

## NINETEENTH DIVISION

[ CA-G.R. SP. NO. 06918, January 30, 2015 ]

**TRASS CONSTRUCTION, CO. INC. / JOSEPH M. TAN,  
PETITIONERS, VS. ROLIE C. VILBAR AND GILBERTO D. ORIÑO;  
AS PRIVATE RESPONDENTS AND HON. VIOLETA ORTIZ-BANTUG,  
PRESIDING COMMISSIONER, NATIONAL LABOR RELATIONS  
COMMISSION, 7<sup>TH</sup> DIVISION, CEBU CITY, PHILIPPINES, AS  
PUBLIC RESPONDENT, RESPONDENTS.**

### D E C I S I O N

**LAGURA-YAP, J.:**

This is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul or set aside the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> dated December 29, 2011 and February 29, 2012, respectively, rendered by the National Labor Relations Commission (NLRC), Seventh Division, Cebu City in NLRC Case No. VAC-09-000723-2011 (RAB Case No. VII-01-0189-2011).

#### ***Factual Antecedents***

On January 21, 2011, private respondents Rolie C. Vilbar (Vilbar) and Gilberto D. Oriño (Oriño) filed a Complaint<sup>[4]</sup> against TRASS Construction, Co. Inc.<sup>[5]</sup> / Joseph M. Tan before the NLRC, Regional Arbitration Branch No. VII (RAB VII), Cebu City for Illegal Dismissal, Premium Pay and Damages docketed as NLRC RAB-VII Case No. 01-0189-11.

The private respondents alleged that Oriño started working for TRASS in April 1996. He was a regular worker, who worked continuously for one construction project after another, with one construction project overlapping another at times, as follows:

1. 1996-1997      Waterfront Mactan
2. 1997-1998      Robinson's Bacolod and back to Waterfront
3. 1999-2000      ManilaBank Cebu
4. 2001-2002      Iloilo
5. 2003-2004      Casino Espanol then Shangri La Mactan

6. 2005-2006 Liberty Warehouse then Banilad Town Center
7. 2007-2008 Centurion Training Center and Foxgate Call Center, Cebu
8. 2008-2010 Filinvest Seascap, Lapu-Lapu City
9. 2010-2011 USC Dormitory, Talamban Cebu City<sup>[6]</sup>

Vilbar, on the other hand, worked as a driver from the Banilad Town Center project and so on.<sup>[7]</sup>

The private respondents were issued several IDs. Aside from being underpaid, they were also not given 13<sup>th</sup> month pay, service incentive leave pay, holiday pay and premium pay for holiday.<sup>[8]</sup>

On December 14, 2010, the private respondents were summoned to TRASS' office and were told that they needed to sign some documents as required by DOLE for their salary increase which will take effect in January 2011. Three days after, they were told by Engr. Villena to proceed to DOLE to sign some documents. Upon their arrival, they were showed a Compromise Agreement for signing. Although surprised and hesitant, they were compelled to sign for fear that they might be fired. However, they were assured at the DOLE that signing the document meant continued employment and proper minimum wage by January 2011.<sup>[9]</sup>

On January 3, 2011, the private respondents were given another set of documents for their signature: a bio-data, application for project employment and a Waiver, Quitclaim and Release. They were warned that their refusal to sign the documents will lead to the termination of their employment. Concerned about the constant signings and threats, the private respondents decided to seek advice from a member of a labor organization. Every now and then, the timekeeper would ask for the return of the documents. However, they kept on making excuses that the documents were left at their home since they were afraid of signing it.<sup>[10]</sup>

On January 19, 2011, Engr. Villena summoned them to report to the canteen. They were asked to submit the documents, especially the Waiver, Quitclaim and Release. Vilbar handed over the documents, but he told Engr. Villena that he refused to sign them. As a result, Engr. Villena admonished them and told them that their hardheadedness and refusal to sign and abide by the new company policy would mean that it would be their last day of work. Engr. Villena then asked for the vehicle keys from Vilbar and he told both the private respondents to go home and not to return for work anymore.<sup>[11]</sup>

TRASS, on the other hand, averred that it is a general contractor for the past many years with projects all over the Philippines. It was engaged by the University of San Carlos (USC) to construct its USC Student Dormitory Building Project located at the USC Campus, Talamban, Cebu. In one of the project's Kick Off Meetings attended by the participating contractors and by USC, one of the main items that was discussed

is the Guidelines for USC Contractors/Laborers, Concessionaires, Staff and Food Handlers. It required Trass to follow the "No ID No Entry" policy.<sup>[12]</sup>

Prior to the start of the USC Dormitory project, the DOLE Regional Office No. 7 conducted an inspection on TRASS by virtue of its visitorial power. As a result, the DOLE Labor Inspector directed TRASS to update and/or rectify its record of employees, i.e. their bio-data and all other important records. The records of TRASS were not updated because as contractor, it has a pool of workers with fast turn-over of project hired workers. It was reported that TRASS violated certain labor standards on wages and benefits. Thus, a Compromise Agreement was reached between the parties and it was signed and validly entered on December 17, 2010.<sup>[13]</sup>

On January 3, 2011, TRASS conducted a meeting with its workers (pool of project hired and regular employees) including the private respondents. The workers were informed of the USC policy to submit to the USC Office of Security & Safety the following: (i) one 1x1 picture, (ii) one 2x2 picture and (iii) duly accomplished bio-data. In that meeting, TRASS provided its workers with new bio-data and other company forms for them to fill out, which is in line with the DOLE requirement to update the records of the company. During the meeting, the private respondents arrogantly reacted and resisted the filling out of bio-data and other forms. They expressed their vigorous and strong refusal to fill out and submit the other pro-forma company forms despite the pleading of TRASS' Operation Manager that they could just fill out the bio-data to secure the Contractor's ID, if they did not like to fill out the other forms inadvertently included, all of which were pro-forma company documents. It was an oversight committed by the office staff to lump up all office pro-forma documents for updating by its workers. TRASS even went to the extent of providing free 1 x 1 and 2 x 2 pictures to the private respondents. However, after almost two weeks of follow-up, the private-respondents still refused to submit their respective bio-data.<sup>[14]</sup>

TRASS alleged that while it was true that its timekeeper would ask for the return of the documents given to the private respondents, the timekeeper did not tell the latter to sign the other pro-forma documents. The timekeeper told private respondents to return and submit the bio-data and the documents. It was also not true that the private respondents were coerced by TRASS Operation Manager to sign on the other forms except for the bio-data. TRASS denied telling the private respondents through its operation manager that it was their last day of work.<sup>[15]</sup>

Thereafter, the private respondents did not report for work anymore and went on absence without official leave. A notice of AWOL was sent to them at their last known address.<sup>[16]</sup>

On July 20, 2011, the Labor Arbiter (LA) rendered a Decision in favor of the private respondents, the *fallo* whereof, reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the illegal dismissal of complainants Rolie Vilbar and Gilbert Oriño.

Respondent Trass Construction Co., Inc. is hereby ordered to pay

complainants the total amount of FOUR HUNDRED THIRTY SIX THOUSAND FOUR HUNDRED NINETY SIX & 50/100 (P436,496.50) inclusive of backwages, separation pay, holiday pay, 13<sup>th</sup> month pay, service incentive leave pay, moral and exemplary damages and attorney's fees, broken down as follows:

	ROLIE VILBAR	GILBERT ORÍÑO
1. Backwages	P 45,240.00	44,460.00
2. Separation Pay	45,240.00	111,150.00
3. Holiday Pay	8,700.00	8,550.00
4. 13 <sup>th</sup> Month Pay	22,620.00	22,230.00
5. SILP	4,350.00	4,275.00
6. Moral Damages	20,000.00	20,000.00
7. Exemplary Damages	20,000.00	20,000.00
8. Attorney's Fees	<u>16,615.00</u>	<u>23,066.50</u>
TOTAL	P182,765.00	P253,731.50

All other claims are dismissed for lack of merit.

SO ORDERED."

Aggrieved, TRASS filed a Notice of Appeal and a Memorandum on Appeal to the NLRC.<sup>[17]</sup>

On December 29, 2011, the NLRC promulgated the assailed Decision<sup>[18]</sup> which affirmed with modification the ruling of the LA, the dispositive portion whereof is hereunder quoted:

**"WHEREFORE,** premises considered, the decision appealed from is hereby **AFFIRMED WITH MODIFICATION** adjusting complainants' backwages and attorney's fees. Respondents are hereby directed to pay complainants the total amount of P430,721.50 comprising complainants' separation pay, backwages, holiday pay, 13<sup>th</sup> month pay, service incentive leave pay, and attorney's fees computed until 29 December 2011.

SO ORDERED." (*Bold letters in the original*).

TRASS filed a motion for reconsideration<sup>[19]</sup> but it was likewise denied by the NLRC in its assailed Resolution<sup>[20]</sup> dated February 29, 2012.

Hence, this petition.