

EIGHTH DIVISION

[CA-G.R. SP No. 136618, March 31, 2015]

**ARMANDO P. BAUTISTA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION HI-TRONIC IMPORT MARKETING,
FONSTY SIAO, AND ALFREDO PUNZALAN, RESPONDENTS.**

D E C I S I O N

LANTION, J.A.C., J.:

This is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court assailing the Resolutions dated 15 April 2014^[2] and 30 May 2014^[3] both issued by the Public Respondent National Labor Relations Commission (NLRC), in NLRC LAC No. 03-000817-14 [8] (NLRC NCR Case No. 05-07270-13), the respective decretal portions of which read:

15 April 2014 Resolution:

"WHEREFORE, premises considered, complainant's appeal is DENIED.

The Decision of the Labor Arbiter is AFFIRMED.

SO ORDERED."

30 May 2014 Resolution:

"WHEREFORE, in view of the foregoing, the instant Motion is hereby DENIED for lack of merit.

SO ORDERED."

THE FACTS

On 17 May 2013, Petitioner Armando P. Bautista filed a Complaint for Illegal Dismissal^[4] (with claim for damages and attorney's fees) before the Labor Arbiter against Private Respondents Hi-Tronic Import Marketing, Fonsty Siao, and Alfredo Punzalan.

In his Position Paper,^[5] Petitioner averred:

"1. On 10 December 2011, complainant Armando P. Bautista was hired by the respondents as varnisher/retoucher of door and jamb. The doors of the respondents are delivered and attached to their clients' condo units. Complainant was assigned to several places such as Belton Place, EPG Bldg., North Belton Park, Park Terraces and other buildings that are located at Ayala, Makati;

2. Complainant's schedule of work is from Monday to Saturday from seven o' clock in the morning until four o' clock in the afternoon (7:00 a.m. To 4:00 p.m.). For the eight (8) hours working shift, complainant receives Four Hundred and Fifty Six Pesos (P456.00) per day;

3. (O)n 12 April 2013, complainant went to DZMM in order to seek for advice and to air his grievances as well because of the respondent's (failure) to pay him holiday pay and 13th month pay. The DZMM referred him to NLRC and there, complainant asked for (a) conference under SENA. Thereafter, on 30 April 2013, the foreman Roberto Celis informed the complainant as well as other employees that it would be their last day in ERG Building and instruct(ed) them to wait for the call of the management for their next work schedule. On 02 May 2013, complainant learned that his other co-employees were called back for work except him. The complainant believes that the respondents never gave him work because of the SENA proceedings. On 15 May 2013, complainant agreed to settle with the respondents in the amount of P10,000.00 with respect to his overtime pay, holiday pay, and 13th month pay. Complainant was made to sign a Release, Waiver, and Quitclaim but he maintains and insists that what was agreed upon was only with respect to overtime pay, 13th month pay and holiday pay. It was clear when he asked the hearing officer that he can still file illegal dismissal even if he signed the same.

4. Thereafter complainant never heard again from the respondents. Feeling aggrieved by his situation, the complainant decided to institute the above-captioned complaint before this Honorable Office."

Private Respondents denied the allegations of Petitioner and, in their Position Paper, [6] countered:

"2. Hi-Tronic Import Marketing is engaged in supplying and installation of fully-painted wood door(s). The employees that perform activities necessary in the usual business of Hi-Tronic are installers and carpenters. However, in case of damaged doors, paint retoucher is being hired (sic) on a case to case basis;

3. In one of the projects of Hi-Tronic in Eton Residence Greenbelt, complainant was commissioned to do retouch. Armando Bautista was hired by the foreman on site considering the need to do retouch paint;

4. After the project, Armando Bautista was paid his due. He was then called in case there is a need for him and if he is near the place of the project of Hi-Tronic;

5. Sometime in April 2013, complainant filed a complaint before the NCR Arbitration Branch against the herein respondent;

6. Just to buy peace and to extend assistance to the complainant, a compromise was reached and the complainant executed a "Release, Waiver, and Quitclaim xxx;

8. Complainant was not dismissed by the respondent. His job as painter is still being sought by respondent considering that there are times that retouch paint should be made;

9. Considering that now is the rainy season, there is not much project to install doors and repairs or repaint are very seldom considering that the imported doors are in good condition when they (were) delivered or imported. When the damaged is too much, (sic) the doors are being returned to the supplier. (sic) That is the reason, complainant is being hired (sic) only when the need arises xxx."

On 17 February 2014, the Labor Arbiter rendered its Decision^[7] which dismissed Petitioner's Complaint.

Petitioner elevated the case to the NLRC. On 15 April 2014, The Commission *a quo* rendered the first assailed Resolution which affirmed the 17 February 2014 ruling of the Labor Arbiter.

Petitioner seasonably filed a Motion for Reconsideration but the same was denied by the NLRC on 30 May 2014 in its second assailed Resolution.

Hence, this Petition.

ISSUE

Petitioner cites this lone issue in his Petition for Certiorari:

"WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THERE WAS NO ILLEGAL DISMISSAL."

THIS COURT'S RULING

Petitioner bewails the Commission *a quo*'s issuance of the 15 April 2014 and 30 May 2014 Resolutions which dismissed Petitioner's Complaint for Illegal Dismissal and subsequently declared him as a project employee. Petitioner contends:

"(P)etitioner's position was reasonably connected with the private respondents' business, which is the installation of doors. The petitioner was tasked with retouching the paint, varnishing the door, as well as providing assistance during installation. Clearly, his job had a reasonable connection with and vital to the nature of respondents' business. Moreover, he worked for the private respondents for more than one (1) year, as evidenced by his Daily Time Records for 2011 until 2013. His continuous employment, therefore, signifies that he was a regular and not merely a project employee."

The Private Respondents posit otherwise, thus:

"(P)etitioner was not illegally dismissed considering that he was a project employee engaged to perform services for Hi-Tronic with respect to Eton