. v. Court of Appeals* [10] instructs: