

**NATION'S PROTECTIVE AND SECURITY SERVICES, INC.,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(SECOND DIVISION) AND NORBERTO M. VILLAPANDO,
RESPONDENTS.**

Ponente: SABIO, JR., J.

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SABIO, JR., J.:

Judicial Review of labor cases does not go as far to evaluate the sufficiency of evidence upon which the Labor Arbiter and the National Labor Relations Commission based their determination (Valiao vs. CA, 435 SCRA 543).

Sought to be annulled in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are: (1) the June 30, 2005 decision of public respondent National Labor Relations Commission (NLRC), 2nd Division in NLRC CA No. 042866-05 (NLRC NCR CASE No. 00-02-02225-03) which affirmed the Labor Arbiters decision and ordered the dismissal of petitioners appeal and (2) the November 29, 2005 Resolution of said public respondent denying petitioner's motion for reconsideration on the earlier decision.

The material antecedents as portrayed in the Labor Arbiter's decision, thus:

“This is case filed by Norberto M. Villapando against Nation's Protective and Security Services, Inc. (NAPROSSI) and/or Mr. Rodrigo Reyes for illegal dismissal with claim for payment of separation pay, underpayment/non-payment of salary, overtime pay, holiday pay, premium pay for holiday, rest day pay, 13th month pay, service incentive leave pay, night-shift differential pay, ecoba, uniform allowance, moral and exemplary damages.

Complainant alleged that he was hired by the respondent NAPROSSI as a security guard on January 2, 1997. At the time of his dismissal from employment, he was receiving the sum of P10,740.00 per month.

In his Position Paper complainant averred that he along with other co-employees filed money claims case against NAPROSSI on February 18, 2003. However, before the hearing of the case, he was relieved from his post at Rose Industries Building located at No. 11 Pioneer Street, Pasig City and was instructed to report at the respondent's office. At the office, he was told to withdraw the complaint he filed before the NLRC otherwise, he will not be given any posting and that he is banned from its premises.

Complainant further alleged that he received a letter from the respondent requiring him to report at its office for reposting; that he reported at the office on March 7, 2003 but was told by Mr. Alluvida, the Administrative Officer in the vernacular “WALA YON STYLE LANG YON”, that he left the respondent's premises in disgust; that again, on March 12, 2003, he received a letter from the respondent informing him that according to their records, he was on AWOL since February 25, 2003 up to March 6, 2003; that since the start of his employment, he was underpaid of his wages; that in the course of his employment from 1999, he was suffered to work daily from Monday to Sunday without any rest day and regardless of holidays, yet was not compensated properly; that he was paid a flat rate of P358.00 a day which is clearly below the minimum wage prescribed by law; that for work he performed during his supposed rest days and holidays, he was simply paid his regular daily rate without the supposed premium and additional pays; that the same system of computation

has been applied up to his termination on February 21, 2003; that respondent failed to give him his salary for the period February 1 to 21, 2003 in the amount of P7,482.00; that he was not paid any service incentive leave pay, eccla and was not given any allowance for the years 2000 and 2001 in the sum of P500.00 a year; that he was not give any 13th month pay for the years 2000 and 2001; that his daily time records for the period February 1 to 15, 2003 will show his regular number of hours worked, just like any other day that he had worked in the past; that he prays for the grant and payment of all his claims.

Respondents through counsel argued that the complainant has no legal and factual basis in claiming that he was illegally dismissed for his relief from duty does not mean illegal dismissal; that its right to transfer employees is judicially recognized as a prerogative inherent in the employer's right to control and manage its enterprise; that the management in this case deemed it best to recall complainant from his last post to accommodate and place others who were earlier placed on a floating status; that there is no truth to the claim of the complainant that his relief is a retaliatory move on its part and that he would not be given any posting if he well not withdraw his initial money claims filed against them; that this is negated by the fact that complainant was immediately given work assignment as soon as it becomes available; that for no apparent reason, it was the complainant who refused to accept any work assignments from respondents as evidenced by the Duty Detail Order dated 7 March 2003 (Annex A, Respondents' Reply); that as regard the alleged unpaid salary from February 1 to 21, 2003, it is willing to give the same to complainant however, complainant has an existing accountability with the company as evidenced by the Authorization letter wherein complainant agreed to pay the same through salary deduction (Annex B, *ibid*); that it has withheld the last salary of the complainant to protect its interest in view of the bad faith shown by him as he refused to accept new work assignments; that there is no truth to complainant's allegation that since the start of his employment, he was underpaid of his salary and also that he was denied other labor standard benefits; that the document alleged as DTR for the period February 1 to 15, 2003 is self serving and has no probative value; that the DTR was not countersigned by the client's authorized representative and neither by those persons required to verify the truthfulness of the entries made therein not even by the person who prepared the same; that the admission by the complainant that he is receiving salary of P358.00 per day in the absence of competent proof that he was made to suffer to work for more than 8 hours proves that he was not underpaid; that without admitting the entitlement of the complainant to his money claims, if any, since the complaint was filed in February 2003, the same should be reckoned from the year 2000 and not 1999 as falsely claimed by the complainant; that it prays for the dismissal of the complaint.

The issues posed for resolution are whether or not complainant was illegally dismissed and whether or not he is entitled to his monetary claims.”

(Rollo, pp. 54-57)

Having considered the pleadings filed and the evidence adduced, the Labor Arbiter decreed, thus:

“WHEREFORE, premises considered, judgment is hereby rendered finding that the complainant was illegally dismissed by the respondents. Respondents NATIONS PROTECTIVE & SECURITY SERVICES INCORPORATED (NAPROSSI) and/or MR. RODRIGO REYES are ordered to pay complainant the following sums:

- 1) The sum of P247,508.94, representing his separation pay and back wages;
- 2) The sum of P15,000.00, representing payment of his 13th month pay;
- 3) The sum of P3,654.81, representing payment of five (5) days service incentive leave pay.
- 4) The sum of P2,785.50, representing payment of his eccla.

All other claims are dismissed for lack of merit.

SO ORDERED.

Quezon City, Philippines, October 29, 2004.”

(Rollo, pp. 60-61)

Unconvinced, petitioner appealed to public respondent arguing on the following submissions, to wit:

“ASSIGNMENT OF ERRORS

- THE HONORABLE LABOR ARBITER FEDRIEL S. PANGANIBAN ACTED WITH GRAVE ABUSE OF DISCRETION IN HIS FINDINGS THAT COMPLAINANT-APPELLEE WAS ILLEGALLY DISMISSED.

- THE HONORABLE LABOR ARBITER FEDRIEL S. PANGANIBAN COMMITTED SERIOUS ERROR WHICH WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE TO THE RESPONDENTS-APPELLANTS IF NOT CORRECTED THAT COMPLAINANT-APPELLEE IS ENTITLED TO SEPARATION PAY AND BACKWAGES.

- THE HONORABLE LABOR ARBITER FEDRIEL S. PANGANIBAN ACTED WITH GRAVE ABUSE OF DISCRETION IN HIS FINDINGS THAT COMPLAINANT-APPELLEE IS ENTITLED TO MONEY CLAIMS.”

(Rollo, p. 64)

In sustaining the decision of the Labor Arbiter, public respondent NLRC ratiocinated in this manner:

“We have gone over the records in the light of the assignment of errors raised by the appellant and we see no cogent reason to disturb the findings of the Arbiter a quo.

Appellant has not shown to our satisfaction that he was able to carry out its burden of proof to establish its stance that appellee was not arbitrarily terminated. For, what is patent is the fact that appellee was relieved from his assignment when he refused to withdraw his complaint for wage deficiency among others. Appellant speaks of terminated contracts as its excuse for the arbitrarily relief of appellee, but it has not shown any copy of the said contract. Indeed, mere allegation is not evidence says the Court in *PT Cerna v. C.A.* (221 SCRA 19).

On the money claims. Again we find the arguments raised by appellant as totally unavailing for the simple reason that “one who pleads payment has the burden of proving it, and even when the plaintiff must alleged non-payment, the general rule is that the burden rests on the defendant to prove payment rather than the plaintiff to prove non-payment. (*Jimenez v. NLRC* 254 SCRA 84).

As borne out by the records, the appellant has not presented any iota by evidence to substantiate its allegations.

Indeed, the appellant miserably failed to discharge its burden of proof as required of him under Article 277 (b) of the Labor Code.

WHEREFORE, the appeal is hereby DISMISSED for lack of merit.

SO ORDERED.”

(Rollo, pp. 18-20)

Aggrieved by the denial of its motion for reconsideration, petitioner now comes to Us, anchored on the following:

“GROUNDS RELIED UPON FOR RELIEF PRAYED FOR

Public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in

dismissing the appeal and affirming the decision of Honorable Labor Arbiter Fedriel Panganiban that private respondent Benjamin B. Girado is entitled to P247,508.94, representing payment for his separation pay and backwages, P15,000.00, representing payment for his 13th month pay, P3,654.81, representing payment for his five (5) days service incentive leave pay and P2,785.50, representing payment of his eccla.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos v. Province of Tarlac*, 38 Official Gazette, 830), or in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law (*Alafriz v. Nable, et al.*, 72 Phil. 278).

The monetary award with a total amount of P268,947.00 allegedly due to private respondent Norberto M. Villapando has no factual and legal basis. The Honorable public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction which this Honorable Court is duty bound to rectify.”

(Rollo, pp. 6-7)

Petition has no merit.

The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction; It does not include correction of the NLRC's evaluation of the evidence or of its factual findings (*Odango vs. NLRC*, 431 SCRA 633). In the case at bench, what petitioner would have us do is to review the factual findings of both the Labor Arbiter and the public respondent NLRC. As the aforecited jurisprudence hold, we are precluded from making such review. More so where the Labor Arbiter's findings and conclusion are affirmed by the NLRC (*Security and Credit Investigation, Inc. vs. NLRC*, 350 SCRA 357).

A special civil action for certiorari will prosper only if a grave abuse of discretion is manifested (*Arceta vs. Mangrobang*, 432 SCRA 136) and there is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence, or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias (*Freedom from Debt Coalition vs. Energy Regulatory Commission*, 432 SCRA 157). There is no such showing in this case. On the contrary it is manifest that the ruling of both the Labor Arbiter and respondent NLRC are founded on substantial evidence and clear law.

WHEREFORE, foregoing premises considered, the petition is hereby DENIED DUE COURSE and ordered DISMISSED. With costs to petitioner.

SO ORDERED.

Asuncion-Vicente and Villon, JJ., concur.

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