

## THIRD DIVISION

[ G.R. No. 124100, April 01, 1998 ]

**PHILTRANCO SERVICE ENTERPRISES, INC., PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND MR. ROBERTO  
NIEVA, RESPONDENTS.**

### D E C I S I O N

**ROMERO, J.:**

Petitioner seeks, in this petition for *certiorari* under Rule 65, the reversal of the resolution of the National Labor Relations Commission dated November 29, 1995, ordering petitioner to pay private respondent Roberto Nieva back wages and separation pay.

The facts of the case are as follows:

Roberto Nieva who was employed as a driver by petitioner Philtranco Services Enterprises, Inc. (hereafter Philtranco) on April 13, 1977, was assigned to the Legaspi City-Pasay City route. On May 15, 1989, Nieva sideswiped an owner-type jeep, damaging the latter's park light. Unfortunately, the vehicle's owner turned out to be a PC colonel who arrested Nieva and brought him to Camp Crame where the corresponding criminal complaint was filed against him.

Nieva obtained his release from detention by virtue of a bail bond secured by Philtranco. He was suspended by the latter for thirty days effective June 8, 1989. Nieva reported back to work after serving his suspension. A few days after resuming his driving duties, however, he was re-arrested on the ground that his bail bond was fake. Nieva reported the incident to the management of Philtranco. On October 15, 1989, Nieva was advised by Philtranco's administrative officer, Epifanio Llado, that to avoid re-arrest, he would have to refrain from driving until a settlement could be reached with the jeep owner. From then on, Nieva would report for work only to be told to wait until his case was settled. The case was finally settled on July 20, 1991, with Philtranco paying for the damages to the jeep. Three days thereafter, Nieva reported for work, but he was requested to file a new application as he was no longer considered an employee of Philtranco, allegedly for being absent without leave from October 19 to November 20, 1989.

Aggrieved by this turn of events, Nieva filed a complaint for illegal dismissal and 13<sup>th</sup> month pay with the NLRC's National Capital Region Arbitration Branch in Manila, which docketed the same as NLRC NCR Case No. 03-01891-92. The case was subsequently assigned to Labor Arbiter Cornelio L. Linsangan.

Philtranco did not appear at the first four conferences scheduled by the arbiter, prompting the latter to warn Philtranco that it would be declared in default if it failed

to appear at the next hearing. Threatened with such an eventuality, Philtranco's representative finally appeared. On August 28, 1992, it filed a position paper with motion to dismiss, stating, among other things, that the complaint should have been lodged with the NLRC's Regional Arbitration Branch in Legaspi City, not only because Nieva was a resident thereof, but also because the latter was hired, assigned, and based in Legaspi City.<sup>[1]</sup>

The motion to dismiss was denied by the labor arbiter in an order dated January 26, 1993. Nieva then presented his evidence. On August 30, 1993, Philtranco filed a second motion to dismiss, which was likewise denied by the arbiter on the ground that the same did not raise any new arguments. Thereafter, Philtranco presented its evidence to prove that Nieva had abandoned his work, having been absent without leave from October 19 to November 20, 1989.

After considering the evidence of the parties, the labor arbiter gave more credence to Nieva's version of facts, finding that the latter's absences were incurred with Philtranco's permission, since he was instructed not to drive until his case was settled. The arbiter dismissed Philtranco's allegation that Nieva had abandoned his work, stating that:

"Persistence in pursuing his claim before the Labor Arbiter negates allegation of abandonment (Antonio Evangelista vs. NLRC and Arturo Mendoza, 195 SCRA 603). In the instant case, even before complainant filed his present complaint he had already shown his determination (and) persistence to return to his work as he untiringly kept on reporting for duty. In fact, as ordered by his supervisor in Legaspi City, he even went to respondent's main office in Pasay City to talk to the operations manager regarding his return to work. There could be no better manifestation of one's interest to his work than what complainant had done. Definitely, therefore, complainant did not abandon his job."<sup>[2]</sup>

Thus, on June 14, 1994, the labor arbiter rendered a decision awarding back wages and separation pay to Nieva. Said decision was seasonably appealed to the NLRC by Philtranco. In a resolution issued on September 15, 1995, the NLRC affirmed the decision of the labor arbiter, granting back wages and separation benefits as follows:

"PREMISES CONSIDERED, WHEREFORE, respondent is directed to pay individual complainant Roberto Nieva both his backwages in the amount of P67,392.00 PESOS and separation benefits in the amount of P33,696.00 PESOS.

SO ORDERED."<sup>[3]</sup>

Philtranco's motion for reconsideration of said resolution having been likewise denied by the NLRC in its resolution of November 29, 1995, Philtranco elevated its case to this Court, raising the following issues:

1. The NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it denied the motion of Philtranco to dismiss complaint based on improper venue;
2. The Commission gravely abused its discretion amounting to lack or in excess of jurisdiction in ruling that Philtranco should be imposed backwages and separation pay;