

FOURTH DIVISION

[CA-G.R. SP No. 128975, January 30, 2015]

GLORIA ROQUE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND GERRY WALOG, RESPONDENTS.

D E C I S I O N

CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the Decision dated October 30, 2012 rendered by the public respondent NLRC in NLRC NCR Case No. 01-00655-12, the dispositive portion of which reads:

“WHEREFORE, premises considered, the instant motion/petition of Gloria Roque is hereby DENIED.

In view of her revelation as the owner of FAD Bamboo Store, Gloria Roque is hereby held liable to pay the monetary awards in the Decision of the Labor Arbiter subject of the instant petition, plus required fees for the petition.”^[1]

The motion for reconsideration of the said Decision was subsequently denied in the Resolution^[2] dated December 27, 2012, hence the present petition.

Antecedents:

This case has its genesis in the complaint^[3] filed by Gerry Walog against FAD Bamboo Store/ Flotarco Delgado for illegal dismissal and monetary claims, docketed as NLRC NCR No. 01-00655-12 dated January 11, 2012. The Summons issued by the Labor Arbiter was addressed to:

Owner/Manager/President
FAD BAMBOO STORE
3263 R. Magsaysay cor.
Maganda St.
Sta. Mesa, Manila

MR. FLOTARCO DELGADO

We shall rely on the Decision of the Labor Arbiter May 29, 2012 and the NLRC Decision dated October 30, 2012 for the facts of this case.

The parties failed to arrive at an amicable settlement during the mandatory conference held on January 27, 2012 and February 3, 2012 prompting the Labor Arbiter to require the submission of the parties' corresponding Position Papers on February 20, 2012.^[4] The date for the submission of Position Papers was extended to March 5, 2012 and then re-scheduled to March 19, 2012 and again on April 12, 2012 with a warning to the respondents that “Failure to appear and file Position

Paper, case shall proceed ex-parte.”^[5] Respondents did not file their Position Papers nor did they appear, thus the case was submitted for decision.^[6] Respondents also failed to inquire about the status of the case even up to the time the Labor Arbiter rendered his Decision.^[7]

Complainant Gerry Walog worked as driver of FAD Bamboo Store since August 2006 until January 2, 2012.^[8] He worked from 8:00 am until 6:00PM from Monday to Saturday.^[9] According to complainant, he was dismissed without cause, thus he was entitled to separation pay and backwages.^[10] He claimed that he was underpaid because he was receiving only P270.00 per day for a nine-hour work and he was not paid his 13th month pay in 2011.^[11]

On the other hand, Flotarco Delgado submitted a letter on February 3, 2012 where he averred that:

“That on January 2 after the holiday seasons, we had a scheduled delivery of bamboos at 9:00 am but we found out that he, Gerry was drunk still lying in their quarters;

That, later in the day, when he got up, the manager, Mr. Flutarco Delgado naturally talked and cautioned him but he rudely countered and reasoned back to our dismay;

That on the following day, he did not report for work and was still drunk;

That because of this problem on delay of deliveries, orders were cancelled and non-acceptance of deliveries caused us loss of income considering that we are only an entrepreneur;

That we were then forced to look for a new driver/substitute;

That after a week or so, he came back asking for an increase in salaries;

That the management asked him why in this point he is asking for such demands after what he has done;

That while we were still talking to him, he replied back to quote: “hindi naman ako namimilit meron naman akong mapapasukan na iba” after which, he turned his back and went away without due respect to us, as his employer;

To this day, he has not yet notified his resignation and considered AWOL;

xxx that he more or less 5 years as stay-in driver, he started at P180.00 a day and now reached to P270.00 or more than P7,000.00 a month, Sundays being his day off, plus overtime pay because more often than not, our deliveries occur at 6:00 an and 9:00 PM because of the truck ban;

xxx that he had been reprimanded in the past for being ill-mannered, arrogant and drunkard, and was given many second chances xxx;

Please find the above grounds meritorious for his dismissal without compensation or any other benefits.”^[12]

The Labor Arbiter found that complainant was illegally dismissed.^[13] The Labor Arbiter ratiocinated that respondents' bare allegation of complainant being always drunk to their damage and prejudice was not substantiated with evidence enough to convince the tribunal that the dismissal was for a valid or just cause.^[14] Moreover, there was a total absence of notice to the employee specifying the grounds for termination.^[15] With regard to the claim of AWOL, the same is inconsistent with the filing of the complaint.^[16]

The dispositive portion of the said Labor Arbiter's Decision reads:

“WHEREFORE, responsive to the foregoing, judgment is hereby rendered, declaring respondents guilty of illegal dismissal. Accordingly, respondents are ordered jointly and severally liable:

- 1) To pay complainant the amount of P59,664.85, representing his backwages, computed only up to the promulgation of this decision;
- 2) To pay the complainant the amount of P65,456.00, representing his separation pay;
- 3) To pay complainant the aggregate amount of P20,436.00 representing his 13th month pay;
- 4) To pay complainant the amount of P127,067.20, representing his underpayment of wages;
- 5) To pay complainant an amount equivalent to ten (10%) per cent of the total judgment award as and for attorney's fees.”^[17]

Flotarco Delgado and FAD Bamboo Store did not appeal the said Labor Arbiter Decision, however, the registered owner of FAD, Gloria Roque filed a Motion/Petition for new trial before the NLRC dated July 19, 2012 alleging that she was the true and registered owner of respondent FAD; that she was not named a party to the case, hence the Labor Arbiter did not acquire jurisdiction over her person, thus she cannot be held jointly and solidarily liable with respondents; that under the Rules of Court, every action must be prosecuted in the name of the real party in interest.^[18]

The NLRC denied the said motion/petition in the Decision dated October 30, 2012^[19] finding the contention of petitioner devoid of merit. The NLRC noted that the Summons sent to petitioner's husband Flotarco Delgado was addressed to the Owner/Manager/President of FAD Bamboo Store, thus, petitioner was duly notified and summoned and she cannot hide from the mere technicality that she was not specifically named in the summons.^[20] The motion for reconsideration was denied^[21], hence the present petition.

Issue/s:

There are two assignment of errors cited by herein petitioner, to wit: