

THIRD DIVISION

[G.R. No. 121574, October 17, 1996]

**METRO TRANSIT ORGANIZATION, INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND FERNANDO
DIZON, RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., J.:

This is a special civil action for *certiorari* to set aside the resolutions of 2 May 1995^[1] and 13 July 1995^[2] of public respondent National Labor Relations Commission (NLRC) in NLRC NCR 00-09-05220-92 (NCR CA No. 005718-93). The former affirmed the decision of 10 August 1993^[3] of Labor Arbiter Eduardo J. Carpio ordering the reinstatement of private respondent Fernando Dizon with the modification that back wages was awarded in favor of Dizon. The latter denied the petitioner's motion for reconsideration.

The antecedent facts of the case are as follows:

Private respondent was employed as an LRV Technician by Metro Transit Organization, Inc. (hereinafter METRO). He had been with METRO for eight years until his questioned dismissal from employment on 27 April 1992. His salary as of the time of his dismissal was P6,200.00 a month.^[4]

On 29 February 1992, the private respondent was assigned to conduct testing on LRV 1061 (train) for various repairs done to it. In the process of testing the same, the train overshot the bunker and collided with gantry 33A thereby causing major damage on the catenary line and injuries to a passing pedicab driver and a security guard. The damage caused was estimated at P12,089,350.36. A formal investigation was conducted. Thereafter, the private respondent was found guilty of gross negligence of duty and was ordered dismissed from the service.^[5] The letter of dismissal states:

It has been established after formal investigation that on February 29, 1992, a single LRV 1061 stabled at Track 9 was maneuvered by you for testing of a reported fault. While approaching the test track, you noticed an intermittent fault indication (CL4) and upon reaching the mid-section of the test track, you again noticed that the LRV's speed was apparently not indicative of the speedometer reading prompting you to apply PB6 but this failed so you stepped on the brake pedal (position 5) which again did not function. As a last resort, you then activated PB7 (pantodown) to cut the power supply on the wrong notion that said LRV would stop which, however, proved to be a disastrous mistake. The pantodown command you executed only contributed to the loss of the train's braking system.

As a consequence, the LRV overshot the bunker ballast and collided with gantry 33A inflicting major damage on the catenary line and causing injuries to a passing pedicab driver and another security guard who was thrown out of the guard house upon impact. In the summation, damage was placed at P12,089,350.56 (taxes and custom duties included) which covers the restoration works on catenary, civil and tracks and rolling stock and claim for damages of those injured in the mishap.

On the basis of the foregoing considerations, you have been found guilty of gross negligence in the performance of your duties and responsibilities and for violating the Safety Code to the prejudice of the Company.

In view thereof, Management is compelled to dismiss you from the service of the Company for a cause, in accordance with law, effective immediately.^[6]

The private respondent assailed his dismissal and filed a complaint for illegal dismissal before Labor Arbiter Eduardo J. Carpio. He argued as follows:

[T]he train (LRV 1061) had just undergone repairs prior to the incident of February 29, 1992. It is precisely to test its traction and brake system that it was moved to Track 9 that morning. In fine, such testing was to ascertain if LRV 1061 could be cleared of defect/s after such testing. If during such testing, its systems break and after applying all precautions and emergency measures believed proper and appropriate under the circumstances, one cannot be lawfully charged for "gross negligence" in the discharge of duties and meted the supreme penalty of dismissal".

x x x

Clearly, the train had, admittedly, several defects at the time of the incident as registered in its CL4. Its speedometer was not also registering its correct speed at the time. So after noticing these, the complainant did or took steps which at that very critical and emergency situation appeared to him to be proper and appropriate to stop the train to prevent any damage to it. He applied PB6 immediately and when this failed, he stepped on the brake pedal, which also failed. He knew there was not much time as it (train) was then nearing the bunker ballast and could not be stopped so, as a last resort, he thought of activating PB7 to cut-off the train's power supply, but this did not likewise prove successful as it did not also stop the train. This explains why the train overshot the bunker ballast and caused damage to it.

Clearly, Dizon did all he could and took all steps he believe[d] could have stopped the train which, unfortunately, proved futile. It was an emergency situation for which he could not be blamed for alleged "gross negligence". If at all, the defects of the train caused the incident and these were beyond the control of the complainant. He could not even be charged of contributory negligence precisely because of the steps he did to stop the train. Assuming he committed a mistake in the process, it

must be excusable because of the critical and emergency nature in which he found himself in at the time.^[7]

In his decision of 10 August 1993, the Labor Arbiter ruled that the private respondent could not be held liable for gross negligence in the performance of his duties and that the penalty of dismissal was not justified.^[8] The Labor Arbiter made the following findings:

It is not disputed that train LRV 1061 had just undergone repairs prior to the incident. It was taken out from Track 9 by complainant to test if it was already cleared of defects. To discover if there are still defects, the train has to undergo the testing process. It is in this process that defects, causing the accident, were uncovered. If damages resulted therefrom, complainant, as the person in charge of the testing, cannot be made to answer for it. As LRV Technician, he merely employed what he believe[d] are means proper and appropriate under such emergency and critical situation. What he did [were] not indicative of "gross negligence". Complainant herein [was] in good faith when he performed his duties as LRV Technician. He had no intention to commit so grave a wrong so as to prejudice the interest of respondent company. Nothing on record and on the investigation report taken by respondents where we can find that such bad intention of complainant to prejudice the company is established by evidence. If ever there was negligence on the part of complainant, the same was excusable.^[9]

Accordingly, the Labor Arbiter ordered the immediate reinstatement of the private respondent. However, he made no award for back wages.^[10]

This decision was unacceptable to both parties. They appealed therefrom to the NLRC with the petitioner imputing upon the Labor Arbiter the following errors: (a) in not finding the private respondent negligent and reckless in the performance of his duties and functions that resulted in the over-shooting of LRV 1061; (b) in holding that the incident in question was unexpected and beyond the control of the private respondent; and (c) in holding that the private respondent acted in good faith and that the steps and measures taken by him were proper and appropriate. The private respondent, on the other hand, assailed the failure of the Labor Arbiter to grant him back wages despite the finding that he was illegally dismissed from his employment.

In its resolution of 2 May 1995, the NLRC upheld the Labor Arbiter on the issue of illegal termination. But it disagreed with the Labor Arbiter on the issue of back wages, and ruled for the private respondent.

Since its motion for a reconsideration of the resolution was denied in the resolution of 13 July 1995, the petitioner instituted the instant special civil action for *certiorari* alleging that the NLRC gravely abused its discretion in totally discarding uncontroverted evidence and in relying merely on conjectures and assumptions not supported by facts.

Upon a meticulous consideration of the arguments of the parties as amplified in their respective Memoranda, we are led to no other conclusion but to affirm the challenged resolutions.