

TWENTIETH DIVISION

[CA-G.R. SP NO. 08200, December 15, 2014]

BENITO REYES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, (7TH DIVISION) HN TRADING AND/OR NESTOR LIM AND NONOY LIM, RESPONDENTS.

D E C I S I O N

QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the following issuances of public respondent National Labor Relations Commission (NLRC) in NLRC Case No. VAC-03-0000131-2013, to wit: (1) Decision^[1] dated August 23, 2013 which affirmed with modification the decision of the labor arbiter dated January 28, 2013;^[2] and (2) Resolution^[3] dated November 28, 2013 which denied petitioner's motion for reconsideration.

The Antecedents

Petitioner filed with the labor arbiter a case for illegal dismissal and money claims against private respondents. He alleged that he was hired as laborer for private respondents' copra and hardware/trading business in 1985. His employment was reported to the Social Security System starting June 2003. He had a total of 98 monthly contributions and his last posted payment was for April 2012. He received a daily wage of P86.00, which was paid to him in cash every week. Private respondents provided him and his family a one-room dwelling. During his rest day, private respondents made him plant eucalyptus in their land but they did not pay him for this work.

On June 27, 2012, petitioner was approached by private respondents' checker named Evelyn and told that Ma'am Bebeth, the wife of one of the private respondents, no longer wanted him to report for work and that he'd better go home since his services were no longer needed. Upon receiving the information, petitioner wanted to talk to Ma'am Bebeth but she was not in the office, hence, he was forced to go home. Petitioner came back the next day, hoping that his employer did not really mean his dismissal, but the security guard of HN Trading prevented him from getting in.

After the mandatory conference, the parties were directed to submit their respective position papers. Petitioner submitted his Position Paper^[4] on October 31, 2012. Private respondents, on the other hand, requested for a 3-day extension to file the said pleading. Private respondents' position paper would have been due on November 5, 2012, but unfortunately, it was not filed on that date. On January 18, 2013, their counsel filed a motion^[5] to admit private respondents' position paper, reasoning out that he overlooked its submission due to his volume of work, and it was only when he was preparing a position paper for another case that he

discovered the inadvertence.

In their Position Paper,^[6] private respondents denied petitioner's claim of illegal dismissal. They averred that HN Trading was registered in the name of Nestor and Hayne Lim and the entity already ceased to operate since July 16, 2012 due to business reverses. It was the second time that petitioner complained of illegal dismissal. His previous complaint in 1998 was amicably settled. Around June 2003, petitioner approached Hayne Lim and asked if he could work again in private respondents' business as he had a hard time raising his family. Petitioner was re-hired and was even constructed with a modest dwelling by private respondents. Petitioner's salary was P168.00.00 per day. Petitioner often went on prolonged absences but he was always given consideration since he had to raise several children. He failed to work for the whole month of June 2012. Hayne Lim was not around when petitioner reported for work. However, upon verification of what happened, private respondents learned that petitioner was teased by his co-workers for having gone AWOL (absent without leave) and that he was no longer allowed to work. Petitioner had a hard time comprehending the situation, hence, private respondents requested one Mr. Dionesio Belingan, officer-in-charge of the PESO program for Bayawan City to explain to petitioner that he was not dismissed. Petitioner, however, did not take the explanation, thus, the case.

When the labor arbiter prepared his decision, he did not consider private respondents' position paper. He resolved the case based only on the position paper of petitioner and declared private respondents to have waived their right to present evidence. The labor arbiter ruled in petitioner's favor and found the latter to be illegally dismissed, hence awarded him with backwages and separation pay. The labor arbiter also declared petitioner entitled to his monetary claims. Specifically, he awarded the following amounts to petitioner, to wit:

Salary differential	=	P155,844.00
13th month pay	=	P19,942.00
Service incentive leave pay	=	3,835.00
Holiday pay	=	7,670.00
Separation pay	=	193, 050.00
Backwages	=	42,900.00

TOTAL		P423,241.00

The dispositive portion of the labor arbiter's decision reads, *viz.*:

WHEREFORE, judgment is hereby rendered that the complainant was illegally dismissed and the respondents are hereby directed to pay complainant the sum of P423,241.00 as shown in the above computation plus 10% attorney's fees.

SO ORDERED.^[7]

Private respondents appealed to the NLRC. Together with their Appeal Memorandum,^[8] they also filed a Motion to Reduce Appeal Bond.^[9] On April 30, 2013, the NLRC issued a Resolution^[10] declaring that the bond posted by private

respondents was not in a reasonable amount. Due to their failure to post the required appeal bond, private respondents' appeal was never perfected, hence, the NLRC dismissed it.

Private respondents moved for reconsideration of the dismissal.^[11] Subsequently, they also filed an Entry of Appearance with Motions to File Supplemental Motion for Reconsideration and Supplemental Memorandum,^[12] with the intended pleadings^[13] attached to the motion.

In the assailed Decision^[14] dated August 23, 2013, the NLRC reconsidered its earlier Resolution dismissing the appeal and opted to decide the case on its merits. It dismissed the complaint for illegal dismissal and deleted the monetary awards granted by the labor arbiter, except for the 13th month pay. The dispositive portion of the NLRC's decision reads, *viz.*:

WHEREFORE, premises considered, respondents' motion for reconsideration is partly granted, and the decision of the Labor Arbiter, dated 24 January 2013, is, hereby AFFIRMED WITH MODIFICATION. The complaint for illegal dismissal is dismissed. We, however, grant the claim for 13th month pay, pursuant to Presidential Decree No. 851. As to the other money claims, We dismiss the same for lack of sufficient basis. Consequently, respondents are ordered to pay the complainant the total amount of PESOS: NINETEEN THOUSAND NINE HUNDRED FORTY-TWO (P19,942.00), Philippine Currency, representing 13th month pay pursuant to P.D. No. 851.

SO ORDERED.^[15]

Petitioner moved for reconsideration^[16] but the NLRC stood pat on its decision.^[17] Aggrieved, petitioner brought the matter to Us and raised the following issues in his petition, *viz.*:

WHETHER OR NOT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC)- 7TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED;

WHETHER OR NOT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC)- 7TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER IS NOT ENTITLED TO SALARY DIFFERENTIAL, SERVICE INCENTIVE LEAVE PAY, HOLIDAY PAY, SEPARATION PAY AND BACKWAGES.

This Court's Ruling

The petition is impressed with merit.

We discuss the issues *ad seriatim*.

ON THE VALIDITY OF

PETITIONER'S DISMISSAL

In reversing the labor arbiter and ruling that petitioner was not illegally dismissed, the NLRC declared that petitioner failed to substantiate his claim of illegal dismissal. According to the labor arbiter, what petitioner had was only his allegation that his co-workers teased him that he was already dismissed, and the claim that he was not allowed entry by the guard was also without evidence.

In making such finding of fact, the NLRC appeared to have mixed up the accounts of the parties regarding the circumstance of the dismissal. To straighten things out, the story that petitioner was teased by his co-workers did not come from petitioner, but was actually the version of private respondents. What petitioner claimed was that he was told by Evelyn that Ma'am Bebeth no longer wanted him to report for work and that he'd better go home since his services were no longer needed.

Sifting through the parties' conflicting accounts, We find that petitioner was actually dismissed and the dismissal was without due process. Dismissals have two facets: first, the legality of the act of dismissal, which constitutes substantive due process; and, second, the legality of the manner of dismissal, which constitutes procedural due process.^[18] In this case, private respondents failed to observe the second requisite.

In order to comply with procedural due process for termination of employment based on just causes as defined in Article 282 of the Code, the following must be complied with, to wit:

- a) a written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side;
- b) a hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him; and
- c) a written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.^[19]

None of the above requirements was observed by private respondents since they just verbally and summarily terminated petitioner's employment *via* the information coursed through their checker Evelyn. However, although the dismissal was without due process, this Court finds that it was with just cause.

Private respondents claimed that petitioner often went on prolonged absences and even failed to report to work for the whole month of June 2012. Notably, in all of his pleadings found in the record, petitioner never confronted or refuted this allegation of private respondents. We keenly observe that in his pleadings, petitioner had been prompt and specific in addressing all of private respondents' allegations, except that he said nothing about their averment regarding his lamentable attendance. Petitioner's silence on the matter sways Us to conclude that his absences were