SECOND DIVISION

[CA-G.R. SP No. 136424, November 19, 2014]

MARIO S. MORA AND RODOLFO A. ALINSOOT, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), AND BDN WASTE MANAGEMENT SERVICES/BALDOMERO D. NIEFES, 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 February 24, 2014 of the National Labor Relations Commission (NLRC), First Division, which affirmed the Decision[3] dated August 27, 2013 of the Labor Arbiter dismissing the complaint for illegal dismissal and money claims filed by petitioners Mario S. Mora and Rodolfo A. Alinsoot against private respondents BDN Waste Management Services and Baldomero D. Niefes; and the Resolution[4] dated April 30, 2014 denying the motion for reconsideration[5] thereof.

THE FACTS

Private respondent BDN Waste Management Services (BDN, for brevity) is a sole proprietorship engaged in collecting and hauling waste materials from industrial companies, commercial establishments and subdivisions which are based in Silang, Cavite. Private respondent BDN has no fixed contract with its clients and its services are engaged by its clients on a day-to-day basis. As such, truck drivers and helpers are only called every time a client taps its services for collection of waste materials. Pursuant thereto, petitioner Mora was hired as a helper in May 2007 with a wage of P200. oo per trip while petitioner Alinsoot was engaged as a truck driver in June 2008 with a pay of P300 per trip.

In 2010, due to the increase in dumping fees coupled with the rising cost of fuel, private respondent BDN also raised its charges to its clients. Many of private respondent BDN's clients no longer engaged its services. The trips became fewer because of the reduction of demand of private respondent BDN's services. Private respondent BDN thus decided to transfer its business to San Pedro, Laguna near the dump site to cut its operation cost. Upon learning of the transfer, petitioner Mora opted to stay and put up a *sari-sari* store at the premises in Silang, Cavite. Later, petitioner Alinsoot chose to look for other employment opportunities.

Two years thereafter or on October 5, 2012, petitioners filed a complaint[6] for illegal dismissal, non-payment of wages, overtime pay, holiday pay, holiday premium pay, service incentive leave pay, 13th month pay and moral and exemplary

damages against private respondents BDN and its owner, Baldomero D. Niefes.

In their Position Paper[7], petitioners alleged that they were illegally dismissed. When petitioner Mora just started working with BDN, private respondent Niefes borrowed the amount of P17,000.00 which was the former's backpay from his previous job. Beginning May 2009, petitioners did not receive what was due them and they were merely allowed to make advances (*bale*). In September 2010, petitioner Mora demanded from private respondent Niefes the payment of the latter's indebtedness including the salary differentials, service incentive leave and 13th month pay due him. This infuriated private respondent Niefes, thus, prompting the outright dismissal of petitioner Mora. In November 2010, petitioner Alinsoot made a similar demand from private respondent Niefes but he was fired instead. Petitioners have unpaid salary differentials of P28,000.00 and P60,000.00, respectively; service incentive leave pay of P6,000.00 each; and 13th month pay of P31,200.00 each.

In their traverse, private respondents averred that petitioners were never dismissed from their employment. Petitioners voluntarily left their jobs. Further, petitioners waited for two years before they decided to file a complaint for illegal dismissal. The belated filing of the complaint negates their claim of illegal termination. Not having been illegally dismissed, petitioners are not entitled to reinstatement and backwages. Neither are petitioners entitled to their money claims since they are paid on a per task basis. Private respondents thus pray that the complaint be dismissed.

In a Decision[8] dated August 27, 2013, the Labor Arbiter dismissed the complaint for illegal dismissal. It ratiocinated that petitioners' alleged dismissal took place in 2010 while the complaint for illegal dismissal was filed only in 2012. If indeed petitioners were dismissed in a brazen manner coupled with the fact that they have not been receiving what is due them, it is inexplicable for them to wait for two years before protesting their unjust termination. Petitioners' money claims cannot likewise be granted. The document denominated as Exhibit "A" to prove the number of trips and salaries due, lacks any probative value. It is unsigned and can be easily made by anybody. The pertinent portions of the Labor Arbiter's decision read:

> The issues posed for resolution are:
>
> 1. Whether or not complainants were dismissed for a valid and lawful cause; and
>
> 2. Whether or not complainants are entitled to their various monetary claims.
>
> In the instant case, there is no documentary evidence to show that complainants were terminated from their services. Is a battle between " I said and you said." Hence, the surrounding circumstances shall determine which version is more credible than the other.
>
> It is remarkable to note that the alleged dismissal happened sometime in September 2010, so it took complainant two (2) years and one (1)

month to file a complaint for illegal dismissal on October 05, 2012. If indeed complainants were verbally dismissed outright without due process of law, a prudent person would immediately file a complaint to assert his or her right and not wait for two (2) years to assert such right. This complaint, in our mind is an afterthought and does not deserve scant consideration.

If indeed complainants were dismissed in a brazen and malevolent manner coupled by the fact that they have not been receiving a fabulous sum of money as salaries, complainants would not wait for two (2) months after their alleged dismissal much less two (2) years when they actually filed their complaint.

We cannot also grant monetary claims of complainants for being unsubstantiated.

Exhibit "A" presented by complainants cannot be given credence because it is merely a private document unsigned and can be easily prepared by anybody. It does not have any evidentiary value.

WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.

SO ORDERED.[9]

Aggrieved, petitioners appealed to public respondent NLRC. In the assailed Decision[10] dated February 24, 2014, public respondent NLRC affirmed the decision of the Labor Arbiter. It sustained the findings of the Labor Arbiter that petitioners were not terminated. Petitioners' unsubstantiated allegation that they were illegally dismissed does not constitute substantial evidence and the same has no probative value. The filing of a complaint for illegal dismissal two years after petitioners' alleged unjust termination was indeed a mere afterthought. It is incredible for petitioners who have been allegedly dismissed and who have a significant amount of receivables from their employer to wait for two years before they pursue their legal rights. Petitioners are likewise not entitled to service incentive leave pay and 13th month pay since they are paid on a per task basis. The pertinent portions of the assailed decision are quoted:

The appeal is devoid of merit.

Complainant's argument that the Labor Arbiter erred in ruling that they abandoned their jobs is sorely misplaced since the Labor Arbiter made no such finding. What the Labor Arbiter found is that they were not terminated, giving more credence to respondents' claim that they voluntarily severed their respective employments.

It is settled that before an employer is burdened to prove the validity of an employee's supposed dismissal, the latter must first prove by

substantial evidence that he was in fact dismissed. xxx

xxx

Since respondents deny having terminated complainants, the latter are now burdened to prove through substantial evidence that they were dismissed from employment. xxx In the case at bar, all that complainants presented to prove their supposed dismissal are their own testimonies alleging that respondent Niefes removed them from their jobs. Given that bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value, the Labor Arbiter is correct in concluding that the fact of their termination was not proven. In the absence of a dismissal, there can be no question regarding the legality or illegality thereof.

Moreover, We find that the Labor Arbiter is justified in ruling that the filing of the complaint was a mere afterthought.

Complainant Mora claims that respondents owe him unpaid salaries in the amount of P28,000.00. Complainant Alinsoot, on the other hand, alleges that respondents owe him unpaid salaries of P60,000.00. It is already far-fetched that someone who was unjustifiably deprived of his employment would wait for two (2) years before he institutes a complaint against his employer. And it is even more inconceivable that a wronged employee would wait that long to pursue his legal rights when he has a significant amount of receivables from his employer in the form of unpaid salaries, as complainants would like Us to believe in this case. Thus, seeing that the claim of illegal dismissal and unpaid salaries are devoid of any concrete basis, and are even incredible, We are one with the Labor Arbiter in concluding that the filing of the complaint is a mere afterthought.

Complainant's claims for service incentive leave and 13th month pay are likewise unmeritorious. As workers paid on a per task basis, they are not entitled thereto. We note that they did not deny respondents' assertion that they belong to such category of workers. Only, they tried to point out that "respondents failed to show compliance with the mandates (sic) of the law which requires permit for the DOLE when the workers are paid on a per trip basis", going on to cite provisions from DOLE Department Order No. 118-12. However, the cited Department Order deals with the employment and working conditions of drivers and conductors in the public utility bus transport industry; thus, is totally inapplicable to their case.

Under Book III, Rule V, Section 1(e) of the Omnibus Rules Implementing the Labor Code, the rule requiring employers to pay their employees service incentive leave does not apply to those who are engaged on a task basis or contract basis. Likewise, per the "Revised Guidelines on the Implementation of the 13th Month Pay Law", employers of those workers engaged on a per task basis are exempt from the coverage of Presidential Decree No. 851, otherwise known as the 13th Month Pay Law. Clearly then, complainants are not entitled to service incentive leave