

## **TRASS CONSTRUCTION, CO. INC. / JOSEPH M. TAN, PETITIONERS, VS. ROLIE C. VILBAR AND GILBERTO D. ORIÑO; AS PRIVATE RESPONDENTS AND HON. VIOLETA ORTIZ-BANTUG, PRESIDING COMMISSIONER...**

Ponente: LAGURA-YAP, J.

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### **LAGURA-YAP, J.:**

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul or set aside the Decision[2] and Resolution[3] dated December 29, 2011 and February 29, 2012, respectively, rendered by the National Labor Relations Commission (NLRC), Seventh Division, Cebu City in NLRC Case No. VAC-09-000723-2011 (RAB Case No. VII-01-0189-2011).

#### **Factual Antecedents**

On January 21, 2011, private respondents Rolie C. Vilbar (Vilbar) and Gilberto D. Oriño (Oriño) filed a Complaint[4] against TRASS Construction, Co. Inc.[5] / Joseph M. Tan before the NLRC, Regional Arbitration Branch No. VII (RAB VII), Cebu City for Illegal Dismissal, Premium Pay and Damages docketed as NLRC RAB-VII Case No. 01-0189-11.

The private respondents alleged that Oriño started working for TRASS in April 1996. He was a regular worker, who worked continuously for one construction project after another, with one construction project overlapping another at times, as follows:

1. 1996-1997 Waterfront Mactan
2. 1997-1998 Robinson's Bacolod and back to Waterfront
3. 1999-2000 ManilaBank Cebu
4. 2001-2002 Iloilo
5. 2003-2004 Casino Espanol then Shangri La Mactan
6. 2005-2006 Liberty Warehouse then Banilad Town Center

7. 2007-2008 Centurion Training Center and Foxgate Call Center, Cebu

8. 2008-2010 Filinvest Seascap, Lapu-Lapu City

9. 2010-2011 USC Dormitory, Talamban Cebu City[6]

Vilbar, on the other hand, worked as a driver from the Banilad Town Center project and so on.[7]

The private respondents were issued several IDs. Aside from being underpaid, they were also not given 13<sup>th</sup> month pay, service incentive leave pay, holiday pay and premium pay for holiday.[8]

On December 14, 2010, the private respondents were summoned to TRASS' office and were told that they needed to sign some documents as required by DOLE for their salary increase which will take effect in January 2011. Three days after, they were told by Engr. Villena to proceed to DOLE to sign some documents. Upon their arrival, they were showed a Compromise Agreement for signing. Although surprised and hesitant, they were compelled to sign for fear that they might be fired. However, they were assured at the DOLE that signing the document meant continued employment and proper minimum wage by January 2011.[9]

On January 3, 2011, the private respondents were given another set of documents for their signature: a bio-data, application for project employment and a Waiver, Quitclaim and Release. They were warned that their refusal to sign the documents will lead to the termination of their employment. Concerned about the constant signings and threats, the private respondents decided to seek advice from a member of a labor organization. Every now and then, the timekeeper would ask for the return of the documents. However, they kept on making excuses that the documents were left at their home since they were afraid of signing it.[10]

On January 19, 2011, Engr. Villena summoned them to report to the canteen. They were asked to submit the documents, especially the Waiver, Quitclaim and Release. Vilbar handed over the documents, but he told Engr. Villena that he refused to sign them. As a result, Engr. Villena admonished them and told them that their hardheadedness and refusal to sign and abide by the new company policy would mean that it would be their last day of work. Engr. Villena then asked for the vehicle keys from Vilbar and he told both the private respondents to go home and not to return for work anymore.[11]

TRASS, on the other hand, averred that it is a general contractor for the past many years with projects all over the Philippines. It was engaged by the University of San Carlos (USC) to construct its USC Student Dormitory Building Project located at the USC Campus, Talamban, Cebu. In one of the project's Kick Off Meetings attended by the participating contractors and by USC, one of the main items that was discussed is the Guidelines for USC Contractors/Laborers, Concessionaires, Staff and Food Handlers. It required Trass to follow the "No ID No Entry" policy.[12]

Prior to the start of the USC Dormitory project, the DOLE Regional Office No. 7 conducted an inspection on TRASS by virtue of its visitorial power. As a result, the DOLE Labor Inspector directed TRASS to update and/or rectify its record of employees, i.e. their bio-data and all other important records. The records of TRASS were not updated because as contractor, it has a pool of workers with fast turn-over of project hired workers. It was reported that TRASS violated certain labor standards on wages and benefits. Thus, a Compromise Agreement was reached between the parties and it was signed and validly entered on December 17, 2010.[13]

On January 3, 2011, TRASS conducted a meeting with its workers (pool of project hired and regular employees) including the private respondents. The workers were informed of the USC policy to submit to the USC Office of

Security & Safety the following: (i) one 1x1 picture, (ii) one 2x2 picture and (iii) duly accomplished bio-data. In that meeting, TRASS provided its workers with new bio-data and other company forms for them to fill out, which is in line with the DOLE requirement to update the records of the company. During the meeting, the private respondents arrogantly reacted and resisted the filling out of bio-data and other forms. They expressed their vigorous and strong refusal to fill out and submit the other pro-forma company forms despite the pleading of TRASS' Operation Manager that they could just fill out the bio-data to secure the Contractor's ID, if they did not like to fill out the other forms inadvertently included, all of which were pro-forma company documents. It was an oversight committed by the office staff to lump up all office pro-forma documents for updating by its workers. TRASS even went to the extent of providing free 1 x 1 and 2 x 2 pictures to the private respondents. However, after almost two weeks of follow-up, the private-respondents still refused to submit their respective bio-data.[14]

TRASS alleged that while it was true that its timekeeper would ask for the return of the documents given to the private respondents, the timekeeper did not tell the latter to sign the other pro-forma documents. The timekeeper told private respondents to return and submit the bio-data and the documents. It was also not true that the private respondents were coerced by TRASS Operation Manager to sign on the other forms except for the bio-data. TRASS denied telling the private respondents through its operation manager that it was their last day of work.[15]

Thereafter, the private respondents did not report for work anymore and went on absence without official leave. A notice of AWOL was sent to them at their last known address.[16]

On July 20, 2011, the Labor Arbiter (LA) rendered a Decision in favor of the private respondents, the fallo whereof, reads:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the illegal dismissal of complainants Rolie Vilbar and Gilbert Oriño.

Respondent Trass Construction Co., Inc. is hereby ordered to pay complainants the total amount of FOUR HUNDRED THIRTY SIX THOUSAND FOUR HUNDRED NINETY SIX & 50/100 (P436,496.50) inclusive of backwages, separation pay, holiday pay, 13[th] month pay, service incentive leave pay, moral and exemplary damages and attorney's fees, broken down as follows:

ROLIE VILBAR GILBERT ORIÑO

1. Backwages P 45,240.00 44,460.00
2. Separation Pay 45,240.00 111,150.00
3. Holiday Pay 8,700.00 8,550.00
4. 13[th] Month Pay 22,620.00 22,230.00
5. SILP 4,350.00 4,275.00
6. Moral Damages 20,000.00 20,000.00
7. Exemplary Damages 20,000.00 20,000.00
8. Attorney's Fees 16,615.00 23,066.50

TOTAL P182,765.00 P253,731.50

All other claims are dismissed for lack of merit.

SO ORDERED.”

Aggrieved, TRASS filed a Notice of Appeal and a Memorandum on Appeal to the NLRC.[17]

On December 29, 2011, the NLRC promulgated the assailed Decision[18] which affirmed with modification the ruling of the LA, the dispositive portion whereof is hereunder quoted:

“WHEREFORE, premises considered, the decision appealed from is hereby AFFIRMED WITH MODIFICATION adjusting complainants' backwages and attorney's fees. Respondents are hereby directed to pay complainants the total amount of P430,721.50 comprising complainants' separation pay, backwages, holiday pay, 13[th] month pay, service incentive leave pay, and attorney's fees computed until 29 December 2011.

SO ORDERED.” (Bold letters in the original).

TRASS filed a motion for reconsideration[19] but it was likewise denied by the NLRC in its assailed Resolution[20] dated February 29, 2012.

Hence, this petition.

Issue

In this recourse, TRASS interposed a lone issue:

WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT TRASS ILLEGALLY DISMISSED THE PRIVATE RESPONDENTS.[21]

The Ruling of this Court

In essence, TRASS questioned the factual findings of both the LA and the NLRC. It asserted that it did not terminate nor dismiss the private respondents. It was the private respondents themselves who refused to return to work. They refused to submit the required bio-data despite TRASS' effort to convince them to do so. The bio-data is in compliance with the project owner (USC) requirement, so that its security office can issue a Contractor's I.D. Hence, the core problem in this case is the policy of “No I.D. No Entry” which is strictly enforced in USC's premises. TRASS cannot resolve this impasse since it lies only in the hands of the private respondents. Although a misunderstanding may have occurred, TRASS never acted to terminate nor dismiss the private respondents.

The petition is bereft of merit.

The special civil action for Certiorari is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[22]

In *Cathay Pacific Steel Corp. v. Hon. Court of Appeals*[23], the Supreme Court discussed that “[t]he essential requisites for a Petition for Certiorari under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial function; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. Grave abuse of discretion

implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or 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.” (Emphasis Ours).

After a judicious examination of the records of this case together with applicable laws and jurisprudence, We cannot conclude that the NLRC exercised its discretion in a capricious, arbitrary or whimsical manner within the contemplation of Rule 65 in rendering the assailed rulings since it is supported with substantial evidence on record.

As pointed out by the NLRC, between the private respondents' comprehensive description of the circumstances leading to their dismissal from employment and TRASS' general denial of the dismissal, it is the former that should be given more weight and credence. We find no compelling nor cogent reason to disregard the unanimous factual findings of both the LA and the NLRC.

It is not disputed in this case that the private respondents were employed by TRASS for a long period of time. Thus, it is safe to assume that they are already familiar with the usual policy of every project owner regarding the procurement of I.D. or Gate Pass which should be used in entering the project premises. As discussed by the LA, the private respondents have valid reasons not to sign the “other forms” furnished by TRASS. For one thing, the private respondents are regular employees but they were made to sign an application letter[24]. Signing the application letter would be detrimental to the private respondents because it would mean that they are new employees even though they were not. Moreover, the private respondents were also made to sign a Waiver, Quitclaim & Release. Signing a blank Waiver, Quitclaim & Release would bar them from pursuing valid claims against their employer.

TRASS argument that it did not force the private respondents to sign on the other pro-forma papers which were merely inadvertently attached does not inspire belief. If indeed the argument is true that the documents were only inadvertently attached then such mistake could be easily rectified. There are several ways to correct such mistake and yet TRASS failed to present a single compelling evidence that showed that it even attempted to correct it. Besides, if TRASS is indeed candid with their stand then this controversy should never have reached the Court because it can be easily corrected at the earliest opportunity. Notably, as alleged by the private respondents, they were both terminated on January 19, 2011. The complaints in this case were both filed on January 21, 2011 or only after two days from their termination. Hence, if it is true that TRASS never dismissed them and that it was merely a product of misunderstanding then TRASS could have simply asked them to return to work since they were never terminated anyway. However, it never happened, which only bolster the claim of the private respondents that they were really unlawfully terminated from their employment.

In contrast, the private-respondents' allegation that they were illegally dismissed from their employment bears the earmark of truth. On January 11, 2011, they were both summoned by Engr. Villena to report to the canteen. They were asked to submit the documents, specially the Waiver, Quitclaim & Release. Vilbar handed over the documents but told Engr. Villena that he refused to sign them. As a result, Engr. Villena admonished the private respondents. He told them that since they were hardheaded and refused to abide by the new company policy, it would be their last day of work. Thereafter, he asked for the vehicle keys from Vilbar and told them both to go home and not to come back for work.[25] Clearly, the private respondents were unlawfully dismissed from their employment without just cause and due process.

As cited by the NLRC, in the case of *Equipment Technical Services v. CA*[26], the Supreme Court made it clear that “[i]n termination disputes, the burden of proving that an employee had been dismissed for a lawful cause or

that the exacting procedural requirements under the Labor Code had been complied with lies with the employer. Where there is no showing of a clear, valid, and legal cause for termination of employment, the law considers the case a matter of illegal dismissal.”

All told, We find no grave abuse of discretion in the assailed rulings of the NLRC.

WHEREFORE, the petition is DISMISSED for want of merit.

**SO ORDERED.**

Delos Santos, J., Chairperson and Lopez, JJ., concur.

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[1] Rollo, pp. 1-18.

[2] Rollo, pp. 21-32.

[3] Rollo, pp. 35-36.

[4] Rollo, pp. 163 & 164.

[5] Hereinafter referred to as TRASS.

[6] Culled from the Decision of the NLRC, supra note 2 (at p. 22-23).

[7] Id at p. 23.

[8] Id.

[9] Id.

[10] Id. at pp. 23-24.

[11] Id., at p. 24.

[12] Culled from the petition, supra note (at p. 6).

[13] Id. at p. 7.

[14] Id. (at pp. 7-8).

[15] Id. at p. 8.

[16] Id.

[17] Culled from the petition, supra note 1 (at p. 9).

[18] Supra note 2.

[19] Rollo, pp. 38-43.

[20] Supra note 3.

[21] See Petition, supra note 1 (at p. 10).

[22] Cathay Pacific Steel Corp. v. Hon. Court of Appeals, G.R. No. 164561, Aug. 30, 2006

[23] Id.

[24] Annex “F” of the Complainant's Position Paper, Rollo, p. 91

[25] Culled from Complainant's Position Paper, Rollo, pp. 79-83 (at p. 82)

[26] G.R. No. 157680, October 8, 2008.

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