

THIRD DIVISION

[G.R. No. 162332, August 28, 2008]

**HERBERT SOLAS PETITIONER, VS. POWER TELEPHONE SUPPLY
PHILS., INC., DERWIN OTWELL, * PELAGIO BATTUNG, JR.* AND
FRANKLIN QUIACHON,* RESPONDENTS.****

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Decision of the Court of Appeals (CA) dated September 12, 2003^[1] dismissing the petition for *certiorari* filed by Herbert Solas (petitioner).

The antecedent facts, as accurately summarized by the CA, are as follows.

On 16 August 1997, Herbert Solas entered into a contract of employment with Power and Telephone /Supply Philippines, Inc., to be the Assistant Sales Manager of the company with a monthly salary of P21,600.00, excluding bonuses and commission.

On 06 November 1998, private respondent company granted petitioner Herbert Solas and Franklin D. Quiachon an amount of P85,418.00 each, corresponding to their sales commission from the month of January to June of 1998. From that time up to the present, no other sales commission was ever again given to them.

Thus, on 04 February 2000, petitioner requested for the release of his alleged commission which had already accumulated since July of 1998. However, in an inter-office memorandum, said request was denied, and instead, petitioner was even mandated to settle his outstanding obligation with the company.

On 07 February 2000, petitioner likewise received another memorandum requiring him to return the issued cellular phone, car and key to his office, which he allegedly all complied. Petitioner averred that these were all forms of harassment including the non-payment of his salary for the month of February 2000, and onwards. Hence, on 15 February 2000, he instituted a case for illegal constructive dismissal, recovery of 10% sales commission on gross sales, and attorney's fees.

In response, private respondents maintained that there was no agreement, written or oral, which talked of the grant of 10% commission on gross sales to sales agent, nor was there a CBA on the matter. There was even no CBA to speak of, since the company had no union, with its

employees numbering only to less than 10, all being fixed-salaried employees. The company gave bonuses when there was an income, but these were purely on the liberality of the company, subject to the availability of funds and profits. Besides, petitioner has actually no client of his own from whom he could close sales, thus the claim for commission was utterly baseless.

Private respondents maintained also that the claim of petitioner that he was constructively dismissed, was without basis. Beginning 02 February 2000, petitioner's attendance was already irregular. On 11 February 2000, he was on absence without leave. He was sick and had a growing lump on his left shoulder. It was this absence without leave which prompted private respondents to write several memoranda to petitioner, one advising him to return to work immediately, as his continued absence was inimical to the company; the other, directing him to explain his continued unauthorized absences within 24 hours from receipt of the memo.

Private respondents asserted further that neither the order directing petitioner to return the company car, the issued cellular phone and keys, nor the deductions made on his salary, could constitute as basis for his alleged constructive dismissal, all allegations being baseless and without merit. Thus, private respondents prayed for an order directing petitioner to pay the latter's debt with the company, and an award amounting to P100,000.00 as attorney's fees, as well as the dismissal of petitioner from employment.

The parties submitted their position papers. On 31 August 2000, the Labor Arbiter rendered a decision finding for the petitioner Herbert Solas, the dispositive portion of which states:

"WHEREFORE, premises considered, respondents are hereby ordered to pay the complainant the amount of P892,780.37 as sales commission, and clearly computed appearing as Annex "K-K1" and "K-3" of complainant's position paper. Complainant is also entitled to six (6) months backwages and separation pay of one month for every year of service and 10% attorney's fees, as computed below by the Research and Information Unit of the Commission:

x x x x

SO ORDERED.^[2]

Respondents appealed to the National Labor Relations Commission (NLRC), which reversed and set aside the decision of the Labor Arbiter (LA). The NLRC ruled that that there was no constructive dismissal in this case, because petitioner never resigned but merely filed an indefinite sick leave, even admitting during the preliminary hearings that he was still an employee of respondents, and his principal claim was for payment of his sales commission. Furthermore, the NLRC saw no badge of constructive dismissal in respondents' action of applying petitioner's salary for the month of February 2000 as payment for his debts to the company amounting to P95,000.00. It was also held that petitioner failed to establish that there was an

agreement between him and respondent employer for a 10% sales commission, and that he failed to establish the origin and authenticity of the specific amount of the commission being claimed by him.

Petitioner filed a motion for reconsideration of the NLRC Decision, but the same was denied *per* Resolution dated September 24, 2002.

From such adverse judgment, petitioner elevated his case to the CA *via* a petition for *certiorari*. On September 12, 2003, the CA promulgated the assailed Decision affirming the NLRC ruling, stating thus:

An examination of the resolution of the public respondent shows no patent and gross error amounting to grave abuse of discretion. **In reversing the labor arbiter, public respondent NLRC rightly held that petitioner Herbert Solas did not really quit from his employment, nor did he involuntarily resign from his office. What he did was merely to file an indefinite sick leave.** As aptly observed by public respondent, if indeed petitioner resigned from his post, he should have filed a resignation letter, not an indefinite sick leave. **His contention that the non-payment of his salary for the month of February 2000 and onwards bolsters even more his claim of constructive dismissal, is without merit.** Petitioner has outstanding loans with private respondent. Thus, **it is more logical to conclude that the reason why he did not receive his salary for the month of February 2000, was due to the off-setting made by the company of his cash advances amounting to about P95,000.00.**

Anent the issue of 10% commission, We find no sufficient basis to grant the claim of petitioner, having no satisfactory evidence to prove his entitlement thereto. What the petitioner did in this case was merely to present a certificate of employment which merely confirms the fact that he is an employee of the company and is receiving the amount provided therein as his salary, exclusive of any bonuses and commission, and nothing more. Consequently, we cannot grant petitioner's claim of commission on the basis of the certificate of employment alone. Assuming, *arguendo*, that the certificate on its face speaks of petitioner's entitlement to commission, then, the same, however, does not provide for its percentage. **The records attest that petitioner has not presented sufficient evidence to bolster his claim that he is entitled to a 10% commission.** His self-serving allegations are not sufficient to justify the claim.^[3] (Emphasis supplied)

In its Decision promulgated on September 12, 2003, the CA dismissed the petition for lack of merit.^[4] Petitioner's motion for reconsideration of the foregoing decision was denied *per* Resolution dated February 12, 2004.

Petitioner then filed the present petition for review on *certiorari*, alleging that:

- I. THE PUBLIC RESPONDENT COURT OF APPEALS PATENTLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE NLRC FINDING THAT THERE WAS NO ILLEGAL

DISMISSAL.

II. THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE DECISION OF THE NLRC DELETING THE VARIOUS MONEY CLAIM AWARDED IN FAVOR OF THE PETITIONER.^[5]

Respondents counter by stressing that the NLRC Decision has become final and executory, and insists that the NLRC and the CA committed no error in ruling that petitioner was not constructively dismissed.^[6]

The Court finds the petition unmeritorious.

However, at the outset, respondents must be disabused of their belief that since no appeal may be taken from the NLRC Decision, then the same can no longer be altered. In *Panuncillo v. CAP Philippines, Inc.*,^[7] the Court explained that:

x x x while under the sixth paragraph of Article 223 of the Labor Code, the decision of the NLRC becomes final and executory *after the lapse of ten calendar days from receipt thereof by the parties*, **the adverse party is not precluded from assailing it via Petition for Certiorari under Rule 65 before the Court of Appeals and then to this Court via a Petition for Review under Rule 45.** x x x^[8] (Emphasis supplied)

Rule 65 gives the adverse party, petitioner in this case, 60 days from the date of receipt of the order denying petitioner's motion for reconsideration within which to file a petition for *certiorari* with the CA. Thus, petitioner took the proper procedural steps to question the NLRC Decision before the CA.

As to the merits of the petition, our oft-repeated ruling, reiterated in *Reyes v. National Labor Relations Commission*,^[9] must be emphasized, to wit:

x x x findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.

x x x x

x x x Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.^[10]

The CA affirmed the finding of the NLRC that petitioner's salary for February 2000 was applied as payment for his cash advances from the company amounting to about P95,000.00. The CA likewise upheld the NLRC's finding that the evidence on record was insufficient to establish either that there was an agreement between petitioner and respondents or that it was company policy to give commissions to employees.