

FIRST DIVISION

[G.R. No. 121147, June 26, 1998]

**ANTONIO SURIMA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION AND LORETA PEDIAPCO LIM,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

ANTONIO SURIMA filed on 11 September 1990 a complaint against private respondent Loreta Padiapco Lim for overtime pay, 13th month pay, service incentive leave pay, premium pay for holidays and rest days, and underpayment of wages. He alleged that he started working with private respondent in 1983 as cashier of *Horace P. Lim Construction Supply*, named after her son Horace, located in San Jose, Antique. In the same establishment he was also tasked with selling rice and rice husk. Still another job he held for her was as collector of rentals for her three (3) buildings.

Sometime in 1989 petitioner Surima was transferred to Sibalom, Antique, where he worked again as cashier but this time at private respondent's *Caltex* gasoline station. In August of the same year he also became a salesman in a drugstore owned by her although during harvest seasons he would be placed in charge of her business of buying and selling *palay*. He was earning at that time a monthly salary of P1,000.00.

On 1 October 1990, or almost three (3) weeks after he filed his complaint, petitioner was allegedly dismissed without just cause, hence his additional claim for back wages, reinstatement and attorney's fees.

Private respondent contended that petitioner was first employed by her son Horace. In July 1989, when the latter's business floundered and eventually ceased to operate, she hired petitioner as domestic helper receiving an income of P250.00 per week with free board and lodging. He also worked in her drugstore but only occasionally. On 1 October 1990 he left his work.

The Labor Arbiter did not sustain the claim of illegal dismissal for lack of evidence. On the other hand, he upheld the contention of private respondent that she hired petitioner only in July 1989 for which he was adequately compensated. Thus on 26 June 1991 the complaint was dismissed.^[1]

On appeal, the National Labor Relations Commission (NLRC) viewed the case differently. According to public respondent, respondent Loreta Padiapco Lim had the burden of producing the employment records of her business enterprise as proof that petitioner was not in any way connected with any of her businesses since 1983. She failed to discharge this burden. Even granting that petitioner initially worked with her son Horace, the undisputed fact is that her son's business did not have a separate personality of its own. Thus, it is not difficult to conclude that the business

enterprises where petitioner worked belonged to one and the same owner, private respondent herself, hence," the finding of the NLRC that petitioner had been her employee since 1983.

Furthermore, the NLRC took into account the fact that only a day after petitioner allegedly left his work his counsel sent private respondent a letter protesting his termination from the service. This prompt recourse to legal assistance was considered inconsistent with the claim of abandonment. Moreover, there was not even a compliance by private respondent with the legal requisite of notice to petitioner at his last known address.

As a consequence, the NLRC concluded that petitioner was illegally dismissed so that he was entitled to reinstatement with back wages. However, due to the strain in the relationship of the parties and the lapse of time, separation pay in lieu of reinstatement was considered by the NLRC to be more feasible under the circumstances. Petitioner was likewise declared entitled to wage differentials, 13th month pay, service incentive leave pay and attorney's fees, but his other claims were denied for lack of basis. Thus on 12 January 1995 private respondent Loreta Padiapco Lim was ordered to pay petitioner the following amounts -

1. Back Wages (1 Oct. 1990 to 30 Sept. 1993)

a. Basic Salary

P1,000/mo. x 36 mos. (3 yrs.) P 36,000.00

b. 13th Month Pay

P92.50/da. x 26 das./mo. x 3 yrs.P 7,215.00

c. Service Incentive Leave Pay

P92.50/da. x 5 das./mo. x 3 yrs.P 1,387.50

P44,602.50

2. Separation Pay (8 yrs./length of service
+ 3 yrs./1 Oct. 1990 to 30 Sept. 1993)

P92.50/da. x 26 das./mo. x 11 yrs.
.P26,455.00

3. Wage Differentials
(1 Oct. to 26 Nov. 1990)

P75.00 - MWR (Minimum Wage Rate)

P38.46 - ASR (Actual Salary Rate)

P36.50 x 52 das./2 mos.P 1,900.08

(27 Nov. 1990 to 28 Dec. 1990)

P82.50 - MWR (Minimum Wage Rate)

P38.46 - ASR (Actual Salary Rate)

P44.04 x 27 das./1 mo.P 1,189.08

(29 Dec. 1990 to 30 Sept. 1993)

P92.50 - MWR (Minimum Wage Rate)

P38.46 - ASR (Actual Salary Rate)

P54.04 x 861 das./33 mos. P46,528.44

P49,617.60

4. 13th Month Pay

1990 - P75.00/da. x 26 das. P 1,950.00

1991 - 92.50/da. x 26 das. 2,405.00

1992 - 92.50/da. x 26 das. 2,405.00

1993 - 92.50/da. x 26 das./mo.

x 9/12 mos. . . . 1,803.75

P 8,563.75

5. Service Incentive Leave Pay

P92.50 x 5 das./yr. x 3 yrs.

. P 1,387.50

Total Money Claims

. P130,626.35

6. Attorney's Fees of 10%

. P13,062.63

GRAND TOTAL -

. P143,688.98^[2]

Private respondent moved for reconsideration while petitioner moved for recomputation of the awards. However, both motions were denied on 19 May 1995.

^[3] The NLRC found private respondent's motion without merit while that of petitioner was filed beyond the 10-day reglementary period. The records showed that petitioner received copy of the decision on 23 January 1995 but moved for recomputation only on 13 February 1995 after the decision became final and executory on 2 February 1995.

Private respondent then resorted to this Court in G.R. No. 120404 but her petition was dismissed for failure to show grave abuse of discretion on the part of the NLRC.

^[4] The dismissal became final and executory on 28 August 1995.^[5]

For his part, petitioner filed the instant petition assailing the NLRC for its grave abuse of discretion in the computation of his monetary awards and prayed that it be required to make the necessary recomputation. Petitioner alleges that the NLRC has contravened settled jurisprudence when it limited the period of his entitlement to back wages, separation pay, wage differentials, 13th month pay and service incentive leave pay to only three (3) years reckoned from the time of his illegal dismissal. He also asserts that additional awards of wage differentials, 13th month pay and service incentive leave pay should be granted to him covering the three-year period prior to the filing of the complaint since money claims prescribe in three (3) years.

Respondent counters that inasmuch as petitioner failed to timely move for reconsideration he could no longer seek other reliefs, and that it is perfectly within the discretion of the NLRC to limit the award of back wages to three (3) years since it is not her fault that it took approximately four (4) years for the appeal to be