

NELSON G. GASPI, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SM SECURITY & SERVICES, INC./ SONIA B. ORBON, RESPONDENTS.

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INTING, S. B., J.:[*]

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by the Petitioner which seeks to nullify and declare void ab initio the July 16, 2012 Decision[2] and September 14, 2012 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000538-12 NLRC SRABV Case No. 06-00097-11.

Petitioner Nelson G. Gaspi (“Petitioner”) was a former employee of Private respondent SM Security & Services Inc. (“Respondent company”) which company is engaged in providing security agency services. While Sonia B. Orbon is the owner and president of the respondent company.

The facts:

The petition stems from the Complaint[4] filed with the NLRC for underpayment/nonpayment of salaries/wages, overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, night shift differential pay, 13th month pay and claims for medical and dental benefits by herein Petitioner.

Petitioner's Version

Petitioner started working for Respondent company sometime in December 2001 as a reliever security guard with a work schedule of 12 hours a day. He was paid a daily salary rate of Php 114.00 with no other benefits granted to him by the Respondent company. Sometime in February of 2002 Petitioner was promoted as Head Security Guard. He was given the same work schedule and paid the same salary. Subsequently, Respondent company paid its contributions to the Social Security System, Philhealth and Pag-ibig for the Petitioner.

Sometime in January of 2008, Petitioner's salary was increased to a daily rate of Php 220.00, still for the same work schedule of 12 hours a day but still he was not paid his overtime pay, holiday pay, night differential pay, and service incentive leave pay.

Every time Petitioner was paid his salaries, he was asked to sign one copy of his payroll wherein the salaries he received was stated. Petitioner was also asked to sign two other copies of his payroll wherein the salaries he received was stated in blank.

Subsequently, considering his salary was not enough to sustain the needs of his family, he took a second job as a Martial Arts Instructor and worked whenever he was not on duty as a guard of Respondent company.

Sometime in March of 2011 due to financial problems he quit his job as a Martial Arts Instructor and started to work as a market guard with a work schedule of 12 hours “on duty” and 24 hours “off-duty.”

Prior to assuming his work as a market guard, he sought approval for a one-day-duty and one-day-off work schedule from Henry Cerillo (“Cerillo”), the Operations Manager of Respondent company. The said work

schedule of one day duty and one day off duty was approved by Cerillo.

On May 3, 2011, Petitioner was suspended without pay for a period of fifteen (15 days) by the Respondent company and was not allowed to work for allegedly being absent without filing any leave of absence and for having two jobs with two different companies. He asked his superiors, Sonia Orbon and Marie Orbon to reconsider and lift his suspension from work. However, he was instead ordered to resign either from his work at the Respondent company or from his work as a market guard.

On May 18, 2011, he reported back for work but he was not allowed to work by Cerillo. Considering Cerillo, Sonia and Marie Orbon pressured him to resign, he was forced to file an indefinite leave of absence at the Respondent company on May 20, 2011. On June 6, 2011, Petitioner filed the aforesaid Complaint with the National Labor Relations Commission (NLRC) because the conference between the parties did not result to any settlement.

On July 8, 2011, he received two letters from the Respondent company dated June 28, 2011 and June 29, 2011 respectively. Both letters were denominated as 2nd Notice of Termination. He was also asked to explain on July 1, 2011 why he took a second job as a market guard with a different company. Petitioner was also asked to explain his tardiness at the Respondent company.

Private respondent's Version

Petitioner was asked by the Respondent company in a letter[5] dated May 2, 2011 to explain his repeated absences and tardiness as well as his unauthorized double employment with the LGU-CSU of Iriga City resulting in the neglect of his duties and responsibilities as Supervisor.

Petitioner responded by sending two letters[6] both dated May 3, 2011. In the said letters he admitted he has violated the company's rules and regulations because of his tardiness and absences as well as his unauthorized double employment. Petitioner also promised that he will not repeat the same violations again and that he will resign from LGU-CSU. Upon receipt of the letters Respondent company decided to suspend[7] Petitioner for fifteen (15) days effective upon receipt of the suspension letter or until May 18, 2011. It also further ordered Petitioner to report to the office after fifteen days for reinstatement and to submit his promissory letter pertaining to his infractions. However, on May 20, 2011, after serving the 15-day suspension, the Petitioner, instead of reporting back for work, filed an indefinite leave[8]. The Petitioner's reason for filing the said leave was his scheduled trip to Manila.

Subsequently, on May 23, 2011, Respondent company was surprised to receive a Notice of Conference[9] from the Office of the City Prosecutor calling for a meeting regarding the Complaint filed by the Petitioner against the Respondent company. In the said conference, held on May 23, 2011, Petitioner demanded Respondent company to pay him Php 200,000.00 representing his separation pay. Petitioner's demand was not granted by the Respondent company considering Petitioner was not terminated but merely suspended. On June 7, 2011, Respondent company sent another letter[10] to Petitioner asking the latter if he still has plans to return to work and requested him to resign if he was not returning in order to prevent disruption of work at the Respondent company. However, there was no reply from the Petitioner. On the same day of June 7, 2011, Respondent company received the summons from the NLRC together with the formal Complaint filed by the Petitioner. On June 28, 2011, Respondent company sent a second Notice[11] to Petitioner asking him to explain his continued absences without having filed any leave of absence as well as the status of his continued employment with the LGU-CSU of Iriga City. However, still no reply was made thereto by the Petitioner.

On December 28, 2011, the Labor Arbiter rendered a Decision[12] granting Petitioner's claims for salary

differentials, thirteenth (13[th]) month pay differentials and thirteenth (13[th]) month pay for the year of 2011. However, Petitioner's claims for other monetary claims were denied by the Labor Arbiter. Petitioner's claim for constructive dismissal was also disregarded by the Labor Arbiter considering the issue was not raised by the Petitioner in his Complaint[13] as one of his causes of action. The dispositive portion of the Decision[14] provides, to wit:

“xxx xxx xxx

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent S.M. Security and Services, Inc. to pay complainant Nelson G. Gaspi the total amount of SIXTEEN THOUSAND FORTY EIGHT PESOS and 33/100 (P16,048.33), representing the latter's salary/wage differentials, 13[th] month pay differentials and proportionate 13[th] month pay for the year 2011, as computed above.

All other claims and charges are hereby dismissed, for lack of factual and/or legal basis.

The claims for SSS and Philhealth contributions are likewise dismissed, for lack of jurisdiction.

SO ORDERED.”

Petitioner then filed a Memorandum on Appeal[15] which was denied by the NLRC in a Decision[16], dated July 16, 2012. The pertinent portion of which provides:

“xxx xxx

We do not find merit in the appeal. On the issue of constructive dismissal, it is clear that the same was not included in complainant's complaint, as required by the Rules. The Labor Arbiter is correct in saying that he could have amended his complaint upon the advice of his lawyer. xxx xxx xxx

xxx xxx xxx

Complainant admitted in his position paper that he was a supervisor in the respondent security agency. He likewise submitted a detailed description of his duties and responsibilities in the company xxx. A perusal of his job description revealed that he was indeed performing supervisory functions. As a supervisory employee, complainant is a managerial employee who is excluded from the provisions of the Labor Code on working conditions and rest period such as normal hours of work (Article 83), hours worked (Article 84), meal periods (Article 85), night shift differential (Article 86), overtime work (Article 87). Moreover, complainant failed to adduce any concrete proof that he rendered additional service beyond the normal working hours and days, thus overtime pay cannot be granted. Further, respondents submitted copies of company payroll to prove payment of correct wages as against complainant's general averments which are uncorroborated and unsubstantiated.

WHEREFORE, premises considered, the Appeal is DENIED and the December 28, 2011 Decision is hereby AFFIRMED.

SO ORDERED.”

Consequently, Petitioner filed a Motion for Reconsideration[17] which was denied by the NLRC in a Resolution[18] dated September 14, 2012. The dispositive portion of which provides:

“WHEREFORE, premises considered, the motion for reconsideration is DENIED for lack of merit.

SO ORDERED.”

Hence, the instant petition.

The Issue:

1. WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER DATED DECEMBER 28, 2011 AND RULING THAT THE PETITIONER WAS A SUPERVISORY EMPLOYEE AND THUS WAS NOT ENTITLED TO THE BENEFITS GRANTED UNDER ARTICLES 83- 87 OF THE LABOR CODE

2. WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THE EVIDENCE PRESENTED BY THE RESPONDENT COMPANY SUFFICIENT TO ESTABLISH THAT PETITIONER WAS PAID CORRECT AMOUNT OF WAGES

The Ruling:

The petition is devoid of any merit.

Anent the first issue, as correctly ruled by the NLRC, Petitioner admitted in his Position Paper[19] that he was a supervisor and thus he cannot claim benefits granted under Articles 83-87 of the Labor Code, as clearly stated in Article 82 of the Labor Code, which provides, to wit:

“Art. 82. COVERAGE. — The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations. As used herein, "managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

xxx xxx”

Applying the afore-cited provision Petitioner is exempted from the coverage of labor standards. Labor standards provide the working conditions of employees, including entitlement to overtime pay and premium pay for working on rest days.[20]

Anent the second issue, We also find the copies of payroll submitted by the Respondent company sufficient evidence to clearly show that Petitioner was paid the correct amount of wages for the period January up to April 2011. As correctly cited by the Labor Arbiter , payroll appearing to be regular in its face, is prima facie evidence of its contents. Petitioner's claim that his signatures appearing on the payrolls were not his signatures deserves scant consideration in the absence of substantial proof clearly establishing that Petitioner's signatures were forged. Hence, WE cannot give more weight to Petitioner's bare allegations that his signatures were forged vis-a-vis the said copies of payroll submitted by the Respondent company clearly showing on its face that there were no indications that it was tampered or that his signatures thereat were forged thus, indubitably, Petitioner was correctly paid his wages for the period January up to April 2011.

We likewise agree with the NLRC and Labor Arbiter's ruling that the Petitioner cannot belatedly include constructive dismissal as one of his causes of action when he failed to include it in his complaint. Rules must not be disregarded. By express provision of Section 3, par. (2) 33 Rule V of The New Rules of Procedure of the NLRC on the proceedings before the labor arbiter, verified position papers shall cover only those claims and causes of action raised in the complaint save those that may have been amicably settled. They shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. Thereafter, the parties shall not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position

papers, affidavits and other documents.[21]

With regard to the other issues, they being intertwined with the issue on the alleged constructive dismissal of the Petitioner, WE find it no longer necessary to discuss them.

Thus, applying the foregoing rulings, the NLRC correctly affirmed the Labor Arbiter's Decision[22].

WHEREFORE, the petition is hereby DENIED. The July 16, 2012 Decision[23] and September 14, 2012 Resolution[24] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000538-12 NLRC SRABV Case No. 06-00097-11 hereby STAY.

SO ORDERED.

Reyes, Jr., (Chairperson) and Galapate-Laguilles,[**] JJ., concur.

[*] Acting Senior Member vice J. Mario V. Lopez who is in Baguio for the summer session per Office Order No. 177-14-RDC dated May 2, 2014

[**]Acting Junior Member vice J. Socorro B. Inting who has been designated as acting Senior Member per Office Order No. 177-14-RDC dated May 2, 2014

[1] Rollo, pp. 3-29

[2] Rollo, pp. 33-39

[3] Rollo, pp. 40-42

[4] Rollo, pp. 43

[5] Rollo, pp. 71

[6] Rollo, pp. 72-73

[7] Rollo, pp. 74

[8] Rollo, pp. 75

[9] Rollo, pp. 76

[10]Rollo, pp. 77

[11] Rollo, pp. 78

[12] Rollo, pp. 173-184

[13] Supra note 4

[14] Ibid.

[15] Rollo, pp. 111-136

[16] Supra note 2

[17] Rollo, pp. 185-209

[18] Supra note 3

[19] Rollo, pp. 46-55

[20] Peñaranda, vs. Baganga Plywood Corp., G.R. No. 159577. May 3, 2006

[21] Mobilia Products, Inc., vs. Demecillo, G.R. No. 170669. February 4, 2009

[22] Supra note 14

[23] Rollo, pp. 33-39

[24] Rollo, pp. 40-42

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