

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE RABBIT BUS LINES, INC.,
*Petitioner,***

-versus-

**G.R. No. 98137
September 15, 1997**

**NATIONAL LABOR RELATIONS
COMMISSION, HON. LABOR ARBITER
ROLANDO D. GAMBITO, and
REYNATO B. AGUINALDO,
*Respondents.***

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DECISION

MENDOZA, J.:

This is a Petition for *Certiorari* to set aside the Decision of the NLRC dated October 29, 1990 and the resolution dated February 28, 1991, holding petitioner Philippine Rabbit Bus Lines, Inc. liable to private respondent Reynato B. Aguinaldo for one year backwages and for reinstatement.

The facts of the case are as follows:

Private respondent was a bus conductor of the Philippine Rabbit Bus Lines, Inc. His duty, among other things, was to issue freight and passenger tickets and to collect the corresponding payment.

On September 18, 1988, private respondent and bus driver Conrado Collado were scheduled to make a trip from Baguio City to Manila on Bus No. 575 at 10 p.m. Private respondent arrived at the terminal thirty (30) minutes before the start of the trip. He saw bundles of flowers already loaded on the bus. He inquired from the freight clerk whether the freight fare for the flowers had been paid and was told that it had been paid. Private respondent was handed a bill of lading indicating payment of the amount of P800.00. Based on the bill of lading, he issued a freight ticket.

As the bus was already full, it left Baguio City fifteen minutes ahead of schedule. When it was nearing Camp 6 at Tuba, Benguet, inspectors Jessie C. Sy and Silverio Mendoza boarded the bus and found that two passengers, one bound for Camp 5 and the other bound for Manila, had not been issued tickets. Upon the inspectors' instruction, private respondent issued tickets to the two passengers.

At the Tarlac terminal, the inspectors counted the number of bundles of flowers on the bus and found that eight bundles had not been accounted for in the bill of lading. Hence, private respondent Aguinaldo issued an additional freight ticket for the extra baggage and paid the freight fare from his own money.

Because of these incidents, private respondent was told that he was being placed under preventive suspension on that day. On September 21, 1988, a memorandum was issued to him by the company, confirming his suspension and stating the grounds for his suspension and requiring him to report for investigation within three days.

On September 26, 1988, Ricardo J. Castañeda, Jr., operations manager, conducted an investigation during which private respondent admitted the violations alleged in the memorandum.

After the lapse of 30 days, Aguinaldo reported for work, but he was refused admission into the company compound. Hence on April 26, 1989, he filed a complaint for illegal dismissal. On May 3, 1989, a

notice of termination dated April 11, 1989 was served on him by petitioner.^[1]

On December 20, 1989, the Labor Arbiter rendered a decision, finding petitioner guilty of dismissing private respondent without just cause and denying his right to due process. The dispositive portion of the decision states:^[2]

WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent to reinstate the complainant to his former position as bus conductor and to pay his backwages from September 18, 1988 up to his actual reinstatement. In case reinstatement is no longer possible, respondent is ordered to pay his separation pay computed at one month salary including other benefits/commissions, for every year of service.

Thus, respondent should pay the complainant the following:

BACKWAGES

Period covered: September 18, 1988 up to November 30, 1989 or an equivalent of 382 working days.

I.	Working Days Covered	382 days
II.	Multiplied by the basic rate of	x P77.35

III.	Equals backwages due	P29,547.00

NOTE: Computation of backwages does not include backwages from November 30, 1989 up to actual reinstatement by respondent.

SEPARATION PAY IN CASE REINSTATEMENT IS NOT POSSIBLE

I.	Salary per day	P77.35 per day
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II.	Multiplied by working days per month	x 26 days
III.	Equals salary per month	P2,011.00
IV.	Multiplied by years of service	x 21 years -----
V.	Equals separation pay of	P42,231.00

NOTE: A fraction of at least six (6) months considered as one whole year(Section 9, Rule I, Book VI, Implementing Rules and Regulations of the Labor Code).

SUMMARY

A.	Backwages	P29,547.00
B.	Separation Pay	42,231.00 -----
	TOTAL	P71,778.00

Respondent is likewise ordered to pay P5,000.00 as attorney's fees to complainant's counsel whose services he was forced to engage to assist him in this case.

Petitioner appealed to the NLRC which, on October 29, 1990, affirmed the Labor Arbiter's decision with the modification that the alternative reliefs of separation pay and attorney's fees were deleted and, instead, petitioner's reinstatement with backwages for one year was ordered.^[3] Petitioner moved for reconsideration, but its motion was denied on February 28, 1991.^[4] Hence this petition.

Petitioner contends that it complied with the twin requirements of showing just cause and due process before dismissing private respondent. With respect to the requirement of due process, it claims that private respondent was notified of the charges against him by means of a memorandum dated September 20, 1988, and that he was duly heard during a formal investigation held on September 26, 1988. Petitioner alleges that private respondent was dismissed on May 3, 1989, upon the service on him of a termination notice.

With respect to the finding of the NLRC and the Labor Arbiter that dismissal was a harsh penalty and that imposition of the penalty was unreasonable and baseless, petitioner points to Aguinaldo's record of violations of company rules for which he was reprimanded and warned, thus justifying a finding that petitioner was guilty of (1) serious misconduct or willful disobedience; (2) gross and habitual neglect of duties; and (3) willful breach of trust.^[5]

It is argued that Aguinaldo's error in relying, on the freight clerk for information as to the number of bundles of flowers loaded on the bus on September 18, 1988 should not be considered an occupational risk, as the NLRC held, because, as conductor, his duty was to count the bundles. Petitioner claims that the evidence shows that Aguinaldo was incorrigible and justifies its loss of confidence in him. Contending that because its income depends primarily on the efficient, effective, and honest-to-goodness collection of transportation fares, petitioner asserts that private respondent's habitual failure to do his duties cannot be taken lightly.

First. Petitioner's claim that the memorandum given on September 21, 1988 to private respondent was sufficient compliance with the following requirements of law and regulations:

Labor Code, Art. 277(b):

- (b) The employee 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.

Omnibus Implementing Rules, Book V, Rule XIV:

- Sec. 2. Notice of dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In

cases of abandonment of work, the notice shall be served at the worker's last known address.

Sec. 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representatives, if he so desires.

Sec. 6. Decision to dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating the reasons therefor.

The memorandum issued to private respondent, while stating the violations charged against him, did not say that the violations were being charged as grounds for dismissal but rather for preventive suspension. Thus the memorandum reads:^[6]

Date: Sept. 20, 1988

Memo to

CONDUCTOR REYNATO AGUINALDO

Bus No. 575 — Baguio — Mla. Line

1. In connection with the reported violation/s of company rules and regulations you have committed (sic) are herein below enumerated, you are hereby paced (sic) under preventive suspension and directed to report to TRAFFIC DEPT. at the Main Office during office hours within three (3) days from receipt hereof, wherein you will be given opportunity to explain your side in formal investigation.

VIOLATION

- a) For failure to issue freight ticket to eight (8) bundles of flowers on board your Bus No. 575 on Sept. 18, 1988;

- b) For failure to issue ticket to two (2) passengers on September 18, 1988.

X X X

Conductor _____ to take over.

2. Failure on your part to report for investigation will be construed to mean waiver on your part to present your side and the management will render the appropriate decision.

(Sgd.)

RICARDO L. PARAS
General Manager

As the Solicitor General well states, the memorandum is insufficient to give warning of possible dismissal because in the past private respondent was given similar notices for which the penalty meted out was only reprimand or suspension. Indeed, an employee cannot be afforded "ample opportunity to be heard" as required by the Omnibus Rules above quoted if the notice given to him is inadequate.^[7]

Second. Considering that private respondent admitted the charges against him, the question is whether the termination of his employment was justified under the circumstances. With respect to private respondent's failure to issue tickets to two passengers, it is contended that there were quite a number of passengers when the bus left Baguio City. In fact, the bus left fifteen minutes ahead of schedule because it was already full. Nor, so it is contended, is there any question that, when the inspectors boarded the bus, private respondent was still in the process of issuing tickets to the passengers. It is quite probable that private respondent simply missed the two passengers in question to whom he did not issue tickets. Such failure to issue tickets cannot, however, be considered an occasional error, considering that this was not the first time he committed such mistakes. In the recent past similar mistakes were made for which he was reprimanded and given warning.

While the failure of private respondent to issue tickets to passengers could be considered excusable if not frequent, because, as the

Solicitor General on behalf of the NLRC contends, in his 20 years of service to the company, he committed only 62 violations of company rules, thus averaging a mere 3.26 violations per year, his record^[8] shows that, prior to the incident in this case, he had already been given last warnings on two occasions: on April 20, 1988 (for failure to issue ticket to a freightable item) and on September 17, 1988 (for underrating a freight ticket). These violations are similar to those involved in this case. The record shows that he committed eight offenses of this nature in the past for which he was at one time merely reprimanded and at other times suspended. His failure to observe due diligence in performing his job shows how little regard he had for the consequences of his acts and inactions.

With respect to his failure to count the bundles of flowers, we find Aguinaldo grossly negligent. Under the rules of the company, a conductor has to count the number of pieces of cargo to be carried, take the shipper to the person in charge of freight, and inform the latter of the number of packages to be transported so that the latter could prepare the bill of lading on the basis of which the conductor has to issue tickets.^[9] Private respondent did not follow the rules. In disregard of them, he chose to rely merely on the information given by the freight clerk that he had already counted the number of bundles of flowers and, on the basis of the bill of lading given to him by the freight clerk, private respondent issued the freight ticket. Private respondent's disregard of the rules cannot be considered occupational risk.

The fact that the flowers were already loaded on the bus when private respondent arrived at the terminal did not excuse him from the duty of counting the bundles even if this meant unloading them. Nor is the fact that the bus left Baguio City fifteen minutes earlier than scheduled because it was full a valid reason for private respondent not to count the cargo. It might be different if it was already late and therefore unloading the cargo and counting the number of pieces might cause more delay, although even in such a case there would be no reason to leave if the loading of cargo is taking quite some time to finish.

Nor can it be plausibly argued that because the offenses were already given the appropriate sanctions, they cannot be taken against him.

They are relevant in assessing private respondent's liability for the present violation for the purpose of determining the appropriate penalty. To sustain private respondent's argument that the past violation should not be considered is to disregard the warnings previously issued to him.

Nonetheless, considering that there is no allegation of dishonesty made in this case against private respondent and taking into account his twenty years of service to petitioner, we think he should be given some financial assistance to tide him and his family over until he finds other employment. Only recently, we have reiterated the rule that although an employee is validly dismissed for cause, he may nevertheless be given separation pay as a measure of social justice provided he is not guilty of serious misconduct reflecting on his moral character.^[10] Where, as in this case, the reason for the dismissal of the employee is gross negligence in the performance of his duties resulting in the loss of trust and confidence, we have ordered financial assistance to be given to such employee. Petitioner should therefore be ordered to pay private respondent the sum of P40,220.00 by way of separation pay, computed as follows:

Salary per month	P2,011.00
<i>(P77.35/day x 21 days/ Daily rate x # of working days)</i>	
Multiplied by: Years of service	
<i>(20 years, 1 month, and 1 day/ from April 2, 1969 until May 3, 1989)^[11]</i>	20

Separation pay due:	P40,220.00
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Pursuant to the memorandum dated September 20, 1988, private respondent was placed under preventive suspension on September 21, 1988. But, contrary to the Omnibus Rules, Book V, Rule XIV, §3, which provides that suspension shall not be for more than 30 days, private respondent's suspension was continued until May 3, 1989. If it was thought necessary to extend his suspension, his wages and other benefits should have been paid, without having to reimburse the amount paid to him in the event he was finally dismissed, as in

this case. Nevertheless, because of the award of separation pay herein ordered, no further payment for the period October 21, 1988 (end of 30-day period of suspension) to May 3, 1989 (termination of employment) is to be made by petitioner. The amount of separation pay shall be considered as full settlement of private respondent's monetary claims against petitioner.

WHEREFORE, the decision and resolution of the NLRC are **SET ASIDE** and judgment is hereby rendered **ORDERING** petitioner Philippine Rabbit Bus Lines, Inc. to pay private respondent Reynato B. Aguinaldo the sum of P1,000.00, as indemnity for violation of his right to due process, and the amount of P40,220.00, as separation pay.

SO ORDERED.

Regalado, Puno and Torres, Jr., JJ., concur.

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- [1] Rollo, p. 23.
[2] Id., pp. 36-37.
[3] Id., p. 60.
[4] Id., p. 73.
[5] NEW LABOR CODE, Art. 282 (a), (b), and (c).
[6] Rollo, pp. 6-7.
[7] Tanala vs. NLRC, 252 SCRA 314 (1996).
[8] Rollo, p. 25.
[9] Id., p. 29.
[10] Camua vs. NLRC, G.R. No. 116473, Sept. ____ 1997; Pepsico, Inc. vs. NLRC, 177 SCRA 308 (1989); Philippine Long Distance Telephone Co. vs. NLRC, 164 SCRA 671 (1988).
[11] At the rate of one month for every year of service, a fraction of at least six months being considered one year based on private respondent's salary at the time of his dismissal.