EIGTH DIVISION

[CA-G.R. SP NO. 93707, September 27, 2006]

RRCG BUS COMPANY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION), HON. GEOBEL A. BARTOLABAC, IN HIS CAPACITY AS LABOR ARBITER, AND ARNEL T. CAILLES, RESPONDENTS.

D E C I S I O N

DACUDAO, J.:

Assailed in this petition for certiorari, as tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, are:

> (1) The Resolution[1] issued on January 6, 2006 by the National Labor Relations Commission (or NLRC), denying petitioner's motion for reconsideration of the Resolution dated October 18, 2005;
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> (2) The NLRC's Resolution dated October 18, 2005[2] itself, which dismissed petitioner's appeal from the Orders dated April 29, 2004 and June 24, 2004 of Labor Arbiter Geobel A. Bartobalac;
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> (3) The Decision[3] rendered on May 27, 2002 by the NLRC, reversing the ruling of Labor Arbiter Bartolabac that petitioner was not guilty of illegal dismissal;
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> (4) Labor Arbiter Bartolabac's Order dated April 29, 2004[4] itself, directing the issuance of a writ of execution; and
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> (5) The Order[5] itself issued on June 24, 2004 by Labor Arbiter Bartolabac, which corrected the computation made by the Computation & Examination Unit of the NLRC.
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> The material operative facts:

Before the NLRC-Arbitration Branch, private respondent Arnel Cailles and Wilson S. Villamin, as complainants, sued the petitioner RRCG Bus Company, Fidel Torres, and Anna Marie Torres as defendants, for illegal dismissal and money claims. Instituted on July 17, 1996, the case was thereat docketed as NLRC NCR Case No. 00-07-04478-96.

However, only private respondent Arnel Cailles remained as complainant therein because on December 6, 1996, the case was dismissed insofar as Wilson Villamin was concerned.[6]

The private respondent averred in his position paper that he was employed by the

petitioner RRCG Bus Company as bus driver in April 1995; that, sometime in August 1995, he accidentally hit a jeepney, for which he was made to pay for the damage; that, a year later, on April 23, 1996, the bus assigned to him was hired for a field trip and while in that field trip, it suddenly stopped running; and that, since then, he was not allowed to drive by the said bus company, hence, the complaint.[7]

Petitioner countered in its position paper8 that, three of its employees, namely: the bus conductors Tirso M. Mendoza and Juan P. de Leon, and the chief mechanic Carlos V. Mina, executed affidavits uniformly declaring that private respondent was a reckless and negligent driver; and that there is no factual and legal basis to support the claims of private respondent, especially so if the seriousness and extent of the damage that he inflicted upon the petitioner bus company would be considered.

In the decision dated September 26, 1998,[9] Labor Arbiter Bartolabac sustained petitioner's stance that private respondent had been reckless in driving the bus assigned to him, and that he was equally negligent in the maintenance thereof, hence, his dismissal was justified.

As to the money claims, the labor arbiter ordered the petitioner bus company to refund the P1,000.00 deposit for personal bond of private respondent.

The rest of the claims were dismissed.

Private respondent went up on appeal to the NLRC. This was docketed as NLRC NCR CA No. 019794-99.

But in its decision of May 27, 2002,[10] the NLRC overturned the labor arbiter's finding that the petitioner bus company was not guilty of illegal dismissal, the NLRC viewing the affidavits of petitioner's witnesses with suspicion. Thus:

> "We reverse.
> "Respondents filed a one (1) page Position Paper accompanied with three (3) affidavits which were adopted as forming part of the Position Paper. Respondents did not state in their Position Paper that they did not dismiss complainant. The second paragraph of their Position Paper state:
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> > 'From the foregoing affidavits of Tirso Mendoza, Juan de Leon and Carlos Mina, there is no factual or legal basis for the claims made by complainant, Arnel T. Cailles especially so if we consider the seriousness and extent of damages that Mr. Arnel T. Cailles has caused on respondent corporation arising from his recklessness and negligence.'
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> "The above-quoted statement of respondents conveys the idea that complainant was indeed dismissed from the service on account of his 'recklessness and negligence' as depicted in the three (3) affidavits mentioned above. But it is unclear which specific 'recklessness and negligence' led to the separation of complainant from his employment. It seemed that there were two (2) incidents. One which happened in August 1995 whereby the bus driven by complainant his a 'passenger type vehicle' as narrated in the affidavit of Juan P. de Leon. Although the windshield of the bus was damaged, the affidavit did not mention any

damage to (the) passenger type vehicle, much less any injuries to its passenger. It did not mention at all whether there were passengers in the said passenger type vehicle. The second incident was the one narrated in the affidavits of Tirso M. Mendoza and Carlos Mina, referring to the incident where the bus driven by complainant conked out on the way to the EDSA Central Terminal coming from Binangonan, Rizal. This happened on April 26, 1996 where the cause of the engine trouble was the alleged failure of the complainant to put water in the radiator of the bus. The radiator was discovered dry when it was towed to the garage at Binangonan. Respondent allegedly spend P65,000.00 for the overhaul of the bus.

"There are clouds of doubt in these three (3) affidavits. The affidavit of Juan P. de Leon was executed on November 29, 1996 while the incident mentioned therein happened in August 1995. Complainant alleged that Juan P. de Leon was not the bus conductor when the incident happened but a certain Pedi Andal. Respondents did not dispute this allegation. And if Juan P. de Leon was not the bus conductor, how could he conclude that 'the accident was due to Mr. Cailles fault as he was driving recklessly at the time and was not observing proper road courtesy and was very hot headed that day.

"With respect to the August 26, 1996 incident, (although complainant alleged this happened on April 23, 1996) Tirso M. Mendoza, the bus conductor and Carlos V. Mina, the chief mechanic, alleged that the bus radiator was dry of water yet complainant also alleged that the mechanic who arrived at the site of incident saw that the bus had sufficient water in the radiator and even engine oil and the reason why the bus stopped was that it was already too old. Respondents did not present any corroborative evidence such as the copy of the on-the-spot report or incident report of the chief mechanic or whoever, to attest to the real trouble of the engine. Complainant also alleged that Mr. Mina was assigned then at Baras terminal station so that he could not say whether or not water was put in the radiation before leaving from Binangonan.

"Now, for the first incident, complainant was clearly made to suffer the penalty by obligating him to pay for the broken windshield of the bus. He can not be made to suffer for the same offense.

"This leaves Us now to the second incident. Because of the last incident, complainant was stranded and was not able to drive the bus for two (2) days. He was given the ran-around when he asked to resume his work. After almost (3) months without assigning complainant any work, he filed the instant case for constructive dismissal.

"The Affidavits of Messrs. Mendoza and Mina were executed on November 20, 1996 while the incident occurred on April 26, 1996. The said affidavits alone can not stand because aside from being self-serving they are executed by the affiants who are still employees of respondent company and thus have possible bias against complainant.

"As regards due process, for lack of notice or communication from

respondent, complainant had no inkling at all that he would be dismissed constructively on account of the incident on April 26, 1996. He was in limbo for three (3) months. "While We recognize the prerogative of employers to discipline and penalize their erring employees, they can only do so within the bounds of the law, particularly our labor laws.

"We are not however inclined to order the reinstatement of complainant because due to lapse of time the relationship between the herein litigants may have been marred with animosity and hostility brought about by this suit. The antipathy toward complainant had been demonstrated by respondent during the three (3) month periods that preceded the filing of his case.

"Complainant is entitled to backwages from the filing of this case until the date of this decision plus separation pay at the rate of one (1) month salary per every year of service thereof.

"As regards the monetary claim, except for the reimbursement of P1,000.00 deposit for personal bond, the other monetary claims would have to be denied for lack of clear basis."

The NLRC thereupon dispositively decreed, to wit:

"WHEREFORE, premises considered, the assailed decision is hereby reversed. Respondents are adjudged guilty of constructive dismissal. Accordingly, respondents are ordered to pay complainant backwages from the filing of the complaint up to the date of this decision and separation pay at the rate of one (1) month salary for every year of service plus ten (10%) of the monetary award as attorney's fees. In addition, respondents are ordered to pay P1,000.00 as reimbursement of deposit for personal bond.

"SO ORDERED.

"Quezon City, Philippines.

"ANGELINA A. GACUTAN
"Commissioner

"WE CONCUR:

"RAUL T. AQUINO
"Presiding Commissioner

"VICTORIANO R. CALAYCAY
"Commissioner"

Private respondent filed a motion for partial reconsideration thereon, but the NLRC thumbed down the motion in a resolution dated November 29, 2002.[11]

No action was taken by petitioner in regard to the NLRC decision, however.

On January 8, 2003, private respondent filed a manifestation/motion for execution,[12] alleging that, since petitioner did not file a motion for reconsideration, the NLRC decision had become final and executory.

On June 10, 2003, an entry of judgment[13] was indeed issued by the NLRC, certifying that its Resolution dated November 29, 2002 became final and executory on February 10, 2003, and was accordingly recorded in the book of entries of judgments.

The case was thereafter remanded to the Arbitration Branch for the pre-execution conference, which was initially set on July 8, 2003.[14]

Because petitioner ignored the pre-execution conference, private respondent filed a second motion for execution dated September 11, 2003, attaching thereto the pertinent return card purportedly showing receipt by petitioner's counsel of the NLRC decision on June 13, 2002.[15]

On September 15, 2003, Atty. Marcos L. Estrada, Jr. entered his appearance as petitioner's new counsel.[16] This entry of appearance by the new counsel was effected notwithstanding the fact that no formal withdrawal of appearance was submitted by petitioner's counsel of record, Atty. Benjamin Benito.

Subsequently, computation of the award was prepared, and copies thereof were served on the parties. Private respondent filed his comment thereon, while petitioner did not.[17]

On October 29, 2003, petitioner filed before the Labor Arbiter's Office a manifestation/motion for reconsideration,[18] thereunder questioning the validity or propriety of the entry of judgment.

It is contended thereunder by the petitioner that there is no record of receipt by it and its former counsel of a copy of the NLRC decision; that, under Article 224 of the Labor Code of the Philippines, and conformably with the ruling in PNOC Dockyard & Engineering Corp. v. NLRC,[19] both party and counsel must be served a copy of the decision; that, moreover, it is not bound by the gross neglect of its previous counsel in the handling of the case, adverting to Amil v. Court of Appeals;[20] that, indeed, after filing its position paper, its former counsel for some inexplicable reason, stopped taking further action on the case altogether, without formally withdrawing from the case, however; and that, in view of this, there can be no valid entry of judgment in this case.

On November 24, 2003, private respondent tendered an opposition thereto, with motion to strike out petitioner's motion for reconsideration,[21] thereunder arguing that the case is already at its execution stage, hence, a motion for reconsideration is no longer allowed.

In his Order of April 29, 2004,[22] the labor arbiter directed the issuance of a writ of execution.

Petitioner appealed the said order to the NLRC.

In its appeal memorandum,[23] petitioner now maintained that the NLRC decision never attained finality and could not be the subject of execution, considering that it (petitioner) never received a copy thereof.