

DOMINICO C. CONGSON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, NOE BARGO, ROGER HIMENO, RAYMUNDO BADAGOS, PATRICIO SALVADOR, SR., NEHIL BARGO, JOEL MENDOZA, AND EMMAN...

G.R. No. 114250. April 05, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioner Dominico C. Congson seeks the nullification of the decision rendered by the National Labor Relations Commission in Case No. NLRC CA M-000681-92[1] dated 28 May 1993 and its resolution dated 28 January 1994, denying petitioner's motion for reconsideration.

In the challenged decision*, the NLRC affirmed in toto Labor Arbiter Arturo Aponesto's decision dated 27 September 1991, holding thus:

"WHEREFORE, the appealed decision is hereby AFFIRMED IN TOTO and the instant appeal is DISMISSED for lack of merit.

SO ORDERED." [2]

Petitioner is the registered owner of Southern Fishing Industry. Private respondents were hired on various dates[3] by petitioner as regular piece-rate workers. They were uniformly paid at a rate of P1.00 per tuna weighing thirty (30) to eighty (80) kilos per movement, that is - from the fishing boats down to petitioner's storage plant at a load/unload cycle of work until the tuna catch reached its final shipment/destination. They did the work of unloading tuna from fishing boats to truck haulers; unloading them again at petitioner's cold storage plant for filing, storing, cleaning, and maintenance; and finally loading the processed tuna for shipment. They worked seven (7) days a week.

During the first week of June 1990, petitioner notified his workers of his proposal to reduce the rate-per-tuna movement due to the scarcity of tuna. Private respondents resisted petitioner's proposed rate reduction. When they reported for work the next day, they were informed that they had been replaced by a new set of workers. When they requested for a dialogue with the management, they were instructed to wait for further notice. They waited for the notice of dialogue for a full week but in vain.

On 15 June 1990, private respondents filed a case against petitioner before the NLRC Sub-Regional Arbitration Branch No. XI in General Santos City, docketed as Case No. RAB-11-06-50165-90 for underpayment of wages (non-compliance with Rep. Act Nos. 6640 and 6727) and non-payment of overtime pay, 13th month pay, holiday pay, rest day pay, and five (5)-day service incentive leave pay; and for constructive dismissal. With respect to their monetary claims, private respondents charged petitioner with violation of the minimum wage law, alleging that with petitioner's rates and the scarcity of tuna catches, private respondents' average monthly earnings each did not exceed ONE THOUSAND PESOS (P1,000.00).

Accusing petitioner of constructive dismissal, private respondents claimed that petitioner refused to give them work assignments and replaced them with new workers when they showed resistance to the petitioner's proposed reduction of the rate-per-tuna movement.

On 2 July 1990, private respondents filed another case against petitioner, docketed as Case No. RAB-11-07-50179-90 containing an additional claim for separation pay should their complaint for constructive dismissal be upheld.

The two (2) cases were consolidated. Conciliation conferences were scheduled. On 24 July 1990, however, Labor Arbiter Aponesto directed the parties to submit their respective position papers within twenty (20) days from receipt of the directive, since no amicable settlement was reached in conciliation between the parties.

On 22 August 1990, private respondents filed their position paper reiterating the charges in their complaint for constructive dismissal, attaching thereto a Bill of Particulars containing the computations of their monetary claims. Petitioner, instead of filing his position paper, sought, through counsel, an extension of time within which to file his position paper.

On 20 September 1991, petitioner filed his position paper wherein he claimed that the only issue for resolution was private respondents' monetary claims, and that there was no constructive dismissal. Petitioner further argued that private respondents were not dismissed but rather, they abandoned their work after learning of petitioner's proposal to reduce tuna movement rates because of the scarcity of tuna, and that, it took private respondents one (1) month to return to work, but they could no longer be accommodated as petitioner had already hired their replacements after private respondents failed to heed petitioner's repeated demands for them to return to work. Upon said premises, petitioner contended that private respondents were not entitled to separation pay.

On 27 September 1991, Labor Arbiter Aponesto rendered a decision, with the following disposition:

"WHEREFORE, finding that complainants Noe Bargo, Roger Himeno, Raymundo Badagos, Patricio Salvador, Sr., Negil Bargo, Joel Mendoza and Emmanuel Calixihan were (constructively) dismissed from employment without just or unauthorized cause, hence illegal, respondents Southern Fishing Industry and Mr. Dominico Congson are hereby directed to pay, jointly and severally, their respective separation pay and monetary claims for salary differentials, 13th month pay and service incentive leave pay, as computed above, in the total sum of FIVE HUNDRED TWO THOUSAND EIGHT HUNDRED SIXTY FIVE (P502,865.00) PESOS.

The claims for overtime pay, holiday pay and rest day pay are, however, dismissed for lack of factual basis and for reasons aforecited.

SO ORDERED."[4]

In holding petitioner guilty of constructive dismissal, Labor Arbiter Aponesto made the following findings:

"After a careful evaluation of the foregoing facts, proofs, evidence, arguments and counter-arguments adduced by the parties we find that complainants were summarily dismissed from employment on the first week of June, 1990, when respondent Dominico Congson arbitrarily replaced them with another group of laborers to do the work of complainants. This was brought about by their reluctance or resistance to accept a new lower rate proposed by respondent the day before. The advise to 'wait for further notice' was indeed a confirmation that complainants were dismissed as underscored by the fact that such notice never came even until this date. Having been constructively and illegally dismissed complainants are therefore entitled to their prayer for separation pay. Their length of service 10 years and 6 years, respectively (supra), which respondent dismally failed to controvert or refute, shall be the basis of our computation, thus:

1. N. Bargo

(P2,670x10)

P 26,700

2. R. Himeno

(P2,670x10)

26,700

3. R. Badayos

(P2,670x10)

26,700

4. P. Salvador, Jr.

(P2,670x6)

16,020

5. Negil Bargo

(P2,670x10)

26,700

6. J. Mendoza

(P2,670x6)

16,020

7. E. Calixihan

(P2,670x6)

16,020

Total

P154,860"[5]

Except for private respondents' claim for overtime pay, holiday pay, and rest day pay which were dismissed, Labor Arbiter Aponesto granted the monetary claims of private respondents, in this wise:

"We likewise grant the monetary claims of complainants for wage differentials, 13th month pay and service incentive leave pay payment of or exemption from which respondents failed to show. Hence, given the 3-year period covered by their monetary claims, i.e. from June, 1987 to June, 1990 the monetary awards due complainants are as follows:

Name

Wage

Diff'l

13th

Mo. Pay

SIL

Total

Noe Bargo

42,120

6,510

1,085

P 49,715.00

R. Himeno

42,120

6,510

1,085

49,715.00

R. Badagos

42,120

6,510

1,085

49,715.00

P. Salvador

42,120

6,510

1,085

49,715.00

N. Bargo

42,120

6,510

1,085

49,715.00

J. Mendoza

42,120

6,510

1,085

49,715.00

Calixihan

42,120

6,510

1,085

49,715.00

Total

P 348,005.00

x x x

"Pertaining to salary differentials respondent failed to adduce any evidence or document at all to show that under their peculiar arrangements complainants were receiving compensation at par or above the then existing minimum wage; this, despite more than sufficient time afforded. Consequently, we have no other alternative but to give credence to complainants' assertion that their average income (each) did not exceed P1,000.00 a month (Annex "B", complainants' position paper), thus the differentials." [6]

On the other hand, Labor Arbiter Aponesto made short shrift of petitioner's defense by ruling that:

"We cannot give credence to the allegations or defenses put up by respondents: As stated, one of the principal claims of complainants is the payment of their separation pay which was specifically prayed by complainants when they filed the second case on July 2, 1990; this claim is likewise included in their Bill of particulars (Annex "C", complainants' position paper). We cannot sustain respondents' theory of abandonment. Record shows that shortly after complainants were constructively dismissed on the first week of June, 1990 they immediately filed the instant case for constructive dismissal on June 15, 1990. There is also no showing of a deliberate refusal on their part to resume work. Moreover, respondents dismally failed to substantiate their

general allegation that 'repeated demands' were made upon complainants to return to work." [7]

On appeal by petitioner, respondent NLRC found petitioner guilty of illegal dismissal. Holding that petitioner failed to substantiate his contention that private respondents abandoned their work, respondent NLRC ruled that petitioner replaced private respondents with a new set of workers without just cause and the required notice and hearing. Respondent NLRC therefore affirmed Labor Arbiter Aponesto's findings and monetary awards. Petitioner's motion for reconsideration and supplemental motion for reconsideration were denied for lack of merit in the challenged resolution dated 28 January 1994.

Hence, the present recourse by petitioner.

Petitioner imputes grave abuse of discretion to respondent NLRC in completely disregarding his motion for reconsideration and supplemental motion for reconsideration. He contends that said motions for reconsideration raised substantial issues which respondent NLRC failed to consider and resolve.

Petitioner's motion for reconsideration and supplemental motion for reconsideration raised only two (2) issues: a) the accuracy of Labor Arbiter Aponesto's computations in arriving at the monetary awards representing salary differentials; and b) the propriety or correctness of Labor Arbiter Aponesto's grant of separation pay to private respondents.

Petitioner takes issue with the manner Labor Arbiter Aponesto computed private respondents' wage differentials. In his supplemental motion for reconsideration, petitioner argued, thus:

"In the Decision rendered, the Arbiter awarded wage differential on the premise that complainants monthly average income is only P1,000.00 as alleged in their position paper. This is erroneous. Here is why:

Herein complainants were employed by respondents on a load-unload cycle of hauling 'bariles' from the fishing boats to the truck hauler of the respondents; then from the truck hauler down to the cold storage; the herein complainants were paid P1.00 per movement; that is, from the fishing boat to the cold storage, the herein complainants actually received the amount of P2.00, one (1) peso per movement; that there are two (2) movements from the fishing boat to the cold storage, hence complainants are actually receiving P2.00 per piece of tuna. The Arbiter must have been on the impression that there is only one (1) movement from the fishing boat to the cold storage. This is erroneous.

That finally, when the tuna is ready for export, the same is to be transferred from the cold storage to the ocean going vessel berthed at respondents wharf at Talisay, General Santos City, this time herein complainants are paid P3.00 per piece of tuna from the cold storage to the ocean going vessel as shown in the herewith attached Annexes.

In fine, all in all, there are three (3) movements from the time the tuna is unloaded from the fishing boat to the fish car then to the cold storage; and, finally from the cold storage to the vessel.

In addition to the amount of P1.00 per 'bariles' per movement herein complainants get the intestines and liver of the tuna as part of their salary. That for every tuna delivered, herein complainants extract at least three (3) kilos of intestines and liver. That the minimum prevailing price of tuna intestine and liver in 1986 to 1990 range from P15.00 to P20.00/kilo. The value of the tuna intestine and liver should be computed in arriving at the daily wage of herein complainants because the very essence of the agreement between complainants and respondent is: complainants shall be paid only P1.00 per tuna per movement BUT the intestines and liver of the tuna delivered shall go to the herein complainants. It should be noted that tuna intestines and liver are easily disposed of in any public market. Complainants themselves would not have agreed and would not have served respondent that long period of time if they are only paid P1.00 per tuna movement. What they are after, in truth and in fact is the tuna intestines and liver which they can easily convert into cash." [8]

Quite clearly, petitioner admits that the P1.00-per-tuna movement is the actual wage rate applied to private respondents as expressly agreed upon by both parties. Petitioner further admits that private respondents, per their request, were entitled to retrieve the tuna intestines and liver as part of their compensation. Finally, petitioner does not refute Labor Arbiter Aponesto when the latter fixed private respondents' individual monthly wage at P2,670 computed at the mandatory daily wage of P89.00.

However, it is the contention of petitioner that notwithstanding the fact that private respondents' actual cash wage fell below the minimum wage fixed by law, respondent NLRC should have considered as forming a substantial part of private respondents' total wages the cash value of the tuna liver and intestines private respondents were entitled to retrieve. Petitioner therefore argues that the combined value of private respondents' cash wage and the monetary value of the tuna liver and intestines clearly exceeded the minimum wage fixed by law.

Petitioner's foregoing arguments do not impress us.

The Labor Code expressly provides:

"Article 102. Forms of Payment. - No employer shall pay the wages of an employee by means of, promissory notes, vouchers, coupons, tokens, tickets, chits, or any object other than legal tender, even when expressly requested by the employee.

Payment of wages by check or money order shall be allowed when such manner of payment is customary on the date of effectivity of this Code, or is necessary because as specified in appropriate regulations to be issued by the Secretary of Labor or as stipulated in a collective bargaining agreement." (Underscoring supplied)

Undoubtedly, petitioner's practice of paying the private respondents the minimum wage by means of legal tender combined with tuna liver and intestines runs counter to the abovesited provision of the Labor Code. The fact that said method of paying the minimum wage was not only agreed upon by both parties in the employment agreement but even expressly requested by private respondents, does not shield petitioner. Article 102 of the Labor Code is clear. Wages shall be paid only by means of legal tender. The only instance when an employer is permitted to pay wages in forms other than legal tender, that is, by checks or money order, is when the circumstances prescribed in the second paragraph of Article 102 are present.

We therefore find no grave abuse of discretion on the part of respondent NLRC in upholding Labor Arbiter Aponesto's award of salary differentials.

With respect to the issue concerning the propriety or correctness of the grant of separation pay to private respondents, petitioner contends that, assuming *arguendo* that Labor Arbiter Aponesto's findings were proper as to private respondents' illegal dismissal, his decision did not state the reason why instead of reinstatement, separation pay has to be awarded to private respondents. Petitioner submits that under existing laws and jurisprudence, whenever there is a finding of illegal dismissal, the available and logical remedy is reinstatement. As a permissible exception to the general rule, separation pay may be awarded to the employee in lieu of reinstatement, by reason of strained relationship between the employer and employee. Since there was no finding or even allegation of strained relationship between petitioner and private respondents, respondent NLRC should have deleted, according to petitioner, the award of separation pay in Labor Arbiter Aponesto's decision.

We find petitioner's ratiocination on the impropriety of the award of separation pay to private respondents to be specious. Petitioner seeks to defeat the award of separation pay, in lieu of reinstatement, on the pretext that inasmuch as the existence of strained relationship -- as a permissible exception to an axiomatic order of reinstatement in cases of illegal dismissal -- was not adequately established, Labor Arbiter Aponesto should not have entertained at all private respondents' claim for separation pay.

A careful scrutiny of the records of the case at bench, however, readily discloses the existence of strained relationship between the petitioner and private respondents.

Firstly, petitioner consistently refused to re--admit private respondents in his establishment. Petitioner even replaced private respondents with a new set of workers to perform the tasks of private respondents. Moreover, although petitioner ostensibly argued in his supplemental motion for reconsideration that reinstatement should have been the proper remedy in the case at bench on his premise that the existence of strained relationship was not adequately established, yet petitioner never sincerely intended to effect the actual reinstatement of private respondents. For if petitioner were to pursue further the entire logic of his argument, the prayer in his supplemental motion for reconsideration should have contained not just the mere deletion of the award of separation pay, but precisely, the reinstatement of private respondents. Quite obviously then, notwithstanding petitioner's argument for reinstatement, he was only interested in the deletion of the award of separation pay to private respondents.

In the case of *Felix Esmalin vs. National Labor Relations Commission (3rd Division) and CARE Philippines*,^[9] we held that strained relationship is fairly established if the records of the case showed consistent refusal of the employer to accept the dismissed employee, to wit:

"From the records of the case, it can be discerned that reinstatement is no longer viable in view of the strained relations between petitioner-employee (Felix Esmalin) and private respondent-employer (CARE Philippines). This is very evident from the vehement and consistent stand of CARE Philippines in refusing to accept back petitioner Esmalin. Instead, petitioner should be awarded separation pay as an alternative for reinstatement."

And secondly, private respondents themselves, from the very start, had already indicated their aversion to their continued employment in petitioner's establishment. The very filing of their second case before Labor Arbiter Aponesto (RAB-11-07-90179-90) specifically for separation pay is conclusive of private respondents' intention to sever their working ties with petitioner.

In the case of *Arturo Lagniton, Sr. vs. National Labor Relations Commission, et al.*,^[10] we ruled that the refusal of the dismissed employee to be re-admitted is constitutive of strained relations, thus:

"It appears that relations between the petitioner and the complainants have been so strained that the complainants are no longer willing to be reinstated. As such reinstatement would only exacerbate the animosities that have developed between the parties, the public respondents were correct in ordering instead the grant of separation pay to the dismissed employees in the interest of industrial peace."

We therefore find no grave abuse of discretion on the part of respondent NLRC in upholding Labor Arbiter Aponesto's grant of private respondents' prayer for separation pay in lieu of reinstatement.

WHEREFORE, premises considered, the petition is hereby DISMISSED. The challenged decision of respondent NLRC dated 28 May 1993 is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] A consolidation of Cases No. RAB-11-06-50165-90 and No. RAB-11-07-90179-90 both entitled *TUPAS In Behalf of Its Members: Noe Bargo and Six (6) Others v. Southern Fishing Industries/Dominico Congson*.

* Penned by Hon. Commissioner Oscar Abella, with the concurrence of Hon. Commissioners Leon Gonzaga, Jr., and Musib Buat.

[2] Rollo, p. 34.

[3] Noe and Nehil Bargo, Roger Himeno and Badagos, in 1980; Patricio Salvador, Sr., Joel Mendoza and Emmanuel Calixihan, in 1984.

[4] Rollo, pp. 72-73.

[5] Rollo, pp. 69-70.

[6] Rollo, pp. 70-72.

[7] Rollo, pp. 71-72.

[8] Rollo, pp. 41-42.

[9] G.R. No. 67880, 15 September 1989, 177 SCRA 537, 549.

[10] G.R. No. 86339, 5 February 1993, 218 SCRA 456, 459-460.

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