

## SECOND DIVISION

[ G.R. No. 180718, October 23, 2009 ]

**HENLIN PANAY COMPANY AND/OR EDWIN FRANCISCO/ ANGEL LAZARO III, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND NORY A. BOLANOS, RESPONDENTS.**

### D E C I S I O N

**QUISUMBING, J.:**

For review on certiorari are the Decision<sup>[1]</sup> dated October 9, 2007 and the Resolution<sup>[2]</sup> dated November 26, 2007 of the Court of Appeals in CA-G.R. SP No. 98814. The appellate court had affirmed the Resolution<sup>[3]</sup> dated January 31, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-08-06773-05<sup>[4]</sup> declaring petitioners liable for illegally dismissing respondent Nory A. Bolanos.

The facts as found by the appellate court and the NLRC are as follows:

Private respondent Nory A. Bolanos started working on September 26, 2004 as service crew for petitioner Henlin Panay Company where she worked for eight hours a day from Sunday to Friday and was paid P325 per day. Henlin Panay is owned by VMD Food House Company whose president is petitioner Angel Lazaro III.

On July 8, 2005, around 7:00 p.m., while Bolanos was manning Henlin Panay's Counter B, her brother-in-law, Febe Javier (Javier), arrived and ordered wanton mami from her. Javier gave her a 500-peso bill for his order and was given his corresponding change. Petitioner Edwin Francisco (Francisco), the store supervisor, who was just near the counter and was about to take his break, asked Bolanos who her customer was to which she replied that he is her brother-in-law. Afterwards, Francisco took his break.

Bolanos served one more customer before she closed Counter B. Later, Javier ordered an additional siopao and softdrink from Counter A manned by Fe Niyam Combo (Combo).

After taking his break, Francisco returned to the dine-in area and noticed that Javier was already having siopao and softdrink. He then checked the journal tape of Counter B but did not find said food items punched in the cash register. At that time, Javier already left Henlin Panay. Francisco then asked Bolanos about the additional items ordered by Javier, but she told him that they were ordered at Counter A. When Francisco scrutinized the journal tape of Counter A, it did not also reflect the siopao and softdrink ordered by Javier. Francisco asked Combo about the matter and the latter told him that she remembered giving Javier siopao and softdrink. Combo said that she might have made an erroneous entry in the cash register by punching in siomai and lemonade instead. When Bolanos and Combo checked the order slips,

where the order of each customer was first written before being punched in the cash register, they found one indicating siopao and softdrink. Despite Combo's admission of her mistake, Francisco did not believe her. Bolanos offered to bring along her brother-in-law the next day to prove that the additional food items were ordered from and paid for at Counter A, but Francisco dismissed the idea and remarked that Javier would naturally side with her. He just instructed her to call him the following day.

As instructed, Bolanos called Francisco the next day, and was ordered not to report the following day. She inquired why she was being penalized as she did nothing wrong, to which Francisco replied that she was not only being suspended but was already dismissed from service. Bolanos protested as she was not served a notice of termination. However, Francisco simply replied that he has the authority to terminate the employment of employees; hence, a notice of termination was not necessary. Bolanos wanted to go to VMD's office to explain her side further, but Francisco remained adamant. He told her that even if she brought her lawyer along with her, his decision would not change.

On July 11, 2005, Bolanos went to the NLRC and was advised that she might have been illegally dismissed. The NLRC scheduled a mediation between Bolanos and petitioners on July 26, 2005, but the same failed. Hence, Bolanos filed an illegal dismissal complaint<sup>[5]</sup> on August 3, 2005, docketed as NLRC NCR Case No. 00-08-06773-05.

Petitioners, for their part, presented a different version of the events.<sup>[6]</sup> They alleged that when Francisco did not see in the journal tapes of both Counters A and B the additional food items ordered by Javier, he asked Bolanos why said items were not punched in or unpaid. Bolanos allegedly did not give an explanation and merely said, "*Babayaran ko na lang yan.*" Francisco replied, "*Di iyon ang point ko doon. Ang point ko ay naglabas ka ng pagkain na hindi nabayaran at dishonesty yun.*" Bolanos became speechless. After her duty that night, Francisco instructed her to call him the next day.

During their phone conversation on July 9, 2005, Francisco told Bolanos that he had already informed Susan Lim of VMD and Cecille Navarro of M & H Food Corporation, owner of the Henlin franchise, about the incident and both said that the matter should be investigated. Before the call ended, Bolanos remarked, "*Siguro ginagawa mo iyon dahil alam mo.*" Francisco replied that it was just part of his job to watch out for fraudulent schemes like "passing out" of food.

On July 11, 2005, Lim informed Bolanos to report to her and explain her side. When she came later that day, Lim told her that there was no decision yet since the investigation was still ongoing and requested that Bolanos obtain the receipt from Javier if he still has it. Lim likewise required Bolanos to report for work that day, but the latter said that she will just go to work on July 12, 2005.

On July 12, 2005, Bolanos called Lim and said that she cannot go to work as she accidentally slipped. Lim then just told her to take a rest.

The following day, Lim was surprised to receive a Notice/Invitation<sup>[7]</sup> from the NLRC Conciliation and Mediation Center with an Information Sheet<sup>[8]</sup> executed by Bolanos

charging Henlin Panay of illegal dismissal.

On February 28, 2006, the Labor Arbiter rendered a Decision,<sup>[9]</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, the claim for illegal termination is dismissed.

However, respondent is directed to pay the complainant a proportionate 13<sup>th</sup> month pay for 2005 in the amount of P4,386.96 (1/2/05 - 7/9/05 = 6.23 mos.;  $P325 \times 26 \text{ days} \times 6.23 \text{ mos.}/12$ ).

**SO ORDERED.**<sup>[10]</sup>

Bolanos appealed to the NLRC, which reversed the Labor Arbiter's decision on January 31, 2007 as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is **GRANTED**. The decision appealed from is **REVERSED** and **SET ASIDE**, thereby declaring the respondents-appellees guilty of illegal dismissal.

Accordingly, respondents-appellees are ordered to pay the complainant-appellant her full backwages computed from the time she was dismissed up to the finality of this Resolution and separation pay equivalent to one (1) month's salary plus her proportionate 13<sup>th</sup> month pay for the year 2005. As computed, complainant-appellant is entitled to the following monetary award as of January 23, 2007, viz:

A) Backwages

1. Basic salary  
7/10/05-1/23/07  
 $P325 \times 26 \times 18.43$       P155,733.50
2. 13<sup>th</sup> mo. pay  
 $P155,733.50/12$       12,977.80
3. SILP  
 $P325 \times 5/12 \times 18.43$       2,495.73 171,207.03

B) Separation Pay

9/26/04-1/23/07      16,900.00  
  
 $P 325 \times 26 \times 2$

- C) Proportionate 13<sup>th</sup> mo.  
[P]ay  
  
1/2/05-7/9/05