

EIGHTEENTH DIVISION

[C.A.-G.R. SP NO. 05602, March 27, 2014]

**LORETO T. DELA CALZADA, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION (SEVENTH DIVISION), GT
INDUSTRIAL DEVELOPMENT INC.,/COLIN B. TING
(OWNER/MANAGER), RESPONDENTS.**

D E C I S I O N

DIY, J.:

This special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure assails the Resolution^[1] dated July 30, 2010 rendered by public respondent National Labor Relation Commission (NLRC), which reversed its earlier Decision^[2] dated May 31, 2010 in NLRC No. VAC-11-001060-2009. The dispositive portion of the assailed NLRC resolution reads:

WHEREFORE, PREMISES CONSIDERED, Our decision is, hereby, RECONSIDERED and a new one entered DISMISSING the complaint of illegal dismissal. Complainant is, hereby, ordered to report back to work within ten (10) days from receipt of this Resolution but without backwages and respondents are, likewise, ordered to accept him back to his former position under the same terms and conditions without loss of seniority rights.

Respondent GT Industrial Development Inc. is, however, ordered to pay complainant the following:

| | | | |
|----|----------------|---|-----------------|
| 1. | 13th Month Pay | P | 18,796.19 |
| 2. | SILP | | <u>3,746.00</u> |
| | Total Award | | P22,542.19 |

SO ORDERED.

The NLRC denied petitioner's Motion for Reconsideration³ in a Resolution^[4] dated September 30, 2010.

The Antecedents

The present petition traces its roots to the complaint for illegal dismissal filed by petitioner Loreto T. Dela Calzada against private respondents GT Industrial Development Inc. and its owner and manager, Colin B. Ting, before the Labor Arbiter.

For failure of the parties to settle the case amicably, the Labor Arbiter required them

to submit their respective position papers. In compliance with said directive, petitioner filed his Position Paper^[5] on December 8, 2008 while private respondents failed to submit their position paper.

On July 15, 2009, the Labor Arbiter issued an order declaring private respondents to have waived the right to present their position papers and evidence in their defense.

In his position paper, petitioner alleged that on February 11, 1998, he was hired by private respondents as product worker. He was assigned as a "bundler" in the company's Bundling Department. Petitioner was tasked to file, weigh, tie, bundle, record and deliver finished products. The company paid him P95.00 per day in 1998 with P5.00 to P10.00 increase in salary every six months thereafter.

After almost eleven (11) years, petitioner's employment was terminated without any just or authorized cause provided by law. He claimed that he did not commit any violation of the company's rules and regulations. Petitioner inquired from private respondents the reason for the termination of his services. But private respondents prevented petitioner from entering the premises. Because of this, the working relationship between the parties had been drastically strained.

On September 15, 2009, the Regional Arbitration Branch (RAB) rendered a Decision^[6] granting the complaint of petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered declaring complainant as having been illegally terminated from his employment. Consequently, the respondents GT INDUSTRIAL DEV'T. INCORPORATED and/or COLIN B. TING, are directed to solidarily pay complainant LORETO T. DELA CALZADA the total amount of TWO HUNDRED THIRTY-SIX THOUSAND SIX HUNDRED FORTY PESOS and 09/100 (P236,640.09) in concept of separation pay, backwages, salary differentials, 13th month pay, and holiday pay, service incentive leave pay, and attorney's fees either in cash or in check payable to the NLRC-RAB VII, Cebu City, through the Cashier/s Office of this Arbitration Branch within ten (10) days from receipt of this Decision.

All other claims are DISMISSED for lack of specifics and/or insufficiency of evidence.

SO ORDERED.

Assailing the Labor Arbiter's decision as erroneous, private respondents filed a Memorandum of Appeal with Formal Entry of Appearance^[7] before the NLRC. Private respondents anchored their appeal on the claim that the Labor Arbiter gravely abused her discretion in declaring that petitioner was illegally dismissed and in awarding his monetary claims. In order for private respondents to adequately present their case and supporting documents as evidence, they prayed for the relaxation of the rules and invoked the liberal construction policy. Private respondents insisted that petitioner was not dismissed. They alleged that petitioner was receiving the minimum wage provided by law. During the first week of October 2008, petitioner would no longer follow the instructions of his immediate superior, Alejandro Larrobis ("Larrobis"), particularly when petitioner was warned to stop

talking during working hours, which reduced his output. Larrobis reported to the company's plant head Gilbert Cepe ("Cepe") about petitioner's attitude problem. On October 16, 2008, Cepe informed petitioner to stop talking during working hours. Petitioner apologized for the incident. On the following day, petitioner filed a leave of absence for one (1) day to settle some important matters. On October 18, 2008 and on the succeeding days, petitioner did not report back for work. Private respondent thought that petitioner was just absent. They were surprised and shocked to receive a copy of the summons and the complaint of petitioner before the NLRC, RAB No. VII.

According to private respondents, petitioner threatened Larrobis because the latter told Cepe about petitioner's attitude problem. As a result, petitioner filed a complaint for illegal dismissal, dragging private respondents into this case. It is alleged that petitioner also warned Larrobis not to execute an affidavit; otherwise, the latter would suffer the consequences of such action.

On May 31, 2010, the NLRC rendered a Decision^[8] affirming and modifying the Labor Arbiter's decision:

WHEREFORE, in view of the foregoing, judgment is, hereby, rendered affirming with modification the decision of the Labor Arbiter dated 15 September 2009, deleting the award of holiday pay to the complainant and granting complainant moral damages in the amount of five thousand pesos (Php. 5,000.00) plus an attorney's fee of ten percent of the total monetary award. Thus, complainant's total monetary award as modified are as follows:

| | | |
|-----------------------------|---|-------------------|
| Previous total award by the | - | P215,127.35 |
| LA | | |
| Less: Holiday pay | - | P7,175.00 |
| | - | <hr/> P207,952.00 |
| Add: Moral damages | - | P5,000.00 |
| Total award | - | P212,952.35 |
| Attorney's Fee (10%) | - | P21,295.23 |
| GRAND TOTAL | - | P 234,247.59 |

SO ORDERED.

On June 25, 2010, private respondents filed their Motion for Reconsideration,^[9] which persuaded public respondent. On July 30, 2010, the NLRC issued a resolution reversing and setting aside its earlier decision.

Petitioner filed a Motion for Reconsideration,^[10] which was denied by the NLRC in its Resolution^[11] dated September 30, 2010. Hence, this Petition, raising the following grounds:^[12]

1. The Honorable Commission committed grave abuse of discretion when it reversed its initial factual findings and that of the Labor Arbiter of the fact of dismissal on flimsy grounds which are even contradictory to and unsupported by the evidence on record.
2. The Honorable Commission gravely abused its discretion when it deleted the award of salary differential as this contravenes the evidence on record.
3. The Honorable Commission gravely abused its discretion when it deleted the award of damages and attorney's fees without even giving an explanation thereto.

(Emphasis in the original)

The Ruling of the Court

Petitioner alleges that the NLRC committed grave abuse of discretion when it reversed its initial findings as well as the findings of the Labor Arbiter relative to the fact of dismissal on flimsy grounds, which are even contradictory to and unsupported by the evidence on record.

It is further posited that public respondent also erred in omitting and ignoring the work schedule of GT Industrial for the period covering October 27 to 31, 2008 which did not include petitioner's name, as well as the affidavit executed by Larrobis.

We grant the petition.

It is undisputed that petitioner is recognized as a regular employee of private respondents. The Court is, therefore, tasked to determine whether or not petitioner was illegally dismissed.

The Supreme Court held that in cases of illegal dismissal, the employer bears the burden of proof to establish that the termination was for a valid or authorized cause. But before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence that indeed he was dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof.^[13]

In the case at bench, petitioner was able to establish his claim that he was illegally dismissed by private respondents. He presented Larrobis' Affidavit.^[14] In said affidavit, it is stated that petitioner was forced to sign a document purporting to show that he voluntarily resigned from the company. Likewise, based on the same affidavit, petitioner was given an assurance that he would continue working with the company through another agency if he signed a resignation letter; otherwise, his services would be terminated.

Notably, petitioner also offered as evidence the company's work schedule "dated October 27-31, 2008", which clearly reflected that his name was no longer included in the list of workers.^[15]

On the other hand, private respondents attempt to support their allegations that