

## SECOND DIVISION

[ G.R. No. 114333, January 24, 1996 ]

**PANTRANCO NORTH EXPRESS, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), FIRST DIVISION AND REYNALDO M. RUEDA, RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

The present petition for certiorari assails the Decision<sup>[1]</sup> dated November 29, 1993, rendered by public respondent National Labor Relations Commission (NLRC) in NLRC NCR CA No. 002166-91, which reversed the decision of the labor arbiter.

The facts show that on May 14, 1956, private respondent Reynaldo Rueda was employed as a bus conductor by petitioner and later promoted to the position of Line Inspector-I.

Several years later, petitioner suffered financial setbacks and retrenched some of its employees. Rueda was among those retrenched on September 16, 1978. He received separation pay in the amount of nine thousand pesos (P9,000.00).

On **February 9, 1981**, Rueda was re-hired as a line inspector by petitioner. He again became a permanent (regular) line inspector after the probationary period of six (6) months.

On June 29, 1987, Rueda got involved in a quarrel with a co-employee. He stabbed bus driver Bonifacio Bartolome. Criminal and administrative complaints were filed against him. The criminal complaint for 'Frustrated Homicide' filed in the Quezon City Regional Trial Court was amicably settled by Rueda and Bartolome. Petitioner, however, through its legal department, proceeded with its own investigation. Rueda claimed he stabbed Bartolome in self-defense.<sup>[2]</sup>

In a Memorandum<sup>[3]</sup> dated March 28, 1988, petitioner's legal department, through Atty. Antonio Pekas, recommended to the Personnel Department the dismissal of Rueda.

Rueda requested for a reinvestigation of his case. He alleged that the case between him and Bartolome had already been settled amicably. He also argued that he was not investigated by Atty. Pekas who recommended his dismissal.<sup>[4]</sup> His request was denied.<sup>[5]</sup>

On May 4, 1988, Rueda met a vehicular accident. He suffered back injuries and went on sick leave from **May 5, 1988 to August 9, 1989**. Even before the accident, Rueda has been diagnosed to be suffering from moderately advanced

stage of tuberculosis.

It appears that petitioner desisted from dismissing Rueda for stabbing Bartolome. Instead, it approved his retirement "due to medical reasons." Rueda was advised to report to the Personnel Department for the processing of his clearances and the payment of his retirement benefits.<sup>[6]</sup>

Again, Rueda appealed to petitioner not to retire him from the service.<sup>[7]</sup> His request was denied in a letter, dated July 1, 1988.<sup>[8]</sup> He also learned that his retirement benefits would be computed from the date of his reemployment on February 9, 1981. He pleaded that his service with petitioner be computed continuously from the original date of his employment on May 14, 1956, up to the last day of his sick leave on August 9, 1989. Petitioner rejected his plea.

On October 29, 1990, Rueda commenced an action for "illegal dismissal, reinstatement, backwages, damages and attorney's fees" against petitioner.<sup>[9]</sup>

In a Decision dated June 28, 1991, Labor Arbiter Pablo C. Espiritu, Jr., dismissed the complaint for lack of merit. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered: dismissing the complaint for illegal dismissal and damages for lack of merit, however, in the interest of compassionate justice and for humanitarian considerations as manifested by respondent company, respondent is hereby ordered to pay complainant the amount of P36,498.78 as retirement pay based on respondent company's policy of 35 days for every year of service from February 9, 1981 to August 9, 1989, a fraction of at least six (6) months to be considered one (1) year.

"SO ORDERED."

Rueda appealed to public respondent National Labor Relations Commission (NLRC).<sup>[10]</sup> The decision of the labor arbiter was reversed by public respondent. Public respondent held that Rueda should not be dismissed since, according to his "Salaysay," he stabbed his co-employee in self-defense. However, in lieu of reinstatement, it ordered, inter alia, the payment of Rueda's separation pay **computed from his original employment on May 14, 1956, up to July 1, 1988, the date of his alleged constructive dismissal.** The dispositive portion of its Decision,<sup>[11]</sup> dated November 29, 1993, provides:

"WHEREFORE, the appealed Decision is hereby SET ASIDE and a new one entered ordering respondent to pay complainant the total amount of - P286,449.37 broken down as follows:

<b>"1. Backwages for three (3) years</b>	P135,567.12
<b>"2. Separation pay computed at 35 days for every year of service (32 years less 2 years gap) per company policy</b>	P124,841.40
<b>"3. Attorney's fees equivalent to 10% of the total amount awarded</b>	P 26,040.85
<b>"GRAND TOTAL</b>	P286,449.37

"SO ORDERED."

Hence, the petition.

The first issue in the case at bar is whether Rueda's dismissal was illegal.

Article 282 of the Labor Code includes serious misconduct as among the just causes of termination of employment by an employer, viz:

"(1) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(2) Gross and habitual neglect by the employee of his duties;

(3) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(4) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(5) **Other causes analogous to the foregoing.**"

The Labor Code<sup>[12]</sup> also considers **illness** and **retrenchment to prevent losses** as valid grounds for termination of employment, subject to the conditions specified therein.

Petitioner anchors its right to terminate the employment of Rueda on the ground of serious misconduct.

In its Comment,<sup>[13]</sup> the Office of the Solicitor General (OSG) contends that petitioner cannot capitalize on Rueda's alleged serious misconduct in stabbing his co-employee since his forced retirement was premised on his health problems.

We agree with the Solicitor General. The facts show that petitioner abandoned serious misconduct as a ground to dismiss Rueda when it opted to retire him due to illness. A memorandum to this effect was issued by petitioner on May 10, 1988, thus:

"Memorandum for -

ATTY. MANUEL VIJUNCO

Chairman - Management Committee

Thru: MR. ANGELITO D. YNIGUEZ

General Manager

Subject: REYNALDO RUEDA