

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

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This petition for certiorari[1] seeks to modify the Decision[2] and Resolution[3] 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[4] dated August 27, 2010 of the Sub-Regional Arbitration Branch No. VI, Iloilo City, for Illegal Dismissal, Non-Payment of 13[th] 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[5] for Illegal Dismissal, Unjust Diminution of Salary, Non-payment of Overtime Pay, Unpaid 13[th] 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.[6]

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.[7]

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.[8]

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.[9]

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.[10]

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.[11]

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.[12] 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.[13]

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.[14]

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.[15]

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.[16] 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.[17] 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.[18]

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[19] 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

GRAND TOTAL - P225,935.33

All other claims are DISMISSED for lack of merit.

SO ORDERED.”[20]

The Honorable Labor Arbiter ruled that the complainant-petitioner is considered a regular employee such that he cannot be dismissed without due process of law.[21] In lieu of reinstatement, separation pay has been awarded to the complainant-petitioner at the rate of one month pay for every year of service.[22]

Complainant-petitioner was also awarded money claims, i.e. backwages, 13[th] month pay and service incentive leave, due to the failure of the private-respondents to present payrolls, vouchers and other documentary evidence to disprove complainant-petitioner's allegations that these benefits were already paid.[23]

Private respondents were also suffered to pay moral damages and attorney's fee equivalent to 10% of the total monetary award.[24]

The private respondents, not satisfied with the decision of the Labor Arbiter, appealed[25] to the National Labor Relations Commission Seventh Division on November 2, 2010.

On June 28, 2011 Order[26], the NLRC denied private respondents' Motion for Reduction of Bond. They were then directed to post the remaining balance of the supersedeas bond within a non-extendible period of ten (10) days from receipt of the said order, viz

“WHEREFORE, premises considered, the Motion for Reduction of Bond filed by the respondents is DENIED. They are ordered to post the remaining balance of the supersedeas bond to be deposited with the Arbitration Branch of origin within a non-extendible period of ten (10) days from receipt hereof. Respondents are likewise directed to show proof of payment thereof, attaching the same with their compliance, failure of which will result to the dismissal of the appeal.

SO ORDERED.”[27]

On September 27, 2011, the NLRC promulgated a Resolution[28] dismissing the private respondents' appeal for non-compliance with the Order dated June 28, 2011, to wit:

xxx xxx xxx

Our records show that the order was mailed to respondent Andres Jaspe on 11 August 2011, and from the usual course of things, he was already in receipt of our 28 June 2011 Order before the last day of August 2011. Assuming then that Mr. Jaspe has received their proof of compliance by now. But, none was filed. Accordingly, respondents are deemed to have abandoned their appeal.

WHEREFORE, premises considered, respondents' appeal is hereby DISMISSED.[29]

On October 20, 2011, a motion for reconsideration[30] was filed by the private respondents relative to the Order promulgated by the NLRC.

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[th] month pay and service incentive leave is UPHELD. All other awards are, hereby DELETED.

SO ORDERED.[31]

Not in total accord with the NLRC Decision dated December 23, 2011, complainant-petitioner filed a motion for reconsideration[32] 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[33] 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.[34]

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.[35]

Nevertheless, on April 27, 2012, complainant-petitioner submitted to the NLRC a Manifestation[36] 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[37] 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.

SO ORDERED.” [38]

With the denial of his Motion for Reconsideration, complainant-petitioner sought recourse to this Court via the present Petition for Certiorari,[39] raising the following issues:

I

WHETHER OR NOT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC)-SEVENTH (7th) DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT PETITIONER BE REINSTATED TO HIS FORMER POSITION IN LIEU OF THE SEPARATION PAY.

II

WHETHER OR NOT THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC)-SEVENTH (7th) DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT PETITIONER IS NOT ENTITLED TO AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES.[40]

This Court's Ruling

The appeal has merit.

We do not concur with the NLRC when it reversed the ruling of the Labor Arbiter in denying the award of separation pay and instead directed the private respondents to immediately reinstate petitioner to his former position.[41] In its Decision, the NLRC ruled that it is only when reinstatement is no longer possible, as in the case of a strained relationship between the parties, where separation pay may be given in lieu of reinstatement.[42] In asserting this ruling, it stressed the limitations to the application of the strained relations principle, in which it stated that only those employees who occupy a position where he enjoys the trust and confidence of his employer that cannot be reinstated for it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned.[43] We disagree.

The recent case of *Bani Rural Bank Inc. Enoc Theater I and II and/or Rafael de Guzman vs. Teresa de Guzman, Edgar C. Tan and Teresa G. Tan*[44] thoroughly discussed payment of separation pay in this wise:

Article 279 of the Labor Code, as amended,[45] provides backwages and reinstatement as basic awards and consequences of illegal dismissal:

Article 279. Security of Tenure. -x x x An employee who is unjustly dismissed from work shall be 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 up to the time of his actual reinstatement.

"By jurisprudence derived from this provision, separation pay may [also] be awarded to an illegally dismissed employee in lieu of reinstatement." [46] Section 4(b), Rule I of the Rules Implementing Book VI of the Labor Code provides the following instances when the award of separation pay, in lieu of reinstatement to an illegally dismissed employee, is proper: (a) when reinstatement is no longer possible, in cases where the dismissed employee's position is no longer available; (b) the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved.[47] In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages.[48] The payment of separation pay and reinstatement are exclusive remedies. The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.[49]

It bears to stress that both the Labor Arbiter and the NLRC ruled that the herein petitioner was illegally dismissed from his employment by the respondents. It is clear that under the above-mentioned provision, illegally dismissed

employee may be awarded separation pay. There is no qualification whether he is a rank and file employee or an employee who holds a position where he enjoys the trust and confidence of his employer.

To recall, the very reason why petitioner was dismissed was because of a family conflict between the petitioner's younger sister, Maria Dedeles and private respondent, Mr. Jaspe together with his family. Although herein petitioner is not directly involved with the said family feud, it cannot be denied that he became part of it when the herein private respondents illegally dismissed him.

We are convinced that the said family misunderstanding compounded by the filing of the illegal dismissal against the private respondents, engendered ill-feelings and discord among the parties. With this situation, the working environment between the parties would not be favorable to both of them if petitioner will be reinstated to his previous position, considering also that the working area where petitioner used to work is inside of the Jaspe Compound and the private respondent Jaspe and his daughters directly manage the affairs of the private respondent company.

Furthermore, We agree with the petitioner when it opined that no less than the public respondent in its Order[50] dated June 28, 2011, observed that the private respondents do not show their intention to let the petitioner return to his previous work, thus:

xxx "Besides, We have observed that except on appeal, records do not show that respondents manifested their willingness to receive the complainant back to work." [51] (emphasis supplied)

Clearly, reinstatement of the petitioner is no longer the best remedy in the instant case. It is for the best interest of both parties that herein petitioner be given his separation pay in lieu of the reinstatement ordered by the public respondent NLRC.

It is also noteworthy that in the amended Complaint of the petitioner as well as in his position paper,[52] he prays, among others, for separation pay instead of reinstatement. Thus, in the case of *Cabigting vs. San Miguel Foods, Inc.*, [53] the Supreme Court pronounced that the doctrine of strained relations has been made applicable to cases where the employee decides not to be reinstated and demands for separation pay.

Anent the second issue, the Court sustains the Labor Arbiter's award of moral damages and overruled the denial of the NLRC of granting the same. Moral damages may be awarded to compensate one for diverse injuries such as mental anguish, besmirched reputation, wounded feelings, and social humiliation occasioned by the employer's unreasonable dismissal of the employee. The Court has consistently accorded the working class a right to recover damages for unjust dismissals tainted with bad faith; where the motive of the employer in dismissing the employee is far from noble. The award of such damages is based not on the Labor Code but on Article 220 of the Civil Code. [54] However, the Court observes that the Labor Arbiter decision of P25,000.00 as moral damages, is evidently excessive because the purpose for awarding damages is not to enrich the illegally dismissed employee. Consequently, the Court hereby reduces the amount to P15,000.00 as moral damages.[55]

Here, the petitioner had served the private respondents for almost fifteen (15) years but despite his loyalty to them, he was unlawfully dismissed because of the family dispute to which he was not directly involved. To reiterate, he was not even afforded due process as required by the law. Since the said dismissal was abrupt and unexpected, he was not prepared emotionally and financially. Moreover, aside from his illegal dismissal, his family also lost a home (a makeshift house inside the compound of the private respondents) on that same day.

As a head and provider of the family who had lost his job and a home in a just single day, there is no doubt that petitioner suffered mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation.

On the remaining issue, We resolve that the NLRC did not gravely abused its discretion when it deleted the award of attorney's fees. Award of attorney's fees is upon the discretion of the adjudicating body, and in the absence of grave abuse of discretion the same cannot be disturbed, or should be upheld.

The general rule is that attorney's fees in the concept of damages are not recoverable.[56]

In addition, it is a declared policy of law that awards of attorney's fees remain the exception rather than the general rule, it must be stressed once again that it is necessary for the court to make express findings of facts and law that would bring the case within the exception and justify the grant of such award.[57]

We concur with the respondents on this matter that the deletion of attorneys fees is within the discretion of the NLRC proper. Such discretion should not be disturbed. Thus:

“xxx Errors of judgments, as distinguished from errors of jurisdiction are not within the province of a special civil action for certiorari, which is merely confined to issues of jurisdiction or grave abuse of jurisdiction. It is incumbent upon petitioner to satisfactorily establish that Respondent Commissioner or Executive Labor Arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy in order that the extraordinary Writ of Certiorari will lie.[58]

Thus, We deny the petitioner's claim for attorney's fees as he has not substantiated his entitlement to this benefit.

WHEREFORE, premises considered, the Decision dated December 23, 2011 of the National Labor Relations Commission, 7[th] Division, Cebu City in NLRC Case No. VAC-03-000220-2011 [SRAB Case No. VI-12-50457-09] is hereby REVERSED and SET ASIDE. The Decision[59] rendered by the Labor Arbiter dated August 27, 2010 is hereby REINSTATED with the following modifications:

(1) The award of Moral Damages is reduced to fifteen thousand pesos (P15,000.00) instead of twenty five thousand pesos (P25,000.00).

(2) The award of Attorney's fees is deleted.

All other awards stand.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] See Petition for Certiorari, rollo, pp. 3-23.

[2] Rollo, pp. 201-210, penned by Commissioner Julie C. Rendoque.

[3] Rollo, pp. 230-231, penned by Presiding Commissioner Julie C. Rendoque.

[4] Rollo, pp. 135-140, penned by Labor Arbiter Roderick Joseph B. Calanza.

[5] See Petitioner's Complaint at the NLRC SRAB 6, rollo, p. 24 and Complainant's Position Paper, rollo pp. 25-37.

[6] See Complainant's Position Paper, rollo p. 25.

[7] Id., p. 26.

[8] Id., p. 27.

[9] Id,

[10] Id., p. 28.

[11] Id.

[12] See Respondents' Position Paper, p. 42.

[13] Id.

[14] Id., p. 43.

[15] Id., p. 45.

[16] Id., p. 45.

[17] Id.

[18] Id., p. 46.

[19] See SRAB VI Decision pp. 135-140.

[20] Rollo, pp. 139-140.

[21] Rollo, p. 138.

[22] Rollo, pp. 138-139.

[23] Rollo, p. 139 citing the case of Mark Roche vs. NLRC, 313 SCRA 356; Allan Villar, et. al. vs. NLRC, G.R. No. 100935, May 11, 2000; Jimenez vs. NLRC, 256 SCRA 84.

[24] Rollo, p. 139.

[25] See Notice of Appeal, rollo, pp. 142-143; Respondents-Appellants Memorandum of Appeal, rollo, pp. 144-157.

[26] Rollo, pp. 163-166.

[27] Rollo, pp. 165-166.

[28] Rollo, pp. 192-193.

[29] Rollo, p. 192.

[30] Rollo, pp. 194-196.

[31] See Decision, rollo p. 201-210.

[32] Rollo, pp. 211-218.

[33] Rollo, pp. 219-221.

[34] Rollo, p. 224.

[35] Rollo, p. 224.

[36] Rollo, pp. 226-228.

[37] Rollo, pp. 230-231.

[38] Rollo, p. 231.

[39] Rollo, pp. 3-23.

[40] Rollo, p. 13.

[41] Rollo, p. 208.

[42] Rollo, p. 208, citing *Hernandez vs. NLRC*, G.R. No. 34302, August 10, 1989,

[43] Rollo, p. 208, citing *Globe-Mackay Cable and Radio Corp. vs. NLRC and Salazar*, G.R. No. 82511, March 3, 1992.

[44] G.R. No. 170904, November 13, 2013.

[45] Republic Act No. 6715 or An Act to Extend Protection to Labor, Strengthen the Constitutional Rights of Workers to Self-Organization, Collective Bargaining and Peaceful Concerted Activities, Foster Industrial Peace and Harmony, Promote the Preferential Use of Voluntary Modes of Settling Labor Disputes, and Reorganize the National Labor Relations Commission, Amending for These Purposes Certain Provisions of Presidential Decree No. 442, as amended, Otherwise Known as the Labor Code of the Philippines, Appropriating Funds Therefore and For Other Purposes.

[46] *Bani Rural Bank Inc. vs. Teresa de Guzman*, G.R. No. 170904, November 13, 2013 citing *Session Delights Ice Cream and Fast Foods v. Court Appeals (Sixth Division)*, supra note 21 at 25 citing *Mt Carmel College v. Resuena*, G.R. No. 173076, October 10 2007, 533 SCRA 518, 541.

[47] Id.

[48] Id. citing *Bombase v. NLRC*, 315 Phil. 551, 556 (1995).

[49] Id. citing *Nissan North EDSA, Balintawak, Quezon City v. Serrano, Jr.*, G.R. No. 162538, June 4, 2009, 588 SCRA 238, 248.

[50] Rollo, pp. 163-166.

[51] Rollo, p. 165.

[52] Rollo, pp. 25-37.

[53] G.R. No. 167706, November 5, 2009 citing *FRF Enterprise vs. NLRC and R. Soriano*, 313 Phil. 493 (1995); *Starlite Plastic Industrial Corporation vs. National Labor Relations Commission*, 253 Phil. 307 (1989).

[54] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*, G.R. No. 163091, October 6, 2010, 632 SCRA 293, 320-321.

[55] Amount of damages is pursuant to ruling in *General Milling Corporation v. Viajar*, G.R. No. 181738, January 30, 2013, 689 SCRA 598, which affirmed CA's award of damages.

[56] *De Jesus-Alano vs. Tan* 106 Phil 554) (*Pascual vs. Court of Appeals* 300 SCRA 214

[57] *Pedro Mirasol vs. Rafael De la Cruz and Dominador Mendoza*, G.R. No. L-32552 July 31, 1978

[58] *Zarate vs. Olegario*, G.R. No. 90655, October 7, 1996, 263 SCRA 2

[59] Rollo, pp. 135-140, penned by Labor Arbiter Roderick Joseph B. Calanza.

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