

RODOLFO A. ROJAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE ACRYLIC CHEMICAL CORPORATION AND CHARLES T. GAN, RESPONDENTS.

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Philippine Acrylic Chemical Corporation and Charles T. Gan (respondents) are before the Court via a Motion for Reconsideration (Rollo, pp. 299-305) seeking the reversal of this Court's Decision dated July 12, 2013 which granted petitioner Rodolfo A. Rojas' petition. The subject Decision reversed and set aside the Resolutions dated September 13, 2011 and October 28, 2011 of the National Labor Relations Commission (NLRC), and remanded the case to the Labor Arbiter for the computation of petitioner's benefits pursuant to this Court's finding of constructive dismissal.

Respondents aver that the NLRC Resolutions, which this Court reversed, were correct as it took into account the Asian Financial Crisis in 2007 and the economic damage left by Typhoon Ondoy in 2009. Petitioner also misrepresented facts to gain the Court's sympathy. Respondents further assert that they did not present before the Labor Arbiter and the NLRC evidence to support their claim of financial losses as they expressly reserved their right to do so. They believed that petitioner was merely fishing for evidence, having earlier filed a similar case for constructive dismissal against them. Since their contention was sustained by the Labor Arbiter and the NLRC, there was no occasion for them to present their evidence on financial losses. The audited income statements of respondents for the years 2009 to 2012 show that they suffered net losses amounting to millions of pesos. They also maintain that they did not have any intention to dismiss petitioner from work as they even sent three notices telling him to report to work, after the instant case was filed. (Rollo, pp. 299-304).

Petitioner meanwhile asserts that the accident which led to the cutting-off of his two fingers is relevant to the present case as it is the reason why he was given only 2 to 3 working days a week. Petitioner also calls as flimsy the excuse given by respondents in not presenting evidence to support their claim of financial losses. Respondents are aware that they have the burden of proving with sufficient evidence the closure or suspension of their business operations. The documents respondents belatedly presented are self-serving and were already available as early as 2009, hence cannot be considered as newly discovered evidence. (Rollo, pp. 338-345).

The Court DENIES respondents' Motion for Reconsideration.

The documents appended to the instant motion are not newly discovered evidence. Respondents could have presented the same before the Labor Arbiter and the NLRC but they did not do so. Neither did they offer adequate explanation for such failure. It is a basic rule that evidence not formally offered before courts below cannot be considered on appeal. Thus such documents cannot be admitted much less given probative value at this point. To do so would be repugnant to the demands of justice and fair play. (St. Michael's Institute v. Santos, 371 SCRA 383, 395-395 [2001]).

The Complaint in this case was filed in 2010. The documents presented meanwhile pertain to the years 2008 to

2011. (Rollo, pp. 312-317). For their failure to present the same at the earliest opportunity respondents could only state that they did not present such documents because they “expressly reserved their right to submit and present the appropriate defense and pertinent evidence for the reason that they believe that complainants...was merely speculating or alleging pure conclusion of law or fishing for evidence...” (Rollo, p. 302).

Respondents seek the indulgence of the Court on the ground that they were not represented by counsel in the proceedings before the Labor Arbiter. (Rollo, p. 303). Any layman by simple logic however can be expected to know that evidence supporting one's defense should have been presented early on in the case. (See *Peñaflor v. Outdoor Clothing Manufacturing Corp.*, 618 SCRA 208, 215 [2010]).

It is also settled that whatever doubts that exist on the credibility of the parties' evidence should be settled in favor of the working man. (*Peñaflor v. Outdoor Clothing Manufacturing Corp.*, *supra*, 216).

WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

Lopez, M. V., and Inting, S. B., JJ., concur.

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