

SECOND DIVISION

[G.R. No. 224944, May 05, 2021]

REGGIE ORBISTA ZONIO, PETITIONER, VS. 1ST QUANTUM LEAP SECURITY AGENCY, INC. AND ROMULO Q. PAR, RESPONDENTS.

R E S O L U T I O N

LOPEZ, M., J.:

Assailed in this Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court is the Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 141856 dated May 31, 2016, which deleted the award of overtime pay, holiday premium pay, rest day premium pay, and night shift differentials in favor of petitioner Reggie Orbista Zonio (Zonio).

ANTECEDENTS

In his Position Paper^[3] filed before the Labor Arbiter, Department of Labor and Employment, Zonio alleged that on March 13, 2011, he was hired as a security guard by 1st Quantum Leap Security Agency, Inc., owned and managed by respondent Romulo Q. Par (collectively, respondents). Zonio worked seven days a week from 7:00 a.m. to 7:00 p.m., or from 7:00 p.m. to 7:00 a.m., alternately every two weeks, for a monthly wage of P8,500.00. From his wage, a cash bond of P50.00 and P10.00 miscellaneous fee, or a total of P60.00 were deducted every 15 days, or a total of P120.00 every month. Respondents did not pay him for overtime work, work rendered on holidays and rest days, as well as 13th month pay, service incentive leave, and night shift differential.

On April 21, 2014, Zonio, along with some of his colleagues, received a memorandum suspending them from April 21, 2014 to May 20, 2014, for sleeping while on duty. There was no formal investigation conducted. Nonetheless, Zonio served the suspension and reported back to work on May 21, 2014. Respondents, however, refused to accept him.

Thus, Zonio filed a complaint^[4] against respondents for illegal suspension underpayment of salary and 13th month pay; non-payment of overtime and holiday pay; holiday and rest day premiums pay; service incentive leave pay; night shift differential pay; reimbursement of cash bond and miscellaneous fees; moral and exemplary damages; and attorney's fees.^[5]

For its part, respondents justified Zonio's suspension when its inspection team caught Zonio sleeping in his post on April 20, 2014, and took photographs^[6] of him as proof. Respondents directed Zonio to report to the head office to explain, but Zonio disregarded the directive. Thus, in a memorandum dated April 21, 2014,^[7]

respondents suspended him for 30 days, effective April 21, 2014, until May 20, 2014. As to Zonio's money claims, he was oriented as to the salary and benefits to which he is entitled, and he agreed to it. Moreover, Wage Order No. IVA-14, provides that the minimum wage rate does not apply to persons employed in the personal service of another, such as a private security guard like Zonio. Lastly, respondents claimed attorney's fees, and moral and exemplary damages for the besmirched goodwill and reputation that the company suffered by reason of the filing of the complaint.^[8]

In a Decision^[9] dated February 26, 2015, Labor Arbiter Joel A. Allones ruled that Zonio was validly suspended for sleeping in his post as proved by photographs, which Zonio did not dispute. Moreover, Zonio failed to substantiate his claim for payment of overtime and holiday pay; holiday and rest day premiums pay, and night shift differentials pay. Even so, Zonio is entitled to salary differentials for a period of three years counted backwards from the date of his suspension on April 21, 2014; as well as to 13th month pay; the monetization of his service incentive leave, and the refund of the cash bond and miscellaneous fees that were deducted from his salary.

Zonio appealed to the National Labor Relations Commission (NLRC) on the ground that the Labor Arbiter erred in ruling that he is not entitled to the payment of overtime and holiday pay; holiday and rest day premiums pay; night shift differentials pay; and in adopting the computation of Ms. Rachel Z. Averia who failed to include the refund of the cash bond and miscellaneous fees.^[10]

In a Decision dated May 29, 2015,^[11] the NLRC modified the Decision of the Labor Arbiter and ruled that Zonio is entitled to overtime and holiday pay; holiday and rest day premiums pay; and night shift differentials pay.

Respondents filed a petition for *certiorari* with the CA to question the award of overtime and holiday pay, holiday and rest day premiums, and night shift differentials pay in favor of Zonio, and the NLRC's failure to award damages and attorney's fees in their favor.

In the assailed Decision^[12] dated May 31, 2016, the CA partly granted the petition by deleting the award of overtime pay, holiday and rest day premiums pay, and night shift differentials pay.^[13] The CA ratiocinated as follows:

Entitlement to overtime pay must first be established by proof that said overtime work was actually performed, before an employee may avail of said benefit. The same is likewise true for premium pay for holidays and rest days because these benefits are not incurred in the normal course of business. To support his allegations, [Zonio] submitted in evidence photocopies of the entries in the logbook dated 02 June 2012 until 21 August 2012 and semi-monthly payroll report for the period 01 June to 15 June 2013.

However, the photocopies of entries in the logbook do not prove that, indeed, [Zonio] rendered overtime work beyond the normal work hours from 02 June 2012 until 21 August 2012. Rather, the entries were made by [Zonio] and other security guards themselves. Although these entries

were signed by incoming and outgoing security guards. the same were not countersigned by their supervisor or any authorized representative from the place where they were designated. As such, it raises serious doubt as to whether [Zonio] actually rendered work on a given date and time.

Moreover, the semi-monthly payroll report presented by [Zonio] indicated that it only covered the period of 01 June to 15 June 2013 as opposed to the entries in the logbook which were all dated 2012. In other words, the payroll report submitted by [Zonio] does not clearly reflect that he performed overtime work during the period of 02 June 2012 until 21 August 2012 as indicated in the photocopies of the entries in the logbook.

(Zonio] likewise failed to adduce concrete proof showing that he had rendered service during regular holidays or that he had rendered service between 10:00 p.m. and 6:00 a.m., so as to entitle him to premium pays and night shift differential. Thus, We find that the NLRC gravely erred in awarding him said benefits.^[14] (Citation omitted.)

In this petition, Zonio contends that the CA erred in deleting the award of overtime pay, holiday and rest day premiums pay, and night shift differentials pay. The entries in the logbook, which are the bases of Zonio's claim, contained the details of Zonio's shifts from June 2, 2012 to August 21, 2012. Respondents did not assai1 the entries in the logbook when Zonio first presented it before the Labor Arbiter. It is only in respondents' motion for reconsideration of the NLRC Decision that they questioned it. However, respondents did not present their own records, such as Zonio's daily time records, to contradict Zonio's claims.

In their comment,^[15] respondents countered that the petition is premature and must be denied because Zonio did not file a motion for reconsideration of the CA Decision before filing the present petition. In any case, Zonio has the burden to prove entitlement to his money claims, but he failed to discharge this burden. The entries in the logbook are not credible since these were not countersigned by any representative of the respondents. Though respondents questioned the authenticity of the logbook only before the NLRC, the NLRC is not precluded from resolving the issue, considering that labor proceedings are not bound by technicalities of law or procedure.

RULING

The petition is partly meritorious.

A motion for reconsideration is not required for the filing of a petition for review on certiorari under Rule 45.

Rule 45 of the Rules of Court does not require the filing of a motion for

reconsideration for this Court to take cognizance of appeals through petitions for review on *certiorari*.^[16] Sections 1 and 2 of this Rule pertinently provide:

SEC. 1. *Filing of petition with Supreme Court.* - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

SEC. 2. *Time for filing; extension.* - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, **or of the denial of the petitioner's motion for new trial or reconsideration** filed in due time after notice of the judgment. On motion duly filed and served, with full payment x x x. (Emphases supplied.)

These provisions clearly do not require the filing of a motion for reconsideration as a condition precedent. Section 2 states that "*the petition shall be filed x x x from notice of judgment x x x appealed from, or of the denial of the petitioner's motion for new trial or reconsideration x x x.*" The use of the word "or" indicates an alternative or choice, as opposed to being mandatory. Verily, the petitioner has an option to file a motion for reconsideration of the judgment or final order or resolution appealed from, or directly file an appeal or a petition for review to the appellate court without filing a motion for reconsideration, as what Zonio did.

Meanwhile, the cases^[17] cited by respondents that emphasize the necessity of a motion for reconsideration involve a petition for *certiorari* under Rule 65, and not a petition for review under Rule 45. Corollarily, one of the distinctions between Rule 45 and Rule 65 lies on the necessity of a motion for reconsideration. *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*^[18] distinguished the two actions on this regard:

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for *certiorari*, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.^[19] (Citation omitted.)

Thus, Zonio's petition was properly filed.

The factual findings of administrative bodies are accorded great weight and respect and even finality by this Court, except when their findings