

NINETEENTH DIVISION

[CA-G.R. SP NO. 08291, February 27, 2015]

**BING PHARMACY/GABRIELA FUA LUMAPAS, PETITIONER, VS.
ROSALIE C. CALO, MARIEL J. ARANETA, LYNE T. PARADIANG,
MARSHA G. GOLEZ AND THE NATIONAL LABOR RELATIONS
COMMISSION, SEVENTH DIVISION,^[1] RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

Before Us is an Amended Petition for Certiorari^[2] under Rule 65 of the Rules of Court assailing the Decision^[3] promulgated on September 30, 2013 of the National Labor Relations Commission (NLRC) Seventh (7th) Division, Cebu City, as well as the Resolution^[4] dated December 20, 2013 of the same NLRC in NLRC Case No. VAC-06-000398-13, which denied the Motion for Partial Reconsideration^[5] of herein petitioner.

The Antecedents^[6]

Version of the Petitioner

In gist, petitioner Bing Pharmacy is a pharmaceutical retailer, which is owned and managed by Gabriela Fua Lumapas. The family members of Gabriela Fua Lumapas also helped in running the business by acting as sales assistants and cashiers.

Bing Pharmacy has branches in Canduman Mandaue City, Guadalupe, Cebu City and Consolacion, Cebu. It is regularly employing an average of eight (8) employees.

Petitioner hired Mariel Araneta and Marsha Golez as sales assistants on January 2, 2012 and April 17, 2012, respectively. Like all the other workers these private respondents were given their salaries and benefits.

Suddenly, on February 18, 2013, these two private respondents did not report for work but, instead, went to the National Conciliation and Mediation Board (NCMB) in Cebu City. They alleged that they were terminated by herein petitioner and thus, sought the Board's assistance. During the first SENA conference, petitioner stressed that it never dismissed such employees. They were also welcome to report back for work, as their absence severely affected the business operation.

However, private respondents Mariel Araneta and Marsha Golez subsequently managed to convince their co-employees to support their cause. Thus, during the second NCMB held on February 20, 2013, the other employees also attended the conciliation meeting, which prejudiced the business of herein petitioner.

There were about eighteen complainants who appeared on the second NCMB meeting, but most of them were unknown to the petitioner. The NCMB hearing officer after learning the true personality of the other alleged complainants, ordered them to leave the hearing room. Moreover, when the other employees learned the reason for the NCMB hearing, all of them, except for Rosalie Calo and Lynn T. Paradiang, apologized to herein petitioner and were permitted to report back for work.

With regard to the two private respondents, Rosalie Calo and Lyne T. Paradiang, they were both hired as sales assistants on January 2, 2012 and were assigned at the Canduman, Mandaue and Cansaga, Consolacion branches. Both were given all the benefits due them. It was on February 20, 2013 that they abandoned their posts and joined Mariel Araneta and Marsha Golez in instituting a complaint before the NCMB.

The last complainant, Jean A. Auxtero, is not known to the petitioner as she was never its employee.

Version of the Private Respondents

In sum, the private respondents assert that they were employees of the petitioner Bing Pharmacy/Gabriela Fua Lumapas who were paid below the minimum wage rate. In fact, there were certain periods that they were not paid of their salaries, overtime pay, holiday pay, holiday premium, 13th month pay, and service incentive leave pay. Private respondents also claimed for nominal, moral and exemplary damages, as well as attorney's fees.

Private respondent Rosalie Calo alleged that she was hired as sales clerk on July 10, 2008 and she received a salary of P180.00 each day. It was increased to P200.00 on January 2009, to P260.00 on January 2010, to P285.00 on January 2011 and finally to P330.00 on February 2012.

Private respondent Lyne T. Paradiang averred that she was hired on June 6, 2008 as sales clerk and was receiving a salary of P150.00 a day. On January 2009, it was increased to P170.00, then on January 2010 to P260.00, on January 2011 to P285.00 and on February 2012 to P330.00.

Private respondent Mariel Araneta claimed that she was hired as sales clerk on January 31, 2009 and was paid a salary of P150.00 per day. It was increased to P170.00 on January 2010, to P252.00 on January 2011, to P285.00 on January 2012 and to P330.00 on February 2012.

Meanwhile, private respondent Marsha Golez alleged that she was hired by the petitioner as sales clerk on July 17, 2011 and paid a salary of P150.00 a day. This rate was increased to P330.00 on February 2012.

Lastly, complainant Jean A. Auxtero averred that she was hired on July 24, 2012 as sales clerk and was paid P280.00 per day.

The private respondents further alleged that they were assigned to the Canduman or Mantuyong branches of the petitioner. During their employment, they were not issued identification cards and payslips. The only proof of their employment were

the cashier's notebooks. They have also requested herein petitioner for their benefits, but their pleas fell on deaf ears. Left with no other recourse, they filed the instant case against the petitioner.

The Ruling of the Labor Arbiter

In a Decision^[7] dated May 14, 2013, Labor Arbiter Bertino A. Ruaya, Jr. ruled in favor of the private respondents. He found the evidence of the private respondents, including that of Jean A. Auxtero sufficient to prove their employment with herein petitioner. Moreover, he also found the award of salary differential, 13th month pay and service incentive leave proper. The decretal portion of the decision states:

"WHEREFORE, premises considered, judgment is hereby rendered finding that there is an employer-employee relationship between complainant Jean A. Auxtero and respondents.

Respondents BING PHARMACY AND GABRIELA FUA LUMAPAS are hereby ordered jointly and solidarily to pay the complainant their salary differentials, 13th month pay and service incentive leave pay in the aggregate amount of ONE HUNDRED EIGHTY-SIX THOUSAND FOUR HUNDRED EIGHTY NINE & 32/100 (186,489.32).

All other claims are dismissed for lack of merit.

SO ORDERED."^[8]

The Ruling of the National Labor Relations Commission

In its assailed Decision^[9] dated September 30, 2013, the National Labor Relations Commission modified the findings of the Labor Arbiter in so far as to its finding of the presence of employer-employee relationship between the petitioner and the private respondent Jean A. Auxtero. Contrary to the ruling of the Labor Arbiter, the NLRC asseverated that the said employee was not able to substantially prove her employment with the petitioner. However, with respect to the remaining private respondents, the Commission affirmed the money claims granted to them. The dispositive portion of the decision reads, to wit:

"WHEREFORE, premises considered, respondents' appeal is PARTLY GRANTED and the Decision of the Labor Arbiter is MODIFIED. The Complaint of Jean A. Auxtero is, hereby, DISMISSED and the monetary award made in her favor DELETED. The monetary award in favor of complainants Rosalie C. Calo, Mariel J. Araneta, Lyne T. Paradiang, and Marsha G. Golez, as computed by the Labor Arbiter, is, hereby, AFFIRMED.

SO ORDERED."^[10]

Aggrieved, petitioner then filed a Motion for Partial Reconsideration.^[11] However, such motion was also denied by the NLRC in a Resolution^[12] dated December 20, 2013.

Undeterred, petitioner comes before Us raising the following issues, to wit:

WHETHER OR NOT THE NLRC ERRED AND GRAVELY ABUSED ITS DISCRETION IN A CAPRICIOUS, WHIMSICAL, ARBITRARY OR DESPOTIC MANNER IN THE EXERCISE OF ITS JURISDICTION AMOUNTING TO LACK OF JURISDICTION IN PARTLY DISMISSING AND/OR DENYING PETITIONER'S APPEAL OF THE DECISION OF THE LABOR ARBITER PROMULGATED ON MAY 14, 2013, AWARDING HEREIN PRIVATE RESPONDENTS THEIR MONEY CLAIMS.

The Ruling of this Court

The petition is not meritorious.

The core of the present controversy is the determination of whether or not the NLRC acted with grave abuse of discretion when it awarded the monetary claims of the private respondents.

At the outset, it must be stressed that (f)actual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.^[13]

In the case at bench, We observed that the NLRC agreed with the Labor Arbiter in so far as to the award of money claims (salary differential, 13th month pay and service incentive leave) to the private respondents Rosalie Calo, Mariel Araneta, Lyne Paradiang and Marsha Golez. To support these findings, the Commission postulated as follows:

Anent the issue concerning the monetary award made by the Labor Arbiter in favor of the other four complainants. We affirm the validity of the same. Respondent's objection over the same is basically based on the following arguments: 1) complainants were paid the mandated minimum wage based on their own admission of having been paid PhP 330.00/day as of February 2012 and as shown in their monthly salary credit as reflected in their SSS record; and 2) respondent has been giving complainants Christmas gifts/tokens which answers for her obligation to pay them 13th month pay.

Respondent's assertions fail to persuade. Respondent has conveniently glossed over the fact that complainant's [sic] clamor for the correct wage includes the period, before February 2012. Their admission that they were paid a daily wage of PhP 330.00, starting February 2012, does not excuse respondent from her obligation to comply with the minimum wage law for the period before said date. Upon respondent's shoulder rests the burden of proving payment of the labor standard benefits and she has failed in this regard. She has presented no substantial evidence to prove that complainants were paid the minimum wage all throughout the period of their employment. We also find no substantial evidence showing that complainants received the alleged cash gifts, that these alleged cash gifts were given as 13th month pay for the concerned workers or that the amount of said gift equals the benefit due each worker. Respondent's excuse of employing less than ten workers has not been indubitably