

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 07523, December 16, 2014]

**LBP SERVICE CORPORATION, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION-CEBU CITY AND ELISEO
CONLU, RESPONDENTS.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

This is a petition filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the July 31, 2012 Decision^[1] rendered by the National Labor Relations Commission and its October 31, 2012 Resolution^[2] denying reconsideration in NLRC Case No. VAC-04-000232-2012.

THE ANTECEDENTS

On 3 August 2011, Eliseo G. Conlu (hereinafter private respondent) alleged that Cesar Artesano, branch manager of Land Bank Philippines-Kabankalan told him to resign. This shocked private respondent as he was never informed or heard of any offense to necessitate his termination or resignation. All he can remember was that he accidentally leaned on the side mirror of one of the pick-up vehicles of the bank causing a minor damage to it. He promised to pay the damage or to have it repaired. All this time, he was not formally charged for the damage of the side mirror leaving him in the dark about what really motivated Cesar Artesano to ask him to resign. After he was told to resign he had no choice but to leave for home. Then he was no longer called back for work. He learned later on that he was already replaced by one of the security guards assigned at the branch.

LBP Service Corporation (petitioner hereinafter) averred that it is a job contractor duly registered with the Department of Labor and Employment in compliance with DOLE Order No. 18-02 with certificate of registration No. NCR-MPFO-72600-42611-010. One of its clients is the Land Bank of the Philippines (Land Bank). Under their contract of manpower services, it will supply manpower services such as, but not limited to, janitors, drivers, mechanics, building maintenance workers, professional and technical people and other bank personnel. Thereunder, too, is the provision (Clause No. 8) that Land Bank shall have the right to request the replacement of any personnel who may be found undesirable. That, the private respondent was employed and assigned to the Land Bank-Kabankalan Branch. That, on 22 August 2011, it received a letter from Land Bank requesting the recall of the private respondent after the bank received a report about the vandal/damage committed by the private respondent on the bank's service vehicle, and what made it worst is that the private respondent committed such infraction while under the influence of alcohol. That, before it could investigate the alleged vandalism and to recall him

from Land Bank, private respondent voluntarily tendered his resignation effective August 3, 2011. That, it informed Land Bank about private respondent's resignation. Surprisingly, however, the private respondent filed a complaint for illegal dismissal with claims for backwages, separation pay, if reinstatement is no longer feasible, 13th month pay, moral and exemplary damages plus attorney's fees.

Efforts to amicably settle the case before the Labor Arbiter failed.

THE RULING^[3] OF THE LABOR ARBITER

The Labor Arbiter found for the petitioner; but awarded payment of prorated 13th month pay for the year 2011. The decretal portion of the Labor Arbiter's decision reads,

"WHEREFORE, premises considered, judgment is hereby rendered ordering the dismissal of the instant case for lack of merit. However, respondents Land Bank of the Philippines and LBP Service Corporation are DIRECTED to jointly and solidarily pay complainant ELISEO G. CONLU the amount of SIX THOUSAND THREE HUNDRED FIFTY-FOUR and 83/100 PESOS (P6,354.83) as his pro-rata 13th month for the year 2011.

SO ORDERED."

Dissatisfied, Eliseo G. Conlu appealed^[4] the Labor Arbiter's decision to the respondent National Labor Relations Commission. By its Decision promulgated on 31 July 2012 the respondent NLRC reversed the Labor Arbiter's decision, the fallo of which reads as follows:

"WHEREFORE, premises considered, the Decision of Acting Executive Labor Arbiter Romulo P. Sumalinog is, hereby REVERSED. Complainant is declared illegally dismissed by respondent LBPSC. Respondent LBPSC is hereby directed to pay complainant the amount of One Hundred Eighty-One Thousand Six Hundred Eighteen & 97/100 (P181,618.97), representing his backwages, proportionate 13th month pay for 2011, moral and exemplary damages. Respondent LBPSC, is, further directed to actually reinstate the complainant or reinstate him in the payroll and submit proof of compliance within ten (10) days from receipt of this Decision to NLRC RAB Bacolod.

SO ORDERED."^[5]

In reaching this conclusion, the respondent NLRC reasoned that:

"It is undisputed that complainant was the employee of respondent LBPSC assigned as janitor/messenger at LBP-Kabankalan Branch pursuant to a Contract of Manpower Services that they entered into, on 28 February 1997. Under paragraph 8 of said contract, LBP may request from LBPSC, the replacement of any LBPSC personnel, whom the former finds undesirable or whose performance is unsatisfactory. In fact, respondent LBP exercised this prerogative when in a letter dated 17 August 2011, it requested for the recall of complainant. The same was allegedly received by respondent LBPSC, on 22 August 2011. Respondent

LBPSC, however, alleges that before it could investigate and recall the complainant from LBP, complainant voluntarily tendered his resignation. Thus, respondent LBPSC informed LBP of complainant's resignation through a letter, dated 24 August 2011.

In his Appeal, complainant claims that the purported claims that the purported resignation letter is fabricated and that his supposed signature is forged by the respondents to make it appear that he voluntarily resigned.

He presented the affidavits of Marlou Lumawag, former head security guard of KBP-Kabankalan and Diovic Chua, a second cousin. Both assert that they are familiar with complainant's signature. Mr. Lumawag claims that he was assigned in LBP from June 1997 – September 2008, and that during the latter part of his term, he was appointed head guard and part of his duties were to verify the complainant's daily time record with his signature and had complainant affix his signature in the Employee Log Sheet every day, together with all other employees, for attendance. Mr. Chua, on the other hand, declares that he is familiar with the signature of complainant because he had seen and read the documents of complainant before.

Both declare that the signature in the resignation letter shows purposeful, heavy and deliberate strokes which indicate that the signature of complainant was painstakingly copied. This is contrast with the original signature of complainant, which strokes are more natural, light and spontaneous. Further, the original signatures of complainant are consistently slanted because of his being left-handed while that in the resignation letter is erect, a clear indication that it was written in a deliberate fashion and the person who wrote the same is right-handed.

Complainant, further, attached photo copies of his PhilHealth, PAG-IBIG and company ID cards with his signature. Also, an original copy of his Voter Certification Record, with his original signatures on it, signed on 26 March 2012.

We have compared the questioned signature of complainant in the resignation letter with those original signatures of complainant in the Complaint filed before the NLRC RAB and in his Voter Certification Record, as well as with those in his Philhealth, PAG-IBIG and company ID cards. It is Our opinion that the signature in the resignation letter is entirely different from the specimen signature in the resignation letter is entirely different from the specimen signatures presented by the complainant.

We agree with respondent LBPSC that slight variations in strokes are expected considering that the signature of a person will never be exactly the same to the last dot, stroke, curve or dash. However, We notice that in all the specimen signatures presented by the complainant, complainant's strokes are pointed unlike that in the resignation letter. We also share the same observation with the complainant that the questioned signature in the resignation letter is erect while the signatures

of complainant in his specimen signatures are all slanted.

Respondent LBPSC, further, argues that, 'x x x complainant's resignation letter was sent to the company through courier service (JRS Express). The letter and complainant's resignation letter, thereon, appeared genuine and legitimate. The [c]ompany had no reason to doubt its authenticity and due execution. Thus, the company may not be accused of fabricating complainant's resignation letter since it merely received the same through mail.

An examination of the JRS Express envelope, allegedly containing the said resignation letter, however, indicates that complainant was not sender of the same as the sender indicated therein was the following:

'LBP KABANKALAN Br.
Kabankalan City
Negros Occ.'

We also find it highly suspect that the sender of said resignation letter is LBP Kabankalan Branch. This is contrary to the statement of respondent Cesar O. Artesano, found in his Affidavit that sometime in August 2011, complainant went to his office and showed him a prepared resignation letter but that he informed complainant to submit it to his employer LBPSC. Hence, granting without admitting that complainant, indeed, executed the resignation letter, it is apparent that complainant did not submit his resignation letter to respondent LBP Kabankalan Br.

Nonetheless, as held by the Court in the case of *Mora v. Avesco*, and reiterated in the case *Peñaflor v. Outdoor Clothing Manufacturing Corp., et. al.*

'x x x x'

Taking the circumstances all together, We are of the opinion that respondent LBPSC was not able to prove by clear evidence that complainant voluntarily resigned. As previously held by the Court in *BMG Records (Phils.), Inc. v. Aparecio*,

'x x x x'

Furthermore, the filing of the instant complaint contradicts respondent's claim that complainant voluntarily resigned. As held by the Court in *Valdez v. NLRC*:

'x x x x'

We notice the diligent and painstaking efforts taken by the complainant in asserting his claim. This, to Our mind, is inconsistent with respondent LBPSC's claim that complainant has voluntarily resigned.

Whatever doubts that remain in our minds on the credibility of the parties' evidence, should, by the law's dictate, be settled in favor of the

workingman.

We also take into consideration the fact that, as admitted by respondent LBPSC, complainant started working with them since March 15, 1997 or more than thirteen (13) years. To Our mind, complainant would not give up his employment that easily especially the scarcity of available jobs nowadays. It would certainly be contrary to human conduct for an employee of more than thirteen (13) years to throw away said employment just because he was being suspected of causing damage to the client's service vehicle. In face, complainant without admitting his culpability was willing to pay the damage or have it repaired. Certainly, complainant deserves to be accorded due process."

Accordingly, the respondent NLRC granted monetary award to the private respondent, thus -

"In view of his dismissal, complainant is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him, which was, on 03 August 2011, up to the time of his actual reinstatement.

For failure to present proof of payment to complainant of his proportionate 13th month pay for 2011, We affirm the award below.

Complainant was forced to hire the services of a counsel to vindicate his rights. Thus, attorney's fees equivalent to 10% of the total award to complainant is proper.

In view of the bad faith of respondent LBPSC, as shown by their act of fabricating complainant's resignation letter, complainant is entitled to moral damages in the amount of P10,000.00 and exemplary damages in the amount of P5,000.00. As held by the Supreme Court in the case of *Maliwat v. CA*:

'x x x x'

Complainant's award is computed as follows:

1) BACKWAGES

08/03/11 – 07/31/12 =

12 mos.

P419.00/day x 26 days x

12 months

=

P130,728.00

13th Month Pay

P419.00/day x 26 days x

12 months

=

10,894.00

12 months

SILP