THIRD DIVISION

[CA-G.R. SP. No. 132677, May 27, 2014]

MYLENE A. ESTRADA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND UNIVERSAL APA CORPORATION / CHARLIE CHAN, RESPONDENTS.

D E C I S I O N

GARCIA, R.R., J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision[2] dated June 14, 2013 of public respondent National Labor Relations Commission (NLRC), Fifth Division, affirming the Decision[3] dated January 25, 2013 of the Labor Arbiter which dismissed the complaint for constructive dismissal filed by petitioner Mylene A. Estrada against private respondents Universal Apa Corporation and Charlie Chan but ordered private respondent Universal Apa Corporation to pay petitioner her unpaid service incentive leave pay amounting to P6,690.00; and the Resolution[4] dated August 30, 2013 the denying the motion for reconsideration thereof.

THE FACTS

On August 16, 2012, petitioner Mylene A. Estrada, together with her co-worker, Agnes Ualat, filed with the Arbitration Branch of public respondent National Labor Relations Commission (NLRC) a complaint[5] for illegal dismissal, underpayment of salary and non-payment of ECOLA against private respondents Universal APA Corporation and its manager Charlie Chan.[6] The company is engaged in the manufacture of ice cream cones. On October 2, 2012, petitioner filed the instant amended complaint[7] for constructive dismissal, underpayment of salary, non-payment of service incentive leave pay as well as moral and exemplary damages.

In her position paper[8], petitioner alleged that she was employed by private respondents sometime in April 1992 as a factory worker in Panay Avenue, Quezon City. Her duty starts at 8:00 in the morning and ends at 5:00 in the afternoon. Her latest daily wage was P426.00. During her tenure with private respondent company, petitioner worked from Monday to Saturday. However, in the latter part of her employment, her work days, together with that of the other regular employees, were reduced. The reduction of work days started when private respondent company entered into a contract with Aly Manpower Agency which provided private respondents with factory workers. This resulted in the bumping off of petitioner and her co-workers from their regular schedule of duty. Initially, their work days were reduced to four (4) days a week. After a few months, their workweek was further reduced to three (3) days. Thereafter, they were told that they would only work if they were given a call by private respondent company because the demand for the company's product has dwindled. However, the workers supplied by Aly Manpower Agency continued to work regularly from Monday to Saturday.

By reason of the reduction in her workweek, she suffered constant hardships because she has no other means to support her family. She pleaded to private respondents that she be given a regular duty since she has been a regular employee of the company for twenty (20) years but her pleas fell on deaf ears. The unbearable situation of having to work irregularly, the concomitant diminution of the salary that she receives and the continuous engagement by private respondent company of factory workers from the manpower agency is tantamount to constructive dismissal.

It was alleged further that petitioner's salary has been underpaid from May 2012 since she is receiving only P426.00 daily instead of the P446.00 daily wage mandated by law. She was not also paid her service incentive leave pay. Petitioner likewise prayed for the payment of moral and exemplary damages on account of the harsh and oppressive manner by which her employment was terminated.

In their traverse, private respondents averred that petitioner was hired in 1998, not in 1992. Petitioner was not dismissed, either verbally or in writing. In fact during the hearing scheduled on September 11, 2012, petitioner was represented by her husband who said that petitioner was unable to attend because she went to work at private respondent company. Private respondents explained that the implementation of work stoppages is an exercise of management right in order to prevent losses. The demand for the product of private respondent company is adversely affected by the weather conditions. During the rainy season, the demand for ice cream cones is very low. To avoid losses, manufacturing operations had to be suspended. The reduction of petitioner's work days has nothing to do with the contract between private respondent company and Aly Manpower Agency. The contract with the manpower agency was entered into five (5) years ago for private respondent company's factory in Bulacan and not for its factory in Quezon City.[9] It was averred further that there are times when petitioner, together with her co-employees, was asked to report to private respondent company's factory in Bulacan. In those instances, petitioner and her co-employees are given transportation allowance of P200.00, which is more than the actual fare going to and from Bulacan. Petitioner was also paid her salaries in accordance with law and that her service incentive leave benefits are accordingly paid.

In a Decision[10] dated January 25, 2013, the Labor Arbiter dismissed petitioner's complaint for constructive dismissal but ordered private respondent company to pay petitioner the sum of P6,690.00 for her unpaid service inventive leave pay. There is no actual illegal dismissal to speak of considering that during the September 11, 2012 conference, petitioner was still working with private respondents. Neither was constructive dismissal established. The pieces of evidence submitted by both parties did not establish that the contract between private respondent company and Aly Manpower Agency caused the reduction of petitioner's work schedule. There is also no showing that the workers from the said agency were assigned to private respondent company's factory in Quezon City where petitioner was assigned. Petitioner failed to dispute that the reduction in her work days was due to a decrease in demand for the company's product arising from changes in weather. Anent the issue of non-payment of service incentive leave pay, private respondents failed to present evidence to show that petitioner was duly paid the same, hence, private respondent company was ordered to pay petitioner the amount of P6,690.00. The pertinent portions of the Labor Arbiter's decision are quoted:

Anent the issue of illegal dismissal, this Arbitration Branch is constrained to dismiss the same for lack of factual basis to support it.

It bears to point out that complainant Estrada's original complaint as well as the first amendment thereto stated that s he was actually dismissed sometime in July 2012 xxx. However, during the September 11, 2012 conference, complainant Estrada failed to attend because she was then at work xxx. Clearly, there was no dismissal to speak of at the time alleged by the complainant Estrada. Neither was constructive dismissal established. Complainant Estrada averred that she was constructively dismissed when the respondents[,] discriminately reduced her work schedule after availing the services from Aly Manpower. This Arbitration Branch painstakingly scrutinized the pleadings and evidence submitted by the parties and the same did not establish that the hiring from Aly Manpower caused the reduction of complainant's work schedule.

Herein complainant was hired as a factory worker for the Quezon City factory of the respondents. It was not shown that the worker from Aly Manpower was assigned to the Quezon City factory to displace herein complainant Estrada or to circumvent her security of tenure. Complainant Estrada likewise did not dispute respondents' allegations that the reduction of work schedule in the Quezon City factory was due to the changes in weather conditions and decrease in demand for the products of the respondents. Further, the respondents were able to establish that efforts were done to continue providing schedules to the complainant and to the other Quezon City workers by assigning them in Bulacan, with corresponding transportation allowance xxx. All these, taken into consideration belies complainant Estrada's claim of discrimination and constructive dismissal.

There being no dismissal to speak of, claims for the payment of separation pay and damages must necessarily fail.

Anent the issue of underpayment of wages, complainant herself averred that she was receiving the amount of P426.00 daily. Records disclosed that complainant Estrada's salary rate is computed at P446.00 xxx. Thus, there was no underpayment of wages as complainant was properly paid the mandatory minimum wage.

Finally, as to the issue of non-payment of service incentive leave, respondents failed to establish that complainant Estrada enjoys paid vacation leave. xxx

In this case, it was undisputed that complainant worked for more than a year, thus, entitling her to the payment of service incentive leave. Respondents presented evidence of due payment of ECOLA but no evidence was presented to show that complainant was duly paid her service incentive leave. Thus, complainant is hereby awarded service incentive leave limited tot he three (3) year prescriptive period computed as follows: P446.00 x 5 x 3 = P6,690.00.

All other claims are dismissed for lack of merit.

> WHEREFORE, premises considered, the compromise entered into by complainant Agnes Ualat and the respondents are hereby APPROVED and said complaint is dismissed with prejudice[d] and considered close[d] and terminated.
>
> The complaint filed by complainant Mylene Estrada for constructive dismissal is hereby DISMISSED for lack of merit.
>
> Respondent Universal Apa Corporation is hereby ordered to pay complainant Mylene Estrada the sum of P6,690.00 for her unpaid service incentive leave.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[11]

Aggrieved, petitioner filed a partial appeal[12] with public respondent NLRC. As additional evidence, petitioner submitted a copy of the list of the number of days when she was made to work in the months of June to September, 2012. The list[13] shows that in July 2012, petitioner was asked to report for work only for sixteen (16) days; in August, only for three (3) days; and in September, only for five (5) days. In their Comment/Manifestation[14] and Opposition[15] to petitioner's partial appeal, private respondents neither confirmed nor denied the veracity of the additional evidence submitted by petitioner.

In the assailed Decision[16] dated June 14, 2013, public respondent NLRC denied petitioner's partial appeal. Petitioner moved for a reconsideration[17] thereof but the same was denied in a Resolution[18] dated August 30, 2013.

Hence, the instant petition for certiorari filed by herein petitioner raising the lone ground for its allowance[19], to wit:

> PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO DECLARE THAT PETITIONER WAS ILLEGALLY DISMISSED.

THE ISSUE

The only issue to be resolved in the instant case is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in affirming the dismissal of petitioner's complaint for constructive dismissal.

THE RULING

The petition is impressed with merit.

Petitioner essentially argues that public respondent NLRC gravely abused its discretion when it affirmed the dismissal of her complaint for constructive dismissal. The reduction in petitioner's number of workdays is tantamount to constructive dismissal. Private respondents failed to justify that there is a dire exigency to implement the reduced work schedule. They were not able to substantiate their assertion that the reason therefor was the adverse effect of weather conditions on the demand for private respondent company's product. Evidently, the reason behind