FLOREN HOTEL AND/OR LIGAYA CHU, DELY LIM AND JOSE CHUA LIM, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, RODERICK A. CALIMLIM, RONALD T. RICO, JUN A. ABALOS, LITO F. BA...

G.R. NO. 155264. May 06, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioners Floren Hotel, Ligaya Chu, Dely Lim and Jose Chua Lim seek to annul the Decision,[1] dated September 10, 2002, of the Court of Appeals in CA-G.R. SP No. 60685 insofar as it ruled that petitioners had constructively dismissed private respondents Roderick A. Calimlim and Ronald T. Rico, hence the petitioners are liable to the private respondents for their proportionate 13[th] month pay, service incentive leave pay, and indemnity.

At the time of their termination, private respondents Roderick A. Calimlim, Ronald T. Rico and Jun A. Abalos were working in the hotel as room boys, private respondent Lito F. Bautista as front desk man, and private respondent Gloria B. Lopez as waitress. They all started working for the hotel in 1993, except for Jun A. Abalos who started only in 1995.

In the afternoon of June 6, 1998, petitioner Dely Lim randomly inspected the hotel rooms to check if they had been properly cleaned. When she entered Room 301, she found private respondent Lito F. Bautista sleeping half-naked with the air-conditioning on. Lim immediately called the attention of the hotel's acting supervisor, Diosdado Aquino, who had supervision over Bautista. Lim admonished Aquino for not supervising Bautista more closely, considering that it was Bautista's third offense of the same nature.

When she entered Room 303, she saw private respondents Calimlim and Rico drinking beer, with four bottles in front of them. They had taken these bottles of beer from the hotel's coffee shop. Like Bautista, they had switched on the air conditioning in Room 303.

That same afternoon, Dely Lim prepared a memorandum for Bautista, citing the latter for the following incidents: (1) sleeping in the hotel rooms; (2) entertaining a brother-in-law for extended hours during duty hours; (3) use of hotel funds for payment of SSS loan without management consent; (4) unauthorized use of hotel's air-con; and (5) failure to pay cash advance in the amount of P4,000.[2]

In the presence of Acting Supervisor Aquino as well as workers Jennifer Rico, Romel Macaraeg, Mario Resquino and Charie Chua, Dely Lim tried to give Bautista a copy of the memorandum but Bautista refused to receive it. Bautista then went on absence without leave. Calimlim and Rico, embarrassed by the incident, went home. When they returned to work the next day, they were served with a notice[3] of suspension for one week.

Like Bautista, they refused to receive the notice of suspension, but opted to serve the penalty. Upon their return on June 15, 1998, they saw a memorandum[4] dated June 13, 1998 on the bulletin board announcing (a) the

suspension as room boys of Calimlim and Rico, or alternately, (b) returning to work on probation as janitors for the following reasons: unsatisfactory work, having a drinking spree inside the hotel's rooms, cheating on the Daily Time Record, being absent without valid reason, leaving work during duty time, tardiness, and sleeping on the job. The memorandum also included Calimlim and Rico's new work schedule.

Calimlim and Rico submitted handwritten apologies[5] and pleaded for another chance, before they went AWOL (absent without leave).

On June 25, 1998,[6] Calimlim, Rico and Bautista filed separate complaints, for illegal dismissal and money claims, before the Labor Arbiter in Dagupan City. Calimlim and Rico claimed they were constructively dismissed, while Bautista claimed that Dely Lim orally told him not to go back to work because he was already dismissed. Abalos and Lopez later also filed separate complaints for underpayment of wages, non-payment of their 13[th] month pay, and service incentive leave pay. On July 7, 1998, after they stopped working, Abalos and Lopez amended their complaints. They claimed that petitioners orally dismissed them when they refused to withdraw their complaints.

Petitioners for their part, alleged that they did not dismiss private respondents but that private respondents had abandoned their jobs.[7]

Private respondents filed a manifestation and motion[8] dated November 24, 1998, praying that petitioners be ordered to reinstate them to their former positions since after all, according to petitioners, they were not dismissed.

Petitioners opposed the motion and argued that private respondents cannot be reinstated since they were not illegally dismissed but they had abandoned their jobs and management simply considered them dismissed for abandonment.[9] There is no record, however, that the Labor Arbiter resolved said motion.

On March 19, 1999, the Labor Arbiter dismissed the complaints but ordered petitioners to pay private respondents their proportionate 13th month pay, and service incentive leave pay. He likewise ordered petitioners to pay Calimlim and Rico indemnity. He decreed:

> IN VIEW OF THE FOREGOING PREMISES, judgment is hereby rendered as follows:
>
> - Declaring that the five complainants in these consolidated cases were not dismissed illegally from their work but they abandoned their work.
>
> - Ordering respondents Floren Hotel and/or Ligaya [Chu] and Dely Joson Lim to pay the complainants proportionate 13th month pay for 1998 and incentive leave pay equivalent to two and one half days salary (January to June 1998), computed as follows:
>
> Proportionate 13[th] month pay:
>
> a) Roderick Calimlim (daily wage as of June 4, 1998 = P148.00 x 30 days [=] P4,440 x 6 months (Jan. to June 1998) = P26,640 divided by 12 (one year) = P2,220.00;
>
> b) Ronald Rico = P2,220.00
>
> c) Jun Abalos = P2,220.00
>
> d) Lito Bautista = P2,220.00
>
> e) Gloria Lopez = P2,220.00
>
> Service Incentive Leave:

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R. Calimlim (2 ½ days salary)
= P 369.00

R. Rico
= 369.00;

J. Abalos
= 369.00

L. Bautista
= 369.00

G. Lopez
= 369.00

- Ordering the same respondents to pay Roderick Calimlim and Ronald Rico one thousand five hundred pesos each as indemnity;

Summary:

R. Calimlim

= P4,089.00

R. Rico

= 4,089.00

J. Abalos

= 2,589.00

L. Bautista

= 2,589.00

G. Lopez

= 2,589.00

TOTAL AWARD

= P15,945.00

All other claims of the complainants including moral and exemplary damages are hereby denied/dismissed for want of merit.

SO ORDERED.[10]

The Labor Arbiter found that Calimlim, Rico, and Bautista did not report for work and they did not show any order of dismissal, thus constructively, they abandoned their work and were not illegally dismissed. The Labor Arbiter also ruled that Calimlim and Rico's demotion and reassignment were valid exercises of management prerogatives. The reassignment was intended to enable management to supervise them more closely and, in any event, did not involve a diminution of wages.[11] The Labor Arbiter, however, held petitioners liable for indemnity to Calimlim and Rico for not observing the twin notices rule.

On the absence of any suspension order or notice of dismissal[12] concerning Abalos and Lopez, the Labor Arbiter held that the allegation that they were orally dismissed was insufficient, self-serving, and baseless.

Private respondents appealed to the National Labor Relations Commission (NLRC). They averred that the Labor Arbiter committed grave abuse of discretion in ruling (1) that they abandoned their work, and (2) that the immediate filing of their complaints for illegal dismissal where they prayed for reinstatement, did not mean they abandoned their jobs. They stressed that the two elements of abandonment were not proven and that petitioners failed to comply with the two-notice rule.[13] Private respondents likewise insisted that damages were due them, because their dismissal was attended with bad faith and malice.[14]

On March 22, 2000, the NLRC rendered its decision.[15] It reversed the decision of the Labor Arbiter and ordered the hotel management to immediately reinstate complainants-appellants to their former positions without loss of seniority rights, with full backwages and other benefits until they are actually reinstated. In the event that reinstatement was no longer possible, the respondent-appellees should pay herein private respondents their separation pay in addition to the payment of their full backwages; their incentive leave pay and their 13th month pay, together with P1,000 to each of them as indemnity.[16]

The NLRC concluded that petitioners failed to prove that private respondents had abandoned their work. Petitioners likewise failed to serve private respondents notices of termination based on abandonment. The NLRC added that Calimlim and Rico were constructively dismissed when they were demoted from room boys to janitors and reclassified as probationary employees.[17] However, the NLRC denied private respondents' claim for damages and attorney's fees. It found no evidence that petitioners acted maliciously or in bad faith in dismissing the five private respondents.[18]

Later, the NLRC also denied petitioners' motion for reconsideration.[19] Hence, the petitioners appealed to the Court of Appeals.[20]

On September 10, 2002, the Court of Appeals decided the petition as follows:

> WHEREFORE, premises considered, the Court MODIFIES the Decision of the respondent NLRC in this wise: (1) The Court declares that the private respondents Roderick A. Calimlim and Jose Abalos [should be Ronald T. Rico] were illegally dismissed by petitioner Floren Hotel/Ligaya Chu who is ORDERED to reinstate them to their former positions without loss of [seniority] rights, with full backwages and other benefits until they are actually reinstated; but if reinstatement is no longer possible, Floren Hotel/Ligaya Chu shall pay their separation pay in addition to their backwages. (2) Declaring private respondents Lito Bautista, Jun Abalos and Gloria Lopez to have abandoned their employment, and, therefore, not entitled to either backwages nor separation pay; and (3) ORDERING Floren Hotel/Ligaya Chu to pay all the private respondents their 13th month pay and incentive leave pay as computed in the Decision of the Labor Arbiter, to wit:
>
> "Proportionate 13[th] month pay:
>
> a) Roderick Calimlim (daily wage as of June 4, 1998 = plus P148.00 x 30 days P4,440 x 6 months (Jan. to June 1998) P26,640 divided by 12 (one year) = P2,220.00;
>
> b) Ronald Rico = P2,220.00
>
> c) Jun Abalos = P2,220.00
>
> d) Lito Bautista = P2,220.00
>
> e) Gloria Lopez = P2,220.00
>
> Service Incentive Leave:
>
> R. Calimlim (2 ½ days salary)
> = P 369.00

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R. Rico
= 369.00;

J. Abalos
= 369.00

L. Bautista
= 369.00

G. Lopez
= 369.00

3. Ordering the same respondents to pay Roderick Calimlim and Ronald Rico one thousand five hundred pesos each as indemnity;

Summary:

R. Calimlim

= P 4,089.00

R. Rico

= 4,089.00

J. Abalos

= 2,589.00

L. Bautista

= 2,589.00

G. Lopez

= 2,589.00

TOTAL AWARD

= P 15,945.00

SO ORDERED.[21]

The Court of Appeals agreed with the NLRC that the June 13, 1998, memorandum demoting Calimlim and Rico to janitors and reclassifying them as probationary employees constituted constructive discharge. The Court of Appeals likewise ruled that their right to due process was violated when they were imposed the additional penalties of demotion from room boys to janitors, reassignment as part-time employees, and change of their status from regular to probationary for other alleged offenses for which they were not given notice.[22]

But the Court of Appeals held that the NLRC committed grave abuse of discretion in declaring that Bautista, Abalos and Lopez were illegally dismissed, since they presented no other piece of evidence besides the allegations in their position papers.[23] The appellate court brushed aside the issue that petitioners' failure to serve notices of termination was due to the immediate filing of the complaints for illegal dismissal which made the service of such notices superfluous.[24]

Petitioners received a copy of the decision on September 20, 2002. On October 3, 2002, they filed the instant appeal, raising the following errors:

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(a)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE RESPONDENT NATIONAL LABOR RELATIONS COMMISSION DECLARING RESPONDENTS CALIMLIM AND RICO TO HAVE BEEN CONSTRUCTIVELY DISMISSED FROM THE SERVICE, SOLELY ON THE BASIS OF THE MEMORANDUM DATED JUNE 13, 1998. THE COURT OF APPEALS MISINTERPRETED AND MISAPPRECIATED THE IMPORT OF THE SAID MEMORANDUM VIS-À-VIS THE RULING OF THE HONORABLE COURT ON CONSTRUCTIVE DISMISSAL.

(b)

THE COURT OF APPEALS ERRED IN ORDERING THE PETITIONERS TO PAY THE RESPONDENTS-EMPLOYEES THEIR PROPORTIONATE 13TH MONTH PAY AND SERVICE INCENTIVE LEAVE AND IN ORDERING THE PETITIONERS TO PAY RESPONDENTS CALIMLIM AND RICO P1,500.00 EACH AS INDEMNITY.[25]

Private respondents, for their part, received a copy of the decision on September 23, 2002. On October 7, 2002, the private respondents except Calimlim filed a motion for reconsideration. They pointed out the typographical error in the dispositive portion of the Court of Appeals decision which declared that it was Calimlim and a certain Jose Abalos who were constructively dismissed.[26]

They raised the following errors:

. . .

II. The Honorable Court gravely erred in holding that Lito Bautista, Gloria Lopez and Jun Abalos were not illegally dismissed as they abandoned their jobs.

III The Honorable Court gravely erred in giving due course to the petition despite the fact that it was not sufficient in form as it was not accompanied by copies of all pleadings and documents relevant and pertinent thereto.[27]

On November 20, 2002, the Court of Appeals required management, herein petitioners, to comment on the motion. Upon receipt of petitioners' comment, however, the Court of Appeals issued a resolution on March 29, 2004, holding in abeyance the action on said motion for reconsideration by the concerned employees, herein private respondents, pending final resolution by this Court of the instant petition.[28]

In this petition now before us, we find four issues for our resolution: (1) whether the Court of Appeals erred in giving due course to the petition for certiorari filed before the appellate court; (2) whether the private respondents were illegally dismissed; (3) whether the Court of Appeals erred in ordering petitioners to pay Calimlim and Rico indemnity of P1,500; and (4) whether the appellate court erred in ordering petitioners to pay all of private respondents their proportionate 13th month pay and incentive leave pay.

On the first issue, private respondents argue that the failure of petitioners to attach copies of the position papers to their petition for certiorari before the Court of Appeals was fatal to their cause. Private respondents point out that petitioners' allegation (that the NLRC decision holding that Bautista, Abalos and Lopez had been illegally dismissed) was not supported by substantial evidence. They add that the NLRC erred in disregarding the material evidence adduced by petitioners. Hence, it was essential that the evidence for the parties contained in their position papers be attached to the petition as required by Section 1, Rule 65 of the Rules of Court.[29]

We find no merit in private respondents' insistence on procedural flaws. Acceptance of a petition for certiorari as well as the grant of due course thereto is addressed to the sound discretion of the court.[30] Section 1, Rule 65 of

the Rules of Court in relation to Section 3, Rule 46 of the same rules does not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders.[31] Here the pieces of evidence, which petitioners alleged had been arbitrarily disregarded, were duly annexed to the petition. Also, the material allegations of the position papers were summarized and discussed extensively in the decision of the Labor Arbiter, a copy of which was also made part of the petition. It does not appear in this case that in deciding to give due course to the petition for certiorari, the Court of Appeals committed any error that prejudiced the substantial rights of the parties. There is, therefore, no reason for this Court to disturb the appellate court's determination that the copies of the pleadings and documents attached to the petition were sufficient to make out a prima facie case.

Nonetheless, on the second issue, we find that the Court of Appeals erred in reversing the NLRC decision and in holding that Bautista, Abalos and Lopez were not illegally dismissed, but had abandoned their jobs.

Petitioners claimed that all five private respondents were guilty of abandoning their jobs. Thus, it was incumbent upon petitioners to show that the two requirements for a valid dismissal on the ground of abandonment existed in this case. Specifically, petitioners needed to present, for each private respondent, evidence not only of the failure to report for work or that absence was without valid or justifiable reasons, but also of some overt act showing the private respondent's loss of interest to continue working in his or her job.[32]

In our view, petitioners failed to adduce sufficient evidence to prove the charge of abandonment. Petitioners merely presented joint affidavits from hotel supervisors Agustin Aninag and Lourdes Cantago and other hotel employees showing that Calimlim, Rico, and Bautista simply went on absence without leave after they were confronted with certain irregularities, and that Abalos and Lopez likewise just left their employment, also without filing leaves of absence.[33] Those joint affidavits, however, are insufficient as they do not show that the absence of Calimlim, Rico, Bautista, Abalos and Lopez were unjustified. More important, they do not show any overt act that proves that private respondents unequivocally intended to sever their working relationship with the petitioners. We have held that mere absence from work does not constitute abandonment.[34]

If it was true that private respondents abandoned their jobs, then petitioners should have served them 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, in effect at that time. Said Section 2 provided that:

> 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 comply with the foregoing requirement, thereby bolstering further private respondents' claim that they did not abandon their work but were illegally dismissed.[35]

Indeed, we find that none of the private respondents in this case had any intention to sever their working relationship. Just days after they were dismissed, private respondents Calimlim, Rico, Bautista, Abalos and Lopez filed complaints to protest their dismissals. The well-established rule is that an employee who takes steps to protest his layoff cannot be said to have abandoned his work.[36]

That private respondents all desired to work in the hotel is further shown by the fact that during the proceedings before the Labor Arbiter, shortly after private respondents received petitioners' position paper where the latter averred that private respondents were never terminated, private respondents filed a manifestation and motion asking that petitioners be ordered to allow them back to work. This is nothing if not an unequivocal expression of eagerness to resume working.

We reiterate here the settled rule that in illegal dismissal cases, the employer bears the burden of showing that the dismissal was for a just or authorized cause.[37] Failure by the employer to discharge this burden, as in this case, would necessarily mean that the dismissal is not justified, and therefore illegal.[38]

As regards Calimlim and Rico, the NLRC further found that petitioners constructively dismissed both. Before us, petitioners now argue that the Court of Appeals misconstrued the memorandum of June 13, 1998. They insist that they had no intention of dismissing Calimlim and Rico, as shown by the very fact that the memorandum itself expressly allows Calimlim and Rico to return to work after they submit their written explanations for the drinking incident which happened on June 6, 1998.[39] Rather than a constructive dismissal, petitioners argue that the temporary transfer of Calimlim and Rico to janitorial positions was a valid exercise of the management prerogative to assign their employees to where they would be of the most benefit to the hotel. This temporary reassignment, according to the management, was intended solely to prevent Calimlim and Rico from repeating their infractions by denying them access to the hotel rooms and keeping them busy and easier to supervise in their new area assignments.[40]

Petitioners further argue that the terms of employment imposed in the memorandum did not render continued employment impossible, unreasonable or unlikely because, according to them, there was neither diminution of pay nor demotion involved. They maintain that room boys and janitors receive the same wages and that the only difference between the two is that room boys clean the rooms while janitors clean the common areas.[41]

We are not persuaded by petitioners' contention. For the transfer of the employee to be considered a valid exercise of management prerogatives, the employer must show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; neither would it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to discharge this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely, as in an offer involving a demotion in rank and diminution in pay.[42]

In this case, Calimlim and Rico were being forced to accept alternate work periods in their new jobs as janitors, otherwise they would be unemployed. Not only did their new schedule entail a diminution of wages, because they would only be allowed to work every other week, the new schedule was also clearly for an undefined period. The June 13, 1998, memorandum did not state how long the schedule was to be effective. Indeed, it appears that the period could continue for as long as management desired it. These unreasonable new terms of employment were imposed in the memorandum of June 13, 1998, which was issued two days before Calimlim and Rico returned from their week-long suspension. They were imposed for alleged past infractions for which neither Calimlim nor Rico was given the chance to be heard. Under the circumstances, we fail to see how the temporary transfer of Calimlim and Rico could be a valid exercise of management prerogatives. Even the employer's right to demote an employee requires the observance of the twin-notice requirement.[43]

As to the third issue, Article 279 of the Labor Code gives to Calimlim and Rico the right to reinstatement without loss of seniority rights and other privileges or separation pay in case reinstatement is no longer possible, and to his full backwages, inclusive of allowances and other benefits. It was thus error for the Court of Appeals to affirm the NLRC decision to award Calimlim and Rico indemnity in addition to the measure of damages provided in Article 279. The award of indemnity is a penalty awarded only when the dismissal was for just or authorized cause but where the twin-notice requirement was not observed.[44]

With respect to the fourth issue, petitioners fault the appellate court for failing to state why petitioners should pay respondents their proportionate 13th month pay and service incentive leave pay.[45] On this matter, we find that

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the appellate court committed no error. Petitioners did not question the propriety of the award of proportionate 13th month pay and service incentive leave in the Court of Appeals. They assailed the NLRC decision on only one ground: "Respondent NLRC committed grave abuse of discretion in reversing the Labor Arbiter's decision insofar as it relates to the issues of illegal dismissal." Hence, the correctness of the cited award in the NLRC ruling was never brought before the appellate court and is deemed to have been admitted by petitioners. It cannot therefore be raised anymore in this petition. The office of a petition for review under Rule 45 is to review the decision of the Court of Appeals, not the NLRC. The decision of the NLRC as regards the award of 13th month pay and service incentive leave pay became binding on petitioners because the failure to question it before the Court of Appeals amounts to an acceptance of the ruling. In any event, the award appears to us amply supported by evidence and in accord with law.

WHEREFORE, the Decision dated September 10, 2002, of the Court of Appeals in CA-G.R. SP No. 60685 is hereby MODIFIED. Petitioners Floren Hotel/Ligaya Chu, Dely Lim, and Jose Chua Lim are held liable for illegally dismissing private respondents Roderick A. Calimlim, Ronald T. Rico, Jun A. Abalos, Lito F. Bautista and Gloria B. Lopez. Petitioners are ordered, (1) to reinstate private respondents to their former positions without loss of seniority rights, with full backwages and other benefits until they are actually reinstated or to pay their separation pay in addition to their backwages, if reinstatement is no longer feasible; (2) to jointly and solidarily pay P2,589.00 to each of the private respondents as proportionate 13th month pay and service incentive leave pay for the period January to June 1998, as computed in the decision dated March 19, 1999, of the Labor Arbiter. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

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[1] Rollo, pp. 24-40. Penned by Associate Justice Hilarion L. Aquino, with Associate Justices Bienvenido L. Reyes, and Mario L. Guariña, III concurring.

[2] CA Rollo, p. 49.

[3] Id. at 50.

[4] Rollo, pp. 93-94.

[5] CA Rollo, pp. 54-55.

[6] June 25, 2000 in some parts of the records.

[7] CA Rollo, pp. 198-201.

[8] Id. at 270-271.

[9] Id. at 272-275.

[10] Rollo, pp. 68-69.

[11] CA Rollo, p. 109.

[12] Id. at 110-111.

[13] Id. at 76.

[14] IbId.

[15] Id. at 70-84.

[16] Id. at 83-84.

[17] Id. at 78-82.

[18] Id. at 82-83.

[19] Id. at 85.

[20] Id. at 7-28.

[21] Rollo, pp. 39-40.

[22] CA Rollo, pp. 255-257.

[23] Id. at 257-259.

[24] Id. at 259.

[25] Rollo, p. 11.

[26] CA Rollo, pp. 264-265.

[27] Id. at 264.

[28] Id. at 371.

[29] Id. at 265-266.

[30] Serrano v. Galant Maritime Services, Inc., G.R. No. 151833, 7 August 2003, 408 SCRA 523, 527.

[31] Quintano v. NLRC, G.R. No. 144517, 13 December 2004, p. 11.

[32] Metro Transit Organization, Inc. v. NLRC, G.R. No. 119724, 31 May 1999, 307 SCRA 747, 753-754.

[33] CA Rollo, pp. 47-48, 51, 59-60.

[34] Labor Congress of the Philippines v. NLRC, G.R. No. 123938, 21 May 1998, 290 SCRA 509, 525 citing De Ysasi III v. NLRC, G.R. No. 104599, 11 March 1994, 231 SCRA 173, 187.

[35] Villaruel v. National Labor Relations Commission, G.R. No. 120180, 20 January 1998, 284 SCRA 399, 407.

[36] Nazal v. National Labor Relations Commission, G.R. No. 122368, 19 June 1997, 274 SCRA 350, 355.

[37] Me-shurn Corporation v. Me-shurn Workers Union-FSM, G.R. No. 156292, 11 January 2005, p. 10.

[38] Gabisay v. National Labor Relations Commission, G.R. No. 108311, 18 May 1999, 307 SCRA 141, 148.

[39] Rollo, p. 14.

[40] Id. at 16-17.

[41] Id. at 15-17.

[42] Mendoza v. Rural Bank of Lucban, G.R. No. 155421, 7 July 2004, 433 SCRA 756, 766.

[43] See Jarcia Machine Shop and Auto Supply, Inc. v. NLRC, G.R. No. 118045, 2 January 1997, 266 SCRA 97, 109-110.

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[44] Agabon v. NLRC, G.R. No. 158693, 17 November 2004, p. 12.

[45] Rollo, p. 19.

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