

VISATECH INTEGRATED, INC., EDMUND BERMEJO AND ANTHONY GALORPO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND MARLON YUTAN, RESPONDENTS.

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

Assailed by Visatech Integrated, Inc., Edmund Bermejo and Anthony Galorpo (“petitioners”), in this Petition for Certiorari,[1] are the Decision[2] dated August 15, 2012 and Resolution[3] dated September 20, 2012 rendered by the National Labor Relations Commission[4] (“NLRC”), in NLRC LAC Case No. 05-001449-12 [NLRC-NCR Case No. 08-13248-11], entitled “Marlon Yutan, Complainant-Appellee/Appellant –versus– Visatech Integrated Inc., and/or Edmund Bermijo and Anthony Galorpo, Respondents-Appellants/Appellees,” the dispositive portions of which read:

(a) Decision dated August 15, 2012:

“WHEREFORE, premises considered, the respondents' appeal is DISMISSED for non-perfection.

The complainant's appeal is PARTLY GRANTED. The charge of illegal dismissal is DISMISSED, but the recomputation of his salary differentials is GRANTED.

Respondents are ordered to pay complainant's salary differentials in the amount of Eighty Four Thousand Four Hundred Eleven and 8/100 Pesos (P84,411.08).

Salary Differentials

NCR 14 = P377.00

8/19/08 – 8/27/08

(377.00 – 300.00 = 77.00)

= P 77.00 x 26 days x 0.30 mos.

= P600.60

NCR 14 = P382.00

8/28/08 – 6/30/10

(382.00 – 300.00 = 82.00)

= P 82.00 x 26 days x 22.10 mos.

= P 47,117.20

NCR 15 = P404.00

7/01/10 – 8/18/11 (404.00 – 250.00 = 104.00)

= P 104.00 x 26 days x 13.57 mos.

= P 36,693.28

Total

= P 84,411.08
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SO ORDERED.”[5] (emphasis supplied);

(b) Resolution dated September 20, 2012

“WHEREFORE, the Motion is DENIED. No further motion of similar nature shall be entertained.

SO ORDERED.”[6] (emphasis supplied)

The Facts

The antecedent facts of this case as culled from the assailed Decision of the NLRC dated August 15, 2012, are as follows:

“Respondent company is an independent contractor for Telephone Companies laying telephone and cable line, and installation/repair of phone and internet lines. It employed the complainant in May 2006 initially as wired/wireless installer but later designated as broad band technician.

Complainant alleges that during his employment, he was required to work six (6) days a week for eight (8) hours, and frequently rendering overtime services without paying him for the extra time. In the average, he was receiving a daily wage of P300. He was never paid the benefits mandated by law.

In July, complainant and Roel Dulog, a co-worker, installed the Globe internet connection of one Jennifer Flores at No. 314 Simon St., Tondo, Manila. Thereat, he noticed that there was an existing Globe internet connection. He duly informed Flores of the same, but the latter insisted on installing a new one to replace the old unreliable line. Upon completion of the work, he charged the amount of P500 as installation fee and issued the corresponding receipt.

On August 4, Joseph Apostol, Coordinator, informed him that Flores complained about the internet connection. He was required to explain to which he complied. He denied the accusation of asking additional amount from Flores, maintaining that he collected P500 only. He later learned that Flores' old line was illegally connected. Respondents suspended him for five (5) days. When he returned for work on August 19, 2011, he was informed that he was already dismissed from employment per memorandum of Anthony Galarpo based on Globe Telecom's letter dated August 8, 2011. Hence, he filed this complaint claiming that he was illegally dismissed.

Respondents, on the other hand, admit the complainant's employment. His compensation depended on the volume of works he installed/performed during the day. They deny the complainant's charge of illegal dismissal from employment.

Respondents aver that on August 8, 2011, they received a memo from Globe Telecom, its client, informing them of the complaint of a certain Jennifer Flores, its subscriber. Flores positively identified the complainant to have personally offered upgrading of internet speed for a fee without its (Globe) knowledge, to which the subscriber Jennifer Flores agreed. After two (2) days, the internet connection suffered a problem, and after the repair, the internet speed went back to its normal speed as if it was not all upgraded. Having found the complainant's and Dulog's act illegal, Globe blacklisted the two technicians and cancelled their accreditation. Respondents notified complainant about the memorandum of Globe. Thereafter, he ceased to report for work for fear of being criminally charged before the court of justice. There is no legal basis for his allegation of illegal dismissal.

The Labor Arbiter dismissed the charge of illegal dismissal, however, she ordered payment of complainant's salary differentials and attorney's fees.”[7]

On March 16, 2012, Labor Arbiter Veneranda C. Guerrero rendered her Decision, viz.:

“WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit. Respondent Visatech Integrated Inc., is ordered to pay complainant Marlon Yutan the amount of Twenty One Thousand Twenty Nine Pesos and 32/100 (21,029.32) as salary differentials, plus ten percent (10%) thereof or P2,102.93 as and for attorney’s fees.

All other claims are dismissed for lack of merit.

SO ORDERED.”[8]

Aggrieved, herein private respondent Yutan filed, on May 8, 2012, a Memorandum of Partial Appeal[9] before the NLRC. He challenged the ruling that he was not illegally dismissed and the Labor Arbiter’s computation for salary differential.

Herein petitioners also filed, on May 7, 2012, their Memorandum of Partial Appeal[10] before the NLRC, assailing the monetary award made in favor of private respondent.

On August 15, 2012, the NLRC rendered its now assailed Decision.[11]

On September 6, 2012, herein petitioners moved for reconsideration[12] of the above-quoted NLRC Decision. However, the same was denied for lack of merit.

Hence, this petition.

Issues

In this petition, the petitioners argue that:

“6.1. The NLRC committed gross abuse of discretion amounting to lack of jurisdiction in failing to recognize the identity practice in the payment of work rendered which ever (sic) the Labor Arbiter even recognized in his discussion of the case.

6.2. The NLRC committed grave abuse of discretion amounting to lack of jurisdiction when it included the individual petitioners to likewise pay the increased monetary award.

6.3. The NLRC committed grave abuse of discretion when it followed the computation of monetary award without setting a hearing to determine its accuracy, resulting to unjust enrichment and to the prejudice of petitioners.”[13]

In fine, what We shall resolve in this case is the issue of whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the assailed decision and resolution.

OUR RULING

The Court notes that the petitioners prayed in this petition that:

“WHEREFORE, premises considered, it is most respectfully prayed that the Decisions dated August 15, 2012 and September 20, 2012 rendered by the National Labor Relations Commission as well as the Decision dated March 16, 2012 rendered by the Labor Arbiter be reversed and set aside, and a new one be entered declaring that:

1. Individual petitioners are not solidarily liable with petitioner Visatech because the latter has a separate and independent personality from its officers and stockholders;
2. The monetary award in favor of the complainant has no factual and legal basis.

Other reliefs and remedies are likewise prayed for.”[14]

Considering, however, that the March 16, 2012 Decision of the Labor Arbiter was earlier made subject of their “Memorandum of Partial Appeal” to the NLRC, and the latter's August 15, 2012 Decision dismissing said appeal, and resolution dated September 20, 2012 denying petitioners' motion for reconsideration therefrom are what have been assailed by petitioners in this petition for certiorari, there consequently is no longer any need for Us to review the assailed March 16, 2012 Decision of the Labor Arbiter.

On the other hand, the Court notes that private respondent did not move for the reconsideration of the NLRC's decision declaring that he was not illegally dismissed. It thus, pursuant to Art. 223 of the Labor Code, became final and executory 10 days from the date he received a copy of said NLRC Decision. Being so, what remains to be resolved by this Court relative to the afore-described issue of this case is the question of whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when: (1) it held that private respondent is entitled to salary differential; (2) when it increased said award; and (3) when it held that petitioners Edmund Bermejo and Anthony Galorpo – corporate officers of petitioner company – are solidarily liable with petitioner company relative to the award of salary differential pay.

Regarding the first issue, the Court notes that the Labor Arbiter, in her Decision dated 16 March 2012, admitted:

“As regards his money claims, this Office duly notes the fact that the complainant was paid on per task basis or P300.00 for each installation work performed. As correctly pointed out by the complainant, the daily rate should not be less than the prevailing minimum wage. Hence, he is entitled to the corresponding salary differentials for the period worked.”[15] (emphasis Ours)

Private respondent himself even admitted in the position paper he submitted to the Labor Arbiter that he receives “the amount of P300.00 per completed installation work.”[16] With the admission that private respondent is a piece-rate worker as he is being paid on the basis of “completed work”, he then is not to be paid on the basis of any particular wage order that requires compensation on a per day basis regardless of volume of work completed. For, the minimum wage orders apply only to daily or monthly paid employees who are paid on a fixed rate basis.[17]

If, as claimed by private respondent that he was underpaid as he was being paid only “P300.00 per completed installation work”, it consequently behooves him to refer the matter to the Department of Labor and Employment in order that a time-and-motion study be conducted pursuant to Section 8, Rule VII-A, Book III of the Omnibus Rules Implementing the Labor Code. Absent any determination by the Department of Labor and Employment (DOLE) on how much an employee like private respondent may be paid for each installation work that he completes, the NLRC and its Arbiters would have no basis in adjudicating the parties' dispute, particularly on the question of whether or not the private respondent is being underpaid.

In fine, the Court has to grant the petition for certiorari as both the Labor Arbiter and NLRC did not have factual basis in awarding salary differential to private respondent.

With such disposition, the resolution of the second and third issues have become academic.

ACCORDINGLY, the petition is GRANTED. The assailed Decision dated August 15, 2012, and Resolution dated September 20, 2012 are hereby SET ASIDE.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Rollo, pp. 3-15.

[2] Ibid., pp. 82-89.

[3] Ibid., pp. 106-109.

[4] Fourth Division.

[5] Rollo, pp. 87-88.

[6] Ibid., pp. 108-109.

[7] Rollo, pp. 83-84.

[8] Ibid., p. 44.

[9] Ibid., pp. 45-56.

[10] Rollo, pp. 57-72.

[11] Note 2, *supra*.

[12] Rollo, pp. 90-103.

[13] Ibid., p. 9.

[14] Rollo, pp. 13-14.

[15] Rollo, p. 43.

[16] Ibid, p. 28.

[17] Section 1, Rule VII, Book III, Omnibus Rules Implementing the Labor Code.

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