

TWENTY-FIRST DIVISION

[CA-G.R. SP NO. 04470-MIN, January 30, 2014]

**HOTDOG ON STICKS CORPORATION, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND ARLIE
MARCIAL, RESPONDENTS.**

D E C I S I O N

FRANCISCO, J.:

Before Us is a Petition for Certiorari^[1] under Rule 65 assailing the Resolutions dated March 30, 2011^[2] and June 30, 2011^[3] issued by the public respondent National Labor Relations Commissions (NLRC), Eight Division (formerly 5th Division), Cagayan de Oro City in NLRC Case No. MAC-02-011895-2011.

The assailed Resolution dated March 30, 2011 dismissed petitioner's appeal from the Decision^[4] dated November 25, 2010 issued by the Labor Arbiter Henry F. Te in NLRC Case No. RAB-X-05-00268-2010 entitled "*Arlie L. Marcial v. Hotdog on Sticks and/or Jose Renato P. De Leon*" for Illegal Dismissal with Prayers for Separation Pay and Other Money Claims while the second assailed Resolution dated June 30, 2011 denied petitioner's motion for reconsideration.

The Facts

The petition draws its origin from the complaint for illegal dismissal with prayers for separation pay and other monetary claims filed by the private respondent Arlie Marcial dated May 20, 2010, against petitioner Hotdog on Sticks and/or Renato P. De Leon before the Regional Arbitration Branch (RAB) No. X, NLRC, Cagayan de Oro City.

Private respondent Arlie Marcial (Marcial for brevity) was an employee of petitioner Hotdog on Sticks, a duly organized domestic corporation engaged in the retail of hotdogs and sausages in schools and malls in Cagayan de Oro City with a warehouse located at Diwata 11, Capistrano Complex, Gusa, Cagayan de Oro City and Office Address at PCL Center, 1049 Aurora Blvd. Cor. Katipunan Ave., Loyola Heights, Quezon City. Renato P. De Leon is the petitioner's Company President.

Marcial was hired as Warehouse-In-Charge^[5] on November 2, 2007^[6] with a daily wage rate of P256.00.^[7] As warehouse-in-charge, he starts work at 7:00 a.m. and sometimes work until 8:30-9:00 p.m. or an average of thirteen (13) working hours daily, including Sundays and Legal Holidays.^[8]

In his position paper, Marcial narrates that on May 14, 2010, due to high fever, he asked permission from his Area Supervisor Hydee Bacat for a leave of absence and went home to his hometown San Isidro, Jimenez, Misamis Occidental. His mother

brought him to one Rosila Sumanduran, a quack doctor (*albularyo*), who administered herbal medicines to him for three (3) days^[9]. On the fourth day, upon being cured of illness, Marcial reported back to work in Cagayan de Oro City. Allegedly, however, Ms. Bacat verbally dismissed him and no longer admitted him to work.

Petitioner, on the other hand, contends that Marcial was not illegally dismissed. When he returned to work on May 20, 2010, he was issued a memorandum to explain his unauthorized absences. On the same day, Marcial submitted his written explanation. He was then informed that his case would be referred to the head office for decision and was advised to return to work on the next working day, May 24, 2010. Marcial, however, no longer reported to work and just filed the subject complaint.

After due proceedings, the Labor Arbiter, in a Decision dated November 25, 2010, declared Marcial illegally dismissed and ordered the petitioner to pay Marcial separation pay, damages, and other monetary claims. The dispositive portion of the Decision reads:

WHEREFORE, conformably with the foregoing premises, judgment is hereby rendered as follows:

1. Declaring that complainant was illegally dismissed by respondent company Hotdog-on-Sticks Corporation through its area supervisor Haydee G. Bacat and, in lieu of reinstatement, ordering the respondent company to pay complainant a separation pay equivalent to one (1) month pay for every year of service covering the period from November 2, 2007 (start of complainant's employment with respondent company) up to May 20, 2010 (date of his termination) provided that a fraction of at least six (6) months shall be considered one (1) whole year, all subject to computation by the Fiscal Examiner of this Branch;
2. Ordering the respondent company to pay complainant 13th month pay and service incentive leave pay covering the period from November 2, 2007 (start of complainant's employment with respondent company) up to May 20, 2010 (date of his termination) all subject to computation by the Fiscal Examiner of this Branch and taking into consideration the payments by respondent company to complainant on October 7, 2010 for his last salary with 5-hour overtime pay, cash bond refund and 13th month pay which were done in this Branch;
3. Ordering the respondent company to pay complainant the sum of Twenty Thousand Pesos (PhP20,000) as moral damages and the sum of Five Thousand Pesos (PhP 5,000) as exemplary damages; and
4. Ordering the respondent company to pay complainant attorney's fees equivalent to ten percent (10%) of the aggregate monetary awards due the complainant.

All other claims or counterclaims not mentioned in this dispositive portion are hereby dismissed for lack of substantial evidence and/or for lack of merit.

SO ORDERED.^[10] (underscoring in the original)

Aggrieved, petitioner appealed to the NLRC- Eight Division, Cagayan de Oro City which dismissed the appeal for non-perfection due to lack of a Board Resolution/Certification by the Board Secretary authorizing the HR Manager to sign the verification and certification of non-forum shopping. The NLRC, in dismissing the appeal and affirming the Decision of the Labor Arbiter, held in its Resolution dated March 30, 2011, thus:

The present appeal shows that the verification and the certification of non-forum shopping attached to the memorandum of appeal [which] is signed and sworn to by Antonette D. Pascua, HR Manager of respondent corporation, was not properly authorized to act on behalf of the corporation to commence the action. There is no Board Resolution and/or Certification by the Board Secretary that would show that she was duly authorized by the corporation to sign the verification and certification against forum shopping. Without such authority, the appeal is not perfected in accordance with law. This is so because the power of the corporation to sue and be sued is lodged with its Board of Directors that exercises corporate powers.

It bears reiteration that "where a petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative."^[11]

Petitioner filed a motion for reconsideration attaching thereto a Secretary's Certificate^[12] which provides, among others, that during a special Board Meeting on March 15, 2011 at 10:00 a.m. in which a quorum existed, the Board of Directors passed a resolution authorizing the HR to sign the verification/certification for and in behalf of the petitioner corporation. The motion, however, was likewise denied by the NLRC in its Resolution dated June 30, 2011. Thus, this instant petition for certiorari under Rule 65 petitioner invoking the following issues, to wit:

I.

[WHETHER OR NOT] THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION [AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION] IN DISMISSING THE PETITION FOR NON PERFECTION DUE TO ALLEGED LACK OF AUTHORIZATION OF THE HR MANAGER TO SIGN THE VERIFICATION/CERTIFICATION OF NON FORUM SHOPPING[;]

II

[WHETHER OR NOT] THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND IS IN EXCESS OF ITS JURISDICTION WHEN IT ADOPTED [I]N TOTO THE DECISION OF THE ARBITRATION BRANCH WITHOUT ANY DISCUSSION OF THE MERITS OF THE ARGUMENTS OF THE APPEAL[; AND]

III

[WHETHER OR NOT] THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND IS IN EXCESS OF ITS JURISDICTION WHEN

IT ADOPTED [I]N TOTO THE GRANTING OF THE MONETARY AWARD WITHOUT ANY SUBSTANTIAL AND LEGAL EVIDENCE TO SUPPORT SUCH AWARD.[13]

Our Ruling.

The petition is impressed with merit.

The petitioner posits that the submission in the motion for reconsideration of the authority to sign the verification and certification constitutes substantial compliance with the procedural requirements. Thus, the NLRC should have reconsidered its dismissal of the appeal.

We agree.

Under the NLRC Rules of Procedure, among the requisites for the perfection of an appeal is a verification by the appellant in accordance with Section 4, Rule 7 of the Rules of Court. A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.[14]

On the other hand, a certificate of non-forum shopping is a requisite for the perfection of an appeal, and non-compliance therewith shall not stop the running of the period for perfecting an appeal.[15] A certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof, and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[16]

The requirement that a petitioner or principal party should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Rules of Court make no distinction between natural and juridical persons.[17] However, a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[18] This rule, however, admits of certain exceptions.

In the case of *Shipside Incorporated v. Court of Appeals*,^[19] the Supreme Court had the occasion to relax the rigid application of this rule and held, viz:

In certain exceptional circumstances, however, the Court has allowed the belated filing of the certification. In *Loyola v. Court of Appeals, et al.* (245 SCRA 477 [1995]), the Court considered the filing of the certification one day after the filing of an election protest as substantial compliance with the requirement. In *Roadway Express, Inc. v.*