

## FIFTEENTH DIVISION

[ CA-G.R. SP NO. 92800, August 08, 2006 ]

**ZIRCON CEM-MIX, INC., MR. VICENTE CHUACUCO, AND MR. MARK YU, MGR., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FRANKIE G. GALIT, RESPONDENTS.**

### D E C I S I O N

**REYES, J.:**

Before us is the petition for certiorari under Rule 65 of the Rules of Court, filed by petitioners ZIRCON CEM-MIX, INC., Vicente Chuacuco and Mark Yu (***collectively referred to as the petitioners and respondents below***) which prays for the setting aside of the public respondent National Labor Relations Commission's (NLRC for brevity) Resolution issued on 05 July 2005 and its Affirmatory Resolution dated 25 October 2005, declaring private respondent Frankie G. Galit (***Galit for brevity and complainant below***) to be entitled to salary differentials and unpaid wages.

The facts of the case as embodied in the Labor Arbiter's decision and for which we adopt as our own, viz:

"**ZIRCON CEM-MIX INC.** is engaged in the ready mix cement business for construction use with its main office at 109 E. Criselda Bldg., Scout De Guia, Quezon City. It is headed by a certain Mr. Vincent Chucoco.

The said firm has a field office or factory known as **ZIRCON CEM-MIX INC.** at Brgy. Parulan, Plaridel, Bulacan. It is headed by certain Mr. Mark Yu.

The business establishment has fifty (50) under its employ in Bulacan alone one of whom is Frankie Galit, a driver of the said firm in Bulacan earning **ONE HUNDRED EIGHTY FIVE PESOS (P185.00)** per day with a work schedule from 8:00 A.M. to 5:00 P.M. He was employed by ZIRCON on August, 2001 and has been working there up to the date of his termination. Frankie Galit is a resident of Brgy. Ilang-Ilang, Guiguinto, Bulacan.

On January 13, 2003, Frankie Galit reported to the Chief Mechanic of ZIRCON that there was a transmission fault and gear oil problem with the truck that was assigned to him. The truck was a transit mixer of cement due for construction work. Despite his report, he was ordered by management to proceed to deliver the cement from Plaridel to Malabon City. He obeyed the directive but was not able to reach the place of delivery as the truck broke down at the expressway.

Upon knowledge of the non-delivery, he was ordered by management to

prepare a written report regarding the failure of the truck to reach the place of delivery, which he did and this was signed by Chief Mechanic Jimmy Caculitan.

He was asked again to prepare another written report as the first one had been lost, according to management. He prepared another report, but this time the Chief Mechanic refused to sign his report. This was the first time that he sensed a foreboding of what management was planning against him.

On January 20, 2003, Mark Yu verbally notified him to pay the repair made on the transmission seal of the truck in the amount of TWENTY SEVEN THOUSAND PESOS (P27,000.00) or to resign.

The amount being exorbitant, Frankie Galit instead continued to report to work up to January 29, 2003 but unable to get his salary from management from January 13, 2003 to January 29, 2003, he filed this Complaint the following day.

On the other hand, in order to controvert complainant's claims above, respondents made the following submission:

1. Respondent Zircon Cem-Minx, Inc. ("respondent" for brevity), is a corporation existing and duly organized under the laws of the Republic of the Philippines with postal address at 109 E. Criselda Bldg., Scout de Guia, Quezon City. It is engaged in ready mix cements.
2. Respondent Vincent Chuacuco is the President of Zircon Cem-Mix, Inc. with postal address same as above.
3. Complainant is a former employee of the Respondent Company.
4. Complainant Frankie G. Galit (herein complainant Galit) was employed by Zircon Cem-Mix sometime in 2001 as driver. From the statements of his colleagues, complainant Galit had the tendency of being tactless and careless in his job as a driver.
5. In fact, on November 22, 2002, while driving a company truck, complainant Galit bumped a signboard and/or signage thereby destroying the same without complainant Galit knowing it. Worse, after being informed of the damage, complainant failed to report the matter to the management. And when asked to explain, complainant Galit readily admitted his carelessness when he wrote:

"PARA SA PAMUNUAN NANG ZIRCON CEM ANG PANGYAYARING NAGANAP NOON IKA 22 NG NOV. TAONG 2002 AY HINDI KO SINASADYA NABIGLA NA LANG AKO NANG SINABE SAKIN NG CREW NG PUMP NA TINAMAAN KO YUNG SIGN BOARD SA TAAS AT NANG BUMABA AKOT TINGNAN BASAG YONG KABILANG (SIDE)"

a copy of the complainant Galit's letter dated November 26, 2001 is hereto attached as Annex "1".

6. Again, sometime on January 2003, in an apparent display of recklessness and without due regard to her (sic) job and the company properties, the truck which complainant Galit was driving suffered a serious damage when the transmission broke down due to the absence of oil because of complainant Galit's failure to check the same before driving it.
7. Thus, on February 03, 2003, complainant Galit was furnished a letter asking him to explain why the damage should not be charged against him. A copy of the letter is hereto attached as Annex "2".
8. However, complainant Galit refused to receive the letter (Annex "2") and to submit his explanation. Instead, he failed to report for work anymore after he damaged the truck he was driving until he filed the present case on January 30, 2002.
9. Still, the respondent showed patience and forbearance that in the initial hearings of the case on February 20, 2003, March 07, 2003 and March 28, 2003, respondent manifested in open court and made it on record that it has terminated complainant Galit and that the latter should report for work immediately.
10. Notwithstanding the manifestation to report for work in the hearings of February 20, March 28, 2003, complainant Galit still refused to report for work and refused to submit his explanation."  
**(Rollo, pp. 53 to 56)**

After the submission of the parties' position papers (**Annex "C", pp. 22 to 28; Annex "D"; pp. 32 to 35, Rollo**) and Reply to complainant's Position Paper (**Annex "E", pp. 36 to 38, *ibid***), together with the documentary evidence, Labor Arbiter Leandro M. Jose issued a decision dated 02 December 2003, the dispositive portion thereof reads:

"WHEREFORE, premises considered, judgment is hereby rendered dismissing instant complaint for illegal dismissal for lack of merit.

However, respondents are hereby ordered to compensate complainant his salary differential in the sum of P17, 516.33 for having paid the latter remuneration below minimum wage.

Respondents are likewise held liable to pay complainant's salary for the period January 13 to 29, 2003 in the amount of P2,960.00.

All other claims are hereby dismissed for lack of merit.

SO ORDERED." (**Rollo, pp. 58 to 59**)

On 15 March, the petitioner filed a memorandum of Partial Appeal before the public respondent NLRC, which seeks the reversal of the Labor Arbiter's decision, declaring private respondent Galit's entitlement to salary differentials and unpaid wages.