

CALAMBA MEDICAL CENTER, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RONALDO LANZANAS AND MERCEDITHA LANZANAS, RESPONDENTS.

G.R. No. 176484. November 25, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Calamba Medical Center (petitioner), a privately-owned hospital, engaged the services of medical doctors-spouses Ronaldo Lanzanas (Dr. Lanzanas) and Merceditha Lanzanas (Dr. Merceditha) in March 1992 and August 1995, respectively, as part of its team of resident physicians. Reporting at the hospital twice-a-week on twenty-four-hour shifts, respondents were paid a monthly "retainer" of P4,800.00 each.[1] It appears that resident physicians were also given a percentage share out of fees charged for out-patient treatments, operating room assistance and discharge billings, in addition to their fixed monthly retainer.[2]

The work schedules of the members of the team of resident physicians were fixed by petitioner's medical director Dr. Raul Desipeda (Dr. Desipeda). And they were issued identification cards[3] by petitioner and were enrolled in the Social Security System (SSS).[4] Income taxes were withheld from them.[5]

On March 7, 1998, Dr. Meluz Trinidad (Dr. Trinidad), also a resident physician at the hospital, inadvertently overheard a telephone conversation of respondent Dr. Lanzanas with a fellow employee, Diosdado Miscala, through an extension telephone line. Apparently, Dr. Lanzanas and Miscala were discussing the low "census" or admission of patients to the hospital.[6]

Dr. Desipeda whose attention was called to the above-said telephone conversation issued to Dr. Lanzanas a Memorandum of March 7, 1998 reading:

As a Licensed Resident Physician employed in Calamba Medical Center since several years ago, the hospital management has committed upon you utmost confidence in the performance of duties pursuant thereto. This is the reason why you were awarded the privilege to practice in the hospital and were entrusted hospital functions to serve the interest of both the hospital and our patients using your capability for independent judgment.

Very recently though and unfortunately, you have committed acts inimical to the interest of the hospital, the details of which are contained in the hereto attached affidavit of witness.

You are therefore given 24 hours to explain why no disciplinary action should be taken against you.

Pending investigation of your case, you are hereby placed under 30-days [sic] preventive suspension effective upon receipt hereof.[7] (*Emphasis, italics and underscoring supplied*)

Inexplicably, petitioner did not give respondent Dr. Merceditha, who was not involved in the said incident, any work schedule after sending her husband Dr. Lanzanas the memorandum,[8] nor inform her the reason therefor, albeit she was later informed by the Human Resource Department (HRD) officer that that was part of petitioner's cost-cutting measures.[9]

Responding to the memorandum, Dr. Lanzas, by letter of March 9, 1998,[10] admitted that he spoke with Miscala over the phone but that their conversation was taken out of context by Dr. Trinidad.

On March 14, 1998,[11] the rank-and-file employees union of petitioner went on strike due to unresolved grievances over terms and conditions of employment.[12]

On March 20, 1998, Dr. Lanzas filed a complaint for illegal suspension[13] before the National Labor Relations Commission (NLRC)-Regional Arbitration Board (RAB) IV. Dr. Merceditha subsequently filed a complaint for illegal dismissal.[14]

In the meantime, then Sec. Cresenciano Trajano of the Department of Labor and Employment (DOLE) certified the labor dispute to the NLRC for compulsory arbitration and issued on April 21, 1998 return-to-work Order to the striking union officers and employees of petitioner pending resolution of the labor dispute.[15]

In a memorandum[16] of April 22, 1998, Dr. Desipeda echoed the April 22, 1998 order of the Secretary of Labor directing all union officers and members to return-to-work "on or April 23, 1998, except those employees that were already terminated or are serving disciplinary actions." Dr. Desipeda thus ordered the officers and members of the union to "report for work as soon as possible" to the hospital's personnel officer and administrator for "work scheduling, assignments and/or re-assignments."

Petitioner later sent Dr. Lanzas a notice of termination which he received on April 25, 1998, indicating as grounds therefor his failure to report back to work despite the DOLE order and his supposed role in the striking union, thus:

On April 23, 1998, you still did not report for work despite memorandum issued by the CMC Medical Director implementing the Labor Secretary's ORDER. The same is true on April 24, 1998 and April 25, 1998,--you still did not report for work [sic].

You are likewise aware that you were observed (re: signatories [sic] to the Saligang Batas of BMCMC-UWP) to be unlawfully participating as member in the rank-and-file union's concerted activities despite knowledge that your position in the hospital is managerial in nature (Nurses, Orderlies, and staff of the Emergency Room carry out your orders using your independent judgment) which participation is expressly prohibited by the New Labor Code and which prohibition was sustained by the Med-Arbiter's ORDER dated February 24, 1998. (Emphasis and italics in the original; underscoring partly in the original and partly supplied)

For these reasons as grounds for termination, you are hereby terminated for cause from employment effective today, April 25, 1998, without prejudice to further action for revocation of your license before the Philippine [sic] Regulations [sic] Commission.[17] (Emphasis and underscoring supplied)

Dr. Lanzas thus amended his original complaint to include illegal dismissal.[18] His and Dr. Merceditha's complaints were consolidated and docketed as NLRC CASE NO. RAB-IV-3-9879-98-L.

By Decision[19] of March 23, 1999, Labor Arbiter Antonio R. Macam dismissed the spouses' complaints for want of jurisdiction upon a finding that there was no employer-employee relationship between the parties, the fourth requisite or the "control test" in the determination of an employment bond being absent.

On appeal, the NLRC, by Decision[20] of May 3, 2002, reversed the Labor Arbiter's findings, disposing as follows:

WHEREFORE, the assailed decision is set aside. The respondents are ordered to pay the complainants their full backwages; separation pay of one month salary for every year of service in lieu of reinstatement; moral damages of P500,000.00 each; exemplary damages of P250,000.00 each plus ten percent (10%) of the total award as attorney's fees.

SO ORDERED.[21]

Petitioner's motion for reconsideration having been denied, it brought the case to the Court of Appeals on certiorari.

The appellate court, by June 30, 2004 Decision,[22] initially granted petitioner's petition and set aside the NLRC ruling. However, upon a subsequent motion for reconsideration filed by respondents, it reinstated the NLRC decision in an Amended Decision[23] dated September 26, 2006 but tempered the award to each of the spouses of moral and exemplary damages to P100,000.00 and P50,000.00, respectively and omitted the award of attorney's fees.

In finding the existence of an employer-employee relationship between the parties, the appellate court held:

x x x. While it may be true that the respondents are given the discretion to decide on how to treat the petitioner's patients, the petitioner has not denied nor explained why its Medical Director still has the direct supervision and control over the respondents. The fact is the petitioner's Medical Director still has to approve the schedule of duties of the respondents. The respondents stressed that the petitioner's Medical Director also issues instructions or orders to the respondents relating to the means and methods of performing their duties, i.e. admission of patients, manner of characterizing cases, treatment of cases, etc., and may even overrule, review or revise the decisions of the resident physicians. This was not controverted by the petitioner. The foregoing factors taken together are sufficient to constitute the fourth element, i.e. control test, hence, the existence of the employer-employee relationship. In denying that it had control over the respondents, the petitioner alleged that the respondents were free to put up their own clinics or to accept other retainerhip agreement with the other hospitals. But, the petitioner failed to substantiate the allegation with substantial evidence. (Emphasis and underscoring supplied)[24]

The appellate court thus declared that respondents were illegally dismissed.

x x x. The petitioner's ground for dismissing respondent Ronaldo Lanzas was based on his alleged participation in union activities, specifically in joining the strike and failing to observe the return-to-work order issued by the Secretary of Labor. Yet, the petitioner did not adduce any piece of evidence to show that respondent Ronaldo indeed participated in the strike. x x x.

In the case of respondent Merceditha Lanzas, the petitioner's explanation that "her marriage to complainant Ronaldo has given rise to the presumption that her sympathies are likewise with her husband" as a ground for her dismissal is unacceptable. Such is not one of the grounds to justify the termination of her employment.[25] (Underscoring supplied)

The fallo of the appellate court's decision reads:

WHEREFORE, the instant Motion for Reconsideration is GRANTED, and the Court's decision dated June 30, 2004, is SET ASIDE. In lieu thereof, a new judgment is entered, as follows:

WHEREFORE, the petition is DISMISSED. The assailed decision dated May 3, 2002 and order dated September 24, 2002 of the NLRC in NLRC NCR CA No. 019823-99 are AFFIRMED with the MODIFICATION that the moral and exemplary damages are reduced to P100,000.00 each and P50,000.00 each, respectively.

SO ORDERED.[26] (Emphasis and italics in the original; underscoring supplied)

Preliminarily, the present petition calls for a determination of whether there exists an employer-employee relationship[27] between petitioner and the spouses-respondents.

Denying the existence of such relationship, petitioner argues that the appellate court, as well as the NLRC, overlooked its twice-a-week reporting arrangement with respondents who are free to practice their profession

elsewhere the rest of the week. And it invites attention to the uncontroverted allegation that respondents, aside from their monthly retainers, were entitled to one-half of all suturing, admitting, consultation, medico-legal and operating room assistance fees.[28] These circumstances, it stresses, are clear badges of the absence of any employment relationship between them.

This Court is unimpressed.

Under the "control test," an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.[29]

Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, the element of control is absent.[30]

As priorly stated, private respondents maintained specific work-schedules, as determined by petitioner through its medical director, which consisted of 24-hour shifts totaling forty-eight hours each week and which were strictly to be observed under pain of administrative sanctions.

That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential for the employer to actually supervise the performance of duties of the employee, it being enough that it has the right to wield the power.[31]

With respect to respondents' sharing in some hospital fees, this scheme does not sever the employment tie between them and petitioner as this merely mirrors additional form or another form of compensation or incentive similar to what commission-based employees receive as contemplated in Article 97 (f) of the Labor Code, thus:

"Wage" paid to any employee shall mean the remuneration or earning, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. x x x (Emphasis and underscoring supplied),

Respondents were in fact made subject to petitioner-hospital's Code of Ethics,[32] the provisions of which cover administrative and disciplinary measures on negligence of duties, personnel conduct and behavior, and offenses against persons, property and the hospital's interest.

More importantly, petitioner itself provided incontrovertible proof of the employment status of respondents, namely, the identification cards it issued them, the payslips[33] and BIR W-2 (now 2316) Forms which reflect their status as employees, and the classification as "salary" of their remuneration. Moreover, it enrolled respondents in the SSS and Medicare (Philhealth) program. It bears noting at this juncture that mandatory coverage under the SSS Law[34] is premised on the existence of an employer-employee relationship,[35] except in cases of compulsory coverage of the self-employed. It would be preposterous for an employer to report certain persons as employees and pay their SSS premiums as well as their wages if they are not its employees.[36]

And if respondents were not petitioner's employees, how does it account for its issuance of the earlier-quoted March 7, 1998 memorandum explicitly stating that respondent is "employed" in it and of the subsequent termination letter indicating respondent Lanzanas' employment status.

Finally, under Section 15, Rule X of Book III of the Implementing Rules of the Labor Code, an employer-employee relationship exists between the resident physicians and the training hospitals, unless there is a training agreement between them, and the training program is duly accredited or approved by the appropriate government agency. In respondents' case, they were not undergoing any specialization training. They were considered non-training general practitioners,[37] assigned at the emergency rooms and ward sections.

Turning now to the issue of dismissal, the Court upholds the appellate court's conclusion that private respondents were illegally dismissed.

Dr. Lanzanas was neither a managerial nor supervisory employee but part of the rank-and-file. This is the import of the Secretary of Labor's Resolution of May 22, 1998 in OS A-05-15-98 which reads:

x x x x

In the motion to dismiss it filed before the Med-Arbiter, the employer (CMC) alleged that 24 members of petitioner are supervisors, namely x x x Rolando Lanzanas [sic] x x x.

A close scrutiny of the job descriptions of the alleged supervisors narrated by the employer only proves that except for the contention that these employees allegedly supervise, they do not however recommend any managerial action. At most, their job is merely routinary in nature and consequently, they cannot be considered supervisory employees.

They are not therefore barred from membership in the union of rank[-]and[-]file, which the petitioner [the union] is seeking to represent in the instant case.[38] (Emphasis and underscoring supplied)

x x x x

Admittedly, Dr. Lanzanas was a union member in the hospital, which is considered indispensable to the national interest. In labor disputes adversely affecting the continued operation of a hospital, Article 263(g) of the Labor Code provides:

ART. 263. STRIKES, PICKETING, AND LOCKOUTS.—

x x x x

(g) x x x x

x x x x. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, the Secretary of Labor and Employment is mandated to immediately assume, within twenty-four hours from knowledge of the occurrence of such strike or lockout, jurisdiction over the same or certify to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

x x x x (Emphasis and underscoring supplied)

An assumption or certification order of the DOLE Secretary automatically results in a return-to-work of all striking workers, whether a corresponding return-to-work order had been issued.[39] The DOLE Secretary in fact

issued a return-to-work Order, failing to comply with which is punishable by dismissal or loss of employment status.[40]

Participation in a strike and intransigence to a return-to-work order must, however, be duly proved in order to justify immediate dismissal in a "national interest" case. As the appellate court as well as the NLRC observed, however, there is nothing in the records that would bear out Dr. Lanzas's actual participation in the strike. And the medical director's Memorandum[41] of April 22, 1998 contains nothing more than a general directive to all union officers and members to return-to-work. Mere membership in a labor union does not ipso facto mean participation in a strike.

Dr. Lanzas's claim that, after his 30-day preventive suspension ended on or before April 9, 1998, he was never given any work schedule[42] was not refuted by petitioner. Petitioner in fact never released any findings of its supposed investigation into Dr. Lanzas's alleged "inimical acts."

Petitioner thus failed to observe the two requirements, before dismissal can be effected – notice and hearing – which constitute essential elements of the statutory process; the first to apprise the employee of the particular acts or omissions for which his dismissal is sought, and the second to inform the employee of the employer's decision to dismiss him.[43] Non-observance of these requirements runs afoul of the procedural mandate.[44]

The termination notice sent to and received by Dr. Lanzas on April 25, 1998 was the first and only time that he was apprised of the reason for his dismissal. He was not afforded, however, even the slightest opportunity to explain his side. His was a "termination upon receipt" situation. While he was priorly made to explain on his telephone conversation with Miscala,[45] he was not with respect to his supposed participation in the strike and failure to heed the return-to-work order.

As for the case of Dr. Merceditha, her dismissal was worse, it having been effected without any just or authorized cause and without observance of due process. In fact, petitioner never proffered any valid cause for her dismissal except its view that "her marriage to [Dr. Lanzas] has given rise to the presumption that her sympath[y] [is] with her husband; [and that when [Dr. Lanzas] declared that he was going to boycott the scheduling of their workload by the medical doctor, he was presumed to be speaking for himself [and] for his wife Merceditha." [46]

Petitioner's contention that Dr. Merceditha was a member of the union or was a participant in the strike remained just that. Its termination of her employment on the basis of her conjugal relationship is not analogous to any of the causes enumerated in Article 282[47] of the Labor Code. Mere suspicion or belief, no matter how strong, cannot substitute for factual findings carefully established through orderly procedure.[48]

The Court even notes that after the proceedings at the NLRC, petitioner never even mentioned Dr. Merceditha's case. There is thus no gainsaying that her dismissal was both substantively and procedurally infirm.

Adding insult to injury was the circulation by petitioner of a "watchlist" or "watch out list"[49] including therein the names of respondents. Consider the following portions of Dr. Merceditha's Memorandum of Appeal:

- Moreover, to top it all, respondents have circulated a so called "Watch List" to other hospitals, one of which [was] procured from Foothills Hospital in Sto. Tomas, Batangas [that] contains her name. The object of the said list is precisely to harass Complainant and malign her good name and reputation. This is not only unprofessional, but runs smack of oppression as CMC is trying permanently deprived [sic] Complainant of her livelihood by ensuring that she is barred from practicing in other hospitals.
- Other co-professionals and brothers in the profession are fully aware of these "watch out" lists and as such, her reputation was not only besmirched, but was damaged, and she suffered social humiliation as it is of public knowledge that she was dismissed from work. Complainant came from a reputable and respected family, her

father being a retired full Colonel in the Army, Col. Romeo A. Vente, and her brothers and sisters are all professionals, her brothers, Arnold and Romeo Jr., being engineers. The Complainant has a family protection [sic] to protect. She likewise has a professional reputation to protect, being a licensed physician. Both her personal and professional reputation were damaged as a result of the unlawful acts of the respondents.[50]

While petitioner does not deny the existence of such list, it pointed to the lack of any board action on its part to initiate such listing and to circulate the same, viz:

- x x x. The alleged watchlist or "watch out list," as termed by complainants, were merely lists obtained by one Dr. Ernesto Naval of PAMANA Hospital. Said list was given by a stockholder of respondent who was at the same time a stockholder of PAMAN[A] Hospital. The giving of the list was not a Board action.[51] (Emphasis and underscoring supplied)

The circulation of such list containing names of alleged union members intended to prevent employment of workers for union activities similarly constitutes unfair labor practice, thereby giving a right of action for damages by the employees prejudiced.[52]

A word on the appellate court's deletion of the award of attorney's fees. There being no basis advanced in deleting it, as exemplary damages were correctly awarded,[53] the award of attorney's fees should be reinstated.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 75871 is AFFIRMED with MODIFICATION in that the award by the National Labor Relations Commission of 10% of the total judgment award as attorney's fees is reinstated. In all other aspects, the decision of the appellate court is affirmed.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

* Mercedita in some pleadings and annexed documents.

[1] Rollo, p. 10.

[2] Id. at 11.

[3] NLRC records, pp. 79-80; Annexes "E" and "F" of Complainants' (herein private respondents) Joint Reply and Rejoinder.

[4] Id. at 74-75; Annexes "A" and "B."

[5] Id. at 76-78; Annexes "C" and "D."

[6] Id. at 12.; NLRC records, pp. 99-100, Affidavit of Dr. Meluz Trinidad.

[7] NLRC records, p. 171.

[8] Rollo, p.12.

[9] NLRC records, p.16.

[10] Id. at 174.

[11] The actual date of the union strike as reflected in the order of the Secretary of Labor and Employment. Id. at 50-51.

[12] Rollo, p. 11.

[13] NLRC records, p. 1.

[14] Id. at 7.

[15] NLRC records, pp. 50-51.

[16] CA rollo, p. 198.

[17] NLRC records, p. 175.

[18] Id. at 12.

[19] Id. at 117-130.

[20] Id. at 280-305.

[21] Id. at 304.

[22] Rollo, pp. 94-99. Penned by Justice Elvi John S. Asuncion with the concurrence of Justices Mariano C. Del Castillo and Hakim S. Abdulwahid.

[23] Id. at 32-43. Penned by Justice Hakim S. Abdulwahid with the concurrence of Justices Remedios A. Salazar-Fernando and Mariano C. del Castillo.

[24] Id. at 40.

[25] Id. at 40-41.

[26] Id. at 42.

[27] Applying the four-fold test which has the following elements: a) selection and engagement of the employee; b) payment of wages or salaries; c) exercise of the power of dismissal; and d) exercise of the power to control the employee's conduct.

[28] Rollo, p. 26.

[29] *Nogales v. Capitol Medical Center*, G.R. No. 142625, December 19, 2006, 511 SCRA 204, 221 citing *Diggs v. Novant Health, Inc.*, 628 S.E.2d 851 (2006).

[30] *Encyclopedia Britannica v. NLRC*, G.R. No. 87098, November 4, 1996, 264 SCRA 1, 10.

[31] *Equitable Banking Corp. v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 371.

[32] NLRC records, pp. 179-184; Annex "H."

[33] Id. at 89; Annex "J."

[34] Vide Section 9 of REPUBLIC ACT NO. 8282.

[35] *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

[36] *Nagasura v. NLRC*, G.R. Nos. 117936-37, May 20, 1998, 290 SCRA 245, 251; *Equitable Banking Corporation v. NLRC*, supra note 31.

[37] Rollo, p. 58.

[38] NLRC records, pp. 90-93.

[39] *Telefunken Semiconductors Employees Union-FFW v. Sec. of Labor and Employment*, G.R. Nos. 122743

and 127215, December 12, 1997, 283 SCRA 145-146.

[40] Marcopper Mining Corp. v. Brillantes, G.R. No. 119381, March 11, 1996, 254 SCRA 595, 602.

[41] CA rollo at 198.

[42] Rollo, p. 79.

[43] PNB v. Cabansag, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 530-531.

[44] Condo Suite Club Travel v. NLRC, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 690 citing Vinta Maritime v. NLRC, 284 SCRA 656, 671-672 (1998).

[45] Supra note 10.

[46] NLRC records, p. 43; Respondent's (Petitioner herein) Position Paper.

[47] Article 282 Termination by employer.—An employer may terminate an employee for any of the following causes:

(a)

Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b)

Gross and habitual neglect by the employee of his duties;

(c)

Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d)

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e)

Other causes analogous to the foregoing.

[48] Austria v. NLRC, G.R. No. 123646, July 14, 1999, 310 SCRA 293, 303.

[49] NLRC records, pp. 197-199.

[50] Id. at 20-21.

[51] Id. at 59.

[52] Article 28 of the Civil Code states "Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage."

[53] Article 2208 of the Civil Code states "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) x x x;

x x x x"

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