

## TWENTIETH DIVISION

[ CA-G.R. SP NO. 08296, December 17, 2014 ]

**HERMINIGILDO M. REYNALDO, PETITIONER, VS. HACIENDA BENARES / BENITO MALAN, NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION, CEBU CITY, RESPONDENTS.**

### DECISION

**QUIJANO-PADILLA, J.:**

This is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court assailing, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the Decision dated August 30, 2013<sup>[2]</sup> and November 25, 2013<sup>[3]</sup> Resolution of the National Labor Relations Commission (NLRC), 7<sup>th</sup> Division, Cebu City in NLRC Case No. VAC-07-000411-2013. The assailed Decision set aside the May 27, 2013 Decision<sup>[4]</sup> of the Labor Arbiter in RAB Case No. VI-10-10629-12 and dismissed the petitioner's complaint for illegal dismissal. On the other hand, the assailed resolution denied petitioners' motion for reconsideration.

### The Antecedents

The instant case stemmed from a complaint<sup>[5]</sup> for illegal dismissal, non-payment and/or underpayment of salary, non-payment of overtime pay, 13th month pay, moral and exemplary damages, and attorney's fees before the NLRC, Regional Arbitration Branch (RAB) No. VI, Bacolod City. The antecedent facts of the case, as culled from the NLRC,<sup>[6]</sup> are as follows:

#### "The facts according to complainant:

Complainant states that he was employed sometime in 1995 as one of the laborers of Benito Malan, Sr. at Hacienda Bantud, Brgy. Concepcion, Talisay City.

The nature of complainant's work as laborer includes hulip, patdan, planting, weeding, fertilizer application, and all other works related to sugarcane farming. Complainant claims that he was paid below the pakyaw rate, if he works on pakyaw basis, or if he worked on a daily basis, he was only paid the amount of P120.00 per day.

Respondent Benigno Malan employed more than ten (10) workers in the hacienda alone.

By reason of the low wages, non-payment of benefits, and non-compliance with the SSS law, complainant, together with his co-workers at the hacienda, filed a complaint for inspection before the Department of

Labor and Employment in the last quarter of 2008. An inspection was, thus, conducted at the hacienda on 13 January 2009 with a finding that his employer, Benito Malan, Sr., underpaid the laborers of their wages and 13<sup>th</sup> month pay and failed to pay them their service incentive leave pay and SSS coverage.

In December 2008, complainant joined the Hacienda Alusiman-Malan Farm Independent Workers Union (HAMFIWU) as one of its members and supported the filing of a Petition for Certification Election in December 2008.

Complainant's employer, Benito Malan, Sr., vehemently and actively opposed the petition for certification election and started intimidating the members of the union including complainant, and induced other workers in the hacienda to refrain from joining the union.

In addition, respondent Malan claimed that he was no longer engaged in sugarcane farming because he is already old at the age of 75 years.

The certification election held on 09 June 2009 resulted to a failure of election by reason of the fact that respondent Malan, Sr., acting in cohorts with his son, Wilfredo Malan, actively opposed said election.

On the day following the election, complainant's house were partially burned and some of his farm tools were stolen. Despite the fact that complainant reported the incident for proper action, no action was taken by the Punong Barangay, William Malan, who is the son of respondent Benito Malan, Sr.

Another certification election was held sometime in July 2009, but again it resulted to a failure of election by reason of the active opposition of Benito Malan, Sr. and his son, Wilfred Malan.

Right after the second certification election, while complainant was waiting for his ride home in front of the barangay market, Joel Hortillano, a known supporter of Benito Malan, Sr. and Wilfred Malan, suddenly punched him in the face and body and while delivering the blows, Hortillano uttered:

*'Kaw guid gapa isog isog nga mag union ang mga tawo di.'*

Complainant suffered contusions in his face and body because of the injury inflicted upon him by the supporter of his employer, Malan, Sr.

During the start of the crop year 2009-2010, to their surprise, "Siopao Malan", the wife of William Malan, was already the one paying the salaries and would not anymore allow complainant to sign any paper unlike in the previous pay periods.

Complainant was not given regular work and was instead assigned to work areas where non-union members would refuse to be assigned because the work was difficult and the pakyaw rate was lower.

Sometime in September 2010, Benito Malan, Sr. came to complainant's house and threatened to evict him from the hacienda because he was no longer working for him.

Malan Sr. even dared complainant to file a labor case against him and bragged that he has money to pay lawyers including labor officials to decide against him.

By reason of the unjust and illegal dismissal and the continuous curtailment of his right to self-organization, complainant was constrained to engage the services of a lawyer to protect his rights and interests.

The facts according to respondents:

Respondents state that Hacienda Benares is a small sugarcane farm with a total area of 86,722 square meters. The farm is owned by William Llena Malan married to Rosalie Daulong and Winelyn Malan married to Leonel Tomayao.

In December 2009, the farm was leased by the owners William Llena Malan and Winelyn Malan to their father, respondent Benito Malan, Sr. for a period of two years at P10,000.00 per hectare. The lease was to start in crop year 2009-2010 to June 2011.

When the lease expired in June 2011, respondent Benito Malan, Sr. no longer renewed the lease contract because of his old age. Respondent Malan Sr. was then already 72 years of age and could no longer tackle to handle the administration of the farm. The farm was then leased by Wilma Malan, who is presently the one cultivating the farm.

On 13 January 2009, the farm underwent a routine inspection by the Department of Labor and Employment and uncovered the following violations: underpayment of wages both on pakiao and daily paid workers; underpayment of 13<sup>th</sup> month pay; non-payment of Wage Order No. RB 6-16; and non-payment of five days service incentive leave pay. Per continuation, the amount due to the workers totaled to P45,774.05. Complainant Reynaldo was computed to be awarded the amount of P6,132.75.

Upon the termination of the contract of lease of respondent Malan Sr. in June 2009, the workers were informed by respondent of the payment of their respective separation pay. However, the workers were indebted to the respondent by way of cash advances. The separation pay of some of the workers was not even enough to cover for their respective cash advances, hence, they refused to receive any amount and instead asked that they be allowed to work by the next lessee. In the case of complainant Reynaldo, he refused to receive his separation pay because he wanted a bigger amount despite the fact that he only worked for a short span during the period covered by the lease."

**The Decisions of the Labor Arbiter and NLRC**

After carefully weighing the parties' allegations and counter-allegations and the evidence on hand, the Labor Arbiter rendered its Decision<sup>[7]</sup> on May 27, 2013, dismissing the complaint of petitioner for illegal dismissal but awarded petitioner with separation pay and attorney's fees. The dispositive portion of said Decision reads:

WHEREFORE, premises considered, judgment is here rendered as follows:

1. **DISMISSING** the complaint of complainant for Illegal Dismissal due to his failure to establish the fact of his dismissal. However, instead of his reinstatement to his former position but without back wages be ordered, his separation pay is awarded in lieu of such reinstatement;
2. **ORDERING** the respondents, jointly and severally, to pay the complainant of his Separation Pay equivalent to one (1) month pay for every year of service based on the minimum pakyaw rate for a laborer in 2009, observing the formula followed in sugar industry, from the date of his employment in 1995 until his alleged dismissal in December 2009;
3. **AWARDING** complainant of his claim for Attorney's Fees equivalent to ten percent (10%) of his Separation Pay as mentioned above, both to be computed by the Fiscal Examiner of this Arbitration Branch;
4. **ORDERING** the respondents, jointly and severally, to pay complainant the aggregate sum of **FORTY THREE THOUSAND SIX HUNDRED FORTY THREE AND 60/100 (PHP 43,643.60)**, representing the latter's Separation Pay and award of Attorney's Fees and to DEPOSIT said amount to the Cashier of this Arbitration Branch within ten (10) calendar days from receipt of this decision and to show proof of compliance thereof;
5. All other claims are denied for lack of merit. <sup>[8]</sup>

On the issue of illegal dismissal, the Labor Arbiter ruled that the petitioner failed to substantially prove the fact of his dismissal from his employment. The Labor Arbiter likewise ruled that by filing this case after the lapse of 2 years from his alleged dismissal and failing to validly explain the cause of such undue delay is an apparent indication that petitioner was never terminated from employment. However, the Labor Arbiter found it just and reasonable to grant the petitioner his separation pay in lieu of reinstatement to his former job as a laborer of the private respondent. The Labor Arbiter likewise awarded attorney's fees to petitioner.

Aggrieved, private respondent filed a Partial Appeal with Motion to Reduce Bond before the NLRC.<sup>[9]</sup> On appeal, the NLRC granted private respondent's motion to reduce bond and accordingly, resolved the instant appeal in private respondent's favor. According to the NLRC, it remains unclear as to which hacienda petitioner was truly an employee. While the petitioner implicates Hacienda Benares as respondent in this case for illegal dismissal, he simultaneously acknowledged Hacienda Bantud to have employed him in the first place and suggests being a member of the union in Hacienda Alusiman. Thus, a determination of liabilities in this case cannot be made comprehensibly without risking questions of fair play and certainty as an evaluation of petitioner's postulations in this case are neither here nor there.

The August 30, 2013 NLRC Decision disposed as follows:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby SET ASIDE. Complainant's case for illegal dismissal is hereby DISMISSED.<sup>[10]</sup>

From the aforesaid Decision, petitioner moved for reconsideration,<sup>[11]</sup> which was opposed<sup>[12]</sup> by private respondent, but the NLRC denied the same in its February 29, 2012 Resolution.<sup>[13]</sup>

Hence, petitioner filed the present petition imputing grave abuse of discretion on the part of the NLRC based on this sole ground:

**THE NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED AND SET ASIDE THE FINAL AND EXECUTORY DECISION OF LABOR ARBITER JESSIE SULLANO.**<sup>[14]</sup>

### **This Court's Ruling**

The petition is bereft of merit.

#### ***NLRC Did Not Err in Dismissing the Appeal***

Petitioner charges NLRC of gravely abusing its discretion in reversing and setting aside the final and executory decision of the Labor Arbiter. Petitioner posits that the Labor Arbiter's decision has attained finality due to non-perfection of the instant appeal because of the reduced bond.

We are not persuaded.

The Court finds that petitioner substantially complied with the appeal bond requirement.

Before discussing the NLRC's ruling, however, this Court finds it necessary to emphasize the well-entrenched doctrine that an appeal is not a matter of right, but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.<sup>[15]</sup>

In appeals from any decision or order of the labor arbiter, the posting of an appeal bond is required under Article 223 of the Labor Code, which reads:

Article 223. APPEAL. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety