

NINETEENTH DIVISION

[CA-G.R. CEB-SP No. 05760, January 26, 2015]

**FRANKLIN M. AGUILAR, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, RCL DIRECT MARKETING CORP. AND
ROMULO CAPULONG, RESPONDENTS.**

D E C I S I O N

LAGURA-YAP, J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision^[1] dated 31 August 2010 rendered by the National Labor Relations Commission Seventh Division and the Resolution^[2] dated November 30, 2010 denying petitioner's Motion for Reconsideration^[3].

The facts, as culled from the records, are as follows:

Petitioner Franklin M. Aguilar started working for respondents RCL Direct Marketing Corp. and/or Romulo Capulong as a collector sometime in January 2003. He worked from Mondays to Sundays and was paid Php 2,870.00 a month

On December 15, 2006, petitioner was dismissed from his employment.

On December 23, 2006, petitioner reported to the police station of San Jose Antique that he was boxed and threatened to be shot by the Regional Manager of the respondents.

Thereafter, petitioner filed a complaint dated 29 December 2006 for illegal dismissal, underpayment of wages, holiday pay, premium pay for working on holidays and rest days, service incentive leave pay, 13th month pay, damages and attorney's fees against respondents in the National Labor Relations Commission - Sub-Regional Arbitration Branch VI docketed as SRAB Case No. 06-06-50241-09 .

On the other hand, respondents allege that petitioner was not dismissed. They hired petitioner sometime in January 2003 as a branch collector. Respondents alleged that during petitioner's employment, he committed the following: 1) abandoned work; 2) insulting, insubordination and willful disrespect to his superiors, 3) willful refusal to carry out work instruction issued by superiors; 4) malversation of company funds; and 5) fraud and willful breach of trust.

Respondents claimed that despite the acts and omissions committed by the petitioner, he was still given due process as he was required to explain and was invited to an investigation. Respondents gave petitioner written notices for the settlement of his unremitted collections. However, petitioner failed and refused to settle his unremitted collection and even threatened respondent's Regional Manager Prudencio Ibasco. Thereafter, petitioner abandoned his work with the company

sometime in December 2006. Subsequently, respondent company filed a case against petitioner for Estafa before the Office of the Provincial Prosecutor in the Province of Antique

On May 27, 2010, the Labor Arbiter issued a Decision^[4] declaring that petitioner was validly terminated from his employment, thus:

“WHEREFORE, premises considered, complainant is considered validly terminated from his employment. His 13th month pay for the year 2006, in the amount of Php5,531.50 and his service incentive leave pay in the amount of Php3,330.00 are considered valid offset to his unremitted collections in the amount of Php26,300.00

The rest of the claims are dismissed for lack of merit.

SO ORDERED.”

Dissatisfied with the Labor Arbiter's Decision, petitioner filed an Appeal^[5] to the National Labor Relations Commission (NLRC) docketed as NLRC Case No. VAC-07-000374-10.

On August 31, 2010, the NLRC rendered the assailed Decision^[6] finding that there was no dismissal at all. The dispositive part of the decision states:

“WHEREFORE, premises considered, the 27 May 2010 Decision of the Acting Executive Labor Arbiter with respect to the declaration that there was a valid dismissal is hereby REVERSED as there is no finding of dismissal at all. Consequently, complainant is not entitled to his claim for separation pay and backwages. The offsetting of his unremitted amount of P26,300.00 against his award of proportionate 13th month pay and service incentive leave pay is sustained.

SO ORDERED.”

Thereafter, petitioner filed a Motion for Reconsideration^[7] which was denied in the assailed Resolution^[8] dated November 30, 2010.

Aggrieved, petitioner filed this instant petition^[9] raising the following issues:

I

THAT THE RESPONDENT NLRC IN GRAVE ABUSE OF DISCRETION, WITHOUT JURISDICTION AND IN EXCESS OF JURISDICTION REFUSED TO MAKE RESPONDENTS LIABLE TO PAY CORRECT COMPUTATION OF THE MONTHLY SALARY OF THE PETITIONER, THE RESPONDENT NLRC REFUSED AND FAILED TO COMPLY WITH ITS OBLIGATION UNDER THE LABOR CODE.^[10]

II

THAT THE RESPONDENT NLRC IN GRAVE ABUSE OF DISCRETION IN THE EXERCISE OF ITS FUNCTION, BY WAY OF EVASION OF POSITIVE DUTY