

**ANICETO E. MANGASER, PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, RIGHT EIGHT SECURITY AGENCY, INC./
ROXANNE A. SINGSON, RESPONDENTS.**

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is a Petition for Certiorari of the Rules of Court which seeks to reverse and set aside the (i) Decision dated March 31, 2011[1] of the National Labor Relations Commission (NLRC) in NLRC NCR 00-09-13580-09 (LAC No. 11-002912-10) and the (ii) subsequent Resolution dated June 21, 2011,[2] which denied petitioner's motion for reconsideration. The dispositive portion of the Decision dated March 31, 2011, reads:

" xxx xxx xx

WHEREFORE, premises considered, the appeal is DENIED. The decision of Labor Arbiter Arthur L. Amansec dated August 12, 2010 is hereby AFFIRMED.

SO ORDERED.

xxx xxx xxx "

THE ANTECEDENTS

On March 31, 1997, Right Eight Security Agency, Inc. (Right Eight) hired Aniceto E. Mangaser as a security guard.

On September 23, 2009, Aniceto E. Mangaser, as complainant, filed a complaint for constructive dismissal, underpayment of salary, 13[th] month pay, night shift differential, and non-payment of holiday pay, holiday premium, service incentive leave pay, and separation pay against Right Eight and Roxanne Singson, as respondents, before the Labor Arbiter. This was docketed as NLRC RAB Case No. NCR-09-13580-09.[3]

In his position paper,[4] complainant alleged the following:

“ xxx xxx xxx

- xxx he had an altercation with his assistant commander Arthur Layson xxx. When reprimanded on the air or over the radio, he requested his superior Arthur Layson to just talk to him personally and not over the radio since everyone would be able to hear him being scolded. Arthur Layson took this request personally against Complainant and thus, on February 10, 2009, a memorandum notice of preventive suspension was effected from said date to March 1 or a period of 19 days;

- xxx in violation of his right to due process, after serving the preventive suspension for a concocted offense, he was again issued a memo notice of suspension for the Conduct unbecoming and his suspension was extended for another 15 days (exclusive of Holidays and Sundays) from March 2 to March 18, 2009;

- Thus, from February 10 to March 18 was a period of 36 days of penalty of suspension for an offense for which he was found guilty without due process and hearing;

xxx xxx xxx

- Thereafter, he was no longer given a post until one day in April 2009, he was surprised to be called for work for a detail to a post at Eight Arms Agency, Inc. (Eight Arms for brevity), a sister company of Respondent Right Eight Security Agency, Inc. (Right Eight for brevity) as reliever/augmentation force at Queensland Catering at Las Piñas, Rizal;

- His stint as reliever or augmentation force with Eight Arms was very short since after that he was no longer given a post with Eight Arms nor with his main employer Right Eight, but rather placed on a floating status with no means to support his family;

- His last day of service with Right Eight was February 9, 2009;

- For so many times he went back to office to seek an assignment but to no avail since the usual reply was that there was no post available at the moment; but to him that was unbelievable because he saw that new guards were being assignments and he was given least priority;

- On September 23, 2009, he filed this case;

- xxx xxx, he received a letter dated October 20, 2009 from Eight Arms Agency, Inc. the said sister company of his employer Respondent Right Eight Security Agency, Inc. advising him that he has been on continued Absence Without Official Leave (AWOL) since April 25, 2009, to report to central office within 48 hours, etc.;

- Complainant did not report and obey the instructions contained in said letter since Eight Arms was not his employer but Right Eight;

xxx xxx xxx “

For their part, respondents countered that complainant was not illegally dismissed. They alleged that, complainant went AWOL; several notices[5] were sent to complainant via registered mail directing him to report to the Central Office and to explain his side but he failed to appear; despite being on AWOL, they did not impose any penalty or sent any notice of termination or dismissal to complainant; and, they still consider complainant their employee.[6]

On August 12, 2010, the labor arbiter render a Decision[7] dismissing the complaint. It found that re-assignment

of complainant through the auspices of Eight Arms, a sister company valid, thus, there was no constructive dismissal. The dispositive portion of the decision reads:

“ xxx xxx xxx

WHEREFORE, the Complaint is DISMISSED for lack of merit but the respondent company is ordered to pay complainant P25,000.00 as financial assistance.

xxx xxx xxx “

Complainant interposed an appeal to the National Labor Relations Commission (NLRC).[8] On March 31, 2011, the NLRC rendered a Decision[9] affirming the labor arbiter's decision. It ruled that transferring an employee from one place to another is not by itself unlawful. It is within the inherent right of an employer to transfer or assign an employee in the pursuit of its legitimate business interest. Also, there is no constructive dismissal because the attendance of complainant with Eight Arms effectively interrupted the six-month period.

Thus, the NLRC decreed:

" xxx xxx xx

WHEREFORE, premises considered, the appeal is DENIED. The decision of Labor Arbiter Arthur L. Amansec dated August 12, 2010 is hereby AFFIRMED.

SO ORDERED.

xxx xxx xxx "

Aggrieved, complainant filed a motion for reconsideration[10] which was denied in the Resolution dated June 21, 2011.[11]

Hence, this petition.

THE ISSUES BEFORE US

Complainant as petitioner before Us advances the following posers for Our resolution, that:

I. THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONCLUDING THAT PETITIONER WENT ON AWOL;

II. THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT RIGHT EIGHT AND EIGHT ARMS ARE JUST ONE JURIDICAL ENTITY AND CONCLUDING THAT THERE WAS NO CONSTRUCTIVE DISMISSAL FOR THE REASON THAT THE PERIOD OF SIX MONTHS HAD STILL NOT LAPSED AND ATTENDANCE TO THE FORMER IS ATTENDANCE TO THE LATTER;

III. THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN UPHOLDING THE LABOR ARBITER'S FINDINGS THAT PETITIONER'S MONEY CLAIM PRESCRIBE IN THREE YEARS AND THAT THERE WAS NO UNDERPAYMENT SINCE THE MINIMUM WAGE RATE USED BY PETITIONER IS ERRONEOUS;

IV. THE NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO APPRECIATE THE EVIDENCE OF PETITIONER.

Petitioner argues that while it may be true that he was assigned to work with Eight Arms, Private Respondent Right Eight's sister company, it was for a very short term and a temporary detail. Moreover, if a security guard is

not given a post for more than six (6) months, this is tantamount to constructive dismissal. In this case, he was put on floating status for more than six (6) months and respondents also failed to offer him a job during the proceedings before the labor arbiter and the NLRC, clearly, he was constructively dismissed.

He adds that it was erroneous for the labor arbiter and the NLRC to find that he went AWOL. He could not have abandoned his work or went AWOL because he had a family to feed. Furthermore, the filing of complaint for illegal dismissal is inconsistent with abandonment.

Private respondents, on the other hand, maintained that the ruling of the NLRC was in accordance with the law and jurisprudence. A security guard placed on floating status is lawful as long as it does not exceed the six month period. Petitioner's assignment to work with Eight Arms was made in good faith and effectively interrupted the six-month period, therefore, there is no constructive dismissal to speak of.

Moreover, the dismissal of his money claims are proper because there is no evidence to support his allegations. Each party must prove his affirmative allegation.

OUR RULING

In a Special Civil Action for Certiorari, the query is limited to the determination of whether or not the NLRC acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its decision. "By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. There is grave abuse of discretion when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so 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." [12]

However, as an exception, We may examine the factual findings and sift the factual findings of the NLRC if the same are not supported by substantial evidence. [13] In petitions for certiorari We are clothed with ample authority to review the factual findings and conclusion of the NLRC. And when the NLRC gravely abused its discretion in overlooking or disregarding evidence material to the controversy, We have to look at the evidence and make Our own factual determination. [14] With this standard in mind, We scoured the records and find that,

Petitioner was
constructively
dismissed

Petitioner points out that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction in affirming the labor arbiter and ruling that his detail or attendance to Eight Arms, a sister company of Right Eight, is a valid transfer and effectively interrupted the floating status or the six-month period. He argues that while it may be true that he was assigned to work with Eight Arms, it was for a very short term and a temporary detail. Moreover, he was put on floating status for more than six (6) months and private respondents also failed to offer him a job during the proceedings before the labor arbiter and the NLRC, clearly, he was constructively dismissed.

We are well aware that a security agency could lawfully place security guards on floating status. In security agency parlance, floating status means waiting to be posted. [15] The floating status however must not exceed six (6) months, otherwise, the security agency could be held liable for constructive dismissal. [16] Constructive dismissal is quitting because continued employment is rendered impossible, unreasonable or unlikely, or because of a demotion in rank or a diminution of pay. It also exists when there is a clear act of discrimination, insensibility or disdain by an employer which becomes unbearable for the employee to continue his employment. [17]

In this case, the NLRC affirmed the ruling of the labor arbiter. The labor arbiter, in finding that there was no constructive dismissal, reasoned that:

“ xxx xxx xxx

On the issue of illegal dismissal, we find and hold that complainant was not constructively dismissed from employment.

After he was relieved from his last post on February 10, 2010, at the same time undergoing suspension of 36 days, he was provided a re-assignment through the auspices of Eight Arms, a sister company.

Absent any evidence of bad faith on the part of the respondent company in its decision to seek the help of a sister company in reporting complainant, we should view the decision as a good faith compliance with its obligation to provide complainant a re-assignment within six (6) months from his last relief.

xxx xxx xxx “

We find that the foregoing pronouncement bereft of factual basis. A transfer means a movement from one position to another of equivalent rank, level or salary, without a break in the service.[18] Here, there is nothing on record showing that petitioner was informed that he was being transferred and/or placed on floating status. It appears that after his preventive suspension,[19] petitioner was transferred by Right Eight to Eight Arms on April 2009 where he was assigned to work merely as a reliever and thereafter was not given any future assignments. While the transfer of an employee ordinarily lies within the ambit of management prerogatives. However, a transfer amounts to constructive dismissal when the transfer is unreasonable, inconvenient, or prejudicial to the employee, and it involves a demotion in rank or diminution of salaries, benefits and other privileges.[20]

It must also be stressed that the onus of proving that there is no post available to which the security guard can be assigned rests on the employer.[21] There is paucity of evidence establishing that there was a lack of available post. As it is, Private Respondent Right Eight simply stopped giving petitioner new assignments after petitioner's preventive suspension. With the absence of any proof of dire exigency justifying their failure to give petitioner further assignment, the only logical conclusion is that he was constructively dismissed.

Even assuming that Private respondent Right Eight was justified in not immediately giving petitioner future assignments, the length of time that the latter was put on floating status made the former's act tantamount to constructive dismissal. Here, Private Respondent Right Eight relieved petitioner on February 9, 2009[22] and the complaint for constructive dismissal was filed on September 23, 2009.[23] The records also bear out that private respondent did not offer a new assignment to petitioner even during the proceedings before the labor arbiter. By then, more than six (6) months had elapsed. It appears that the supposed floating status was meant to be a permanent one.

The case of Megaforce Security and Allied Services, Inc. vs. Lactao[24] is apt. There is was held that the continued failure of the employer to offer an employee a new assignment during the proceedings of the case before the labor arbiter and beyond the six month period makes the former liable for constructive dismissal, thus:

“ xxx xxx xxx

xxx xxx xxx. Indeed, the Court has repeatedly recognized that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time; when such a "floating status" lasts for more than six months, the employee may be considered to have been constructively dismissed.

However, in the present case, while the charge of illegal dismissal may have been premature because Lactao has not been given a new assignment or temporary "off-detail" for a period of seven days only when he

amended his complaint, the continued failure of Megaforce to offer him a new assignment during the proceedings of the case before the LA and beyond the reasonable six-month period makes it liable for constructive dismissal.

There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. (Underscoring ours).

xxx xxx xxx “

Also, private respondents, in their position paper,[25] alleged that there was no constructive dismissal rather petitioner went on absent without leave (AWOL) or abandoned his job. They have sent series of letters directing the latter to report for work and explain his side, but petitioner refused to report for work. They adduced in evidence the Letters dated May 4, 2009,[26] labeled as 1st Notice, and June 5, 2009,[27] labeled as 2[nd] Notice, allegedly sent via registered mail to petitioner, which commonly state and read:

“ xxx xxx xxx

DEAR MR. MANGASER,

We wish to advise you that per our records, you have been on continued ABSENT WITHOUT OFFICIAL LEAVE (AWOL) since 25 April 2009 up to this date.

Please report to Central Office together with this letter within 48 hours upon receipt of this notice to straighten out your personal records and contract status. We would like you to advise us in writing regarding your reasons for going on AWOL and why we should not drop you from the Security Guard Roster.

Failure to respond to this letter will mean that you are no longer interested to be part of the Agency.

For your guidance and information.

xxx xxx xxx “

Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee.[28] It is a matter of intention and cannot lightly be presumed from certain equivocal acts. 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.[29] Clearly, the operative act is the employee's ultimate act of putting an end to his employment.[30] And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.[31]

Private respondents failed to discharge this burden. Apart from the Letters dated May 4, 2009 and June 5, 2009, there is nothing in the records to show that petitioner deliberately and unjustifiably abandoned his job.

Even assuming that petitioner abandoned his job, private respondents should have served him with a valid written notice of termination on the ground of abandonment. Here, We find the letters suspect and bereft of evidentiary value. First, We are at a loss why the said letters were sent by Eight Arms when the petitioner's employer is Private Respondent Right Eight. Second, the similarity in the substance of both letters indicate that they were merely pro-forma intended to make it appear that there was no dismissal. Finally, there is no registry return card, hence, there is no proof that the said letters were actually sent to and received by petitioner. A notice of termination is the best evidence of dismissal. Clearly, the absence thereof taints petitioner's dismissal with

illegality.

Moreover, private respondents' theory that petitioner intended to forsake his job is belied by the fact that a complaint for constructive dismissal was filed. An employee who takes steps to protest his dismissal, as by filing a labor case, cannot logically be said to have abandoned his employment.[32] Simply put, private respondents' charge of abandonment, lacking evidentiary support, is bare and self-serving.

Given the factual circumstances of this case, We are constrained to reverse the ruling of the NLRC. The factual findings of the NLRC is made in utter disregard of the evidence on record, hence, it may be corrected by a writ of certiorari.

Petitioner is entitled to
the benefits of an illegally
dismissed employee,
i.e. separation pay and
payment of backwages

It is settled that an illegally dismissed employee is entitled to two reliefs: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively.[33]

A perusal of the petitioner's position paper[34]and complaint[35] shows that he prayed for separation pay in lieu of reinstatement. Case law[36] 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.[37] Backwages shall be computed from the time of dismissal until the finality of the decision.[38] Having determined that petitioner was constructively dismissed, he is entitled to separation pay, in lieu of reinstatement, and backwages.

However, the NLRC did
not err in dismissing
petitioner's money claims

It is petitioner's position that the computation of underpayment of money claims, such as wages, overtime pay, 13th month pay, night shift differential, holiday and service incentive leave pay, presented in his position paper and reiterated in his appeal were not refuted by private respondents, thus, the NLRC grossly erred in dismissing his money claims.

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.[39] 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.[40]

Here, Private respondents' assertion that they paid the right amount of wages, overtime pay, holiday pay, 13th month pay and service incentive leave pay were substantiated. They presented copies of the Payroll Register[41], Daily Time Record (DTR);[42] Letter Debit Advices to China Bank Corporation and/or Bank Advice Slips,[43] hence, the dismissal of petitioner's money claims is proper.

WHEREFORE, premises considered, the petition is GRANTED. The assailed (i) Decision dated March 31, 2011 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-09-13580-09 (LAC No. 11-002912-10) affirming the labor arbiter's Decision dated August 12, 2010 and the (ii) subsequent Resolution dated June 21, 2011, except the dismissal of petitioner's money claims, are hereby REVERSED and SET ASIDE.

Petitioner Aniceto Mangaser is constructively dismissed and Private Respondent Right Eight Security Agency, Inc. is ordered to pay petitioner's separation pay equivalent to one (1) month salary for every year of service reckoned from the first day of employment until the finality of the decision and backwages, inclusive of allowances and other benefits due to petitioner computed from the time of dismissal until the finality of the decision.

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 Barza, R. F., JJ., concur.

[1] Penned by Commissioner Raul T. Aquino, with Commissioner Napoleon M. Manese concurring, while Commissioner Teresita D. Castillon-Lora, dissenting; Rollo, pp. 41-50.

[2] Id., pp. 30-32.

[3] Id., pp. 174-176.

[4] Complainant's Position Paper, Id., pp. 163-171.

[5] Notice dated May 4, 2009 marked as Annex "D", Id., p.135 and Notice dated June 5, 2009 marked as Annex "E", Id., p. 136.

[6] Respondents' Position Paper, Id., pp. 118-131.

[7] Penned by Labor Arbiter Arthur L. Amansec; Id., pp.71-75.

[8] Memorandum of Appeal, Id., pp. 55-69.

[9] Supra, Note 1.

[10] Id., 33-39.

[11] Supra, Note 2.

[12] University of Mindanao, Inc. vs. Court of Appeals, G.R. No. 181201, February 21, 2011. citing Solvic Industrial Corporation vs. NLRC, G.R. No. 125548, September 25, 1998, 296 SCRA 432, 441.

[13] Soriano, Jr. vs. NLRC, G.R. No. 165594, April 23, 2007.

[14] Pepsi-Cola Products Philippines, Inc. vs. Molon,et.al., G.R. No. 175002, February 18, 2013. citing Plastimer Industrial Corporation v. Gopo, G.R. No. 183390, February 16, 2011, 643 SCRA 502, 509.

[15] Veterans Security Agency, Inc. vs. Gonzalvo, G.R No. 159293, December 16, 2005. citing Sentinel Security

Agency v. NLRC, G.R. No. 122468, 03 September 1998, 295 SCRA 123.

[16] Pido vs. NLRC, G.R. No. 169812, February 23, 2007. see also Article 286 of the Labor Code.

[17] Barroga vs. Data Center College of the Philippines, G.R. No. 174158, June 27, 2011. citing Montederamos vs. Tri_Union International Corporation, G.R. No. 176700, September 4, 2009, 598 SCRA 370, 376.

[18] Sentinel Security, Agency, Inc. vs. NLRC, G.R. No. 122468 & 122716, September 3, 1998. citing Millares vs. Subido, 2o SCRA 954,962, August 10, 1967.

[19] See Notice of Preventive Suspension dated February 10, 2009, marked as Annex “1” Rollo, p. 172 and Notice of Disciplinary Action dated February 26, 2009, marked as Annex “2”.

[20] OSS Security and Allied Services, Inc, et.al. vs. NLRC, et.al., G.R. No. 112752, February 9, 2000. citing Escobin v. NLRC, 289 SCRA 48 (1998); Autobus Worker’s Union (AWU) v. NLRC, 291 SCRA 219, 229 (1998); Isabelo v. NLRC, 276 SCRA 141, 146 (1997). Garcia v. NLRC, G.R. No. 116568, September 3, 1999; Ledesma v. NLRC, 246 SCRA 47, 51 (1995).

[21] Nationwide Security and Allied Services, Inc. vs. Valderama, G.R. No. 186614, February 23, 2011. Pido v. National Labor Relations Commission, G.R. No. 169812, February 23, 2007, 516 SCRA 609, 616-617.

[22] See Complainant's Position Paper, Supra, Note 4.

[23] Complaint, Supra, Note 3.

[24] G.R. No. 160940, July 21, 2008. citing Veterans Security Agency, Inc. v. Gonzalvo, Jr., G.R. No. 159293, December 16, 2005, 478 SCRA 298, 308; Mobile Protective & Detective Agency v. Ompad, G.R. No. 159195, May 9, 2005, 458 SCRA 308, 322-323; Soliman Security Services, Inc. v. Court of Appeals, 433 Phil. 902, 910 (2002); Valdez v. National Labor Relations Commission, 349 Phil. 760, 766 (1998); Superstar Security Agency, Inc. v. National Labor Relations Commission, G.R. No. 81493, April 3, 1990, 184 SCRA 74, 77; Agro Commercial Security Services Agency, Inc., v. National Labor Relations Commission, G.R. Nos. 82823-24, July 31, 1989, 175 SCRA 790, 797. Fungo v. Lourdes School of Mandaluyong, G.R. No. 152531, July 27, 2007, 528 SCRA 248, 256-257; The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, November 11, 2004, 442 SCRA 274, 290; Duldulao v. Court of Appeals, G.R. No. 164893, March 1, 2007, 517 SCRA 191, 199; Phil. Employ Services and Resources, Inc. v. Paramio, G.R. No. 144786, April 15, 2004, 427 SCRA 732, 753-754.

[25] Resopndent's Position Paper; Supra, Note 6.

[26] Id., p.135.

[27] Id., p. 136.

[28] Galang vs. Malasugui, G.R. No. 174173, March 7, 2013.

[29] 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.

[30] 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.

[31] 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).

[32] 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.

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

[34] Complainant's Position Paper, Supra, Note 4.

[35] Complaint, Supra, Note 3.

[36] 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.

[37] 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.

[38] Bani Rural Bank, Inc., et.al., vs. Guzman, et.al., Supra 30.

[39] 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).

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

[41] Rollo, pp. 137, 141, 145, 149,

[42] Id., pp. 138, 142, 146, 150.

[43] Id, pp.139-140, 143-144, 147-148, 151-152, 153-154, 155-156, 157-158, 159-160.

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