

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 05387-MIN, May 29, 2014]

**ZAMBOANGA DEL NORTE ELECTRIC COOPERATIVE (ZANECO),
INC., AND ADELMO P. LAPUT, ACTING GENERAL MANAGER,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
8TH DIVISION, CAGAYAN DE ORO CITY, AND, JOCELYN D.
VELASCO-YU, RESPONDENTS. DECISION**

CAMELLO, J.:

This Rule 65 petition seeks the corrective writ against the Resolution of the National Labor Relations Commission (NLRC) dated June 20, 2012^[1] reversing and setting aside the Decision of the Executive Labor Arbiter dated August 5, 2011,^[2] and the Resolution dated December 28, 2012^[3] denying the motion for reconsideration in NLRC Case No. MAC-08-012215-2011 (SRAB 09-02-10008-2011). The antecedents of this Petition, are briefly outlined in the Labor Arbiter's decision, in this manner:

Respondent ZANECO is a duly organized and existing electric rural cooperative operating in the province of Zamboanga del Norte and in the two cities of Dipolog and Dapitan. Like all other cooperatives in the country, it is under the supervision, control, and authority of the National Electrification Administration (NEA) but its day-to-day affairs are managed by a Board of Directors.

ZANECO employed herein complainant on November 16, 1994 as Clerk/Receptionist. She was assigned to the Office of the General Manager in Dipolog City, and became a regular employee xxx. After two (2) years, she was designated as Acting Head of the Human Resource Division and at the same time Secretary to the then General Manager, Albino Palma. She held said positions for nine (9) years. At the time of her alleged dismissal, she was paid the amount of P20,136.00 salary per month. (xxx).

In the year 2008, respondent ZANECO started studying how to effectively solve the problem of system's loss, technical problems in the electric power distribution and supply, theft of electricity, seemingly lack of personnel in certain fields of operation, lack of proper monitoring and guidance, and other aspects of managements. (xxx).

Accordingly, to better address these problems, and with the aim and objective of better management and providing better electric service to the community, management decided to harness the service of some employees, some of whom had to be given temporary additional work loads, and some of whom had to be temporarily assigned to other areas without loss of seniority rights and diminution of benefits. Complainant was one of those ordered to be temporarily assigned to Liloy Area Office effective June 9, 2009. (xxx)

After receiving the order on June 2, 2009, complainant wrote respondent General Manager Laput a letter requesting for the reconsideration of her transfer for reasons that she will be away from her loved ones; that she had just been married and hospitalized for miscarriage and because she has been on leave for three (3) months; that she was still undergoing medical treatment.

After evaluating complainant's request, respondents granted her request for reconsideration by suspending the effectivity of her transfer to said area to July 16, 2009. (xxx)

On July 15, 2009, complainant again wrote the respondent General Manager Laput a letter asking for another reconsideration of her temporary transfer which was to take effect the following day (xxx) but this was denied in an office order of even date. (xxx). Thereafter, complainant finally complied and reported to the Liloy Area Office.

But just barely two and a half months from her assumption at said office, complainant again wrote a letter to respondent General Manager Laput and requested to be transferred back to main office in Dipolog City so she can be reunited with her husband. (xxx). Together with said letter, complainant also submitted her Monthly Communication Report of even date addressed to respondent General Manager and which solicited a letter from the latter commending complainant for her good work. (xxx).

Failing to get a positive response to her request complainant applied for a leave of absence from December 10 to December 29, 2009 for reasons of medical check-up which was approved by the respondent General Manager Laput (xxx). Thereafter, complainant did not anymore report for work and on January 5, 2010, she wrote respondent General Manager Laput and requested for her re-assignment/transfer to ZANECO Main Office for reasons that she was two (2) months pregnant and that she was advised by her OB-GYNE doctor to avoid travel and strenuous physical activities considering that her age belonged to a high-risk level pregnancy with attached medical certificate. She likewise admitted that she did not file for leave of absence from December 30, 2009 to January 4, 2010 (xxx). Management denied her request.

On February 8, 2010, complainant again wrote another letter requesting management that she be returned/transferred to the Main Office because she was already three-months pregnant and avoids miscarriage so she can save the child and will have the "chance to become a mother" (xxx). But up to this point in time, complainant had not reported for work and had never filed a leave of absence. Management then was prompted to apprise her of her remaining leave credits to enlighten her of the importance of filing an application for leave of absence which was received by her sister at complainant's residence on April 12, 2010. (xxx).

Since complainant totally ignored the above-mentioned communication, management again sent her a second notification letter containing the same tenor dated April 22, 2010 (xxx). This was personally brought to complainant's known residence by a ZANECO employee who was

informed that complainant was not there. The informant-mother of the complainant- was requested to sign and acknowledge receipt of the second notice but she refused to sign and receive the same. She likewise declined to disclose when her daughter will be returning to her home. Respondents made several follow-ups in complainant's residence of her whereabouts and were later informed that she has already left for Dumaguete City but her mother refused to give her daughter's address in said city. (xxx).

After a while, complainant, through an emissary, served a letter, dated May 4, 2010, to the ZANECO President, copy furnished to the Board of Directors, detailing the notification letters sent her, and pleaded for humanitarian considerations on her predicament. (xxx). But after management did not give any positive response to her plea, complainant, this time, wrote General Manager Laput and explained that the reason of her 5-month absence without leave was because she was seven (7) months pregnant and requested that she be reassigned to Piñan Area Office. (xxx).

Considering that complainant did not present any proof to buttress her allegations, and did not personally see respondent General Manager regarding this matter, and still did not report for work, management issued to her a memorandum dated July 21, 2010, directing her to submit her written explanation within seventy-two (72) hours why no disciplinary action shall be taken against her for her failure and refusal to report for work since January 2, 2010. (xxx). The same ZANECO employee was tasked to personally serve the memorandum to complainant in her house but was told by the latter's mother that she was not around and was not anymore residing in said house. The mother likewise did not reveal complainant's present address and refuse to acknowledge receipt of said memorandum on July 23, 2010. (xxx).

After two months elapsed without any explanation given by complainant, management again sent her a second memorandum, dated September 17, 2010, to give her another opportunity to clarify and explain in writing within seventy-two (72) hours why no disciplinary action shall be taken against her for her failure or refusal to report for work or why she abandoned her job. (xxx). Again, complainant's mother explained that her daughter does not anymore reside in their house but was now residing in Dumaguete City. She, however, did not divulge the latest address of her daughter. Just the same, the memorandum was left to complainant's mother. Respondents thereafter also mailed a copy of said memorandum to complainant's last known address at Bolicon, Turno, Dipolog City. (xxx) This second notice was received at complainant's address by a certain Virgie Velasco on October 4, 2010. (xxx). Complainant, however, averred in her position paper that she personally received the same on October 8, 2010 at 4:45 p.m. from the Postman (xxx).

Complainant failed to comply with the second memorandum. However, on the very same day when the memo was received by Virgie Velasco, complainant also wrote a letter to respondent General Manager Laput to

apply for retirement from service "after seeing the futility of having her request to be returned to base be granted. (xxx).

She then returned to Guihulngan, Negros Occidental but was later on informed that she was terminated from service. (xxx)

On August 5, 2011,^[4] Executive Labor Arbiter Rhett Julius J. Plagata rendered a Decision, the dispositive portion reads:

WHEREFORE, the charges and claims in the above entitled case are hereby dismissed for lack of merit.

SO ORDERED.^[5]

Not satisfied with the decision, private respondent Yu filed a Notice of Appeal to the NLRC.

On June 20, 2012,^[6] public respondent rendered its Resolution, reversing and setting aside the Decision dated August 8, 2011, the dispositive portion reads:

WHEREFORE, the appeal of complainant-appellant is hereby GRANTED. The Decision of the Executive Labor Arbiter appealed from is hereby REVERSED and SET ASIDE and a new one entered declaring complainant-appellant to have been illegally dismissed thereby ordering respondents-appellee to pay her separation pay equivalent to one (1) month's pay for every year of service, a fraction of at least six (6) months considered as one (1) whole year or to her retirement benefits under respondent-appellee's Policy Bulletin No. 3-9E adopted on 04 July 1992 by the latter's Board Resolution No. 053, whichever is higher.

Respondents-appellee are likewise ordered to pay complainant-appellant backwages which shall be determined by the Executive Labor Arbiter a quo during the pre-execution proceeding below pursuant to the above discussion, and attorney's fees equivalent to ten (10%) percent of the total award herein granted which shall be determined likewise at the pre-execution stage.

SO ORDERED.

Petitioners filed a Motion for Reconsideration. On December 28, 2012,^[7] public respondent rendered a Resolution, denying the motion for want of merit.

This petition alleges the following grounds:^[8]

- 1) THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR IN REFUSING TO EVEN GIVE CREDENCE THAT THE MEMORANDUM ORDER ISSUED BY MANAGEMENT SUFFICIENTLY JUSTIFIED THE TEMPORARY ASSIGNMENT OF THE PRIVATE RESPONDENT VELASCO AS ALTER-EGO OF THE GENERAL MANAGER, AND THAT THIS WAS ALSO EXPLICITLY, PROPERLY, AND EFFECTIVELY EXPLAINED IN PETITIONERS' POSITION PAPER.
- 2) THE NLRC COMMITTED A GRAVE ABUSE AND REVERSIBLE

ERROR IN EVEN REWARDING PRIVATE RESPONDENT VELASCO WHO WENT ON AN UNAUTHORIZED WORK-HOLIDAY FOR A CONTINUOUS PERIOD OF ALMOST TEN (10) MONTHS, WITHOUT ANY LEAVE APPLICATION, THUS REWARDING A WORKER FOR GOING ON AWOL, AND EVEN DELIBERATELY HIDING HERSELF FROM HER EMPLOYER.

- 3) ORIGINALLY NEVER THEN CLAIMED THAT SHE WAS ILLEGALLY DISMISSED. SHE DID NOT EVEN CLAIM THAT SHE WAS CONSTRUCTIVELY DISMISSED. SHE INSTEAD APPLIED FOR RETIREMENT, TO PRE-EMPT THE DISCIPLINARY ACTION IMPOSED AGAINST HER. THUS, THE NLRC TOTALLY ACCEPTED HOOK, LINE AND SINKER EVERYTHING THAT THE PRIVATE RESPONDENT ASSERTED IN THIS CASE, TOTALLY OBLIVIOUS OF THE FACT THAT SHE NEVER EVEN RAISED THESE ISSUES ORIGINALLY. THUS, THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT DECREED THE REINSTATEMENT OF THE PRIVATE RESPONDENT OR AWARDED SEPARATION PAY, OR RETIREMENT BENEFIT, OR BACKWAGES.
- 4) THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR IN IGNORING THE EMPLOYERS' RIGHT TO RELY ON THE DECISION OF THE SUPREME COURT IN GTE DIRECTORIES CORPORATION vs. SANCHEZ, ET. AL., G.R. No. 76219, MAY 27, 1991 WHICH MANDATED THE PROCEDURE TO QUESTION AN ASSIGNMENT OR TRANSFER ORDER. THUS, THE NLRC INEQUITABLY AND UNFAIRLY IMPOSED UPON THE EMPLOYERS TO WAIT AND SUFFER IN ETERNITY FROM THE REFUSAL OF THE WORKER TO REPORT TO WORK, WITHOUT CHALLENGING HER ASSIGNMENT OR TRANSFER.
- 5) THE NLRC COMMITTED A GRAVE AND REVERSIBLE ERROR IN GRANTING BACKWAGES TO THE PRIVATE RESPONDENT VELASCO "RECKONED FROM THE TIME HER SALARY WAS WITHHELD, PARTICULARLY AT THE TIME SHE WAS CONSIDERED ON LEAVE WITHOUT PAY, UP TO THE TIME THE ORDERED SEPARATION PAY OR RETIREMENT BENEFITS IS FULLY PAID", TAKING INTO CONSIDERATION THAT THE COMPLAINANT DELIBERATELY REFUSED TO WORK, AND EVEN HID HERSELF FROM THE EMPLOYER. WORST, AS IN THIS CASE, THE ASPECT OF REINSTATEMENT WAS NOT EVEN FAVORABLY CONSIDERED.
- 6) THE NLRC COMMITTED A GRAVE ERROR IN REVERSING THE DECISION OF THE EXECUTIVE LABOR ARBITER WHO DECREED THAT THE PRIVATE RESPONDENT WAS VALIDLY DISMISSED AND THAT SHE WAS NOT ENTITLED TO HER MONETARY CLAIMS.

The core issue is whether or not the respondent Commission acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess