

## FIFTH DIVISION

[ CA-G.R. SP NO. 72771, July 20, 2006 ]

### **WILFREDO LLAGUNO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PIN PIN PROTECTIVE & SECURITY AGENCY, RESPONDENTS.**

#### **DECISION**

##### **BARRIOS, J.:**

In this special civil action for certiorari, Wilfredo Llaguno (or hereafter Llaguno) pleads that the Decision and Resolution of the National Labor Relations Commission (or NLRC) promulgated on May 20, 2002 and July 29, 2002 be reversed and set aside for having been issued with grave abuse of discretion. The assailed Decision modified the Decision of October 27, 2000 of Labor Arbiter Facundo Leda holding Llaguno's dismissal illegal while the assailed Resolution denied the motion for its reconsideration.

Starting July 31, 1996, Llaguno was employed by the respondent PIN PIN Security & Protective Agency (hereafter PINPIN) as security guard. He was detailed at LA Foods Ubdystruesm Ube and was thereafter transferred to Pasig Light Industrial Park (or Pasig Light) in Manggahan Village, Pasig City. But for allegedly acting as realtor agent or brokering the sale of townhouses while on duty, PINPIN relieved Llaguno from his post on January 18, 1999. Thereafter he was not given any assignment.

Llaguno initially filed with the Labor Arbiter a complaint for underpayment of wages and non-payment of overtime, premium, holiday and service incentive leave pays. But since he was not given any assignment since February 1999, he amended his complaint on November 18, 1999 to include the allegation of illegal dismissal. Also, he prayed for reinstatement with backwages.

PINPIN denied that it dismissed Llaguno. It averred that Llaguno was brokering the sales of units in Manggahan Village while on duty and so Pasig Light requested for his immediate transfer. Llaguno however refused and thereafter stopped reporting for work. PINPIN also denied the claim for underpayment of wages and non-payment of other benefits.

On October 27, 2000, the Labor Arbiter rendered a Decision decreeing that:

WHEREFORE, decision is hereby rendered declaring that complainant was illegally dismissed and was underpaid of his salaries.

However, considering that the relationship between the parties has already become strained, the respondents are ordered to pay complainant, jointly and severally, his separation pay, in lieu of reinstatement, backwages and salary differentials as computed in the total amount of THREE HUNDRED TEN THOUSAND SEVEN HUNDRED

FIFTY FIVE & 35/100 (P310,752.35)

SO ORDERED. (pp. 27-28)

PINPIN appealed this to the NLRC which rendered the assailed Decision disposing that:

WHEREFORE, the decision appealed from is hereby MODIFIED in that the award of backwages is deleted and set aside.

All other findings are affirmed.

SO ORDERED. (p. 36, rollo)

Llaguno filed a motion for its reconsideration but this was denied by the NLRC in its Resolution of July 29, 2002. Defeated, Llaguno seeks relief through this *Petition for Certiorari* advancing the following grounds for the allowance of his petition:

1. THE PUBLIC RESPONDENT GRIEVOUSLY ERRED WHEN IT RESOLVED THAT PETITIONER DID NOT ALLEGE A COMPLAINT FOR ILLEGAL DISMISSAL DESPITE THE FACT THAT AN AMENDED COMPLAINT WAS FILED WHERE IT STATED THIS ILLEGAL DISMISSAL AS A CAUSE OF ACTION.
2. THE PUBLIC RESPONDENT IN ITS ATTEMPT TO WEAVE AND INCORPORATE TECHNICALITY HAD INTENTIONALLY SENT THE DECISION TO ANOTHER LAWYER KNOWING FULLY WELL THE NAME AND ADDRESS OF THE PETITIONER COUNSEL ON RECORD.
3. PUBLIC RESPONDENT GRIEVOUSLY ERRED WHEN IT MODIFIED THE DECISION OF LABOR ARBITER, FACUNDO LEDA WHOSE DECISION IS BASED ON FULL BLOWN TRIAL, OTHER THAN THE SUBMISSION OF AFFIDAVITS AND POSITION PAPERS.
4. THE PUBLIC RESPONDENT ERRED IN DELETING THE AWARD FOR BACKWAGES AND THE PRONOUNCEMENT THAT THERE IS NO COMPLAINT FOR ILLEGAL DISMISSAL. (p. 12, rollo)

The NLRC reversed the Labor Arbiter reasoning that:

. . . The form complaint and even his position paper are very clear that complainant-appellee did not seek and claim that he was dismissed. Thus, the decision of the Labor Arbiter a quo finding the dismissal of the complainant illegal and awarding full backwages is set aside. (p. 35, rollo)

Indeed Llaguno's original complaint was only for underpayment of wages and non-payment of other benefits. It was a standard and form complaint where he filled in the blanks. But mark that Llaguno filed an amended complaint on November 18, 1999 where he included illegal dismissal as his cause of action and prayed for his reinstatement with backwages (vide: Annex "D", rollo, p. 41). If this was not abundantly clear by then, it was made so in Llaguno's Supplemental Position Paper (pp. 75-79) and in PINPIN's Comment (pp. 80-81) where it denied Llaguno's claim