

GOLD & PERFECT CORPORATION AND JERRY SY, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ARMANDO S. AQUINO, RESPONDENTS.

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to reverse and set aside the (i) Decision dated June 16, 2010[1] of the National Labor Relations Commission (NLRC) in NLRC NCR-03-03713-09 (NLRC LAC No. 11-003180-09) and (ii) the subsequent Resolution dated August 10, 2010,[2] which denied petitioners' motion for reconsideration. The dispositive portion of the Decision dated June 16, 2010 reads:

" xxx xxx xx

WHEREFORE, the assailed decision of the Labor Arbiter is REVERSED and a new one entered finding respondent guilty of illegal dismissal. Consequently, respondent Gold and Perfect Corp. is hereby directed to pay complainant his full backwages and other monetary benefits computed as follows:

- BACKWAGES

a) BASIC SALARY

2/28/09-3/30/10

P382.00 X 26 X 13.00

=

129,116.00

b) 13[th] Month Pay

P129,116.00/12

=

10,759.67

c) SILP (Not entitled, Field Worker)

- SEPARATION PAY

2/9/97- 3/30-10

P9,168 x 3 years

27,504.00

P167,379.67

SO ORDERED.

xxx xxx xxx "

THE ANTECEDENTS

Armando S. Aquino (Aquino, for short) was employed by Gold & Perfect Corporation (GPC, for brevity) as a Company Driver on February 9, 1997 and was paid a monthly salary of P9,168.00.[3]

On March 3, 2009, Aquino, as complainant, filed a complaint for actual illegal dismissal and non-payment of separation pay and money claims against GPC and its Finance Manager, Jerry Sy, before the labor arbiter. This was docketed as NLRC NCR Case No. 03-03713-09.[4]

In his position paper,[5] complainant alleged the following:

“ xxx xxx xxx

Sometime in the middle of February 2009, complainant reported for work. He was told by FERDINAND, brother of Respondent JERRY, that: “Huwag ka nang pumasok sa kompanya namin, lumabas ka na.” Apparently, FERDINAND got angry when the information reached them that complainant was questioning the computation of his overtime pay. Complainant, however, did not take FERDINAND's statement seriously. So as not to be charged of being on AWOL, he continued reporting for work.

On 28 February 2009, complainant reported for work. When he was about to claim his salary at the office of Respondent JERRY, the latter mentioned: “Hindi ka pinapapasok, pumasok ka pa.” Complainant took the opportunity to relay his concern as to why they were required to follow the clock at the office which is advanced by thirty (30) minutes from the actual time wherever the (sic) report for work in the morning but the clock is being disregarded whenever they will leave the company to go home contending that it's advanced. In other words, they are required to report at 8:00 in the morning as they are following the clock at the office which indicates that it is already 8:30 a.m. However, in going home, the same clock is being disregarded. The clock already indicates that it was already 5:30 p.m but they were required to stay until 6:00 p.m. Oftentimes, whenever rendering overtime services, the number of hours of overtime is being deducted by thirty (30) minutes. The statement of complainant got JERRY irritated. Respondent JERRY uttered: “Umalis ka na, dahil tanggal ka na. Maghanap ka na ng ibang mapagtrabuhuan at mapagsusumbungan mo.”

Again thinking that it might be an outburst of emotion, complainant simply left the office and went back in assisting the loading of deliveries at one of the truck. While working, complainant heard JERRY's wife, JOCELYN, shouting: “Guard, guard, palabasin mo si Arman. Hindi na siya pwedeng pumasok at tanggal na siya.” The guard on duty, thereafter, guided complainant out of the warehouse.

xxx xxx xxx “

For their part, respondents argued that complainant was never dismissed from work. They averred that,

complainant started to work with the company on May 2003; complainant was late on the following dates: January 2, 5, 6, 7, 9, 10, 12, 14, 15, 17, 20, 21, 22, 23, 24, 28 and 31, 2009 and February 2, 3, 5, 6, 10, 11, 12, 13 and 14, 2009; due to his tardiness for the months of January and February 2009, they served him two (2) Memoranda dated February 17 and 20, 2009, which he refused to receive; on February 28, 2009, after complainant obtained his salary for the month, he did not report for work and voluntarily terminated his employment.[6]

Complainant filed a Reply[7] arguing that the delay on the part of the respondents to take action on or discipline him for tardiness means that they have tolerated it and could not serve as a basis or ground for termination from employment.

On August 28, 2009, the labor arbiter rendered a Decision[8] dismissing the complaint for illegal dismissal. It ruled that complainant's narration that he was verbally dismissed by the brother of Respondent Jerry Sy is self-serving because he failed to prove that said person was a superior officer with authority to hire and fire employees. Since he was not illegally dismissed, complainant is not entitled to separation pay, however, the labor arbiter awarded complainant's proportionate 13th month pay for the year 2009 in the amount of P1,528.00. The dispositive portion of the Decision reads:

" xxx xxx xxx

WHEREFORE, premises considered, instant complaint is hereby dismissed for lack of merit.

Respondent Corporation is directed to pay complainant's monetary award as computed above.

SO ORDERED.

xxx xxx xxx "

Aggrieved, complainant interposed an appeal[9] to the National Labor Relations Commission (NLRC). On June 16, 2010, the NLRC rendered a Decision[10] reversing the labor arbiter. It ruled that while respondents submitted two (2) memoranda charging complainant with tardiness, the latter's daily time records were never presented in evidence. Respondents also failed to present the company rules with respect to absences and tardiness, hence, complainant was illegally dismissed.

The fallo of the Decision reads:

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2/9/97- 3/30-10

P9,168 x 3 years

27,504.00

P167,379.67

SO ORDERED.

xxx xxx xxx "

Respondents filed a motion for reconsideration but the same was denied by the NLRC in its Resolution dated August 10, 2010.[11]

Now, respondents, as petitioners, elevate the matter before Us by way of Petition for Certiorari.

THE ISSUES BEFORE US

In assailing the decision, petitioners raise the following posers for Our resolution, that:

I. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THEY ARE GUILTY OF ILLEGAL DISMISSAL ALTHOUGH IT WAS PRIVATE RESPONDENT WHO STOPPED WORKING ON FEBRUARY 26, 2009 AND HAD GONE AWOL AFTER GETTING HIS SALARY ON FEBRUARY 28, 2009;

II. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING IN FAVOR OF PRIVATE RESPONDENT BECAUSE THE COMPLAINT FILED ON MARCH 3, 2009 IS PREMATURE;

III. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT IGNORED PRIVATE RESPONDENT'S DAILY TIME RECORDS AS WELL THE AFFIDAVITS SUBMITTED IN THE MOTION FOR RECONSIDERATION;

IV. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO ISSUE A SUBPOENA AD TESTIFICANDUM DIRECTING THEIR WITNESSES TO TESTIFY;

V. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT GIVE CREDENCE TO THE TWO (2) MEMORANDA CHARGING PRIVATE RESPONDENT WITH TARDINESS;

VI. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CONCLUDED THAT PETITIONERS HAVE NEVER ESTABLISHED THAT THEY HAVE A COMPANY POLICY WITH RESPECT TO ABSENCES AND TARDINESS;

VII. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT EVEN IF THE DAILY TIME RECORDS BELATEDLY SUBMITTED ARE CONSIDERED, THE SAME WILL NOT ALTER THE DECISION;

VIII. PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY HELD THAT PRIVATE RESPONDENT IS ENTITLED TO SEPARATION PAY AND FULL BACKWAGES

Petitioners assert that private respondent was not dismissed from work, instead, he suddenly stopped report for work on February 26, 2009 after he was confronted by Jocelyn Sy about his unexplained refusal to receive the two (2) Memoranda dated February 17 and 20, 2009, informing him of his repeated acts of tardiness for the months of January and February 2009. In fact, he even went on absent without leave (AWOL) after getting his salary on February 28, 2009, hence, there is no termination or dismissal from employment to speak of and private respondent is not entitled to separation pay and backwages.[12]

They also argue that the complaint for illegal dismissal is premature because private respondent's repeated acts of tardiness is a sufficient cause to discipline him but private respondent pre-empted them from conducting their own investigation. Needless to state, an irresponsible employee like private respondent, who also committed serious misconduct and wilful disobedience of a lawful order and insubordination which are just causes for dismissal, do not deserve a place in the workplace.[13]

Further, they claim that the NLRC gravely abused its discretion when it ignored and did not admit private respondent's daily time records, cash vouchers, payroll records, a copy of the company rules and regulations[14] as well as the affidavits[15] submitted by them in its motion for reconsideration.[16]

On the other hand, private respondent counters that petitioners failed to substantiate their claim of abandonment because the onus of proving that the employee was not dismissed or if dismissed, that the same was not illegal rest on the employer. Also, petitioners failed to comply with the twin-notice rule because the purported memoranda were defective as they were mere instructions to explain and did not apprise him of any investigation to be conducted. Since he was illegally dismissed the NLRC was correct in awarding him separation pay and backwages.[17]

OUR RULING

Then as now, the rule is factual findings of the labor arbiter and the NLRC are generally accorded not only respect but even finality and binds Us when supported by substantial evidence.[18] But when, as in this case, the labor arbiter and the NLRC have sharply contrasting factual findings, We have reason to delve into the records to determine which finding is supported by evidence and is in accordance with law. After scouring the records, We find that,

Petitioners' belated submission
of evidence in their motion for

reconsideration cannot be
permitted and their allegation
of serious misconduct and
willful disobedience cannot
be passed upon

Petitioners posit that the NLRC gravely abused its discretion in not accepting or admitting the documents such as private respondent's daily time records, cash vouchers, payroll records and a copy of the company rules and regulations[19] as well as the affidavits[20] as evidence submitted in their motion for reconsideration. They reasoned that the failure to present these documents before the labor arbiter and even to the NLRC during the appeal was because several of their records were destroyed by the typhoon "Ondoy" and that it was only on June 25, 2010 that these documents were discovered undestroyed in their warehouse. They add that private respondent also committed serious misconduct and willful disobedience of a lawful order and insubordination, thus, he does not deserve a place in the workplace.

Petitioners' stance is weak.

Indeed, the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases.[21] This rule applies equally to both the employee and the employer. In the interest of substantial justice, the NLRC and labor arbiter are directed to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities.[22] There is, however, a caveat to this policy. A party should still conform with the rudiments of equitable principles of law, i.e. (1) any delay in the submission of evidence should be clearly explained and (2) the evidence should adequately prove the allegations sought to be proven.[23]

Petitioners failed to comply with the foregoing requirements. First, petitioners failed to adequately explain the delay in the submission of evidence. The records indicate that petitioners, as appellee, did not file an answer or reply to private respondent's memorandum of appeal before the NLRC. They had all the chance to ventilate their arguments and adduce additional evidence by filing an answer or reply but they failed to do so. Under the 2011 NLRC Rules of Procedure, failure on the part of the appellee to file an answer or reply is construed as a waiver.[24] In fact, it was only after an adverse decision was rendered against them by the NLRC that they filed a motion for reconsideration and presented these documents. Petitioners' failure to present the documentary evidence at the earliest opportunity casts serious doubt on their credibility specially so when the same are not newly discovered evidence.

Second, the documents do not prove the allegations sought to be proven. The daily time records[25] of private respondent, cash vouchers and payroll records[26] for the months of September, October, November and December 2008 submitted by petitioners lack probative value because private respondent's tardiness for the said months were never an issue or alleged in their position paper.[27]

Furthermore, a careful scrutiny of the Affidavits of Demetrio Urdaneta,[28] Jesus Mantilla,[29] Emiliano Rivera,[30] Dionesio Mabilangan,[31] Niceta Comiso[32] and Kristine Pabale,[33] who are employees of petitioners, were all executed only on June 29, 2010 or after the NLRC rendered its Decision dated June 16, 2010. These are self-serving because they have been executed by employees beholden to their employer. It also appears that private respondent was not afforded any opportunity to test their veracity. Hence, these affidavits, being mere afterthought, are bereft of evidentiary weight. As a rule, affidavits, while admissible as evidence, must be received with caution. By themselves, generalized and pro-forma affidavits cannot constitute relevant evidence which a reasonable mind may accept as adequate.[34]

As to petitioners' allegation of serious misconduct and willful disobedience of a lawful order and insubordination allegedly committed by private respondent, We cannot pass upon it because it was raised for the first time in the motion for reconsideration. The 2011 NLRC Rules of Procedure expressly provides that the NLRC shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.[35] Petitioners' lapses in not raising these matters before the labor arbiter, which has the expertise to resolve the same, put them in estoppel. A party cannot subsequently take a position contrary to, or inconsistent, with its pleadings. They cannot therefore change their theory on appeal. To do so would be tantamount to a denial of private respondent's right to due process as he would have no more opportunity to present further evidence material to the new theory.

Petitioners failed to
prove by substantial
evidence that private
respondent went AWOL
or abandoned his job

Petitioners assert as a defense that it was private respondent who suddenly stopped for work on February 26, 2009 after he was confronted by Jocelyn Sy about his unexplained refusal to receive the two (2) Memoranda dated February 17 and 20, 2009 and that the latter went AWOL after getting his salary on February 28, 2009.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts.[36] To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[37] Clearly, the operative act is the employee's ultimate act of putting an end to his employment.[38] It bears stressing that an employee's dismissal from employment on the ground of abandonment is a factual question and the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.[39]

The elements of abandonment are wanting. There is paucity of evidence showing that private respondent failed to report for work without valid or justifiable reason on February 28, 2009. And even assuming private respondent was absent or failed to report for work on February 28, 2009, it cannot be deemed as an abandonment. It is well-settled that mere absence or failure to report for work is not tantamount to abandonment.[40] For Us, this action could hardly be interpreted as "a clear intention to sever the employer-employee relationship."

Moreover, there is dearth of evidence to prove that the petitioners served upon private respondent a written notice of termination of employment on the ground of abandonment. A notice of termination is the best evidence of dismissal. The absence thereof clearly taints private respondent's dismissal with illegality.

Also, petitioners' theory that private respondent abandoned his job is negated by the fact that a complaint for illegal dismissal was immediately instituted on March 3, 2009[41] or three (3) days after his termination from employment. An employee who takes steps to protest his dismissal, as by filing a labor case, cannot logically be said to have abandoned his employment.[42] In short, there is nothing in the records showing that private respondent deliberately, permanently or unequivocally abandoned or forsake his job.

Given the factual circumstances of this case, We are more inclined to agree with the findings of the NLRC, viz:

“ xxx xxx xxx

Ironically, in the two (2) memoranda charging complainant with tardiness, respondents referred to the daily time record as its basis for complainant's tardiness, however, the two (2) daily time record were never presented in evidence. Respondents had possession thereof and the opportunity to present the same. Being the

bases of the charges against herein complainant, it is without doubt the best evidence available to substantiate their allegations. The purpose of the rule requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes which its production would expose and defeat. Thus, respondents unexplained and unjustified non-presentation of the daily time records, which constitute the best evidence in its possession against the complainant, cast serious doubts on the factual basis of the charges of tardiness.

Moreover, respondent (sic) never established that indeed they have that company policy with respect to absences and tardiness.

“It is indeed true that administrative agencies, like the NLRC, are not bound by the technical rules of procedure and evidence in the adjudication of cases. However, this procedural liberty must not be interpreted to mean an unfettered license to put forth assertions without at least presenting tangible proof to back them up. Otherwise, such assertions would just be allegations, and allegations are not evidence. What is involved here transcends mere procedural technicality and concerns the more paramount principles and requirements of due process, which may not be sacrificed at the altar of the supposed Company Policy to prove the allegation of their existence must be seen and taken for what they are-in admissible hearsay. Mere allegation or assertion, by any stretch of reasoning cannot be considered substantial evidence of their existence and of the subsequent violation complained of.”

It thus became clear that respondents' allegations of violation of company rules is nothing but a vain attempt to escape liability from the complainant. Unfortunately, that boomeranged, as to Our mind it lend credence to complainant's claim of illegal dismissal.

“The dearth of reliable evidence on record constitutes serious doubt as to the factual basis of the charge of violation of company policy filed against private respondent. This doubt shall be resolved in her favor in line with the policy under the Labor Code to afford protection to labor and construe doubts in favor of labor. The consistent rule is that if doubts exist between the evidence presented by the employer and employee, the scales of justice shall be tilted in favor of labor.”

xxx xxx xxx “

The NLRC did not err in
awarding separation pay
and backwages

Jurisprudence teaches that an illegally dismissed employee is entitled to two reliefs: (1) either reinstatement or separation pay, if reinstatement is no longer viable and (2) backwages.[43] These two reliefs are separate and distinct from each other and are awarded conjunctively.[44]

Private respondent, in his position paper[45] and complaint,[46] prayed for separation pay in lieu of reinstatement. Case law[47] teaches that if the employee opts not to be reinstated, the employer shall pay him separation pay in lieu of reinstatement. In awarding separation pay, in lieu of reinstatement, to an illegally dismissed employee, the amount to be awarded shall be equivalent to one month salary for every year of service reckoned from the first day of employment until the finality of the decision. Payment of separation pay is in addition to payment of backwages.[48] Backwages shall be computed from the time of dismissal until the finality of the decision.[49] Having determined that private respondent was illegally dismissed, the NLRC's award of separation pay, in lieu of reinstatement, and backwages is proper.

The NLRC's award
of 13[th] month pay

is in order

The rule is one who pleads payment has the burden of proving it and even where the employee must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove non-payment.[50] The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents which will show that overtime, differentials, service incentive leave, and other claims of employees have been paid are not in the possession of the employee but in the custody and absolute control of the employer.[51]

Here, petitioners failed to adduce evidence to show that they paid private respondent's 13th month for the year 2009. Presidential Decree No. 851 mandates that all employers must pay all their employees receiving a basic salary of not more than P1,000.00 a month, regardless of the nature of the employment, a 13th month pay not later than 24 December of every year. Therefore, the NLRC's award of the 13th month pay is in order.

In Petitions for Certiorari, Our review of labor cases is confined to question of jurisdiction or grave abuse of discretion. To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[52] Grave abuse of discretion also refers to palpable errors of jurisdiction or to violations of the Constitution, the law and jurisprudence.[53] For failure to prove that the NLRC acted with grave abuse of discretion, its findings will not be disturbed. The petition for certiorari must perforce fail.

WHEREFORE, premises considered, the petition is DISMISSED. The assailed (i) Decision dated June 16, 2010 of the National Labor Relations Commission (NLRC) in NLRC NCR-03-03713-09 (NLRC LAC No. 11-003180-09) and (ii) the subsequent Resolution dated August 10, 2010 are hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, H.S., Chairperson and [**]Inting, S.B., JJ., concur.

[*] Acting Senior Member per Office Order No. 238-14-ABR dated May 23, 2014.

[**] Acting Junior Member per Office Order No. 238-14-ABR dated May 23, 2014.

[1] Penned by Commissioner Mercedes R. Posada-Lacap, concurred in by Commissioners Leonardo L. Leonida and Dolores M. Peralta -Beley. Rollo, pp. 83-90.

[2] Ibid., pp. 91-92.

[3] Complainant's Position Paper; Id. p. 226.

[4] Complaint, Id., p. 210-211.

[5] Id, pp. 226-230.

- [6] Respondent's Position Paper; Id., pp. 212-230.
- [7] Complainant's Reply, Id., 237-240.
- [8] Penned by Labor Arbiter Edgardo M. Madriaga, Id., pp. 241-248.
- [9] Notice and Memorandum of Partial Appeal, Id., pp. 249-260.
- [10] Supra, Note 1.
- [11] Supra, Note 2.
- [12] Petition for Certiorari, Rollo, pp. 78.
- [13] Ibid.,
- [14] Marked as Annexes "G" to "VV" in the Motion for Reconsideration; Id., 166-195.
- [15] Marked as Annexes "A" to "F" in the Motion for Reconsideration; Id., pp. 153-164.
- [16] Supra, Note 12.
- [17] Comment, Id., pp. 352-368.
- [18] Julie's Bakeshop, et.al, vs,. Arnaiz, et.al., G.R. No. 173882, February 15, 2012, citing Alfaro v. Court of Appeals, 416 Phil. 310, 318 (2001).
- [19] Marked as Annexes "G" to "VV" in the Motion for Reconsideration; Id., 166-195.
- [20] Marked as Annexes "A" to "D" in the Motion for Reconsideration; Id., pp. 153-164.
- [21] Section 2, Rule V, 2011 NLRC Rules of Procedure.
- [22] Loon vs. Power Master, Inc., G.R. No. 189404, December 11, 2013. citing Casimiro vs. Stern Real Estate Inc. 519 Phil. 438, 454-455 (2006) and Iran vs. NLRC 352 Phil 264-265, 274-274 (1998).
- [23] MORESCO II vs. Cagalawan, G.R. No. 175170, September 5, 2012, citing Iran v. National Labor Relations Commission, 352 Phil. 261, 274 (1998) Anabe vs. Asian Construction, et. al., G.R. No. 183233, December 23, 2009. Angeles v. Fernandez, G.R. No. 160213, January 30, 2007, 513 SCRA 378, 384; Tanjuan v. Philippine Postal Savings Bank, Inc., 457 Phil. 993, 1004-1005 (2003); AG & P United Rank & File Association v. NLRC, 332 Phil. 937 (1996).
- [24] Section 4 (c), Rule VI of the 2011 NLRC Rules of Procedure
- [25] Marked as Annexes "K" to "Q"; Rollo, pp. 169-176.
- [26] Marked as Annexes "CC" to "VV"; Ibid., pp. 183-195.
- [27] Supra, Note 6.
- [28] Marked as Annex "A"; Id., pp. 153-154.
- [29] Marked as Annex "B"; Id., pp. 155-156.
- [30] Marked as Annex "C"; Id., pp. 157-158.
- [31] Marked as Annex "D", Id., p.159.
- [32] Marked as Annex "E", Id., pp.160-162.

[33] Marked as Annex “F”, Id., pp. 163-164.

[34] *Mendoza vs. NLRC and Asian Land Strategies Corporation*, G.R. No. 131405, July 20, 1999. citing *Cf. Madlos vs. NLRC*, 254 SCRA 248, 257, March 4, 1996.

[35] Section 4 (d), Rule VI of the 2011 NLRC Rules of Procedure

[36] *Samarca vs. ARC-Men Industries, Inc.* G.R. No. 146118, October 8, 2003.

[37] *Dimagan vs. Dacworks United, Inc., et.al.*, G.R. No. 191053, November 28, 2011. Citing *Exodus International Construction Corporation v. Biscocho, et. al.*, G.R. No. 166109, February 23, 2011.

[38] *Ibid.*, Citing *Hodieng Concrete Products, Inc. v. Emilia*, G.R. No. 149180, February 14, 2005, 451 SCRA 249. Citing *Samarca v. Arc-Men Industries, Inc.* G.R. No. 146118, October 8, 2003, 413 SCRA 162.

[39] *Macahilig vs. NLRC, et.al.*, G.R. No. 158095, November 23, 2007. citing *Malayang Samahan ng mga Manggagawa sa M. Greenfield v. Ramos*, 383 Phil. 329, 371-372 (2000).

[40] *Shie Jie Corp vs. National Federation of Labor*, G.R. No. 153148, July 15, 2005. citing *Samarca vs. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168-169, cited in *Hodieng Concrete Products vs. Dante Emilia*, G.R. No. 149180, February 14, 2005.

[41] Complaint, Supra, Note 4.

[42] *Ang vs. San Joaquin, Jr.*, G.R. No. 185549, August 7, 2013. citing *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 118.

[43] *Macasero vs. Southern Industrial Gases Philippines and/or Neil Lindsay*, G.R. No. 178524, January 30, 2009. Citing Article 279 of the Labor Code, *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

[44] *Robinsons Galleria, et.al., vs. Ranchez*, G.R. No. 177937, January 19, 2011, citing *Siemens v. Domingo*, G.R. No. 150488, July 28, 2008, 560 SCRA 86, 100.

[45] Complainant’s Position Paper, Supra, Note 3.

[46] Complaint, Supra, Note 4.

[47] *Bani Rural Bank, Inc., et.al., vs. Guzman, et.al.*, G.R. No. 170904, November 13, 2013. citing *Session Delights Ice Cream and Fast Foods v. Court Appeals (Sixth Division)*, G.R. No. 172149, February 8, 2010. See also *Golden Ace Builders vs. Talde*, G.R. No. 187200, May 5, 2010 and *Century Canning Corporation, et.al. vs. Ramil*, G.R. No. 171630, August 8, 2010. Citing *Eastern Telecommunications Phils., Inc. v. Diamse*, G.R. No. 169299, June 16, 2006. 491 SCRA 239, 251

[48] *Agricultural And Industrial Supplies Corp., et.al. vs. Siazar, et.al.*, G.R. No. 177970, August 25, 2010. citing *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507. *Pangilinan v. Wellmade Manufacturing Corporation*, G.R. No. 149552, March 10, 2010. *Henlin Panay Company v. National Labor Relations Commission*, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 371.

[49] *Bani Rural Bank, Inc., et.al., vs. Guzman, et.al.*, Supra, Note 47.

[50] *Heirs of Ridad vs. Gregorio Araneta University Foundation*, G.R. No. 188659, February 13, 2013. citing *De Guzman vs. NLRC*, G.R. No. 167701, December 12, 2007, 540 SCRA 21, 35 citing *Mayon Hotel & Restaurant Adana* 497 Phil 892, 923-924 (2005) citing *furtgher Sevillana vs. I.T. (Internationatl) Corp.* 408 Phil 570-588

(2001).

[51] G & M Philippines, Inc. vs. Cuambot, G.R. No. 162308, November 22, 2006.

[52] Malayang Manggagawa ng Stayfast Phils., Inc. vs. NLRC, Stayfast Philippines, Inc and Almeida, G.R. No. 155306, August 28, 2013. citing Yu vs. Judge Reyes-Carpio, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348. See also Julie's Franchise Corporation, et.al., vs. Ruiz, et.al., G.R. No. 180988, August 28, 2009. citing Vergara v. Ombudsman, G.R. No. 174567, 12 March 2009; Nationwide Security and Allied Services, Inc. v. Court of Appeals, G.R. No. 155844, 14 July 2008, 558 SCRA 148 .

[53] United Coconut Planters Bank vs. Go, G.R. No. 156337, September 28, 2007. citing Presidential Commission on Good Government v. Desierto, 445 Phil. 154, 175 (2003).

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