

## FIRST DIVISION

[ G.R. No. 142133, November 19, 2002 ]

**METRO TRANSIT ORGANIZATION, INC. AND JOVENCIO P. BANTANG, JR., PETITIONERS, VS. THE COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) AND RUPERTO EVANGELISTA, JR., RESPONDENTS.**

### DECISION

**CARPIO, J.:**

This is a petition for review under Rule 45 to reverse the Decision dated 30 April 1999 and the Resolution dated 16 February 2002 of the Court of Appeals<sup>[1]</sup> in CA-G.R. SP No. 50122.

The Facts

Petitioner Metro Transit Organization, Inc. ("MTO" for brevity) is a government-owned and controlled corporation operating a light rail transit ("LRT" for brevity), while petitioner Jovencio Bantang, Jr. ("Bantang" for brevity) is an officer of MTO. Respondent Ruperto Evangelista ("Evangelista" for brevity) worked as a cash assistant in the Treasury Division of MTO.

On December 29, 1989, after completion of an inventory count of tokens, petitioners discovered that 2,000 pieces of tokens were missing. Petitioners conducted an investigation which resulted in implicating Evangelista as one of the alleged perpetrators responsible for the loss of the tokens. The evidence presented against Evangelista included three handwritten letters by three persons, namely: George Kasunuran, a vault keeper of MTO; Renato Mendoza, a treasury personnel of MTO; and Edgardo de Leon, owner of a token outlet.

Based on the handwritten letters, petitioners terminated Evangelista's employment on April 3, 1990 for lack of trust and confidence. Petitioners also filed a criminal case for qualified theft against Evangelista before the prosecutor's office but the investigating prosecutor dismissed the case.

Subsequently, Evangelista filed a case for illegal dismissal against petitioners. On September 5, 1991, Labor Arbiter Oswald B. Lorenzo rendered a decision declaring that petitioners illegally dismissed Evangelista. The Labor Arbiter ordered petitioners to reinstate Evangelista to his former position, with payment of full back wages. The dispositive portion of the Labor Arbiter's decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Declaring the dismissal of complainant Ruperto Evangelista, Jr. as having been effected illegally by respondent Metro Transit Organization, Inc. and Jovencio P. Bantang, Jr.;

2. Ordering respondents to immediately reinstate complainant to his former position without loss of seniority rights and other monetary benefits with full back wages in the amount of FORTY SIX THOUSAND FIVE HUNDRED EIGHTY PESOS AND FIFTY SIX CENTAVOS (P46,580.56);
3. Respondent is further ordered to pay the thirteenth month due the complainant in the amount of THREE THOUSAND EIGHT HUNDRED EIGHTY AND ONE PESOS (P3,881.00);
4. Respondent is further ordered to pay the award of moral damages to complainant in the amount of TWENTY FIVE THOUSAND (P25,000.00) PESOS and exemplary damages in the amount of TWENTY FIVE THOUSAND (P25,000.00); and
5. Finally, respondent is ordered to pay for and as attorney's fees the amount of TEN THOUSAND FORTY SIX PESOS AND TWENTY TWO CENTAVOS (P10,046.22) which is equivalent to ten (10%) percent of the total award due the complainant herein."

Petitioners appealed the Labor Arbiter's decision to the National Labor Relations Commission ("NLRC" for brevity). The NLRC rendered a judgment on March 7, 1996 affirming the Labor Arbiter's decision but deleting the award of moral and exemplary damages. Petitioners did not file any motion for reconsideration. Instead, petitioners directly filed with the Court of Appeals a petition for certiorari under Rule 65.

#### *Ruling of the Court of Appeals*

On April 30, 1999, the Court of Appeals rendered a decision dismissing the petition for certiorari filed by petitioners. The Court of Appeals ruled that the special civil action of certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. The Court of Appeals held that the plain and adequate remedy is a motion for reconsideration of the assailed NLRC decision, which motion is mandatory.

On the merits of the case, the Court of Appeals ruled that petitioners failed to adduce substantial evidence to prove Evangelista's culpability for the loss of the 2,000 pieces of tokens. Petitioners presented only the handwritten letters implicating Evangelista. The Court of Appeals doubted the veracity of the handwritten letters because the letters were not sufficiently identified. The affidavit allegedly executed by petitioners' principal witness, Renato Mendoza ("Mendoza" for brevity), who identified Evangelista as the culprit, was not sworn to before any administering officer.

The Court of Appeals also found that petitioner Bantang prepared Mendoza's unsworn affidavit, and that Mendoza signed it under a threat of dismissal if he failed to cooperate with petitioners. Mendoza later renounced under oath before the investigating prosecutor his unsworn affidavit which pointed to Evangelista as the culprit. Moreover, the Court of Appeals held that petitioners failed to allow Evangelista to explain his side during the investigation. Neither did petitioners give Evangelista an opportunity to contest the veracity of the handwritten letters presented against him.

The Court of Appeals denied petitioners' Motion for Reconsideration. Hence, the present petition.

Evangelista did not file any comment to the instant petition despite notices sent to him or his counsel at the address on record and despite earnest efforts by petitioners to locate his new address and that of his counsel. Hence, in a Resolution dated July 3, 2002, the Court considered the case submitted for resolution.

### Issues

Petitioners raise the following assignment of errors:

"I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS NOT THE PLAIN, SPEEDY AND ADEQUATE REMEDY AVAILABLE TO PETITIONERS;

II

THE COURT OF APPEALS ERRED IN HOLDING THAT A MOTION FOR RECONSIDERATION OF THE RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION IS NECESSARY BEFORE RESORTING TO A PETITION FOR CERTIORARI;

III

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS ILLEGALLY DISMISSED PRIVATE RESPONDENT."

### The Court's Ruling.

We shall jointly discuss the first two issues raised by petitioners since these are interrelated.

Petitioners contend that a motion for reconsideration is not necessary before resort to the special civil action of certiorari under Rule 65. Petitioners contend that they availed of certiorari under Rule 65 with a prayer for a writ of preliminary injunction to set aside the NLRC decision because certiorari is the plain, speedy, adequate and only remedy available to petitioners. Petitioners argue that without the extraordinary relief of injunction, the NLRC can immediately execute the questioned decision rendering the issues raised in the petition moot and academic. Moreover, petitioners assert that a motion for reconsideration of the NLRC decision is no longer necessary because the questions that will be raised in the motion for reconsideration are the very same questions which the NLRC already considered.

We are not persuaded.

The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any. The rule is well-settled that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for certiorari, subject to certain exceptions. Thus, in [\*Abraham v. NLRC\*](#),<sup>[2]</sup> the Court ruled:

"Generally, certiorari as a special civil action will not lie unless a motion for reconsideration is filed before the respondent tribunal to allow it an