

SPOUSES ANNABELLE AND LINELL VILLARUEL, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND NARCISO GUARINO, RESPONDENTS. D E C I S I O N

G.R. No. 120180. January 20, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

This special civil action for certiorari seeks the review of the decision[1] dated 9 December 1994 of public respondent National Labor Relations Commission (NLRC), Fourth Division, in NLRC CA No.V-0220-94 (RAB-06-09-50295-91) which reversed the Labor Arbiter's decision dismissing the petitioners' complaint for illegal dismissal, as well as the resolution dated 9 February 1995 denying reconsideration thereof.

On 15 June 1988, private respondent Narciso Guarino started working as master baker at petitioners' bakery known as "Ideal Bakery," receiving a daily wage of P40.00. His work schedule was from 6:00 A.M. to 8:00 P.M. and 11:00 P.M. to 6:00 o'clock the following morning. On 11 April 1991, private respondent was told by the petitioners not to report for work anymore after he asked for a ten-peso increase of his daily wage.

Consequently, on 3 September 1991, private respondent filed a complaint[2] before the Regional Office No. VI, Department of Labor and Employment for recovery of wages, night shift differential, overtime pay, and 13th month pay, which complaint was later amended[3] to include illegal dismissal with reinstatement or separation pay, payment of backwages; service incentive leave, moral, exemplary and actual damages plus attorney's fees.

In their Position Paper,[4] petitioners denied private respondent's demands contending that the latter is not an employee but a partner in the bakery business with a 50-50 sharing from the profits derived therefrom; that private respondent abandoned his work when he failed to return from vacation; and that they were surprised to know later that private respondent worked in another bakery which was later known as "7-A".

On 11 May 1994, Labor Arbiter Dennis D. Juanon rendered a decision[5] dismissing the complaint for lack of merit. The labor arbiter ruled that there exists no employer-employee relationship between the parties and that private respondent's claim for illegal dismissal and other money claims were without basis. He said:

"In sum , xxx we give more weight to the credibility of respondent Linell Villaruel's declarations. Further, common human experience, observations dictate that in cases like these where capital in business ventures are limited, not sufficient, some members of the corporation or partnership put up capital while others contribute their labor as capital. Assuming without admitting, however that such is not exactly the case, then what could have practically transpired is sharing the profits based on a piece rate basis, that is on the volume of bread produced per day. Besides the allegations in passing, adduced by respondent Linell Villaruel on abandonment by complainant of his work with respondent appears likewise credible considering the wide gap of income to be realized by complainant if he works with the other bakery-competitor 7-A since there he is going to receive a much bigger amount. Consequently, we resolve issue number one in favor of respondent, that there exists no employer-employee relationship between complainant and respondent hence, complainants claim for Illegal

Dismissal and other money claims is without basis.”[6]

Private respondent appealed to the NLRC which reversed the labor arbiter’s decision. The dispositive portion of the NLRC decision reads:

“WHEREFORE, the decision, dated May 11,1991 rendered by Labor Arbiter Dennis D. Juanon is hereby REVERSED and SET ASIDE and another one entered:

- Declaring the dismissal of complainant to be without just cause and without due process.
- Directing respondents to pay complainant full backwages from April 11,1991 to April 30,1991 and in lieu of reinstatement, to pay complainant separation pay equivalent to one (1) month pay for every year of service; and
- Directing respondents to pay the complainant salary differentials, overtime pay, holiday premium pay, 13th month pay for 1988, 1989 and 1990, and night shifts differentials computed as follows:

I.

BACKWAGES

April 11, 1991 to April 30, 1991

= P 1, 757.50

P 92.50 x 19 days

II.

SEPARATION PAY

P 92.50 x 30 days x 3 years

= 8,325.00

III.

SALARY DIFFERENTIALS - (June 15/88 to April 11/91)

June 15, 1988 - December 31, 1988

MWR -P 60.00

ASR -P 40.00

P 20.00 x 199 days

= P 3, 980.00

January 1, 1990 - June 30, 1989

MWR -P 60.00

ASR -P 40.00

P 20.00 x 390.90 / 2

= P 3,909.00

July 1 - December 31, 1989

MWR -P 75.00

ASR -P 40.00

P 35.00 x 390.90 / 2

= P 6,840.75

June 1, 1991 - November 26, 1990

MWR - P 75.00

ASR - P 40.00

P 35.00 x 390.90 / 2 x 10.90

= P12,427.35

months

Nov. 27, 1990 - Dec. 28, 1990

MWR - P 82.50

ASR - P 40.00

P 42.50 x 32 days

= P 1,360.00

Dec. 29, 1990 - Dec. 31, 1990

MWR - P 92.50

ASR -P 40.00

P 52.50 x 3 days

= P 157.50

Jan. 1, 1991 - Apr. 11, 1991

MWR - P 92.50

ASR - P 40.00

P 52.50 x 101 days P 5,302.50

= P33,977.10

IV.

HOLIDAY PREMIUM PAY

1988:

P 60.00 x 200% x 4 Holidays = P 480.00

1989:

P 60.00 x 200% x 6 Holidays = P 720.00

P 75.00 x 200% x 4 Holidays = P 600.00

1990:

P 75.00 x 200% x 7 Holidays = P 1,050.00

P 82.50 x 200% x 3 Holidays = P 495.00

1991:

$P 92.40 \times 200\% \times 4 \text{ Holidays} = P 740.00$

= P 4,085.00

V.

13th MONTH PAY

1988:

$P 11,940.00 \times 1/12 = P 995.00$

1989:

$P 14,170.13 \times 1/12 = P 1,180.84$

1990:

$P 29,547.56 \times 1/12 = P 2,462.30$

1991:

$P 9,342.50 \times 1/12 = P 778.54$

= P 4,421.68

TOTAL MC

P 52,566.28

“All other claims of complainant are hereby dismissed for insufficiency of supporting evidence.[7]

In so ruling, the NLRC reasoned out that:

“First, the labor arbiter erroneously concluded that the complainant never refuted or denied the allegations of the respondent, to the effect that complainant convinced the said respondents to put up a bakery in Roxas City

and they agreed to put up a partnership on a 50-50 sharing basis; that respondents cannot afford to hire the services of regular workers and most of the workers are respondents' relatives; that on April 5, 1991, complainant went on vacation leave and was never heard again; and that on May 1, 1991, respondents were surprised to discover that complainant was already employed as a baker by a new bakery owned by Mrs. Genoves at the same site where respondents' bakery was formerly located; that at one time, while working with respondents, complainant also worked with Pizza Junction for three (3) months, six (6) days a week for three (3) hours per day.

"As correctly pointed by complainant, his Affidavit dated July 29, 1992 (pp. 39-40, Rollo), controverted all said allegations of respondents.

"Moreover, no evidence was presented by the respondents to show that there was, in reality, a 50-50 sharing of the net income from the operation of the bakery between complainant and the respondents. Neither did the respondents present any evidence of the partnership agreement with complainant.

"From the records, We are convinced that complainant was a regular employee - not a partner - of respondents.

"Being a regular employee, complainant can only be dismissed for causes provided for in the Labor Code.

"Respondents in this case have not shown that complainant's dismissal was for a just or authorized cause. Considering that the respondents have the burden of proving that the dismissal of complainant was for a just or authorized cause, their failure to do so results in the finding that the dismissal was unjustified x x x.

"The conclusion of the Labor Arbiter that complainant abandoned his work to transfer to a better - paying job in another bakery is devoid of factual support.

"It will be recalled that complainant was dismissed on April 11, 1991. But he transferred to 7-A Bakery on May 1, 1991 or almost a month after he was illegally dismissed." [8]

On 9 February 1995, petitioners moved for a reconsideration of the decision but the same was denied for lack of merit.[9]

Petitioners now come to us via this petition for certiorari contending that the NLRC gravely abused its discretion when:

- it rendered its decision finding that private respondent was a regular employee of petitioner and not a partner.
- it found that private respondent did not abandon the partnership and transfer to another bakery.
- it directed the petitioners to pay private respondent salary differentials, overtime pay, holiday premium, 13th month pay for 1988 to 1990 and night shift differential.

The petition essentially raises a factual issue. We have time and again ruled that the jurisdiction of this Court to review a decision or resolution of the NLRC, in a petition for certiorari under Rule 65 of the Rules of Court, does not include a correction of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion.[10] Grave abuse of discretion is committed when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner. An abuse of discretion does not necessarily follow just because there is a reversal by the NLRC of the decision of the labor arbiter, such as the case at bench. Neither does the mere variance in the evidentiary assessment of the NLRC and that of the labor arbiter warrant another full review of the facts.[11] The NLRC's factual findings if supported by substantial evidence, is entitled to great respect and even finality, unless petitioner is able to show that it simply and arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[12]

The NLRC ruling that there is an employer-employee relationship between the petitioners and the private

respondent is supported by substantial evidence as can be gleaned from a reading of the assailed decision.

On the other hand the Labor Arbiter's finding that a partnership exists between the petitioners and private respondent is unsupported by any documentary evidence. Aside from his self-serving testimony, petitioner Linell Villaruel failed to present the contract of partnership or agreement as well as the accounting records showing the production or gross earnings of the bakery business and the receipts of the 50% sharing in the profits received by private respondent. Petitioners likewise failed to submit the mayor's permit and the business permit despite the labor arbiter's Order[13] giving rise to the presumption that the said documents were purposely suppressed because the same would negate their claim of partnership. Thus, in *Opulencia Ice Plant and Storage vs. NLRC*,[14] we ruled:

“ x x x It should be noted that petitioners repeatedly failed or refused to submit all the payroll slips covering the period during which private respondent claims to have been employed by them despite repeated directives from the Labor Arbiter x x x ‘ In this regard, We can aptly apply the disputable presumption that evidence willfully suppressed would be adverse if produced. “

On the issue of abandonment, the Labor Arbiter's conclusion that private respondent abandoned his work to transfer to a better-paying job in another bakery, as correctly observed by the NLRC, is likewise devoid of factual support.

Private respondent transferred to 7-A Bakery only after he was told by the petitioner not to report for work anymore. Understandably, he had to look for another job to support himself and more importantly, his family.

Further, as aptly argued by the Solicitor General[15] if it were true that private respondent abandoned his work, then petitioners should have served him with a notice of termination on the ground of abandonment as required under Sec. 2, Rule XIV, Book V. Rules and Regulation Implementing the Labor Code which provides that:

Sec. 2. Notice of Dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

But petitioners failed to do so, bolstering further private respondent's claim that he did not abandon his work but was illegally dismissed.

Finally, the dismissal of private respondent being illegal, he is entitled to the monetary claims prayed for, that is, salary differentials, overtime pay, holiday premium, 13th month pay for the years 1988, 1989 and 1990, and night shift differentials which we assume to be correct computations thereof. And since private respondent is now employed with another employer and has no desire to be reinstated, he is entitled to separation pay equivalent to one (1) month's salary for every year of service.

WHEREFORE, the decision of the public respondent NLRC is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Regalado, (Chairman), Puno, and Mendoza, JJ., concur.

[1] Per Commissioner Amorito V. Canete and concurred in by Presiding Commissioner Irene C. Ceniza and Commissioner Bernabe S. Batuhan.

[2] P. 1, Record

[3] Amended Complaint, p. 5, Id.

[4] Pp. 28-29, Id.

[5] Pp. 110-119, Id.

[6] Decision of Labor Arbiter, pp. 110-119, Id.

[7] Decision of NLRC, pp. 194-196, Id.

[8] pp. 192-194, Id.

[9] pp. 227-228, Id.

[10] Morales vs. NLRC, 241 SCRA 103; Capitol Industrial Construction Group vs. NLRC, 221 SCRA 469.

[11] Philippine Advertising Counselors, Inc. vs. NLRC, 263 SCRA 400-401

[12] Loadstar Shipping Co., Inc. vs. Gallo, 229 SCRA 660; Sta. Fe Construction Co. vs. NLRC, 230 SCRA 593; Morales vs. NLRC, 241 SCRA 103; Capitol Industrial Construction Group vs. NLRC, 221 SCRA 469.

[13] Order dated 22 February 1994, p. 101, Record.

[14] 228 SCRA 473.

[15] Memorandum of the Solicitor General , p. 122, Rollo

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