

SECOND DIVISION

[G.R. No. 122078, April 21, 1999]

**PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND PROCOPIO
EVANGELISTA, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

PHILIPPINE RABBIT BUS LINES, INC., through this special civil action certiorari under Rule 65 of the Rules of Court as amended, seeks to reverse and set aside the decision of respondent National Labor Relations Commission ordering petitioner to pay private respondent Procopio Evangelista back wages and separation pay equivalent to one (1) month pay for every year of service.

Procopio Evangelista, private respondent, was employed by petitioner on 6 May 1962, first as a bus conductor and later as a dispatcher. On 26 October 1975 petitioner terminated the services of respondent Evangelista; hence, respondent sued petitioner for illegal dismissal.

On 14 April 1976 Labor Arbiter Julio F. Andres, Jr., declared the dismissal of Evangelista as illegal and ordered his reinstatement with payment of back wages. Petitioner appealed to respondent National Labor Relations Commission (NLRC); however, the appeal was dismissed for failure to file the same within the reglementary period.

Petitioner appealed to the Office of the President which, on 10 May 1978, held through Presidential Assistant for Legal Affairs Ronaldo B. Zamora that although there was just cause for terminating the employment of Evangelista the dismissal was nonetheless illegal due to the failure of petitioner to observe the mandatory procedural requirements for termination of employment under the rules implementing the Labor Code. The Office of the President also directed petitioner to reinstate Evangelista and pay him six (6) months back wages.

Petitioner filed a motion for reconsideration; it was denied. Petitioner filed a second motion for reconsideration; it was likewise denied under Executive Order No. 19, series of 1966, which allows only one motion for reconsideration.

On 17 November 1978, the Labor Arbiter issued a writ of execution directing petitioner to reinstate Evangelista and to pay him six (6) months back wages.

In a Manifestation dated 10 September 1979 respondent Evangelista informed the Labor Arbiter that the monetary award in his favor had already been fully satisfied, although he had not yet been reinstated by petitioner.

On 16 December 1985 respondent Evangelista moved for the issuance of a second *alias* writ of execution for his reinstatement and payment of additional back wages from 4 September 1979, the day he presented himself for reinstatement, until he could be actually reinstated.

On 8 January 1986 petitioner opposed the motion asserting that the inaction of private respondent Evangelista for seven (7) years to pursue his reinstatement had rendered that portion of the decision dormant and therefore could no longer be executed by mere motion.

On 26 August 1986 Labor Arbiter Antonio Tria Tirona issued an *alias* writ of execution of the 10 May 1978 decision of the Office of the President for the reinstatement of respondent Evangelista. The order did not grant the prayer of private respondent for additional back wages from 4 September 1979 to actual reinstatement as the same was not provided in the dispositive portion of the decision.

Petitioner appealed to respondent NLRC reiterating among others its opposition that the 10 May 1978 order had indeed become dormant hence could not be enforced by mere motion.

On 30 August 1988 respondent NLRC affirmed the order of the Labor Arbiter directing reinstatement of Evangelista without any award of additional back wages. Petitioner filed a motion for reconsideration alleging that reinstatement was inconsistent with the finding of the Office of the President that the dismissal of Evangelista was for a just cause. Respondent Evangelista also filed a motion for reconsideration reiterating his prayer for additional back wages from 4 September 1979 up to actual reinstatement. On 29 November 1988 respondent NLRC denied both motions for reconsideration.

On 5 April 1989 respondent Evangelista submitted a Manifestation inviting the attention of respondent NLRC to the reluctance of petitioner to comply with the order to reinstate him and that he was willing to accept separation pay equivalent to one (1) month salary for every year of service. On 16 November 1989 Labor Arbiter Arthur L. Amansec granted Evangelista's request for payment of separation pay in lieu of reinstatement. For its part, petitioner manifested its willingness to grant separation pay to private respondent computed at the wage rate prevailing at the time of dismissal in 1975.

On 10 January 1990 Labor Arbiter Amansec issued an Order directing that the separation pay of Evangelista, which was equivalent to thirty (30) days salary for every year of service, should be based on the minimum wage rate prevailing in April 1989.

Petitioner appealed to respondent NLRC which ruled on 20 July 1995 that respondent Evangelista should be awarded back wages from 26 April 1986, the date of the issuance of the second writ of execution directing his reinstatement, up to April 1989 when he manifested his willingness to accept separation pay in lieu of reinstatement, and back wages based on the statutory minimum wage prevailing in April 1989 computed from the date of hiring up to April 1989, excluding the period 23 August 1979 to 16 December 1985.