

THIRD DIVISION

[G.R. No. 164681, April 24, 2009]

BERNARDINO V. NAVARRO, PETITIONER, VS. P.V. PAJARILLO LINER, INC., RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul the Decision^[1] dated November 28, 2003 and the Resolution^[2] dated July 19, 2004 of the Court of Appeals in CA- G.R. SP No. 67666.

P.V. Pajarillo Liner Inc. (respondent), a corporation engaged in the business of land transportation, employed Bernardino V. Navarro (petitioner) as a bus driver on April 20, 1995. Sometime in March 1996, petitioner, while on duty, was apprehended for picking up passengers in a non-loading zone (illegal terminal) along Ayala Avenue, Makati. His driver's license was confiscated by a Metro Manila Development Authority (MMDA) enforcer and a corresponding traffic violation receipt (TVR) was issued to him, which was valid as a temporary driver's license for seven days from date of apprehension. Before the expiration of the TVR, petitioner allegedly gave the same to respondent's Operations Manager Arnel Hegina^[3] (Hegina) and requested the latter to redeem his license from the MMDA. Respondent was not able to redeem the license from the MMDA but merely secured a two-month extension for the validity of the TVR. Sometime in May 1996, petitioner was again apprehended along Shoemart, Makati by highway patrol operatives who demanded petitioner's driver's license. The record does not specify the violation. When petitioner presented his TVR, the operatives ordered him to drive the bus directly to the garage. After the incident, petitioner was not able to work for respondent again.^[4]

On March 14, 1997, petitioner filed with the Labor Arbiter (LA), a complaint for illegal dismissal with damages against respondent, alleging that he was dismissed from the service on May 19, 1996; that as a bus driver, he worked for five days a week and from six in the morning up to eleven in the evening with a gross fare receipts average of P6,500.00; that from the amount of P6,500.00, he was entitled to a 9% commission and P50.00 incentive; that in cases of apprehension of respondent's driver due to violations involving illegal terminal or being "out of line," respondent was in charge of getting the driver's license from the MMDA; that when he was apprehended in March 1996 for illegal terminal, he gave the TVR to Hegina and requested the latter to redeem the license from the MMDA; that petitioner's license was not redeemed and respondent secured only two extensions of the TVR's validity for two months; that when he was again apprehended in May 1996 and upon arrival at the respondent's garage, he gave the extended TVR to Hegina and requested the latter to redeem his license from the MMDA; that Hegina informed him that his license would be redeemed the following day, but when petitioner tried

to get his license from Hegina, the latter told him that he failed to get it because of heavy workload; that petitioner was asked to come back after one week with the assurance that his license would already be available, but no license was released; that he was constantly following up his license with respondent's office but was only given promises that his license was due for release; that respondent's refusal to redeem his license constituted constructive dismissal because he was deprived of his source of livelihood, as he was not able to perform his work as a bus driver without his license.

In its position paper, respondent claimed that petitioner abandoned his job as shown by the former's letter dated July 28, 1996 addressed to petitioner requiring the latter to explain why he should not be dismissed for neglecting his duty through prolonged absence; that after petitioner submitted his reply to respondent's letter, nothing was heard from him until he filed his complaint with the LA; that it was petitioner's obligation to redeem the driver's license; that petitioner's inaction to get back his license showed his lack of interest in resuming his job; and that respondent could not give back petitioner's work without his driver's license.

Petitioner filed his reply, arguing that in his August 8, 1996 letter to respondent's letter dated July 28, 1996, he had already brought to its attention that it should redeem his license for having been caught for illegal terminal, to wit:

Bilang tugon sa sulat ninyo ay ikinalulungkot kong sabihin sa inyo na hindi ako nagpabaya sa aking tungkulin bilang driver bagkus ay nasa management ang pagkukulang at ito'y tungkol sa hindi pagtubos ng aking TVR na nahuli sa Ayala ng illegal terminal na dapat ay sagutin ng ating kumpanya. Nagpabalik balik ako sa ating opisina dahil gusto kong makuha ang original license ko pero ang nangyari puro extension **at hanggang sa tuluyan ng nawala dahil nadukutan ako**. At isa pa, nagpaalam ako kay Arnel na hindi muna ako makakalabas hangga't hindi pa nalulutas and problema ko.^[5] (Emphasis supplied)

that there was no response received from respondent; that it was only in its position paper filed with the LA that respondent raised the matter of not condoning or encouraging the act of using illegal terminal, and that it could not be held liable for petitioner's unlawful act. Petitioner added that it could not be denied that petitioner requested respondent to redeem his license, since the TVR was in respondent's possession.

In the Rejoinder, respondent argued that the TVR was submitted by petitioner when he was given an extension permit, and it was for record purposes as it was only a xerox copy.

On September 10, 1998, the LA rendered a decision^[6] in favor of herein petitioner, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered ordering respondents to reinstate complainant to his former position with full backwages which as of August 31, 1998 had already amounted to P175,500.00 and incentives in the amount of P35,100.00.^[7]

In finding that petitioner was constructively dismissed, the LA said that respondent's claim of petitioner's negligence in the performance of his duties as a driver due to his alleged prolonged absences had been well explained by petitioner; that said absences could never be attributed to petitioner's fault, since he could not perform his usual duties as a driver without his license; that he was not remiss in following up the release of his license from respondent, which did not do its job.

The LA did not sustain respondent's claim that it was not the latter's policy to redeem the license of its drivers who were caught for illegal terminal, as respondent did not deny petitioner's allegation that he submitted the TVR to Hegina and that the office of respondent worked for the renewal of the period of its validity pending the release of petitioner's license; and respondent's policy of redeeming driver's license was further established by the affidavit of Marcelino Ibañez, one of respondent's drivers and the Chairman of the Board of the *Kilusang Manggagawa sa PVP Liner*. The LA then concluded that respondent's failure to redeem petitioner's license deprived him of the source of his livelihood without just and valid cause.

Respondent filed its appeal with the NLRC. The NLRC rendered its decision^[8] dated August 17, 2000, the dispositive portion of which reads:

WHEREFORE, the appealed decision is MODIFIED in that respondent is ordered to reinstate complainant to his former position as bus driver without backwages.^[9]

On the question of who should redeem petitioner's driver's license, the NLRC ruled that petitioner as the holder of the license should be the one to redeem the same; that considering petitioner's allegation in his position paper, that he gave the TVR to Hegina and requested the latter to redeem his license, it was clear that petitioner was merely requesting him to redeem his license, which did not connote any obligation on Hegina's part; that as respondent failed to heed such request, it was incumbent upon petitioner to redeem his license, as it was necessary in the pursuit of his occupation as a bus driver. The NLRC did not believe petitioner's claim that he submitted the original TVR to respondent, because he could not have driven with only a photocopy of said document.

On the issue of constructive dismissal, the NLRC found that the evidence showed that respondent sent a notice to petitioner requiring him to explain his prolonged absences, to which petitioner submitted an explanation that he could not report for work, as his license was with the authorities and was waiting to be redeemed by respondent; and that no action was taken by the latter on the matter. Thus, the NLRC agreed with the LA that there was constructive dismissal; and petitioner should be reinstated upon presentation of his driver's license, but without backwages considering that he was equally at fault, as he did not bother to take proper steps to redeem his license.

Petitioner's motion for reconsideration was denied in a Resolution^[10] dated September 29, 2000.

Petitioner filed a petition for *certiorari* with the CA. Respondent filed its Comment and petitioner his Reply thereto.

On November 28, 2003, the CA rendered herein assailed decision dismissing the