

SIXTH DIVISION

[CA-G.R. SP NO. 128659, May 23, 2014]

**VICTORIA B. MABAYLAN PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, DEPARTMENT OF LABOR AND
EMPLOYMENT EMPLOYEES COOPERATIVE (DOLEEC), CAROLINA
D. JULVE AND ALMERANTE GALLARDO, RESPONDENTS.**

D E C I S I O N

BARZA, J.:

Assailed in this petition for certiorari under Rule 65 are: 1) NLRC Decision^[1] dated 10 October 2012 in NLRC LAC No. 06-001929-12, which modified the Labor Arbiter's Decision^[2] (NLRC-NCR-03-03970-11) finding merit in the complaint for illegal dismissal filed by petitioner Victoria B. Mabaylan (Mabaylan), and 2) the NLRC Resolution^[3] dated 29 November 2012, which resolution denied partial reconsideration of the NLRC's Decision.

The facts as summarized by the NLRC:

"Complainant, in her Position Paper, alleged: that on November 8, 2004, she was hired by respondents as bookkeeper/Accountant x x x; that from November 2004 up to the first quarter of 2005, she reconstructed and established records of prior years and finished the financial reports on scheduled time; that she protected all the money of the cooperative by instituting an effective accounting system and preparing all the necessary records; that on February 9, 2010, the Board of Directors headed by respondent Julve terminated her employment with the cooperative through a Board Resolution and memorandum on the ground of lack of trust and confidence x x x; and that since then, she was no longer allowed to enter the cooperative's premises.

Complainant clarified: that the allegation that no financial reports were submitted is not true since she already submitted and discussed in detail the financial statement for 2009 during the Board meeting conducted on January 28, 2010 x x x; and that the alleged inefficiency and poor health are not true as she was very competent, efficient and healthy.

On the other hand, in their Position Paper, respondents averred: that since 1970, the DOLE Cooperative had operated a canteen but in the 1990's, the canteen was closed; that sometime in 2004, the cooperative resumed operation of the canteen through an experienced canteen operator; that recognizing the need to prepare financial statements to be submitted to the BIR, the cooperative's Board resolved to hire the services of complainant as bookkeeper on an honorarium basis, like a monthly retainer's fee for professionals and she started rendering bookkeeping work on November 8, 2004; that complainant's duties

included installing an effective accounting system, rendering monthly financial reports or as may be required, coordinate with the committee concerned in the preparation of the annual budget, assist in the preservation of documents and records pertaining to the business of the cooperative, and prepare all disbursement vouchers and checks for the signature of authorized officers of the cooperative; that complainant did not have to report on any specific day so long as the needed financial statements are prepared on time and as of 2005 she received an honorarium of P2,500.00 for her services x x x; and that as the cooperative's income increased, complainant's honorarium was increased to P5,000.00 in May 2006 x x x which was further increased to P7,500.00 per month in April 2007 x x x.

Respondent further averred: that suddenly, on December 19, 2007, without any Board resolution, the check prepared by complainant to be paid to her was increased to P12,000 and the title of the expense account was changed from honorarium to "salaries and wages" x x x; that again, without any written authority of the Board, complainant prepared vouchers and checks showing an increase in her honorarium to P15,000.00 which she indicated as "salaries and wages" x x x; that in March 2008, complainant started deducting from her so-called "salaries and wages" SSS contributions and even paid to herself the amount of P179.00 as "patronage refund", although she is not entitled thereto as she is not a member of the cooperative; that from December 2007 onwards, all the vouchers prepared by her indicated that she was already receiving salaries and wages as an employee of the cooperative when in truth and in fact she was not; that aside from this, respondents also discovered that complainant was remiss in her duty of preparing the Financial Statement for the year 2008; that it was only on January 9, 2010 when complainant submitted the financial statement after several verbal reminders; that the submission of the 2009 financial statement was also delayed and the computation of the patronage refund and dividends for member could not be made; that complainant was absent without permission from February 1 to 5, 2010 and did not submit any explanation despite written notice to explain; that on February 9, 2010, the Board adopted a Resolution releasing complainant for her duties as bookkeeper/accountant x x x; and that on February 11, 2011, respondent Julve issued a notice terminating the services of complainant on the ground of lack of trust and confidence effective March 15, 2010 x x x.

Complainant in her Reply, contended: that she is a regular employee of respondent cooperative as the officers of the cooperative recognized the necessity of having a bookkeeper/accountant to prepare financial statements; that respondents' allegation that she failed to explain her absence from work for five days implies that she was required to report for work daily; that the SSS Contribution Collection List was approved and certified as correct by respondent Julve; that the vouchers presented by respondents were approved by respondent Julve and the Treasurer; that she had submitted all the financial reports for 2008 on January 25, 2009 x x x; that said reports were even received by Roberto Rodelas, one of the members of the Board and was even discussed by her in a Board

Meeting held on January 28, 2010; that she was absent from February 1 to 5 because she took a rest due to headache since respondents Julve and Gallardo pressured her by demanding various reports; that respondent Gallardo was verbally notified by her husband on the first day of her leave of absence; that respondent Gallardo interfered in her work when he prepared an erroneous Cash Position Report; and that the decision to dismiss her was merely an act of reprisal because Barrymore Mabayan, complainant's husband, filed an administrative complaint against respondent Julve for dishonesty and conduct prejudicial to the service at the Civil Service Commission last January 5, 2010 x x x."

In their Reply, respondents asseverated: that the letters from the Cooperative Development Authority indicate violations of the cooperative x x x; that complainant processed loans of her husband Barrymore Mabayan but indicated the wrong monthly amortizations x x x; and that being a contractual employee, complainant is only entitled to a notice of termination."

On 30 April 2012, the Labor Arbiter promulgated a Decision finding illegal dismissal and entitling Mabayan to her money claims, as follows:

"WHEREFORE, premises considered, judgment is hereby rendered declaring that complainant was illegally dismissed by respondents.

Respondent Department of Labor and Employment (DOLE) Employees' Cooperative, Inc., is hereby ordered to pay complainant her separation pay in lieu of reinstatement computed at one month pay for every year of service counted from November 8, 2004 until the date of this Decision in the amount of P105,000.00, with backwages counted from the time of her illegal dismissal on February 28, 2010 until the date of this Decision in the amount of P390,000.00, and 13th month pay in the amount of P45,000.00 per attached computation, which shall form an integral part of this Decision.

All other claims are dismissed for want of merit.

SO ORDERED."

The Cooperative appealed to the NLRC.

In resolving the appeal, the NLRC ruled that Mabayan is a regular employee of the Cooperative and is entitled to 13th month pay. As explained, Mabayan's relationship with the respondent company has all the attributes of an employer-employee relationship. The necessary nature of her work has been acknowledged by the respondents and confirmed by the fact the her services were continuously engaged by the respondent. However, Mabayan's position as bookkeeper/accountant is reposed with trust and confidence as she was entrusted with delicate matters, or with custody of her employer's property. Her attitude problem, health concerns, absences from work when the financial reports were badly needed, delay in the preparation of the needed financial reports are enough basis for her valid termination for a cause. As such, the NLRC ruled that the respondents did not observe the procedural due process in terminating Mabayan as she was not given a written notice directing her to explain why she should not be dismissed. The NLRC also awarded separation pay pursuant to the notice of termination served on