

EIGHTH DIVISION

[CA-G.R. SP NO. 125774, March 17, 2014]

**WILFREDO NAVARRO, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION (SIXTH DIVISION), LABOR ARBITER
LOURDES BARICAUA, AND RODRIGO PREZA, RESPONDENTS.**

D E C I S I O N

REYES, JR., J.C., J.:

Assailed in the instant petition filed under Rule 65 of the 1997 Rules of Civil Procedure are the following:

- a) The NLRC (Sixth Division) Decision (Rollo, pp. 17-27) dated April 24, 2012 which Denied the appeal of petitioner;
- b) The Resolution (Rollo, pp. 25-27) dated June 29, 2012 which denied petitioner's motion for reconsideration likewise issued by public respondent NLRC (Sixth Division) in NLRC LAC NO. 10-002781-11; NLRC RAB II CASE NO. 04-0131-11.

The facts:

The case for illegal dismissal, non-payment of 13th month pay, service incentive leave pay and overtime pay, attorney's fees arose from herein private respondent Rodrigo P. Preza's complaint against herein petitioner, Wilfredo D. Navarro, owner and general manager of Navarro Construction.

Private respondent alleged that he worked for petitioner company as a Dump Truck Driver and all around helper for ten (10) years with a fixed monthly salary amounting to Php 6,000.00. He was employed in January 2000, working from Monday to Saturday without a fixed working hour. Private respondent renders service whenever he is needed however, he usually stays in the construction site due to the nature of his work.

On February 13, 2011, Sunday, private respondent did not report for work believing that it was his day off from work. When he reported back for work the following day, his co-workers told him that he was already dismissed. Thinking that it was just hearsay, he continued reporting for work. When he claimed his salary from the secretary of petitioner company, Ms. Lulette Aguinaldo, he was informed verbally that he was already dismissed. No reason or cause was given to him for the said termination.

Private respondent went back to Ms. Aguinaldo to inquire about the status of his employment on whether petitioner has reconsidered his decision of dismissing him, but he was informed by Ms. Aguinaldo that they will just inform him through text message regarding the matter. Private respondent further alleged that for two

months, he constantly visited his workplace in the hope that he will be reinstated back to work, but he was not. Hence, a complaint for illegal dismissal was filed.

Petitioner on the other hand denied illegally dismissing private respondent. Petitioner alleged that private respondent is a contractual employee and not a permanent employee. Private respondent was given a fixed salary in spite of the flexibility of his working hours as he reports for work whenever he wishes. Further, private respondent was allegedly suspended for engaging in illegal activities such as delivering gravel, sand and crushed aggregates without the company's authority and its proceeds went to his own pocket. Hence, petitioner company sanctioned private respondent with suspension from work twice on August 25, 2008 and June 18, 2010.

Private respondent was required to work on February 13, 2011 however, he did not report for reasons only known to him. He was allegedly absent during the first two weeks of February 2011 and reported only from February 16 to 28, 2011. Petitioner company averred that private respondent was not illegally dismissed instead, he voluntarily abandoned his post. In fact, private respondent was summoned to report for work for the month of March 2011 but he only reported on March 9, 2011 to claim his salary for the month of February.

Petitioner also claimed that private respondent voluntarily resigned when he deliberately refused to report to work without any apparent reason. Hence, private respondent is not entitled to any money claims.

On October 6, 2011, Labor Arbiter Ma. Lourdes Baricaua rendered her decision in favor of the private respondent. The Labor Arbiter ruled that private respondent is a regular employee since the petitioner company had no proof whatsoever that private respondent was hired for a specific project only. Termination reports for every project completion were also not submitted to the Department of Labor and Employment (DOLE). The dispositive portion of the Decision states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring complainant illegally dismissed and ORDERING respondents Navarro Construction and/or Wilfredo Navarro to pay complainant the amount of P30,000.00 as separation pay and P18,000.00 as 13th month pay or a total of FORTY-EIGHT THOUSAND (P48,000.00) PESOS, within ten (10) calendar days from receipt hereof.

The claims for overtime pay, service incentive leave pay and attorney's fees are dismissed for lack of basis.

SO ORDERED." (Rollo, p. 33)

Petitioner filed an appeal. On April 24, 2012, the National Labor Relations Commission (NLRC) issued the appealed decision affirming the Labor Arbiter's decision. According to the NLRC, petitioner company failed to prove that private respondent abandoned his job and it had conflicting statements whether private respondent's absence was due to abandonment of his post or was suspended for his illegal activities. The dispositive portion of the NLRC decision states:

"WHEREFORE, premises considered, the appeal is DENIED and the Decision of Labor Arbiter Ma. Lourdes R. Baricaua dated October 6, 2011