

NILO O. ASIONG, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (2ND DIVISION), PONCIANO LATO BANJAO AND/OR JESEL LATO CERILO, RESPONDENTS.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Resolutions dated January 28, 2013[2] and March 27, 2013[3] of the National Labor Relations Commission (NLRC), Second Division in NLRC LAC No. 10-002944-12 NLRC RAB-IV 01-00074-12-R entitled “Nilo Asiong, Complainant-Appellant, vs. JCPB Security Agency/Ponciano Lato Banjao/Jesel L. Cerilo, Respondents-Appelles.”, the dispositive portions of which read:

Resolution dated January 28, 2013:

“WHEREFORE, the appeal is hereby DISMISSED for lack of merit, and the Decision dated July 19, 2012 rendered by the Labor Arbiter Enrico Angelo C. Portillo, AFFIRMED.

SO ORDERED.[4]”

Resolution dated March 27, 2013:

“WHEREFORE, the motion for reconsideration is denied for lack of merit.

NO FURTHER MOTION OF SIMILAR NATURE SHALL BE ENTERTAINED.

SO ORDERED.[5]”

The facts are:

On January 15, 2008, petitioner Nilo O. Asiong (petitioner for brevity) was hired by private respondent JCPB Security Agency as a security guard, initially detailed at parking lot II of Club Manila East Resort, and later assigned at LLDA Sampaguita Construction-Club Manila East. As a security guard, he claimed that he worked for twelve (12) hours, from 6:00 o'clock in the evening to 6:00 o'clock in the morning and received a daily wage of Two Hundred Pesos (Php 200).[6] At the end of his shift on November 6, 2011, his fellow security guard Rolly Dayang (Dayang for brevity), was allegedly instructed by Operations Manager Rodel Labong (Labong for brevity) to tell him not to report for his night shift and get his belongings because his post will be occupied by a relative of private respondents Ponciano Lato Banjao and Jesel Lato Cerilo.[7] After hearing this, he allegedly surrendered his service gun and went home.[8] He was still bothered by his abrupt removal, so he clarified the matter with Operations Manager Labong[9] and private respondent Cerilo,[10] but they both confirmed his alleged replacement.[11] Initially, petitioner filed a complaint for non-payment of his monetary benefits, but this was later amended to a case for illegal dismissal[12] against JCPB Security Agency, impleading private respondents Cerilo and Banjao as its alleged owners[13] (private respondents for brevity). No settlement was reached during the mandatory conciliation proceedings, thus the parties were directed to file their respective

position papers.[14]

In his Position Paper,[15] petitioner averred that his dismissal was illegal because it was done in bad faith. He maintained that his termination was confirmed when the agency's Operations Manager told him, "Tanggal ka na nga eh, kaya wag mo na akong istorbohin." He also insinuated that he was removed from his position to create a vacancy for the relative of private respondents. He adduced handwritten payslips[16] claiming he was underpaid and that his other monetary benefits were not given/paid. Finally, he asserted that neither just nor authorized causes were presented to justify his dismissal, therefore he is entitled to reinstatement and payment of his monetary claims.

In their position paper,[17] private respondents belied the allegation that petitioner was illegally dismissed, claiming that the latter went on Absence Without Leave (AWOL) on November 15, 2011 and refused to heed the agency's Return to Work Notice.[18] They also included documents[19] denying petitioner's claim for non-payment or underpayment of salary and provided proof that his other monetary benefits like 13[th] month pay, cash bond, surety bond and monthly bonus were all duly paid.[20] With no dismissal to speak of, they prayed for the denial of petitioner's claim.

On July 19, 2012, the Labor Arbiter dismissed the complaint for lack of merit but ordered private respondents to pay petitioner's proportionate 13[th] month pay and his unpaid service incentive leave pay as well as to refund his cash bond and security bond for the year 2011.[21] Petitioner appealed before the NLRC,[22] but his appeal was dismissed.[23] His Motion for Reconsideration[24] was also denied.[25]

Hence, this petition raising the following assignment of errors:[26]

I.

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONER FAILED TO PROVE HIS DISMISSAL (p. 8, Annex "K", Petition, which is the Resolution prom. on January 28, 2013);

II.

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PRIVATE RESPONDENTS PAID PETITIONER'S LABOR STANDARD BENEFITS;

III.

PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT ONLY JCPB SECURITY AGENCY AND NOT PRIVATE RESPONDENTS ARE LIABLE.

The petition is without merit.

It is a recognized rule in illegal dismissal cases that the employer bears the burden of proving that the dismissal is valid, but before the employer take on this duty, the employee must first establish the fact of his dismissal.[27] As the party alleging the fact, petitioner therefore carries the burden of proving that he was indeed dismissed by private respondents, and such proof needs to be clear, positive and convincing.[28] However, measured on these parameters, it appears that petitioner failed to hurdle this task. A study of the records show that other than his bare allegations that he was verbally terminated by private respondents' Operations Manager, no other evidence was presented to support his claim that he was replaced or that he was prevented from returning to his post. The lack of evidence to corroborate his mere assertion, makes his statement self-serving and deserving no probative

value.[29] Significantly, in the absence of any showing of an overt or positive act that private respondents had indeed dismissed him, his claim of illegal dismissal cannot be sustained.[30]

In his petition, petitioner also raises the issue of underpayment of his salary as well as the withholding of his overtime pay. These issues essentially raise questions of facts which are outside the ambit of a Petition for Certiorari. It is a settled rule that the sole object of such petition is to address errors of jurisdiction or grave abuse of discretion.[31] It does not correct an error of law, nor does it remedy a mistake in the appreciation of the contending parties' respective evidence.[32] More so, it does not entertain factual issue as these are left for the labor tribunals to resolve.[33] This fortifies the doctrine that judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which the labor officials' findings rest.[34] As long as such findings are supported by substantial evidence, the conclusion of public respondent NLRC will be accorded with great weight and will be considered binding on this Court.[35] Here, the records reveal that the findings of public respondent NLRC are properly substantiated by the payslips[36] provided by private respondents, to wit:

“xxx These payrolls in fact, disprove the claim of Complainant that he was underpaid his salaries and not paid his overtime work. They show payments to Complainant the amount of P7,290.00 every 15 days, for 15 days' work and 60 “O.T. Hrs.”, as reflected on them. For the same period September to October 2011, the prevailing Minimum Daily Wage Rate under Wage Order No. IV-A-146 which took effect on January 15, 2011, was P320.00 a day. At that rate, a regular 8-hour work rendered for 15 days should be paid the minimum of P4,160; or for 30 days, P8,320.00. As the payroll shows a bi-monthly payment of P7,290.00 or P14,580.00 for 30 days, there cannot be any underpayment of Complainant's salary

The amount due complainant for his regular 60 hours overtime work every 15 days, is legally mandated to be at the rate of 25% of the hourly rate on ordinary work days, or 30% on overtime worked perform on regular holidays. However, Complainant failed to prove the specific dates he worked beyond 8 hours or overtime, to form as basis for his allegation that he was underpaid or unpaid his pay for overtime work. xxx”

Thus, unless it is clearly demonstrated that such factual findings complained of are completely devoid of support from the evidence on record or that the assailed judgment is based on a gross misapprehension of facts, the findings of public respondent NLRC will be respected.[37]

WHEREFORE, premises considered, the petition is DENIED. The Resolutions dated January 28, 2013 and March 27, 2013 of the National Labor Relations Commission (NLRC), Second Division in NLRC LAC No. 10-002944-12 NLRC RAB-IV 01-00074-12-R are hereby AFFIRMED.

SO ORDERED.

Bruselas, Jr., and Barrios,[*] JJ., concur.

[*]Vice Justice Samuel H. Gaerlan per Office Order No. 270-14-RSF dated June 6, 2014

[1] Rollo, pp. 5-16

[2] Rollo, pp. 158-167

[3] Rollo, pp. 177-178

[4] Rollo, pp. 166-167

[5] Rollo, pp. 178

[6] Rollo, pp. 6, 21, 25, 44, 134, 160

[7] Rollo, pp. 8, 22, 134,

[8] Rollo, pp. 8, 22, 134, 160

[9] Rollo, pp. 8, 11, 22, 135 (Note: Operations Manager Labong allegedly told petitioner that, “Totoo! Huwag ka nang magreport pa umpisa mamayang gabi at iuwi mo na ang mga gamit mo! Wala tayong magagawa at siyempre kailangan may trabaho ang kamag-anak nina Sir Banjo at Cerilo.”)

[10] Rollo, pp. 8, 11, 23 (Note: When petitioner asked private respondent Cerilo if its true that his post will be filled by his relative, he allegedly answered, “Ganyan talaga ang buhay! Sige kunin mo na ang mga gamit mo.”)

[11] Rollo, pp. 8, 11, 22-23, 134-135

[12] Rollo, p. 18-19, 134, 159

[13] Rollo, pp. 28, 44, 63-65, 125, 135

[14] Rollo, pp. 47, 160

[15] Rollo, pp. 20-27

[16] Rollo, pp. 29-41

[17] Rollo, pp. 42-53

[18] Rollo, pp. 55

[19] Rollo, pp. 57-60

[20] Rollo, pp. 54

[21] Rollo, pp. 134-138

[22] Rollo, pp. 139-148

[23] Supra, footnote 2

[24] Rollo, pp. 168-173

[25] Supra, footnote 3

[26] Rollo, pp. 10

[27] MZR Industries, Marilou R. Quiroz and Lea Timbal vs. Majen Colambot (G. R. No. 179001, August 28, 2013)

[28] Luciano P. Cañedo vs. Kampilan Security and Detective Agency, Inc. and Ramoncito L. Arquiza (G. R. No. 179326, July 31, 2013)

[29] MZR Industries, Marilou R. Quiroz and Lea Timbal vs. Majen Colambot (G. R. No. 179001, August 28, 2013)

[30] Id.

[31] Malayang Manggagawa ng Stayfast Phils., Inc. vs. National Labor Relations Commission, et al., (G. R. No. 155306, August 28, 2013)

[32] Malayang Manggagawa ng Stayfast Phils., Inc. vs. National Labor Relations Commission, et al., (G. R. No.

155306, August 28, 2013)

[33] Jenny F. Peckson vs. Robinsons Supermarket Corporation, et al. (G. R. No. 198534, July 3, 2013)

[34] Id.

[35] Id.

[36] Rollo, pp. 57-60

[37] P. J. Lhuillier Inc. and Philippe J. Lhuillier vs. National Labor Relations Commission and Herminia Montenegro (G. R. No. 158758, April 29, 2005)

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