

DIAMOND INN AND/OR HELEN DAGDAGAN AND/OR IRISH GLORIA D. DAGDAGAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), THIRD DIVISION (COMMISSIONERS LOURDES C. JAVIER, ...

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a Petition for Certiorari with Application for Temporary Restraining Order and/or a Writ of Preliminary Injunction seeking the nullification of the February 5, 2005 Decision[1] of the National Labor Relations Commission

(NLRC) which reversed the Executive Labor Arbiter's ruling and declared private respondents' dismissal illegal.

Private respondents FLORECITA TAYAB, JOAQUIN GAMES, TERESITA ECLARINO, MARIVIC ILDEFONSO, ARLENE DEBAN, RHOMEL CORPUZ and CANDIDO ANDRES were hired by petitioners HELEN DAGDAGAN and/or IRISH GLORIA DAGDAGAN on different dates to work in various positions at the DIAMOND INN until their separation from work sometime in July 2001. TAYAB first came to work for petitioners in 1979 and last held the position of Supervisor/Desk Clerk. GAMES came to work as a Room Boy at the DIAMOND INN in 1992 while ECLARINO was hired as Chambermaid in 1995. ILDEFONSO and DEBAN were hired in 1998 and 2000, respectively, to work as Desk Clerks. Both CORPUZ and ANDRES, on the other hand, came to work as Room Boys in 2001. Aside from their hotel work at the DIAMOND INN, however, private respondents also attended to the personal comforts of petitioners like washing their clothes, cleaning their house, washing their cars and other tasks not related to their hotel assignments. On August 1, 2001, private respondents each received a similarly worded Letter/Notice of Abandonment[2] from petitioner IRISH GLORIA DAGDAGAN declaring them absent without leave (AWOL) and requiring them to report to work. Although private respondents immediately reported for duty petitioners refused to admit them back at the DIAMOND INN prompting private respondents to file a complaint for illegal dismissal against petitioners. About two weeks after filing the complaint before the NLRC, however, charges of Qualified Theft were filed by petitioners before the Prosecutor's Office alleging that private respondents have been systematically filching the hotel's income to the prejudice of the hotel owners. For this purpose, petitioner HELEN DAGDAGAN'S son Troy Dagdagan executed a Sworn Statement[3] in which he related the confessions allegedly told to him earlier by private respondent ECLARINO about the "kupit" system employed by her group. Petitioners' also submitted the Affidavit[4] of its former employee Lourdes Ann Sta. Ana in which the latter detailed the alleged deception private respondents played upon petitioners. After consideration of the evidence, however, the City Prosecutor eventually dismissed the criminal complaint for want of prima facie case[5].

Petitioners for their part assert that the relationship that exists between them and private respondents is one of partnership and not employment. As proof thereof, petitioners made reference to the Memorandum of Agreement[6] entered into on December 19, 1992 and April 1, 1996, upon which the parties agreed on a 40%-60% sharing of profit with private respondents as industrial partners and petitioner HELEN DAGDAGAN as

capitalist partner. Petitioners averred that pursuant to the agreement they had effectively transferred the operation and management of DIAMOND INN to private respondents in consideration of a fixed 60% share in the income of the business. In contrast, private respondents argued that the Memorandum of Agreement was a mere scheme employed by petitioners to escape their obligations under labor laws for, in truth, despite the said agreement, petitioners carried on with the management of DIAMOND INN and continued to pay meager salaries to private respondents. Moreover, private respondents accused petitioners of cheating them out of the profit-sharing agreement by occupying some rooms at the hotel free of charge for their own personal use and converting eight hotel rooms into a billiard hall for petitioner HELEN DAGDAGAN's own personal income benefit.

In a Decision[7] dated April 22, 2002, the Labor Arbiter upheld the validity of the Memorandum of Agreement and dismissed the complaint due to the absence of an employer-employee relationship between the parties. Ruling further on the merits of the case, the Labor Arbiter held that even if private respondents were considered regular employees of petitioners, their dismissal on the ground of loss of trust and confidence was sufficiently supported by the Sworn Affidavits of Troy Dagdagan and Lourdes Ann Sta. Ana.

On appeal, the NLRC rendered the assailed Decision dated February 5, 2004 reversing the Labor Arbiter's ruling. The dispositive portion thereof reads as follows:

"WHEREFORE, the appeal is hereby GRANTED and the Decision of the Labor Arbiter dated April 22, 2002 is REVERSED and SET ASIDE. In lieu thereof, a new Order is hereby issued declaring appellants to have been dismissed from work illegally by appellees. Consequently, appellees are hereby directed to pay appellants, jointly and severally, separation pay equivalent to one month's salary for every year of service, full backwages and other benefits provided by law, without deduction or qualification, computed from the date of dismissal until the finality of this Decision, and unpaid salaries/salary differential for three years prior to the filing of the complaint detailed as follows:

Salary Diff'l Separ'n Pay Backwages 13th Mo. Pay SILP Total

F. Tayab - 127,020.00 156,384.25 11,922.41 1,959.85 297,286.51

J. Gamez 30,590.18 58,217.50 156,384.25 11,922.41 1,959.85 259,074.19

T. Eclarino 83,720.18 42,340.00 157,115.77 11,978.09 1,969.00 297,123.04

M. Ildefonso 30,168.06 26,464.50 158,410.00 12,076.62 1,985.20 229,102.38

A. Deban 30,590.18 15,877.50 156,384.25 11,922.41 1,959.85 216,734.19

R. Corpuz 101,430.18 15,877.50 156,384.25 11,922.41 1,959.85 287,574.19

C. Andres 101,430.18 10,585.00 156,384.25 11,922.41 1,959.85 282,281.69

or a total of P1,869,176.19 as of the issuance of this Decision and such other amounts appertaining to appellants by virtue hereof from this date up to its finality.

There was obvious bad faith by respondents in using the Memorandum of Agreement which simulated the fact that complainants were partners when in actuality they were employees so as to avoid or escape from its lawful obligations to the appellants for which reason We award P50,000 moral damages and P20,000.00 exemplary damages.

Appellants other monetary claims are DENIED for lack of basis and merit.

SO DECIDED."[8]

Hence, the filing of the instant petition alleging grave abuse of discretion amounting to lack or excess of

jurisdiction on the part of respondent NLRC –

- For entertaining instead of dismissing the appeal of private respondents despite the absence of proper verification and certification against non-forum shopping by all the private respondents or by their duly authorized attorney-in-fact;

- In holding that there was an employer-employee relationship between petitioner Helen Dagdagan and private respondents despite the valid memoranda of agreement establishing a capitalist partner-industrial partners relationship between the parties, the judicial admission of leading respondent Florecita Tayab that they were industrial partners, and the repeated judicial admissions of all private respondents that they received “percentage shares” in the net income of Diamond Inn;

- In disregarding the final decision of April 17, 1998 of Executive Labor Arbiter Jesselito B. Lantoja in NLRC Case No. RAB-CAR-08-022-96 filed by Elvira Pacase against Diamond Inn and Helen Dagdagan, which decision dismissed Elvira Pacase’s complaint, categorically and solidly holding that there was no employer-employee relationship, which binds private respondents herein, on the principles of conclusiveness of judgment and estoppel;

- In ignoring and disregarding the obvious fact additionally found by Executive Labor Arbiter Rolando B. Gambito in the case below, RAB-CAR-08-0364-01, that private respondents were justifiably separated for abandonment and loss of trust and confidence due to “kupit” activities at the inn.

- In reversing the final decision of April 17, 1998 of Executive Labor Arbiter Jesselito B. Lantoja in the earlier RAB-CAR-08-022-96, and then the decision of April 22, 2002 of Executive Labor Arbiter Rolando B. Gambito in the instant case – RAB-CAR-08-0364-01 below, despite the absence of prima facie evidence of abuse of discretion and/or fraud or coercion and/or serious errors in the said Executive Labor Arbiters’ findings in the two cases;

- In granting the private respondents’ money claims despite the absence of any basis in substantial evidence, and, indeed, despite their willful suppression of evidence thereon.

On January 31, 2006, this Court issued a Temporary Restraining Order enjoining public respondent NLRC from immediately implementing the assailed decision. Private respondents moved for the inhibition of all three (3) Members of this Court’s Tenth Division, alleging that the issuance of the Temporary Restraining Order reveals a manifest intention by this Court’s Tenth Division to grant the petition and reverse the decision of public respondent NLRC. Private respondents put this Court’s credibility under a cloud of doubt upon the insinuation that the Members of this Court’s Tenth Division rely simply upon the work of subordinates and do not act upon the cases brought before them with judicious circumspection.

The issuance of the Temporary Restraining Order does not by itself prove bias and prejudice to warrant the disqualification of the Members of the Tenth Division from hearing the instant case. Bias and prejudice as a ground for disqualification “must be shown to have stemmed from an extrajudicial source, and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, as long as they are based on the evidence presented and conduct

observed by the judge, even if found later on to be erroneous, do not prove personal bias or prejudice on the part of the judge. Extrinsic evidence is required to prove bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself".[9] The Motion for Inhibition filed on February 9, 2006 is DENIED for being without factual and legal basis and grounded merely on private respondents' perceived bias and imagined fears of partiality.

Coming now to the issues raised in the petition, We find, at the outset, that the procedural objections to the entertainment of the appeal had been sufficiently addressed by the NLRC through its Resolution dated June 30, 2005 in which it ruled in this wise:

"In labor cases, a punctilious adherence to stringent technical rules may be relaxed in the interest of the working man and to serve the demands of substantial justice. Thus, in the interest of justice, procedural lapses may be disregarded to allow an examination of the conflicting rights and responsibilities of the parties in a case. (Havtor Management Phils., Inc. (now known as Bergensen D. Y. Phils., Inc.), and/or A/S Havtor Management vs. NLRC and Emerlito A. Ranoa, G.R. No. 146336, December 13, 2001 citing the cases of Dayag vs. Canizares, Jr. (287 SCRA 181) and Salinas, Jr. vs. NLRC, 319 SCRA 54). And this is more in rhyme with the rule that all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor."

The NLRC Rule upon which the dismissal of private respondents appeal sought is based on Section 4 (a), of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, Series of 2002 which states,

"SECTION 4. REQUISITES FOR PERFECTION OF APPEAL. a) The appeal shall be filed within the reglementary period in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites afore-stated shall not stop the running of the period for perfecting the appeal."

While the NLRC may formulate its own rules, it is worthy to note that the requirements set forth in Sections 4 and 5, Rule 7 of the Rules of Court, upon which the above-mentioned NLRC Rule is based/ fashioned, are imposed only in initiatory pleadings, thus:

"SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

x x x."

"SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, x x x.

x x x."

This is affirmed in the case of *Argana v. Republic*[11] . And in the case of *BA Savings Bank v. Sia*[12] the High Tribunal emphasized:

"(W)e stress that technical rules of procedure should be used to promote, not frustrate, justice. While the swift unclogging of court dockets is a laudable objective, the granting of substantial justice is an even more urgent ideal."[13]

To Our mind, this yardstick, laid down by no less than the Honorable Supreme Court, is the guiding principle why NLRC admitted private respondents' appeal. This must be so for the parties here have already been recognized, qualified and accepted before the Arbiter which is but the first level in the hierarchy of the quasi-judicial body of the NLRC. To require them to submit a verification and a certificate at this point would be unnecessary, and even superfluous. Besides, Section 10, paragraph 1, Rule VII of the NLRC's very own rules mandate that,

“SEC. 10. Technical Rules not Binding. – The rules or procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively without regard to technicalities of law or procedure, all in the interest of due process.”

This directive addressed to the NLRC and the labor arbiters “to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure all in the interest of substantial justice,” is nothing short of clear.

Now to the merits of the case.

The statements and admissions made by the parties both for and against their own interests rendered it necessary for this Court to look into how the parties actually dealt with each other in order to determine the real nature of their relationship, that is, whether it is one of partnership or an employment relationship.

Petitioners deny that private respondents are their employees and allege that what governs them is the Memorandum of Agreement initially executed between the parties on December 19, 1992, and subsequently reformed on April 1, 1996, defining their relationship as an industrial partnership. The substantive portion of the agreement is quoted hereunder:

1. For and in consideration of the SECOND PARTY taking over the operation and management of the DIAMOND INN and use of all the hotel facilities therein, the SECOND PARTY shall pay the FIRST PARTY Sixty Percent (60%) of net income every 15th and the end of each month;
2. The SECOND PARTY shall operate the business of DIAMOND INN on their own and in accordance with their own system without any unsolicited interference from the FIRST PARTY under whose business license the SECOND PARTY will operate the DIAMOND INN;
3. The SECOND PARTY shall never be considered as employees of the FIRST PARTY as in fact they have contracted entirely the management and operation of the DIAMOND INN in which the FIRST PARTY would have nothing to do therewith;
4. The operation and management of the DIAMOND INN shall be done entirely in accordance with applicable local and national laws and no illegal activity shall be conducted in the premises;
5. The SECOND PARTY shall renew the business permit under the name of the FIRST PARTY and shall spend on their own for such renewal. They shall also undertake to maintain their books of accounts with the present Accountant of the FIRST PARTY who is already knowledgeable of the accounting system relative to the DIAMOND INN business;
6. The SECOND PARTY shall make prompt payments for all powers, water, telephone and other utility services to the proper offices and also promptly pay the current rental of the premises to the building owner J.M. Dominguez Agronomic Company, Inc., and comply strictly with all the conditions and stipulations in that contract of lease which the FIRST PARTY has with the building owner-lessor;
7. Any default in the payment of the consideration as stated above or violation by the SECOND PARTY of any other terms and conditions of said agreement shall cause the automatic termination of the agreement, without

prejudice to the SECOND PARTY appealing to the FIRST PARTY for extension of compliance, and in the event of termination, the FIRST PARTY is authorized to take over complete possession of the entire premises and the management and operation of the hotel business at DIAMOND INN without need of any judicial action with the right to retain any and all of the properties of the SECOND PARTY within the premises which shall not be released to them until they have fully settle (sic) their financial obligations under said agreement;

8. The SECOND PARTY undertake liability for any damage to the premises including wear and tear and shall repair them at their own expense; provided, that, in case of major repair, the SECOND PARTY shall secure the prior written consent of the FIRST PARTY and the building owner;

9. The aforementioned agreement shall be effective for as long as the parties hereto comply with their stipulations and agreements and unless either party terminate this agreement by a 30 day written notice to the other.

(Emphasis supplied)

This is apart from the admission by the private respondents that they received “percentage shares” from the income of the operation of the Inn when they filed their Counter-affidavit before the Office of City Prosecutor of Baguio when they were charged by petitioner of qualified theft.

The principal allegation of the existence of an industrial partnership necessarily raises a question as to whether the resolution of the instant case lies not in the application of labor laws but in the provisions of civil law on partnership. This entails a determination of the existence of the alleged partnership. Under the Civil Code a contract of partnership is one where two or more persons bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves[10]. Thus, in order to constitute a partnership, it must be established that (1) two or more persons bound themselves to contribute money, property, or industry to a common fund, and (2) they intend to divide the profits among themselves. To prove the existence of a partnership, however, all the characteristics of the contract must be present. Thus, other than a common fund obtained from contributions and a joint interest in profits, there must be the bona fide intention to formulate an active union among people sharing mutual confidence and trust and there must also arise a new personality, distinct from the personality of each member.[11]

There is no civil law partnership to speak of in the instant case. Despite the existence of a written agreement purportedly defining the relation of the parties as capitalist and industrial partners, no intention to form a bona fide partnership can be gleaned from the parties’ actuation and the circumstances prior to and during the existence of the alleged partnership. The partners did not intend to establish a partnership with a separate juridical personality under which the hotel business could be pursued. While the partnership need not be registered, there is no showing that the hotel business was operated and run by the partnership. What appears clearly is that the Business Permit¹² for the operation of the DIAMOND INN remained registered under the name of petitioner IRISH DAGDAGAN. There is also no partnership where there is no common fund belonging to the parties as joint owners or partners.[13] While private respondents obligated themselves to take over the operation and management of the DIAMOND INN and petitioner HELEN DAGDAGAN permitted the use of the hotel facilities there is no intention to contribute resources to a common fund for the purpose of running the hotel business. This much is clear from the provisions of the agreement in which petitioner HELEN DAGDAGAN even reserved the right to retain properties belonging to private respondents to answer for any obligation arising from the operation of the business. The existence of a partnership is also belied by the fact that private respondents had no voice or vote in the management of the affairs of the hotel.[14] While the parties seemingly agreed that the operation of the hotel would be taken over by private respondents and in accordance with the system they would adopt, the actual operation of the hotel remained under the full control of petitioners without equal participation from private

respondents. Moreover, the fact that private respondents received a percentage of the net profits of the business does not conclusively establish that they were partners with petitioners. The mere sharing of returns does not in itself constitute a partnership whether or not the persons sharing therein have a joint or common right or interest in the property.[15] Thus, the fact that private respondents' compensation was with reference to the profits in the business did not in any sense make them partners with petitioner HELEN DAGDAGAN in the absence of a bona fide intention of the parties to establish a partnership. It bears noting that the parties to the so-called industrial partnership do not follow the rules on the dissolution of partnership[16]. Instead of providing for the dissolution and discharge of liabilities of the partnership, the agreement speaks only of a termination that allows a unilateral take over by petitioner over the hotel premises, the business operations, as well as, the properties belonging to private respondents. Also, while the two separate but similarly worded Memoranda of Agreement did not exactly have the same signatories, some parties to the first agreement having apparently ceased to be partners when the second partnership contract was ostensibly entered into, there is no record that the partnership was dissolved before a new one was created. Finally, while the receipt of a share of the profits is prima facie evidence that a person is a partner in the business, no such inference shall be drawn if such profits were received in payment as wages of an employee.[17] In this case, it appears that instead of receiving a fixed salary or a fixed salary and a small percentage of the net profits, private respondents received forty percent (40%) of the net profits simply as compensation for their services.

The terms of the Memorandum of Agreement adverted to do not support the existence of a partnership as conceptualized by law. The parties thereto did not intend to create a partnership vested with juridical personality and to contribute to a common fund that would further the hotel business with the intention to eventually divide the profits. We, therefore, sustain the ruling of the public respondent NLRC that private respondents were not industrial partners but regular employees of petitioners. The employment status of a person is defined and prescribed by law and not by what the parties say it should be. Thus, the existence of an employer-employee relationship cannot be easily negated by an express repudiation in a written agreement[18], especially one that may have been precisely entered into as a scheme to evade the employer's obligations under labor laws and deprive the employee of the benefits of regular employment. The undisputed facts show that petitioners had originally hired private respondents as straight-salaried employees. Most of them, in fact, as noted by the NLRC, had already been working at the DIAMOND INN for years prior to, and at the time of, the execution of the so-called agreement by which hotel management changed private respondents' status from that of employees to industrial partners. The fact that the SSS premiums for private respondents were also paid by DIAMOND INN as the registered employer is further proof that they are employees of petitioners since the coverage of the Social Security Law is predicated on the existence of an employer-employee relationship.[19] In a certificate of employment she issued earlier petitioner HELEN DAGDAGAN even acknowledged that private respondent ECLARINO was an employee of the DIAMOND INN of which petitioner acknowledged to be the proprietor and manager. Troy Dagdagan also admitted in his affidavit-complaint before the Prosecutor's Office that the persons he was accusing of qualified theft were DIAMOND INN personnel and that he and his mother HELEN DAGDAGAN are the managers of DIAMOND INN. We agree, more importantly, with the following observation made by the NLRC as regards the Letter/Notice of Abandonment issued to private respondents, thus:

"xxx the letters dated 01 August 2001 served by appellee Irish Gloria Dagdagan upon appellants [private respondents] show that the latter were declared to have been absent from work without leave and their failure to report would result in their dropping from the rolls. An industrial partner who does not report to the office can hardly be considered absent without leave (AWOL) and his failure to report to work could not automatically result in his dismissal as a partner. If they were, then there was no basis for Irish Gloria Dagdagan to issue such directive upon the alleged AWOL industrial partners because appellees [petitioners] had given up the operation and management of Diamond Inn."

The fact that notices of abandonment were sent out to private respondents betrays petitioners' claim that an industrial partnership was established between the parties. If petitioners considered private respondents industrial partners, there would have been no need to send out notices of abandonment warning them that failure to report for duty would result in their dropping from the rolls. A partner's withdrawal or expulsion results in dissolution and not a mere dropping from the rolls, which latter action is more appropriate in the case of an employee who resigns or is dismissed from employment.

Whenever the existence of an employment relationship is in dispute, four elements constitute the reliable yardstick: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power of control over the employee's conduct.[20] The most important element is the power of control by the person for whom the services are rendered not only as to the result of the work to be done but also as to the means and methods employed to accomplish the same.[21] Despite the partnership agreement whereby petitioners allegedly transferred the right to manage and operate the DIAMOND INN, petitioners undoubtedly remained very much in control of the day-to-day operations of the hotel. Petitioner HELEN DAGDAGAN personally monitored the daily sales and room occupancy of the hotel, issued daily work instructions on how private respondents were to do their work and imposed penalties and fines for each mistake and violation committed by private respondents in the course of their work at the hotel. The foregoing circumstances all point to the fact that contrary to the written agreement an employer-employee relationship in fact existed between the parties.

Having established that private respondents are the employees of petitioners, the next issue to be resolved is whether private respondents were illegally dismissed. We rule in the affirmative. Claiming loss of confidence as a ground for dismissal, petitioners insist that private respondents had methodically cheated on the income of the hotel. Accusations of wrongdoing, however, cannot take the place of proof.[22] There is nothing in the evidence that supports the charges of theft against private respondents. The Labor Arbiter's reliance upon the affidavits of Troy Dagdagan and Lourdes Ann Sta. Ana was certainly misplaced since the said affidavits even failed to convince the Public Prosecutor of the existence of a prima facie case against private respondents. The incidents stated in Troy Dagdagan's affidavit were merely narrated to him by another person who did not execute her own statements concerning the matter. Lourdes Ann Sta. Ana, on the other hand, admitted in her subsequent sworn statement that she executed the earlier affidavit against her former co-employees under fearful and coercive circumstances. It appears therefore that the baseless accusations were indeed intended to harass private respondents who had filed a labor case against petitioners two weeks earlier. Loss of confidence as a valid ground for dismissal must be founded on facts established by the employer who must clearly and convincingly prove by substantial evidence the facts and incidents upon which loss of confidence may be fairly made to rest.[23] Loss of trust and confidence cannot also be used arbitrarily to justify the termination from work of just about every employee since it is premised on the fact that the employee concerned holds a position of trust and confidence.[24] In the instant case, except for TAYAB, ILDEFONSO and DEBAN who directly manned the hotel's front desk, private respondents worked as room boys and chambermaids. Neither would the charges of abandonment prosper against private respondents. For abandonment to prosper there must be a showing of a deliberate, unjustified refusal of the employee to resume his employment.[25] This is squarely disputed by the facts in this case. Going to specifics: DEBAN, on July 18, 2001, asked prior permission to go on leave the following day due to severe headache but when she called the hotel the following morning, a new desk clerk answered the telephone and told her not to report for work anymore because CORPUZ had been picked up by the CIS; TAYAB, went on an approved leave from July 19 to 26, 2001 and when she returned to work on July 27, 2001, she found the filing cabinets in the office padlocked. She was also told by HELEN DAGDAGAN not to report for work anymore; ILDEFONSO also was on prior approved leave from July 2 to 7, 2001 but when she

sought to extend her leave for a week, she was told instead to take one month leave. Upon reporting to work on July 10 or 11, 2001, she discovered that her picture had been removed from the chart of hotel employees; CORPUZ called in sick on July 21, 2001 and when he reported back to work on July 23, 2001 HELEN DAGDAGAN told him and GAMES that they should not report for work anymore since they were no longer being given any work schedule in the hotel; and on July 14, 2001, ECLARINO was sent on one month leave without pay by HELEN DAGDAGAN due to a confrontation that occurred among the personnel concerning her work as a chambermaid.

Finally, it does not appear also that private respondents were accorded procedural due process upon their dismissal. While each of them received a Letter/Notice of Abandonment charging them of being absent from work without official leave there is no showing that they were subsequently furnished with a letter informing them of petitioners' decision to terminate their services. What appears from the evidence is that private respondents were refused acceptance at the workplace when they reported for duty and were simply told not to come to work anymore.

The absence of a valid and just cause for terminating their services renders private respondents' dismissal illegal and entitles them to reinstatement, without loss of seniority rights, and payment of full backwages, allowances and other benefits. As found by the NLRC, however, the circumstances do not warrant private respondents' reinstatement, the award of separation pay equivalent to one (1) month's salary for every year of service being the more equitable disposition[26]. In the computation of the monetary award in favor of private respondents, the NLRC properly considered the fact that private respondents received salaries less than the minimum wage mandated by law. Accordingly, it ordered payment of salary differentials to private respondents, with the exception of private respondent TAYAB who admitted receiving more than the minimum wage requirement, and adjusted the award for separation pay, backwages, 13[th] month pay and service incentive leave in accordance therewith. We note that the computation for salary differentials incorporated in the text of the NLRC Decision failed to take into account the fact that the private respondents entitled to salary differentials were employed on different dates and had varying periods of employment. Such error, however, may be corrected by a simple re-computation of the salary differentials on the basis of private respondents' actual length of employment up to their illegal termination on various dates of July 2001. The payment of backwages, 13[th] month pay and service incentive leave benefit shall be computed from the date of private respondents' dismissal until the finality of this Decision while the payment of separation pay shall be computed from the date of private respondents' employment until the finality of this Decision.

WHEREFORE, the instant petition is DENIED. the Decision of the National Labor Relations Commission dated February 5, 2005 is AFFIRMED subject to the proper re-computation of the monetary awards in accordance with the foregoing disquisition.

SO ORDERED.

Dacudao, and Perlas-Bernabe, JJ., concur.

[1] Annex "J" of the Petition, Rollo, pp. 269-282

[2] Annexes "C" to "C-5" of Annex "C" of the Petition, Rollo, pp. 143-148

[3] Annex "7" of Annex "B" of the Petition, Rollo, pp. 107-108

[4] Annex "6" of Annex "B" of the Petition, Rollo, pp. 104-105

- [5] Annex “E” of Annex “C” of the Petition, Rollo, pp. 152-154
- [6] Annexes “1” and “2” of Annex “B” of the Petition, Rollo, pp. 89-94
- [7] Annex “E-1” of the Petition, Rollo, pp. 208-225
- [8] NLRC Decision, pp. 12-14, Rollo, pp. 280-282
- [9] Seveses vs. Court of Appeals, 316 SCRA 605, 613

[11] 443 SCRA 184, 209

[12] 336 SCRA 484

- [13] BA Savings Bank v. Sia, supra, 490
- [10] Article 1767 of the Civil Code
- [11] Art. 1768. – The partnership has a juridical personality separate and distinct from that of each of the partners, even in case of failure to comply with the requirements of article 1772, first paragraph.
- [12] Annex “A” of Annex “C” of the Petition, Rollo, p. 139
- [13] See Fortis vs. Gutierrez Hermanos, G.R. No. 2484, April 11, 1906
- [14] Sardane vs. Court of Appeals, 167 SCRA 524
- [15] Pascual vs. CIR, 166 SCRA 560
- [16] Articles 1828 to 1842 of the Civil Code
- [17] Article 1769(4) of the Civil Code
- [18] Azucena, C. A., The Labor Code With Comments and Cases, 1999 Edition, p. 127
- [19] Flores vs. Nuestro, 160 SCRA 569
- [20] Maraguinot vs. NLRC, January 22, 1998
- [21] Aurora Land Projects Corp. vs. NLRC, 266 SCRA 48
- [22] Philippine Associated Smelting and Refining Corporation vs. NLRC, 174 SCRA 550
- [23] Condo Suite Club Travel, Inc. vs. NLRC, 323 SCRA 679
- [24] Quezon Electric Cooperative vs. NLRC, 172 SCRA 88
- [25] Canete vs. NLRC, 250 SCRA 259
- [26] Section 4[b]/Rule I, Book VI, Rules Implementing the Labor Code

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