

SECOND DIVISION

[CA-G.R. SP No. 131953, May 21, 2014]

**ROLLY BRADECINA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION (THIRD DIVISION), [*]TFM
POWERLINE CONSTRUCTION, INC. AND TERESITO JIMENEZ,
RESPONDENTS.**

DECISION

SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari^[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision dated May 31, 2013^[2] and Resolution dated July 15, 2013^[3] of public respondent National Labor Relations Commission, Third Division, in NLRC LAC No. 04-001211-13(8) NLRC CN. RAB-III-10-19406-12 entitled "Rolly Bradecina, Complainant, versus TFM Powerline and Teresito Jimenez, President, Respondents.", the decretal portions of which read:

Decision dated May 31, 2013 -

"WHEREFORE, the complainant's appeal is DISMISSED.

The respondents' partial appeal is GRANTED. The award of 13th month pay is DELETED.

The service incentive leave pay in the amount of P6,093.00 is AFFIRMED.

SO ORDERED."

Resolution dated July 15, 2013 -

"ACCORDINGLY, complainant's Motion for Reconsideration is hereby DISMISSED for lack of merit.

No further Motions of similar nature shall be entertained.

SO ORDERED."

The facts are:

On October 24, 2012, petitioner Rolly A. Bradecina ("Bradecina" for brevity) filed a Complaint^[4] for Illegal Dismissal; Non-Payment of Holiday Pay, Premium Pay for Holiday, Service Incentive Leave, Thirteenth (13)-Month Pay, and Emergency Cost of Living Allowance; and Payment of Separation Pay, Backwages, Moral and Exemplary Damages and Attorney's Fees against private respondents TFM Power Line Construction, Inc. (TFM Power Line for brevity) and Teresito Jimenez ("Jimenez" for

brevity) before the NLRC Regional Arbitration Branch No. III, San Fernando City, Pampanga.

In his Position Paper^[5], petitioner Bradecina averred that: in 1997, he was employed by private respondent TFM Power Line as a digger; due to his efficiency, effectiveness, loyalty, and dedication, he rose from the rank of lineman to foreman^[6] then finally, supervisor; on August 28, 2012, he received a memorandum^[7] from private respondent TFM Power Line directing him to explain in writing why no disciplinary action should be taken against him for taking part in the unauthorized use of its equipment; as he submitted his written explanation^[8] dated August 29, 2012 to private respondent TFM Power Line, he was mindful that the issuance of the memorandum was just routinary, and whatever explanation that he would give would be an exercise in futility because private respondent TFM Power Line had already made up its mind to terminate his employment; as expected, on September 14, 2012, he received a Notice of Termination^[9] dated September 11, 2012 from private respondent TFM Power Line on the sweeping and unsubstantiated ground of serious misconduct; on September 18, 2012^[10], he lodged a complaint for illegal dismissal and money claims against private respondents with the Department of Labor and Employment, Bulacan Provincial Field Office; no settlement was reached after several conciliation conferences at the DOLE Bulacan Provincial Office because of private respondents' stubborn assertion that he was justly dismissed; upon DOLE Bulacan Provincial Field Office's endorsement, this case was elevated to the NLRC Regional Arbitration Branch No. III, San Fernando City, Pampanga for compulsory arbitration; private respondents failed to appear during the mandatory conciliation conference set by the Labor Arbiter; and, the Labor Arbiter directed the parties to file their respective Position Papers.

On even date, private respondents filed their Position Paper^[11] averring that: they discovered the unauthorized use of their basket crew, digging crew, and crane crew to relocate the Meralco poles and live line wires without the Meralco "caution" sign at Zerata Homes Subdivision in Norzagaray, Bulacan sometime in July 2012 by Christopher Bradecina ("Christopher" for brevity), Jimmy Mendoza ("Mendoza" for brevity), and petitioner Bradecina; they learned about this when an engineer of the subdivision project named "Jhun" divulged to their company vice-president, Michael V. Jimenez, that he (Jhun) sought the help of Christopher, Mendoza, and petitioner Bradecina in erecting Meralco poles at Zerata Homes Subdivision; the lack of Meralco "caution" sign in the construction site would endanger the lives of crew personnel, innocent bystanders or anyone who would be minded to pass by the construction area; upon learning of the incident, private respondent Jimenez immediately sent notices to Christopher, Mendoza, and petitioner Bradecina informing them that their actuations would constitute serious misconduct warranting a penalty of dismissal if they were proven to be true, and to explain in writing within forty eight (48) hours why they should not be dismissed; petitioner Bradecina denied taking part in the irregularities but admitted that he was aware of what his brother Christopher and Mendoza did; petitioner Bradecina allegedly tried to stop Christopher and Mendoza but his explanation letter was bereft of any showing that he reported or at least tried to report the matter to the management; in Mendoza's written explanation, he stated that Christopher advised him to call petitioner Bradecina and relay Jhun's request to transfer certain electric posts at Zerata Homes Subdivision, which he did; petitioner Bradecina paused on the line for a long while, and finally allowed the said request advising him (Mendoza) to tell their co-workers

to be silent about the matter (Nung tinawagan ko si Rolly Bradecina sabi ko kay Rolly sabi ni Christopher Bradecina tawagan kita kasi nakikisuyo yung engr. ng Zerata na mailipat ang poste. Medyo matagal po siyang hindi sumagot sa akin. At nung bandang huli sinabi niya sa akin na sige, sabihan nyo na lang yung mga tao niyo na huwag maingay); Mendoza further confessed that petitioner Bradecina received P3,000.00 of the P75,000.00 given by Zerata Homes Subdivision for the services they rendered; no explanation letter was submitted by Christopher; they found petitioner Bradecina and Mendoza's explanations unsatisfactory and served Notices of Termination dated September 11, 2012 upon petitioner Bradecina, Mendoza and Christopher and charged them with qualified theft; and, they should be indemnified P42,350.00 for the losses they suffered due to the unauthorized use of their equipment.

On January 31, 2013, the Labor Arbiter rendered a Decision dismissing petitioner Bradecina's complaint and other money claims for lack of merit, but ordering private respondents TFM Power Line and Jimenez to pay petitioner Bradecina P6,093.00 as service incentive leave and P36,558.00 as thirteenth (13th)-month pay.

On appeal^[12] and partial appeal^[13] by petitioner Bradecina and private respondents, respectively, and upon petitioner Bradecina's motion for reconsideration^[14], public respondent NLRC, Third Division rendered the aforesaid assailed decision and resolution.

Hence, this petition, raising the following grounds:

I. WITH UTMOST DUE RESPECT, THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING HEREIN PETITIONER'S APPEAL AND AFFIRMING THE DECISION DATED 31 JANUARY 2013 OF THE LABOR ARBITER A QUO UPHOLDING AS VALID THE DISMISSAL OF HEREIN PETITIONER AND IN NOT AWARDING BACKWAGES OR SEPARATION [PAY] TO PETITIONER, WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO PETITIONER.

II. WITH UTMOST DUE RESPECT, THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT AWARDING PETITIONER'S CLAIM FOR PAYMENT OF UNPAID SALARY, ECOLA AND HOLIDAY PAY, MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES, WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO PETITIONER.

III. WITH UTMOST DUE RESPECT, THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENTS' PARTIAL APPEAL AND MODIFYING THE DECISION DATED 31 JANUARY 2013 OF THE LABOR ARBITER A QUO DELETING THE AWARD OF 13TH MONTH PAY TO HEREIN PETITIONER.

IV. WITH UTMOST DUE RESPECT, THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR

EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE DECISION DATED 31 MAY 2013.

Petitioner Bradecina contends that private respondents were not able to establish that he conspired with Christopher and Mendoza in relocating certain electric poles at Zerata Homes Subdivision in Norzagaray, Bulacan using the equipment of private respondents. Neither did private respondents prove that Christopher and Mendoza performed certain irregularities with his knowledge and consent. There is no showing that he exercised supervision and control over Christopher and Mendoza. In January 2013, Mendoza intimated to him that sometime in December 2012, some of private respondent TFM Power Line's high ranking officials sought, treated the former to a meal at a restaurant, and asked the former to write a second explanation letter dated September 10, 2012 implicating petitioner Bradecina in the unauthorized use of equipment and the relocation of electric poles. Mendoza made no statement that any of private respondents' equipment were used in relocating the Meralco poles at the subdivision project. The Labor Arbiter and public respondent NLRC erroneously ruled that he was validly dismissed, relying on Mendoza's second written explanation which came after the complaint was already filed with the Labor Arbiter.

On the other hand, private respondents contend otherwise.

The evidence on record belies petitioner Bradecina's claims.

Records show that petitioner Bradecina had control and supervision over Mendoza and Christopher and knew about the use of the subject equipments. His written explanation dated August 29, 2012, in response to the Notice to Explain stated "Bilang kasagutan po sa ibinigay nyong sulat sa akin, ang dahilan po kaya po nagawa ang bagay na yon...". This shows that he was aware of the acts subject of the Notice to Explain.

As a supervisor, petitioner Bradecina occupied a position of trust and confidence, and he was charged with the care and custody of private respondent TFM Power Line's property, specifically, the equipment.

Further, he had ascendancy, control, and supervision over Christopher and Mendoza and knew of the irregularities committed as stated in his explanation: "Bago pa po nangyari ang nasabing usapin nabanggit ito sakin ni Jimmy Mendoza ngunit hindi po ako pumayag sa kadahilanang ito po ay hindi tama at wala din tayong work order sa nasabing subd". Yet he did nothing to stop, prevent or correct by reporting them to the management. Besides, it would be unnecessary for Mendoza to inform and obtain petitioner Bradecina's consent to the Zerata Homes Subdivision project engineer's request if he exercised no such authority, control and supervision over Christopher and Mendoza's work.

As to the allegation that Mendoza was forced to implicate him, other than petitioner Bradecina's bare allegation, there is no showing that private respondents just forced Mendoza to do so. As a matter of fact the second written explanation was recalled.

The "basket truck" and "crane truck" mentioned in the last part of Mendoza's second written explanation pertain to no other trucks but those belonging to private respondents. One of the aforementioned trucks was even driven by petitioner Bradecina's brother, Christopher, who was also dismissed from employment for being involved in the said irregularities. Otherwise, Mendoza would not have begged