

## **BIOGREEN PROCESSING AND MANUFACTURING INC. THRU HONG HAN, ADM. DIRECTOR MANAGER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, CARLOS A. ACSON, JOEMARIE T. CABUGNASON, JE...**

Ponente: QUIJANO-PADILLA, J.

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### **QUIJANO-PADILLA, J.:**

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Resolution[2] promulgated on October 31, 2012 in NLRC Case No. VAC-02-000093-2012 of the National Labor Relations Commission (NLRC) Seventh (7[th]) Division, Cebu City, which partially granted the Motion for Reconsideration[3] of herein petitioner.

#### **The Antecedents[4]**

In gist, the present controversy stemmed from an illegal dismissal case filed by the private respondents against herein petitioner. Private respondents averred that they were unceremoniously terminated without cause and notice.

To refute such an allegation, petitioner interposed the following defenses:

- a). Private respondents Carlos Acson, Ritchie Torres and Lowell Balasabas stole a unit of welding machine and 50 kilograms of copper wire. This incident was reported to the police and a police blotter was made.
- b). Private respondents Edison Torres and Diosdado Tinambacan left petitioner without notice after receiving their salaries.
- c). The other private respondents did not present any evidence to buttress their claim of illegal dismissal.
- d). Company records and files would show that the private respondents were already paid their money claims.

On November 22, 2011, Acting Executive Labor Arbiter Jose G. Gutierrez issued a Decision[5] declaring that there was no illegal dismissal. However, private respondents were entitled to 13[th] month pay, holiday pay and service incentive leave. The decretal portion of the decision states:

"WHEREFORE, the foregoing premises considered, judgment is hereby rendered DISMISSING the case for Illegal dismissal for lack of merit. Respondent Biogreen Processing and Manufacturing, Inc., however, is directed to pay the complainants' unpaid 13th month pay, Holiday Pay and Service Incentive Leave, as follows:

I – CARLO A. ACSON P6,615.49

II - FERNANDO N. CABUGNASON P15,450.00

III - GINO L. MACAHIG P10,299.99

IV – RAMILITO Q. SOLIS P9,270.00

V – JOMARIE T. CABUGNASON P10,299.99

VI – FLORENCIO M. TORRES P8,239.99

VII – JERRY R. QUISAY P8,239.99

VIII – LOWELL E. BALASABAS P10,299.99

IX – EDISON O. TORRES P11,883.33

X – RONALDO K. ESTRELLA P11,844.99

XI – ROMMEL O. TORRES P10,299.99

XII – MICHAEL O. TORRES P8,239.99

XIII – RETCHIE O. TORRES P8,239.99

XIV – PRIMO R. QUITAY P14,419.99

XV – DIOSDADO S. TINAMBACAN  
P10,300.00

XVI – ARCHER D. RAMIREZ P7,299.99

TOTAL P161,243.71

SO ORDERED."[6]

Aggrieved, private respondents appealed to the NLRC.

In a Decision[7] promulgated on June 29, 2012, the National Labor Relations Commission affirmed the dismissal of the private respondents, but granted the monetary awards of 13[th] month pay differential, service incentive leave and attorney's fees. Some employees were also awarded salary differential. The dispositive portion of the decision reads, to wit:

“WHEREFORE, premises considered, the appeal filed by complainants is PARTIALLY GRANTED. The 22 November 2011 Decision rendered by Acting Executive Labor Arbiter Jose G. Gutierrez is AFFIRMED with MODIFICATION in the following manner:

1. FINDING that in addition to the 13[th]month pay (proportionate) for 2011, complainants are also entitled to their 13[th] month pay differential for years 2008, 2009 and 2010, respectively in the total sum of TWO HUNDRED THIRTY SIX THOUSAND FOUR HUNDRED FIVE PESOS & 57/100 (P236,405.57);
2. FINDING that some complainants are entitled to their salary differential in the total amount of EIGHT HUNDRED NINETEEN THOUSAND THREE HUNDRED SEVENTY ONE PESOS (P819,371.00);
3. AFFIRMING the grant of service incentive leave pay in the total amount of FORTY-EIGHT THOUSAND THREE HUNDRED SIXTY-FIVE PESOS and 35/100 (P48,365.35) but DENYING the award of holiday pay;
4. AFFIRMING the dismissal of all other monetary claims; and finally
5. FINDING that complainants are entitled to an award of attorney's fees of ONE HUNDRED TEN THOUSAND FOUR HUNDRED FOURTEEN PESOS & 19/100 (P110,414.19).

SO ORDERED.[8]

At this juncture, it was now the petitioner who felt aggrieved and unsatisfied with the ruling. Hence, a Motion for

Reconsideration[9] and a Supplemental Motion for Reconsideration[10] were filed. In the said motions, petitioner vehemently opposed the lower tribunal's use of a 26-day per month work schedule as there was no truth that private respondents reported for 26 days a month. Petitioner also argued that private respondents should be classified under Class C Non-Sugar Agriculture sector and not under Class A, Non-Agriculture.

In a Resolution[11] dated October 31, 2012, the NLRC partially granted the motion for reconsideration of the petitioner in so far as the classification of the private respondents. The Commission postulated that they inadvertently considered the private respondents under Class A Non-Agriculture when they should properly belong to Class C Non-Sugar Agriculture. In view thereof, the NLRC found it appropriate that the monetary awards of the private respondents[12] be re-computed as the rates differ between the two classifications. However, the NLRC in re-computing the same, still based its computation on a 26-day per month work schedule. The dispositive portion of the assailed resolution, to wit:

“WHEREFORE, premises considered, the Motion for Reconsideration filed by respondent is PARTIALLY GRANTED with the grant of salary differentials and 13th month pay differentials of THREE HUNDRED FORTY TWO THOUSAND THREE HUNDRED FORTY SIX PESOS (P342,346.00) and ONE HUNDRED EIGHTY THOUSAND FOUR HUNDRED SEVENTY SIX PESOS & 84/100 (P180,476.84), respectively. The attorney's fees are recomputed accordingly in the amount of FIFTY TWO THOUSAND TWO HUNDRED EIGHTY TWO PESOS & 28/100 (P52,282.28). The rest of the challenged Decision STANDS.

SO ORDERED.”[13]

Undeterred, petitioner filed an appeal to the Court of Appeals Manila Station. However the CA Manila in a Resolution[14] dated February 14, 2013 directed this case be transferred to CA Cebu considering that the resolution sought to be set aside came from the Seventh (7th) Division of the NLRC stationed in Cebu City.

#### Assignment of Error

Whether there was grave abuse of discretion when the NLRC rendered its Resolution computing the salary and 13<sup>th</sup> month pay differentials based on a 26 days/month work schedule notwithstanding the evidence of BIOGREEN to the contrary.

#### The Ruling of this Court

The petition is not meritorious.

At the crux of the present controversy is the claim of the petitioner that the NLRC acted with grave abuse of discretion when it used a 26-day per month work schedule in computing the monetary awards.

To begin with, it must be borne in mind that (f)actual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind us when supported by substantial evidence.[15]

In the case at bench, We observed that the NLRC was not convinced by the petitioner's allegation that it was able to present adequate evidence to show private respondents' work schedule did not reach twenty-six (26) days a month and that their monetary claims were already sufficiently paid.

In fact, the lower tribunal held that unless and until the petitioner can provide proof supporting their claim, the same cannot be considered. Based upon this ratiocination of the NLRC, We can conclude that the Commission did not give much weight to the evidence submitted by herein petitioner. Such conclusion reached by the NLRC is clearly a factual determination, which is beyond the scope of a petition for certiorari under Rule 65 especially since it was made after evaluation of the evidence on hand. Moreover, the Labor Arbiter in computing the monetary awards, also used the same work schedule. Instructive is the ruling in *Malayang Manggagawa ng*

Stayfast Phils., Inc. v. NLRC,[16] which states that:

For petitioner to question the identical findings of the Labor Arbiter and the NLRC is to raise a question of fact. However, it is settled that questions of fact cannot be raised in an original action for certiorari.[17] Only established or admitted facts can be considered.[18]

Further, We find the payroll sheets submitted by herein petitioner insufficient to buttress its claim that private respondents were made to work less than 26 days a month. The Court notes that there were periods where no payroll sheets were presented, while some sheets did not have legible headings to show the period it represented.

Quite interesting also is the failure of the petitioner to raise the matter on the use of a 26-day per month work schedule before the Labor Arbiter, considering that the said tribunal in its ruling used also the same work schedule in computing the monetary awards. It was only in its motion for reconsideration to the NLRC's Decision where petitioner raised for the first time such an issue.

We also find it worthy to emphasize that (w)here a petition for certiorari under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[19] This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. In this connection, *Yu v. Judge Reyes-Carpio*[20] is instructive:

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is 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 and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.  
x x x. (Citations omitted.)

Furthermore, "grave abuse of discretion" does not encompass an error of law. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.[21]

With the foregoing disquisitions, We find the lower tribunal not to have acted with grave abuse of discretion as there was paucity of evidence to establish that the assailed ruling was not done in a capricious, arbitrary or whimsical manner.

WHEREFORE, in view of the foregoing, the Petition is DENIED. The assailed Resolution in NLRC Case No. VAC-02-000093-2012 of the National Labor Relations Commission (NLRC), Seventh Division, Cebu City, promulgated on October 31, 2012 is hereby AFFIRMED.

### **SO ORDERED.**

Delos Santos, Chairperson and Azcarraga-Jacob, JJ., concur.

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[1] Rollo, pp. 3-149.

[2] Rollo, pp. 30-43.

[3] Rollo, pp. 70-74.

- [4] See Petition for Certiorari under Rule 65, Facts of the Case, rollo, pp. 5-7.
- [5] Rollo, pp. 308-321.
- [6] Rollo, pp. 320-321.
- [7] Rollo, pp. 45-69, 282-306.
- [8] Rollo, pp. 68-69, 305-306.
- [9] Rollo, pp. 70-74.
- [10] Rollo, pp. 75-85.
- [11] Rollo, pp. 30-43.
- [12] Except Carlo A. Acson and Fernando N. Cabugnason.
- [13] Rollo, pp. 42-43.
- [14] Rollo, pp. 151-152.
- [15] *New City Builders, Inc. v. NLRC*, G.R. No. 149281, June 15, 2005, citing *Stamford Marketing Corporation, et al. vs. Julian, et al*, G.R. No. 145496, 24 February 2004 citing *Abalos vs. Philex Mining Corporation*, 441 Phils. 386, 395 [2002].
- [16] G.R. No. 155306, August 28, 2013.
- [17] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing *Korea Technologies Co., Ltd. v. Lerma*, 566 Phil. 1, 35 (2008).
- [18] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing *Ramcar, Inc. v. Hi-Power Marketing*, 527 Phil. 699, 708 (2006).
- [19] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing *Abedes v. Court of Appeals*, 562 Phil. 262, 276 (2007).
- [20] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, citing G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.
- [21] See *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013.

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