

## TWENTIETH DIVISION

[ CA-G.R. SP No. 07017, December 01, 2014 ]

**RICARDO D. AMADO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, CEBU CITY, JASPE LIGHT STEEL INDUSTRIES, INC., AND ANDRES JASPE, RESPONDENTS.**

### DECISION

#### QUIJANO-PADILLA, J.:

This petition for *certiorari*<sup>[1]</sup> seeks to modify the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> dated December 23, 2011 and May 30, 2012, respectively, of the National Labor Relations Commission, 7th Division, Cebu City in NLRC Case No. VAC-03-000220-2011 [SRAB Case No. VI-12-50457-09] which modified the Decision<sup>[4]</sup> dated August 27, 2010 of the Sub-Regional Arbitration Branch No. VI, Iloilo City, for Illegal Dismissal, Non-Payment of 13<sup>th</sup> Month Pay, Service Incentive Leave with prayer for Damages and Attorney's Fees. The herein complainant-petitioner seeks for a grant of separation pay in lieu of reinstatement and an award of moral damages and attorney's fees of 10%.

#### The Antecedents

This case stemmed from an amended Complaint<sup>[5]</sup> for Illegal Dismissal, Unjust Diminution of Salary, Non-payment of Overtime Pay, Unpaid 13<sup>th</sup> Month Pay, Service Incentive Leave Pay, Backwages, Separation Pay and Damages filed by complainant-petitioner Ricardo D. Amado against the private respondents Jaspe Light Steel Industries, Inc. and owner Andres Jaspe.

As the private respondents were not amenable to enter into settlement with herein complainant-petitioner, both parties were directed to submit their respective position papers.

#### Version of the Complainant-Petitioner

Complainant-petitioner, in his position paper, narrated that the herein private respondent, Jaspe Light Steel Industries Inc., owned by Mr. Andres Jaspe, is engaged in the manufacture/fabrication of farm implements located at Evangelista St., Pavia, Iloilo. He averred that he was employed by private respondent as welder of different farm implements such as rice thresher, sentrex rice thresher, hand tractor, and super tiller since January 1995. He declared that he continuously worked as such for almost 15 years until he was dismissed in November 2009.<sup>[6]</sup>

Complainant-petitioner stated that private respondent conducts a year-round operation and required complainant-petitioner to report for work at 7:30 in the

morning until 5 o'clock in the afternoon, with one-hour lunch break, from Monday until Saturday. He further stated that he was paid a corresponding amount for every item that he would be able to assemble.<sup>[7]</sup>

Moving forward, complainant-petitioner narrated that from the time he got married and started his family in 1995, he and his wife lived in the Jaspe Compound upon the request of the herein private respondents, Mr. and Mrs. Jaspe, considering the fact that Mrs. Jaspe is the complainant-petitioner's paternal grand aunt.<sup>[8]</sup>

Complainant-petitioner's younger sister, Maricar Dedeles who used to work as a secretary in Jaspe Light Steel Industries, Inc., had an illicit relationship with the private respondent's driver, Anthony Cortel. Private respondent was incensed by such relationship which prompted him to later on dismiss Dedeles and Cortel. Subsequently, Dedeles and Cortel filed a case for illegal dismissal before NLRC-SRAB, Branch No. VI, Iloilo City against the private respondent Jaspe Light Steel Industries Inc. in 2009 but the same was settled.<sup>[9]</sup>

In November 2009, complainant-petitioner's grandmother, who is the sister of Mrs. Jaspe, died. Private respondent Mr. Jaspe and Mrs. Jaspe offered to pay for the burial expenses provided that Maricar Dedeles should not attend the said burial. However, on November 21, 2009, on the day of the burial, Maricar Dedeles attended, which resulted in a confrontation between Maricar Dedeles and Mr. Jaspe's daughters, namely, Maria Jaspe-Francisco and Dr. Amalia Jaspe-Fernandez. Complainant-petitioner declared that during such confrontation, he and his wife merely stared and were unable to react due to their shock to the turn of events. Moreover, during said incident, Maria Jaspe-Francisco informed complainant-petitioner's wife that they better pack their belongings in the Jaspe Compound.<sup>[10]</sup>

The following day, November 22, 2009, complainant-petitioner was summoned by respondent Mr. Jaspe to his office. It was then and there when he was told by the said private respondent that his services were no longer needed. Subsequently, complainant-petitioner and his family removed their belongings from their makeshift house and left the Jaspe Compound immediately.<sup>[11]</sup>

### **Version of the Private-Respondents**

Private respondents on the other hand declared, that Jaspe Light Steel Industries, Inc. (JLSI) is a domestic corporation. While it is a family corporation, it has a personality separate and distinct from its owners.<sup>[12]</sup> Private respondent Andres Jaspe is already seventy-eight (78) years old and because of old age, has already retired from the management of the business.<sup>[13]</sup>

Private respondents contend that as part of their business strategy and in order to avoid paying monthly salary it contracted with skilled individuals, including the complainant-petitioner, to assemble a particular part of the agricultural machinery on "pakyaw" basis or by piece of work and paid these persons per work accomplished.<sup>[14]</sup>

Private respondents recount that herein complainant-petitioner, being a relative of private respondent Andres Jaspe and by benevolence, was allowed to occupy one of

the small houses inside the Jaspe Compound.<sup>[15]</sup>

Private respondent Andres Jaspe bewails that on several occasions prior to November 22, 2009, he noticed that complainant-petitioner has been inviting his relatives and friends to drink hard liquor inside the said house. The drinking sessions would last up to early mornings and complainant-petitioner and his guests would often become unruly and so drunk.<sup>[16]</sup> Private respondent claims that complainant-petitioner ignored his several requests to stop this activity. There was even one incident when complainant-petitioner, while drunk, fired his gun. This scared Mr. Jaspe's wife and children. Consequently, Mr. Jaspe informed complainant-petitioner that he and his family should vacate the said house inside the Jaspe Compound, for after all, complainant-petitioner does not pay rentals.<sup>[17]</sup> Respondents opined that this must have hurt complainant-petitioner who immediately told JLSI's Asst. Manager that he would no longer finish the task that he was then working on. Complainant-petitioner also demanded for the computation and payment of the value of his services.

Private respondents assert that they have not terminated the employment of the herein complainant-petitioner. Private respondents declare that they will continue to accept complainant-petitioner for whatever "pakyaw" jobs are available, as maybe determined by order from customers, and available materials. They postulate that it was the complainant-petitioner who refused to continue working.<sup>[18]</sup>

### **Ruling of the Labor Arbiter**

On 27 August 2010, the Office of the Sub-Regional Arbitration Branch VI of Iloilo City thru Labor Arbiter Roderick Joseph B. Calanza rendered the Decision<sup>[19]</sup> which reads

**"WHEREFORE,** in the light of the foregoing, judgment is hereby rendered declaring the complainant to have been illegally dismissed and ordering the respondents JASPE LIGHT STEEL INDUSTRIES, INC. AND ANDRES JASPE, Owner, to jointly and solidarily pay complainant the following monetary awards:

1. Backwages	-	P60,769.58
2. Separation Pay	-	P97,500.00
3. 13th Month Pay	-	P18,376.17
4. Service Incentive Leave Pay	-	P3,750.00
5. Moral Damages	-	P25,000.00
TOTAL	-	P205,395.75
6. 10 % Attorney's Fees	-	P20,539.58
<b>GRAND TOTAL</b>	<b>-</b>	<b>P225,935.33</b>

All other claims are DISMISSED for lack of merit.

SO ORDERED."<sup>[20]</sup>



On December 23, 2011, the NLRC rendered a Decision, thus:

**WHEREFORE**, premises considered, the Decision of the Labor Arbiter is **MODIFIED**. Respondent Jaspe Light Steel Industries, Inc. is directed to immediately reinstate complainant to his former position without loss of seniority rights and other privileges. The Labor Arbiter's award of backwages, 13<sup>th</sup> month pay and service incentive leave is UPHELD. All other awards are, hereby DELETED.

SO ORDERED.<sup>[31]</sup>

Not in total accord with the NLRC Decision dated December 23, 2011, complainant-petitioner filed a motion for reconsideration<sup>[32]</sup> on February 6, 2012. Complainant-petitioner questions the wisdom of the NLRC's directive to have him reinstated back into his former position. He asserts that his strained relations with respondents preclude the propriety of a reinstatement and prays, instead, the payment of separation pay. He also insists on being awarded moral damages and attorney's fees.

Meanwhile, on February 9, 2012, private respondents moved for a motion for reconsideration<sup>[33]</sup> of the same Decision. For their part, private respondents insist that complainant-petitioner was not illegally dismissed at all and pray that all of his claims be dismissed.

On February 27, 2012, the NLRC issued a Resolution denying both motions of reconsideration, thus:

WHEREFORE, foregoing premises considered, both motions for reconsideration filed by complainants and respondents are DENIED.<sup>[34]</sup>

The NLRC stressed that the complainant-petitioner filed his motion one day late while the private respondents filed their motion five days late. The NLRC also note the fact that this is the second motion for reconsideration filed by private respondents, again, in violation of the afore-cited rule.<sup>[35]</sup>

Nevertheless, on April 27, 2012, complainant-petitioner submitted to the NLRC a Manifestation<sup>[36]</sup> seeking to clarify that the last day of the ten-day reglementary period for the filing of his motion on the following working day should be considered as timely.

Hence, on May 30, 2012, the NLRC issued a Resolution<sup>[37]</sup> declaring that the complainant-petitioner's contention in his Manifestation is correct and they had considered and resolved the issues raised in his motion for reconsideration. However, the NLRC found no new arguments or evidence raised in complainant-petitioner's motion for reconsideration, which provide a cogent basis for the reversal of their earlier Decision. Verily:

"WHEREFORE, foregoing premises considered, complainant's motion for reconsideration filed, on 6 February 2012, is DENIED for lack of merit.