LORETO T. DELA CALZADA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SEVENTH DIVISION), GT INDUSTRIAL DEVELOPMENT INC.,/COLIN B. TING (OWNER/MANAGER), RESPONDENTS.

Ponente: DIY, J.

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DIY, J.:

This special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure assails the Resolution[1] dated July 30, 2010 rendered by public respondent National Labor Relation Commission (NLRC), which reversed its earlier Decision[2] dated May 31, 2010 in NLRC No. VAC-11-001060-2009. The dispositive portion of the assailed NLRC resolution reads:

> WHEREFORE, PREMISES CONSIDERED, Our decision is, hereby, RECONSIDERED and a new one entered DISMISSING the complaint of illegal dismissal. Complainant is, hereby, ordered to report back to work within ten (10) days from receipt of this Resolution but without backwages and respondents are, likewise, ordered to accept him back to his former position under the same terms and conditions without loss of seniority rights.
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> Respondent GT Industrial Development Inc. is, however, ordered to pay complainant the following:
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> 1.
>
> 13th Month Pay
>
> P
>
> 18,796.19
>
> 2.
>
> SILP
>
> 3,746.00
>
> Total Award
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> P22,542.19
>
> SO ORDERED.

The NLRC denied petitioner's Motion for Reconsideration3 in a Resolution[4] dated September 30, 2010.

The Antecedents

The present petition traces its roots to the complaint for illegal dismissal filed by petitioner Loreto T. Dela Calzada against private respondents GT Industrial Development Inc. and its owner and manager, Colin B. Ting,

before the Labor Arbiter.

For failure of the parties to settle the case amicably, the Labor Arbiter required them to submit their respective position papers. In compliance with said directive, petitioner filed his Position Paper[5] on December 8, 2008 while private respondents failed to submit their position paper.

On July 15, 2009, the Labor Arbiter issued an order declaring private respondents to have waived the right to present their position papers and evidence in their defense.

In his position paper, petitioner alleged that on February 11, 1998, he was hired by private respondents as product worker. He was assigned as a "bundler" in the company's Bundling Department. Petitioner was tasked to file, weigh, tie, bundle, record and deliver finished products. The company paid him P95.00 per day in 1998 with P5.00 to P10.00 increase in salary every six months thereafter.

After almost eleven (11) years, petitioner's employment was terminated without any just or authorized cause provided by law. He claimed that he did not commit any violation of the company's rules and regulations. Petitioner inquired from private respondents the reason for the termination of his services. But private respondents prevented petitioner from entering the premises. Because of this, the working relationship between the parties had been drastically strained.

On September 15, 2009, the Regional Arbitration Branch (RAB) rendered a Decision[6] granting the complaint of petitioner, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered declaring complainant as having been illegally terminated from his employment. Consequently, the respondents GT INDUSTRIAL DEV'T. INCORPORATED and/or COLIN B. TING, are directed to solidarily pay complainant LORETO T. DELA CALZADA the total amount of TWO HUNDRED THIRTY-SIX THOUSAND SIX HUNDRED FORTY PESOS and 09/100 (P236,640.09) in concept of separation pay, backwages, salary differentials, 13th month pay, and holiday pay, service incentive leave pay, and attorney's fees either in cash or in check payable to the NLRC-RAB VII, Cebu City, through the Cashier/s Office of this Arbitration Branch within ten (10) days from receipt of this Decision.
>
> All other claims are DISMISSED for lack of specifics and/or insufficiency of evidence.
>
> SO ORDERED.

Assailing the Labor Arbiter's decision as erroneous, private respondents filed a Memorandum of Appeal with Formal Entry of Appearance[7] before the NLRC. Private respondents anchored their appeal on the claim that the Labor Arbiter gravely abused her discretion in declaring that petitioner was illegally dismissed and in awarding his monetary claims. In order for private respondents to adequately present their case and supporting documents as evidence, they prayed for the relaxation of the rules and invoked the liberal construction policy. Private respondents insisted that petitioner was not dismissed. They alleged that petitioner was receiving the minimum wage provided by law. During the first week of October 2008, petitioner would no longer follow the instructions of his immediate superior, Alejandro Larrobis ("Larrobis"), particularly when petitioner was warned to stop talking during working hours, which reduced his output. Larrobis reported to the company's plant head Gilbert Cepe ("Cepe") about petitioner's attitude problem. On October 16, 2008, Cepe informed petitioner to stop talking during working hours. Petitioner apologized for the incident. On the following day, petitioner filed a leave of absence for one (1) day to settle some important matters. On October 18, 2008 and on the succeeding days, petitioner did not report back for work. Private respondent thought that petitioner was just absent. They were surprised and shocked to receive a copy of the summons and the complaint of petitioner before the NLRC, RAB No. VII.

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According to private respondents, petitioner threatened Larrobis because the latter told Cepe about petitioner's attitude problem. As a result, petitioner filed a complaint for illegal dismissal, dragging private respondents into this case. It is alleged that petitioner also warned Larrobis not to execute an affidavit; otherwise, the latter would suffer the consequences of such action.

On May 31, 2010, the NLRC rendered a Decision[8] affirming and modifying the Labor Arbiter's decision:

> WHEREFORE, in view of the foregoing, judgment is, hereby, rendered affirming with modification the decision of the Labor Arbiter dated 15 September 2009, deleting the award of holiday pay to the complainant and granting complainant moral damages in the amount of five thousand pesos (Php. 5,000.00) plus an attorney's fee of ten percent of the total monetary award. Thus, complainant's total monetary award as modified are as follows:
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> Previous total award by the LA
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> -
>
> P215,127.35
>
> Less: Holiday pay
>
> -
>
> P7,175.00
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> _____
>
> -
>
> P207,952.00
>
> Add: Moral damages
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> -
>
> P5,000.00
>
> Total award
>
> -
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> P212,952.35
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> Attorney's Fee (10%)
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> -
>
> P21,295.23
>
> GRAND TOTAL
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> -
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> P 234,247.59
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> SO ORDERED.

On June 25, 2010, private respondents filed their Motion for Reconsideration,[9] which persuaded public

respondent. On July 30, 2010, the NLRC issued a resolution reversing and setting aside its earlier decision.

Petitioner filed a Motion for Reconsideration,[10] which was denied by the NLRC in its Resolution[11] dated September 30, 2010. Hence, this Petition, raising the following grounds:[12]

- The Honorable Commission committed grave abuse of discretion when it reversed its initial factual findings and that of the Labor Arbiter of the fact of dismissal on flimsy grounds which are even contradictory to and unsupported by the evidence on record.

- The Honorable Commission gravely abused its discretion when it deleted the award of salary differential as this contravenes the evidence on record.

- The Honorable Commission gravely abused its discretion when it deleted the award of damages and attorney's fees without even giving an explanation thereto.

(Emphasis in the original)

The Ruling of the Court

Petitioner alleges that the NLRC committed grave abuse of discretion when it reversed its initial findings as well as the findings of the Labor Arbiter relative to the fact of dismissal on flimsy grounds, which are even contradictory to and unsupported by the evidence on record.

It is further posited that public respondent also erred in omitting and ignoring the work schedule of GT Industrial for the period covering October 27 to 31, 2008 which did not include petitioner's name, as well as the affidavit executed by Larrobis.

We grant the petition.

It is undisputed that petitioner is recognized as a regular employee of private respondents. The Court is, therefore, tasked to determine whether or not petitioner was illegally dismissed.

The Supreme Court held that in cases of illegal dismissal, the employer bears the burden of proof to establish that the termination was for a valid or authorized cause. But before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence that indeed he was dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[13]

In the case at bench, petitioner was able to establish his claim that he was illegally dismissed by private respondents. He presented Larrobis' Affidavit.[14] In said affidavit, it is stated that petitioner was forced to sign a document purporting to show that he voluntarily resigned from the company. Likewise, based on the same affidavit, petitioner was given an assurance that he would continue working with the company through another agency if he signed a resignation letter; otherwise, his services would be terminated.

Notably, petitioner also offered as evidence the company's work schedule "dated October 27-31, 2008", which clearly reflected that his name was no longer included in the list of workers.[15]

On the other hand, private respondents attempt to support their allegations that petitioner and his witness Alejandro Larrobis were lying, by submitting the Affidavit[16] executed by Flordeliza Avila (former Human Resource Officer of GT Industrial Development, Inc.). However, except for the affidavit executed by Avila, no other evidence was presented to prove that private respondents did not require petitioner to voluntarily resign by forcing him to sign a document. As correctly found by the NLRC in its earlier Decision, viz:[17]

> xxx, complainant's recollection of the events that transpired and the narration of his witness, Alejandro

> Larrobis himself, are far more convincing than respondent's seemingly concocted theory. Complainant filed a leave of absence on the 17th to consult a lawyer friend who is working with a radio station, about the incident that happened on October 16, wherein he was made to sign a document of his purported resignation. On the 18th, a Saturday, he reported for work and was able to get his pay, which complainant proved with the very evidence submitted by respondent consisting of a petty cash voucher dated October 18, 2008. It was on that day that he was informed that his employment was already terminated. On October 20, 2008, Monday complainant went back to GT upon advise of his lawyer to confirm his termination. True enough, his name was no longer included in the posted work schedule and he was already barred from entering the factory.

Likewise, the Court finds merit in petitioner's contention that the NLRC erred in citing the case of Chong Guan Trading v. NLRC[18] where the Supreme Court held that the "petitioner [therein] has consistently manifested its willingness to reinstate private respondent to his former position. This negates any intention on petitioner's part to dismiss private respondent. Petitioner first expressed its willingness to reinstate private respondent during the initial hearing of the case before the Labor Arbiter." Public respondent NLRC erroneously applied the ruling in Chong Guan Trading in finding that private respondents did not dismiss petitioner on the ground that they repeatedly requested him to return to work during the mandatory conferences.

In the case of Hantex Trading Co., Inc. and Chua v. Court of Appeals,[19] the Supreme Court explained:

> Neither does the fact that petitioners made offers to reinstate respondent legally disproves [sic] illegal dismissal. We agree with the observation of the Court of Appeals that the offer may very well be "a tacit admission of petitioners that they erred in dismissing him verbally and without observance of both substantive and procedural due process." Curiously, petitioners' offer of reinstatement was made only after more than one (1) month from the date of the filing of the illegal dismissal case. Their belated gesture of goodwill is highly suspect. If petitioners were indeed sincere in inviting respondent back to work in the company, they could have made the offer much sooner. In any case, their intentions in making the offer are immaterial, for the offer to re-employ respondent could not have the effect of validating an otherwise arbitrary dismissal.

Thus, private respondents' earnestness in offering re-employment to petitioner is suspect. It was only after the filing of the complaint for illegal dismissal that it occurred to private respondents, in a belated gesture of goodwill during the hearings conducted before the Labor Arbiter, to request petitioner to return back to work. If private respondents were indeed sincere, they should have made their offer much sooner. In the instant case, this Court doubts that private respondents' offer would have been made if petitioner had not filed a complaint against them.[20]

Further, private respondents miserably failed to give sufficient explanation why petitioner's name was not included in the list of workers in the work schedule of October 27 to 31, 2008. Private respondents' reason was the mere allegation that from October 18, 2009 and on the succeeding days, petitioner did not report for work anymore. This reasoning is unacceptable. Private respondents should have exerted diligent efforts to make petitioner return to work. They could have sent a notice to return to work or inquire about the unexplained absences incurred by petitioner. Undeniably, petitioner was illegally dismissed from employment.

Petitioner's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. Where reinstatement is no longer viable as an option, backwages shall be computed from the time of the illegal termination of employment up to the finality of the decision. Separation pay equivalent to one month salary for every year of service should likewise be awarded as an alternative in case reinstatement is not possible.[21]

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Here, due to the strained relations between respondents and petitioner, reinstatement is no longer feasible. Hence, the award of backwages and separation pay in favor of petitioner is proper.

Moreover, petitioner is entitled to his money claims such as the payment of holiday pay, service incentive leave pay, and 13th month pay. Private respondents as the employer of petitioner, having complete control over the records of the company, could have easily rebutted the monetary claims against it. All that private respondents had to do was to present the vouchers or payrolls showing payment of the same. But private respondents decided not to provide said documentary evidence. Therefore, this Court concludes that private respondents never paid said benefits. As a result, they must be ordered to settle their obligation with petitioner.[22]

Nevertheless, the Court finds that the NLRC's deletion of the award of salary differential to petitioner was correct. By presenting petty cash vouchers as documentary evidence, private respondents had adequately shown that petitioner was paid according to the minimum wage prevailing during the period of his employment.[23]

In addition, petitioner should be awarded moral damages since private respondents acted in bad faith in illegally dismissing the former. Moral damages may be recovered only where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs, or public policy, while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive or malevolent manner.[24]

Petitioner, having been compelled to litigate in order to seek redress for his illegal dismissal, is also entitled to the award of attorney's fees equivalent to 10% of the total monetary award.[25]

WHEREFORE, the instant petition is GRANTED and the assailed Resolutions dated June 30, 2010 and September 30, 2010 are hereby REVERSED and SET ASIDE. Petitioner Loreto Dela Calzada is found to have been illegally dismissed. The Decision of the NLRC dated May 31, 2010 is REINSTATED and AFFIRMED with modification, as follows:

a). The award of salary differential is deleted; and

b). An award of holiday pay is included.

Therefore, the instant case is REMANDED to the Labor Arbiter for further proceedings to determine the exact amounts of monetary benefits due petitioner, and to make a detailed computation thereof, which private respondents should pay without delay.

SO ORDERED.

Maxino, and Diy, JJ. concur.

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[1] Rollo, pp. 25-31.

[2] Ibid., pp. 48-61.

[3] Ibid., pp. 62-68.

[4] Ibid., pp. 32-34.

[5] Ibid., pp. 75-101.

[6] Ibid., pp. 35-44 (through Labor Arbiter Jermelina Pasignajen-Ay-Ad).

[7] Ibid., pp. 175-194.

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[8] Ibid., pp. 48-61.

[9] Ibid., pp. 195-216.

[10] Ibid., pp. 62-68.

[11] Ibid., pp. 32-34.

[12] Ibid., p. 10.

[13] Exodus International Construction Corporation and Javalera v. Biscocho, et al., G.R. No. 166109, February 23, 2011.

[14] Rollo, pp. 118-119.

[15] Ibid., pp. 102-104.

[16] Ibid., p. 218-222.

[17] Ibid., pp. 56-57.

[18] G.R. No. 81471, April 26, 1989.

[19] G.R. No. 148241, September 27, 2002.

[20] DUP Sound Phils. and Tan v. Court of Appeals, G.R. No. 168317, November 21, 2011.

[21] CRC Agricultural Trading and Catindig v. National Labor Relations Commission and Obias, G.R. No. 177664, December 23, 2009.

[22] Exodus International Construction Corporation and Javalera v. Biscocho, et al., supra.

[23] Rollo, pp. 240-287.

[24] Aguilar v. Burger Machine Holdings Corporation, et al., G.R. NO. 172062, October 30, 2006.

[25] Macasero v. Southern Industrial Gases Philippines and/or Neil Lindsay, G.R. No. 178524, January 30, 2009.

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