

SECOND DIVISION

[G.R. No. 117453, June 26, 1998]

**AUTOBUS WORKERS' UNION (AWU) AND RICARDO ESCANLAR,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION
AND MR. ROBERT ONG, RESPONDENTS.**

D E C I S I O N

MARTINEZ, J.:

This petition for certiorari and prohibition assails the Resolution dated July 12, 1994 of the respondent National Labor Relations Commission which affirmed the decision of the Labor Arbiter, the dispositive portion of which reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant's dismissal valid and in accordance with procedural due process.

As financial assistance, however, respondents are hereby ordered to give complainant the sum of P5,000.00.

SO ORDERED."^[1]

and the Resolution dated October 3, 1994 denying the motion for reconsideration of petitioner.

Petitioner Ricardo E. Escanlar worked with Autobus Industries, Inc. (Autobus for brevity) as a Cutting Machine Operator since January 8, 1981 with a salary of P162.16 per day. He was the recipient of two (2) Plaques of Appreciation as Model Employee in 1987 and as Valuable Employee in 1988. He was later elected President of the Autobus Workers' Union (AWU), the union for the rank and file employees.

On January 29, 1993, Engr. Zosimo Prospero Chavez, Production Manager of Autobus, received a handwritten report^[2] from one Reynaldo T. Andres, a supervisor, pertinent portions of which are quoted hereunder:

"1. That in the morning of January 29, 1993, Mr. Andres told the herein complainant, together with another employee of the company their reassignment to the other section of the company as these latter sections lack manpower; that herein complainant shall be reassigned to the 'Washer Section' while the other to the 'Painting Section';

"2. That despite being told of the reason for his transfer, Mr. Escanlar questioned his transfer to the 'Washer Section';

"3. That on the way to his assigned section, herein complainant asked for an eye goggle to be used in his work; that a certain Mr. Andres told

complainant that there was one goggle in the section where he is assigned;

"4. That herein complainant refused to use the goggles saying that it might have some 'ketong' in it; that no new goggles were issued to the complainant; that the latter was given instructions by Mr. Andres; that Mr. Andres proceeded to the 'Painting Section';

"5. That at around 6:55 a.m. while on his way back to the 'Washer Section,' Mr. Andres saw herein complainant talking to a certain Odelon Gamora; that the two talked for about two (2) minutes; that after their conversation, Mr. Andres approached the complainant; that at this instance Mr. Escanlar told Mr. Andres that he (complainant) did not like the way Mr. Andres chose personnel to go on overtime; that complainant went on further saying that Mr. Andres chose only persons who are close to him and from those who treat him for a drink; that Mr. Andres told complainant to ask a certain Mr. Tomas Marahit who was near if the complainant's allegations were true;

"6. That thereafter, herein complainant answered back by saying 'Gago Ka' to Mr. Andres; that the latter told the former that they should talk later at his (Mr. Andres) office but the complainant again called him (Mr. Andres) 'Gago Ka';

"7. That at this juncture, Mr. Andres deemed it proper to leave complainant; that while Mr. Andres was already in the Seam Weld Section of the company, complainant continued to stare at him without doing his job; that Mr. Andres decided to ask complainant what his problem was; that herein complainant retorted by saying: 'BAKIT ANONG GUSTO MO, TANG INA MO'; Mr. Andres just left him (complainant);

"8. That at about 8:30 a.m. of the same day, while Mr. Andres was on his way to the canteen, herein complainant approached him (Mr. Andres) asking what he told the office regarding the incident between them; that Mr. Andres told the complainant to just ask the management about the matter; that complainant said 'Panapanahon lang yan, panahon mo ngayon';

"9. That at 3:08 p.m. of the same day, complainant approached Mr. Andres in the canteen and said 'Patunayan mong minura kita at kung hindi, tandaan mo yan'."

On February 5, 1993, Engr. Chavez issued a memorandum^[3] to petitioner Escanlar requiring the latter to explain in writing within 48 hours from receipt thereof why no disciplinary action should be taken against him pursuant to the company's Code of Discipline, for addressing Reynaldo T. Andres, his supervisor, in profane or obscene language and for threatening him.

On February 6, 1993, Reynaldo Andres wrote a memorandum^[4] to Engr. Chavez that petitioner Escanlar had again threatened him the previous day at the basketball court of the company premises.

On February 8, 1993, petitioner Escanlar submitted a written explanation^[5] to Engr. Chavez. On the same day, Engr. Chavez through a memorandum^[6] informed

petitioner Escanlar of the scheduled hearing of the January 29 incident on February 17, 1993. The hearing was continued on March 12, 1993.

After the administrative investigation, petitioner Escanlar was served a Notice of Termination^[7] dated April 19, 1993, for gross misconduct, i.e., uttering unsavory remarks and threatening his supervisor with physical harm.

On April 21, 1993, petitioner filed a complaint for illegal dismissal against Autobus. After the submission by the parties of their respective position papers, the case was deemed submitted for resolution. On October 29, 1993, Labor Arbiter Melquiades Sol D. Del Rosario rendered a decision finding the dismissal of petitioner valid, pertinent portions of which are quoted hereunder:

"Subjecting the evidence on record to a close scrutiny, this Arbitration Branch notes that the immediate cause of the row was the order of transfer given by the Supervisor, Mr. Andres to complainant and Julieta Anober from the Cutting Section to the Washer and Painting Sections, respectively. Complainant felt that being a machine operator and union president at that, his transfer to the washer section is without legal and justifiable basis and this constituted harassment. The records discloses, however, that the very Collective Bargaining Agreement, signed by the union headed by complainant and respondent provides for such transfer as management prerogative of respondent. Article VI of the C.B.A. (Annex '1,' Respondent's Rejoinder to Reply to Position Paper), reads:

'The union hereby recognizes the company's right x x x to transfer employees from one job to another; and to make changes in the duties of employees as the company may consider fit and proper to the conduct of its business and to exercise the inherent and customary prerogative and functions of management.'

With this blanket grant of management prerogative, complainant who headed the union panel that concluded the C.B.A. with respondent company is now estopped to question his transfer of work. Further, the reason given for the transfer is the lack of manpower to the two (2) sections and there is no showing that the transfer is permanent. There is no evidence on record that showed complainant's transfer as permanent. If at all it was done by respondent to meet the exigencies of the situation on account of a dearth in manpower. Finally, complainant's transfer and subsequent dismissal can not be termed unfair labor practice on account of union busting because complainant failed to show by concrete proof that all the other officers of the union have been removed or are on the verge of being so. As it appears on records, the union has been in existence prior to complainant's ascendancy as president of the union and even with complainant at the helm of the union as president, respondent company readily concluded a Collective Bargaining Agreement with the union. If union busting has been the agenda of respondent, complainant would not find himself all alone in his present predicament but his co-union officers likewise; but this is not the picture obtaining.

In fine, this Arbitration Branch does not find any unfair labor practice committed by respondents as an aftermath of complainant's dismissal.

With regard to the issue of illegal dismissal, there is evidence on record that complainant violated Sec. 6 of Rule No. 28 of the Code of Discipline of respondent company, which provides:

'Seksiyon 6- ASAL AT KILOS – pag-insulto o panghihiya, pagbanta ng pananakit o pagpakita ng anumang sinasadyang di paggalang sa isang superbisor o sino mang opisyal ng kumpanya.'

The transfer of complainant from the cutting section to the washer section has undoubtedly bruised complainant's ego, and created a rancor in his heart not only because he has been assigned for quite sometime to operate a machine but also because he is the president of the worker's union in the company. He had therefore a reason to commit the acts complained of by respondents. This Arbitration Branch therefore gives more weight and credence to the supervisor's complaint that on four (4) occasions on January 29, 1993, complainant committed acts that violated said rule. These acts are:

That at around 6:55 a.m. when complainant uttered against his supervisor 'gago ka' (twice) when the latter was accused with playing favorites in the choosing of employees for overtime work, when the supervisor pointed to one Tomas Marahit who can deny the charge of favoritism; that the complainant uttered the words 'bakit, anong gusto mo, tang ina mo' upon being approached by the supervisor to ask what the problem is because complainant was not doing his work but merely staring at him; that at 8:30 a.m., when the supervisor on his way to the canteen was threatened by complainant when he said, 'panapanahon lang iyan, panahon mo ngayon' when not told about the contents of the supervisor's report to management concerning the incident that transpired between the two (2) of them; and that at 3:08 of the same day, again at the canteen when complainant approached his supervisor and uttered the following words: 'Patunayan mong minura kita at kung hindi, tandaan mo iyan.'

To these claims of the supervisor, complainant could only give a general denial. As between a positive averment and a mere denial the former should be accorded more weight and belief. Moreover, in complainant's attempt to twist facts, he claims that it was the supervisor who uttered profane language but during the investigation of February 17, 1993, he admitted that he did not hear the supervisor uttered any bad word. Rather it was his co-worker Julierto Anober who told him about it not at the time the statement was uttered but in the afternoon when said co-worker was about to go home. This would constitute an after thought not worthy of credence. Furthermore, the contents of Julierto Anober's affidavit did not mention during the investigation by the fact finding committee on March 12, 1993 said bad words but only the word 'gago' as having been uttered by the supervisor and relayed to complainant in the afternoon when he was about to go home (Annex 'G-5,' Respondent's Rejoinder to Reply to Position Paper). He simply said, 'iyan lang ang