

## TWENTY-FIRST DIVISION

[ CA-G.R. SP NO. 04519-MIN, February 28, 2014 ]

**ROBINSON PUA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 8TH DIVISION, CAGAYAN DE ORO CITY, AND CHRISTOPHER C. DIAZ, RESPONDENTS.**

### DECISION

**BORJA, J.:**

Before this Court is a Petition for Certiorari<sup>[1]</sup> filed under Rule 65 of the Rules of Court assailing the June 27, 2011 Resolution<sup>[2]</sup> of the National Labor Relations Commission (NLRC), in NLRC CA No. MAC-03-011953-11, which dismissed the appeal of herein petitioner Robinson Pua for lack of merit.

#### *The Facts of the Case*

Herein private respondent Christopher C. Diaz was the complainant in RAB XI-06-00655-2010, a complaint for "Illegal Dismissal and Money Claims" against Star Oil and/or Robinson Pua, Manager. The facts, as found by respondent Commission, based on the findings of the Labor Arbiter,<sup>[3]</sup> are as follows:

Respondent Star Oil is a business establishment engaged in the sale of gasoline and other petroleum products. Complainant on the other hand was hired as "welder" sometime in July of 2007 where he was engaged to perform welding jobs to respondent's different gasoline stations for indefinite period in accordance with the instructions of the respondent without reference to any particular project, until his alleged illegal termination on June 2010.

Complainant was specifically engaged to undertake welding jobs for the respondent Star oil whenever and wherever welding jobs are needed at the respondent's different gasoline stations. Wherever he may be assigned to perform welding jobs he is required to report for work from 8:00 a.m. to 5:00 p.m. Monday to Saturday.

Allegedly, he was required to do welding works even during Sundays, which is his established rest day. He was likewise required to perform welding works even during regular holidays except New Year's Day (January 01), Christmas Day (December 25), Holy Thursdays and Good Friday, without paying him premium pay for working on his rest day and regular holidays.

Complainant alleged that sometime on 12 June 2010 while he was receiving his salary, payroll in-charge Margie Amad told him in vernacular "kuya, karun sa mo taman. Hulat land daw kay tawagan land daw ka" (Your job ends today. You are advised to wait until you are called).

Few days after, he received a call from Margie Amad requiring him to report to the Office of Robinson Pua. He told Margie that he could not possibly report immediately to the office of Robinson Pua as he was in General Santos City. Nevertheless, he reported for work two days later only to be told that: "Kuya, wala naman, naa na kay kapuli, nakakita na sir" (There's no more job for you, sir (Robinson Pua) have already found your replacement). After which, he was no longer given work.

Aggrieved by his sudden termination, he filed the present complaint.

Complainant argued that he is a regular employee of respondent Star Oil. That apart from paying his wages, respondent Star Oil exercise direct control and supervision over him. He reports for work directly to the gasoline station of respondent Star Oil to perform welding jobs without reference to any project. It is also the respondent Star Oil that assigns him to perform welding jobs at their different gasoline stations. Moreover, he performed his work according to the instructions of respondent Star Oil.

Complainant further claimed that as shown by his weekly time record, he is a time worker, as he was required to report for work from 8:00 a.m. to 5:00 p.m. from Monday to Saturday. He was not also paid on piece rate or task basis. As such regular time worker, he is entitled to all the mandatory labor standard benefits provided for by law such as: overtime pay, holiday pay, premium pay for work render on rest day and holidays, service incentive leave and 13<sup>th</sup> month pay.

Relying on applicable laws and jurisprudence on the matter, complainant contended that as regular worker of the respondent, he enjoyed the right to security of tenure for which his employment could not be arbitrarily terminated without just and authorized cause. That his dismissal having been capricious, whimsical and arbitrary as he was summarily dismissed without valid and justifiable grounds and he was not also afforded due process in his dismissal, his dismissal therefore is illegal where he is entitled to backwages and separation pay as well as indemnity for damages for violation of his right to due process."<sup>[4]</sup>

On December 20, 2010, the Labor Arbiter rendered his Decision, the dispositive portion of which states –

WHEREFORE, FOREGOING PREMISES CONSIDERED, judgment is hereby rendered declaring complainant Christopher C. Diaz's termination from employment as ILLEGAL.

Consequently, respondents STAR OIL and/or Robinson Pua in his capacity as Manager are hereby jointly and severally held liable to pay complainant Diaz the following:

	Amount
a. Backwages	P65,927.41
b. Separation	27,300.00

Pay	
c. Holiday Pay	11,200.00
e. 13th month pay	26,056.33
f. Service Incentive Leave	<u>5,010.80</u>
TOTAL	p135,494.54

All other claims not hereto awarded are considered denied for lack or merit.

SO ORDERED.<sup>[5]</sup>

Aggrieved by the Labor Arbiter's Decision, Star Oil / Robinson Pua appealed to the NLRC.

On June 27, 2011, the NLRC rendered the herein assailed Resolution, the dispositive portion of which reads –

WHEREFORE, the instant appeal is DISMISSED for lack of merit.

Accordingly, the assailed decision of 20 December 2010 is AFFIRMED.

SO ORDERED.<sup>[6]</sup>

Robinson Pua thus filed the present petition advancing as grounds therefor that:

- A. THE PUBLIC RESPONDENT SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT DISMISSED THE APPEAL OF THE PETITIONER BASED ALONE ON THE PETITIONER'S FAILURE TO FILE HIS POSITION PAPER WITHOUT CONSIDERING THE MERITS OF THE CASE.
- B. THE PUBLIC RESPONDENT SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT AFFIRMED THE DECISION OF THE ARBITER A *QUO* DECLARING THAT THERE EXISTS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND THE PRIVATE RESPONDENT DESPITE LACK OF EVIDENCE TO THAT EFFECT.<sup>[7]</sup>

### *The Ruling of the Court*

The Labor Arbiter had ruled on the basis of the evidence on hand which consisted only of the evidence of Christopher Diaz. The Labor Arbiter explained –

The parties were ordered to file their respective position papers after they failed to reach an amicable settlement during the conciliation and mediation conference on July 8, 14, 22, and August 26, 2010.

Unfortunately, records show that only the complainant complied with the submission of Position Paper on 13 September 2010. Respondents despite due notice, for no apparent reason and even after reasonable time had elapsed after the period of its submission had long prescribed,