

**AKLAN ELECTRIC COOPERATIVE INCORPORATED (AKELCO),
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(FOURTH DIVISION), RODOLFO M. RETISO AND 165 OTHERS,
RESPONDENTS.**

G.R. No. 121439. January 25, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In his petition for certiorari and prohibition with prayer for writ of preliminary injunction and/or temporary restraining order, petitioner assails (a) the decision dated April 20, 1995, of public respondent National Labor Relations Commission (NLRC), Fourth (4th) Division, Cebu City, in NLRC Case No. V-0143-94 reversing the February 25, 1994 decision of Labor Arbiter Dennis D. Juanon and ordering petitioner to pay wages in the aggregate amount of P6,485,767.90 to private respondents, and (b) the resolution dated July 28, 1995 denying petitioner's motion for reconsideration, for having been issued with grave abuse of discretion.

A temporary restraining order was issued by this Court on October 9, 1995 enjoining public respondent from executing the questioned decision upon a surety bond posted by petitioner in the amount of P6,400,000.00.[2]

The facts as found by the Labor Arbiter are as follows:[3]

"These are consolidated cases/claims for non-payment of salaries and wages, 13th month pay, ECOLA and other fringe benefits as rice, medical and clothing allowances, submitted by complainant Rodolfo M. Retiso and 163 others, Lyn E. Banilla and Wilson B. Sallador against respondents Aklan Electric Cooperative, Inc. (AKELCO), Atty. Leovigildo Mationg in his capacity as General Manager; Manuel Calizo, in his capacity as Acting Board President, Board of Directors, AKELCO.

Complainants alleged that prior to the temporary transfer of the office of AKELCO from Lezo Aklan to Amon Theater, Kalibo, Aklan, complainants were continuously performing their task and were duly paid of their salaries at their main office located at Lezo, Aklan.

That on January 22, 1992, by way of resolution of the Board of Directors of AKELCO allowed the temporary transfer holding of office at Amon Theater, Kalibo, Aklan per information by their Project Supervisor, Atty. Leovigildo Mationg, that their head office is closed and that it is dangerous to hold office thereat;

Nevertheless, majority of the employees including herein complainants continued to report for work at Lezo Aklan and were paid of their salaries.

That on February 6, 1992, the administrator of NEA, Rodrigo Cabrera, wrote a letter addressed to the Board of AKELCO, that he is not interposing any objections to the action taken by respondent Mationg...

That on February 11, 1992, unnumbered resolution was passed by the Board of AKELCO withdrawing the temporary designation of office at Kalibo, Aklan, and that the daily operations must be held again at the main office of Lezo, Aklan;[4]

That complainants who were then reporting at the Lezo office from January 1992 up to May 1992 were duly paid of their salaries, while in the meantime some of the employees through the instigation of respondent Mationg continued to remain and work at Kalibo, Aklan;

That from June 1992 up to March 18, 1993, complainants who continuously reported for work at Lezo, Aklan in compliance with the aforementioned resolution were not paid their salaries;

That on March 19, 1993 up to the present, complainants were again allowed to draw their salaries; with the exception of a few complainants who were not paid their salaries for the months of April and May 1993;

Per allegations of the respondents, the following are the facts:

- That these complainants voluntarily abandoned their respective work/job assignments, without any justifiable reason and without notifying the management of the Aklan Electric Cooperative, Inc. (AKELCO), hence the cooperative suffered damages and systems loss;
- That the complainants herein defied the lawful orders and other issuances by the General Manager and the Board of Directors of the AKELCO. These complainants were requested to report to work at the Kalibo office x x x but despite these lawful orders of the General Manager, the complainants did not follow and wilfully and maliciously defied said orders and issuance of the General Manager; that the Board of Directors passed a Resolution resisting and denying the claims of these complainants, x x x under the principle of "no work no pay" which is legally justified; That these complainants have "mass leave" from their customary work on June 1992 up to March 18, 1993 and had a "sit-down" stance for these periods of time in their alleged protest of the appointment of respondent Atty. Leovigildo Mationg as the new General Manager of the Aklan Electric Cooperative, Inc. (AKELCO) by the Board of Directors and confirmed by the Administrator of the National Electrification Administration (NEA), Quezon City; That they engaged in " . . . slowdown mass leaves, sit downs, attempts to damage, destroy or sabotage plant equipment and facilities of the Aklan Electric Cooperative, Inc. (AKELCO)."

On February 25, 1994, a decision was rendered by Labor Arbiter Dennis D. Juanon dismissing the complaints.[5]

Dissatisfied with the decision, private respondents appealed to the respondent Commission.

On appeal, the NLRC's Fourth Division, Cebu City,[6] reversed and set aside the Labor Arbiter's decision and held that private respondents are entitled to unpaid wages from June 16, 1992 to March 18, 1993, thus:[7]

"The evidence on records, more specifically the evidence submitted by the complainants, which are: the letter dated April 7, 1993 of Pedrito L. Leyson, Office Manager of AKELCO (Annex "C"; complainants' position paper; Rollo, p.102) addressed to respondent Atty. Leovigildo T. Mationg; respondent AKELCO General Manager; the memorandum of said Atty. Mationg dated 14 April 1993, in answer to the letter of Pedrito Leyson (Annex "D" complainants' position paper); as well as the computation of the unpaid wages due to complainants (Annexes "E" to "E-3"; complainants' position paper, Rollo, pages 1024 to 1027) clearly show that complainants had rendered services during the period - June 16, 1992 to March 18, 1993. The record is bereft of any showing that the respondents had submitted any evidence, documentary or otherwise, to controvert this asseveration of the complainants that services were rendered during this period. Subjecting these evidences submitted by the complainants to the crucible of scrutiny, We find that respondent Atty. Mationg responded to the request of the Office Manager, Mr. Leyson, which We quote, to wit:

"Rest assured that We shall recommend your aforesaid request to our Board of Directors for their consideration and appropriate action. This payment, however, shall be subject, among others, to the availability of funds."

This assurance is an admission that complainants are entitled to payment for services rendered from June 16, 1992 to March 18, 1993, specially so that the recommendation and request comes from the office manager himself who has direct knowledge regarding the services and performance of employees under him. For how

could one office manager recommend payment of wages, if no services were rendered by employees under him. An office manager is the most qualified person to know the performance of personnel under him. And therefore, any request coming from him for payment of wages addressed to his superior as in the instant case shall be given weight.

Furthermore, the record is clear that complainants were paid of their wages and other fringe benefits from January, 1992 to May, 1992 and from March 19, 1993 up to the time complainants filed the instant cases. In the interregnum, from June 16, 1992 to March 18, 1993, complainants were not paid of their salaries, hence these claims. We could see no rhyme nor reason in respondents' refusal to pay complainants salaries during this period when complainants had worked and actually rendered service to AKELCO.

While the respondents maintain that complainants were not paid during this interim period under the principle of "no work, no pay", however, no proof was submitted by the respondents to substantiate this allegation. The labor arbiter, therefore, erred in dismissing the claims of the complainants, when he adopted the "no work, no pay" principle advanced by the respondents.

WHEREFORE, in view of the foregoing, the appealed decision dated February 25, 1994 is hereby Reversed and Set Aside and a new one entered ordering respondent AKELCO to pay complainants their claims amounting to P6,485,767.90 as shown in the computation (Annexes "E" to "E-3")."

A motion for reconsideration was filed by petitioner but the same was denied by public respondent in a resolution dated July 28, 1995.[8]

Petitioner brought the case to this Court alleging that respondent NLRC committed grave abuse of discretion citing the following grounds:[9]

- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE FACTUAL FINDINGS AND CONCLUSIONS OF THE LABOR ARBITER, AND DISREGARDING THE EXPRESS ADMISSION OF PRIVATE RESPONDENTS THAT THEY DEFIED PETITIONER'S ORDER TRANSFERRING THE PETITIONER'S OFFICIAL BUSINESS OFFICE FROM LEZO TO KALIBO AND FOR THEM TO REPORT THEREAT.

- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN CONCLUDING THAT PRIVATE RESPONDENTS WERE REALLY WORKING OR RENDERING SERVICE ON THE BASIS OF THE COMPUTATION OF WAGES AND THE BIASED RECOMMENDATION SUBMITTED BY LEYSON WHO IS ONE OF THE PRIVATE RESPONDENTS WHO DEFIED THE LAWFUL ORDERS OF PETITIONER.

- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN CONSIDERING THE ASSURANCE BY PETITIONER'S GENERAL MANAGER MATIONG TO RECOMMEND THE PAYMENT OF THE CLAIMS OF PRIVATE RESPONDENTS AS AN ADMISSION OF LIABILITY OR A RECOGNITION THAT COMPENSABLE SERVICES WERE ACTUALLY RENDERED.

- GRANTING THAT PRIVATE RESPONDENTS CONTINUED TO REPORT AT THE LEZO OFFICE, IT IS STILL GRAVE ABUSE OF DISCRETION FOR PUBLIC RESPONDENT TO CONSIDER THAT PETITIONER IS LEGALLY OBLIGATED TO RECOGNIZE SAID CIRCUMSTANCE AS COMPENSABLE SERVICE AND PAY WAGES TO PRIVATE RESPONDENTS FOR DEFYING THE ORDER FOR THEM TO REPORT FOR WORK AT THE KALIBO OFFICE WHERE THE OFFICIAL BUSINESS AND OPERATIONS WERE CONDUCTED.

- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AND SERIOUS, PATENT AND PALPABLE ERROR IN RULING THAT THE "NO WORK, NO PAY" PRINCIPLE DOES NOT APPLY FOR LACK OF EVIDENTIARY SUPPORT WHEN PRIVATE REPONDENTS ALREADY

ADMITTED THAT THEY DID NOT REPORT FOR WORK AT THE KALIBO OFFICE.

- PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN ACCORDING WEIGHT AND CREDIBILITY TO THE SELF-SERVING AND BIASED ALLEGATIONS OF PRIVATE RESPONDENTS, AND ACCEPTING THEM AS PROOF, DESPITE THE ESTABLISHED FACT AND ADMISSION THAT PRIVATE RESPONDENTS DID NOT REPORT FOR WORK AT THE KALIBO OFFICE, OR THAT THEY WERE NEVER PAID FOR ANY WAGES FROM THE TIME THEY DEFIED PETITIONER'S ORDERS.

Petitioner contends that public respondent committed grave abuse of discretion in finding that private respondents are entitled to their wages from June 16, 1992 to March 18, 1993, thus disregarding the principle of "no work, no pay". It alleges that private respondents stated in their pleadings that they not only objected to the transfer of petitioner's business office to Kalibo but they also defied the directive to report thereat because they considered the transfer illegal. It further claims that private respondents refused to recognize the authority of petitioner's lawful officers and agents resulting in the disruption of petitioner's business operations in its official business office in Lezo, Aklan, forcing petitioner to transfer its office from Lezo to Kalibo transferring all its equipments, records and facilities; that private respondents cannot choose where to work, thus, when they defied the lawful orders of petitioner to report at Kalibo, private respondents were considered dismissed as far as petitioner was concerned. Petitioner also disputes private respondents' allegation that they were paid their salaries from January to May 1992 and again from March 19, 1993 up to the present but not for the period from June 1992 to March 18, 1993 saying that private respondents illegally collected fees and charges due petitioner and appropriated the collections among themselves for which reason they are claiming salaries only for the period from June 1992 to March 1993 and that private respondents were paid their salaries starting only in April 1993 when petitioner's Board agreed to accept private respondents back to work at Kalibo office out of compassion and not for the reason that they rendered service at the Lezo office. Petitioner also adds that compensable service is best shown by timecards, payslips and other similar documents and it was an error for public respondent to consider the computation of the claims for wages and benefits submitted merely by private respondents as substantial evidence.

The Solicitor General filed its Manifestation in lieu of Comment praying that the decision of respondent NLRC be set aside and payment of wages claimed by private respondents be denied for lack of merit alleging that private respondents could not have worked for petitioner's office in Lezo during the stated period since petitioner transferred its business operation in Kalibo where all its records and equipments were brought; that computations of the claims for wages and benefits submitted by private respondents to petitioner is not proof of rendition of work. Filing its own Comment, public respondent NLRC claims that the original and exclusive jurisdiction of this Court to review decisions or resolutions of respondent NLRC does not include a correction of its evaluation of evidence as factual issues are not fit subject for certiorari.

Private respondents, in their Comment, allege that review of a decision of NLRC in a petition for certiorari under Rule 65 does not include the correctness of its evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion and that factual findings of administrative bodies are entitled to great weight, and accorded not only respect but even finality when supported by substantial evidence. They claim that petitioner's Board of Directors passed an unnumbered resolution on February 11, 1992 returning back the office to Lezo from Kalibo Aklan with a directive for all employees to immediately report at Lezo; that the letter-reply of Atty. Mationg to the letter of office manager Leyson that he will recommend the payment of the private respondents' salary from June 16, 1992 to March 18, 1993 to the Board of Directors was an admission that private respondents are entitled to such payment for services rendered. Private respondents state that in appreciating the evidence in their favor, public respondent NLRC at most may be liable for errors of judgment which, as differentiated from

errors of jurisdiction, are not within the province of the special civil action of certiorari.

Petitioner filed its Reply alleging that review of the decision of public respondent is proper if there is a conflict in the factual findings of the labor arbiter and the NLRC and when the evidence is insufficient and insubstantial to support NLRC's factual findings; that public respondent's findings that private respondents rendered compensable services were merely based on private respondents' computation of claims which is self-serving; that the alleged unnumbered board resolution dated February 11, 1992, directing all employees to report to Lezo Office was never implemented because it was not a valid action of AKELCO's legitimate board.

The sole issue for determination is whether or not public respondent NLRC committed grave abuse of discretion amounting to excess or want of jurisdiction when it reversed the findings of the Labor Arbiter that private respondents refused to work under the lawful orders of the petitioner AKELCO management; hence they are covered by the "no work, no pay" principle and are thus not entitled to the claim for unpaid wages from June 16, 1992 to March 18, 1993.

We find merit in the petition.

At the outset, we reiterate the rule that in certiorari proceedings under Rule 65, this Court does not assess and weigh the sufficiency of evidence upon which the labor arbiter and public respondent NLRC based their resolutions. Our query is limited to the determination of whether or not public respondent NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering the assailed resolutions.[10] While administrative findings of fact are accorded great respect, and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this court had not hesitated to reverse their factual findings.[11] Factual findings of administrative agencies are not infallible and will be set aside when they fail the test of arbitrariness.[12] Moreover, where the findings of NLRC contradict those of the labor arbiter, this Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[13]

We find cogent reason, as shown by the petitioner and the Solicitor General, not to affirm the factual findings of public respondent NLRC.

We do not agree with the finding that private respondents had rendered services from June 16, 1992 to March 18, 1993 so as to entitle them to payment of wages. Public respondent based its conclusion on the following: (a) the letter dated April 7, 1993 of Pedrito L. Leyson, Office Manager of AKELCO addressed to AKELCO's General Manager, Atty. Leovigildo T. Mationg, requesting for the payment of private respondents' unpaid wages from June 16, 1992 to March 18, 1993; (b) the memorandum of said Atty. Mationg dated 14 April 1993, in answer to the letter request of Pedrito Leyson where Atty. Mationg made an assurance that he will recommend such request; (c) the private respondents' own computation of their unpaid wages. We find that the foregoing does not constitute substantial evidence to support the conclusion that private respondents are entitled to the payment of wages from June 16, 1992 to March 18, 1993. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[14] These evidences relied upon by public respondent did not establish the fact that private respondents actually rendered services in the Kalibo office during the stated period.

The letter of Pedrito Leyson to Atty. Mationg was considered by public respondent as evidence that services were rendered by private respondents during the stated period, as the recommendation and request came from the office manager who has direct knowledge regarding the services and performance of employees under him. We are not convinced. Pedrito Leyson is one of the herein private respondents who are claiming for unpaid wages and we

find his actuation of requesting in behalf of the other private respondents for the payment of their backwages to be biased and self-serving, thus not credible.

On the other hand, petitioner was able to show that private respondents did not render services during the stated period. Petitioner's evidences show that on January 22, 1992, petitioner's Board of Directors passed a resolution temporarily transferring the Office from Lezo, Aklan to Amon Theater, Kalibo, Aklan upon the recommendation of Atty. Leovigildo Mationg, then project supervisor, on the ground that the office at Lezo was dangerous and unsafe. Such transfer was approved by then NEA Administrator, Rodrigo E. Cabrera, in a letter dated February 6, 1992 addressed to petitioner's Board of Directors.[15] Thus, the NEA Administrator, in the exercise of supervision and control over all electric cooperatives, including petitioner, wrote a letter dated February 6, 1992 addressed to the Provincial Director PC/INP Kalibo Aklan requesting for military assistance for the petitioner's team in retrieving the electric cooperative's equipments and other removable facilities and/or fixtures consequential to the transfer of its principal business address from Lezo to Kalibo and in maintaining peace and order in the cooperative's coverage area.[16] The foregoing establishes the fact that the continuous operation of the petitioner's business office in Lezo Aklan would pose a serious and imminent threat to petitioner's officials and other employees, hence the necessity of temporarily transferring the operation of its business office from Lezo to Kalibo. Such transfer was done in the exercise of a management prerogative and in the absence of contrary evidence is not unjustified. With the transfer of petitioner's business office from its former office, Lezo, to Kalibo, Aklan, its equipments, records and facilities were also removed from Lezo and brought to the Kalibo office where petitioner's official business was being conducted; thus private respondents' allegations that they continued to report for work at Lezo to support their claim for wages has no basis.

Moreover, private respondents in their position paper admitted that they did not report at the Kalibo office, as Lezo remained to be their office where they continuously reported, to wit:[17]

"On January 22, 1991 by way of a resolution of the Board of Directors of AKELCO it allowed the temporary holding of office at Amon Theater, Kalibo, Aklan, per information by their project supervisor, Atty. Leovigildo Mationg that their head office is closed and that it is dangerous to hold office thereat.

Nevertheless, majority of the employees including the herein complainants, continued to report for work at Lezo, Aklan and were paid of their salaries.

x x x

The transfer of office from Lezo, Aklan to Kalibo, Aklan being illegal for failure to comply with the legal requirements under P.D. 269, the complainants remained and continued to work at the Lezo Office until they were illegally locked out therefrom by the respondents. Despite the illegal lock out however, complainants continued to report daily to the location of the Lezo Office, prepared to continue in the performance of their regular duties.

Complainants thus could not be considered to have abandoned their work as Lezo remained to be their office and not Kalibo despite the temporary transfer thereto. Further the fact that they were allowed to draw their salaries up to May, 1992 is an acknowledgment by the management that they are working during the period.

x x x

It must be pointed out that complainants worked and continuously reported at Lezo office despite the management holding office at Kalibo. In fact, they were paid their wages before it was withheld and then were allowed to draw their salaries again on March 1993 while reporting at Lezo up to the present.

Respondents' acts and payment of complainants' salaries and again from March 1993 is an unequivocal recognition on the part of respondents that the work of complainants is continuing and uninterrupted and they

are therefore entitled to their unpaid wages for the period from June 1992 to March 1993."

The admission is detrimental to private respondents' cause. Their excuse is that the transfer to Kalibo was illegal but we agree with the Labor Arbiter that it was not for private respondents to declare the management's act of temporarily transferring the AKELCO office to Kalibo as an illegal act. There is no allegation nor proof that the transfer was made in bad faith or with malice. The Labor Arbiter correctly rationalized in its decision as follows:[18]

"We do not subscribe to complainants theory and assertions. They, by their own allegations, have unilaterally committed acts in violation of management's/respondents' directives purely classified as management prerogative. They have taken amongst themselves declaring management's acts of temporarily transferring the holding of the AKELCO office from Lezo to Kalibo, Aklan as illegal. It is never incumbent upon themselves to declare the same as such. It is lodged in another forum or body legally mantled to do the same. What they should have done was first to follow management's orders temporarily transferring office for it has the first presumption of legality. Further, the transfer was only temporary. For:

"The employer as owner of the business, also has inherent rights, among which are the right to select the persons to be hired and discharge them for just and valid cause; to promulgate and enforce reasonable employment rules and regulations and to modify, amend or revoke the same; to designate the work as well as the employee or employees to perform it; to transfer or promote employees; to schedule, direct, curtail or control company operations; to introduce or install new or improved labor or money savings methods, facilities or devices; to create, merge, divide, reclassify and abolish departments or positions in the company and to sell or close the business.

x x x

Even as the law is solicitous of the welfare of the employees it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose can not be denied. The transfer of assignment of a medical representative from Manila to the province has therefore been held lawful where this was demanded by the requirements of the drug company's marketing operations and the former had at the time of his employment undertaken to accept assignment anywhere in the Philippines. (Abbot Laboratories (Phils.), Inc., et al. vs. NLRC, et al., G.R. No. L-76959, Oct. 12, 1987).

It is the employer's prerogative to abolish a position which it deems no longer necessary, and the courts, absent any findings of malice on the part of the management, cannot erase that initiative simply to protect the person holding office (Great Pacific Life Assurance Corporation vs. NLRC, et al., G.R. No. 88011, July 30, 1990)."

Private respondents claim that petitioner's Board of Directors passed an unnumbered resolution dated February 11, 1992 returning back the office from its temporary office in Kalibo to Lezo. Thus, they did not defy any lawful order of petitioner and were justified in continuing to remain at Lezo office. This allegation was controverted by petitioner in its Reply saying that such unnumbered resolution was never implemented as it was not a valid act of petitioner's Board. We are convinced by petitioner's argument that such unnumbered resolution was not a valid act of petitioners legitimate Board considering the subsequent actions taken by the petitioner's Board of Directors decrying private respondents inimical act and defiance, to wit (1) Resolution No. 411, s. of 1992 on September 9, 1992, dismissing all AKELCO employees who were on illegal strike and who refused to return to work effective January 31, 1992 despite the directive of the NEA project supervisor and petitioner's acting general manager;[19] (2) Resolution No. 477, s. of 1993 dated March 10, 1993 accepting back private respondents who staged illegal strike, defied legal orders and issuances, out of compassion, reconciliation, Christian values and humanitarian reason subject to the condition of "no work, no pay"[20] (3) Resolution No. 496, s. of 1993 dated June 4, 1993,

rejecting the demands of private respondents for backwages from June 16, 1992 to March 1993 adopting the policy of "no work, no pay" as such demand has no basis, and directing the COOP Legal Counsel to file criminal cases against employees who misappropriated collections and officers who authorized disbursements of funds without legal authority from the NEA and the AKELCO Board.[21] If indeed there was a valid board resolution transferring back petitioner's office to Lezo from its temporary office in Kalibo, there was no need for the Board to pass the above-cited resolutions.

We are also unable to agree with public respondent NLRC when it held that the assurance made by Atty. Mationg to the letter-request of office manager Leyson for the payment of private respondents' wages from June 1992 to March 1993 was an admission on the part of general manager Mationg that private respondents are indeed entitled to the same. The letter reply of Atty. Mationg to Leyson merely stated that he will recommend the request for payment of backwages to the Board of Directors for their consideration and appropriate action and nothing else, thus, the ultimate approval will come from the Board of Directors. We find well-taken the argument advanced by the Solicitor General as follows:[22]

The allegation of private respondents that petitioner had already approved payment of their wages is without basis. Mationg's offer to recommend the payment of private respondents' wages is hardly approval of their claim for wages. It is just an undertaking to recommend payment. Moreover, the offer is conditional. It is subject to the condition that petitioner's Board of Directors will give its approval and that funds were available. Mationg's reply to Leyson's letter for payment of wages did not constitute approval or assurance of payment. The fact is that, the Board of Directors of petitioner rejected private respondents demand for payment (Board Resolution No. 496, s. 1993)

We are accordingly constrained to overturn public respondent's findings that petitioner is not justified in its refusal to pay private respondents' wages and other fringe benefits from June 16, 1992 to March 18, 1993; public respondents stated that private respondents were paid their salaries from January to May 1992 and again from March 19, 1993 up to the present. As cited earlier, petitioner's Board in a Resolution No. 411 dated September 9, 1992 dismissed private respondents who were on illegal strike and who refused to report for work at Kalibo office effective January 31, 1992; since no services were rendered by private respondents they were not paid their salaries. Private respondents never questioned nor controverted the Resolution dismissing them and nowhere in their Comment is it stated that they questioned such dismissal. Private respondents also have not rebutted petitioner's claim that private respondents illegally collected fees and charges due petitioner and appropriated the collections among themselves to satisfy their salaries from January to May 1992, for which reason, private respondents are merely claiming salaries only for the period from June 16, 1992 to March 1993.

Private respondents were dismissed by petitioner effective January 31, 1992 and were accepted back by petitioner, as an act of compassion, subject to the condition of "no work, no pay" effective March 1993 which explains why private respondents were allowed to draw their salaries again. Notably, the letter-request of Mr. Leyson for the payment of backwages and other fringe benefits in behalf of private respondents was made only in April 1993, after a Board Resolution accepting them back to work out of compassion and humanitarian reason. It took private respondents about ten months before they requested for the payment of their backwages, and the long inaction of private respondents to file their claim for unpaid wages cast doubts as to the veracity of their claim.

The age-old rule governing the relation between labor and capital, or management and employee of a "fair day's wage for a fair day's labor" remains as the basic factor in determining employees' wages. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed,[23] or otherwise illegally prevented from working,[24] a situation which we find is not present in the instant case. It would neither be fair nor just to allow

private respondents to recover something they have not earned and could not have earned because they did not render services at the Kalibo office during the stated period.

Finally, we hold that public respondent erred in merely relying on the computations of compensable services submitted by private respondents. There must be competent proof such as time cards or office records to show that they actually rendered compensable service during the stated period to entitle them to wages. It has been established that the petitioner's business office was transferred to Kalibo and all its equipments, records and facilities were transferred thereat and that it conducted its official business in Kalibo during the period in question. It was incumbent upon private respondents to prove that they indeed rendered services for petitioner, which they failed to do. It is a basic rule in evidence that each party must prove his affirmative allegation. Since the burden of evidence lies with the party who asserts the affirmative allegation, the plaintiff or complainant has to prove his affirmative allegations in the complaint and the defendant or the respondent has to prove the affirmative allegation in his affirmative defenses and counterclaim.[25]

WHEREFORE, in view of the foregoing, the petition for CERTIORARI is GRANTED. Consequently the decision of public respondent NLRC dated April 20, 1995 and the Resolution dated July 28, 1995 in NLRC Case No. V-0143-94 are hereby REVERSED and SET ASIDE for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. Private respondents complaint for payment of unpaid wages before the Labor Arbiter is DISMISSED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Myrna A. Iletto, Leopoldo Casibu, Jr., Vincent Fulgencio, Aradam R. De Manuel, Philip John B. Buenaflor, Cecilia A. Laudaus, Alton O. Flores, Delly A. Yerro, Rowena A. Isidro, John I. Selorio, Nilo I. Tribo, Melenita G. Quimpo, Andres V. Isturis, Rafael Reyes, Manuel M. Laurdaus, Jr., Nicasio Nepomuceno, Bonifacio Quimpo, Villamarte P. Villanueva, Elizabeth M. David, Rudy A. Irada, Bebina B. Fulgencio, Rolando Gerardo, Alejandro M. Arcenio, Emerita C. Mainit, Pedro Nalangan IV, Reynaldo P. Irac, Rodolfo M. Taran, Victorio Rowan, Gervacio V. Rapiz, Jossie S. Lacorte, Joselito I. Lauron, Gabriel B. Casibu, Reynaldo F. Autencio, Hernany R. Pamatian, Perfecto I. Cahilig, Antonio S. Baldo, Bonifacio A. Arboleda, Jesus L. Bandiola, Alma M. Lumio, Teody L. Iradon, Alberto F. Icasas, Pancho A. Beltran, Napoleon B. Jorque, Oscar R. Isidro, Eduardo B. Alcober, Librado J. Belarmino, Jr., Teodisia E. Cirriano, Florencia S. Laurdaus, Jolito C. Abello, Leovigildo I. Lumio, Jose P. Dalisay, Emelio F. Cuatriz, Antonio R. Fulgencio, Tomas Dela Rosa, Marcelino R. Celis, Noel T. Macawili, Arnaldo C. DeLa Cruz, Saine T. Cuenco, Alfredo I. Ilete, Benedict M. Ureta, Editha I. Roldan, Reginato I. Reyes, Florencio S. Sevilla, Rosine F. DeLa Cruz, Antonio R. Lucas, Jay Lloyd S. Beltran, Ludrigo S. Fuentes, Rogelio M. Flores, Leonardo J. Delgado, Manolito E. Canlas, Allan G. Iguban, Salvador S. Maagma, Bernardo B. Aguirre, Jr. Ariel G. Ingeniero, Nabel S. Casidsid, Leoncito T. Legaspi, Paulino B. Castillo, Jose Y. Navarro, Danilo M. Taran, Paul F. Paras, Ramon M. Flores, Ricardo I. Iletto, Ellen A. De La Rosa, Telesforo N. Retuba, Arturo R. Roldan, Nestor U. Salido, Antonio T. Nicolas, Jr., Wilfredo S. Mique, Roger A. Pamatian, Raul S. Paraz, Luis I. De Jose, Jimuel S. Mopia, Diego A. Inocenciso, Godofredo J. Pelayo, Marilyn C. Javier, Melvin T. Prado, Willie D. Pamatian, Asisculo M. Maaya, Jo Arlu L. Sabar, Editio V. Mapiza, Crispin I. Fernandez, Jose O. Pelayo, Jr. Rexel S. Briones, Rey A. Inson, Norberto S. Ponce, Alixes M. Regalado, Rey P. Autencio, Godofredo I. Nepomuceno, Filmore R. Ibabao, Arnel A. Gonzales, Felix E. Aguirre, Dionito M. DeLa Cruz, Nancy B. Pamatian, Teddy J. Belarmino, Roger Q. Serrano, Luciano P. Oquindo, Roy S. Paraz, Rolando P. Nemez, Juan M. Tabas, Joselito M. Gerardo, Rafael M. Silverio, Agustin J. Gonzales, Jose I. Geronimo, Jr., Remegio C.

Fernandez, Ramon R. Fernandez, Renato B. De Guzman, Rosebello T. Masigon, Cesar I. Ileto, Ronnie De La Cruz, Teddy T. Nicolas, Zaldy M. Semira, Emelio P. Trinidad, Magdaleno O. Tagle, Archimedes C. Beltran, Jessie S. Sta. Maria, Nilo S. Solidum, Michael P. Roba, Jeaneflor L. Samar, Rosel M. Milloroso, Archimedes C. Retiro, Evelyn R. Nepomuceno, Eduardo I. Nepomuceno, Benny S. Sallador, Constantino A. Romaquin, Rolando D. Marte, Bonifacio R. Nino, Prudencio B. Malimban, Rodrigo C. Reyesencio, Elizabeth T. Nalangan, Nilda F. Legaspi, Virgilio M. Moribus, Alberto I. Revester, Concordio I. Yambing, Jr. Esther C. Taplac, Leoncito P. Dalisay, Oscar V. Tasoy, Asahel M. Tranco, Melvin U. Torres, Hilton B. Yasa, Flordelisa I. Coching, Julius I. Villanueva, Nemis N Bernaldo, Pedrito L. Leyson, Wilson C. Sallador and Lyn B. Abanilla.

[2] Rollo, p. 124.

[3] Rollo, pp. 55-59.

[4] Petitioner in its Reply alleged that this unnumbered resolution was never implemented because it was not a valid action of the legitimate board of petitioner AKELCO.

[5] Rollo, pp. 32-66.

[6] Ibid, pp. 22-29; Through Commissioner Bernabe S. Batuhan, ponente, Presiding Commissioner Irene E. Ceniza and Commissioner Amorito V. Cañete.

[7] Ibid, pp. 26-28.

[8] Rollo, pp. 30-31, Annex "B".

[9] Rollo, pp. 10-11.

[10] Building Care Corporation vs. NLRC, et al., Feb. 26, 1997; Flores vs. NLRC, 253 SCRA 494; Ilocos Sur Electric Cooperative, Inc. vs. NLRC, 241 SCRA 36.

[11] Philippine Airlines, Inc. vs. NLRC, 279 SCRA 445.

[12] Zarate, Jr. vs. Olegario, et. al, 263 SCRA 1.

[13] Hilario Magcalas, et al. vs. NLRC, et al., March 13, 1997; Raycor Aircontrol Systems, Inc. vs. NLRC, et al., September 9, 1996.

[14] Rule 133, Section 5 of the Revised Rules of Court.

[15] Rollo, p. 71.

[16] Rollo, p. 72.

[17] Rollo, p. 80, Annex "M".

[18] Rollo, p. 63-64.

[19] Rollo, p. 73.

[20] Ibid, p. 75, Annex "J".

[21] Ibid, p. 78, Annex "L".

[22] Rollo, pp. 181-182.

[23] Caltex Refinery Employees Association (CREA) vs. Brillantes, 279 SCRA 218; Durabuilt Recapping Plant and Co. vs. NLRC, 152 SCRA 328; Social Security System vs. SSS Supervisors' Union, 117 SCRA 746 citing

J.P. Heilbronn Co. vs. National Labor Union, 92 Phil. 577.

[24] Caltex Refinery Employees' Association (CREA) vs. Brillantes, 279 SCRA 218.

[25] Jimenez vs. NLRC, 256 SCRA 84.

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