

FIRST DIVISION

[G.R. No. 172506, July 27, 2011]

**JERRY MAPILI, PETITIONER, VS. PHILIPPINE RABBIT BUS
LINES, INC./NATIVIDAD NISCE, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

An employee's propensity to commit repetitious infractions evinces wrongful intent, making him undeserving of the compassion accorded by law to labor.

This Petition for Review on *Certiorari* [1] assails the Decision [2] dated January 16, 2006 and Resolution [3] dated April 6, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 89733, which affirmed the Decision [4] dated November 25, 2004 and Resolution [5] dated February 28, 2005 of the National Labor Relations Commission (NLRC) finding petitioner Jerry Mapili (petitioner) to have been dismissed for cause.

Factual Antecedents

Respondent Natividad P. Nisce (Nisce) is the President of respondent Philippine Rabbit Bus Lines, Inc. (PRBLI), an entity engaged in the transportation business. On April 7, 1993, PRBLI hired petitioner as bus conductor with a salary of P510.00 per trip. On October 7, 2001, while on duty en route from Manila to Alaminos, Pangasinan, petitioner was caught by PRBLI's field inspector extending a free ride to a lady passenger who boarded at *Barangay* Magtaking, Labrador, Pangasinan. Upon order of the field inspector, the lady passenger, who happened to be the wife of Julio Ricardo, petitioner's co-employee and one of PRBLI's drivers, was immediately issued a passenger ticket for which she paid P50.00. [6]

On October 9, 2001, petitioner was preventively suspended and was directed to appear in an administrative investigation. [7] Thereafter, a formal hearing was conducted during which petitioner was given an opportunity to present and explain his side. Consequently, through a memorandum [8] dated November 9, 2001, petitioner was terminated from employment for committing a serious irregularity by extending a free ride to a passenger in violation of company rules. Notably, that was already the third time that petitioner committed said violation.

On February 19, 2002, petitioner filed with the NLRC a Complaint [9] for illegal dismissal against PRBLI, Nisce, and Ricardo Paras (Paras), PRBLI's General Manager.

Parties' Respective Arguments

Petitioner alleged that his employment was terminated without cause and due process. He argued that the infraction was only trivial. It was done without malice

and resulted from his honest belief that immediate family members of PRBLI's employees are entitled to free ride. He argued that his two previous violations of the same company regulation cannot be considered in the imposition of the penalty of dismissal since those previous infractions were not too serious. The first involved a police officer supposedly on official duty who refused to pay for a passenger ticket, while the second involved a former employee of PRBLI who misrepresented himself to be a current employee by virtue of a company ID duly presented. Moreover, he has already been penalized for these previous violations and to consider them anew would be tantamount to penalizing him twice for the same offense. Under these circumstances and considering further his length of service, petitioner advanced that his violations are not sufficient to merit the penalty of dismissal. Petitioner thus prayed that his dismissal be declared illegal and that he be awarded separation pay in lieu of reinstatement, backwages, 13th month pay, damages, attorney's fees and refund of cash bond in the amount of P5,000.00.

Respondents argued that petitioner's admissions during the investigation that he indeed offered a free ride out of gratitude to the wife of his co-employee and that it was his third offense, justified his termination considering that his position is imbued with trust and confidence. They claimed that petitioner's failure to collect fares from the riding public, coupled with his past record of serious offenses ranging from non-issuance, improper passenger tickets to collecting fares without issuing tickets, and allowing passengers to board without fare coupons, for which different penalties have been imposed against him, are grounds for valid dismissal. Respondents also argued that due process was observed when petitioner was accorded a chance to defend himself in an investigation conducted for that purpose. Respondents further disclaimed bad faith, malice, and liability to petitioner's money claims.

Ruling of the Labor Arbiter

In a Decision ^[10] dated July 2, 2003, the Labor Arbiter held that petitioner had no intention to defraud the company by his failure to issue a ticket to the wife of a co-employee as the same was done out of gratitude and under the wrong impression that she is entitled to such privilege. Besides, the amount of the fare was subsequently collected from and paid by the passenger. The Labor Arbiter opined that petitioner's actuations merited a less punitive penalty such as suspension of 30 days which he already served during his preventive suspension. The Labor Arbiter also found that petitioner was not denied due process since he was given the opportunity to present his side. As regards Nisce and Paras, the Labor Arbiter held that they cannot be held personally liable for lack of bad faith on their part. The dispositive portion of said Decision reads:

PREMISES CONSIDERED, judgment is hereby rendered declaring complainant Jerry B. Mapili to have been illegally dismissed from employment. Respondent Philippine Rabbit Bus Lines, Inc. is hereby ordered to reinstate complainant to his former position or to a similar one without loss of seniority rights and pay him the following:

- a.) Backwages amounting to Php271,320.00;
- b.) 13th month pay of Php24,650.00;
- c.) Php5,000.00 as refund of bond.

All in the total amount of Php300,970.00.

A detailed computation is attached as Annex 'A'.

SO ORDERED. [11]

Ruling of the National Labor Relations Commission

The NLRC, in a Decision [12] dated November 25, 2004 set aside the findings of the Labor Arbiter upon appeal by respondents. It found that the non-issuance of a ticket to the lady passenger and failure to collect money due to the company was a deliberate and intentional act of petitioner which prejudiced the company's interests. In ruling that petitioner's dismissal was for just cause, the NLRC opined that petitioner's past record of committing several acts of misconduct and his propensity to commit similar infractions do not merit the compassion of law. Thus, the NLRC disposed of the case as follows:

WHEREFORE, premises considered, the decision under review is hereby, REVERSED and SET ASIDE, and another entered in its stead, DISMISSING the complaint for lack of merit.

Respondents are, however, ordered to refund complainant's cash bond in the amount of FIVE THOUSAND PESOS (P5,000.00), and his proportionate 13th month pay for the year 2001 in the amount of ELEVEN THOUSAND THREE HUNDRED NINETY Pesos (P11,390.00), or a total amount of SIXTEEN THOUSAND THREE HUNDRED NINETY Pesos (P16,390.00).

SO ORDERED. [13]

Petitioner filed his Motion for Reconsideration [14] which was denied by the NLRC in a Resolution [15] dated February 28, 2005.

Ruling of the Court of Appeals

Petitioner filed with the CA a petition for *certiorari*. [16] The CA, in its Decision [17] dated January 16, 2006, however, found no grave abuse of discretion on the part of the NLRC in ruling that petitioner was validly dismissed. The CA agreed that petitioner has a history of committing violations of company rules, the last one being a repeat violation against extending free rides to passengers. This infraction is considered as a grave offense and serious misconduct which merits the penalty of dismissal. The CA also agreed that there was intent to cheat the company of its funds.

Petitioner's Motion for Reconsideration [18] was likewise denied in the CA Resolution [19] dated April 6, 2006.

Hence, the instant petition.

Issues

Petitioner raised the following grounds:

I.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT DISMISSAL FROM EMPLOYMENT IS NOT [A COMMENSURATE] PENALTY [FOR] THE INFRACTION COMMITTED AS A MERE ERROR IN JUDGMENT, SUCH AS PETITIONER'S ACT OF EXTENDING A FREE BUS RIDE TO THE CO-EMPLOYEE BUS DRIVER'S WIFE ON THE HONEST BELIEF THAT AN IMMEDIATE FAMILY MEMBER OF AN EMPLOYEE IN THE COMPANY IS ENTITLED TO A FREE RIDE;

II.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN EQUATING AS PROOF RESPONDENTS' MERE ALLEGATIONS OF VARIOUS PAST INFRACTIONS AGAINST YOUR PETITIONER; and

III.

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN NOT HOLDING THAT THE PAST TWO SIMILAR INFRACTIONS [FOR] WHICH AN EMPLOYEE HAS ALREADY SUFFERED THE CORRESPONDING PENALTY OF WARNING AND SUSPENSION, CANNOT BE USED AS X X X JUSTIFICATION[S] FOR THE EMPLOYEE'S DISMISSAL FROM SERVICE. [20]

Petitioner asserts that the penalty of dismissal is grossly disproportionate to the infraction he committed because his act of extending a free ride was not deliberate but was done on a wrong assumption that immediate family members of company employees are entitled to free rides. He insists that his past infractions, unsupported by proof, and his previous two offenses of not issuing fare tickets to a police officer and former company employee cannot be used as bases for his termination considering that his actuations for the latter offenses were justified under the circumstances and that he was already penalized for all these past violations. It is petitioner's view that his infraction merits only a 30-day suspension, as imposed by the Labor Arbiter.

Our Ruling

We deny the petition.

Petitioner's violation of company rules was intentional, willful, serious and a just cause for dismissal.