

INTERTRANZ CONTAINER LINES, INC. AND JOSEFINA F. TUMIBAY, PETITIONERS, VS. MA. TERESA I. BAUTISTA, RESPONDENT.

G.R. No. 187693. July 13, 2010

Ponente: BRION, J.

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BRION, J.:

For resolution is the present Petition for Review on Certiorari[1] which assails the Decision[2] and the Resolution[3] of the Court of Appeals (CA), rendered on November 26, 2008 and April 29, 2009, respectively, in CA-G.R. SP No. 101611.[4]

The Antecedents

Petitioners Intertranz Container Lines, Inc. and Josefina F. Tumibay (petitioners) are engaged in local and international freight forwarding services. On February 14, 2002, the petitioners employed Ma. Teresa I. Bautista as Customs Representative.

On September 10, 2004, Bautista filed a complaint against the petitioners for illegal dismissal, money claims, moral and exemplary damages and attorney's fees. She stated that as the company's customs representative, she attended to the processing of import documents of the company's clients and the delivery of their cargoes. Her daily work schedule was from 8:30 a.m. to 5:30 p.m., but her duties required her to work up to midnight without overtime compensation. Her monthly salary was increased to P8,000.00 upon her promotion as account officer with the duty of looking for clients. The company did not give her incentive leave and 13[th] month pay. On July 15, 2004, the petitioners terminated her employment without a valid reason and prior investigation; by reason of her dismissal, she suffered and continues to suffer extreme mental anguish and serious anxiety. She also claimed that Tumibay shouted at her when she was dismissed, and threatened to shoot her if she did not leave.

In defense, the petitioners alleged that on July 11, 2004, Bautista was caught red-handed overcharging the company for truck rental; she requested a cash advance of P6,000.00 to pay for the rental, but she actually paid the trucking service only P4,500.00, keeping for herself the balance of P1,500.00.[5] On July 12, 2004, Rhandy Villaflores, the company's Marketing Manager, asked Bautista to explain her side regarding the truck rental overcharge but she merely denied the accusation. On July 15, 2004, Villaflores submitted a report on the matter to Tumibay, who informed Bautista of the findings and asked her to explain her side. Bautista denied any wrongdoing and justified her taking a share from the truck rental as her referral fee, by claiming that she was the one coordinating/dealing with the trucking company. Bautista's insolent reply angered Tumibay who then told Bautista to resign; instead of resigning, she filed the complaint. On July 19, 2004, Bautista, representing herself as manager of a competitor company, Ramaga Cargo Express, sent a letter, dated July 18, 2004, to Sandvik Tamrock Phils., Inc., soliciting business, an act of "moon shining." [6] To avoid being formally charged with a fraudulent and dishonest act, Bautista opted to leave the company and stopped reporting for work. Since Bautista, by her acts, intentionally severed her employment with the company, a letter of notice for her to return to work and a show cause letter would have been a futile exercise. Moreover, the petitioners maintained that Bautista's dishonest

acts constituted a just and valid cause for her dismissal, pursuant to company rules and regulations.

The petitioners denied liability for Bautista's money claims as they paid her 13th month benefits (except in 2004 when Bautista went on absence without leave) and service incentive pay. Her claim for overtime pay allegedly lacked basis because it was not supported by a pre-approved overtime schedule and a daily time record; as a member of the marketing department, she had no regular working hours. The petitioners likewise argued that Bautista cannot claim damages for mental anguish and anxiety because it was her own fraudulent and dishonest act that caused her dismissal from the company. In addition, Tumibay cannot be held personally liable for corporate acts done in her capacity as managing director of the company.

The Compulsory Arbitration Proceedings

On June 15, 2005, Labor Arbiter Aliman D. Mangandog rendered a decision^[7] declaring Bautista's dismissal illegal. He ordered Bautista's reinstatement and directed the petitioners to pay her, jointly and severally, P409,262.89 representing backwages and other monetary benefits, P500,000.00 as moral damages, P300,000.00 as exemplary damages, and P120,926.29 as attorney's fees.

On July 11, 2005, the petitioners filed with the National Labor Relations Commission (NLRC) a Notice of Appeal, accompanied by a Memorandum of Appeal, an Appeal Bond for P531,000.00, and a Motion to Reduce Appeal Bond. On July 14, 2005, Bautista moved for the execution of the reinstatement aspect of the labor arbiter's decision. On August 4, 2005, Bautista filed a Motion for Payroll Reinstatement, which the arbiter granted in an Order dated December 15, 2005,^[8] despite the petitioners' opposition.^[9] The petitioners moved for reconsideration of the labor arbiter's payroll reinstatement order.^[10]

On April 18, 2006, the NLRC issued an Order^[11] directing the petitioners to replace, within ten (10) days, the appeal bond they posted on July 11, 2005, on the ground that the accreditation of the bondsman - the Summit Guaranty and Insurance Company, Inc. - expired on July 31, 2005 and had not been renewed. On May 8, 2006, the petitioners filed, instead of the required bond, a Motion for Reconsideration with Motion for Suspension/Extension,^[12] asking for a period of one month to replace the bond. While the motions were pending, the petitioners submitted, on June 1,

2006, a Manifestation with Motion, attached to which was a copy of the newly secured bond.

In a decision dated January 8, 2007, the NLRC dismissed the petitioners' appeal for non-perfection,^[13] as they filed the replacement bond beyond the 10-day period. Ten days later or on January 17, 2007, the NLRC issued a Resolution^[14] dismissing the petitioners' motion for reconsideration of the labor arbiter's order of December 15, 2005, granting Bautista's payroll reinstatement. The petitioners filed separate motions for reconsideration of the NLRC decision dismissing the appeal and the resolution denying the motion for reconsideration of the payroll reinstatement order. The NLRC denied both motions in a resolution promulgated on October 22, 2007.^[15] The NLRC issued an Entry of Judgment on January 8, 2008,^[16] the basis for the Writ of Execution of January 22, 2008.^[17]

Recourse to the CA

The petitioners sought relief from the CA through a petition for certiorari^[18] under Rule 65 of the Rules of Court charging the NLRC with grave abuse of discretion in: (1) denying their appeal for non-perfection; (2) ordering Bautista's reinstatement in the payroll pending appeal; and (3) issuing the entry of judgment and the writ of execution without prior notice and service of the motion, and before the lapse of the appeal period.

In the decision of November 26, 2008,[19] the CA denied the petition and affirmed the assailed decision and resolution of the NLRC. It found that the NLRC correctly dismissed the petitioners' appeal for non-perfection. The CA noted that the bond that the petitioners posted on July 11, 2005 was valid only until July 31, 2005, the expiry date of the accreditation of the surety firm that issued the bond. The CA further noted that the petitioners posted a new bond on June 1, 2006, beyond the 10-day period mandated by the NLRC. The appellate court also ruled that Bautista's payroll reinstatement, the entry of judgment, and the issuance of the writ of execution were proper since the decision of the labor arbiter had become final and executory.

The petitioners moved for reconsideration of the CA decision, but the CA denied the motion on April 29, 2009.[20]

The Petition and Related Incidents

The petitioners now seek to reverse the CA decision, contending that the appellate court gravely abused its discretion in affirming the NLRC decision dismissing their appeal for non-perfection. They contend that the CA had been too strict in applying the rules on appeal bond considering that: (1) they perfected their appeal by posting a valid appeal bond on July 11, 2005; (2) when they were required by the NLRC to file a replacement bond within 10 days from receipt of its April 18, 2006 order on the matter, they moved for reconsideration, as well as a 30-day extension to post the new bond; and (3) within the extension period prayed for, or on June 1, 2006, they filed the replacement bond. They objected to Bautista's payroll reinstatement arguing that she is guilty of dishonesty, a just cause for dismissal.

On July 6, 2009, the Court required respondent Bautista to comment on the petition.[21]

On July 14, 2009, the petitioners moved[22] for a temporary restraining order (TRO)/writ of injunction "to prevent, enjoin, restrain" the NLRC Sheriffs from enforcing the 2nd Alias Writ of Execution dated June 3, 2009,[23] and from conducting the auction sale on July 17, 2009 or anytime thereafter over the petitioners' property, real or personal.[24]

In a Resolution dated July 15, 2009, the Court granted the motion,[25] issued the TRO prayed for, and required the petitioners to post a cash or surety bond in an amount equivalent to the NLRC award of P1,330,189.18.[26]

On July 24, 2009, the petitioners filed a Manifestation[27] (of compliance), submitting to the Court copies of the surety bond issued by a reputable bonding company of indubitable solvency in the amount equivalent to the NLRC award, with supporting documents.[28]

On September 14, 2009, Bautista filed her Comment,[29] praying that the petition be dismissed for lack of merit, as it failed to establish any reversible error in the assailed NLRC and CA rulings.

The Court's Ruling

a. The Appeal Bond Issue

Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond.[30] The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.[31]

Following jurisprudential standards, we find that a relaxation of the rules on the appeal bond requirement in this case is in order. It is clear from the records that the petitioners never intended to evade the posting of an appeal bond. They exerted earnest efforts to abide by the law and the rules on appeal with a notice of appeal, appeal memorandum, and an appeal bond for P531,000.00. They also moved to reduce the appeal bond. The petitioners might or might not have been aware that the accreditation of the bonding company expired on July 31, 2005 but when the bond was posted on July 11, 2005, the bonding company's accreditation and the bond it issued were still valid. Although the petitioners failed to file a replacement bond within 10 days from receipt of the NLRC order requiring them to do so, again, it cannot be said that they intended to ignore the order. With the plea that the 10-day period was too short, they filed a motion for reconsideration with motion for suspension/extension of time to file the replacement bond. They asked for 30 days to file a new bond and posted the replacement bond within the requested extended period.

The NLRC dismissed the petitioners' appeal for non-perfection/non-compliance with the appeal bond requirement without passing upon - in fact, completely ignoring - the petitioners' motion for time to post the required bond. The NLRC should have granted the motion for extension since there was no showing that it was intended to delay the resolution of the case. More importantly, the petitioners exhibited good faith and willingness to post the bond within the period they asked for which, in fact, they did on June 1, 2006.[32]

It is unfortunate that the NLRC chose to apply the strict letter of the law and the rules on the appeal bond requirement rather than look at the reasons behind the petitioners' plea for a relaxation of the requirement, with an eye on the interest of substantial justice and the merits of the case. The NLRC should have noted that Bautista had been charged by the petitioners of very serious offenses involving acts of dishonesty and engaging in competition with her employer. The awards made also appeared unusually high and out of line: P500,000.00 in moral damages, and P300,000.00 as exemplary damages, or double the monetary benefits in Bautista's favor - awards that even this Court does not mete out in labor cases.

We find, under the circumstances, that the NLRC had precipitately dismissed the appeal for non-perfection. As we held in *Phil. Geothermal, Inc. v. National Labor Relations Commission*,[33] the petitioners' appeal should have been given due course, "in the broader interest of justice and with the desired objective of deciding the case on the merits."

b. Disposition of the Merits of the Dismissal

We now determine, given our ruling on the bond issue, at what level the dismissal issue should be resolved considering the length of time that the case has been pending. The case commenced on September 10, 2004, when Bautista filed the complaint for illegal dismissal. The case is more than five (5) years old already and needs to be resolved as expeditiously as possible. On this vital point, the Court's opinion in *Roman Catholic Archbishop of Manila v. Court of Appeals*[34] is relevant -

[The] remand of the case x x x is not necessary where the Court is in a position to resolve the dispute based on the records before it. [T]he Court, x x x [will decide] actions on the merits [in order to expedite the settlement of a controversy and if] the ends of justice x x x would not be subserved by the remand of the case.

For this same reason, we find that the case should now be resolved without sending it back to the NLRC or to the CA for disposition. We noted earlier that the petitioners filed a memorandum of appeal[35] which Bautista opposed.[36] Thus, the issues have been joined and are ready for adjudication, and should forthwith be resolved in the interest of speedy justice.[37]

c. The Merits of the Dismissal Issue

c.1. The Case for the Petitioners

The petitioners appealed[38] the labor arbiter's decision on the main ground that the labor arbiter committed grave abuse of discretion in making conclusions of fact and law without credible evidence to support such conclusions which, if not corrected, would cause them grave and irreparable damage and injury. More specifically, the petitioners assailed the labor arbiter's finding that: "[Petitioners] failed to adduce convincing evidence to buttress their claim that complainant opted to leave her employment and thereafter failed to return to the company. x x x Her filing of a complaint for illegal dismissal soon after the incident of July 15, 2004 debunks [petitioners'] assertion that she abandoned her work. x x x [Petitioners'] imputation to complainant of the commission of certain acts constituting dishonesty is irrelevant considering that the cause of her separation x x x is abandonment and not for other cause." [39]

The petitioners bewailed the labor arbiter's failure to consider the evidence that Bautista defrauded the company by overcharging the truck rental for her personal gain. They argued that Bautista admitted that she took the P1,500.00 overcharge from the truck rental and, in ignoring this clear indication of Bautista's misconduct, the labor official gravely abused his discretion. They insisted that Bautista left her employment due to the dishonest act imputed against her; instead of resigning and to pre-empt her employer from dismissing her on grounds of dishonesty and abandonment, she allegedly filed the illegal dismissal complaint. There was no notice served on her as it was Bautista, not the petitioners, who severed her employment. They also pointed out that three days after being confronted with the charge of dishonesty, she was already soliciting business for a competitor establishment from a client of the company.

On Bautista's money claims, the petitioners contended that the labor arbiter likewise erred when he ignored the payrolls/time sheets they submitted and found them liable for overtime compensation and 13th month pay based only on Bautista's disclaimer. Further, the petitioners assailed the labor arbiter's ruling making Tumibay personally liable for Bautista's dismissal based on Bautista's bare allegation that Tumibay acted in bad faith. They maintained that as managing director, Tumibay was acting within the bounds of her duty and in the exercise of management prerogative when, in the course of the confrontation with Bautista, she asked for Bautista's resignation. Since it was Bautista who left or abandoned her employment, the petitioners argued, she is not entitled to backwages, damages, and attorney's fees.

Finally, the petitioners claimed that the consequences of the labor arbiter's erroneous decision cannot be overestimated; reinstating an employee who has greatly abused her position in the company, by grossly flouting its rules and regulations, may cause a breakdown of discipline and demoralization among the company personnel. Bautista's continuance in the service is patently inimical to the company's interest.

The petitioners filed a Supplemental Memorandum on Appeal dated August 27, 2005.[40] In support of their position that Bautista abandoned her job, the petitioners pointed out that Bautista did not only work as Manager of Ramaga Cargo Express, the business competitor of the company;[41] she also organized an entity engaged in the same business as the petitioners' under the name of Pure Goal Cargo Express which was registered with the Department of Trade and Industry on July 23, 2004.[42] This confirms, the petitioners argued, that Bautista committed fraud, used company time, resources, and funds, and pirated its valued clients, preparatory to the setting up of her own business which competes with that of the company.

On the procedural due process question, the petitioners maintained that it was grave error for the labor arbiter to rule that the twin-notice requirement was not complied with as the company asked Bautista to explain her side, but she refused to give an explanation and that she pre-empted the second notice by filing a complaint for illegal dismissal.

c.2. The Opposition to the Appeal

On August 16, 2005, Bautista opposed the appeal,[43] contending that the petitioners cannot change their allegation that Bautista was dismissed for abandonment; otherwise, they would be adopting a new theory on appeal. Her filing of the complaint for illegal dismissal negates the allegation of abandonment. Had Bautista abandoned her job, the petitioners should have served her with a termination notice on the ground of abandonment, as required by the rules implementing the Labor Code. She took exception to the petitioners' contention that the labor arbiter committed grave abuse of discretion, and asserted that the assailed decision was supported by substantial evidence. She concluded that the petitioners failed to discharge the burden of showing that her dismissal was for a just cause.

d. Our Ruling on the Dismissal Issue

d.1. The Legality of the Dismissal

The core issue of this case is whether Bautista abandoned her employment or whether she was illegally dismissed. The petitioners submit that Bautista no longer reported for work after she was ordered to explain the anomalous truck-rental service she arranged and to liquidate company funds in her possession; she filed the complaint to pre-empt further investigation on her dishonest and fraudulent acts, and, ultimately, her dismissal. Bautista, however, claims that she was unceremoniously dismissed on July 15, 2004, by petitioner Tumibay, prompting her to file the complaint for illegal dismissal.

We find it clear from the records that Bautista committed fraud or willful breach of her employer's trust, a just cause for termination of employment under the law.[44] The evidence - the cash voucher for the truck rental transaction[45] - proves that Bautista processed the truck rental with intent to defraud the company; she asked the company for P6,000.00 (as reflected in the voucher) to cover the truck rental when the actual fee was only P4,500.00. In her Reply, she admitted that she retained the P1,500.00 difference. She claimed that it was a discount that "pertained to her" as she was able to obtain it from the trucking firm.[46] Bautista's allegation that the P1,500.00 was a discount is not a valid defense; nowhere in the records does it appear that she was authorized to keep the discount for herself, assuming that it was indeed a discount.

As we stressed earlier, Bautista's continued employment with the petitioners has become untenable. She provided sufficient cause for her dismissal; her involvement in the anomalous truck rental transaction defrauded the company, and her dishonest act resulted in the breach of her employers' trust. In *Arlyn D. Bago v. National Labor Relations Commission*, we held that an employee may be dismissed on the ground of fraud or betrayal of trust.[47] Due to the gravity of her transgressions against the company, Bautista opted to voluntarily sever her employment with it.

Judging from Bautista's contemporaneous acts during her alleged termination on July 15, 2004, we find that she must have realized the gravity of her involvement in the truck rental transaction so that, as the company claimed, she no longer reported for work. Petitioners submitted in evidence the sworn statement dated January 18, 2005 of Virgie Mira, Customer Service Representative of Sandvik Tamrock Phils., Inc.,[48] stating that Bautista admitted that she was leaving the company because of her involvement in the truck rental overcharge:

[1.] On June 2004, Ma. Teresa I. Bautista ("Bautista") went to our office to ask for representation fees for the Bureau of Customs of P5,000.00;

[2.] On 12 or 13 July 2004, when Bautista was processing the release of our cargoes and deliveries from customs, through Intertranz Container Lines, Inc. ("Company"), she told me that she is leaving the Company because they are upset with her for making up the price of a truck rental;

[3.] She also told me that "wala naman masama doon sa ginawa ko. Natural lang yun. Ako naman nakipag-usap doon sa trucking";

[4.] On or about the same day, Bautista was also trying to offer her personal services for customs clearance;

[5.] On or about 18 July 2004, Bautista went to our office at Km. 20 West Service Road, South Super Hi-Way, Muntinlupa City;

[6.] She gave me a formal proposal letter dated 18 July 2004 offering her services to my company, Sandvik, as broker to release our imported cargoes and deliver it to our warehouse under a new company, Ramaga Cargo Express, and not her employer, Intertranz, signed by her as manager[.]

Mira's sworn statement also refers to Bautista's solicitation of business similar to that of her employer, in her capacity as manager of Ramaga Cargo Express, a competitor of the company, contained in her letter of July 18, 2004,[49] only two days after her confrontation with Tumibay.

Bautista denied Mira's statements claiming that they are all deliberate falsehoods and therefore worthless.[50] She pointed out that she signed the letter dated July 18, 2004, no longer as an employee of the petitioners but of Ramaga Cargo Express where she worked from July 17, 2004 to July 31, 2004. She also insisted that she never asked Mira for representation fees for the Bureau of Customs; it was Enrico L. Diaz, the operations manager of Ramaga Cargo Express, who made the solicitation. Nevertheless, we find Mira's statements to be credible since Bautista never denied that she wrote the July 18, 2004 letter, wherein she tried to solicit business from one of the company clients in behalf of a competing company or that she had been involved in the truck rental transaction. Bautista merely tried to deflect the possible negative implications of her intention to leave the company by saying she had a family to support and therefore, she had to find employment elsewhere.[51]

Eight days after her confrontation with Tumibay or on July 23, 2004, Bautista also registered, with the Department of Trade and Industry, Pure Goal Cargo Express, a sole proprietorship of which she was listed as owner and which is engaged in providing transport services and equipment and cargo handling,[52] similar to the services offered by the company.

In summary, Bautista's actuations within a time span of little over a week again confirmed Mira's statement that Bautista confided to her that she was leaving her employment with the company because of the truck rental transaction. They also validated the company's submission that after her confrontation with Tumibay, Bautista did not return for work because she was busy servicing the company's competitor (Ramaga Cargo Express) and attending to her own business (Pure Goal Cargo Express), in competition with her former employer, herein petitioners.

The elements of abandonment are present in Bautista's case: (1) the failure to report for work without valid or justifiable reason and (2) a clear intention on her part to sever the employer-employee relationship.[53] While as a rule, the immediate filing of a complaint for illegal dismissal negates abandonment,[54] peculiar circumstances can arise when the immediate filing of an illegal dismissal complaint does not disprove abandonment of work.[55]

In the first place, Bautista did not immediately file the complaint. She instituted it only on September 10, 2004, almost two (2) months after the confrontation with Tumibay on July 15, 2004. Bautista claimed that because of her abrupt dismissal, "she was subjected to public humiliation and she suffered and continues to suffer from extreme anxiety and mental anguish."[56] Yet, her delay in filing the complaint weakens the plausibility of her claims that she had been publicly humiliated and made to suffer emotionally. The filing of the illegal dismissal complaint appears to be an afterthought and a ploy Bautista used as leverage to prevent her employer from taking further action on her case. As we held in the ARC-Men Food Industries case, "abandonment not having been

disproved, the employer's dismissal on that ground was held valid." [57] We thus find that the labor arbiter committed grave abuse of discretion in ignoring the evidence that Bautista clearly intended to abandon her work.

Nevertheless, the company itself admits [58] that it failed to serve a notice of Bautista's termination of employment on the ground of abandonment; [59] the petitioners thus violated Bautista's right to procedural due process. However, the violation will not nullify the dismissal or render it illegal, as the dismissal was for a valid cause. In *Agabon v. National Labor Relations Commission, et al.*, [60] we held that "the violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages, the amount to be addressed to the sound discretion of this Court, taking into account the relevant circumstances." The petitioners are, therefore, liable to Bautista for nominal damages. Given the circumstances of the present case, we deem it appropriate to set the nominal damages award to Bautista at P20,000.00.

Finally, with a valid cause for Bautista's separation from the service, no factual and legal basis exists for the awards of damages and attorney's fees.

d.2. Bautista's Money Claims

The labor arbiter awarded Bautista overtime pay for every workday of her employment with the petitioners in the unusually large amount of P304,380.67. [61] The labor arbiter declared "[C]omplainant's regular work is from 8:30 am to 5:30 pm but according to her she rendered overtime work up to midnight everyday after regular work time." [62]

We find no basis for the overtime pay award. The records do not support Bautista's incredible claim that she worked everyday until midnight during her entire employment with the petitioners. In the face of the petitioners' defense that overtime pay can be claimed only "if an employee has a pre-approved overtime schedule and daily time record," [63] the labor arbiter should have asked for the production of daily time records and proof that she had been allowed or required to render overtime work in the manner and to the extent she sweepingly claimed. For lack of credible evidence supporting the award, the labor arbiter gravely abused his discretion in the grant he made. A claim for overtime pay, it must be stressed, cannot be granted in the absence of supporting factual and legal basis. [64]

On Bautista's claim for 13th month pay, we are inclined to sustain the labor arbiter's finding on the matter in light of the contradictory evidence that the petitioners presented on the matter. They first presented two check vouchers - voucher 5636 purporting to show that Bautista received her 13th month pay for 2002 [65] and voucher 5637 showing that Bautista received her 13th month pay for 2003. [66] Bautista averred that her signatures in these vouchers were forged. She also claimed that those vouchers were spurious as it was highly improbable for her to sign two vouchers with two consecutive serial numbers in an interval of about twelve months. [67] Reacting to Bautista's pointed challenge to the vouchers, the petitioners then presented a second set of documents to prove payment of Bautista's 13th month pay for 2002 and 2003 in cash, [68] which again elicited Bautista's objection for being spurious. [69] These contradictory evidence can only point to the petitioners' failure to establish their payment of Bautista's 13th month benefits. Bautista is therefore entitled to 13th month pay for the years 2002 and 2003, and for proportionate entitlement for the period January 1, 2004 to July 15, 2004.

Regarding Bautista's claim for service incentive leave pay, the petitioners presented evidence only for the years 2003 and 2004, [70] when Bautista enjoyed leave benefits. For this reason, we affirm the labor arbiter's award to Bautista of the monetized equivalent of her service incentive leaves for 2002.

Based on our earlier findings that Bautista abandoned her work and was guilty of dishonest acts against the company, it is evident that petitioner Tumibay had not caused Bautista's dismissal nor had she acted in bad faith. Thus, she cannot be held liable for Bautista's claims.

All told, and as qualified above, we find merit in the appeal.

WHEREFORE, premises considered, the decision dated June 15, 2005 of Labor Arbiter Aliman D. Mangandog is hereby MODIFIED. Accordingly, we DISMISS the complaint for illegal dismissal in light of the proven valid cause for dismissal. However, petitioner Intertranz Container Lines, Inc. is directed to pay respondent Ma. Teresa I. Bautista 13th month pay for 2002 and 2003 and for the period January 1, 2004 to July 15, 2004 and the monetary equivalent of her service incentive leave for 2002, as well as nominal damages in the amount of P20,000.00. The NLRC is ordered to recompute Bautista's total monetary award in accordance with this Decision.

SO ORDERED.

[*]Carpio,[***]Abad, Villarama, Jr., and [****]Mendoza, JJ., concur.

[*] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Lucas P. Bersamin, per Special Order No. 859 dated July 1, 2010.

[**] Designated Acting Chairperson of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 849 dated June 29, 2010.

[***]Designated additional Member of the Third Division, in view of the retirement of Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

[****]Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 850 dated June 29, 2010

[1] Rollo, pp. 57-99; filed pursuant to Rule 45 of the RULES OF COURT.

[2] Id. at 8-20; penned by Associate Justice Jose L. Sabio, Jr. (now retired), with the concurrence of Associate Justice Jose C. Reyes, Jr. and Associate Justice Myrna Dimaranan Vidal.

[3] Id. at 54-55.

[4] Intertranz Container Lines, Inc. and Josefina F. Tumibay v. NLRC and Ma. Teresa I. Bautista.

[5] Rollo, pp. 399-400; Petitioners' Position Paper, Annexes "A" and "B."

[6] Id. at 407; Petitioners' Position Paper, Annex "I."

[7] Id. at 239-244.

[8] Id. at 265-267.

[9] Id. at 263-264.

[10] Id. at 268-272.

[11] Id. at 278-280.

[12] Id. at 281-283.

[13] Id. at 332-335.

- [14] Id. at 346-352.
- [15] Id. at 381-382.
- [16] Id. at 506.
- [17] Id. at 507-510.
- [18] Id. at 159-234.
- [19] Supra note 2.
- [20] Supra note 3.
- [21] Rollo, p. 681.
- [22] Id. at 682-695.
- [23] Id. at 702-706.
- [24] Id. at 707-708.
- [25] Id. at 709-710.
- [26] Id. at 712-714.
- [27] Id. at 733.
- [28] Id. at 738-746.
- [29] Id. at 753-756.
- [30] *Borja Estate v. Spouses R. Ballad*, 498 Phil. 694 (2005).
- [31] *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013 (1998).
- [32] *Nicol v. Footjoy Industrial Corp.*, G.R. No. 159372, July 27, 2007, 528 SCRA 300.
- [33] G.R. No. 106370, September 8, 1994, 236 SCRA 371.
- [34] G.R. No. 77425, June 19, 1991, 198 SCRA 300.
- [35] Rollo, pp. 246-267.
- [36] Id. at 470-471.
- [37] *Metro Eye Security, Inc. v. Julie Salsona*, G.R. No. 167637, September 28, 2007, 534 SCRA 375.
- [38] Supra note 36.
- [39] Id. at 252, par. 3.
- [40] Rollo, pp. 472-480.
- [41] Supra note 6.
- [42] Supra note 38, Annex "A."
- [43] Supra note 36.
- [44] LABOR CODE, Article 282(c).

- [45] Supra note 5.
- [46] NLRC Records, Vol. I, p. 69; Bautista's Reply, par. 3.
- [47] G.R. No. 17001, April 4, 2007, 520 SCRA 644.
- [48] NLRC Records, Vol. I, p. 79, Company's Reply, Annex "A."
- [49] Supra note 6.
- [50] NLRC Records, Vol. I, p. 113; Bautista's Rejoinder, par. 5.
- [51] NLRC Records, Vol. I, p. 70; Bautista Reply to Company's Position Paper, p. 3, par. 9.
- [52] Supra note 42.
- [53] Labor, et al. v. NLRC and Gold City Commercial Complex, Inc., et al., G.R. No. 110388, September 14, 1995, 248 SCRA 183.
- [54] Ibid.
- [55] ARC-Men Food Industries Corp. v. NLRC, et al., 338 Phil. 870 (1997).
- [56] NLRC Records, Volume I, p. 70; Bautista's Reply, p. 3, par. 8.
- [57] Supra note 54.
- [58] NLRC Records, Vol. I, p. 37; Company's Position Paper, p. 9, par. 38.
- [59] Supra note 5, at 242, par. 1.
- [60] 485 Phil. 248 (2004).
- [61] Rollo, p. 245, Computation of Complainant's Monetary Award.
- [62] Id. at 239, Labor Arbiter's Decision, p. 1, par. 3.
- [63] NLRC Records, Vol. I, p. 74; Company's Reply, p. 3, par. 7.
- [64] Global v. Atienza, 227 Phil. 64 (1986).
- [65] Rollo, p. 97; Company's Reply, Annex "D."
- [66] Id. at 98, Annex "E."
- [67] Id. at 113; Bautista's Rejoinder, p. 2, par. 8.
- [68] Id. at 128-129; Company's Sur-Rejoinder, Annexes "A" & "B."
- [69] Id. at 134, Bautista's Final Comment, p. 1, par. 3.
- [70] Id. at 100-102 & 106-108, Company's Reply, Annexes "G," "H," "I," "M," "N," and "Q."

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