

SECOND DIVISION

[G.R. No. 121696, February 11, 1999]

**C. PLANAS COMMERCIAL AND MARCIAL COHU, PETITIONERS,
VS. NATIONAL LABOR RELATIONS COMMISSION AND RAMIL DE
LOS REYES, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

C. PLANAS COMMERCIAL, a business entity engaged in merchandising and retailing of plastic products and fruits, was charged by respondent Ramil de los Reyes with illegal dismissal and non-payment of basic wages and certain monetary benefits.^[1] De los Reyes claimed that he started working as deliveryman of PLANAS in August 1988 and later tasked with selling fruits until 4 June 1993 when he was allegedly dismissed.

On 15 April 1994 the Labor Arbiter found petitioners C. Planas Commercial (PLANAS hereon) and Marcial Cohu, its manager, to have illegally dismissed Ramil de los Reyes. Consequently, petitioners were ordered to reinstate him with back wages and to pay him salary differentials, 13th month pay and service incentive pay.^[2]

On appeal public respondent National Labor Relations Commission reversed and set aside the decision of the Labor Arbiter which declared the dismissal of de los Reyes illegal as well as the grant to him of back wages and other monetary benefits, except salary differentials in the amount of P36,342.80 which NLRC sustained.^[3] Since their motion for reconsideration was denied,^[4] petitioners filed on 18 December 1995 the instant petition for *certiorari* with prayer for preliminary injunction.^[5] They impute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of NLRC for sustaining the award of salary differentials despite the fact that private respondent Ramil de los Reyes was then receiving a daily wage higher than the mandated minimum wage for retail establishments employing less than ten (10) workers, like petitioner PLANAS.

In light of the pertinent facts, we find the petition without merit. In his Position Paper supporting his complaint before the Labor Arbiter for illegal dismissal, underpayment of wages and non-payment of certain monetary claims,^[6] private respondent (complainant below) alleged that he had been employed as deliveryman from August 1988 to 4 June 1993 when he was illegally dismissed by employer PLANAS. His daily wage at the time of his employment was P50.00 which was later increased to P100.00. He further claimed that aside from being underpaid he worked fourteen (14) hours a day, i.e., from 6:00 p.m. to 8:00 a.m., without overtime pay and night shift differential pay from Monday to Sunday with no rest day nor premium pay for holiday and rest day, and without 13th month pay from 1988 to 1993.^[7]

Responding to private respondent's claim, petitioners alleged that they did not dismiss Ramil de los Reyes who was only their helper assigned to sell fruits in front of their stall in Divisoria; on the contrary, they claimed he abandoned his work after PLANAS' manager, petitioner Marcial Cohu, confronted him regarding reports that whenever the former was not around he would sell the fruits at their stall at a higher price then pocket the difference. According to Cohu, private respondent admitted that the reports about his overpricing were true and that after his admission he did not report for work anymore; instead, he tended the fruit stall of another employer.^[8]

Petitioners also denied in their Position Paper any liability for the wages and benefits claimed by de los Reyes. They argued that in their business of merchandising and retailing fruits and plastic products they were leasing a stall in Divisoria with less than ten (10) persons under their employ, hence, exempted from giving holiday pay and service incentive leave pay. Considering that their store hours were from 10:00 a.m. to 6:00 p.m. only, de los Reyes could not be entitled to overtime pay, much less to any night shift differential. Neither could he claim any rest day since he worked only for six (6) days a week.^[9]

Private respondent de los Reyes, in his Reply,^[10] insisted that he was dismissed without any notice after he complained about his low salary. In fact, according to him, this practice of petitioners resulted in the filing of eight (8) labor cases against them by his co-employees.^[11] Moreover, de los Reyes maintained that petitioners employed around thirty (30) persons in their wholesale/retail business.

To fortify their claim that de los Reyes abandoned his job and thus was not terminated, petitioners attached six (6) pictures to their Rejoinder^[12] showing private respondent at work in the stall of one Aling Conchita Paredes located at C. Planas, Divisoria, occupied by his new employer, a certain Jimmy Chua a.k.a. *Sionga*, a fruit dealer.

No amicable settlement having been arrived at before the Labor Arbiter, a decision^[13] was rendered which addressed two (2) basic issues: (a) whether private respondent was dismissed or whether he abandoned his job; and, (b) whether private respondent was entitled to his monetary claims.^[14]

Finding for private respondent, the Labor Arbiter disregarded petitioners' defense of abandonment and reiterated that a worker's complaint for illegal dismissal was inconsistent with the charge of abandonment since it was illogical for an employee to abandon his job and come to the labor tribunal for reinstatement.^[15] Consequently, for having dismissed de los Reyes without any written notice as required by law,^[16] petitioners were ordered to reinstate him immediately to his former position and pay him back wages of P33,675.20.^[17]

As regards the other money claims, the Labor Arbiter disallowed overtime pay and night shift differentials for lack of sufficient evidence inasmuch as de los Reyes' job of selling fruits, as opined by the Labor Arbiter, was normally a daytime activity.^[18] However, an award of salary differentials in the amount of P36,342.80, 13th month pay of P8,138.00 and service incentive pay of P1,565.00 was made in favor of

private respondent for petitioners' failure to submit the corresponding employment records, e.g., payrolls to controvert private respondent's monetary claims.

Raising once more the issue of abandonment in their appeal before public respondent,^[19] petitioners argued that since PLANAS was merely operating a very small business with less than ten (10) employees, or contrary to the Labor Arbiter's finding that it was a plastic company with around thirty (30) employees, they could not be expected to make a "big deal" out of the reports on overcharging and have them recorded in the police blotter before confronting whoever was involved.^[20] Petitioners also reiterated their position that de los Reyes stopped working for PLANAS after Manager Marcial Cohu confronted him about the overpricing and he was thereafter seen working at another stall without being terminated by PLANAS. Petitioners further disputed the monetary award totalling P79,721.00 adjudged against them by the Labor Arbiter claiming that the latter failed to present the factual bases of the computation made.^[21]

After a review of the case, the NLRC^[22] set aside the finding of illegal dismissal on the ground that petitioners' contention that de los Reyes had abandoned his job was duly substantiated by the pictures on record clearly portraying him at work in his new employment.^[23] Thus, NLRC ruled that private respondent was not entitled to reinstatement with back wages. Except for the award of salary differentials due to underpayment of salaries, the other monetary awards granted by the Labor Arbiter were likewise set aside by the NLRC.^[24] According to public respondent, petitioners never denied much less rebutted de los Reyes' claim for salary differentials.^[25]

Still dissatisfied with that portion of the NLRC decision awarding salary differentials to de los Reyes, petitioners seek the writ of *certiorari* through this petition.^[26] They also pray for a writ of preliminary injunction to enjoin the execution of the assailed monetary award while this petition is pending so as not to render the same moot and academic and to prevent irreparable damage and injury to them.^[27]

Petitioners invoke the exemption provided by law for retail establishments which employ not more than ten (10) workers to justify their non-liability for the salary differentials in question. They insist that PLANAS is a retail establishment leasing a very small and cramped stall in the Divisoria market which cannot accommodate more than ten (10) workers in the conduct of its business.^[28]

We are unconvinced. The records disclose de los Reyes' clear entitlement to salary differentials. Well-settled is the rule that factual findings of labor officials who are deemed to have acquired expertise in matters within their jurisdiction are generally accorded not only respect but even finality and bind this Court when supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.^[29] Thus, as long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is our stamp of finality by affirming the factual findings made by them.^[30] In this case, the award of salary differentials by the NLRC in favor of de los Reyes was made pursuant to RA 6727 otherwise known as the Wage Rationalization Act, and the Rules Implementing Wage Order Nos. NCR-01 and NCR-01-A and Wage Order Nos. NCR-02 and NCR-02-