

SECOND DIVISION

[G.R. NO. 147142, February 14, 2005]

ANGELITO CABATULAN, PETITIONER, VS. HON. MUSIB M. BUAT, PRESIDING COMMISSIONER, OSCAR M. ABELLA AND LEON G. GONZAGA, JR., (BOTH COMMISSIONERS), NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), CAGAYAN DE ORO CITY, J.C. TRUCKING, JULIO COSMIANO, AND CECILIA COSMIANO, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review under Rule 45 of the Rules of Court assailing the Decision^[1] and the Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 52576 which reinstated the May 28, 1997 Resolution^[2] of the National Labor Relations Commission (NLRC) in NLRC No. RAB-11-06-00481-93.

The Antecedents

The respondent spouses Julio and Cecilia Cosmiano were engaged in the trucking business under the business name "J.C. Trucking," with principal office at Comawas District, Mangagoy, Bislig, Surigao del Sur. They rented out heavy equipment such as dump trucks, bucket loaders, fork loaders and log haulers.

On March 16, 1987, the respondent spouses employed Angelito Cabatulan, a close relative of Julio, as operations manager and purchasing officer of J.C. Trucking. On April 8, 1993, the respondent spouses and their children went on a world tour and entrusted the business operations of J.C. Trucking to Cabatulan.

On May 11, 1993, an altercation ensued between Cabatulan and Isidro Alaan, a member of the Philippine National Police of Tago, Surigao del Sur, because of a disagreement in the purchase of some spare parts. Alaan served as Julio's security aide, then a Sangguniang Panlalawigan Board Member. At about 1:30 p.m. of the same day, Cabatulan was informed that Vincent Cosmiano, respondent Julio Cosmiano's brother, wanted to see him. Before proceeding to the meeting place, Cabatulan passed by the premises of J.C. Trucking but was refused admission by Alaan who was armed with an armalite rifle. Vincent Cosmiano advised Cabatulan not to report for work in the meantime and await the arrival of the respondent spouses. Cabatulan agreed and immediately went home.

On May 25, 1993, Cabatulan reported for work, knowing that the respondent spouses would be arriving from their trip that day. Cabatulan was summoned to the Cosmiano residence the next day, and was told that his services were no longer needed in the business. On May 27, 1993, Cabatulan was given a pre-drafted voluntary resignation letter which he refused to sign. The following day, respondent

Julio Cosmiano offered him P5,000.00 should he agree to sign the resignation letter. Cabatulan adamantly refused to sign the same.

On June 11, 1993, Cabatulan filed a complaint for illegal dismissal, underpayment of wages, unpaid wages, proportionate 13th month pay, and attorney's fees against the respondent spouses Cosmiano.

By way of defense, the respondent spouses alleged that, upon their arrival from abroad, the other employees petitioned for Cabatulan's dismissal as the latter was abusive. They also learned that Cabatulan maintained a scandalous and adulterous relationship with their comptroller, Anelie P. Manzano, and that he attempted to make sexual advances to Jusilita Batong, the wife of their driver. The respondent spouses maintained that the complainant abandoned his job on May 11, 1993, after he had a disagreement with Alaan over the purchase of certain spare parts for their loader.

Alaan maintained, in both his sworn statement^[3] and testimony, that his altercation with Cabatulan stemmed from the latter's purchase of a fuel pump in Davao instead of Monark Engineering where they usually acquired their materials because of its convenient location within the company's compound and its relatively cheaper prices.

On October 22, 1996, the Labor Arbiter rendered a decision in favor of Cabatulan. The *fallo* of the decision reads:

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered:

(1.) Declaring the termination of complainant illegal;

(2.) Ordering respondents J.C. Trucking/Spouses Julio and Cecilia Cosmiano to jointly and severally pay the complainant the following:

| | |
|---|----------------------------|
| 1. backwages for three years less whatever income received by the complainant during the period | P 126,000.00 |
| 2. separation pay at one month pay for every year of service | 35,700.00 |
| 3. unpaid wages from May 11 to 26, 1993 | 1,750.00 |
| 4. 13 th month pay for 1991, 1992 and 1993 (prop.) | 4,985.18 |
| 5. moral damages | 100,000.00 |
| | ===== |
| | P 268,435.18 |
| 6. 10% attorney's fees | 26,843.52 |
| | ===== |
| TOTAL AWARD | <u>P 295,278.70</u> |

The computation of this Office Fiscal Examiner Mrs. Grace Dolly P. Guanzon is hereby attached as part of the record.

(3.) Dismissing all other money claims for lack of merit.

SO ORDERED.^[4]

On appeal by the respondent spouses, the NLRC issued a Resolution on May 28, 1997 affirming, with modification, the decision of the Labor Arbiter. The NLRC ruled that Cabatulan was illegally dismissed, and that his failure to report to work after the May 11, 1993 incident was a gesture of respect to the advice of Vincent Cosmiano, to preclude any further physical confrontation with Alaan. According to the NLRC, Cabatulan heeded the advice, considering that Vincent Cosmiano was the brother of his employer and exercised moral ascendancy over him. Thus, the NLRC concluded that the complainant had no intention to abandon his job, particularly since he personally saw respondent Julio Cosmiano as soon as the latter arrived from his trip abroad on May 25, 1993. However, the NLRC reduced the monetary awards in favor of Cabatulan to P168,435.18, deleted the awards for moral damages, and reduced the award for attorney's fees. The decretal portion of the May 28, 1997 Resolution reads:

WHEREFORE, the appealed decision is Affirmed, subject to the modification that the portion thereof granting moral damages to complainant Angelito Cabatulan is deleted for lack of legal and factual bases. The monetary award in favor of complainant is therefore fixed in the amount of P168,435.18 while the award of attorney's fees is correspondingly reduced to P16,843.52.

SO ORDERED.^[5]

Cabatulan did not file any motion for the reconsideration of the May 28, 1997 Resolution of the NLRC. Upon the respondent spouses' filing of a motion for reconsideration thereof, the NLRC granted the same in a Resolution dated December 12, 1997. The award for backwages and accrued salaries was deleted, and in lieu thereof, Cabatulan was awarded separation pay and indemnity. The decretal portion of the resolution reads:

WHEREFORE, the resolution the Commission rendered on May 28, 1997 is further modified in accordance with the foregoing disposition and the complaint for illegal dismissal dismissed for lack of merit. Accordingly, the awards for backwages and payment of accrued salaries from May 11 to 26, 1993 are deleted for lack of bases. However, the award for separation pay which is sustained is fixed in the equivalent of one-half (1/2) month pay for every year of service or in the sum of P17,850.00 in favor of complainant as a measure of social justice. Respondents are, likewise, assessed to pay complainant an indemnity in the amount of P2,000.00 and in addition, the award for proportionate 13th month pay is also sustained. Finally, the award for moral damages and attorney's fees is deleted for lack of bases. This is without prejudice to the right of respondents to set off the monetary awards of any accountability by complainant preparatory to the execution stage after due proceedings.

SO ORDERED.^[6]

This time, Cabatulan filed a motion for reconsideration dated January 16, 1998 of the December 12, 1997 Resolution, and prayed that he be granted all the reliefs under the decision of the Labor Arbiter and the May 28, 1997 Resolution of the NLRC:

IN VIEW OF ALL THE FOREGOING, it is respectfully prayed of the Honorable Commission that the RESOLUTION dated December 12, 1997, (*sic*) be reconsidered and another be issued granting all the reliefs and remedies, as are consistent with the facts, evidence, the law and jurisprudence – as had been laid out in the POSITION PAPER of complainant and in the DECISION of October 22, 1996 by Labor Arbiter Antonio Villanueva and the RESOLUTION dated May 28, 1997 of this Honorable Court – with stress, however, that the reliefs and remedies should be consistent with the jurisprudence in the *Osmalik S. Bustamante vs. NLRC and Evergreen Farms and others* which are applicable on the matter of “moral damages” and “attorney’s fees.”^[7]

Upon the denial of the motion, per the Resolution of the NLRC, dated February 27, 1998, Cabatulan filed a petition for certiorari under Sections 1 and 4 of Rule 65 of the Rules of Court before the CA for the nullification of the NLRC’s Resolutions promulgated on December 12, 1997 and February 27, 1998, respectively.

In its comment on the petition, the Office of the Solicitor General recommended the reversal of the assailed resolutions of the NLRC.

On March 14, 2000, the CA rendered a decision granting the petition and maintaining the May 28, 1997 Resolution of the NLRC. The dispositive portion reads:

WHEREFORE, the foregoing considered, the petition is **GRANTED**. Respondent NLRC’s Resolutions dated 12 December 1997 and 27 February 1998 are **nullified** and **set aside** and its Resolution dated 28 May 1997 is reinstated.

SO ORDERED.^[8]

Cabatulan filed a motion for partial reconsideration of the decision, praying that he be awarded all the monetary awards and/or benefits under Article 279 of the Labor Code of the Philippines. The respondent spouses, on the other hand, filed a motion for reconsideration of the decision, contending that the dismissal of the petitioner was for a just cause and, as such, was valid.

On January 15, 2001, the CA denied both motions for lack of merit. The appellate court held that Cabatulan was not entitled to backwages under Article 279 of the Labor Code of the Philippines because he did not appeal the decision of the Labor Arbiter nor file a motion for the reconsideration of the May 28, 1997 Resolution of the NLRC.

Cabatulan, now the petitioner, filed the instant petition, raising the threshold issue of whether or not he is entitled to backwages and other monetary benefits under Article 279 of the Labor Code of the Philippines, notwithstanding his failure to file a