

**NIGHT TOWN KTV BAR, AND LOLITA QUILALA, PETITIONERS, V.
NATIONAL LABOR RELATIONS COMMISSION, GARRIE F. GONZALES,
AND ENRICO LITONJUA, RESPONDENTS.**

Ponente: GARCIA, R.R., J.

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GARCIA, R.R., J.:

Before Us is a petition for certiorari[1] under Rule 65 of the Rules of Court assailing the Decision[2] dated September 30, 2013 of public respondent National Labor Relations Commission, First Division, which affirmed with modification the Decision[3] dated September 27, 2012 of Labor Arbiter and ordered the award of wage differentials, 13th month pay, and holiday pay, in addition to the award of separation pay, in favor of private respondents Enrico Litonjua and Daniel Leander; and the Resolution[4] dated February 14, 2014 denying the motion for reconsideration thereof.

We resolve to dismiss outright the instant petition for the procedural infirmities, as follows:

1)

The statement of material dates was incomplete in that petitioner Lolita Quilala, doing business under the name and style of Night Town KTV Bar/Restaurant, failed to state the date she received the assailed Decision dated September 30, 2013 as well as the date she filed the motion for reconsideration thereof, as required by Section 3, Rule 46 of the Rules of Court;

2)

The assailed Decision dated September 30, 2013 was a mere photocopy and not a duplicate original or certified true copy, as required by Section 1, Rule 65 of the Rules of Court;

3)

The Verification and Certification of Non Forum-Shopping[5] as well as the Affidavit of Service[6] are improperly notarized as their respective notarial certificates do not include the notary public's serial number of the commission as well as office address, contrary to Sections 2(b) and 2(c), Rule VIII of the 2004 Rules on Notarial Practice; and

4)

The petition is not accompanied by copies of the pertinent pleadings and other material portions of the record that would support the allegations therein, such as:

a)

petitioner Quilala's and private respondents' respective motions for reconsideration to the assailed Decision dated September 27, 2012 of public respondent NLRC;

b)

The Memorandum on Appeal filed by private respondents before public respondent NLRC;

c)

The complaint filed by private respondents before the Labor Arbiter; and

d)

petitioner Quilala's and private respondents' respective replies to the position papers filed before the Labor Arbiter.

Section 1, Rule 46 of the Rules of Court provides that the failure of petitioner Quilala to comply with any of the requirements set therein shall be a sufficient ground for the dismissal of the petition.

In any event, this Court has looked into the grounds raised by petitioner Quilala and finds that the petition must still be dismissed for patent lack of merit pursuant to Section 8 Rule 65 of the Rules of Court.

As a backgrounder, records show that private respondents herein filed a complaint for illegal dismissal, underpayment of overtime pay, holiday pay, premium for holiday, 13th month pay, separation pay, retirement benefits, damages, and attorney's fees after petitioner Quilala terminated their employment on June 30, 2011. On the other hand, petitioner Quilala alleged that there was no illegal dismissal, and consequently private respondents were not entitled to the awards sought, because the termination of their employer-employee relations was due to a just cause, that is, the closure of Night Town KTV Bar/Restaurant where private respondents worked due to serious business losses.

In the assailed Decision^[7] dated September 30, 2013, public respondent NLRC ruled in favor of private respondents after finding that petitioner Quilala failed to discharge the burden of proving that the closure of Night Town KTV Bar/Restaurant was due to financial losses. Consequently, private respondents were awarded separation pay. Moreover, petitioner Quilala, as employer, similarly failed to submit evidence that she paid private respondents the correct wages, holiday pay, and 13th month pay.

In the instant petition for certiorari, petitioner Quilala contends that public respondent NLRC committed grave abuse of discretion in granting the claim of private respondents despite proof that they were not entitled thereto considering that the termination of the employer-employee relationship between the parties was because of the closure of the Night Town KTV Bar/Restaurant due to financial losses. In addition, private respondents were not the employees of petitioner Quilala as they only received allowances and commissions.

We do not agree.

It must be stressed that the crux of the petitioner Quilala's grievances is fundamentally factual which cannot be entertained in a petition for certiorari under Rule 65 of the Rules of Court. It has been said time and again that the jurisdiction of the appellate courts to review decisions of public respondent NLRC in a petition for certiorari is confined to issues of jurisdiction or grave abuse of discretion. Findings of facts of quasi-judicial agencies like public respondent NLRC which have acquired expertise in the specific matters entrusted to their jurisdiction are accorded not only respect but even finality if they are supported by substantial evidence. Substantial evidence, which is the quantum of evidence required to establish a fact in cases before administrative and quasi-judicial

bodies, is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[8]

To reiterate, in the absence of any grave abuse of discretion amounting to lack of or excess of jurisdiction committed by public respondent NLRC, the instant petition for certiorari will not lie. Grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[9]

Viewed against the foregoing standard, the assailed Decision[10] dated September 30, 2013 of public respondent National Labor Relations Commission does not appear to have been made with grave abuse of discretion amounting to lack of or excess of jurisdiction. Instead, a reading thereof would show that the reasons for the course of action it had taken were thoroughly and sufficiently discussed therein. There was no hint of whimsicality, no gross or patent abuse of discretion as would amount to an evasion of positive duty or a refusal to perform a duty enjoined by law or to act at all in contemplation of law. The pertinent portions of the Decision read:

We note that as correctly found by the Labor Arbiter, respondent failed to discharge the required burden of proof of financial losses that warrants its exemption from payment of separation pay in accordance with Article 283. Hence, complainants Litonjua and Leander should be granted the same in the amount equivalent to their one-half salary for every year of service with a fraction of six (6) months service considered as one (1) whole year.

x x x

On the other hand, for failure of the respondent to submit evidence that complainants were paid of their correct minimum wage, holiday pay and 13th month pay, complainants are therefore entitled thereto. As employer, it has the burden of proving that the rate of pay given to the complainants is in accordance with the minimum fixed by the law and that [it] paid thirteenth month pay, and holiday pay. This is because the pertinent personnel files, payrolls, records, remittances and other similar documents that would show that the claims have been paid are not in the possession of the worker but in the custody and absolute control of the employer.

WHEREFORE, complainants' appeal is hereby GRANTED and the Decision dated 27 September 2012 is MODIFIED by ordering respondent Lolita Quilala, doing business under the name and style of NIGHT TOWN KTV/BAR, to pay complainants Enrico Litonjua and Daniel Leander wage differentials, 13th month pay and holiday pay, subject to the prescriptive period of three (3) years, as well as separation pay equivalent to their one-half month pay for every years of service. The rest of the Labor Arbiter's Decision is AFFIRMED.

SO ORDERED.[11]

WHEREFORE, premises considered, the instant petition for review is hereby DISMISSED. Accordingly, this case is considered CLOSED and TERMINATED.

SO ORDERED.

De Guia-Salvador (Chairperson) and Sorongon,[*] JJ., concur.

[*] Vice Justice Danton Q. Bueser who is on official business per Raffle dated May 20, 2014.

[1] Rollo, pp 3-10.

[2] Rollo, pp 12-16.

[3] Rollo, pp 26-29.

[4] Rollo, pp 20-23.

[5] Rollo, p 11.

[6] Rollo, p 65.

[7] Rollo, pp 12-16.

[8] Cabuyoc vs. Inter-Orient Navigation Shipment Management, Inc., et al., G.R. No. 166649, November 24, 2006; Queensland-Tokyo Commodities, Inc., et al., vs. George, G.R. No. 172727, September 8, 2010.

[9] Jinalinan Technical School, Inc. vs. NLRC, et al., G.R. No. 163167, August 9, 2006; Leviste vs. Alameda, et al., G.R. No. 182677, August 3, 2010.

[10] Rollo, pp 12-16.

[11] Id., pp 14-15.

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