

SECOND DIVISION

[G.R. NO. 166208, June 29, 2007]

**KING OF KINGS TRANSPORT, INC., CLAIRE DELA FUENTE, AND
MELISSA LIM, PETITIONERS, VS. SANTIAGO O. MAMAC,
RESPONDENT.**

D E C I S I O N

VELASCO, JR., J.:

Is a verbal appraisal of the charges against the employee a breach of the procedural due process? This is the main issue to be resolved in this plea for review under Rule 45 of the September 16, 2004 Decision^[1] of the Court of Appeals (CA) in CA-GR SP No. 81961. Said judgment affirmed the dismissal of bus conductor Santiago O. Mamac from petitioner King of Kings Transport, Inc. (KKTi), but ordered the bus company to pay full backwages for violation of the twin-notice requirement and 13th-month pay. Likewise assailed is the December 2, 2004 CA Resolution^[2] rejecting KKTi's Motion for Reconsideration.

The Facts

Petitioner KKTi is a corporation engaged in public transportation and managed by Claire Dela Fuente and Melissa Lim.

Respondent Mamac was hired as bus conductor of Don Mariano Transit Corporation (DMTC) on April 29, 1999. The DMTC employees including respondent formed the *Damayan ng mga Manggagawa, Tsuper at Conductor-Transport Workers Union* and registered it with the Department of Labor and Employment. Pending the holding of a certification election in DMTC, petitioner KKTi was incorporated with the Securities and Exchange Commission which acquired new buses. Many DMTC employees were subsequently transferred to KKTi and excluded from the election.

The KKTi employees later organized the *Kaisahan ng mga Kawani sa King of Kings* (KKKK) which was registered with DOLE. Respondent was elected KKKK president.

Respondent was required to accomplish a "Conductor's Trip Report" and submit it to the company after each trip. As a background, this report indicates the ticket opening and closing for the particular day of duty. After submission, the company audits the reports. Once an irregularity is discovered, the company issues an "Irregularity Report" against the employee, indicating the nature and details of the irregularity. Thereafter, the concerned employee is asked to explain the incident by making a written statement or counter-affidavit at the back of the same Irregularity Report. After considering the explanation of the employee, the company then makes a determination of whether to accept the explanation or impose upon the employee a penalty for committing an infraction. That decision shall be stated on said Irregularity Report and will be furnished to the employee.

Upon audit of the October 28, 2001 Conductor's Report of respondent, KKTi noted an irregularity. It discovered that respondent declared several sold tickets as returned tickets causing KKTi to lose an income of eight hundred and ninety pesos. While no irregularity report was prepared on the October 28, 2001 incident, KKTi nevertheless asked respondent to explain the discrepancy. In his letter,^[3] respondent said that the erroneous declaration in his October 28, 2001 Trip Report was unintentional. He explained that during that day's trip, the windshield of the bus assigned to them was smashed; and they had to cut short the trip in order to immediately report the matter to the police. As a result of the incident, he got confused in making the trip report.

On November 26, 2001, respondent received a letter^[4] terminating his employment effective November 29, 2001. The dismissal letter alleged that the October 28, 2001 irregularity was an act of fraud against the company. KKTi also cited as basis for respondent's dismissal the other offenses he allegedly committed since 1999.

On December 11, 2001, respondent filed a Complaint for illegal dismissal, illegal deductions, nonpayment of 13th-month pay, service incentive leave, and separation pay. He denied committing any infraction and alleged that his dismissal was intended to bust union activities. Moreover, he claimed that his dismissal was effected without due process.

In its April 3, 2002 Position Paper,^[5] KKTi contended that respondent was legally dismissed after his commission of a series of misconducts and misdeeds. It claimed that respondent had violated the trust and confidence reposed upon him by KKTi. Also, it averred that it had observed due process in dismissing respondent and maintained that respondent was not entitled to his money claims such as service incentive leave and 13th-month pay because he was paid on commission or percentage basis.

On September 16, 2002, Labor Arbiter Ramon Valentin C. Reyes rendered judgment dismissing respondent's Complaint for lack of merit.^[6]

Aggrieved, respondent appealed to the National Labor Relations Commission (NLRC). On August 29, 2003, the NLRC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, the decision dated 16 September 2002 is MODIFIED in that respondent King of Kings Transport Inc. is hereby ordered to indemnify complainant in the amount of ten thousand pesos (P10,000) for failure to comply with due process prior to termination.

The other findings are AFFIRMED.

SO ORDERED.^[7]

Respondent moved for reconsideration but it was denied through the November 14, 2003 Resolution^[8] of the NLRC.

Thereafter, respondent filed a Petition for Certiorari before the CA urging the nullification of the NLRC Decision and Resolution.

The Ruling of the Court of Appeals

Affirming the NLRC, the CA held that there was just cause for respondent's dismissal. It ruled that respondent's act in "declaring sold tickets as returned tickets x x x constituted fraud or acts of dishonesty justifying his dismissal."^[9]

Also, the appellate court sustained the finding that petitioners failed to comply with the required procedural due process prior to respondent's termination. However, following the doctrine in *Serrano v. NLRC*,^[10] it modified the award of PhP 10,000 as indemnification by awarding full backwages from the time respondent's employment was terminated until finality of the decision.

Moreover, the CA held that respondent is entitled to the 13th-month pay benefit.

Hence, we have this petition.

The Issues

Petitioner raises the following assignment of errors for our consideration:

Whether the Honorable Court of Appeals erred in awarding in favor of the complainant/private respondent, full back wages, despite the denial of his petition for certiorari.

Whether the Honorable Court of Appeals erred in ruling that KKTi did not comply with the requirements of procedural due process before dismissing the services of the complainant/private respondent.

Whether the Honorable Court of Appeals rendered an incorrect decision in that [sic] it awarded in favor of the complaint/private respondent, 13th month pay benefits contrary to PD 851.^[11]

The Court's Ruling

The petition is partly meritorious.

The disposition of the first assigned error depends on whether petitioner KKTi complied with the due process requirements in terminating respondent's employment; thus, it shall be discussed secondly.

Non-compliance with the Due Process Requirements

Due process under the Labor Code involves two aspects: **first**, substantive--the valid and authorized causes of termination of employment under the Labor Code; and **second**, procedural--the manner of dismissal.^[12] In the present case, the CA affirmed the findings of the labor arbiter and the NLRC that the termination of employment of respondent was based on a "just cause." This ruling is not at issue in this case. The question to be determined is whether the procedural requirements

were complied with.

Art. 277 of the Labor Code provides the manner of termination of employment, thus:

Art. 277. Miscellaneous Provisions.--x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer.

Accordingly, the implementing rule of the aforesaid provision states:

SEC. 2. Standards of due process; requirements of notice.--In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(c) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. ^[13]

In case of termination, the foregoing notices shall be served on the employee's last known address. ^[14]

To clarify, the following should be considered in terminating the services of employees:

(1) The **first written notice** to be served on the employees should contain the