

MYLENE A. ESTRADA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND UNIVERSAL APA CORPORATION / CHARLIE CHAN, 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 1997 Rules of Civil Procedure assailing the Decision[2] dated June 14, 2013 of public respondent National Labor Relations Commission (NLRC), Fifth Division, affirming the Decision[3] dated January 25, 2013 of the Labor Arbiter which dismissed the complaint for constructive dismissal filed by petitioner Mylene A. Estrada against private respondents Universal Apa Corporation and Charlie Chan but ordered private respondent Universal Apa Corporation to pay petitioner her unpaid service incentive leave pay amounting to P6,690.00; and the Resolution[4] dated August 30, 2013 the denying the motion for reconsideration thereof.

THE FACTS

On August 16, 2012, petitioner Mylene A. Estrada, together with her co-worker, Agnes Ualat, filed with the Arbitration Branch of public respondent National Labor Relations Commission (NLRC) a complaint[5] for illegal dismissal, underpayment of salary and non-payment of ECOLA against private respondents Universal APA Corporation and its manager Charlie Chan.[6] The company is engaged in the manufacture of ice cream cones. On October 2, 2012, petitioner filed the instant amended complaint[7] for constructive dismissal, underpayment of salary, non-payment of service incentive leave pay as well as moral and exemplary damages.

In her position paper[8], petitioner alleged that she was employed by private respondents sometime in April 1992 as a factory worker in Panay Avenue, Quezon City. Her duty starts at 8:00 in the morning and ends at 5:00 in the afternoon. Her latest daily wage was P426.00. During her tenure with private respondent company, petitioner worked from Monday to Saturday. However, in the latter part of her employment, her work days, together with that of the other regular employees, were reduced. The reduction of work days started when private respondent company entered into a contract with Aly Manpower Agency which provided private respondents with factory workers. This resulted in the bumping off of petitioner and her co-workers from their regular schedule of duty. Initially, their work days were reduced to four (4) days a week. After a few months, their workweek was further reduced to three (3) days. Thereafter, they were told that they would only work if they were given a call by private respondent company because the demand for the company's product has dwindled. However, the workers supplied by Aly Manpower Agency continued to work regularly from Monday to Saturday.

By reason of the reduction in her workweek, she suffered constant hardships because she has no other means to support her family. She pleaded to private respondents that she be given a regular duty since she has been a regular employee of the company for twenty (20) years but her pleas fell on deaf ears. The unbearable situation of having to work irregularly, the concomitant diminution of the salary that she receives and the continuous engagement by private respondent company of factory workers from the manpower agency is tantamount to

constructive dismissal.

It was alleged further that petitioner's salary has been underpaid from May 2012 since she is receiving only P426.00 daily instead of the P446.00 daily wage mandated by law. She was not also paid her service incentive leave pay. Petitioner likewise prayed for the payment of moral and exemplary damages on account of the harsh and oppressive manner by which her employment was terminated.

In their traverse, private respondents averred that petitioner was hired in 1998, not in 1992. Petitioner was not dismissed, either verbally or in writing. In fact during the hearing scheduled on September 11, 2012, petitioner was represented by her husband who said that petitioner was unable to attend because she went to work at private respondent company. Private respondents explained that the implementation of work stoppages is an exercise of management right in order to prevent losses. The demand for the product of private respondent company is adversely affected by the weather conditions. During the rainy season, the demand for ice cream cones is very low. To avoid losses, manufacturing operations had to be suspended. The reduction of petitioner's work days has nothing to do with the contract between private respondent company and Aly Manpower Agency. The contract with the manpower agency was entered into five (5) years ago for private respondent company's factory in Bulacan and not for its factory in Quezon City.[9] It was averred further that there are times when petitioner, together with her co-employees, was asked to report to private respondent company's factory in Bulacan. In those instances, petitioner and her co-employees are given transportation allowance of P200.00, which is more than the actual fare going to and from Bulacan. Petitioner was also paid her salaries in accordance with law and that her service incentive leave benefits are accordingly paid.

In a Decision[10] dated January 25, 2013, the Labor Arbiter dismissed petitioner's complaint for constructive dismissal but ordered private respondent company to pay petitioner the sum of P6,690.00 for her unpaid service incentive leave pay. There is no actual illegal dismissal to speak of considering that during the September 11, 2012 conference, petitioner was still working with private respondents. Neither was constructive dismissal established. The pieces of evidence submitted by both parties did not establish that the contract between private respondent company and Aly Manpower Agency caused the reduction of petitioner's work schedule. There is also no showing that the workers from the said agency were assigned to private respondent company's factory in Quezon City where petitioner was assigned. Petitioner failed to dispute that the reduction in her work days was due to a decrease in demand for the company's product arising from changes in weather. Anent the issue of non-payment of service incentive leave pay, private respondents failed to present evidence to show that petitioner was duly paid the same, hence, private respondent company was ordered to pay petitioner the amount of P6,690.00. The pertinent portions of the Labor Arbiter's decision are quoted:

Anent the issue of illegal dismissal, this Arbitration Branch is constrained to dismiss the same for lack of factual basis to support it.

It bears to point out that complainant Estrada's original complaint as well as the first amendment thereto stated that s he was actually dismissed sometime in July 2012 xxx. However, during the September 11, 2012 conference, complainant Estrada failed to attend because she was then at work xxx. Clearly, there was no dismissal to speak of at the time alleged by the complainant Estrada. Neither was constructive dismissal established. Complainant Estrada averred that she was constructively dismissed when the respondents[,] discriminately reduced her work schedule after availing the services from Aly Manpower. This Arbitration Branch painstakingly scrutinized the pleadings and evidence submitted by the parties and the same did not establish that the hiring from Aly Manpower caused the reduction of complainant's work schedule.

Herein complainant was hired as a factory worker for the Quezon City factory of the respondents. It was not shown that the worker from Aly Manpower was assigned to the Quezon City factory to displace herein

complainant Estrada or to circumvent her security of tenure. Complainant Estrada likewise did not dispute respondents' allegations that the reduction of work schedule in the Quezon City factory was due to the changes in weather conditions and decrease in demand for the products of the respondents. Further, the respondents were able to establish that efforts were done to continue providing schedules to the complainant and to the other Quezon City workers by assigning them in Bulacan, with corresponding transportation allowance xxx. All these, taken into consideration belies complainant Estrada's claim of discrimination and constructive dismissal.

There being no dismissal to speak of, claims for the payment of separation pay and damages must necessarily fail.

Anent the issue of underpayment of wages, complainant herself averred that she was receiving the amount of P426.00 daily. Records disclosed that complainant Estrada's salary rate is computed at P446.00 xxx. Thus, there was no underpayment of wages as complainant was properly paid the mandatory minimum wage.

Finally, as to the issue of non-payment of service incentive leave, respondents failed to establish that complainant Estrada enjoys paid vacation leave. xxx

In this case, it was undisputed that complainant worked for more than a year, thus, entitling her to the payment of service incentive leave. Respondents presented evidence of due payment of ECOLA but no evidence was presented to show that complainant was duly paid her service incentive leave. Thus, complainant is hereby awarded service incentive leave limited to the three (3) year prescriptive period computed as follows: $P446.00 \times 5 \times 3 = P6,690.00$.

All other claims are dismissed for lack of merit.

WHEREFORE, premises considered, the compromise entered into by complainant Agnes Ualat and the respondents are hereby APPROVED and said complaint is dismissed with prejudice[d] and considered close[d] and terminated.

The complaint filed by complainant Mylene Estrada for constructive dismissal is hereby DISMISSED for lack of merit.

Respondent Universal Apa Corporation is hereby ordered to pay complainant Mylene Estrada the sum of P6,690.00 for her unpaid service incentive leave.

All other claims are dismissed for lack of merit.

SO ORDERED.[11]

Aggrieved, petitioner filed a partial appeal[12] with public respondent NLRC. As additional evidence, petitioner submitted a copy of the list of the number of days when she was made to work in the months of June to September, 2012. The list[13] shows that in July 2012, petitioner was asked to report for work only for sixteen (16) days; in August, only for three (3) days; and in September, only for five (5) days. In their Comment/Manifestation[14] and Opposition[15] to petitioner's partial appeal, private respondents neither confirmed nor denied the veracity of the additional evidence submitted by petitioner.

In the assailed Decision[16] dated June 14, 2013, public respondent NLRC denied petitioner's partial appeal. Petitioner moved for a reconsideration[17] thereof but the same was denied in a Resolution[18] dated August 30, 2013.

Hence, the instant petition for certiorari filed by herein petitioner raising the lone ground for its allowance[19], to wit:

PUBLIC RESPONDENT NLRC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FAILING TO DECLARE THAT PETITIONER WAS ILLEGALLY DISMISSED.

THE ISSUE

The only issue to be resolved in the instant case is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in affirming the dismissal of petitioner's complaint for constructive dismissal.

THE RULING

The petition is impressed with merit.

Petitioner essentially argues that public respondent NLRC gravely abused its discretion when it affirmed the dismissal of her complaint for constructive dismissal. The reduction in petitioner's number of workdays is tantamount to constructive dismissal. Private respondents failed to justify that there is a dire exigency to implement the reduced work schedule. They were not able to substantiate their assertion that the reason therefor was the adverse effect of weather conditions on the demand for private respondent company's product. Evidently, the reason behind the reduction in the work days of petitioner and her fellow regular employees was the employment of workers supplied by Aly Manpower Agency. The same was conceptualized for the purpose of gradually easing out regular employees out of the company. While the agency workers are assigned in Bulacan and not in Quezon City, they perform the same work as that performed by petitioner and other regular employees. The factories in Bulacan and Quezon City are both engaged in the manufacture of ice cream cones. Furthermore, the fact that petitioner initially filed a complaint for actual illegal dismissal should not be taken against her since petitioner filed the same without the assistance of a lawyer or a person learned in law. Besides, petitioner timely amended her complaint to one for constructive illegal dismissal prior to the filing of a position paper, in accordance with Section 11 (b), Rule V of the 2011 Rules of Procedure of public respondent NLRC.

We agree.

Preliminarily, it is noteworthy that petitioner is a regular employee of private respondent company. The records show that she has been working in the company as factory worker since the 1990s and has remained as such until 2012. Being a regular employee, petitioner cannot be dismissed except for a just or authorized cause as found in the Labor Code.[20] A scrutiny of the records reveal, however, that none of these causes is present. Instead, there is substantial evidence that petitioner was constructively dismissed.

Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits.[21] Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may likewise exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[22] In *Galang vs. Malasugui*[23], the Supreme Court pronounced that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.

Petitioner's constructive dismissal is evident from the fact that the number of her work days was considerably decreased. It is well to note that private respondent company did not deny that they have implemented a reduction in the number of work days of petitioner and her fellow regular employees in its Quezon City factory. Petitioner's

consistent claim that her workweek was reduced first, to four (4) days, then to three (3) days and finally to only such number of days as private respondent company would require her, was not at all disputed by private respondents. Indubitably, the reduced workweek has rendered petitioner's employment unbearable and unreasonable since her take-home pay was radically diminished. In effect, petitioner was deprived of her gainful employment when private respondents decided to implement a reduced workweek schedule in its Quezon City factory. On account of these circumstances, there is no doubt that petitioner was constructively dismissed. Verily, a diminution of pay is prejudicial to the employee and amounts to constructive dismissal.[24]

Further, what made petitioner's situation even worse was that the workers provided by Aly Manpower Agency were allowed to work and earn on a regular basis. This is a clear act of insensitivity on the part of private respondents to the plight of petitioner who is their long-time employee. Private respondents' assertion, that the engagement of the services of workers from Aly Manpower Agency has no effect on petitioner's work schedule because the agency's workers are assigned in Bulacan while petitioner works in Quezon City, deserves scant consideration. It is noteworthy that private respondent company's factories in Bulacan and Quezon City are both engaged in the production of ice cream cones which is the only item produced by the company. Private respondents likewise do not deny that petitioner and the workers supplied by Aly Manpower Agency perform the same functions. In fact, there were several occasions when petitioner was asked to report to the factory in Bulacan. These circumstances only show that the engagement of the services of the workers from the manpower agency has adversely affected petitioner who is a regular employee in the Quezon City factory.

Additionally, private respondents, as employers, failed to discharge their burden of proof to show that the reduction of petitioner's work days is justified by valid and legitimate grounds such as genuine business necessity. The explanation proffered by private respondents in the implementation of the reduced workweek scheme was the decline in the demand for private respondent's product. Allegedly, the work days of private respondent company's employees have to be reduced to prevent the company from suffering losses. These claims however were not adequately substantiated. In *Linton Commercial Co., et al. vs. Hellera, et al.*[25], the Supreme Court pronounced that financial losses must be shown before a company can validly opt to reduce the work hours of its employees. Here, while private respondents claim a decline in the demand for their product, there was no allegation and the records are totally barren of proof that private respondent company has suffered financial losses due to the alleged decline in demand. Noticeably, private respondents did not even bother to submit before the labor tribunals the financial statements of private respondent company so as to substantiate the claim of actual or imminent financial hemorrhage. Certainly, a mere claim of slump in the demand for a company's product cannot be equated to financial loss. Even then, private respondents' bare allegation that there has been a decline in the demand for ice cream cones is rendered doubtful in view of the continuous operation of its cone factory in Bulacan. In view of these shortcomings, We find no sufficient and justifiable reason for the implementation of the drastic measure of reducing the work hours of petitioner.

The invocation of management prerogative cannot save the day for private respondents. Certainly, management has the prerogative to come up with measures to ensure profitability or loss minimization. Whenever exigencies of the service so require, it may change the working hours of its employees. However, the exercise of management prerogative is not absolute.[26] By its very nature, management prerogative must be exercised in good faith and with due regard to the rights of labor. The exercise of management prerogative cannot be utilized as an implement to circumvent our laws and oppress employees.[27] Here, the manner by which private respondents exercised their management prerogative cannot be countenanced because the same not only infringed upon petitioner's right to a gainful employment but also circumvented our labor laws that uphold security of tenure.

Having been constructively dismissed, petitioner is entitled to the twin reliefs of full backwages and reinstatement, pursuant to Article 279 of the Labor Code. The computation of the award of full backwages should commence from October 2012 when she filed her amended complaint for constructive dismissal. The records show that it was also by then that petitioner's unbearable situation has forced her to stop reporting to work at private respondents' factory.[28] While petitioner is entitled to reinstatement, this Court deems it best to instead award her separation pay equivalent to one (1) month pay for every year of service since reinstatement is no longer to the best interest of the parties due to the strained relations brought about by the litigation of this case. In *Golden Ace Builders, et al. vs. Talde*[29], the Supreme Court had the occasion to rule that under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. Such payment liberates the employee from what could be a highly oppressive work environment.

The fact that petitioner initially filed a complaint for illegal dismissal before she amended her complaint to one of constructive illegal dismissal, should not militate against her claims. As correctly pointed out by petitioner, she timely amended her initial complaint before the filing of the parties' position papers. This is pursuant to Section 11 (b)[30], Rule V of the 2011 Rules of Procedure of public respondent NLRC which allows the amendment of a complaint or petition even without leave of the Labor Arbiter if the same is undertaken before the filing of the parties' position papers. Besides, it is well to note that a complaint in a case filed before the Arbitration Branch of public respondent NLRC consists only of a blank form which provides a checklist of possible causes of action that the employee may have against the employer. The check list is designed to facilitate the filing of complaints by employees and laborers even without the intervention of counsel.[31] As such, petitioner, a layman who was not assisted by a lawyer when she filed her initial complaint, should not be blamed for choosing actual illegal dismissal as her cause of action. Further, it has been held that the complaint is not the only document that determines a complainant's cause of action.[32] The cause of action of a complainant is finally ascertained only after both the complaint and position paper are properly evaluated.[33] In the case at bench, the amended complaint and the position paper filed by petitioner consistently show that her cause of action is one for constructive dismissal.

Finally, private respondent company should be held solely liable to petitioner. Private respondent Charlie Chan, its manager, should be dropped from the case since there is no evidence to show that he acted in bad faith or with malice in terminating petitioner from her employment. Settled is the rule that corporate officers are not personally liable for their official acts because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members.[34] In cases of illegal dismissal, this fictional veil may be pierced and its directors and officers may be held solidarily liable with it, where the dismissal of the employee is done with malice or in bad faith.[35] Such is not present in the case at bar.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The Decision dated June 14, 2013 and the Resolution dated August 30, 2013 of public respondent National Labor Relations Commission, Fifth Division, are REVERSED and SET ASIDE. Accordingly, petitioner Mylene A. Estrada is declared to have been constructively dismissed and private respondent Universal Apa Corporation is ordered to pay petitioner her full backwages and separation pay equivalent to one (1) month salary for every year of service in addition to the award of service incentive leave pay in the amount of P6,690.00.

This case is REMANDED to the Computation and Examination Unit of the NLRC for the purpose of computing the proper and total monetary award due petitioner.

SO ORDERED.

De Guia-Salvador (Chairperson) and Bueser, JJ., concur.

[1] Rollo, pp. 3-20.

[2] Rollo, pp. 101-105.

[3] Rollo, pp. 66-73.

[4] Rollo, pp. 112-116.

[5] Rollo, pp. 23-25.

[6] Rollo, p. 52.

[7] Rollo, pp. 47-48.

[8] Rollo, pp. 31-43.

[9] Private respondents' Reply to petitioner's position paper, Rollo, p. 62.

[10] Supra, at Note 3.

[11] Rollo, pp. 71-73.

[12] Rollo, pp. 74-85.

[13] Rollo, pp. 86-91.

[14] Rollo, pp. 92-95.

[15] Rollo, pp. 96-99.

[16] Supra, at Note 2.

[17] Rollo, pp. 106-110.

[18] Supra, at Note 4.

[19] Rollo, p. 9.

[20] Vide: Mitsubishi Motors Philippines Corporation vs. Chrysler Philippines Labor Union, et al., G.R. No. 148738, June 29, 2004.

[21] Morales vs. Harbour Centre Port Terminal, Inc., G.R. No. 174208, January 25, 2012.

[22] Ibid.

[23] G.R. No. 174173, March 7, 2012, citing Philippine Veterans Bank vs. National Labor Relations Commission (Fourth Division), G.R. No. 188882, March 30, 2010, 617 SCRA 204, 212.

[24] Siemens Philippines, Inc. vs. Domingo, G.R. No. 150488, July 28, 2008.

[25] G.R. No. 163147, October 10, 2007.

[26] Linton Commercial Co., et al. vs. Hellera, et al., G.R. No. 163147, October 10, 2007.

[27] Unicorn Safety Glass, Inc. et al. vs. Basarte, G.R. No. 154689, November 25, 2004, 444 SCRA 287, 296.

[28] Supra, at Note 13.

[29] G.R. No. 187200, May 5, 2010.

[30] Section 11 (b), Rule V of the 2011 Rules of Procedure of public respondent NLRC reads:

SECTION 11. SUBMISSION OF POSITION PAPER AND REPLY.

xxx

b) No amendment of the complaint or petition shall be allowed after the filing of position papers, unless with leave of the Labor Arbiter.

[31] Tegimenta Chemical, Phils., et al. vs. Buensalida, G.R. No. 176466, June 17, 2008.

[32] Ibid.

[33] Ibid.

[34] Londonio, et al. vs. Bio Research, Inc., et al., G.R. No. 191459, January 17, 2011.

[35] Ibid.

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