

SPECIAL SEVENTH DIVISION

[CA-G.R. SP NO. 123180, August 19, 2014]

**RILCO BUILDERS CONTRACTORS/ ENGINEER RUEL LICHANGCO,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
GODOFREDO F. FRIAS, ET AL., RESPONDENTS.**

DECISION

REYES, JR., J.C., J.:

This resolves the Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the June 2, 2011 Decision (Rollo, pp. 26-34) issued by public respondent National Labor Relations Commission (NLRC) which modified the Decision of the Labor Arbiter dated December 29, 2011 and its (NLRC's) December 29, 2011 Resolution (Rollo, pp. 37-39) which partially granted petitioners' Motion for Reconsideration, in NLRC LAC No. 03-000703-11 (NLRC NCR Case No. 08-11036-10).

In his position paper, private respondent Godofredo Frias alleged that he was hired by petitioner Rilco Builders Contractor/Engineer (Rilco) in 1997 with a minimum income of Php320.00 a day. He has been in the company for almost twelve years and did not complain even if there is no increase in his salary. On January 9, 2010, after receiving his salary from petitioner Rilco, private respondent was allegedly told that his service is no longer needed. Surprised, private respondent asked for any valid reason for his alleged dismissal, but petitioner Rilco only told him that business is not catching up, and that they need to lessen the staff. Private respondent asked for a meeting with petitioner Rilco to ask if he has done any mistake and if the problem could be fixed but, he was not allowed to enter the company premises. Private respondent repeatedly requested for a meeting with petitioner Rilco but the latter declined. This prompted private respondent to file a case with the arbitration branch of the NLRC for illegal dismissal, underpayment of wages, non-payment of holiday pay, holiday and rest day premiums, service incentive leave pay, 13th month pay, ECOLA and claims for separation pay. While he filed the instant complaint with other of his co-workers (namely, Jesus Frias, Victoriano Felix, Rene Makalinao, Jessiel Frias, Brian Buhawi, Ronie Vales, Renante Legarda and Benjie Hayahay), the case of his co-workers was dismissed for failure to file the required position papers despite due notice which is tantamount to lack of interest to prosecute their claims against herein petitioners.

Petitioner Rilco, through its President petitioner Ruel Lichangco, on the other hand, disclaimed liability and averred that private respondent was hired for certain projects. He was assigned by Foreman Joseph Pulvinar to petitioner Rilco's existing projects on a "project to project" basis. On July 31, 2010, a Saturday, as they are working on the project "Blue Magic Warehouse", Foreman Pulvinar and herein petitioner Engineer Ruel Lichangco agreed that private respondent, together with other workers will clean the job site as the project owner will inspect the on-going

construction on August 3, 2010. However, early on that day of August 1, 2010, only the driver, Boy Ilagan and a few workers showed up, thus, the workforce on that day was not enough to complete the task. Petitioner Engineer Lichangco called for Foreman Pulvinar by cellphone but the former could not be reached. He then called the time keeper and another worker, Renato Barneto to get in touch with Foreman Pulvinar and if necessary to go to the house of Pulvinar and the other workers to ask them to report for work to complete petitioner Rilco's commitment to the project owner.

At around 1:30 pm on the same day of August 1, 2010, petitioner Lichangco received a text message, informing him that Foreman Pulvinar cannot report for work because he has a problem with his workers. After which, petitioner Lichangco called up Foreman Pulvinar and said "*Joseph, ano nangyari, tanghali na usapan natin papasok kayo?*" Foreman Pulvinar answered, "*Sir may problema, ayaw pumasok ng mga tao ko, kung yung increase nila wala pa*". To which petitioner Lichangco countered, "*Wala ka naman nasasabi sa akin tungkol sa request na increase ng mga tao mo ah! Huwag mo naman isabay ngayon yan, pag-usapan natin yan pagkatapos nitong work*". Then, foreman Pulvinar said "*hindi ko kaya x x x*". Petitioner Lichangco, frustrated, said, "*kung talagang hindi kaya, sabihin mo sa kanila papalitan na lang natin sila para matapos ang trabaho dahil naiipit ako*", then Foreman Pulvinar threateningly answered: "*kung ganyan desisyon mo, hindi na rin ako papasok*", then he turned off his cell phone and never talked to petitioner Lichangco again.

The next day, August 2, 2010, Foreman Pulvinar sent his worker, a certain Jessiel Frias to the job site to retrieve his personal belongings. As a last ditch effort, petitioner Lichangco sent one of his men to Foreman Pulvinar's relatives to ask him to report to the former, but vehemently refused and never appeared thereafter. Respondent Lichangco sent a letter, dated August 12, 2010 to Foreman Pulvinar and to herein private respondent to report back for work. Despite notices sent to the workers to report back to work, none of them followed the instruction, hence, petitioner Lichangco concluded that the workers, including private respondent, had abandoned their work. Unknown to petitioner Lichangco, private respondent had already filed a Complaint on August 9, 2010. During the September 28, 2010 conciliation conference, private respondent Godofredo Frias asked for the amount of P80,000.00 as settlement but petitioner Lichangco refused and instead offered reinstatement on the availability of projects.

On January 28, 2011, Labor Arbiter Joel S. Lustria issued a Decision dismissing private respondent's Complaint for Illegal Dismissal. Thus, he ruled:

"WHEREFORE, all foregoing premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of merit. However, for reasons above-discussed, complainant GODOFREDO F. FRIAS is hereby ordered to immediately report back to work within ten (10) working days from receipt hereof but without payment of backwages. As explained above, this return-to-work order is NOT a reinstatement order within the purview of Article 279 of the Labor Code since there is NO illegal dismissal in the case at bar.

In another dimension, respondents are ordered jointly and severally liable to pay complainant GODOFREDO F. FRIAS, the aggregate amount

of P7,041.60, representing his pro-rata 13th month pay for the year 2010, and service incentive leave pay.

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Other claims are dismissed for lack of merit.

SO ORDERED.” (Rollo, pp. 76-77)

Despite the dismissal of the complaint, petitioners still felt dissatisfied with the return-to-work Order and the ruling ordering them to pay the 13th month pay for the year 2010 and Service Incentive Leave Pay and thus they filed a Partial Appeal with public respondent NLRC on the following grounds, to wit:

1. The Honorable Labor Arbiter blatantly erred when he ordered complainant-appellee Godofredo F. Frias to immediately report back to work within then (10) working days from receipt of the assailed decision but without backwages. (Rollo, p. 84)
2. The award of 13th month pay to complainant- appellee Godofredo Frias is blatantly erroneous considering that the latter's project employment has already been terminated before the year 2010, the period under consideration. (Rollo, p. 85)
3. The award of service incentive leave pay (SILP) to complainant-appellee Godofredo Frias is likewise blatantly erroneous considering that the latter's project employment has already been terminated even before the year 2010, the period under consideration, and that he has not work with respondents-appellants during the year 2010. (Rollo, p. 86)

On June 2, 2011, public respondent NLRC issued the now assailed Decision denying petitioners' appeal but modifying the Labor Arbiter's Decision. The dispositive portion of the said Decision reads as follows:

“WHEREFORE, premises considered, the partial appeal is hereby DENIED for lack of merit. However, the Decision below is hereby MODIFIED in the sense that judgment is rendered declaring complainant-appellee to have been illegally dismissed. Respondents-appellants are hereby ordered, to reinstate complainant-appellee to his former position without loss of seniority or diminution of salary and other benefits immediately upon receipt hereof.

Likewise, respondents-appellants are hereby ordered, jointly and severally, to pay complainant-appellee:

1. Backwages from the time of his dismissal on January 9, 2010 until finality hereof;
2. Salary differentials, 13th month pay and service incentive leave pay for a period of three (3) years prior to his termination on January 9,

2010; and

3. Attorney's fees equivalent to ten (10%) percent of the total award.

Should reinstatement be no longer feasible due to the strained relationship between the parties, respondents-appellants shall pay complainant-appellant (sic) separation pay equivalent to one (1) month's salary for every year of service computed from the time of his employment in January 1997 until finality hereof which amount shall be included in the computation of attorney's fees.

All other claims are hereby denied for lack of merit.

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SO ORDERED.” (Rollo, pp. 33-34)

On June 23, 2011, petitioners filed a Motion for Reconsideration (Rollo, pp. 90-102) of the aforesaid Decision. In the assailed Resolution dated December 29, 2011, public respondent partially granted the said Motion in so far as it deleted the award of the 13th month pay of private respondent for the year 2010. The rest of the Decision remains.

On February 3, 2012, petitioners filed the instant Petition for Certiorari with this Court, arguing as follows:

- I. Public respondent NLRC committed Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction in Deciding Issues which were not covered by the Partial Memorandum On Appeal. (Rollo, p. 10)
- II. In any event, even assuming that public respondent NLRC acted within its Jurisdiction in Issuing the Questioned Decision and Resolution, public respondent NLRC committed Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction when it modified the Labor Arbiter's ruling and instead held the private respondent Godofredo Frias was illegally dismissed against factual circumstances, law and jurisprudence. (Rollo, p. 16)
- III. Public respondent NLRC committed Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction in holding that private respondent Godofredo Frias was entitled to the Monetary Claims despite the fact that he was a project employee and was not illegally dismissed by petitioners. (Rollo, pp. 19-20)

On the first issue, petitioners faulted public respondent NLRC when it considered an issue which was not covered by petitioners' Partial Memorandum of Appeal. A closer reading of petitioners' partial appeal would reveal that they only raised two main issues: (a) the propriety of the Labor Arbiter back-to-work Order and (b) the correctness of the Labor Arbiter's Award of 13th month pay and Service Incentive Leave pay for the year 2010. However, public respondent NLRC, in its Decision dated June 2, 2011 also passed upon the issue of illegal dismissal although said issue was never raised in the partial appeal.