

## NINTH DIVISION

[ CA-G.R. SP NO. 90380, August 10, 2006 ]

### PRINCE OF WALES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND LEONIDES CALISAY, RESPONDENTS.

#### D E C I S I O N

##### CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion, the Decision<sup>[1]</sup> of the National Labor Relations Commission (NLRC) dated October 20, 2003 which affirmed the Decision<sup>[2]</sup> of the Labor Arbiter dated December 21, 2001 finding petitioner guilty of illegal dismissal and ordered the reinstatement of petitioner to her former position plus full backwages, service incentive leave pay and 13th month pay. Likewise assailed is the Resolution<sup>[3]</sup> of the NLRC dated December 7, 2004 denying petitioner's motion for reconsideration.

The antecedent facts:

Sometime on May 1992, private respondent Leonides Calisay was employed as kitchen staff/helper at Prince of Wales at Makati City, a pub and restaurant owned and managed by Universal Gourmet Foods, Inc. She regularly worked from Tuesday to Sunday, from 7:00 a.m. to 4:00 p.m. Her assigned rest day is Monday.

On May 3, 2000, private respondent was terminated from employment for allegedly being gainfully employed in another restaurant. Private respondent alleged that her dismissal from work stemmed from an incident that happened on April 30, 2000, Sunday, when she absented herself for work due to extreme colds and flu. She also did not report for work on Monday, May 1, 2000, considering that it was her rest day and at the same time, a legal holiday (Labor Day). On May 2, 2000, private respondent was still physically indisposed and was advised by her doctor at St. Martin Medical Laboratory Clinic to take a rest for three to four days.

When private respondent reported for work on May 3, 2000, a memorandum<sup>[4]</sup> for termination was given to her and informing her that she was gainfully employed by another restaurant and that her absences from April 30 to May 2, 2000 was considered by management as abandonment.

Hence, private respondent filed a complaint for illegal dismissal with claims for non-payment of overtime pay, service incentive leave pay, premium pay for holiday, rest day pay and 13th month pay. She contends that petitioner did not comply with the substantial and procedural due process prior to her dismissal.

For its part, petitioner alleged that private respondent started working in February

1998 and ended her employment on May 3, 2000 with a Quitclaim, Release and Waiver. Although private respondent worked with the company in 1992, she worked on and off and her latest employment was in February 1998. Petitioner maintains that private respondent was not illegally dismissed because she abandoned her work by her failure and refusal to report for work for an unreasonable length of time. Petitioner claims that private respondent's separation from the company was for a valid cause, citing therein Article 282 (a), (b) and (c) of the Labor Code, as amended. Private respondent has not been regularly reporting for work, habitually absented herself and neglected her duties. She requested for a shift change giving personal reason and has requested to work in the morning. Petitioner found out after investigation, however, that private respondent was employed by Glicerio Unas, petitioner's Cook who is moonlighting as a Caterer illegally using the supplies of petitioner. This is clearly conflict of interest, willful breach of trust, and in willful disobedience of the orders of petitioner. Finally, petitioner avers that private respondent was accorded due process of law. She was called by management to explain where she admitted working for another, a serious misconduct under petitioner's policies and general practices of restaurants, which was made known to her from the start of her employment through her contract of employment. She was asked to choose between the two jobs and she chose the other. Thus, petitioner considered private respondent to have abandoned her employment, to which it issued the memorandum terminating her employment.

On December 21, 2001, the Labor Arbiter issued a Decision finding private respondent to have been illegally dismissed from employment, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding the respondent company guilty of illegal dismissal.

In view thereof, respondent Prince of Wales – Makati, owned and operated by Universal Gourmet Corporation is hereby ordered to reinstate complainant Leonides Calisay to her former position plus full backwages from 3 May 2000 up to her actual reinstatement, computed as of even date as follows:

$$P 223.50 \times 26 \text{ days} \times 16 \text{ months} = \mathbf{P 92,976.00}$$

Respondent company is also ordered to pay complainant Calisay her:

a.) Service Incentive Leave Pay for three (3) years:

$$P 223,50 \times 5 \times 3 \text{ years} = \mathbf{P 3,352.50}$$

b.) 13th month pay for three (3) years:

$$P 223.50 \times 26 \text{ days} \times 3 \text{ years} = \mathbf{P17,433.00}$$

All other claims are dismissed for lack of merit and/or factual basis.

SO ORDERED."

The NLRC dismissed petitioner's appeal through its Decision promulgated on October 20, 2003. Petitioner moved for reconsideration but it was likewise denied in the Resolution dated December 7, 2004. The NLRC ratiocinated that the Labor Arbiter was correct in stating that herein petitioner failed to substantiate its accusation that there was conflict of interest amounting to breach of trust and confidence for private respondent to maintain another job with the cook who was moonlighting as caterer and her alleged absence for an unreasonable length of time. Further, the quitclaim signed by private respondent cannot be used to bar her other claims as she signed it under protest, as indicated in the voucher, so that she can receive her salary and holiday pay.

Hence, this petition.

Petitioner contends that there was misappreciation of facts on the part of the NLRC in finding that the appealed decision is supported by substantial evidence. Private respondent's only evidence was the May 3, 2000 Memorandum while petitioner presented the Quitclaim duly admitted by petitioner, the memorandum given prior to termination, the voucher showing that private respondent received all her benefits under the law, and the payroll showing not only private respondent's receipt of all her benefits but also her habitual absenteeism and tardiness. The fact that private respondent chose the other employment is a clear evidence of abandonment and that there was no dismissal. Thus, NLRC committed grave abuse of discretion when it gave credence to the factual findings of the Labor Arbiter when there is no substantial evidence to support the same.

### **The petition is devoid of merit.**

To constitute a valid dismissal, it is imperative that the employer shows that the employee was terminated for a just or authorized cause and it must also prove that it observed procedural due process. In this case, petitioner anchors the validity of petitioner's dismissal on Article 282 (a), (b) and (c) of the Labor Code and maintains that it observed due process before it terminated the employment of petitioner. However, both the Labor Arbiter and the NLRC found, on the basis of the evidence proffered, that private respondent was illegally dismissed.

We have carefully and thoroughly reviewed the records of the case and found no grave abuse of discretion committed by the NLRC when it affirmed the decision of the Labor Arbiter finding petitioner guilty of illegal dismissal. Petitioner failed to fully substantiate its allegation that private respondent is gainfully employed by another restaurant, conflicting with her employment at the Prince of Wales. No other evidence was offered by petitioner other than the sworn statement of Rosalinda Ito to the effect that private respondent admitted, during a conference with the management, having maintained two (2) jobs of conflicting interest.<sup>[5]</sup>

To Our mind, this other restaurant referred to by petitioner is the catering business of Glicerio Unas, petitioner's Cook, who is moonlighting as a caterer. As stated by Unas, he used to accept catering projects and he would ask private respondent to assist him for a fee.<sup>[6]</sup> If this is the other job referred to by petitioner, it cannot be said, therefore, that private respondent is gainfully employed in another restaurant. Private respondent cannot be considered to have been permanently employed elsewhere. Nor can it be said, more importantly, that there is conflict of interest