

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 05189, November 27, 2014]

**ELVIS VILLA, PETITIONER, VS. PATERNO TIGUMAN AND
NATIONAL LABOR RELATIONS COMMISSION 4TH DIVISION,
CEBU CITY, RESPONDENTS.**

D E C I S I O N

INGLES, G. T., J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Decision^[1] dated October 30, 2009 and the Resolution^[2] dated March 12, 2010, all issued by the respondent National Labor Relations Commission in NLRC Case No. VAC-03-000400-2009.

Factual and Procedural Antecedents

This case stemmed from a complaint for illegal dismissal with money claims filed by private respondent Paterno Tiguman (hereafter Tiguman for brevity) against the petitioner Elvis Villa (Villa for brevity).

The case for the petitioner Villa

The respondent Tiguman was employed as driver at the petitioner's business on June 15, 1998. Weeks prior to July 21, 2008, Tiguman was assigned with the petitioner's San Miguel Products Distribution Division of Rogelio Villa & Sons, Inc. and was responsible for driving the delivery truck bearing the plate number PEN-732.

However, on July 19, 2008, the said truck driven by Tiguman broke down rendering it unserviceable while the same had to be repaired for an indefinite period of time. The respondent Tiguman was given another assignment at the petitioner's Coca Cola Products Distribution Division on July 21, 2008, but Tiguman did not report to work as instructed. Instead, Tiguman started working for another employer, Ronnie Samson Villa Poultry Farm (RSVP Farm), incidentally owned by petitioner Villa's brother. Despite this, petitioner sent word for Tiguman to work with RVSI, only to find out that he had already filed a case for illegal dismissal. Nonetheless, petitioner still sent a letter to Tiguman on September 12, 2008 urging him to return to work, but the respondent ignored the letter.

The case for the respondent Tiguman

In his position paper, Tiguman alleged that he was hired by Rogelio Villa & Sons, Inc. on March 15, 1996 as delivery truck driver initially assigned to the section promoting and selling International Pharmaceutical Inc (IPI) products until 1999. In

2000 he was transferred to the section selling and distributing San Miguel Corporation (SMC) beer products. As such, complainant worked from Monday to Saturday, reporting for work at 7AM driving and delivering these IPI and later SMC products to more than 50 stores in the towns of Larena, Siquijor, San Juan and Lazi, returning to office usually at 5PM and sometimes beyond the daily nine hours. He was paid One Hundred Ninety Five (P195.00) only per day.

When complainant reported for work on July 19, 2008 the delivery truck assigned to him with Plate No. PEN-732 had engine trouble which needed replacement of parts he had long ago requested. The petitioner Villa, after hurling invectives, told complainant to file his resignation or else be terminated, and warned not to see his face again in the premises.

Complainant was shocked by such sudden and arbitrary dismissal because resignation was farthest from his mind. Thus, on July 30, 2008, Tiguman filed a case for illegal dismissal with money claims against Rogelio Villa & Sons, Inc. and Elvis Villa, the manager of the aforementioned enterprise.

Ruling of the Labor Arbiter

On December 23, 2008, the Labor Arbiter rendered a Decision finding that respondent Tiguman was not illegally dismissed. The Labor Arbiter ruled that apart from claiming that he was illegally dismissed, Tiguman has not demonstrated his actual dismissal. However, on Tiguman's claim for salary differential, the Labor Arbiter ruled that at P195.00 per day, Tiguman was paid below the minimum wage required by law. The Labor Arbiter likewise granted Tiguman's prayer for payment of 13th month pay, but denied for lack of merit Tiguman's prayer for payment of service incentive leave pay, night shift differential and holiday pay.

The decretal portion of the Labor Arbiter's decision is hereunder quoted as follows:

"WHEREFORE, foregoing considered, the complaint for illegal dismissal is hereby dismissed for lack of merit. Respondents are ordered to pay complainant jointly and severally salary differentials and 13th month pay computed as follows:

I-- SALARY

DIFFERENTIAL:

MW =P215.00/day

Salary Received =P195.00/day

Salary Differential =P 20.00/day

July 2005 - July = 3 yrs. Or 936

2008 days

P20.00/day x 936= P18,720.00

days

II-- 13th MONTH PAY:

July 2005 - July = 3 yrs. Or 936

2008 days

P215.00/day x 936= P201,240.00 = P16,770.00

days

12

TOTAL

P35,490.00

SO ORDERED”

Ruling of the NLRC

Aggrieved by the Labor Arbiter's decision, respondent Tiguman appealed to the National Labor Relations Commission, which reversed the finding of the Labor Arbiter and ruled that Tiguman was illegally dismissed.

The respondent NLRC rejected RVSI's and the petitioner Villa's theory that there can be no illegal dismissal since Tiguman failed to establish the fact of termination in this case. The NLRC ruled that there is reasonable basis for Tiguman's allegation that upon learning of the breakdown of the truck, RVSI manager Elvis Villa went into an emotional outburst and dismissed Tiguman. Being illegally dismissed, the respondent NLRC ruled that Tiguman is entitled to reinstatement with full backwages from the date of termination up to the time he is actually reinstated. Nevertheless, since reinstatement is no longer feasible given the obvious strained relations between Tiguman and his former employer, the NLRC awarded separation pay in lieu of reinstatement computed at one month pay for every year of service.

The dispositive portion of assailed October 30, 2009 Decision of the respondent NLRC is hereunder quoted as follows:

“WHEREFORE PREMISES CONSIDERED, the appeal is given due course. The decision of the Labor Arbiter is hereby SET ASIDE and VACATED and a new one entered declaring complainant to have been illegally dismissed. As such, respondent Rogelio Villa & Sons, Inc. is hereby ordered to pay complainant Paterno Tiguman the following:

BACKWAGES.....	P84,934.24
SEPARATION PAY.....	P75,036.00
SALARY DIFFERENTIALS.....	P14,237.00
13TH MONTH PAY.....	<u>P15,945.25</u>
Total Award.....	P190,152.49

SO ORDERED.”

ISSUES

The petitioner, Elvis Villa, raises the following issues: