

## TWENTY-SECOND DIVISION

[ CA-G.R. SP NO. 04333-MIN, January 23, 2014 ]

**SAM LIM CORPORATION, PETITIONER, VS. THE NATIONAL  
LABOR RELATIONS COMMISSION AND HERACLETO T. MARABI,  
RESPONDENTS.**

### DECISION

**INTING, J.:**

Before Us is a Petition for *Certiorari*<sup>[1]</sup> assailing the Resolution<sup>[2]</sup> dated February 28, 2011 and the Resolution<sup>[3]</sup> dated February 28, 2011 both issued by the National Labor Relations Commission, Eighth Division (Formerly Fifth Division) of Cagayan de Oro City in NLRC MAC No. 11-011774-10. The dispositive portion<sup>[4]</sup> of the February 28, 2011 Resolution reads:

IN VIEW OF ALL THE FOREGOING, the present appeal is DISMISSED. The appealed decision is hereby AFFIRMED in toto.

SO ORDERED.

The facts are as follows:

The instant case stemmed from a complaint for illegal suspension and illegal dismissal filed by private respondent Heracleto T. Marabi against petitioner Sam Lim Corporation (SLC) and Tito B. Pagaddu, Marketing Head of petitioner corporation, with prayer for damages, attorney's fees, money claims for non-payment of wages, overtime pay, non-payment of holiday pay and service incentive leave pay.

Private respondent Heracleto T. Marabi was hired sometime in May 1996 as warehouseman of the petitioner corporation.

On December 22, 2009, petitioner SLC, through its Marketing Head petitioner Pagaddu, released an Office Memorandum addressed to private respondent giving him three (3) days from receipt within which to submit a written explanation for an administrative charge of negligence of duty.

On February 10, 2010, petitioner SLC reached a decision finding the private respondent guilty of negligence of duty. In effect, a notice of suspension was released which meted the penalty of suspension of private respondent for a period of fifteen (15) days starting February 15, 2010 up to March 3, 2010.

On March 4, 2010, the management of petitioner SLC implemented a reshuffling of key personnel. Private respondent was included in the reshuffling procedure. A Memorandum dated March 4, 2010 was personally handed to the private respondent transferring him from Davao Branch to Tacloban Branch. Private respondent refused to sign on the file copy for the petitioner.

From March 5, 2010 up to March 16, 2010, private respondent failed to report for work either to his old post in Davao City or to his new place of assignment in Tacloban City.

Due to his continued absence, private respondent was considered as Absent Without Official Leave (AWOL) and the management sent him by registered mail a Notice to Explain instructing him to submit a written explanation within five (5) days upon notice regarding his willful disobedience and his being on AWOL.

The private respondent filed the instant complaint before the Labor Arbiter. On September 29, 2010, Executive Labor Arbiter Tomas B. Bautista, Jr. issued a Decision. The dispositive portion reads:

"WHEREFORE, finding that complainant Heracleto Marabi was dismissed from employment without just or authorized case (sic) hence, illegal, respondent Sam Lim corporation is hereby directed to complainant (sic) his separation pay computed at one (1) month salary for every year of service, a fraction of at least six (60 months to be considered one whole year which as computed above is in the total sum of Ninety Six Thousand Four Hundred Sixty Pesos (P96,460.00)

The rest of complainant's "prayers" and money claims are dismissed for reasons aforesaid.

SO ORDERED."

On November 11, 2010, petitioner, through counsel filed a Memorandum of Appeal which prayed for the nullification and setting aside of the Decision of the Labor Arbiter.

On February 28, 2011, the Eighth Division (Former Fifth Division) of the NLRC dismissed the petitioner's appeal and affirmed the assailed decision of the Executive Labor Arbiter.

On April 1, 2010, petitioner SLC filed a partial motion for reconsideration<sup>[5]</sup> of the Decision dated February 28, 2011.

On May 25, 2010, the NLRC rendered a Resolution on the petitioner's motion for reconsideration. The dispositive portion states:

"ACCORDINGLY, the present motion of respondents-appellants is DENIED with finality. Let the entire records of the case be remanded to the Regional Arbitration Branch of Origin for proper execution proceedings.

SO ORDERED."

Aggrieved, petitioners filed the instant petition for *certiorari* and forthwith raised the following issues:

## I

WHETHER OR NOT THE HONORABLE PUBLIC RESPONDENT, THE NATIONAL LABOR RELATIONS COMMISSION ---EIGHTH (8<sup>TH</sup>) DIVISION (FORMER FIFTH DIVISION) --- COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN