

## FIRST DIVISION

[ G. R. No. 186732, June 13, 2013 ]

**ALPS TRANSPORTATION AND/OR ALFREDO E. PEREZ,  
PETITIONERS, VS. ELPIDIO M. RODRIGUEZ, RESPONDENT.**

### D E C I S I O N

**SERENO, C.J.:**

Before this Court is a Rule 45 Petition for Review<sup>[1]</sup> assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 100163.

### THE FACTS

Respondent Elpidio Rodriguez (Rodriguez) was previously employed as a bus conductor.<sup>[4]</sup> He entered into an employment contract with Contact Tours Manpower<sup>[5]</sup> (Contact Tours) and was assigned to work with petitioner bus company, ALPS Transportation.<sup>[6]</sup>

During the course of his employment, Rodriguez was found to have committed irregularities on 26 April 2003,<sup>[7]</sup> 12 October 2003,<sup>[8]</sup> and 26 January 2005.<sup>[9]</sup> The latest irregularity report dated 26 January 2005 stated that he had collected bus fares without issuing corresponding tickets to passengers. The report was annotated with the word "Terminate."<sup>[10]</sup>

Rodriguez alleged that he was dismissed from his employment on 27 January 2005, or the day after the issuance of the last irregularity report. However, he did not receive any written notice of termination.<sup>[11]</sup> He went back to the bus company a number of times, but it refused to readmit him.<sup>[12]</sup>

On 11 August 2005, Rodriguez filed before the labor arbiter a complaint for illegal dismissal, nonpayment of 13th month pay, and damages against ALPS Transportation and Alfredo Perez, the proprietor of petitioner bus company.<sup>[13]</sup>

In response to the complaint, petitioners stated that they did not have any prerogative to dismiss Rodriguez, as he was not their employee, but that of Contact Tours.<sup>[14]</sup> In fact, based on their agreement with Contact Tours, it was supposedly the latter that had the obligation to inform respondent of the contents of the reports and to decide on the appropriate sanctions.<sup>[15]</sup> Petitioners further explained that due to the issuance of the three irregularity reports against Rodriguez, they wrote to Contact Tours and recommended the termination of respondent's assignment to them.<sup>[16]</sup>

During the pendency of the illegal dismissal case before the labor arbiter, ALPS

Transportation charged Rodriguez with theft before the Office of the Provincial Prosecutor of Tanauan, Batangas.<sup>[17]</sup> However, petitioners eventually filed an Affidavit of Desistance and withdrew the criminal charges against respondent.<sup>[18]</sup>

On 12 January 2006, the labor arbiter dismissed the illegal dismissal complaint for lack of merit.<sup>[19]</sup> He explained that no evidence had been adduced to support the contention of Rodriguez that the latter had been terminated on 27 January 2005.<sup>[20]</sup> Moreover, during the mandatory conference, the representative of Contact Tours manifested that the company had not dismissed Rodriguez, and that it was in fact willing to reinstate him to his former position.<sup>[21]</sup> Thus, the labor arbiter concluded that Rodriguez had not been illegally dismissed, and was actually an employee of Contact Tours, and not of ALPS Transportation.<sup>[22]</sup>

Rodriguez appealed the dismissal to the National Labor Relations Commission (NLRC). On 28 February 2007, the NLRC set aside the decision of the labor arbiter and entered a new one, the dispositive portion of which reads:

WHEREFORE, the assailed Decision dated January 12, 2006 is hereby SET ASIDE and a new one is being entered, directing the respondents to reinstate the complainant to his former position without loss of seniority rights and privileges but without backwages.

SO ORDERED.<sup>[23]</sup>

In so concluding, the NLRC ruled that Contact Tours was a labor-only contractor.<sup>[24]</sup> Thus, Rodriguez should be considered as a regular employee of ALPS Transportation.<sup>[25]</sup>

As regards the claim of illegal dismissal, the NLRC found that Rodriguez failed to prove that his services were illegally terminated by petitioners, and that he was prevented from returning to work.<sup>[26]</sup> However, the bus company likewise failed to prove that he had abandoned his work.<sup>[27]</sup> Thus, citing previous rulings of this Court, the NLRC held that in case the parties fail to prove either abandonment or termination, the employer should order the employee to report back for work, accept the latter, and reinstate the employee to the latter's former position. However, an award for backwages is not warranted, as the parties must bear the burden of their own loss.<sup>[28]</sup>

Dissatisfied with the ruling of the NLRC, Rodriguez filed a Rule 65 Petition for Certiorari with the CA.

After a review of the records, the CA concluded that the NLRC acted with grave abuse of discretion in rendering the assailed decision. The appellate court ruled that, in termination cases, it is the employer who bears the burden of proving that the employee was not illegally dismissed.<sup>[29]</sup> Here, the CA found that ALPS Transportation failed to present convincing evidence that Rodriguez had indeed collected bus fares without issuing corresponding tickets to passengers. The appellate court held that the irregularity reports were mere allegations, the truth of which had not been established by evidence.<sup>[30]</sup>

Moreover, the CA gave no credence to ALPS Transportation's argument that Rodriguez had not yet been terminated when he filed the illegal dismissal complaint, as he had not yet received any notice of termination.<sup>[31]</sup> The appellate court explained that, before the illegal dismissal complaint was filed, more than six months had lapsed since respondent was last given a bus assignment by ALPS Transportation.<sup>[32]</sup> Thus, the CA concluded that the argument of the bus company was only an excuse to cover up the latter's mistake in terminating him without due process of law.<sup>[33]</sup>

The CA then ordered ALPS Transportation to reinstate Rodriguez and to pay him full backwages, viz:

**WHEREFORE**, the petition is **GRANTED**. Alfredo Perez is declared guilty of having committed illegal dismissal. Accordingly, only the portions of the assailed dispositions ordering the reinstatement of Elpidio Rodriguez to his former position without loss of seniority rights is **AFFIRMED** and the phrase, "but without backwages" is **ANNULLED and SET ASIDE**. In lieu thereof, Alfredo Perez is **ORDERED** to pay Elpidio Rodriguez backwages computed from the time he was illegally dismissed until his actual reinstatement. No costs.

**SO ORDERED.**<sup>[34]</sup>

Aggrieved by the appellate court's decision, petitioners filed the instant Rule 45 Petition before this Court.

### **THE ISSUES**

As culled from the records and the submissions of the parties, the issues in this case are as follows:

1. Whether respondent Rodriguez was validly dismissed; and
2. Assuming that respondent was illegally dismissed, whether ALPS Transportation and/or Alfredo E. Perez is liable for the dismissal.

### **THE COURT'S RULING**

We uphold the assailed Decision and Resolution and rule that respondent Rodriguez has been illegally dismissed.

For a dismissal to be valid, the rule is that the employer must comply with both substantive and procedural due process requirements.<sup>[35]</sup> Substantive due process requires that the dismissal must be pursuant to either a just or an authorized cause under Articles 282, 283 or 284 of the Labor Code.<sup>[36]</sup> Procedural due process, on the other hand, mandates that the employer must observe the twin requirements of notice and hearing before a dismissal can be effected.<sup>[37]</sup>

Thus, to determine the validity of Rodriguez's dismissal, we first discuss whether his employment was terminated for a just cause.

Petitioners argue that the dismissal of Rodriguez was brought about by his act of

collecting fare from a passenger without issuing the corresponding ticket.<sup>[38]</sup> This was not the first irregularity report issued against respondent, as similar reports had been issued against him on 26 April 2003<sup>[39]</sup> and 12 October 2003.<sup>[40]</sup> Thus, the company had lost trust and confidence in him, as he had committed serious misconduct by stealing company revenue.<sup>[41]</sup> Petitioners therefore submit that the dismissal was valid under Article 282 of the Labor Code.<sup>[42]</sup>

For his part, Rodriguez denies the contents of the irregularity report.<sup>[43]</sup> He states that the report consists of a mere charge, but is bereft of the necessary proof.<sup>[44]</sup> Moreover, he submits that while the bus company filed a criminal complaint against him for the same act, the complaint was dismissed pursuant to an Affidavit of Desistance, in which the bus company stated that “the incident arose out of [a] misunderstanding between them.”<sup>[45]</sup> Finally, he contends that the company’s invocation of the 2003 irregularity reports to support his dismissal effected in 2005 was a mere afterthought.<sup>[46]</sup> In any event, he maintains that even those alleged infractions were not duly supported by evidence.<sup>[47]</sup>

We find for respondent and rule that the employer failed to prove that the dismissal was due to a just cause.

The Labor Code provides that the burden of proving that the termination of an employee was for a just or authorized cause lies with the employer.<sup>[48]</sup> If the employer fails to meet this burden, the conclusion would be that the dismissal was unjustified and, therefore, illegal.<sup>[49]</sup>

Here, we agree with Rodriguez’s position that the 26 January 2005 irregularity report, which served as the basis of his dismissal, may only be considered as an uncorroborated allegation if unsupported by substantial evidence. On this matter, we quote with favor the ruling of the appellate court:

[T]he nature of work of a bus conductor involves inherent or normal occupational risks of incurring money shortages and uncollected fares. A conductor’s job is to collect exact fares from the passengers and remit his collections to the company. Evidence must, therefore, be substantial and not based on mere surmises or conjectures for to allow an employer to terminate the employment of a worker based on mere allegations places the latter in an uncertain situation and at the sole mercy of the employer. An accusation that is not substantiated will not ripen into a holding that there is just cause for dismissal. A mere accusation of wrongdoing or a mere pronouncement of lack of confidence is not sufficient cause for a valid dismissal of an employee. Thus, the failure of the [petitioners] to convincingly show that the [respondent] misappropriated the bus fares renders the dismissal to be without a valid cause. To add, jurisprudence dictates that [if] doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.<sup>[50]</sup> (Citations omitted)

Thus, we rule that petitioners have failed to prove that the termination of Rodriguez’s employment was due to a just cause.