

HOTDOG ON STICKS CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND ARLIE MARCIAL, RESPONDENTS.

Ponente: FRANCISCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b1632a6ed963/>

FRANCISCO, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 assailing the Resolutions dated March 30, 2011[2] and June 30, 2011[3] issued by the public respondent National Labor Relations Commissions (NLRC), Eight Division (formerly 5[th] Division), Cagayan de Oro City in NLRC Case No. MAC-02-011895-2011.

The assailed Resolution dated March 30, 2011 dismissed petitioner's appeal from the Decision[4] dated November 25, 2010 issued by the Labor Arbiter Henry F. Te in NLRC Case No. RAB-X-05-00268-2010 entitled “Arlie L. Marcial v. Hotdog on Sticks and/or Jose Renato P. De Leon” for Illegal Dismissal with Prayers for Separation Pay and Other Money Claims while the second assailed Resolution dated June 30, 2011 denied petitioner's motion for reconsideration.

The Facts

The petition draws its origin from the complaint for illegal dismissal with prayers for separation pay and other monetary claims filed by the private respondent Arlie Marcial dated May 20, 2010, against petitioner Hotdog on Sticks and/or Renato P. De Leon before the Regional Arbitration Branch (RAB) No. X, NLRC, Cagayan de Oro City.

Private respondent Arlie Marcial (Marcial for brevity) was an employee of petitioner Hotdog on Sticks, a duly organized domestic corporation engaged in the retail of hotdogs and sausages in schools and malls in Cagayan de Oro City with a warehouse located at Diwata 11, Capistrano Complex, Gusa, Cagayan de Oro City and Office Address at PCL Center, 1049 Aurora Blvd. Cor. Katipunan Ave., Loyola Heights, Quezon City. Renato P. De Leon is the petitioner's Company President.

Marcial was hired as Warehouse-In-Charge[5] on November 2, 2007[6] with a daily wage rate of P256.00.[7] As warehouse-in-charge, he starts work at 7:00 a.m. and sometimes work until 8:30-9:00 p.m. or an average of thirteen (13) working hours daily, including Sundays and Legal Holidays.[8]

In his position paper, Marcial narrates that on May 14, 2010, due to high fever, he asked permission from his Area Supervisor Hydee Bacat for a leave of absence and went home to his hometown San Isidro, Jimenez, Misamis Occidental. His mother brought him to one Rosila Sumanduran, a quack doctor (albularyo), who administered herbal medicines to him for three (3) days[9]. On the fourth day, upon being cured of illness, Marcial reported back to work in Cagayan de Oro City. Allegedly, however, Ms. Bacat verbally dismissed him and no longer admitted him to work.

Petitioner, on the other hand, contends that Marcial was not illegally dismissed. When he returned to work on May 20, 2010, he was issued a memorandum to explain his unauthorized absences. On the same day, Marcial submitted his written explanation. He was then informed that his case would be referred to the head office for decision and was advised to return to work on the next working day, May 24, 2010. Marcial, however, no longer reported to work and just filed the subject complaint.

After due proceedings, the Labor Arbiter, in a Decision dated November 25, 2010, declared Marcial illegally dismissed and ordered the petitioner to pay Marcial separation pay, damages, and other monetary claims. The dispositive portion of the Decision reads:

WHEREFORE, conformably with the foregoing premises, judgment is hereby rendered as follows:

- Declaring that complainant was illegally dismissed by respondent company Hotdog-on-Sticks Corporation through its area supervisor Haydee G. Bacat and, in lieu of reinstatement, ordering the respondent company to pay complainant a separation pay equivalent to one (1) month pay for every year of service covering the period from November 2, 2007 (start of complainant's employment with respondent company) up to May 20, 2010 (date of his termination) provided that a fraction of at least six (6) months shall be considered one (1) whole year, all subject to computation by the Fiscal Examiner of this Branch;
- Ordering the respondent company to pay complainant 13[th] month pay and service incentive leave pay covering the period from November 2, 2007 (start of complainant's employment with respondent company) up to May 20, 2010 (date of his termination) all subject to computation by the Fiscal Examiner of this Branch and taking into consideration the payments by respondent company to complainant on October 7, 2010 for his last salary with 5-hour overtime pay, cash bond refund and 13[th] month pay which were done in this Branch;
- Ordering the respondent company to pay complainant the sum of Twenty Thousand Pesos (PhP20,000) as moral damages and the sum of Five Thousand Pesos (PhP 5,000) as exemplary damages; and
- Ordering the respondent company to pay complainant attorney's fees equivalent to ten percent (10%) of the aggregate monetary awards due the complainant.

All other claims or counterclaims not mentioned in this dispositive portion are hereby dismissed for lack of substantial evidence and/or for lack of merit.

SO ORDERED.[10] (underscoring in the original)

Aggrieved, petitioner appealed to the NLRC- Eight Division, Cagayan de Oro City which dismissed the appeal for non-perfection due to lack of a Board Resolution/Certification by the Board Secretary authorizing the HR Manager to sign the verification and certification of non-forum shopping. The NLRC, in dismissing the appeal and affirming the Decision of the Labor Arbiter, held in its Resolution dated March 30, 2011, thus:

The present appeal shows that the verification and the certification of non-forum shopping attached to the memorandum of appeal [which] is signed and sworn to by Antonette D. Pascua, HR Manager of respondent corporation, was not properly authorized to act on behalf of the corporation to commence the action. There is no Board Resolution and/or Certification by the Board Secretary that would show that she was duly authorized by the corporation to sign the verification and certification against forum shopping. Without such authority, the

appeal is not perfected in accordance with law. This is so because the power of the corporation to sue and be sued is lodged with its Board of Directors that exercises corporate powers.

It bears reiteration that “where a petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative.”[11]

Petitioner filed a motion for reconsideration attaching thereto a Secretary's Certificate[12] which provides, among others, that during a special Board Meeting on March 15, 2011 at 10:00 a.m. in which a quorum existed, the Board of Directors passed a resolution authorizing the HR to sign the verification/certification for and in behalf of the petitioner corporation. The motion, however, was likewise denied by the NLRC in its Resolution dated June 30, 2011. Thus, this instant petition for certiorari under Rule 65 petitioner invoking the following issues, to wit:

I.

[WHETHER OR NOT] THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION [AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION] IN DISMISSING THE PETITION FOR NON PERFECTION DUE TO ALLEGED LACK OF AUTHORIZATION OF THE HR MANAGER TO SIGN THE VERIFICATION/CERTIFICATION OF NON FORUM SHOPPING[;]

II

[WHETHER OR NOT] THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND IS IN EXCESS OF ITS JURISDICTION WHEN IT ADOPTED [I]N TOTO THE DECISION OF THE ARBITRATION BRANCH WITHOUT ANY DISCUSSION OF THE MERITS OF THE ARGUMENTS OF THE APPEAL[; AND]

III

[WHETHER OR NOT] THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AND IS IN EXCESS OF ITS JURISDICTION WHEN IT ADOPTED [I]N TOTO THE GRANTING OF THE MONETARY AWARD WITHOUT ANY SUBSTANTIAL AND LEGAL EVIDENCE TO SUPPORT SUCH AWARD.[13]

Our Ruling

The petition is impressed with merit.

The petitioner posits that the submission in the motion for reconsideration of the authority to sign the verification and certification constitutes substantial compliance with the procedural requirements. Thus, the NLRC should have reconsidered its dismissal of the appeal.

We agree.

Under the NLRC Rules of Procedure, among the requisites for the perfection of an appeal is a verification by the appellant in accordance with Section 4, Rule 7 of the Rules of Court. A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.[14]

On the other hand, a certificate of non-forum shopping is a requisite for the perfection of an appeal, and non-compliance therewith shall not stop the running of the period for perfecting an appeal.[15] A certification of non-forum shopping is a certification under oath by the plaintiff or principal party in the complaint or other

initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof, and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.[16]

The requirement that a petitioner or principal party should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Rules of Court make no distinction between natural and juridical persons.[17] However, a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[18] This rule, however, admits of certain exceptions.

In the case of *Shipside Incorporated v. Court of Appeals*,[19] the Supreme Court had the occasion to relax the rigid application of this rule and held, viz:

In certain exceptional circumstances, however, the Court has allowed the belated filing of the certification. In *Loyola v. Court of Appeals, et al.* (245 SCRA 477 [1995]), the Court considered the filing of the certification one day after the filing of an election protest as substantial compliance with the requirement. In *Roadway Express, Inc. v. Court of Appeals, et al.* (264 SCRA 696 [1996]), the Court allowed the filing of the certification 14 days before the dismissal of the petition. In *Uy v. LandBank, supra*, the Court had dismissed Uy's petition for lack of verification and certification against non-forum shopping. However, it subsequently reinstated the petition after Uy submitted a motion to admit certification and non-forum shopping certification.

xxx

Moreover, in *Loyola*, *Roadway*, and *Uy*, the Court excused non-compliance with the requirement as to the certificate of non-forum shopping. With more reason should we allow the instant petition since petitioner herein did submit a certification on non-forum shopping, failing only to show proof that the signatory was authorized to do so. That petitioner subsequently submitted a secretary's certificate attesting that Balbin was authorized to file an action on behalf of petitioner likewise mitigates this oversight.

It must also be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping (*Bernardo v. NLRC*, 255 SCRA 108 [1996]). Lastly, 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. (*Italics in the original; emphasis supplied*)

Anent the second issue, the petitioner avers that the NLRC erred in affirming and adopting in toto the decision of the Labor Arbiter without discussing the merits of the appeal.

Petitioner denied having terminated Marcial through Ms. Bacat who allegedly had no authority to do so. Petitioner claims that upon Marcial's return to work, he was issued a memorandum requiring him to submit a written explanation of his unauthorized absences. The memorandum and the written explanation were then sent to the Head Office for proper disciplinary action. However, before the Head Office can act upon Marcial's case, he failed to report to work and just filed a case for illegal dismissal. Petitioner contends that Marcial, therefore, has the burden of proof to establish by substantial evidence the fact of his illegal dismissal.

The contention is meritorious. Well-settled is the rule that in illegal dismissal cases, “[w]hile the employer bears the burden x x x to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service.”[20] The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive and convincing.[21]

Marcial countered that his termination is proved by the Disciplinary Action Ticket Form[22] issued to him by the petitioner. However, upon a close reading of the said form, We are of the opinion that the Disciplinary Action Ticket Form did not indicate dismissal or termination of Marcial. While the form indicates Unexcused Absen[ces] and AWOL as the nature of the offenses committed by Marcial, nowhere was it stated therein the specific disciplinary action taken by the Company, much less an order of dismissal meted against Marcial. If at all, the Ticket Form only lends credence to the petitioner's claim that Marcial prematurely filed the instant complaint for illegal dismissal without awaiting for the decision of the Head Office.

Thus, as it is incumbent upon Marcial to prove the fact of his alleged dismissal, his reliance upon the Ticket Form is untenable. The rule is that the fact of dismissal must be evidenced by positive and overt acts of an employer indicating an intention to dismiss.[23] Here, except for the Ticket Form and his bare allegation that he was not allowed to report to work by Area Supervisor Ms. Bacat on May 19, 2010, Marcial failed to proffer other evidence showing that indeed he was illegally dismissed from work. It must be emphasized that the Ticket Form, albeit absent any dismissal order, was not even signed by the Personnel Manager.

On the issue of monetary claims and damages, petitioner claims that without substantial evidence, the grant of monetary award and damages should be set aside.

We agree.

As Marcial failed to prove by substantial evidence the fact of his illegal dismissal, the grant of separation pay, backwages, and other monetary claims has no leg to stand on. In *Macasero v. Southern Industrial Gases Philippines*, the Supreme Court instructs:

[T]he award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof. (emphasis supplied)

Corollarily, when there is no dismissal to speak of, much less illegal, separation pay or backwages cannot be awarded. Consequently, Marcial's claims for separation pay and backwages without loss of seniority rights must inevitably fail. Respecting Marcial's claim for moral and exemplary damages, there being no clear showing that there was dismissal and that it was effected in a malevolent or oppressive manner, Marcial is not also entitled thereto.

It must be remembered that the High Court has always reminded that:

Although it has, more often than not, been inclined towards the workers and has upheld their cause in their conflicts with the employers, such inclination has not blinded it to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.

THE FOREGOING CONSIDERED, the instant PETITION is thus GRANTED. The NLRC's Resolutions dated March 30, 2011 and June 30, 2011 are hereby REVERSED AND SET ASIDE, and a new one entered dismissing

the complaint for illegal dismissal for lack of merit.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Ch., and Badelles, JJ., concur.

[1] Rollo, p.2.

[2] Rollo, pp. 15-18.

[3] Rollo, pp. 19-23.

[4] Rollo, pp. 43-50.

[5] Rollo, p. 30.

[6] Ibid

[7] Rollo, p. 31.

[8] Rollo, p. 30.

[9] Rollo, p. 41.

[10] Rollo, p. 50.

[11] Rollo, pp. 16-17.

[12] Rollo, p. 75.

[13] Rollo, p. 6.

[14] Rules of Court, Rule 7, Section 4.

[15] Mandaue Galleon Trade, Inc., et.al. v. Isidto, et.al., G.R. No. 181051, July 5, 2010.

[16] Rules of Court, Rule 7, Sec. 5.

[17] Pascual and Santos, Inc. v. The Members of the Tramo Wakas Neighborhood Association, Inc., G.R. No. 144880, November 17, 2004, 442 SCRA 438, 446.

[18] Ibid

[19] G.R. No. 143377, February 20, 2001.

[20] Montederamos v. Tri-Union International Corporation, G.R. No. 176700, September 4, 2009, 598 SCRA 370, 376.

[21] Ledesma, Jr. v. National Labor Relations Commission, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370 citing Machica v. Roosevelt Services Center, Inc., 523 Phil. 199, 209-210 (2006).

[22] Rollo, p. 42.

[23] Exodus International Construction Corporation v. Biscocho, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 88.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.