

## SPECIAL SIXTH DIVISION

[ CA-G.R. SP NO. 116009, May 29, 2014 ]

**GOLD & PERFECT CORPORATION AND JERRY SY, PETITIONERS,  
VS. NATIONAL LABOR RELATIONS COMMISSION AND ARMANDO  
S. AQUINO, RESPONDENTS.**

### DECISION

**CRUZ, R.A. J.:**

#### THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to reverse and set aside the (i) Decision dated June 16, 2010<sup>[1]</sup> of the National Labor Relations Commission (NLRC) in NLRC NCR-03-03713-09 (NLRC LAC No. 11-003180-09) and (ii) the subsequent Resolution dated August 10, 2010,<sup>[2]</sup> which denied petitioners' motion for reconsideration. The dispositive portion of the Decision dated June 16, 2010 reads:

" xxx xxx xx

**WHEREFORE**, the assailed decision of the Labor Arbiter is **REVERSED** and a new one entered finding respondent guilty of illegal dismissal. Consequently, respondent Gold and Perfect Corp. is hereby directed to pay complainant his full backwages and other monetary benefits computed as follows:

#### 1. BACKWAGES

##### a) BASIC SALARY

2/28/09-3/30/10		
P382.00 X 26 X	=	129,116.00
13.00		

##### b) 13<sup>th</sup> Month Pay

P129,116.00/12	=	10,759.67
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##### c) **SILP** (Not entitled, Field Worker)

#### 2. SEPARATION PAY

2/9/97- 3/30-10	
P9,168 x 3 years	<u>27,504.00</u>
	<b>P167,379.67</b>

**SO ORDERED.**

xxx xxx xxx "

## THE ANTECEDENTS

Armando S. Aquino (Aquino, for short) was employed by Gold & Perfect Corporation (GPC, for brevity) as a Company Driver on February 9, 1997 and was paid a monthly salary of P9,168.00.<sup>[3]</sup>

On March 3, 2009, Aquino, as complainant, filed a complaint for actual illegal dismissal and non-payment of separation pay and money claims against GPC and its Finance Manager, Jerry Sy, before the labor arbiter. This was docketed as NLRC NCR Case No. 03-03713-09.<sup>[4]</sup>

In his position paper,<sup>[5]</sup> complainant alleged the following:

" xxx xxx xxx

Sometime in the middle of February 2009, complainant reported for work. He was told by FERDINAND, brother of Respondent JERRY, that: *"Huwag ka nang pumasok sa kompanya namin, lumabas ka na."* Apparently, FERDINAND got angry when the information reached them that complainant was questioning the computation of his overtime pay. Complainant, however, did not take FERDINAND's statement seriously. So as not to be charged of being on AWOL, he continued reporting for work.

On 28 February 2009, complainant reported for work. When he was about to claim his salary at the office of Respondent JERRY, the latter mentioned: *"Hindi ka pinapapasok, pumasok ka pa."* Complainant took the opportunity to relay his concern as to why they were required to follow the clock at the office which is advanced by thirty (30) minutes from the actual time wherever the (sic) report for work in the morning but the clock is being disregarded whenever they will leave the company to go home contending that it's advanced. In other words, they are required to report at 8:00 in the morning as they are following the clock at the office which indicates that it is already 8:30 a.m. However, in going home, the same clock is being disregarded. The clock already indicates that it was already 5:30 p.m but they were required to stay until 6:00 p.m. Oftentimes, whenever rendering overtime services, the number of hours of overtime is being deducted by thirty (30) minutes. The statement of complainant got JERRY irritated. Respondent JERRY uttered: *"Umalis ka na, dahil tanggal ka na. Maghanap ka na ng ibang mapagtrabuhuan at mapagsusumbungan mo."*

Again thinking that it might be an outburst of emotion, complainant simply left the office and went back in assisting the loading of deliveries at one of the truck. While working, complainant heard JERRY's wife, JOCELYN, shouting: *"Guard, guard, palabasin mo si Arman. Hindi na siya pwedeng pumasok at tanggal na siya."* The guard on duty, thereafter, guided complainant out of the warehouse.

xxx xxx xxx "

For their part, respondents argued that complainant was never dismissed from work. They averred that, complainant started to work with the company on May 2003; complainant was late on the following dates: January 2, 5, 6, 7, 9, 10, 12, 14, 15, 17, 20, 21, 22, 23, 24, 28 and 31, 2009 and February 2, 3, 5, 6, 10, 11, 12,

13 and 14, 2009; due to his tardiness for the months of January and February 2009, they served him two (2) Memoranda dated February 17 and 20, 2009, which he refused to receive; on February 28, 2009, after complainant obtained his salary for the month, he did not report for work and voluntarily terminated his employment.<sup>[6]</sup>

Complainant filed a Reply<sup>[7]</sup> arguing that the delay on the part of the respondents to take action on or discipline him for tardiness means that they have tolerated it and could not serve as a basis or ground for termination from employment.

On August 28, 2009, the labor arbiter rendered a Decision<sup>[8]</sup> dismissing the complaint for illegal dismissal. It ruled that complainant's narration that he was verbally dismissed by the brother of Respondent Jerry Sy is self-serving because he failed to prove that said person was a superior officer with authority to hire and fire employees. Since he was not illegally dismissed, complainant is not entitled to separation pay, however, the labor arbiter awarded complainant's proportionate 13<sup>th</sup> month pay for the year 2009 in the amount of P1,528.00. The dispositive portion of the Decision reads:

" xxx xxx xxx

**WHEREFORE**, premises considered, instant complaint is hereby dismissed for lack of merit.

Respondent Corporation is directed to pay complainant's monetary award as computed above.

**SO ORDERED.**

xxx xxx xxx "

Aggrieved, complainant interposed an appeal<sup>[9]</sup> to the National Labor Relations Commission (NLRC). On June 16, 2010, the NLRC rendered a Decision<sup>[10]</sup> reversing the labor arbiter. It ruled that while respondents submitted two (2) memoranda charging complainant with tardiness, the latter's daily time records were never presented in evidence. Respondents also failed to present the company rules with respect to absences and tardiness, hence, complainant was illegally dismissed.

The *fallo* of the Decision reads:

" xxx xxx xx

**WHEREFORE**, the assailed decision of the Labor Arbiter is **REVERSED** and a new one entered finding respondent guilty of illegal dismissal. Consequently, respondent Gold and Perfect Corp. is hereby directed to pay complainant his full backwages and other monetary benefits computed as follows:

**1. BACKWAGES**

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13.00		

b) **13<sup>th</sup> Month Pay**

$$P129,116.00/12 = 10,759.67$$

c) **SILP** (Not entitled, Field Worker)

2. SEPARATION PAY

$$\begin{array}{rcl} 2/9/97- 3/30- & & \\ 10 & & \\ P9,168 \times 3 & & \underline{27,504.00} \\ \text{years} & & \\ & & \mathbf{P167,379.67} \end{array}$$

**SO ORDERED.**

xxx xxx xxx "

Respondents filed a motion for reconsideration but the same was denied by the NLRC in its Resolution dated August 10, 2010.<sup>[11]</sup>

Now, respondents, as petitioners, elevate the matter before Us by way of Petition for Certiorari.

**THE ISSUES BEFORE US**

In assailing the decision, petitioners raise the following posers for Our resolution, that:

I. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THEY ARE GUILTY OF ILLEGAL DISMISSAL ALTHOUGH IT WAS PRIVATE RESPONDENT WHO STOPPED WORKING ON FEBRUARY 26, 2009 AND HAD GONE AWOL AFTER GETTING HIS SALARY ON FEBRUARY 28, 2009;

II. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING IN FAVOR OF PRIVATE RESPONDENT BECAUSE THE COMPLAINT FILED ON MARCH 3, 2009 IS PREMATURE;

III. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED PRIVATE RESPONDENT'S DAILY TIME RECORDS AS WELL THE AFFIDAVITS SUBMITTED IN THE MOTION FOR RECONSIDERATION;

IV. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO ISSUE A SUBPOENA AD TESTIFICANDUM DIRECTING THEIR WITNESSES TO TESTIFY;

V. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT GIVE CREDENCE TO THE TWO (2) MEMORANDA CHARGING PRIVATE RESPONDENT WITH TARDINESS;

VI. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CONCLUDED THAT PETITIONERS HAVE NEVER ESTABLISHED THAT THEY HAVE A COMPANY POLICY WITH RESPECT TO ABSENCES AND TARDINESS;

VII. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT EVEN IF THE DAILY TIME RECORDS BELATEDLY SUBMITTED ARE CONSIDERED, THE SAME WILL NOT ALTER THE DECISION;

VIII. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY HELD THAT PRIVATE RESPONDENT IS ENTITLED TO SEPARATION PAY AND FULL BACKWAGES

Petitioners assert that private respondent was not dismissed from work, instead, he suddenly stopped report for work on February 26, 2009 after he was confronted by Jocelyn Sy about his unexplained refusal to receive the two (2) Memoranda dated February 17 and 20, 2009, informing him of his repeated acts of tardiness for the months of January and February 2009. In fact, he even went on absent without leave (AWOL) after getting his salary on February 28, 2009, hence, there is no termination or dismissal from employment to speak of and private respondent is not entitled to separation pay and backwages.<sup>[12]</sup>

They also argue that the complaint for illegal dismissal is premature because private respondent's repeated acts of tardiness is a sufficient cause to discipline him but private respondent pre-empted them from conducting their own investigation. Needless to state, an irresponsible employee like private respondent, who also committed serious misconduct and wilful disobedience of a lawful order and insubordination which are just causes for dismissal, do not deserve a place in the workplace.<sup>[13]</sup>

Further, they claim that the NLRC gravely abused its discretion when it ignored and did not admit private respondent's daily time records, cash vouchers, payroll records, a copy of the company rules and regulations<sup>[14]</sup> as well as the affidavits<sup>[15]</sup> submitted by them in its motion for reconsideration.<sup>[16]</sup>

On the other hand, private respondent counters that petitioners failed to substantiate their claim of abandonment because the *onus* of proving that the employee was not dismissed or if dismissed, that the same was not illegal rest on the employer. Also, petitioners failed to comply with the twin-notice rule because the purported memoranda were defective as they were mere instructions to explain and did not apprise him of any investigation to be conducted. Since he was illegally dismissed the NLRC was correct in awarding him separation pay and backwages.<sup>[17]</sup>

### **OUR RULING**

Then as now, the rule is factual findings of the labor arbiter and the NLRC are generally accorded not only respect but even finality and binds Us when supported by substantial evidence.<sup>[18]</sup> But when, as in this case, the labor arbiter and the NLRC have sharply contrasting factual findings, We have reason to delve into the