CAGAYAN DE ORO CITY

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04445-MIN, January 10, 2014]

HR CONSTRUCTION CORPORATION/ WILLIE HO, OWNER/ ZALDY RECTOR AND ALLAN CAPUTILLA, FOREMAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, 8TH DIVISION, AND MARIO O. CASAS, RESPONDENTS.

D E C I S I O N

LOPEZ, J.:

Petitioners, by way of a petition for certiorari[1] under Rule 65 of the Rules of Court, seek the nullification of the Decision dated November 30, 2010[2] of the 8th Division of the National Labor Relations Commission of Cagayan de Oro City which affirmed the June 29, 2010 Decision[3] of the Regional Arbitration Branch No.XI, Davao City in NLRC Case No. RAB-XI-02-00150-10[4], which declared herein respondent to have been illegally dismissed from his employment and held herein petitioners liable for the money claims of respondent. Also assailed herein is the Resolution dated May 27, 2011[5] of the NLRC, which denied for lack of merit petitioners' motion for reconsideration of the November 30, 2010 Decision.

The Antecedents

The facts, as culled by the NLRC, are as follows:

On February 3, 2010, herein respondent filed a case for illegal dismissal and money claims against herein petitioners. During the mediation conference on February 24, 2010, no amicable settlement was forged between the parties; hence, an Order was issued by the Labor Arbiter directing the parties to file their respective verified position papers with documentary proofs and affidavits of witnesses.

The Order further states that "non-submission of a position paper by any of the parties will be deemed a waiver to adduce evidence and this Office will be constrained to resolve the case on the basis of evidence on record".

On April 7, 2010, respondent filed his position paper. He alleged therein that he is a regular employee of petitioners; that he was hired as a finisher/mason on January 5, 2009 and receiving a salary of P200.00/day and later, it was increased to P220.00 in November 2009; that he reports for work from Monday to Sunday from 7:00 am to 5:00 pm without any rest day and performs overtime work for three hours everyday; and that on November 4, 2009, respondent asked permission that he will go on leave of absence for one week for he will join the carolling as Christmas was already approaching. Respondent disclosed that he was allowed to go on leave but when he returned to work on November 10, 2009, he was no longer permitted to work.

For unknown reason, herein petitioners failed to submit their position paper despite receipt of the Order directing them to file the same. Record discloses that the said Order was received by petitioners' counsel on March 26, 2010.

Despite ample opportunity and considerable time given to the petitioners, no position paper was ever filed by them before the Labor Arbiter. Hence, On June 29, 2010, the Labor Arbiter issued his Decision in NLRC RAB-02-00150-10 adverse to the petitioners and awarding the respondent the amount of P85,415.62.

The salient portions of the Decision of the Labor Arbiter provide as follows:

> "X x x
>
> Stated in the said Order that non-submission of the position paper by any of the parties will be deemed a waiver to adduce evidence, and this Office will be constrained to resolve the case on the basis of the evidence on record. Hence, this ex-parte decision.
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> Considering that complainant's material allegations have not been rebutted or disputed by the respondent (sic), the same shall be considered as true and valid declarations of fact. It is a settled doctrine that the burden of proving the validity of a dismissal and payment of money claims rests on the part of the employer.
>
> In this instance, the respondents failed to submit the required position paper. They opted not file, therefore, it shall be considered a waiver of its right to adduce evidence in its behalf and to rebut the material allegations presented by the complainant. It is also a manifestation of disinterest to prosecute complainant's claims against it.
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> Consequently, We shall award complainant the twin relief of backwages and reinstatement. However, in lieu of reinstatement, it is prudent to grant separation pay for the best interest of both parties and due to the strained relations developed in the filing of this case. We shall also grant his money claims such as, underpayment of wages, cost of living allowance, and 13th month pay. There being no proof that these money claims have already been paid by the respondent. Extraordinary claims, such (sic) holiday and overtime pays are denied for failure to substantiate the same.
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> X x x
>
> WHEREFORE, premises considered, judgment is hereby rendered declaring complainant to be illegally dismissed from his employment and is entitled to backwages and separation pay. He shall also be entitled to his money claims, such as, salary differentials, cost of living allowance and 13th month pay in the total amount of EIGHTY FIVE THOUSAND FOUR HUNDRED FIFTEEN AND 62/100 PESOS (P85,415.62).
>
> ACCORDINGLY, respondent (sic) HR CONSTRUCTION / WILLIE HO, owner / ZALDY RECTO and ALLAN CAPUTILLA, foremen are held liable to pay complainant the total amount stated above.
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> All other claims and issues not heretofore discussed are denied for lack of legal and factual basis.

SO ORDERED."

On August 16, 2010, the petitioners seasonably appealed the Decision of the Labor Arbiter to the 8th Division of the National Labor Relations Commission in Cagayan de Oro City.

On November 30, 2010, the NLRC 8th Division issued the assailed Decision. Some of the salient portions of the body of the NLRC Decision provides as follows:

> "Regrettably, with the respondents' failure to file a verified position paper in the proceedings below, they waive their right to adduce evidence for the first time on appeal, much less, assign factual errors on the part of the Arbiter a quo in rendering an ex-parte decision based solely on the complainant's averments in his position paper. Despite ample opportunity given to the respondents by the Arbiter a quo to file a position paper and for reason known only to them, respondents failed or simply ignored to file the same. Simply, no one can be faulted in the rendition of an ex-parte decision adverse to respondents except the respondents themselves for failure to file the required position paper.
>
> Clearly, the Arbitration Branch, in its primordial task to dispose of cases expeditiously, cannot wait for eternity so that a party can file a position paper on appeal to rectify their failure to submit the same in the proceedings below. This is not permissible as We abhor the same.
>
> Indeed, this Commission has its own rules of procedure which the parties must follow and not to play with them. To allow the contrary, our rules would be rendered inutile by a party's unreasonable idiosyncrasies and capricious or whimsical attitude in ignoring our rules. This we cannot allow.
>
> WHEREFORE, the instant appeal is DISMISSED for lack of merit. Accordingly, the assailed decision of 29 June 2010 is AFFIRMED in toto.
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> SO ORDERED."

Petitioners filed a motion for reconsideration which was, however, denied by the NLRC through a Resolution dated May 27, 2011.

Hence, the instant petition.

ASSIGNMENT OF ERRORS

Petitioners come before this Court with the following assignment of errors:

1. The National Labor Relations Commission, 8th Division, acted without or in excess of its jurisdiction or gravely abused its discretion in refusing to receive the evidence of the petitioners and in dismissing the appeal without deciding the same on the merits.

2. The National Labor Relations Commission, 8th Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Mario O. Casas was illegally dismissed.

3. The National Labor Relations Commission, 8th Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that Mario O. Casas was entitled to the monetary award.

This Court's Ruling

Petitioners argue that the NLRC erred in disregarding their evidence. Petitioners add that the NLRC should have allowed and considered their evidence and not dismissed their appeal on a technicality considering that default judgments are generally frowned upon by the Supreme Court.

Petitioners further argue that had the NLRC taken even a cursory look at the evidence presented by them, the NLRC would have discovered that respondent Mario O. Casas was not illegally dismissed and was paid the correct wages. It is petitioners' contention that respondent was a project employee having been employed as a construction worker and therefore, Department Order No. 19, Series of 1993 or the DOLE Guidelines Governing the Employment of Workers in the Construction Industry governs the respondent's employment.

In support of their contention, petitioners cite evidence they presented before the National Labor Relations Commission in their memorandum on appeal and motion for reconsideration, consisting of the following: (1) The Notice of Appointment which likewise serves as respondent's employment contract,[6] (2) respondent's Daily Time Record and Payroll from September 3, 2009 to October 28, 2009 and November 4, 2009,[7] (3) Cash Voucher dated October 30, 2009 representing respondent's receipt of the amount of P2,080.00 as 13th month pay,[8] (4) Employer's Monthly Report to the DOLE on Employee's Termination/Dismissal/Suspension for the month of November 2009,[9] and (5) Affidavit of Christine W. Orevilio.[10]

With respect to the first assigned error, the Labor Code provides:

> ART. 221. *Technical rules not binding and prior resort to amicable settlement.* In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process.

In *Tanjuan v. Philippine Postal Savings Bank, Inc.,*[11] the Supreme Court held that:

> "It is well-settled that the *NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases.* This rule applies equally to both the employee and the employer. In the interest of due process, the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities. *However, delay in the submission of evidence should be clearly explained and should adequately prove the employer's allegation of the cause for termination.*" (Emphasis supplied.)

In the case at bar, petitioners asserted that their failure to file Position Paper was not a disregard of the rules of the NLRC but was due to the difficulty in locating the records of respondent Mario O. Casas among the files of several hundred other construction workers who worked on the Central Parq Hotel. Petitioners explained that the construction of a hotel usually takes nearly two (2) years to complete and the petitioners hired several hundred workers of different skills during the different phases of the construction. Due to the large volume of construction workers involved in the project, it was extremely difficult to locate the files, time record and payroll sheets of respondent Mario O. Casas. Petitioners further stated in their petition that the difficulty in searching for the records of respondent was compounded by the fact that the petitioners were engaged in several other construction projects at the same time. Thus, the sheer number of files that the staff of the petitioners had to go through just to look for the records of one (1) worker was simply overwhelming. These facts are contained in the affidavit of Christine W. Orevilio,[12] the employee tasked to look for the records of the respondent.

Accordingly, it has been settled that no undue sympathy is to be accorded to any claim of a procedural misstep in labor cases. Such cases must be decided according to justice and equity and the substantial merits of the controversy.[13] Thus, in *Bristol Laboratories Employee's Association v. NLRC,*[14] the Court held that the NLRC did not commit grave abuse of its discretion in considering additional documentary evidence submitted by the employer on appeal to prove breach of trust and loss of confidence as bases for the dismissal of the petitioner in that case.

In *EDI Staff Builders International, Inc. v. Magsino,*[15] the Supreme Court held:

> "At the outset, it should be stressed that in an unlawful dismissal case, the employer has the burden of proving the lawful cause for the employee's dismissal. Without sufficient proof of loss of confidence, an employee cannot be dismissed on this ground. It was, therefore, error for both the NLRC and the Court of Appeals to disallow evidence on appeal which petitioners tried to present."

In the instant case, considering that respondent had also been given the opportunity to rebut petitioners' evidence against him, We deem it best to admit such evidence and to decide this case on the merits in the interest of truth, justice and fair play.

As regards the second assigned error, both the Labor Arbiter and the NLRC declared that respondent Mario O. Casas was illegally dismissed solely on the basis of respondent's Position Paper in view of the fact that petitioners failed to file their Position Paper before the Labor Arbiter and upon presentation of their evidence for the first time on appeal to the NLRC, the latter refused to consider it and dismissed the appeal without deciding the same on the merits. This Court notes, however, that technical rules of evidence do not strictly apply if the decision to grant the petition proceeds from an examination of its sufficiency as well as a careful look into the arguments contained in position papers and other documents.[16]

We now proceed to the resolution of the substantive issues submitted by petitioners for our consideration, particularly, whether respondent was illegally dismissed from his employment. Petitioners averred that respondent is a project employee having been employed as a construction worker and therefore, Department Order No. 19,