

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 125856, November 27, 2014]

PADERNAL CONSTRUCTION CO., INC. AND/OR THEODORE M. PADERNAL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND GODOFREDO DUMALAG, 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 seeking to annul and set aside the Decision^[1] of the National Labor Relations Commission, Seventh Division, Cebu City, promulgated on April 30, 2012 the dispositive portion of which, states:

"WHEREFORE, premises considered, the Decision rendered by the Labor Arbiter on 27 September 2011 is hereby MODIFIED, to the effect, that the holiday pay and service incentive leave pay awarded to complainant are CANCELLED. While as to his ten percent (10%) attorney's fees, the same shall be adjusted commensurate to the reduction of the total monetary award.

SO ORDERED."

Factual and Procedural Antecedents

This petition stems from a complaint^[2] for illegal dismissal, non-payment of overtime pay, 13th month pay, service incentive leave pay, separation pay, damages and attorney's fees filed on September 8, 2010 by respondent Godofredo Dumalag against herein petitioners.

On October 22, 2009, private respondent Dumalag was hired as foreman in petitioner's construction business. He worked from 8:00 o'clock in the morning until 6:00 o'clock in the evening. He allegedly applied for and was granted three (3) days leave of absence on August 17, 2010. Upon his return to work on August 20, 2010, the petitioners, through a certain Engr. Sabio, were said to have informed the respondent Dumalag that his employment had been terminated effective that same day.

On the other hand, petitioners contend that respondent Dumalag was hired as a project/ seasonal employee for the Quinoguitan Bridge Project in Loboc, Bohol, which started in August 2009. Respondent Dumalag's job was allegedly limited to a

specific completion phase of the Quinoguitan Bridge project, which was said to be explained to respondent Dumalag at the onset.

Petitioners allege that during the crucial phases of the construction project in August 2010, complainant purportedly abandoned his work as a foreman forcing the petitioners to make adjustments and re-deploy workers to make up for Dumalag's extended unexcused absences. The project phase for which the respondent Dumalag was hired was said to be completed during his unauthorized absence.

Ruling of the Labor Arbiter

The Labor Arbiter ruled that while the respondents kept insisting that respondent Dumalag is a project employee, they failed to present the employment contract between them. Thus, there was no showing that petitioners herein informed respondent Dumalag of the nature and duration of his employment. Furthermore, the petitioners failed to show that respondents submitted an employee termination report to the DOLE, per Department Order No. 19. Petitioners' omissions, are clear indications of respondent Dumalag's regular employment, the Labor Arbiter ruled. The Labor Arbiter also rejected herein petitioners' allegation that respondent Dumalag abandoned his job. The Labor Arbiter did not find evidence pointing to the fact that Dumalag deliberately and unreasonably refused to get back to work.

Thus, in a Decision^[3] dated September 27, 2011, the Labor Arbiter declared the respondent Dumalag a regular employee and that he was illegally dismissed by herein petitioners. The Labor Arbiter awarded separation pay, backwages, 13th month pay, holiday pay and service incentive leave pay. The total monetary award adjudged in favor of respondent Dumalag, inclusive of ten (10%) percent attorney's fees amounted to One Hundred Thirty One Thousand Nine Hundred Forty Five (P131,945.00) Pesos.

Ruling of the NLRC

Aggrieved, the petitioners then filed an appeal before the respondent NLRC, which, in turn, affirmed the Labor Arbiter's decision. The NLRC rejected the petitioners' submission that respondent Dumalag is a project employee because the petitioners failed to show by clear, positive and convincing evidence was engaged to work on a specific phase of the Quinoguitan bridge project and that the private respondent was duly informed and of the nature of his employment and the duration thereof.

The NLRC likewise rejected the petitioners' submission that Dumalag abandoned his work and thus, there can be no illegal dismissal to speak of. The NLRC ruled that since respondent Dumalag is a regular employee, he is entitled to security of tenure and enjoys the right not to be dismissed from work without just or valid cause or without due process. Respondent Dumalag's right having been violated, the NLRC sustained the separation pay and backwages awarded to him.

However, the NLRC modified the other monetary award granted by the Labor Arbiter. The NLRC ruled that there is no basis for the award of holiday pay since Dumalag did not pray for such relief in his complaint. Likewise, the award for service incentive leave was improper since only employees who have rendered at least one (1) year of service is entitled to a yearly service incentive leave of five (5) days with pay,

pursuant to Article 95 of the Labor Code.

Issues

Undaunted, petitioners now come before this Court via a Petition for Certiorari under Rule 65 grounded on the following:

1. The NLRC committed serious error amounting to grave abuse of discretion, when it ruled that private respondent Dumalag is not a project employee but a regular employee;
2. The NLRC committed serious error amounting to grave abuse of discretion, when it ruled that private respondent Dumalag did not abandon his work but instead he was illegally dismissed;
3. The NLRC committed serious error amounting to grave abuse of discretion when it awarded the money claims of private respondent Dumalag, especially backwages even after the completion of the Quinoguitan Bridge Project and despite the fact that backwages was not claimed and not discussed in the private respondent's Position Paper, and despite the award of separation pay.
4. The NLRC committed serious error amounting to grave abuse of discretion, when it awarded attorney's fees.

Argument for the Petitioners

Petitioners insist that private respondent Dumalag was hired for the construction of the Quinoguitan Bridge Project in Loboc, Bohol. As project employee, private respondent Dumalag's employment was co-terminus with the completion of the aforementioned bridge project. Petitioners further reiterate that although there was no written contract between the petitioners and the private respondent Dumalag, the latter was duly informed of the nature and duration of his employment at the beginning of his engagement as foreman for the said project.

The private respondent Dumalag, during his stint with the petitioners, also served as Barangay Kagawad and later Barangay Chairman in one of the barangays in Loboc, Bohol where he was a resident at the time. This was the reason why private respondent Dumalag was oftentimes absent during the crucial phases of construction of Quinoguitan Bridge. Petitioners argue that private respondent Dumalag's absenteeism forced the petitioners to make adjustments and re-deployment of workers to make up for Dumalag's extended and unexcused absences. The project phase for which Dumalag was hired was completed during his unauthorized absence. Petitioners argue that even if there were still other phases to complete, the work attitude shown by Dumalag did not merit private respondent's rehiring.

Finally, petitioners contend that respondent Dumalag is not entitled to backwages