

SECOND DIVISION

[G.R. No. 119724, May 31, 1999]

**METRO TRANSIT ORGANIZATION, INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND VICTORIO T.
TURING, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for *certiorari* to set aside the resolution^[1] of the National Labor Relations Commission (NLRC) affirming *in toto* the decision of the Labor Arbiter finding petitioner guilty of illegal dismissal and ordering it to reinstate private respondent with backwages.

Petitioner Metro Transit Organization, Inc. is a government-owned and controlled corporation and a subsidiary of the Light Rail Transit Authority which operates a light rail transit system.

Private respondent Victorio T. Turing was a train operator of the light rail transit system of petitioner. He was hired on November 22, 1984 at a monthly salary of P4,150.00. On March 29, 1990, he was dismissed for abandonment of work.

Earlier, on January 9, 1990, private respondent had been suspended for three (3) days for having been absent, without leave, for ten (10) days on December 14, 15, 16, 18, 23, 24, 27, 28, 30 and 31, 1989.^[2] On February 14, 1990, he applied for leave of absence for three (3) days (February 17, 20, and 21, 1990), but after his leave had expired, he failed to report for work. On March 6, 1990, the company's social worker, Emma Luciano, went to see him at his home address but did not find him. She later learned that private respondent had gone to Calamba, Laguna. Nonetheless, private respondent, on the same day, informed petitioner that he would be reporting for work on March 15, 1990. As a matter of fact, he returned to work on March 12, 1990, explaining that he had been absent because of domestic problems. (It appears that private respondent's wife left him and their six children because of some misunderstanding between the two of them). However, on March 29, 1990, private respondent was dismissed for abandonment of work.

Another employee of petitioner, Reynaldo C. Pohol, was also suspended for unauthorized absences on various dates in January, March, April, May, and December 1989. He was again absent without leave on February 4, 6, 7, 17, 20, 22, 23 and 24, 1990. As his explanations were found unsatisfactory, he was dismissed on April 2, 1990.

The two cases were heard by the Labor Arbiter who found Pohol's dismissal to be for cause, but that of private respondent to be illegal. The dispositive portion of his decision, dated September 13, 1991, reads:

WHEREFORE, judgment is rendered declaring the complainant Victorio Turing was illegally dismissed. Accordingly, respondent Metro Transit Organization, Inc. is hereby directed to REINSTATE him as Train Operator within three days from the date complainant would present himself for that purpose, without loss of seniority rights and with payment of backwages equivalent to six months, or the amount of TWENTY-FOUR THOUSAND NINE HUNDRED PESOS (P24,900.00).

Judgment is likewise hereby rendered declaring that complainant Reynaldo Pohl was dismissed for a just cause and after due process. Consequently, his instant complaint is hereby DISMISSED for lack of merit.

Respondent is likewise assessed the amount of P2,490.00 by way of attorney's fees.

SO ORDERED.

On appeal, the Labor Arbiter's decision was affirmed by the NLRC. Petitioner moved for a reconsideration, but its motion was denied. Hence, this petition for certiorari alleging grave abuse of discretion by the NLRC for denying petitioner's right as employer to discipline its employees. Petitioner maintains that private respondent was guilty of abandonment of work.

The contention has no merit.

Whether or not private respondent is guilty of abandonment of work is a factual issue.^[3] It is settled that findings of fact made by labor arbiters, when affirmed by the NLRC, are entitled not only to great respect but even finality and are binding on this Court if they are supported by substantial evidence.^[4] The power of this Court to review labor cases is limited to questions of jurisdiction and grave abuse of discretion.^[5]

In this case, petitioner was declared guilty of illegal dismissal on the basis of the following facts found by the Labor Arbiter:^[6]

The notice of termination dated March 29, 1990 addressed to complainant Turing shows that he was dismissed for abandonment of work for having incurred a total of 17 days of absence without official leave and after his explanation was found unmeritorious. This absence refers to the period from February 17, 20, & 21, 1990 to March 13, 1990 when he submitted his explanation. It was therefore complainant's absences during that period that was the "just cause" referred to by respondent because the former's absence of ten days in December, 1989 was already the subject of his three-day suspension (Annex "1" Respondent's PP).

The problem experienced by complainant was about his wife having left him and their six children (Annex "4", Ibid; Complainant's PP, p. 4). Everybody will perhaps agree that the problem was too personal and so serious that anyone affected would surely lose concentration in his job especially during the early stages of its occurrence and discovery. We

note from complainant's handwritten explanation (Annex "5", Respondents' PP) that he was thankful to God that "hindi niya tinutulutan na ako ay panlabuan ng isipan" and resolved to face the problem. To our mind, complainant's plea for understanding and forgiveness should have merited respondent's kind consideration. Needless to say, no husband of sane mind would expect any problem of that nature and perhaps only a few would be able to maintain his mental composure. Respondent should have considered that complainant's job involves many passengers and any moment of mental lapse on his part while the train moves on would surely endanger so many lives. In short, we believe that there was really no "just cause" for complainant Turing's dismissal.

In affirming the Labor Arbiter's decision, the NLRC stated:^[7]

We are [not] impressed with the submission of respondent that complainant Turing has abandoned his work during the period the absences in question were incurred. While it is true that the respondent submitted proof that it exerted efforts to contact the complainant pursuant to legal procedure, yet on the March 6, 1990 home visit conducted by Social Worker Emma M. Luciano, the complainant personally and unequivocally signified interest to return to work on March 15, 1990. The Social Worker Report clearly disclosed the fact that the complainant expressed that he really needed his job for his children. The report also stated that the complainant even talked with Jordan Basa, TCAD Clerk of the respondent, apparently regarding his scheduled reporting for work. We also took into account the complainant's letter dated March 12, 1990 to the respondent (respondent's position paper) detailing expression of regrets regarding his absences and the cause why the same was incurred. Also taken into account is the letter dated March 13, 1990 (Annex 5) of complainant Turing assuring management of his attendance for work now that his family problems are already normalized.

In the instant case, the main reason of complainant's dismissal was anchored on abandonment arising from his seventeen (17) days of total absences from work without the company's permission. Thus, the main point in controversy hinges on the merit and validity for which the absence was availed. We have taken into account the admission made by the complainant regarding his unauthorized absence not only from the statement he made before the Social Worker who attended to his case but also before the respondent company under a subsequent letter on March 12, 1990. As correctly pointed out by the Labor Arbiter who rendered the decision, the problem that confronted the complainant was very personal and too serious that any one affected would surely lose concentration in his job especially during the early stages of its occurrence and discovery and that is followed by the further observation that complainant's plea for understanding and forgiveness should have merited kind consideration. The Labor Arbiter also observed correctly that the nature of the complainant's job involves safety of passengers and mental lapse on his part, being a train operator, would surely endanger many lives. More importantly, we believe the purpose of the law in requiring respondent to exert efforts to contact the complainant under