375 Phil. 855

SECOND DIVISION

[G.R. No. 111042, October 26, 1999]

AVELINO LAMBO AND VICENTE BELOCURA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND J.C. TAILOR SHOP AND/OR JOHNNY CO, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for *certiorari* to set aside the decision[1] of the National Labor Relations Commission (NLRC) which reversed the awards made by the Labor Arbiter in favor of petitioners, except one for P4,992.00 to each, representing 13th month pay.

The facts are as follows.

Petitioners Avelino Lambo and Vicente Belocura were employed as tailors by private respondents J.C. Tailor Shop and/or Johnny Co on September 10, 1985 and March 3, 1985, respectively. They worked from 8:00 a.m. to 7:00 p.m. daily, including Sundays and holidays. As in the case of the other 100 employees of private respondents, petitioners were paid on a piece-work basis, according to the style of suits they made. Regardless of the number of pieces they finished in a day, they were each given a daily pay of at least P64.00.

On January 17, 1989, petitioners filed a complaint against private respondents for illegal dismissal and sought recovery of overtime pay, holiday pay, premium pay on holiday and rest day, service incentive leave pay, separation pay, 13th month pay, and attorney's fees.

After hearing, Labor Arbiter Jose G. Gutierrez found private respondents guilty of illegal dismissal and accordingly ordered them to pay petitioners' claims. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring the complainants to have been illegally dismissed and ordering the respondents to pay the complainants the following monetary awards:

	AVELINO LAMBO	VICENTE BELOCURA
I. BACKWAGES	P64,896.00	P64,896.00
II. OVERTIME PAY	13,447.90	13,447.90
III. HOLIDAY PAY	1,399.30	1,399.30
IV. 13TH MONTH PAY	4,992.00	4,992.00
V. SEPARATION PAY	9,984.00	11,648.00
TOTAL	P94,719.20	P96,383.20 = P191,102.40

Add: 10% Attorney's Fees 19,110.24

GRAND TOTAL P210,212.64

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or a total aggregate amount of TWO HUNDRED TEN THOUSAND TWO HUNDRED TWELVE AND 64/100 (P210,212.64).

All other claims are dismissed for lack of merit.

SO ORDERED.[2]

On appeal by private respondents, the NLRC reversed the decision of the Labor Arbiter. It found that petitioners had not been dismissed from employment but merely threatened with a closure of the business if they insisted on their demand for a "straight payment of their minimum wage," after petitioners, on January 17, 1989, walked out of a meeting with private respondents and other employees. According to the NLRC, during that meeting, the employees voted to maintain the company policy of paying them according to the volume of work finished at the rate of P18.00 per dozen of tailored clothing materials. Only petitioners allegedly insisted that they be paid the minimum wage and other benefits. The NLRC held petitioners guilty of abandonment of work and accordingly dismissed their claims except that for 13th month pay. The dispositive portion of its decision reads:

WHEREFORE, in view of the foregoing, the appealed decision is hereby vacated and a new one entered ordering respondents to pay each of the complainants their 13th month pay in the amount of P4,992.00. All other monetary awards are hereby deleted.

SO ORDERED.[3]

Petitioners allege that they were dismissed by private respondents as they were about to file a petition with the Department of Labor and Employment (DOLE) for the payment of benefits such as Social Security System (SSS) coverage, sick leave and vacation leave. They deny that they abandoned their work.

The petition is meritorious.

First. There is no dispute that petitioners were employees of private respondents although they were paid not on the basis of time spent on the job but according to the quantity and the quality of work produced by them. There are two categories of employees paid by results: (1) those whose time and performance are supervised by the employer. (Here, there is an element of control and supervision over the manner as to how the work is to be performed. A piece-rate worker belongs to this category especially if he performs his work in the company premises.); and (2) those whose time and performance are unsupervised. (Here, the employer's control is over the result of the work. Workers on pakyao and takay basis belong to this group.) Both classes of workers are paid per unit accomplished. Piece-rate payment is generally practiced in garment factories where work is done in the company premises, while payment on pakyao and takay basis is commonly observed in the agricultural industry, such as in sugar plantations where the work is performed in bulk or in volumes difficult to quantify.[4] Petitioners belong to the first category, i.e., supervised employees.

In determining the existence of an employer-employee relationship, the following elements must be considered: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.[5] Of these elements, the most important criterion is whether the employer controls or has reserved the right to control the employee not only as to the result of the work but also as to the means and methods by which the result is to be accomplished.[6]

In this case, private respondents exercised control over the work of petitioners. As tailors, petitioners worked in the company's premises from 8:00 a.m. to 7:00 p.m. daily, including Sundays and holidays. The mere fact that they were paid on a piece-rate basis does not negate their status as regular employees of private respondents. The term "wage" is broadly defined in Art. 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations.[7] Nor does the fact that petitioners are not covered by the SSS affect the employer-employee relationship.

Indeed, the following factors show that petitioners, although piece-rate workers, were regular employees of private respondents: (1) within the contemplation of Art. 280 of the Labor Code, their work as tailors was necessary or desirable in the usual business of private respondents, which is engaged in the tailoring business; (2) petitioners worked for private respondents throughout the year, their employment not being dependent on a specific project or season; and, (3) petitioners worked for private respondents for more than one year.[8]

Second. Private respondents contend, however, that petitioners refused to report for work after learning that the J.C. Tailoring and Dress Shop Employees Union had demanded their (petitioners') dismissal for conduct unbecoming of employees. In support of their claim, private respondents presented the affidavits[9] of Emmanuel Y. Caballero, president of the union, and Amado Cabañero, member, that petitioners had not been dismissed by private respondents but that practically all employees of the company, including the members of the union had asked management to terminate the services of petitioners. The employees allegedly said they were against petitioners' request for change of the mode of payment of their wages, and that when a meeting was called to discuss this issue, a petition for the dismissal of petitioners was presented, prompting the latter to walk out of their jobs and instead file a complaint for illegal dismissal against private respondents on January 17, 1989, even before all employees could sign the petition and management could act upon the same.

To justify a finding of abandonment of work, there must be proof of a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment.[10] Mere absence is not sufficient. It must be accompanied by manifest acts unerringly pointing to the fact that the employee simply does not want to work anymore.[11]

Private respondents failed to discharge this burden. Other than the self-serving declarations in the affidavits of their two employees, private respondents did not adduce proof of overt acts of petitioners showing their intention to abandon their work. On the contrary, the evidence shows that petitioners lost no time in filing the case for illegal dismissal against private respondent. This fact negates any intention on their part to sever their employment relationship.[12] Abandonment is a matter of intention; it cannot be inferred or presumed from equivocal acts. [13]

Third. Private respondents invoke the compromise agreement,[14] dated March 2, 1993, between them and petitioner Avelino Lambo, whereby in consideration of the sum of P10,000.00, petitioner absolved private respondents from liability for money claims or any other obligations.

To be sure, not all quitclaims are per se invalid or against public policy. But those (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person or (2) where the terms of settlement are unconscionable on their face are invalid. In these cases, the law will step in to annul the questionable transaction.[15] However, considering that the Labor Arbiter had given petitioner Lambo a total award of P94,719.20, the amount of P10,000.00 to cover any and all monetary claims is clearly unconscionable. As we have held in another case, [16] the subordinate position of the individual employee vis-a-vis management renders him especially vulnerable to its blandishments, importunings, and even intimidations, and results in

his improvidently waiving benefits to which he is clearly entitled. Thus, quitclaims, waivers or releases are looked upon with disfavor for being contrary to public policy and are ineffective to bar claims for the full measure of the workers' legal rights.[17] An employee who is merely constrained to accept the wages paid to him is not precluded from recovering the difference between the amount he actually received and that amount which he should have received.

Fourth. The Labor Arbiter awarded backwages, overtime pay, holiday pay, 13th month pay, separation pay and attorney's fees, corresponding to 10% of the total monetary awards, in favor of petitioners.

As petitioners were illegally dismissed, they are entitled to reinstatement with backwages. Considering that petitioners were dismissed from the service on January 17, 1989, i.e., prior to March 21, 1989,[18] the Labor Arbiter correctly applied the rule in the Mercury Drug case,[19] according to which the recovery of backwages should be limited to three years without qualifications or deductions. Any award in excess of three years is null and void as to the excess.[20]

The Labor Arbiter correctly ordered private respondents to give separation pay. Considerable time has lapsed since petitioners' dismissal, so that reinstatement would now be impractical and hardly in the best interest of the parties. In lieu of reinstatement, separation pay should be awarded to petitioners at the rate of one month salary for every year of service, with a fraction of at least six (6) months of service being considered as one (1) year.[21]

The awards for overtime pay, holiday pay and 13th month pay are in accordance with our finding that petitioners are regular employees, although paid on a piece-rate basis.[22] These awards are based on the following computation of the Labor Arbiter:

AVELINO LAMBO

I. BACKWAGES: Jan. 17/89 - Jan. 17/92 = 36 mos.

P 64.00/day x 26 days =

1,664.00/mo. x 36 mos. = P 59,904.00

13th Mo. Pay:

P 1,664.00/yr. x 3 yrs. = 4, 992.00 P64,896.00

II. OVERTIME PAY: Jan. 17/86 - Jan. 17/89

Jan. 17/86 - April 30/87 = 15 mos. & 12 days =

(15 mos. x 26 days + 12 days) = 402 days

*2 hours = 25%

402 days x 2 hrs./day = 804 hrs.

P 32.00/day ÷ 8 hrs. =

4.00/hr. x 25% =

1.00/hr. + P4.00/hr. =

5.00/hr. x 804 hrs. = P 4,020.00

May 1/87-Sept. 30/87 = 4 mos. & 26 days =

(4 mos. x 26 days + 26 days) = 130 days