

**RILCO BUILDERS CONTRACTORS/ ENGINEER RUEL LICHANGCO,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION,
GODOFREDO F. FRIAS, ET AL., RESPONDENTS.**

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

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

This resolves the Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the June 2, 2011 Decision (Rollo, pp. 26-34) issued by public respondent National Labor Relations Commission (NLRC) which modified the Decision of the Labor Arbiter dated December 29, 2011 and its (NLRC's) December 29, 2011 Resolution (Rollo, pp. 37-39) which partially granted petitioners' Motion for Reconsideration, in NLRC LAC No. 03-000703-11 (NLRC NCR Case No. 08-11036-10).

In his position paper, private respondent Godofredo Frias alleged that he was hired by petitioner Rilco Builders Contractor/Engineer (Rilco) in 1997 with a minimum income of Php320.00 a day. He has been in the company for almost twelve years and did not complain even if there is no increase in his salary. On January 9, 2010, after receiving his salary from petitioner Rilco, private respondent was allegedly told that his service is no longer needed. Surprised, private respondent asked for any valid reason for his alleged dismissal, but petitioner Rilco only told him that business is not catching up, and that they need to lessen the staff. Private respondent asked for a meeting with petitioner Rilco to ask if he has done any mistake and if the problem could be fixed but, he was not allowed to enter the company premises. Private respondent repeatedly requested for a meeting with petitioner Rilco but the latter declined. This prompted private respondent to file a case with the arbitration branch of the NLRC for illegal dismissal, underpayment of wages, non-payment of holiday pay, holiday and rest day premiums, service incentive leave pay, 13th month pay, ECOLA and claims for separation pay. While he filed the instant complaint with other of his co-workers (namely, Jesus Frias, Victoriano Felix, Rene Makalinao, Jessiel Frias, Brian Buhawi, Ronie Vales, Renante Legarda and Benjie Hayahay), the case of his co-workers was dismissed for failure to file the required position papers despite due notice which is tantamount to lack of interest to prosecute their claims against herein petitioners.

Petitioner Rilco, through its President petitioner Ruel Lichangco, on the other hand, disclaimed liability and averred that private respondent was hired for certain projects. He was assigned by Foreman Joseph Pulvinar to petitioner Rilco's existing projects on a "project to project" basis. On July 31, 2010, a Saturday, as they are working on the project "Blue Magic Warehouse", Foreman Pulvinar and herein petitioner Engineer Ruel Lichangco agreed that private respondent, together with other workers will clean the job site as the project owner will inspect the on-going construction on August 3, 2010. However, early on that day of August 1, 2010, only the driver, Boy Ilagan and a few workers showed up, thus, the workforce on that day was not enough to complete the task. Petitioner Engineer Lichangco called for Foreman Pulvinar by cellphone but the former could not be reached. He then called the time keeper and another worker, Renato Barneto to get in touch with Foreman Pulvinar and if necessary to go to the house of Pulvinar and the other workers to ask them to report for work to complete petitioner Rilco's commitment to the project owner.

At around 1:30 pm on the same day of August 1, 2010, petitioner Lichangco received a text message, informing him that Foreman Pulvinar cannot report for work because he has a problem with his workers. After which, petitioner Lichangco called up Foreman Pulvinar and said “Joseph, ano nangyari, tanghali na usapan natin papasok kayo?” Foreman Pulvinar answered, “Sir may problema, ayaw pumasok ng mga tao ko, kung yung increase nila wala pa”. To which petitioner Lichangco countered, “Wala ka naman nasasabi sa akin tungkol sa request na increase ng mga tao mo ah! Huwag mo naman isabay ngayon yan, pag-usapan natin yan pagkatapos nitong work”. Then, foreman Pulvinar said “hindi ko kaya x x x”. Petitioner Lichangco, frustrated, said, “kung talagang hindi kaya, sabihin mo sa kanila papalitan na lang natin sila para matapos ang trabaho dahil naiipit ako”, then Foreman Pulvinar threateningly answered: “kung ganyan desisyon mo, hindi na rin ako papasok”, then he turned off his cell phone and never talked to petitioner Lichangco again.

The next day, August 2, 2010, Foreman Pulvinar sent his worker, a certain Jessiel Frias to the job site to retrieve his personal belongings. As a last ditch effort, petitioner Lichangco sent one of his men to Foreman Pulvinar's relatives to ask him to report to the former, but vehemently refused and never appeared thereafter. Respondent Lichangco sent a letter, dated August 12, 2010 to Foreman Pulvinar and to herein private respondent to report back for work. Despite notices sent to the workers to report back to work, none of them followed the instruction, hence, petitioner Lichangco concluded that the workers, including private respondent, had abandoned their work. Unknown to petitioner Lichangco, private respondent had already filed a Complaint on August 9, 2010. During the September 28, 2010 conciliation conference, private respondent Godofredo Frias asked for the amount of P80,000.00 as settlement but petitioner Lichangco refused and instead offered reinstatement on the availability of projects.

On January 28, 2011, Labor Arbiter Joel S. Lustria issued a Decision dismissing private respondent's Complaint for Illegal Dismissal. Thus, he ruled:

“WHEREFORE, all foregoing premises considered, judgment is hereby rendered DISMISSING the instant complaint for lack of merit. However, for reasons above-discussed, complainant GODOFREDO F. FRIAS is hereby ordered to immediately report back to work within ten (10) working days from receipt hereof but without payment of backwages. As explained above, this return-to-work order is NOT a reinstatement order within the purview of Article 279 of the Labor Code since there is NO illegal dismissal in the case at bar.

In another dimension, respondents are ordered jointly and severally liable to pay complainant GODOFREDO F. FRIAS, the aggregate amount of P7,041.60, representing his pro-rata 13th month pay for the year 2010, and service incentive leave pay.

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Other claims are dismissed for lack of merit.

SO ORDERED.” (Rollo, pp. 76-77)

Despite the dismissal of the complaint, petitioners still felt dissatisfied with the return-to-work Order and the ruling ordering them to pay the 13th month pay for the year 2010 and Service Incentive Leave Pay and thus they filed a Partial Appeal with public respondent NLRC on the following grounds, to wit:

- The Honorable Labor Arbiter blatantly erred when he ordered complainant-appellee Godofredo F. Frias to immediately report back to work within then (10) working days from receipt of the assailed decision but without backwages. (Rollo, p. 84)
- The award of 13th month pay to complainant- appellee Godofredo Frias is blatantly erroneous considering that the latter's project employment has already been terminated before the year 2010, the period under

consideration. (Rollo, p. 85)

- The award of service incentive leave pay (SILP) to complainant-appellee Godofredo Frias is likewise blatantly erroneous considering that the latter's project employment has already been terminated even before the year 2010, the period under consideration, and that he has not work with respondents-appellants during the year 2010. (Rollo, p. 86)

On June 2, 2011, public respondent NLRC issued the now assailed Decision denying petitioners' appeal but modifying the Labor Arbiter's Decision. The dispositive portion of the said Decision reads as follows:

“WHEREFORE, premises considered, the partial appeal is hereby DENIED for lack of merit. However, the Decision below is hereby MODIFIED in the sense that judgment is rendered declaring complainant-appellee to have been illegally dismissed. Respondents-appellants are hereby ordered, to reinstate complainant-appellee to his former position without loss of seniority or diminution of salary and other benefits immediately upon receipt hereof.

Likewise, respondents-appellants are hereby ordered, jointly and severally, to pay complainant-appellee:

- Backwages from the time of his dismissal on January 9, 2010 until finality hereof;
- Salary differentials, 13[th] month pay and service incentive leave pay for a period of three (3) years prior to his termination on January 9, 2010; and
- Attorney's fees equivalent to ten (10%) percent of the total award.

Should reinstatement be no longer feasible due to the strained relationship between the parties, respondents-appellants shall pay complainant-appellant (sic) separation pay equivalent to one (1) month's salary for every year of service computed from the time of his employment in January 1997 until finality hereof which amount shall be included in the computation of attorney's fees.

All other claims are hereby denied for lack of merit.

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SO ORDERED.” (Rollo, pp. 33-34)

On June 23, 2011, petitioners filed a Motion for Reconsideration (Rollo, pp. 90-102) of the aforesaid Decision. In the assailed Resolution dated December 29, 2011, public respondent partially granted the said Motion in so far as it deleted the award of the 13[th] month pay of private respondent for the year 2010. The rest of the Decision remains.

On February 3, 2012, petitioners filed the instant Petition for Certiorari with this Court, arguing as follows:

- Public respondent NLRC committed Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction in Deciding Issues which were not covered by the Partial Memorandum On Appeal. (Rollo, p. 10)
- In any event, even assuming that public respondent NLRC acted within its Jurisdiction in Issuing the Questioned Decision and Resolution, public respondent NLRC committed Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction when it modified the Labor Arbiter's ruling and instead held the private respondent Godofredo Frias was illegally dismissed against factual circumstances, law and jurisprudence. (Rollo, p. 16)
- Public respondent NLRC committed Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction in holding that private respondent Godofredo Frias was entitled to the Monetary Claims despite the fact that he

was a project employee and was not illegally dismissed by petitioners. (Rollo, pp. 19-20)

On the first issue, petitioners faulted public respondent NLRC when it considered an issue which was not covered by petitioners' Partial Memorandum of Appeal. A closer reading of petitioners' partial appeal would reveal that they only raised two main issues: (a) the propriety of the Labor Arbiter back-to-work Order and (b) the correctness of the Labor Arbiter's Award of 13[th] month pay and Service Incentive Leave pay for the year 2010. However, public respondent NLRC, in its Decision dated June 2, 2011 also passed upon the issue of illegal dismissal although said issue was never raised in the partial appeal.

“Section 4 (c) of the New Rules of Procedure of the NLRC echoes the provision, viz.:

SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. —

c) Subject to the provisions of Article 218, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding specific issues that were elevated on appeal.”

The clear import of the aforementioned procedural rule is that the NLRC shall, in cases of perfected appeals, limit itself to reviewing those issues which are raised on appeal (Luna vs. Allado Construction Co., Inc., 249 SCRA 262, 268 [2011]). As a consequence thereof, any other issues which were not included in the appeal shall become final and executory (ibid.).

Notwithstanding the provision under Article 218 (c) of the Labor Code which grants the NLRC the authority to "correct, amend or waive any error, defect or irregularity whether in substance or in form" in the exercise of its appellate jurisdiction, the invocation of this authority may be made only in the determination of a question, matter or controversy within its jurisdiction. The issue of the illegality of dismissal in the instant case was never brought within public respondent NLRC's jurisdiction. And when said issues were touched upon by public respondent NLRC, petitioners vehemently objected on the ground that it was not raised in their appeal. As explained by the Supreme Court:

“When petitioner limited the issue on appeal, necessarily the NLRC may review only that issue raised. All other matters, including the issue of the validity of private respondent's dismissal, are final. If private respondent wanted to challenge the finding of a valid dismissal, he should have appealed his case seasonably to the NLRC. By raising new issues in the reply to appeal, private respondent is in effect appealing his case although he has, in fact, allowed his case to become final by not appealing within the reglementary period. A reply/opposition to appeal cannot take the place of an appeal. Therefore, in this case, the dismissal of the complaint for illegal dismissal and the denial of the prayer for reinstatement, having become final, can no longer be reviewed.

Justifying its right to review the entire case and not just the sole legal question raised, public respondent relied on Article 218 (c) of the Labor Code. In the resolution denying the motion for reconsideration, public respondent quoted that portion which provides that the NLRC may in the exercise of its appellate power 'correct, amend or waive any error, defect or irregularity whether in substance or in form.'

Such reliance is misplaced.

The Labor Code provision, read in its entirety, states that the NLRC's power to correct errors, whether substantial or formal, may be exercised only in the determination of a question, matter or controversy within its jurisdiction [Art. 218, Labor Code]. Therefore, by considering the arguments and issues in the reply/opposition to appeal which were not properly raised by timely appeal nor comprehended within the scope of the issue raised in petitioner's appeal, public respondent committed grave abuse of discretion amounting to excess of jurisdiction.

The contention that the NLRC may nevertheless look into other issues although not raised on appeal since it is

not bound by technical rules of procedure, is likewise devoid of merit.

The law does not provide that the NLRC is totally free from 'technical rules of procedure', but only that the rules of evidence prevailing in courts of law or equity shall not be controlling in proceedings before the NLRC [Art. 221, Labor Code]. This is hardly license for the NLRC to disregard and violate the implementing rules it has itself promulgated. Having done so, the NLRC committed grave abuse of discretion.” (See: Luna vs. Allado Construction Co., Inc., 249 SCRA 262, 271-272 [2011]; citing Del Monte Philippines, Inc. vs. National Labor Relations Commission, 188 SCRA 370 [1990]).

In other words, since private respondent did not appeal the ruling of the Labor Arbiter when he found that there was no illegal dismissal, then said ruling became final and executory when the period to appeal lapsed. Thus:

“As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. Any attempt on the part of the . . . entities charged with the execution of a final judgment to insert, change or add matters not clearly contemplated in the dispositive portion violates the rule on immutability of judgments. An exception to this rule is the existence of supervening events which refer to facts transpiring after judgment has become final and executory or to new circumstances that developed after the judgment acquired finality, including matters that the parties were not aware of prior to or during the trial as they were not yet in existence at that time.” (Bani Rural Bank, Inc. vs. De Guzman, G.R. No. 170904, November 13, 2013)

The exception referred to above does not obtain in this case. With the ruling of the Labor Arbiter being final and executory, then public respondent NLRC can no longer take cognizance of the said matter especially in this case where the same was not brought within its jurisdiction. Considering that the petitioners' appeal was limited to two issues, then public respondent NLRC has gone beyond the scope of its jurisdiction when it tackled the issue of illegal dismissal, which issue was not raised in the first place.

To bolster that there can be no illegal dismissal, petitioners insisted that private respondent is a project employee whose term of employment has expired due to project completion. He faulted public respondent NLRC for ruling that the repeated rehiring of private respondent has made him a regular employee. However, We found it unnecessary to delve on the nature of private respondent's employment considering that the Labor Arbiter's finding - that there is no illegal dismissal in this case - has already become final and executory for failure of private respondent to appeal the said issue.

Since private respondent was not illegally dismissed, he is not entitled to backwages and reinstatement. Article 279 of the Labor Code, as amended, provides backwages and reinstatement as basic awards and consequences of illegal dismissal:

“Article 279. Security of Tenure. — . . . 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.” (underlining supplied)

Private respondent is also not entitled for the payment of separation pay. Courts may grant separation pay in lieu of reinstatement when the relations between the employer and the employee have been so severely strained; when reinstatement is not in the best interest of the parties; when it is no longer advisable or practical to order reinstatement; or when the employee decides not to be reinstated (SME Bank Inc. vs. De Guzman, G.R. No. 184517 & 186641, October 8, 2013). Since reinstatement cannot be ordered in this case because private respondent's alleged dismissal is not illegal, then the award of separation pay cannot be sustained.

As to the salary differentials, the same must be deleted for lack of factual basis. It must be made clear that salary differentials must be supported by substantial evidence. In this case, private respondent failed to present any evidence to prove underpayment. Other than his bare allegations, private respondent did not explain how much he must be properly receiving. Then again, he who asserts, not he who denies, must prove (*Portuguez vs. GSIS Family Bank*, 517 SCRA 309, 325 [2007], cited case omitted). Furthermore, petitioners amply explained that private respondent enjoyed facilities given by petitioners which is more than enough of the minimum wage. Thus, We concur with the ruling of the Labor Arbiter when it ruled that the facilities given to private respondent which includes rice subsidy, barracks rental and cash transportation fare in going to the job site amounting to Php150.00 per day made private respondent's daily salary more than the minimum wage mandated by law. These facilities as enumerated by petitioners were never rebutted by private respondent.

As to the 13[th] month pay awarded, the same is warranted considering the failure of petitioners to show proof that they had already paid for it. However, We are inclined to grant the said 13[th] month pay which covers only the period of three (3) years prior to the end of private respondent's employment particularly year 2007, 2008 and 2009. Thus, the claim for 13[th] month pay for the year 2010 is denied. Records would show that private respondent's employment ended on January 9, 2010 which means that he has worked only for less than one (1) month for that year. Under the law, a worker, regardless of his designation or employment status is entitled to the 13[th] month pay if he has rendered at least one (1) month of service within the year (See: *Central Azucarera de Tarlac vs. Central Azucarera de Tarlac Labor Union-NLU*, 625 SCRA 622, 628 [2010]). For not rendering work for at least one month for the year 2010, private respondent is not entitled to a 13[th] month pay for the said year.

As to the Service Incentive Leave, whether one is project employee or a regular employee for as long as he has rendered at least one (1) year of service, he is entitled to a yearly Service Incentive Leave of five (5) days with pay (See: Article 95 (a), Labor Code). As defined by the Supreme Court:

“Service incentive leave is a right which accrues to every employee who has served within 12 months, whether continuous or broken reckoned from the date the employee started working, including authorized absences and paid regular holidays unless the working days in the establishment as a matter of practice or policy, or that provided in the employment contracts, is less than 12 months, in which case said period shall be considered as one year. It is also commutable to its money equivalent if not used or exhausted at the end of the year. In other words, an employee who has served for one year is entitled to it. He may use it as leave days or he may collect its monetary value. . .” (*Mansion Printing Center vs. Bitara, Jr.*, 664 SCRA 44, 62-63 [2012], cited case omitted)

In the instant case, there is no showing that private respondent had already made use of his service incentive leave nor ever demanded for its commutation. Neither is there a showing that petitioners compensated for it. The employers (in this case, petitioners) bear the burden to prove that employees have received these benefits in accordance with law and present the necessary documents to prove such claim (See: *Mansion Printing Center vs. Bitara, Jr.*, 664 SCRA 44, 63 [2012], quoting the Court of Appeals). Regrettably, petitioners failed to discharge said burden. Thus, the award of the Service Incentive leave (covering three years- as claims prior to that had prescribed) in favor of private respondent is proper.

WHEREFORE, the assailed Decision dated June 2, 2011 and the Resolution dated December 29, 2011 of public respondent National Labor Relations Commission in NLRC LAC No. 03-000703-11 (NLRC NCR Case No. 08-11036-10) are SET ASIDE and the January 28, 2011 Decision of the Labor Arbiter is hereby REINSTATED. Accordingly, petitioners are ORDERED to pay jointly and severally private respondent, the money equivalent of the 5-day service incentive leave for every year of service covering his employment period from January 9, 2007 to January 9, 2010 and his 13[th] month pay for the year 2007, 2008 and 2009. This case is REMANDED to the Labor Arbiter for the computation of the adjudged service incentive leave pay and 13[th] month pay.

SO ORDERED.

Lopez, and Cruz,[*] JJ., concur.

[*] Acting Junior Member vice J. S.B. Inting per Office Order No. 348-14-RSF dated August 4, 2014.

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