

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**SERAFIN QUEBEC SR.,  
*Petitioner,***

**-versus-**

**G.R. No. 123184  
January 22, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION, PAMFILO POMBO SR.,  
and ANTONIO QUEBEC,  
*Respondents.***

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**D E C I S I O N**

**BELLOSILLO, J.:**

This Petition for *Certiorari*<sup>[1]</sup> assails the 31 August 1995 Decision of public respondent National Labor Relations Commission (NLRC) which reversed its own Resolution of 27 February 1995 dismissing private respondents' appeal for lack of merit.

Petitioner Serafin Quebec Sr. was the owner of the Canhagimet Express, a transportation company plying Oras-Catbalogan (Samar) — the Bicol area — Metro Manila, and vice-versa, before the company was sold. Canhagimet Express was managed by Serafin Quebec Jr. until he was murdered on 1 September 1981.<sup>[2]</sup> Petitioner Serafin Quebec Sr. was his father. Serafin Quebec III, obviously the son of

Serafin Quebec Jr. and grandson of petitioner, briefly managed the company thereafter until he fled when he received serious threats to his life following the death of his father.

In September 1981 private respondent Antonio Quebec, brother of petitioner, was hired by the Company as inspector and liaison officer with the powers and duties of a supervisor/manager<sup>[3]</sup> at a monthly salary of P5,000.00 but without any 13<sup>th</sup> month pay, overtime pay, service incentive leave pay (SILP) and night premium pay.<sup>[4]</sup> Neither was he paid any separation pay when he was dismissed without any notice and hearing in 1991 by Paciencia Quebec, wife of petitioner, on suspicion of covering up the latter's womanizing activities.<sup>[5]</sup>

Meanwhile on 5 November 1981 private respondent Pamfilo Pombo Sr., brother-in-law of petitioner by reason of his marriage to petitioner's sister Estelita Quebec, was hired as driver-mechanic and co-manager of Antonio in Catbalogan, Northern Samar, the Bicol Region and Manila, for a monthly salary of P4,000.00. He was dismissed without notice and hearing in October 1990 allegedly for his failure to help in the repair of Bus No. 152. Neither was he given any separation pay, overtime pay, 13<sup>th</sup> month pay nor service incentive leave pay.<sup>[6]</sup> Consequently, private respondents Antonio Quebec and Pamfilo Pombo Sr. separately filed illegal dismissal cases against petitioner which were later consolidated under one Labor Arbiter.<sup>[7]</sup>

In his 5 January 1994 Decision,<sup>[8]</sup> the Labor Arbiter dismissed the complaints against petitioner and found the dismissal of Antonio to be valid on the ground that an employee could be terminated from employment for lack of confidence due to serious misconduct. The serious misconduct alluded to was the purported misappropriation of company funds by Antonio. The Labor Arbiter opined that such misconduct was proved by circumstantial evidence through Antonio's unsatisfactory answers on how he was able to afford a house and lot within a short time.

The Labor Arbiter also found valid the dismissal of Pamfilo Pombo as he was indisputably engaged in the shipment of rattan and stalagmites via the Canhagimet buses without paying the corresponding freightage.

Accordingly, private respondents appealed to the NLRC which initially dismissed the appeal for lack of merit in its 27 February 1995 resolution. However, on 31 August 1995 the NLRC set aside its earlier resolution and granted the motion for reconsideration by holding that private respondents Quebec and Pombo were illegally dismissed because (1) there was an employer-employee relationship between the parties; (2) petitioner did not submit any evidence, e.g., payrolls and vouchers, to rebut the allegations of unpaid money claims; and, (3) other than petitioner's bare denial of respondents' employment status in the Canhagimet Express, no evidence was submitted to refute respondents' claim that they were dismissed without due process. Thus, the NLRC ordered petitioner to pay private respondents the following amounts:<sup>[9]</sup>

I. PAMPILO POMBO SR.

A. Back wages: (Oct. 1990 to 31 Aug. 1995)		
4 years and 10 months (P4,000.00 x 58 mos.)	=	P232,000.00
B. Separation Pay: (5 Nov. 1981 to Oct. 1990)		
9 years (4,000.00 x 9 yrs.)	=	36,000.00
C. Service Incentive Leave Pay:		
(19 Dec. 1989 to 18 Dec. 1992)		
3 years and 5 days (P131.51 x 5 days x 3 yrs.)	=	1,972.65
D. 13 <sup>th</sup> Month Pay: (19 Dec. 1989 to 18 Dec. 1992)		
3 years (P4,000.00 x 3 yrs.)	=	<u>12,000.00</u>
TOTAL AWARD		P281,972.65
		=====

II. ANTONIO QUEBEC

A. Back wages: (Nov. 1991 to 31 Aug. 1995)		
3 yrs. and 9 mos. (P5,000.00 x 45 mos.)	=	P225,000.00
B. Separation Pay: (1 Sept. 1981 to 30 Nov. 1991)		
10 yrs. (P5,000.00 x 10 yrs.)	=	50,000.00
C. Service Incentive Leave Pay:		
(19 Dec. 1989 to 18 Dec. 1992)		
3 yrs. and 5 days (P164.38 x 5 days x 3 yrs.)	=	2,465.70

D. 13 <sup>th</sup> Month Pay: (19 Dec. 1989 to 18 Dec. 1992)		
3 yrs. (P5,000.00 x 3 yrs.)	=	<u>15,000.00</u>
TOTAL AWARD		P292,465.70
		=====

OVER-ALL AWARD		P574,438.35
		=====

Petitioner, in seeking a reversal of the NLRC's appreciation of the facts, is now essentially raising questions of fact. In a long line of cases we have ruled that resort to judicial review of the decisions of the NLRC in a petition for *certiorari* under Rule 65 of the Rules of Court is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the tribunal rendering them. It does not include an inquiry as to the correctness of the evaluation of evidence which served as the basis of the labor official or officer in determining his conclusion. Findings of fact of such administrative officers are generally given finality.<sup>[10]</sup> In this regard, the finding of an employer-employee relationship between the private parties becomes indubitable when the Labor Arbiter and the NLRC are in agreement thereto. More importantly, this relationship was admitted before us by petitioner.<sup>[11]</sup>

The remaining issue to be resolved then is whether private respondents were illegally dismissed. Although this is a factual question and should not be taken now for judicial review, an exception is to be made for the reason that the Labor Arbiter and the NLRC in this case are at odds on this point.<sup>[12]</sup>

There were various reasons cited for the dismissal of Antonio Quebec, i.e., that he was covering up for the womanizing activities of petitioner, and that petitioner suspected him of misappropriating Canhagimet funds by the mere fact that he was unable to explain his wherewithal to buy a house and lot in a short time. Two reasons were also asseverated on Pamfilo's dismissal, i.e., his non-payment of freightage at the Canhagimet buses in transporting his rattan and stalagmites, and his inability to help in the repair of a bus. Both claims however were never substantiated by any evidence other than the barefaced allegations in the affidavits of petitioner and his witnesses.<sup>[13]</sup>

When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause.<sup>[14]</sup> This burden of proof appropriately lies on the shoulders of the employer and not on the employee because a worker's job has some of the characteristics of property rights and is therefore within the constitutional mantle of protection. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.<sup>[15]</sup>

Apropos thereto, Art. 277, par. (b), of the Labor Code mandates in explicit terms that the burden of proving the validity of the termination of employment rests on the employer. Failure to discharge this evidential burden would necessarily mean that the dismissal was not justified, and, therefore, illegal.<sup>[16]</sup> Hence, a mere accusation of wrongdoing or a mere pronouncement of lack of confidence is not a sufficient cause for a valid dismissal of an employee. As we held in *Ranises vs. NLRC*<sup>[17]</sup> —

While it is true that loss of trust or breach of confidence is a valid ground for dismissing an employee, such loss or breach of trust must have some basis. Unsupported by sufficient proof ; loss of confidence is without basis and may not be successfully invoked as a ground for dismissal. Loss of confidence as a ground for dismissal has never been intended to afford an occasion for abuse because of its subjective nature. Thus, there must be an actual breach of duty committed by the employee and the same must be supported by substantial evidence. Consequent therefore to respondent employer's failure to discharge the burden of substantiating its charges of breach of trust against petitioner, there is no just cause for the latter's dismissal. Hence, his termination from employment is illegal (Emphasis ours).

Furthermore, not only does our legal system dictate that the reasons for dismissing a worker must be pertinently substantiated, it also mandates that the manner of dismissal must be properly done,

otherwise, the termination itself is gravely defective and may be declared unlawful.<sup>[18]</sup>

The charge of lack of due process in the dismissals for lack of notice and hearing, as correctly observed by the Labor Arbiter, was never controverted.<sup>[19]</sup> For this, too, petitioner must be held liable.

Considering that the dismissal of private respondents was illegal, the payment of back wages is in order; and since their termination was after 21 March 1989, or after RA No. 6715 took effect, they are also entitled to full back wages, inclusive of allowances and other benefits allowed by law, computed from the time their compensation was withheld up to the finality of this judgment.<sup>[20]</sup>

In lieu of reinstatement, however, separation pay is to be awarded herein due to the fact that the reinstatement of respondents to their previous confidential jobs is no longer possible since the Canhagimet Express was already sold by petitioner.<sup>[21]</sup> Separation pay is the amount that an employee receives at the time of his severance from the service and is designed to provide him with the wherewithal during the period that he is looking for another employment. The grant of separation pay does not preclude an award for back wages for the latter represents the amount of earnings lost by reason of the unjustified dismissal.<sup>[22]</sup>

However, inasmuch as Antonio Quebec and Pamfilo Pombo Sr. have admitted in their counter-affidavits dated 26 July 1993<sup>[23]</sup> that they exercised managerial or supervisory powers in their jobs, they cannot avail of the 13<sup>th</sup> month pay, overtime pay and service incentive leave pay. Presidential Decree No. 851 as amended by Memorandum Order No. 88 provides for the 13<sup>th</sup> month pay to be of mandatory effect only on all rank-and-file employees.<sup>[24]</sup> As to the overtime pay and service incentive leave pay, we have discussed in *Salazar vs. NLRC*<sup>[25]</sup> that —

Although petitioner cannot strictly be classified as a managerial employee under Art. 82 of the Labor Code, and Sec. 2 (b), Rule I, Book III of the Omnibus Rules Implementing the Labor Code, nonetheless he is still not entitled to payment of the aforesaid benefits (overtime pay, premium pay for holidays and rest days and service incentive leave pay) because he falls squarely under

another exempt category-'officers or members of a managerial staff' as defined under Sec. 2 (c) of the abovementioned implementing rules: Sec. 2. Exemption. — The provisions of this Rule shall not apply to the following persons if they qualify for exemption under the condition set forth herein: (c) Officers or members of a managerial staff if they perform the following duties and responsibilities: (1) The primary duty consists of the performance of work directly related to management policies of their employer; (2) Customarily and regularly exercise discretion and independent judgment; (3) [i] Regularly and directly assist a proprietor or a managerial employee whose primary duty consists of the management of the establishment in which he is employed or subdivision thereof.

Accordingly, the award for service incentive leave pay and 13th month pay benefits must be deleted from the computation of the NLRC while the amounts of back wages due private respondents should be adjusted up to the finality of this Decision.

**WHEREFORE**, the questioned Decision of 31 August 1995 of the National Labor Relations Commission is **MODIFIED** by (1) deleting the amounts of P1,972.65 as service incentive leave pay and P12,000.00 as 13<sup>th</sup> month pay awarded to Pamfilo Pombo, Sr., as well as the amounts of P2,465.70 as service incentive leave pay and P15,000.00 as 13th month pay awarded to Antonio Quebec; and, (2) increasing the award for back wages computed from October 1990 in the case of Pamfilo Pombo Sr., and from November 1991 for Antonio Quebec, up to the finality of this decision. The grant of separation pay of P36,000.00 to Pombo Sr. and P50,000.00 to Quebec is **AFFIRMED**.

**SO ORDERED.**

**Puno, Mendoza, Quisumbing and Buena, JJ., concur.**

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[1] Filed by Serafin Quebec Sr., on 15 January 1996 under Rule 65 of the Rules of Court.

[2] Rollo, pp. 31-32.

[3] Records, pp. 14-23.

- [4] Id., pp. 11 and 13.
- [5] See Note 2 at 32.
- [6] Id., pp. 32-33.
- [7] See Note 3, pp. 1-3.
- [8] Penned by Labor Arbiter Gabino A. Velasquez Jr. of NLRC, Regional Arbitration Branch No. VIII, Tacloban City; id., pp. 60-63.
- [9] See Note 2, pp. 35-36.
- [10] ComSavings Bank vs. NLRC, G.R. No. 98456, 14 June 1996, 257 SCRA 307, 317; Madlos vs. NLRC, G.R. No. 115365, 4 March 1996, 254 SCRA 248, 256; Sta. Fe Construction Co. vs. NLRC, G.R. No. 101280, 2 March 1994, 230 SCRA 593; San Miguel Corp. vs. Javate Jr., G.R. No. 54244, 27 January 1992, 205 SCRA 469.
- [11] See Note 2, pp. 17 and 22.
- [12] Jimenez vs. NLRC, G.R. No. 116960, 2 April 1996, 256 SCRA 84, 88-89.
- [13] See Note 3, pp. 30-32, 35-36.
- [14] Valiant Machinery and Metal Corporation vs. NLRC, G.R. No. 105877, 25 January 1996, 252 SCRA 369, 377.
- [15] Brahm Industries Inc. vs. NLRC, G.R. No. 118853, 16 October 1997. 280 SCRA 824.
- [16] Royal Crown Internationale vs. NLRC, G.R. No. 105877, 25 January 1996, 252 SCRA 369, 377.
- [17] G.R. No. 111914, 24 September 1996, 262 SCRA 371, 378-379.
- [18] See Note 15.
- [19] See Note 3, pp. 61-63.
- [20] Hilario vs. NLRC, G.R. No. 119583, 29 January 1996, 252 SCRA 555, 560.
- [21] See Note 2, p. 180.
- [22] Rasonable vs. NLRC, G.R. No. 117195, 20 February 1996, 253 SCRA 815, 820.
- [23] See Note 3, pp. 38-39.
- [24] Philippines Airlines Inc. vs. NLRC, G.R. Nos. 114280 and 115224, 26 July 1996, 259 SCRA 459, 468.
- [25] G.R. No. 109210, 17 April 1996, 256 SCRA 273, 283-284.