

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

REYNALDO VALDEZ,
Petitioner,

-versus-

**G.R. No. 125028
February 9, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION and NELBUSCO, INC.,**
Respondents.

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DECISION

REGALADO, J.:

This Special Civil Action for *Certiorari* challenges the Decision of the National Labor Relations Commission (NLRC), promulgated on December 13, 1995, dismissing petitioner's complaint and thereby reversing the decision of the Labor Arbiter dated September 15, 1994, as well as the former's resolution of March 15, 1996 which denied petitioner's motion for reconsideration.^[1] Auspiciously, there is no substantial dispute on the antecedents of this case.

Sometime in December, 1986, petitioner was hired by private respondent as a bus driver on commission basis, with an average earning of P6,000.00 a month. On February 28, 1993, the air-conditioning unit of the bus which petitioner was driving suffered a

mechanical breakdown. Respondent company told him to wait until the air-conditioning unit was repaired. Meanwhile, no other bus was assigned to petitioner to keep him gainfully employed.

Thereafter, petitioner continued reporting to his employer's office for work, only to find out each time that the air-conditioning unit had not been repaired. Several months elapsed but he was never called by respondent company to report for work. Later, petitioner found out that the bus formerly driven by him was plying an assigned route as an ordinary bus, with a newly-hired driver.

On June 15, 1993, petitioner filed a complaint against private respondent for illegal dismissal, with money claims for labor standard benefits, and for reimbursement of his bond and tire deposit. He claimed that the reason why respondent company did not allow him to drive again was due to his refusal to sign an undated company-prepared resignation letter and a blank affidavit of quitclaim and release.

Private respondent, on the other hand, admitted that it told petitioner to wait until the air-conditioning unit of the bus was repaired. However, private respondent alleged that after the bus driven by the petitioner broke down due to his fault and negligence, the latter did not report for work. He supposedly informed the management later that he was voluntarily resigning from his employment in order to supervise the construction of his house. Consequent to his resignation, petitioner demanded the return of his cash bond and tire deposit. Respondent company required him to secure the necessary management clearance and other pertinent papers relative to his resignation. Instead of complying with those requirements, petitioner filed the instant complaint.

On September 15, 1994, the Labor Arbiter rendered a decision with the following dispositive portion:

“WHEREFORE, with all the foregoing considerations, judgment is hereby rendered declaring complainant illegally dismissed and respondent NELBUSCO, INC., is hereby ordered to pay complainant as follows:

P111,000.00	- Full backwages
36,000.00	- Separation pay in lieu of reinstatement
<u>9,000.00</u>	- Refund of cash bond and tire deposit
P156,000.00	TOTAL

All other claims are hereby dismissed.

SO ORDERED.”^[2]

Aggrieved by the said Decision, private respondent filed a memorandum on appeal with the NLRC. On December 13, 1995, public respondent rendered its decision subject of the present recourse, adjudging as follows:

“WHEREFORE, in view of the foregoing premises, the decision appealed from is hereby SET ASIDE and a new one entered directing respondent to reinstate complainant back to work but without backwages. Should reinstatement be not possible, respondent shall pay complainant separation benefits equivalent to one (1) month pay for every year of service computed up to the time he was temporarily laid-off and to refund to him the cash bond and tire deposit.

All other claims are DENIED for lack of merit.

SO ORDERED.”^[3]

On February 8, 1996, petitioner filed a motion for reconsideration which was denied in a resolution dated March 12, 1996.^[4] Hence the present petition, raising the issues of (1) whether or not petitioner was illegally dismissed, and (2) whether or not petitioner is entitled to back wages and separation pay starting from the time he was laid off.^[5]

We find the petition meritorious.

Public respondent committed grave abuse of discretion in holding that petitioner was not illegally dismissed and in consequently deleting the award of back wages. It is especially so, since this case

does not present such complicated issues as would mislead it into committing the errors complained of.

Under Article 286 of the Labor Code, the bona fide suspension of the operation of a business or undertaking for a period not exceeding six months shall not terminate employment. Consequently, when the bona fide suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. By the same token and applying said rule by analogy, if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed.^[6]

The Solicitor General opines that, strictly speaking, Article 286 does not apply to this case, contrary to the position taken by respondent (NLRC). Of course, it is true that since private respondent operated a fleet of buses, its entire business operations were not suspended, whether we speak of either a bona fide suspension or not. However, as already stated, the principle underlying that provision which puts six months as a defining cut-off period can be used as a consonant basis in determining the reasonableness of the length of time when petitioner could be deprived of work for causes imputable to private respondent.

In the instant case, the reason for the stoppage of operation of the bus assigned to petitioner was the breakdown of the air-conditioning unit, which is a valid reason for the suspension of its operation. However, such suspension regarding that particular bus should likewise last only for a reasonable period of time.^[7] The defect in the air-conditioning unit could have been easily remedied by private respondent. The period of six months was more than enough for it to cause the repair thereof. Beyond that period, the stoppage of its operation was already legally unreasonable and economically prejudicial to herein petitioner who was not given a substitute vehicle to drive.

The so-called “floating status” of an employee should last only for a legally prescribed period of time. When that “floating status” of an employee lasts for more than six months, he may be considered to have been illegally dismissed from the service. Thus, he is entitled to

the corresponding benefits for his separation,^[8] and this would apply to the two types of work suspension heretofore noted, that is, either of the entire business or of a specific component thereof.

Although, it is true that the present complaint was filed by petitioner before the end of the six months period, the filing of the same is nonetheless in order, considering the several attendant circumstances hereunder discussed.

It was not denied by private respondent that it tried to force private respondent to sign an undated company-prepared resignation letter and a blank undated affidavit of quitclaim and release which the latter validly refused to sign. Furthermore, the bus which petitioner used to drive was already plying a transportation route as an ordinary bus and was being driven by another person, without petitioner having been priorly offered the same alternative arrangement.

Finally, private respondent admitted in its appeal memorandum dated September 23, 1994, or more than one year and six months from petitioner's dismissal, that the bus was still awaiting repair. Hence, even after the lapse of six months from the date the bus driven by petitioner broke down, private respondent was still not in a position to reemploy or provide any work assignment to petitioner.

The other allegation of private respondent that petitioner voluntarily resigned from work obviously does not deserve any consideration. It would have been illogical for herein petitioner to resign and then file a complaint for illegal dismissal. Resignation is inconsistent with the filing of the said complaint.^[9]

Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and, that he has no other choice but to disassociate himself from his employment. Resignation is a formal pronouncement of relinquishment of an office. It must be made with the intention of relinquishing the office accompanied by an act of relinquishment.^[10]

The cardinal rule in termination cases is that the employer bears the burden of proof to show that the dismissal is for just cause, failing in

which it would mean that the dismissal is not justified.^[11] This rule applies adversely against herein respondent company since it has utterly failed to discharge that onus by the requisite quantum of evidence.

Under Article 279 of the Labor Code, as amended, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[12]

Thus, it being clearly established that herein petitioner was constructively dismissed, the decision of the Labor Arbiter awarding him back wages and separation pay in lieu of reinstatement, plus the refund of his cash bond and tire deposit, is definitely in order.

WHEREFORE, the questioned Decision of respondent National Labor Relations Commission is **SET ASIDE** and the Decision of the Labor Arbiter dated September 15, 1994 is hereby **REINSTATED**.

SO ORDERED.

Melo, Puno, Mendoza and Martinez, JJ., concur.

[1] Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Rogelio I. Rayala concurring.

[2] Rollo, 21-27.

[3] Ibid., 40-48.

[4] Ibid., 52.

[5] Ibid., 8.

[6] See Agro Commercial Security Services Agency, Inc., vs. NLRC, et al., G.R. Nos. 82823-24, July 31, 1989, 175 SCRA 790.

[7] See People's Security, Inc. vs. NLRC, et al., G.R. No. 96451, September 8, 1993, 226 SCRA 146.

[8] Agro Commercial Security Services Agency, Inc., vs. NLRC, et al., supra, Fn. 6; Superstar Security Agency, Inc., et al. vs. NLRC, et al., G.R. No. 81493, April 3, 1990, 184 SCRA 74.

[9] See Santos vs. NLRC, et al., G.R. No. 76991, October 28, 1988, 166 SCRA 759; Hua Bee Shirt Factory, et al. vs. NLRC, et al., G.R. No. 80389, June 18,

- 1990, 186 SCRA 586; Dagupan Bus Company, Inc. vs. NLRC, et al., G.R. No. 94291, November 9, 1990, 191 SCRA 328.
- [10] Dosch vs. NLRC, et al., G.R. No. 51182, July 5, 1983, 123 SCRA 296; Magtoto vs. NLRC, et al., G.R. No. 63370, November 18, 1985, 140 SCRA 58; Molave Tours Corporation vs. NLRC, et al., G.R. No. 112909, November 24, 1995, 250 SCRA 325, citing Intertrod Maritime, Inc., et al. vs. NLRC, et al., G.R. No. 81087, June 19, 1991, 198 SCRA 318.
- [11] Philippine Manpower Services, Inc., et al., vs. NLRC, et al., G.R. No. 98450, July 21, 1993, 224 SCRA 691; Mapalo vs. NLRC, et al., G.R. No. 107940, June 17, 1994, 233 SCRA 266; Sanyo Travel Corp., et al., vs. NLRC, et al., G.R. No. 121449, October 2, 1997.
- [12] Manipon, Jr. vs. NLRC, et al., G.R. No. 105338, December 27, 1995, 239 SCRA 451.