CEBU CITY

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 07387, January 30, 2015]

G & S TRANSPORT CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 7TH DIVISION, CEBU CITY, ALEXANDER D. ROSALES, JUANITO S. MAGSILONG, JR. AND ALFONSO E. ARROGANTE, RESPONDENTS.

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Before this court is a petition for certiorari filed under Rule 65 of the 1997 Revised Rules on Civil Procedure, as amended seeking to annul and set aside the Decision[1] dated June 29, 2012, of the National Labor Relations Commission, Seventh Division, Cebu City, in NLRC Case No. VAC-02-000085-2012, which reversed and set aside the Decision[2] dated November 29, 2011, of the NLRC, Regional Arbitration Board Branch VII, Cebu City in RAB Case No. VII-05-0852-11.

Also assailed is the Resolution[3] dated September 24, 2012 which denied petitioner's Motion for reconsideration.

THE FACTS:

Petitioner G & S is a corporation engaged in rent-a-car business represented by its Cebu manager, Cherry Bennish.

Respondents Alexander Rosales, Juanito Magsoling, Jr., and Alfonso Arrogante worked as drivers for petitioner G & S Transport Corporation. They have worked for petitioner corporation for several years already – Alexander since February 23, 2003, Juanito since July 25, 2007 and Alfonso since May, 2003. Their tour of duty had been divided into three groups as follows: 1) first shift- 6:00 AM to 3:00 PM; 2) second shift- 2:00 PM to 11:00 PM and 3) third shift- 10:00 PM to 7:00 AM, with each shift bearing nine (9) hours of work. Respondents asked management if they could use one hour for break time but Cherry Bennish told them she could not change the policy of the company and that she had no authority to change the number of working hours. She likewise told them that they could still take a break when there is no customer for a certain period of time. In turn, respondents requested that if the nine-hour work policy could not be changed, then, they could at least be given overtime pay for the excess of eight hours of work. Petitioner, however, insists that it is not liable for the one hour excess of work everyday.

Respondents filed a Complaint before the Department of Labor and Employment (DOLE).

On June 9, 2010, Labor Inspector Engr. Vicente Abordo inspected the branch office of petitioner in Lapu-Lapu City and found that: *"Payrolls were not available during inspection. However, per random interview and the Complaint/Affidavit of complainants, noted was a violation on overtime (non payment), affecting 14 workers in the total amount of P 489,376.10 (see attached computation)."*

On September 8, 2010, petitioner manifested to contest the findings during the first summary investigation. An oral objection was reiterated by petitioner during the second summary investigation. Before the DOLE could make a final resolution on the controversy, the Regional Director endorsed the case to the Regional Arbitration Branch No. VII of the National Labor Relations Commission (NLRC). Thus, respondents filed their respective complaints for unfair labor practice, overtime pay and regularization before said office docketed as NLRC RAB-VII Case4 No. 05-0852-11.

Subsequently, the parties filed their respective position papers.

In its position paper, petitioner contended that respondents have no basis for their claims of overtime pay and unfair labor practice and that they are mere project employees. Also, petitioner averred that Cherry Bennish is not a real-party-in-interest and should be dropped as co-party.

On the other hand, respondents asserted in their position paper that they should be declared as regular employees of petitioner corporation. They posited that they are required to be in their workplace for nine hours under three different work shifts. In short, their working time is nine hours daily. While waiting to be engaged by prospective customers, respondents had to be designated in the waiting area ready to answer any call by the dispatchers and they were not allowed to leave the area for a longer period of five minutes. According to respondents, work in excess of eight hours a day is compensable as overtime and is compensable even if the worker is not really working. Hence, respondents prayed for the award of their one-hour daily overtime pay since the start of their employment, payment of the one-hour excess of the nine-hour daily work shift or in the alternative, to allow them to enjoy their daily one hour lunch/meal break.

The Labor Arbiter's Ruling:

On November 29, 2011, Labor Arbiter Maria Ada Aniceto-Veloso rendered a Decision[5], the pertinent portion of which reads:

> *"WHEREFORE, premises considered, herein complainants are considered project employees by the nature of their employment contracts with respondent G & S TRANSPORT CORPORATION.*
>
> *However, salary differentials are hereby awarded to the complainants, as follows:*
>
> 1. Alexander Rosales - P 13,544.00
> 2. Juanito S. Magsoling - P 1,080.00
> 3. Alfonso E. Arrogante, Jr. P 13,544.00

Total	P 28,128.00

All other claims are dismissed for lack of merit.

SO ORDERED."

Aggrieved, petitioner filed a partial appeal with the National Labor Relations Commission, Fourth Division, Cebu City praying for the reversal of the award of salary differentials to respondents.

Too, respondents filed their appeal on the grounds that the Labor Arbiter erred in declaring them as project employees and in finding that they have been working only for eight hours during their period of employment .

The NLRC Ruling:

On June 29, 2012, the NLRC, Fourth Division, Cebu City rendered a Decision[6], reversing the Labor Arbiter's Decision, the pertinent portion of which reads as follows:

"Thus, contrary to the finding of the Labor Arbiter, We do not simply ascribe validity on the fact that complainants' project employment agreements were completed. Evidently, complainants must be declared regular employees.

As regards their claim for overtime pay, however, We agree with the finding below that there is no basis therefor. Apart from the fact that there is actually nothing on record that establishes complainants' entitlement to this benefit, complainants are correctly considered to be field workers who are not entitled to overtime pay.

Finally, on the award of salary differentials, We find the same misplaced.

Section 7, Rule V of the 2005 of the Revised Rules of Procedure of the NLRC, which was then in force at the time of complainants' filing of their complaint, mandates:

SECTION 7 – SUBMISSION OF POSITION PAPER AND REPLY -

x x x x x x
b) The position papers of the parties shall cover only those claims and causes of action raised in the complaint or amended complaint, excluding those that may have been amicably settled, and accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony.
X x x x x x
It is clear, therefore, that parties shall not be allowed to allege facts or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.

Records of the case reveal that complainants did not expressly claim and,

in fact, had not identified underpayment of wages as a cause of action in their complaint. The said claim was likewise not substantiated, or in the least, discussed in complainants' position paper. Yet, the Labor Arbiter proceeded to grant said salary differentials to complainants in the total amount of P 28,128.00.

We rule, therefore, that the Labor Arbiter had no authority to pass upon and resolve an issue and grant a claim which was not pleaded and proved before her in the first place. By granting salary differentials which was a claim not identified by complainants in their complaint, the Labor Arbiter acted without authority, and consequently, in excess of her jurisdiction. Consequently, the grant of salary differentials must be deleted.

WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and SET ASIDE and NEW ONE ENTERED deleting the award of salary differentials and declaring complainants as regular employees of respondent G & S Transport Corporation but are not entitled to overtime pay.

SO ORDERED."

Dissatisfied, petitioner filed a Motion[7] for partial reconsideration on the following grounds: (1) there is no such cause of action as regularization under the Labor Code and (2) complainants are project employees as distinguished from regular rank and file employees of the company.

Said motion was denied in a Resolution[8] dated September 24, 2012.

Hence, this petition for certiorari.

THE ISSUES:

I.

"WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ENTERTAINING THE COMPLAINTS FOR REGULARIZATION AND DECLARING PRIVATE RESPONDENTS REGULAR EMPLOYEES AS DISTINGUISHED FROM PROJECT OR PROJECT-BASED EMPLOYEES;

IA.

WHETHER OR NOT A COMPLAINT FOR REGULARIZATION CANNOT PER SE BE THE PRINCIPAL CAUSE OF ACTION UNDER THE LABOR CODE, AS AMENDED;

1B.

ASSUMING THAT THE ISSUE CAN BE ADJUDICATED, THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING PRIVATE RESPONDENTS REGULAR EMPLOYEES. "