

TENTH DIVISION

[CA-G.R. SP No. 135728, November 27, 2014]

CIELITO D. LIM, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), PAPERTECH, INC., MR. ALEXANDER WONG, MS. JOAN MAGLAYA-BALDE, AND MS. MARISSA ANGELES, RESPONDENTS. D E C I S I O N

LANTION, J.A.C., J.:

Before Us is a Petition for *Certiorari*^[1] filed by Petitioner Cielito D. Lim (hereinafter "Petitioner") assailing the Decision^[2] dated 21 February 2014 issued by the National Labor Relations Commission ("NLRC"), Fourth Division, in NLRC LAC No. 12-003383-13, NLRC NCR-04-04862-13. The *fallo* of the challenged Decision reads:^[3]

WHEREFORE, the assailed Decision dated 27 September 2013 of Labor Arbiter Remedios T. Capinig is REVERSED and SET ASIDE. The Complaint of Cielito D. Lim is DISMISSED for lack of merit. The respondents are however, mandated to notify the complainant not later than ten (10) days from receipt hereof the latter's reinstatement, but without requiring the respondents to pay complainant his backwages, there being no illegal dismissal.

SO ORDERED.

The Resolution^[4] dated 08 April 2014 of the NLRC denying Petitioner's Motion for Reconsideration,^[5] is likewise assailed.

THE FACTS

On 16 August 2000, Private Respondent Papertech, Inc. ("Private Respondent") hired Petitioner as an Inventory Clerk in Pasig City. In 2005, Petitioner was promoted to Logistic Dispatcher earning a salary of P468.00 with P28.00 as daily allowance.^[6]

On 05 November 2012, Private Respondent notified Petitioner via a Memorandum of Transfer^[7] that the latter will be reassigned from his post in Pasig City to the warehouse located in Cagayan de Oro due to the urgency of the business. This was caused by the untimely resignation of one of Private Respondent's employees, namely a certain Dennis L. Casiño.^[8] The benefits, allowances, or subsidies that Private Respondent gave to Petitioner were enumerated in a Memorandum of

Transfer dated 12 November 2012, as follows:^[9]

| | |
|-------------------|---|
| P 4,500.00 | - Meal Subsidy (P150.00 per day) |
| 2,000.00 | - Bed Space |
| 3,069.68 | - Airline Ticket |
| 400.00 | - Transportation (Pasig to Airport) |

Subsequently, Petitioner assumed his duties at his new post. However, on 05 January 2013, Petitioner was informed that his transfer to Cagayan de Oro will be made **permanent** and, further, that **he will no longer be entitled to housing and meal subsidies** as financial assistance.^[10] This prompted Petitioner to write a letter to Private Respondent requesting to be transferred back to his original assignment in Pasig City.^[11]

On 20 March 2013, Petitioner filed an application for leave to visit his family, which was subsequently approved.^[12] Nonetheless, the following month, Private Respondent received two (2) incident reports stating that Petitioner had not reported for work upon the lapse of his leave.^[13]

In view of Petitioner's unauthorized absences, on 08 April 2013, Private Respondent issued a Memorandum directing Petitioner to report for work, which he refused to sign.^[14] On 20 April 2013, Private Respondent sent Petitioner a Notice directing the latter to explain his absences from work under the penalty of administrative charges.^[15] Again, Petitioner refused to sign the same.^[16] Thus, on 26 April 2013, Private Respondent dismissed Petitioner from employment for "abandonment of job and insubordination."^[17]

On 01 April 2013, Petitioner filed a Complaint against Private Respondent and its officers^[18] before the NLRC for *Unfair Labor Practices, Illegal Dismissal - Constructive, Moral and Exemplary Damages, and Attorney's Fees*.^[19] Since the parties did not amicably settle, they were directed to file their respective position papers and their responsive pleadings as well.

In his Position Paper,^[20] Petitioner alleged that he was illegally dismissed from employment. Petitioner opined that after his reassignment to Cagayan de Oro, he was unduly prejudiced when Private Respondent subsequently revoked his housing and meal subsidies amounting to P6,500.00. Also, Petitioner accused Private Respondent of harassment because the underlying reason for his transfer was based on the former's membership and participation in the Papertech Employees Association-ALU-TUCP and Private Respondent was keen on busting the said union. Moreover, from the time he was unlawfully terminated, Petitioner suffered anxiety and sleepless nights. Thus, Petitioner prayed for the award of backwages, reinstatement, moral damages, and attorney's fees.

On the other hand, Private Respondent averred in its Position Paper^[21] that the point of contention is not unfair labor practice because the members of Papertech Employees Association-ALU-TUCP had filed a voluntary petition to dissolve the same

before the Department of Labor and Employment, which had already been granted by the said agency.^[22] Furthermore, Private Respondent argued that the reassignment of Petitioner to Cagayan de Oro was in good faith and was a valid exercise of its management prerogative to transfer employees where they will be most needed. Moreover, Private Respondent highlighted that Petitioner's dismissal was valid due to the fact that the latter abandoned his duties. In fact, Petitioner was duly informed to return to work on a number of occasions, yet he failed to do so. Thus, Private Respondent prayed for the dismissal of the Complaint.

Following the exchange of responsive pleadings, on 27 September 2013, Labor Arbiter Remedios Tirad-Capinig ("Labor Arbiter") rendered a Decision^[23] in favor of Petitioner finding that the latter was unlawfully dismissed. The Labor Arbiter reasoned that the permanent transfer of Petitioner from Pasig City to Cagayan de Oro coupled with the withdrawal of his housing and meal subsidies led to his prejudice and diminution of pay and benefits, which amounted to constructive dismissal. The dispositive portion of the Labor Arbiter's Decision decreed:^[24]

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent [Papertech, Inc.] to pay Complainant the amount of TWO HUNDRED FIFTY ONE THOUSAND SIX HUNDRED SEVENTY ONE PESOS and thirty-seven centavos (P251,671.37) as follows:

- | | | |
|----------------------------------|-------------|----------------------------|
| 1. BACKWAGES - - - | P 71,088.12 | |
| - - - - - | | |
| 4/1/13 - 9/27/13 | | |
| = 5.26 | | |
| P466.58 x 26 x | | |
| 5.86 | | |
| | | |
| 2. SEPARATION PAY | P157,704.04 | P228,792.16 |
| - - - - - | | |
| 8/16/2000 - | | |
| 9/27/13 = 13 | | |
| yrs. | | |
| P466.58 x 26 x | | |
| 13 yrs. | | |
| | | |
| 3. 10% ATTORNEY'S FEES - - - - - | | <u>P 22,879.21</u> |
| - - - - - | | |
| | TOTAL | <u>P 251,671.37</u> |

SO ORDERED.

Unsatisfied, Private Respondent filed a Memorandum of Appeal^[25] questioning the aforesaid Decision. According to Private Respondent, the transfer of Petitioner to Cagayan de Oro was not motivated by discrimination or bad faith, nor did the same cause a demotion in the rank, salary, or privileges of Petitioner. Private Respondent emphasizes that the housing and meal subsidies were merely temporary benefits

given to Petitioner to help the latter adjust to his new work area.^[26] Furthermore, Private Respondent insisted that Petitioner's dismissal from employment was valid as the latter essentially abandoned his employment when he failed to report for work.

On 21 February 2014, the NLRC issued the assailed Decision in favor of Private Respondent. Firstly, the NLRC ruled that the act of Private Respondent in transferring Petitioner to Cagayan de Oro was a valid exercise of management prerogative; it was not a form of harassment amounting to constructive dismissal. In fact, the NLRC found no evidence to support Petitioner's allegations that he was harassed by Private Respondent for his union membership and participation. The NLRC continued that Petitioner's change of station was necessitated by the resignation of one Dennis L. Casiño. Secondly, the NLRC opined that the withdrawal of Petitioner's subsidies was not unlawful since "they are not part of his wage and are not legally demandable and enforceable."^[27] Finally, considering the instances when Petitioner took unauthorized leaves of absence coupled with his defiance of the return to work notices issued by Private Respondent, the NLRC concluded that Petitioner was guilty of abandonment. Thus, the said Commission dismissed Petitioner's Complaint.

Aggrieved, Petitioner filed a Motion for Reconsideration^[28] of the above Decision, but the same was denied by the NLRC in a Resolution^[29] dated 08 April 2014.

Hence, this Petition.

ISSUE

Petitioner raises the following lone assigned error:^[30]

THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION HOLDING THAT PETITIONER WAS NOT ILLEGALLY TERMINATED.

OUR RULING

Prefatorily, in order for a petition for *certiorari* to prosper, the petitioner must show that the tribunal concerned has acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.^[31] The phrase "grave abuse of discretion" has been defined by jurisprudence as "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross."^[32]