

## **EIGHTH DIVISION**

**[ CA G.R. SP NO. 89641, September 11, 2006 ]**

**LUTONG BAHAY FOOD COURT AND MRS. LONIFLOR IMPERIAL,  
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION  
(THIRD DIVISION) AND ANTONIO M. NOBLEZA, RESPONDENTS.**

### **D E C I S I O N**

**CARANDANG, J.:**

This Petition for Certiorari in accordance with Rule 65 of the 1997 Rules of Civil Procedure was instituted to impugn, on ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolutions of the National Labor Relations Commission, Third Division, dated September 30, 2004, and April 11, 2005 in NLRC-NCR-CA No. 039643-04/NLRC-NCR-00-03-01736-2002, which dismissed the appeal interposed by petitioners Lutong Bahay Food Court and its owner/manager Loniflor Imperial from the January 6, 2004 Decision of NCR Labor Arbiter Joel S. Lustria on ground of failure to perfect the appeal within the reglementary period prescribed under the Labor Code, and denying petitioners' subsequent Motion for Reconsideration, respectively (Rollo pp. 23-29).

The antecedents of the case are as follows:

Herein petitioner Lutong Bahay Food Court (LBFC) is a single proprietorship owned by and operating under the management of co-petitioner Loniflor Imperial (Imperial). Sometime in February 1999, Imperial's husband Mario engaged the services of private respondent Antonio Merabuino Nobleza (Nobleza) to work as cook in one of the fast food outlets owned by the Imperials, which is located at Ever Gotesco Mall in Caloocan City. Sometime in May 2001, after the eatery at Ever Gotesco Mall has closed down and ceased operations, Imperial absorbed and continued Nobleza's employment as cook, this time at LBFC's fast food outlet located at North Mall in Caloocan City. In the evening of February 4, 2002, Imperial's daughter Catherine directed the counter girl of LBFC to prepare a double order of sizzling mixed seafoods for her. Accordingly, the counter girl took the order to the kitchen and handed the same to Nobleza for cooking and preparation. As soon as it was prepared, the food was delivered to Catherine, who forthwith brought it home to be savored at the family's dinner. After about an hour, a fuming Imperial called-up LBFC at North Mall to complain about the food, which according to her was bland. After having been informed that Nobleza was the one who cooked the food, Imperial reprimanded Nobleza regarding the sloppy preparation of the viand of mixed seafoods which was supposedly tasteless and cooked "way below standard". Imperial then told Nobleza that if he cannot effectively perform his job, or if he is already unhappy with his work, he must leave LBFC and look for another employment. In response, Nobleza told Imperial that he shall just try to find another job. Starting on February 5, 2002, Nobleza did not report for work anymore.

On March 16, 2002, Nobleza instituted a Complaint before the NCR-North Sector Arbitration Branch of the NLRC for Illegal Dismissal, payment of emoluments and Damages against LBFC and Imperial (Rollo pp. 39-40). On January 6, 2004, after the parties shall have submitted their respective Position Papers, other pleadings and documentary evidence in support of their claims and defenses, NCR Labor Arbiter Joel S. Lustria promulgated a Decision pronouncing that Nobleza was unlawfully terminated from work, thereby disposing thus:

WHEREFORE, premises considered, judgment is hereby rendered finding respondents guilty of illegal dismissal. Respondents are therefore, ordered jointly and severally liable:

1. To pay complainant, the amount of P184,076.66 representing his backwages, computed only up to the promulgation of this decision;
2. To pay complainant, the amount of P36,400.00, representing his separation pay;
3. Other claims are hereby dismissed for lack of merit.

SO ORDERED. (Rollo pp. 94-101)

In disagreement with the judgment of the Labor Arbiter, LBFC and Imperial interposed an appeal before the NLRC through a Memorandum on Appeal on April 12, 2004. The records disclose, though, that the counsel for LBFC and Imperial received an official copy of the Labor Arbiter's January 6, 2004 Decision on March 24, 2004, and therefore it is evident that the appeal was filed 9 days after the 10-day reglementary period for the perfection thereof has expired. On May 14, 2004, the Third Division of the NLRC issued a Resolution dismissing the appeal on ground of failure on the part of LBFC and Imperial to submit an indemnity agreement, which is an essential requirement for perfection of appeals pursuant to Section 6, Rule VI of the NLRC New Rules of Procedure (Rollo pp. 30-31).

LBFC and Imperial thereafter filed a Motion for Reconsideration on June 2, 2004, where they tried to establish that an indemnity agreement was actually prepared and executed through the Philippine British Assurance Company, Incorporated, but they inadvertently omitted to attach a copy thereof when they submitted their Memorandum on Appeal on April 12, 2004 (Record pp. 200-203). On September 30, 2004, the NLRC issued the first assailed Resolution. Noting that an indemnity agreement was indeed executed but it was left out due to mere excusable inadvertence and honest mistake, the NLRC accepted its belated filing. Nevertheless, the NLRC still stood firm in dismissing the appeal, this time on ground of non-perfection thereof within the 10-day reglementary period allowed under Article 223 of the Labor Code (Rollo pp. 27-29).

LBFC and Imperial then lodged a Motion for Reconsideration on October 28, 2004 (Record pp. 215-221). The NLRC denied said Motion in the second assailed Resolution dated April 11, 2005 (Rollo pp. 23-26).

Hence, this Petition for Certiorari, with petitioners raising the following issues: