

C. PLANAS COMMERCIAL AND MARCIAL COHU, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND RAMIL DE LOS REYES, RESPONDENTS.

G.R. No. 121696. February 11, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

C. PLANAS COMMERCIAL, a business entity engaged in merchandising and retailing of plastic products and fruits, was charged by respondent Ramil de los Reyes with illegal dismissal and non-payment of basic wages and certain monetary benefits.[1] De los Reyes claimed that he started working as deliveryman of PLANAS in August 1988 and later tasked with selling fruits until 4 June 1993 when he was allegedly dismissed.

On 15 April 1994 the Labor Arbiter found petitioners C. Planas Commercial (PLANAS hereon) and Marcial Cohu, its manager, to have illegally dismissed Ramil de los Reyes. Consequently, petitioners were ordered to reinstate him with back wages and to pay him salary differentials, 13th month pay and service incentive pay.[2]

On appeal public respondent National Labor Relations Commission reversed and set aside the decision of the Labor Arbiter which declared the dismissal of de los Reyes illegal as well as the grant to him of back wages and other monetary benefits, except salary differentials in the amount of P36,342.80 which NLRC sustained.[3] Since their motion for reconsideration was denied,[4] petitioners filed on 18 December 1995 the instant petition for certiorari with prayer for preliminary injunction.[5] They impute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of NLRC for sustaining the award of salary differentials despite the fact that private respondent Ramil de los Reyes was then receiving a daily wage higher than the mandated minimum wage for retail establishments employing less than ten (10) workers, like petitioner PLANAS.

In light of the pertinent facts, we find the petition without merit. In his Position Paper supporting his complaint before the Labor Arbiter for illegal dismissal, underpayment of wages and non-payment of certain monetary claims,[6] private respondent (complainant below) alleged that he had been employed as deliveryman from August 1988 to 4 June 1993 when he was illegally dismissed by employer PLANAS. His daily wage at the time of his employment was P50.00 which was later increased to P100.00. He further claimed that aside from being underpaid he worked fourteen (14) hours a day, i.e., from 6:00 p.m. to 8:00 a.m., without overtime pay and night shift differential pay from Monday to Sunday with no rest day nor premium pay for holiday and rest day, and without 13th month pay from 1988 to 1993.[7]

Responding to private respondent's claim, petitioners alleged that they did not dismiss Ramil de los Reyes who was only their helper assigned to sell fruits in front of their stall in Divisoria; on the contrary, they claimed he abandoned his work after PLANAS' manager, petitioner Marcial Cohu, confronted him regarding reports that whenever the former was not around he would sell the fruits at their stall at a higher price than pocket the difference. According to Cohu, private respondent admitted that the reports about his overpricing were true and that after his admission he did not report for work anymore; instead, he tended the fruit stall of another

employer.[8]

Petitioners also denied in their Position Paper any liability for the wages and benefits claimed by de los Reyes. They argued that in their business of merchandising and retailing fruits and plastic products they were leasing a stall in Divisoria with less than ten (10) persons under their employ, hence, exempted from giving holiday pay and service incentive leave pay. Considering that their store hours were from 10:00 a.m. to 6:00 p.m. only, de los Reyes could not be entitled to overtime pay, much less to any night shift differential. Neither could he claim any rest day since he worked only for six (6) days a week.[9]

Private respondent de los Reyes, in his Reply,[10] insisted that he was dismissed without any notice after he complained about his low salary. In fact, according to him, this practice of petitioners resulted in the filing of eight (8) labor cases against them by his co-employees.[11] Moreover, de los Reyes maintained that petitioners employed around thirty (30) persons in their wholesale/retail business.

To fortify their claim that de los Reyes abandoned his job and thus was not terminated, petitioners attached six (6) pictures to their Rejoinder[12] showing private respondent at work in the stall of one Aling Conchita Paredes located at C. Planas, Divisoria, occupied by his new employer, a certain Jimmy Chua a.k.a. Sionga, a fruit dealer.

No amicable settlement having been arrived at before the Labor Arbiter, a decision[13] was rendered which addressed two (2) basic issues: (a) whether private respondent was dismissed or whether he abandoned his job; and, (b) whether private respondent was entitled to his monetary claims.[14]

Finding for private respondent, the Labor Arbiter disregarded petitioners' defense of abandonment and reiterated that a worker's complaint for illegal dismissal was inconsistent with the charge of abandonment since it was illogical for an employee to abandon his job and come to the labor tribunal for reinstatement.[15] Consequently, for having dismissed de los Reyes without any written notice as required by law,[16] petitioners were ordered to reinstate him immediately to his former position and pay him back wages of P33,675.20.[17]

As regards the other money claims, the Labor Arbiter disallowed overtime pay and night shift differentials for lack of sufficient evidence inasmuch as de los Reyes' job of selling fruits, as opined by the Labor Arbiter, was normally a daytime activity.[18] However, an award of salary differentials in the amount of P36,342.80, 13th month pay of P8,138.00 and service incentive pay of P1,565.00 was made in favor of private respondent for petitioners' failure to submit the corresponding employment records, e.g., payrolls to controvert private respondent's monetary claims.

Raising once more the issue of abandonment in their appeal before public respondent,[19] petitioners argued that since PLANAS was merely operating a very small business with less than ten (10) employees, or contrary to the Labor Arbiter's finding that it was a plastic company with around thirty (30) employees, they could not be expected to make a "big deal" out of the reports on overcharging and have them recorded in the police blotter before confronting whoever was involved.[20] Petitioners also reiterated their position that de los Reyes stopped working for PLANAS after Manager Marcial Cohu confronted him about the overpricing and he was thereafter seen working at another stall without being terminated by PLANAS. Petitioners further disputed the monetary award totalling P79,721.00 adjudged against them by the Labor Arbiter claiming that the latter failed to present the factual bases of the computation made.[21]

After a review of the case, the NLRC[22] set aside the finding of illegal dismissal on the ground that petitioners' contention that de los Reyes had abandoned his job was duly substantiated by the pictures on record clearly portraying him at work in his new employment.[23] Thus, NLRC ruled that private respondent was not entitled to reinstatement with back wages. Except for the award of salary differentials due to underpayment of salaries, the

other monetary awards granted by the Labor Arbiter were likewise set aside by the NLRC.[24] According to public respondent, petitioners never denied much less rebutted de los Reyes' claim for salary differentials.[25]

Still dissatisfied with that portion of the NLRC decision awarding salary differentials to de los Reyes, petitioners seek the writ of certiorari through this petition.[26] They also pray for a writ of preliminary injunction to enjoin the execution of the assailed monetary award while this petition is pending so as not to render the same moot and academic and to prevent irreparable damage and injury to them.[27]

Petitioners invoke the exemption provided by law for retail establishments which employ not more than ten (10) workers to justify their non-liability for the salary differentials in question. They insist that PLANAS is a retail establishment leasing a very small and cramped stall in the Divisoria market which cannot accommodate more than ten (10) workers in the conduct of its business.[28]

We are unconvinced. The records disclose de los Reyes' clear entitlement to salary differentials. Well-settled is the rule that factual findings of labor officials who are deemed to have acquired expertise in matters within their jurisdiction are generally accorded not only respect but even finality and bind this Court when supported by substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[29] Thus, as long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties before them, all that is left is our stamp of finality by affirming the factual findings made by them.[30] In this case, the award of salary differentials by the NLRC in favor of de los Reyes was made pursuant to RA 6727 otherwise known as the Wage Rationalization Act, and the Rules Implementing Wage Order Nos. NCR-01 and NCR-01-A and Wage Order Nos. NCR-02 and NCR-02-A.

Petitioners claim exemption under the aforesaid law. However, the best proof that they could have adduced was their approved application for exemption in accordance with applicable guidelines issued by the Commission. Section 4, subpar. (c) of RA 6727 categorically provides:

Retail/service establishments regularly employing not more than ten (10) workers may be exempted from the applicability of this Act upon application with and as determined by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission. Whenever an application for exemption has been duly filed with the appropriate Regional Board, action on any complaint for alleged non-compliance with this Act shall be deferred pending resolution of the application for exemption by the appropriate Regional Board. In the event that applications for exemptions are not granted, employees shall receive the appropriate compensation due them as provided for by this Act plus interest of one percent (1%) per month retroactive to the effectivity of this Act (emphasis supplied).

Extant in the records is the fact that petitioners had persistently raised the matter of their exemption from any liability for underpayment without substantiating it by showing compliance with the aforesaid provision of law. It bears stressing that the NLRC affirmed the Labor Arbiter's award of salary differentials due to underpayment on the ground that de los Reyes' claim therefor was not even denied or rebutted by petitioners.[31]

More importantly, NLRC correctly upheld the Labor Arbiter's finding that PLANAS employed around thirty (30) workers.[32] We have every reason to believe that petitioners need at least thirty (30) persons to conduct their business considering that Manager Cohu did not submit any employment record to prove otherwise. As employer, Manager Cohu ought to be the keeper of the employment records of all his workers. Thus, it was well within his means to refute any monetary claim alleged to be unpaid.[33] His inability to produce the payrolls from their files without any satisfactory explanation can be interpreted no less as suppression of vital evidence adverse to PLANAS.

Be that as it may, whether PLANAS has thirty (30) workers or ten (10) workers as respectively advanced by de los Reyes and PLANAS is a factual issue which is not a proper subject of this certiorari petition, as the power of this Court to review labor cases is limited to the issue of jurisdiction and grave abuse of discretion.[34] In the absence of any indication that the NLRC has exercised its power in a capricious, arbitrary and whimsical manner, the extraordinary writ of certiorari will not lie.[35] Considering that the NLRC's award of salary differentials is proper, petitioners shall also be liable for 13th month pay of P8,138.00 and service incentive pay of P1,565.00 as mandated by law.

In the interest of justice, we deem it necessary to re-examine the reversal by the NLRC of the Labor Arbiter's finding that de los Reyes was illegally dismissed although this matter is not raised in the petition. There is no debate as to technical rules being relaxed and construed liberally in labor cases to uphold the rights of the worker.

Somehow, the NLRC abused its discretion in holding that private respondent simply abandoned his work after he was confronted by his employer through its manager with the reported overpricing of the fruits that he sold and his pocketing of the difference. The NLRC considered the pictures of de los Reyes while at work under a new employment as sufficient proof to substantiate petitioners' defense of abandonment.

We are more inclined to uphold the Labor Arbiter's findings on this issue of illegal dismissal. From the NLRC's point of view, it would seem that the abandonment was triggered by the employer's charges of overpricing and the unlawful taking of the excess amounts. However, apart from Cohu's plain allegation that he confronted de los Reyes regarding these charges, there is no evidence on record to prove the veracity of Cohu's claim. It is more likely that after de los Reyes complained about his low salary, he was no longer allowed to report for work, hence, was dismissed without cause and without the requisite written notice. Under the circumstances, it is more logical to suppose that de los Reyes never abandoned his job. In fact, he even presented his case before the Labor Arbiter where he sought reinstatement. Our ruling in *Sentinel Security Agency, Inc. v. NLRC*[36] is relevant -

Abandonment, as a just and valid cause for termination, requires a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work (cited cases omitted; emphasis supplied).

Thus, we sustain the Labor Arbiter's grant of back wages and order of reinstatement in favor of de los Reyes. Since de los Reyes was illegally dismissed on 4 June 1993 after the effectivity of RA No. 6715 on 21 March 1989, he is entitled to full back wages, inclusive of allowances and other benefits computed from the date of his dismissal until he is actually reinstated. If reinstatement shall no longer be feasible, he shall be entitled to separation pay in accordance with law.

WHEREFORE, the petition is DISMISSED for lack of merit. The Decision of the Labor Arbiter dated 15 April 1994 declaring the dismissal of Ramil de los Reyes illegal, ordering his immediate reinstatement and awarding him back wages, 13th month pay, service incentive leave pay and salary differentials is REINSTATED. The Labor Arbiter is DIRECTED immediately to compute accordingly the monetary benefits awarded to private respondent Ramil de los Reyes in accordance with law, including his separation pay in the event reinstatement is no longer feasible.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena JJ., concur.

[1]Complaint dated 5 July 1993, docketed as NLRC NCR Case No. 00-07-04312-93; Original Records, p. 2.

- [2]Decision penned by Labor Arbiter Ernesto S. Dinopol; Rollo, pp. 28-33.
- [3]Decision of NLRC (Third Division) dated 15 June 1995 penned by Commissioner Ireneo B. Bernardo, concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Joaquin A. Tanodra; id., pp.40-47.
- [4]NLRC Resolution dated 31 July 1995, id., pp. 50-51.
- [5]Rollo, pp. 3-24.
- [6] Money claims of De los Reyes include overtime pay, premium pay for holiday and rest day, night shift differential, service incentive leave pay and 13th month pay.
- [7]Original Records, pp. 12-17.
- [8]Id., pp. 22-25.
- [9]Ibid.
- [10]Original Records, pp. 27-28.
- [11]De los Reyes' eight (8) co-employees who similarly filed complaint against PLANAS were Roger Afralda, Rogelio Amar, Rudy Allauegan, Alfredo Ofialda, Diolito Marinette, Jonel Patron, Jaime Vili and Junny Villamor.
- [12]Original Records, pp. 31-33.
- [13]See Note 2.
- [14]Id., p. 30.
- [15]Ibid.
- [16]Sec. 2, Rule XIV, Book V, of the Labor Code.
- [17]Rollo, p. 32.
- [18]Id., pp. 30-31.
- [19]Original Records, pp. 44-52.
- [20]Id., pp. 46-47.
- [21]Id., pp. 47-48.
- [22]See Note 3.
- [23]Id., p. 45.
- [24]Ibid.
- [25]Ibid.
- [26]See Note 5.
- [27]Rollo, pp. 17, 115-116.
- [28]Id., p. 14.
- [29]Philippine Airlines, Inc. (PAL) v. NLRC, G.R. No. 119868, 28 July 1997, 276 SCRA 391; see also Philippine National Construction Corporation v. NLRC, G.R. No. 116929, 7 July 1995, 245 SCRA 668, and Mina v. NLRC,

G.R. Nos. 97251-52, 14 July 1995, 246 SCRA 229.

[30]Pono v. NLRC, G.R. No. 118860, 17 July 1997, 275 SCRA 611.

[31]See Note 3, p. 45.

[32]See Note 2, p. 31.

[33]See Helpmate, Inc. v. NLRC, G.R. No. 112323, 28 July 1997.

[34]San Miguel Foods, Inc. - Cebu B-Meg Feed Plant v. Laguesma, G.R. No. 116172, 10 October 1996, 236 SCRA 68, 85, citing Oscar Ledesma and Co. v. NLRC, 246 SCRA 47, 51 (1995).

[35]Zarate, Jr. v. Olegario, G.R. No. 90655, 7 October 1996, 263 SCRA 1, 9, citing Sta. Fe Construction Co. v. NLRC, 230 SCRA 593, 597 (1994) and Pan Pacific Industrial Sales Co., Inc. v. NLRC, 194 SCRA 633 (1991).

[36]G.R. No. 122468, 3 September 1998, pp. 10-11.

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