

EIGHTEENTH DIVISION

[CA-G.R. SP. 07744, November 17, 2014]

GOLDEN STAR MANNING AND SHIP MANAGEMENT CORP. AND ANTONIO SULAY III, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION SEVENTH DIVISION AND CIPRIANO P. CONSAD, JR., RESPONDENTS.

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Assailed in this petition filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended, are the Decision^[1] rendered on 31 January 2013 by the National Labor Relations Commission and its Resolution^[2] issued on 30 April 2013 denying partial reconsideration insofar as the wage differentials is concerned and, reducing the award of 13th month pay in NLRC Case No. VAC-10-000635-12.

The petitioners prayed for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to restrain the execution of the assailed Decision and Resolution as it would stand to suffer great and irreparable injury if such execution pushes through.

THE ANTECEDENTS

As culled by the National Labor Relations Commission, the facts are as follow, to wit:

“Complainant alleged that he was employed by respondent on July 9, 2008 as welder until his termination on May 16, 2012. He had been continuously working with respondent for almost four years receiving a monthly salary of P6,000.00 or P285.00 per day as reflected in his pay slips, which is below the prescribed minimum wage of P305.00 per day. Respondent Golden Star Manning Ship Management Corp. is a company engaged in the operation of tugboats used in towing bigger ships to the port. Complainant's work schedule is from 8:00 AM to 5:00 PM, Mondays through Saturdays. Despite rendering overtime work, he never received a single centavo as overtime pay. In his four years of service with respondent, complainant was not able to avail of service incentive leave pay nor was he given its money equivalent. Furthermore, he was not also given his 13th month pay. Complainant, further, alleged that based on his pay slips, the company automatically deducts P1.147.50 (food allowance) and P40.00 (medical allowance) every pay day or P2,295.00 food allowance and P80.00 medicine allowance every month. However, such deductions were not agreed to by the complainant in writing, which make them illegal.

Complainant also averred that during the SENA mediation conferences at the DOLE, respondent interposed the defense that he was merely suspended for fifteen days, from May 16 to June 1, 2012. However, it was only during the SENA conference that he saw a copy of the suspension letter. He received copy thereof by registered mail only three weeks after the effectivity date of his suspension. As a matter of fact, he even reported for work on May 16-22, 2012 until he was already barred by the guard from entering the company premises per order of Henry Regner. On June 11, 2012, the company sent him by registered mail a Return to Work Order directing him to report immediately otherwise his continued absence would be considered abandonment of work.

Respondents, for their part, alleged that complainant started working with the company on July 9, 2008 on probationary status. He was accepted for the position despite complainant's failure to present proof of training that would qualify him for the said position. He subsequently attained a regular status of employment.

Under the Salary and Benefits Agreement for the years 2008, 2009 and 2010 entered into by, herein complainant and respondents, complainant agreed to the payment of his 13th month pay and service incentive leave pay on a *pro-rata* (monthly) basis spread over the twelve months of the year.

Around December 2011, on different occasions, complainant became difficult to handle as an employee. Complainant left the work place several times, during working hours, without permission from his immediate supervisor. For several times he also showed disrespect to his supervisor, Henry Regner (x x x) by ignoring Regner every time he was told to do his tasks. Consequently on January 10, 2012, a memorandum was issued calling his attention regarding his reprehensible attitude, and was given a 'Last Warning' not to commit the same infractions again. Complainant refused to receive the letter-memorandum saying that he would only receive the letter after he has consulted his lawyer and the matter contained therein, sufficiently explained to him by his lawyer.

In the interim, for the years 2009 to 2010, complainant's monthly basic salary was increased by respondent on a yearly basis as shown by his monthly pay slips. Pursuant to respondent's policy, employees are asked to receive and sign their respective copy of the 'Employees Salaries and Benefits Contract' for salary increases to indicate the employees' assent to their salary increase. However, among all the employees, it was only complainant who refused to sign this document despite having received his yearly salary increase. Complainant justified his refusal to sign by saying that he could not read properly and that he needed to consult his lawyer before signing the document. Thus, on April 25, 2012, respondents, in a written memorandum, directed complainant to submit a written explanation within forty-eight hours from receipt thereof why he should not be penalized for insubordination. Despite complainant's refusal to receive the said memorandum, respondent still explained the tenor of the said memorandum to the complainant and even translated it

in the Cebuano dialect. When complainant still refused to sign it, insisting that he needed to refer it to his lawyer, respondent sent the said letter to complainant's given address through registered mail. However, complainant refused to comply with respondent's lawful directive and failed to submit his written explanation. On May 14, 2012, after patiently waiting for complainant to sign and confirm his assent to the increases in his salary, respondent issued a written notice of fifteen-day suspension from May 16, 2012 to June 1, 2012 against complainant for continuous insubordination. Again, complainant refused to receive the notice of his suspension and told respondent that he would not comply, therewith, without having consulted his lawyer. Thus, complainant insisted on reporting for work on May 16, 2012 on the premise that he had not yet received the notice of suspension. On May 17, 2012, complainant was no longer allowed to enter respondent's work premises in view of his suspension. On June 4, 2012, the day after complainant's fifteen-day suspension lapsed, complainant did not report for work. That day, respondent sent complainant a Return to Work order but the same could not be served upon him at his residence such that respondent sent it to him by registered mail. Due to his continued absence, respondent sent him another Return to Work Order (RTWO) on June 11, 2012. Since complainant, again, refused to receive the said order, it was, again, sent to him by registered mail. Despite the two RTWOs sent to complainant, he still refused to work such that on June 13, 2012 a last and final RTWO was sent to him, which was again refused receipt by his wife since complainant was not around. Again, the same was sent to complainant by registered mail. On July 9, 2012. complainant filed the instant complaint.”^[3]

THE RULING OF THE LABOR ARBITER

The Labor Arbiter ruled out illegal dismissal, but directed the herein petitioners to pay the private respondent 13th month pay and service incentive leave pay in the amount of Nine Thousand Four Fifty-Five Pesos (P9,455.00).^[4]

THE RULING OF THE NLRC

On appeal, the respondent NLRC affirmed with modification the Labor Arbiter's decision, *viz* -

“WHEREFORE, premises considered, the decision of the Labor Arbiter dated 28 August 2012 is, hereby, AFFIRMED with MODIFICATION. Respondents are ordered to pay complainant wage differentials, 13th month pay and Service Incentive Leave Pay (SILP) in the aggregate amount of ONE HUNDRED ONE THOUSAND NINE HUNDRED TEN 49/100 (P101,910.49).

SO ORDERED.”^[5]

On reconsideration,^[6] the respondent NLRC disposed the petitioners' motion in this wise, *viz* -

WHEREFORE, premises considered, the instant Motion for Reconsideration is DENIED insofar as the grant of salary differentials to the complainant is concerned. However, the amount of 13th month pay awarded to the complainant is reduced from P22,149.91 to Php. 12,044.91. Thus, respondent is, hereby, ordered to pay complainant the amount of NINETY-ONE THOUSAND EIGHT HUNDRED FIVE and 49/100 (P91,805.49) broken down as follows:

Salary Differentials	P75,524.48
13 th month pay	12,044.91
SILP	<u>4,236.10</u>
Total	P91,805.49

SO ORDERED.”[7]

Hence, this petition on the following grounds, to wit:

“I.

The Honorable Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction when it totally disregarded evidence material to the controversy.

II.

The Honorable Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction when it awarded wage differentials to private respondent arbitrarily causing grave and irreparable injury and against the interest of substantial justice.”

THE ARGUMENTS

The petitioners'

That, the respondent NLRC committed grave abuse of discretion when it disregarded the certified true copies of the payroll statements for the period January 2009 to May 2012 attached to its motion for partial reconsideration. Under Article 221 of the the Labor Code, as amended, technical rules of the Rules of Court are not binding in labor cases. The case relied upon by the respondent NLRC, *Cansino v. CA*, to support its ruling that credence cannot be given to belatedly-submitted evidence such as the payroll statements is a civil case, hence, not applicable in this instance. It bears to stress that “even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to the NLRC is enough basis for the latter to be more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal.” (*Sasan, Sr. v. NLRC*, G.R. No. 176240, October 17, 2008, citing *Clarion Printing House, Inc. v. NLRC*, G.R. No. 148372, June 27, 2005.) To add, “the submission of additional evidence before the NLRC is not prohibited by its New Rules of Procedure. X x x The NLRC and labor arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence such as documents and affidavits submitted by the parties for the first time on

appeal. The submission of additional evidence on appeal does not prejudice the other party for the latter could submit counter-evidence." (*Sasan, supra*)

Even granting without admitting that the payroll statements attached to its motion for partial reconsideration are mere photocopies still these are acceptable it being that, as already stated, the proceedings before the NLRC are not covered by the technical rules of evidence and procedure observed in the regular courts.

That, the respondent NLRC failed to take into account the Salary and Benefits Agreement for the years 2008, 2009, and 2010 and the certified true copies of the payroll statements it submitted, and the payslips that the private respondent, himself, submitted. From these documents, it is clear that the private respondent receive a daily wage rate more than that prescribed by law.

Anent the allegation that automatic deductions were made against the private respondent's regular salary, such allegation is amply refuted by the payroll statements attached to its motion for partial reconsideration. Thus, the burden is now shifted to the private respondent to prove such deductions and underpayment.

"x x x Labor cases must be decided according to justice and equity and the substantial merits of the controversy. x x x Indeed, rules of procedure may be relaxed to relieve a part of any injustice not commensurate with the degree of non-compliance with the process required." (*Anib v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 190216, August 16, 2010)

Moreover, as enunciated in *Medline Management, Inc., et. al. v. Roslinda* (G.R. No. 168715, September 15, 2010):

While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Employment Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, this Court has no choice but to deny the claim, lest we cause injustice to the employer.

The private respondent's

Contrary to the petitioners's allegation, the respondent NLRC did not disregard the evidence extant in the records. In fact, the respondent NLRC ruled that based on the evidence on record there is no illegal dismissal to speak of. To add, the respondent NLRC even reduced the monetary award on reconsideration.

Anent the payroll statements, the petitioners should have submitted the same at the earliest opportune time. If the respondent NLRC did not anymore consider the payroll statements as evidence to prove payment of the amounts reflected therein there is no one to blame but the petitioners itself. Thus, the respondent NLRC did not commit grave abuse of discretion when it awarded wage differentials and other benefits in his favor.

That, the monthly medicine and victualling allowances in the amount of P80.00 and P2,295.00, respectively, were correctly excluded by the respondent NLRC from the computation of his salary as he did not actually receive such allowances. This practice of augmenting the salary by adding in the payslips the medicine and