

## SECOND DIVISION

[ G.R. No. 125028, February 09, 1998 ]

**REYNALDO VALDEZ, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND NELBUSCO, INC., RESPONDENTS.**

### D E C I S I O N

**REGALADO, J.:**

This special civil action for *certiorari* challenges the decision of the National Labor Relations Commission (NLRC), promulgated on December 13, 1995, dismissing petitioner's complaint and thereby reversing the decision of the Labor Arbiter dated September 15, 1994, as well as the former's resolution of March 15, 1996 which denied petitioner's motion for reconsideration.<sup>[1]</sup> Auspiciously, there is no substantial dispute on the antecedents of this case.

Sometime in December, 1986, petitioner was hired by private respondent as a bus driver on commission basis, with an average earning of ₱6,000.00 a month. On February 28, 1993, the airconditioning unit of the bus which petitioner was driving suffered a mechanical breakdown. Respondent company told him to wait until the airconditioning unit was repaired. Meanwhile, no other bus was assigned to petitioner to keep him gainfully employed.

Thereafter, petitioner continued reporting to his employer's office for work, only to find out each time that the airconditioning unit had not been repaired. Several months elapsed but he was never called by respondent company to report for work. Later, petitioner found out that the bus formerly driven by him was plying an assigned route as an ordinary bus, with a newly-hired driver.

On June 15, 1993, petitioner filed a complaint against private respondent for illegal dismissal, with money claims for labor standard benefits, and for reimbursement of his bond and tire deposit. He claimed that the reason why respondent company did not allow him to drive again was due to his refusal to sign an undated company-prepared resignation letter and a blank affidavit of quitclaim and release.

Private respondent, on the other hand, admitted that it told petitioner to wait until the airconditioning unit of the bus was repaired. However, private respondent alleged that after the bus driven by the petitioner broke down due to his fault and negligence, the latter did not report for work. He supposedly informed the management later that he was voluntarily resigning from his employment in order to supervise the construction of his house. Consequent to his resignation, petitioner demanded the return of his cash bond and tire deposit. Respondent company required him to secure the necessary management clearance and other pertinent papers relative to his resignation. Instead of complying with those requirements, petitioner filed the instant complaint.

On September 15, 1994, the Labor Arbiter rendered a decision with the following dispositive portion:

“WHEREFORE, with all the foregoing considerations, judgment is hereby rendered declaring complainant illegally dismissed and respondent NELBUSCO, INC, is hereby ordered to pay complainant as follows:

P111,000.00 - Full backwages

36,000.00 - Separation pay in lieu of

reinstatement

9,000.00 - Refund of cash bond and  
tire deposit

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P156,000.00                      TOTAL

All other claims are hereby dismissed.

SO ORDERED.”<sup>[2]</sup>

Aggrieved by the said decision, private respondent filed a memorandum on appeal with the NLRC. On December 13, 1995, public respondent rendered its decision subject of the present recourse, adjudging as follows:

“WHEREFORE, in view of the foregoing premises, the decision appealed from is hereby SET ASIDE and a new one entered directing respondent to reinstate complainant back to work but without backwages. Should reinstatement be not possible, respondent shall pay complainant separation benefits equivalent to one (1) month pay for every year of service computed up to the time he was temporarily laid-off and to refund to him the cash bond and tire deposit.

All other claims are DENIED for lack of merit.

SO ORDERED.”<sup>[3]</sup>

On February 8, 1996, petitioner filed a motion for reconsideration which was denied in a resolution dated March 12, 1996.<sup>[4]</sup> Hence the present petition, raising the issues of (1) whether or not petitioner was illegally dismissed, and (2) whether or not petitioner is entitled to back wages and separation pay starting from the time he was laid off.<sup>[5]</sup>

We find the petition meritorious.

Public respondent committed grave abuse of discretion in holding that petitioner was not illegally dismissed and in consequently deleting the award of back wages. It is especially so, since this case does not present such complicated issues as would mislead it into committing the errors complained of.

Under Article 286 of the Labor Code, the *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six months shall not terminate employment. Consequently, when the *bona fide* suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. By the same token and applying said rule by analogy, if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed.<sup>[6]</sup>