

SPECIAL THIRTEENTH DIVISION

[SP NO. 111641, October 28, 2010]

**FILWEB SYSTEM TECHNOLOGY AND LARRY MERCADO,
PETITIONERS, VS NATIONAL LABOR RELATIONS COMMISSION
(THIRD DIVISION) AND MA. THERESA A. JASARENO,
RESPONDENTS.**

DECISION

Court of Appeals

Before Us is a *Petition for Certiorari* filed by Petitioners Filweb System Technology and Larry Mercado under Rule 65 of the 1997 Rules of Civil Procedure, seeking to annul and set aside the Resolution (Rollo, pp. 26-29) dated June 30, 2009 of the public respondent National Labor Relations Commission (NLRC), Third Division, Quezon City in NLRC LAC No. 02-000-602-09(8) (NLRC CN. RAB-IV-06-26854-08-L) and its subsequent Resolution (Rollo, pp. 30-34) dated September 15, 2009 which denied the Petitioners' motion for reconsideration.

The instant case stemmed from a complaint for illegal dismissal and nonpayment of night shift differential which Private Respondent Acting Junior Member per Office Order No. 307-10-ABR dated October 22, 2010. Ma. Theresa A. Jasareno (hereinafter Respondent) filed against Filweb System Technology (Filweb for brevity) and Larry Mercado (hereinafter Petitioners).

In her Position Paper (Rollo, 39-45), Respondent alleged that she was hired through the selection process of interview and examination. She alleged that she started working for Filweb in December 2006 and was assigned at the Resume Writing Department. When hired, she was paid P10,000.00 as monthly salary which was later increased to P12,000.00.

In order to accommodate the increase of clientele as well as the demands of her job, she was given the work shift 6:00 A.M. to 6:00 P. M. Later on, her shift was from 7:00 A. M. to 7:00 P.M. until finally it became 9:00 P.M. to 9:00 A.M. She was, however, informed that she is not entitled to night shift differential pay as Filweb pays them on commission.

According to Respondent, the sudden shift of working hours adversely affected her health which necessitated her to take a leave of absence from October 29, 2007 until November 2, 2007. She was likewise unable to report for work on November 21 and November 22, 2007 because she had to attend to her child who then had a viral infection.

She also stated in her Position Paper that she was suspended on September 28, 2007 and was later terminated from service on December 19, 2007.

Refuting the allegations in Respondent's position paper, Petitioners averred that

Respondent was not Filweb's regular employee. At the time of Respondent's service at Filweb, she was always late for work. Even worse, she always incurred absences but failed to present any medical certificate.

Petitioners further alleged that due to Respondent's unexplained absences, her performance was deemed unsatisfactory which resulted to "client refund and chargeback."

Unfortunately, the parties failed to settle the case amicably. On November 19, 2008, the Labor Arbiter rendered a Decision (Rollo, pp. 46-52) and declared that Respondent was illegally dismissed. The dispositive part thereof reads:

"WHEREFORE, premises considered, Respondent Filweb System Technology and/or Larry Mercado, Sole Proprietor thereof, are DIRECTED to pay Complainant Ma. Theresa A. Jasareno separation pay in lieu of reinstatement from the date of her hiring up to the date of the promulgation of this judgment and full backwages and other benefits from the date of her dismissal up to this judgment's promulgation date, as a consequence of her illegal dismissal.

Such awarded claims are computed as follows:

Separation
Pay:

From 1/07
to 11/08
P12,000.00
x 2 yrs. = P24,000.00

Backwages:
From 2/08
to 11/08
12,000 x =
10 mos. P120,000.00
Grand Total P144,000.00

Complainant's claims for night shift differential and for moral and exemplary damages are DISMISSED for lack of merit and lack of jurisdiction, respectively.

SO ORDERED." (Rollo, pp. 51-52)

Aggrieved thereby, Petitioners interposed an appeal to the NLRC, captioned as "*Motion to Dismiss and/or Appeal (With Prayer to Reduce Bond*" (Rollo, pp. 53-59). In the challenged Resolution dated June 30, 2009, *supra*, the NLRC dismissed the Petitioners' appeal as the amount posted as bond clearly fell short of the judgment award of P144,000.00, thus:

"WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for non-perfection.

SO ORDERED." (Rollo, p. 28)

The NLRC likewise denied the Petitioners' subsequent motion for reconsideration per its Resolution issued on September 15, 2009, *supra*.

Hence, this petition anchored on the following grounds-

"THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE CHALLENGED RESOLUTION DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER ON THE GROUND THAT IT WAS FILED BEYOND THE REGLEMENTARY PERIOD FOR FILING A MOTION FOR RECONSIDERATION BEFORE THE NATIONAL LABOR RELATIONS COMMISSION[;] [AND]

"THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE CHALLENGED RESOLUTION DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER ON THE GROUND OF FAILURE TO POST THE REQUIRED APPEAL BOND." (Rollo, pp. 12-13)

Simply stated, the issue is whether or not the NLRC gravely abused its discretion in issuing the assailed Resolutions.

In ascribing grave abuse of discretion upon the NLRC, Petitioners insist that their new counsel who formally entered appearance on July 21, 2009 did not receive a copy of the June 30, 2009 NLRC Resolution, hence, the reckoning date should be their date of receipt on July 22, 2009.

The NLRC did not commit grave abuse of discretion.

Concededly, it is a time-honored principle that administrative and quasi-judicial bodies like the National Labor Relations Commission are not bound by the technical rules of procedure in the adjudication of cases. However, the rule on substitution of counsel or employment of additional counsel is still observed in labor cases. (Gudez, et al. vs. NLRC, et al., 183 SCRA 644, 648 [1990]) Thus, in order to resolve the issue on the timeliness of Petitioners' motion for reconsideration, We must first determine if there was valid substitution of counsel.

The following are the essential requisites of a valid substitution of counsel:

- (1) there must be a written request for substitution;
- (2) it must be filed with the written consent of the client;
- (3) it must be with the written consent of the attorney to be substituted; and
- (4) in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court. (Santana-Cruz vs. Court of Appeals, 361 SCRA 520, 532 [2001])