



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 9, 2020 which reads as follows:

“G.R. No. 247722 (Rodrigo S. Gabiana v. Vallacar Transit, Inc. and Ricardo Yanson). – Assailed in this Petition for Review on *Certiorari*¹ is the Decision² dated July 27, 2017 and the Resolution³ dated January 7, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 09546. The assailed issuances affirmed the Decision⁴ dated March 31, 2015 and the Resolution⁵ dated June 30, 2015 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-02-000115-2015 (RAB Case No. VII-08-2031-2014), which likewise affirmed the Decision⁶ dated December 8, 2014 of the Labor Arbiter (LA).

Rodrigo S. Gabiana (Rodrigo) was employed by Vallacar Transit Inc. (Vallacar Transit) as bus driver on May 31, 2012. Rodrigo regularly plied the route from Cebu City to the towns of Barili, Bato, and Oslob. He was paid ₱79.00 per round trip. On average, Rodrigo can make three roundtrips daily.⁷ In case his commission is less than the basic minimum wage for eight hours, Vallacar Transit provides

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¹ *Rollo*, pp. 7-15.

² Penned by Associate Justice Edward B. Contreras, with the concurrence of Associate Justice Edgardo L. Delos Santos and Gabriel T. Robeniol; id. at 23-29.

³ Penned by Associate Justice Edward B. Contreras, with the concurrence of Associate Justice Edgardo L. Delos Santos and Louis P. Acosta; id. at 32.

⁴ Penned by Commissioner Jose G. Gutierrez; id. at 62-67.

⁵ Penned by Commissioner Jose G. Gutierrez, with the concurrence of Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Julie C. Rendoque; id. at 69-70.

⁶ Penned by Acting Executive Labor Arbiter Emiliano C. Tiongco Jr.; id. at 103-109.

⁷ Id. at 77-78.

automatic subsidy pursuant to Article 18, Section 2⁸ of the existing Collective Bargaining Agreement (CBA) with Rodrigo's union.⁹

On March 31, 2014, Rodrigo was driving along the highway of Sibonga, Cebu when he noticed that his mobile phone was ringing. The call came from his neighbor Alexander Mapait (Alexander). Initially, Rodrigo did not answer. On Alexander's fourth call attempt and feeling the sense of urgency, Rodrigo finally answered the call. He was informed that his wife was brought to the hospital for an emergency. Due to this act of using his mobile phone while driving, in violation of the Company Personnel Policies, Rules, and Regulations (CPPRR), Rodrigo was dismissed from employment.¹⁰

Rodrigo does not deny that he used his mobile phone while driving. He, however, disputes the penalty of dismissal from employment as too harsh especially since he only answered an emergency phone call. In support of his claim, Rodrigo submitted an Affidavit¹¹ dated October 7, 2014 executed by Alexander. In the Affidavit, Alexander narrated that he went to Rodrigo's residence on March 31, 2012 to relay an information about a certain meeting that Rodrigo and his wife had to attend. Then, Alexander saw Rodrigo's wife, Flordeluna Estoy Gabiana (Flordeluna), suffering from tremendous chest pain. Alexander called Rodrigo and told him that Flordeluna might have suffered from a heart attack and had to be sent to the hospital. Further, Alexander stated that Rodrigo did not answer the call right away and took him four persistent calls before Rodrigo picked-up the call.¹²

According to Vallacar Transit, Rodrigo was caught using his mobile phone while driving on June 24, 2014. Vallacar Transit avers that rules and regulations are laid down in the CPPRR in furtherance of their duty as a common carrier to exercise extraordinary diligence.¹³ Chapter 13, Article 359 of the CPPRR penalizes with dismissal the use of a mobile phone. This penalty is applicable even

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⁸ The EMPLOYER agrees to subsidize the daily commission earning of Drivers and Conductors in case of breakdown on the line when the resulting commission is less than the statutory minimum wage, in such amount as to ensure that they get daily gross earning of not less than the statutory minimum wage, in such amount as to ensure that they get daily gross earning of not less than the statutory minimum wage for eight (8) hours. This subsidy emanates from the humanitarian benevolence of the EMPLOYER (additional *rollo*, pp. 13 – 14).

⁹ *Id.*

¹⁰ *Rollo*, p. 78.

¹¹ *Id.* at 87.

¹² *Id.*

¹³ *Id.* at 90-91.

on the first offense.¹⁴ Rodrigo was trained and appraised of these rules and regulations, as evidenced by a Memorandum dated May 21, 2012 where he was asked to report to the Department/Section Heads for a pre-employment orientation or briefing. In the course of Rodrigo's employment, Rodrigo was given warnings for travelling ahead of the designated time or "Advance Time Travel" on October 13, 2013 and February 8, 2014. Any advance travel time during a trip would mean that the driver had been driving above the legal speed measured and fixed in the Certificate of Public Convenience issued to Vallacar Transit. Furthermore, Rodrigo was involved in other incidents that show his propensity for driving recklessly: (1) overtaking same color on January 23, 2013; (2) overtaking at blind curve on June 11, 2013; (3) on February 9, 2014 when Rodrigo hit a Toyota Ken taxi, causing damage at the front left side signal light of the latter, and as penalty, Rodrigo was suspended for eight days; and (4) On June 24, 2014, at around 4:00 p.m., when Rodrigo was caught using his mobile phone by Line Inspector Elizer Companero. Due to this fourth incident, a Notice to Investigate dated June 26, 2014 was issued. Rodrigo was investigated on July 18, 2014 for violating the CPPRR. During the pre-termination proceedings, Rodrigo was assisted by Marvin Abrea, the Vice-President of PACIWU/TUCP. Thereafter, Rodrigo was dismissed from employment.¹⁵

Rodrigo filed a complaint¹⁶ against Vallacar Transit on August 13, 2014 for illegal dismissal, non-payment of salary, overtime pay, holiday premium, night shift differential, thirteenth month pay, service incentive leave, and separation pay.¹⁷

In the Decision¹⁸ dated December 8, 2014, the LA ruled that Rodrigo was dismissed for a just and valid cause when he used his mobile phone while driving. The LA explained: "[t]he call made on "March 31, 2012" as attested by affiant Alexander differed from the date mentioned in complainant's Position Paper, which is "March 31, 2014." However, respondent claimed that the incident happened on June 24, 2014 at around 4:00 p.m. as reported by the Bus Inspector. The date June 24, 2014 was also mentioned in the Notice to Investigate dated June 26, 2014 issued by respondent company to complainant. It is discernible that in the Affidavit of Alexander, he alleged that complainant's wife "had to be sent to the hospital" but

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¹⁴ Id. at 93-94.

¹⁵ Id. at 91-92.

¹⁶ Id. at 76.

¹⁷ Id.

¹⁸ Supra note 5.

there is no medical certification or report that could support this. Verily, the claim that complainant used his mobile phone while driving the bus was because of an emergency call, is only an allegation.”¹⁹ According to the LA, Rodrigo’s violation cannot just be trivialized and must be dealt with severely considering the threat it poses to the lives of the passengers. Hence, the company policy against the use of mobile phones while driving is a legitimate exercise of management prerogative. Records further show that Rodrigo was aware of the provisions under the CPPRR. Procedural due process was likewise observed when Rodrigo was dismissed from employment.²⁰ Finding no merit, the LA dismissed Rodrigo’s claim for salary differential, unpaid salaries/wages, overtime pay, holiday pay, and night shift differentials. Lastly, the LA explained that Rodrigo is not entitled to service incentive leave since he enjoys vacation leave with pay under the CBA between Vallacar Transit and the labor union where Rodrigo is a member.²¹

In his Memorandum of Appeal,²² Rodrigo alleged that when he answered the call, he slowed down the bus to a halt posing no danger to the safety of the passengers on board.²³ In a Decision²⁴ dated March 31, 2015, the NLRC affirmed with modification the Decision of the LA.²⁵ The NLRC ruled that there was just and valid ground for the dismissal of Rodrigo’s services because he exposed the lives of the passengers to unimaginable risk and danger. Further, the NLRC found that “whether it was on March 31, 2012, March 31, 2014 or June 24, 2014, complainant failed to submit a medical certificate to substantiate his wife’s hospitalization in order to avail of the leniency afforded to the worker.” In addition, Rodrigo failed to submit a medical certificate to substantiate his claim that his wife was hospitalized. As such, there can be no basis to give leniency in favor of the worker. Since Rodrigo is compensated on commission basis, the NLRC ruled that he is not entitled to wage differentials and overtime pay. The NLRC followed the ruling in *Philippine Agricultural Commercial and Industrial Workers Union v. NLRC and Vallacar Transit, Inc.*²⁶ wherein the claim for wage differentials was denied since Vallacar Transit admitted that, by virtue of the existing CBA, their bus drivers are automatically entitled to the basic minimum pay in case their commission earned is less than their basic

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¹⁹ *Rollo*, pp. 106-107.
²⁰ *Id.* at 107.
²¹ *Id.* at 108-109.
²² *Id.* at 110-120.
²³ *Id.* at 113.
²⁴ *Supra* note 3.
²⁵ *Rollo*, p. 67.
²⁶ 317 Phil. 305 (1995).

minimum for eight hours. The same CBA also entitles Rodrigo to leave benefits convertible to cash if not used. Hence, Rodrigo's claim for service incentive leave cannot be granted. As regards the other claims, Rodrigo failed to present proof that he is entitled to holiday pay, overtime pay, and night shift differentials. The NLRC, however, granted Rodrigo's claim for thirteenth month pay in the amount of ₱18,421.00.²⁷

Rodrigo filed a Petition for *Certiorari*²⁸ before the CA maintaining that the NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it ruled that he was not illegally dismissed and not entitled to monetary claims and damages.²⁹ The appellate court, in its Decision³⁰ dated July 27, 2017, dismissed the petition and affirmed *in toto* the NLRC Decision.³¹ The CA explained that Vallacar Transit presented substantial evidence to prove that Rodrigo was duly informed of the CPPRR and that procedural due process was complied with when he was dismissed from employment. All Rodrigo proffered in return, however, was his bare, empty denial, far from the substantial evidence required in labor cases.³² As regards money claims, the CA agreed with the NLRC that Rodrigo is entitled to 13th month pay. There was no evidence presented to prove that Rodrigo had been paid the same.³³

Before this Court is a petition for review on *certiorari*³⁴ filed by Rodrigo. Rodrigo claims that the documents presented by Vallacar Transit to prove that he was duly informed of the CPPRR are signed only by the department heads. Without his signature, there is no proof of Rodrigo's participation in the pre-employment orientation/briefing. Also, Rodrigo contends that the penalty of dismissal is too harsh given the circumstances when he answered the phone call while driving – that the infraction was only brought about by a feeling of great necessity knowing that his wife's health is failing. In support of his argument, Rodrigo cited *PLDT v. Teves*³⁵ where the Court ruled that management prerogative should be tempered with compassion and understanding.³⁶ Rodrigo also questions the denial by the CA of his money claims based on the ruling in *Philippine Agricultural Commercial and Industrial Workers Union v. NLRC*.³⁷

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²⁷ Id. at 66-67.

²⁸ Id. at 50-57.

²⁹ Id. at 53-55.

³⁰ Supra note 2.

³¹ *Rollo*, p. 29.

³² Id. at 25-26.

³³ Id. at 27-28.

³⁴ Id. at 7-15.

³⁵ 649 Phil 39 (2010).

³⁶ *Rollo*, pp. 11-13.

³⁷ 317 Phil. 305 (1995).

The Court agrees with the labor tribunals and the CA that Rodrigo was validly dismissed. The use of mobile phone while driving is an infraction connected with his work as a bus driver and constitutes serious misconduct or, at the very least, conduct analogous to serious misconduct, under Article 297³⁸ of the Labor Code.

It is not disputed that the company called Rodrigo's attention for violating Article 359 of the CPPRR which prohibits:

Article 359. Using or in possession of mobile phone while in the performance of duty, including stopovers, whether the bus is moving or not. This rule applies to both driver and conductor.

First offense – Dismissal.

It remains unclear when this incident exactly happened. There was also no explanation for the difference in the date of incident – March 2012 or 2014 as claimed by Rodrigo and June 24, 2014 according to Vallacar Transit. Nonetheless, this Court agrees with the NLRC when it ruled that “whether it was on March 31, 2012, March 31, 2014 or June 24, 2014, complainant failed to submit a medical certificate to substantiate his wife’s hospitalization in order to avail of the leniency afforded to the worker.”³⁹ Vallacar Transit also cites Rodrigo’s involvement in other traffic violations such as: (1) Advance Time Travel on October 13, 2013 and February 8, 2014; (2) overtaking same color on January 23, 2013, which means overtaking with double lines painted on the street with same color (yellow line); (3) overtaking at blind curve on June 11, 2013; and (4) vehicular accident on February 9, 2014 causing damage at the front left side signal light of a Toyota Ken taxi.⁴⁰ Rodrigo did not deny any of these incidents. Thus, the totality of Rodrigo’s infractions in the span of two years shows his tendency to speed up during his trips, his reckless driving, and the propensity to make-up an excuse such as the hospitalization of his wife.

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³⁸ ARTICLE 297. [282] *Termination by Employer*. – An employer may terminate an employment for any of the following causes:

- (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
- (b) Gross and habitual neglect by the employee of his duties;
- (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
- (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
- (e) Other causes analogous to the foregoing. (*Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), [July 21, 2015]*)

³⁹ *Rollo*, p. 65.

⁴⁰ *Id.* at 91-92.

In *Sampaguita Auto Transport Corporation v. NLRC*,⁴¹ the Court explained that while the employee denies being informed when he was hired of the duties and responsibilities of a driver, it is incumbent upon the driver to obey traffic rules and regulations as well as the company policies and to ensure the safety of the riding public as well as the other vehicles and motorist. This same rule applies in the case of Rodrigo and he has no basis to deny that Vallacar Transit did not so inform him of these basic and fundamental rules.

Due process was also properly accorded to Rodrigo before he was dismissed. Records show that a Notice to Investigate was sent to Rodrigo and an investigation was conducted where Rodrigo was given the opportunity to present his side. Subsequently, a Notice of Decision was sent to Rodrigo informing him about the decision of the management to dismiss him from service.⁴²

Contrary to Rodrigo's claim, the CA did not merely rely on *Philippine Agricultural Commercial and Industrial Workers Union v. NLRC and Vallacar Transit, Inc.*⁴³ when it ruled that Vallacar Transit had been paying Rodrigo just compensation. Records show that the existing CBA states that Vallacar Transit will give automatic subsidy should the commission of the bus drivers be less than the monthly minimum wage. Rodrigo failed to prove any instance that he received below the required minimum wage or that Vallacar Transit violated the CBA provision stated above.

As regards holiday pay, the CA correctly found that Rodrigo failed to provide sufficient factual basis for the award of premium pays for holidays. The burden of proving entitlement to premium pays rests on the employee because these are not ordinary payment as regular daily wage. Rodrigo failed to adduce any evidence showing that he worked on holidays. Moreover, entitlement to this claim is a question of fact which is beyond the scope of a Petition for Review on *Certiorari* filed before the Supreme Court. Likewise, Rodrigo is not entitled to service incentive leave because he is entitled to vacation leave with pay granted under the CBA.

Lastly, the NLRC correctly awarded 13th month pay to Rodrigo. As discussed above, Rodrigo is not compensated *purely* on commission basis because Vallacar Transit gives subsidy to its bus

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⁴¹ 702 Phil. 701, 715 (2013).

⁴² *Rollo*, p. 92.


⁴³ G.R. No. 107994, August 14, 1995

drivers whenever their commission is less than the monthly minimum wage. Moreover, DOLE Department Order No. 118-12⁴⁴ entitles bus drivers to 13th month pay. The amount of ₱18,421.00 is also in accordance with law and jurisprudence.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated July 27, 2017 and the Resolution dated January 7, 2019 of the Court of Appeals in CA-G.R. SP No. 09546 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *sk/210*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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⁴⁴ DOLE Department Order No. 118-12. Rules and Regulations on the Employment and Working Conditions of Bus Drivers and Conductors.

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