

EDILBERTO P. ETOM, JR., PETITIONER, VS. AROMA LODGING HOUSE THROUGH EDUARDO G. LEM, PROPRIETOR AND GENERAL MANAGER, RESPONDENT.

G.R. No. 192955. November 09, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Assailed in this Petition for Review on Certiorari[1] is the January 21, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 110901. The CA granted the Petition for Certiorari[3] filed therewith and set aside the April 30, 2009 Decision[4] and June 30, 2009 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-003303-08 which affirmed with modification the August 20, 2008 Decision[6] of Labor Arbiter (LA) Eduardo G. Magno in NLRC NCR No. 04-05453-08 and found Edilberto Etom (petitioner) entitled to unpaid wages, 13[th] month pay and holiday pay. Also assailed is the July 2, 2010 CA Resolution[7] which denied petitioner's motion for reconsideration.

Factual Antecedents

This case stemmed from a complaint[8] dated April 15, 2008 filed by petitioner against Aroma Lodging House (respondent) for illegal dismissal and money claims. Petitioner alleged that respondent, a business engaged in providing affordable lodging,[9] employed him as roomboy in 1997 with a monthly salary of P2,500.00. He averred that his working hours were from 5:00 a.m. to 11:00 p.m. from Monday to Saturday, including holidays. His tasks included cleaning the lodging house and washing towels and bedsheets.[10]

Petitioner claimed that on February 4, 2008, respondent refused to allow him to report for work. Petitioner argued that respondent did not inform him of any violation that would warrant his dismissal. He also claimed that he was not given an opportunity to explain and answer any imputation against him by his employer.[11]

On the other hand, respondent asserted that it employed petitioner as roomboy in 2000.[12] He was paid salary above the required minimum wage, holiday pay, 13[th] month pay and overtime pay. Respondent also stated that it provided petitioner with free meals, allowed him to receive "tips" from customers, and sell bottles left by customers in the lodge. It also gave him commission on certain occasions.[13]

Respondent averred that despite its beneficence, petitioner still showed an adverse attitude in work. In particular, he created trouble within the workplace, stole items from customers and was even charged with rape in 2003.[14] Petitioner also figured in a fistfight with another roomboy, Reynaldo Baccus, whom he tried to stab with a knife on September 2, 2006. He likewise had an altercation with Arnold Sansona (Sansona), a checker in the lodge, who reprimanded him for watching television during working hours. He also had a quarrel with another co-worker, Jess Abuca (Abuca). On separate occasions, while purportedly armed with a knife, petitioner chased Sansona and Abuca.[15]

Respondent averred that it served upon petitioner a memorandum[16] requiring him to explain why he chased a

co-employee with a knife. However, respondent refused to receive said memorandum. Taking into consideration the safety of its employees and customers, it terminated petitioner for serious misconduct.[17]

Ruling of the Labor Arbiter

On August 20, 2008, the LA rendered a Decision[18] finding petitioner to have been legally dismissed. The LA, however, ordered respondent to pay petitioner punitive damages amounting to P10,000.00 for non-compliance with the termination notice requirement, salary differential computed at P199,482.80, holiday pay amounting to P3,107.50 and 13[th] month pay of P7,150.00.

Respondent appealed to the NLRC arguing that petitioner was not underpaid.[19] It stated that in a "Sama-Samang Sinumpaang Salaysay"[20] - which was submitted in another labor case, - petitioner and another employee averred that they were regular employees of respondent since 2000 and that they were receiving wages beyond the minimum required by law.[21] Respondent also claimed that it furnished petitioner with a copy of notice to explain and notice of termination but the latter refused to receive them.[22]

Ruling of the National Labor Relations Commission

In its April 30, 2009 Decision,[23] the NLRC affirmed the ruling of the LA but deleted the award of punitive damages.

The NLRC concurred with the LA ruling that petitioner was underpaid considering that he was receiving only P2,500.00 as monthly salary. It decreed that petitioner was entitled to receive salary differential amounting to P166,080.38 for three years computed from February 20, 2005 to February 20, 2008 less 10% thereof for the facilities provided by respondent.

On June 30, 2009, the NLRC denied respondent's motion for reconsideration.[24]

Undaunted, respondent filed with the CA a Petition for Certiorari insisting that petitioner was not entitled to salary differential, 13[th] month pay and holiday pay because he admitted in an affidavit that he had been receiving wages and other benefits in accordance with law.[25] It also asseverated that it was exempt from Minimum Wage Law since it had no more than 10 employees.[26]

For his part, petitioner argued that the Petition for Certiorari should not be entertained for late filing of the motion for reconsideration of the NLRC Decision. He contended that respondent received the NLRC Decision on May 13, 2009 but filed a motion for reconsideration only on May 26, 2009. Thus, he maintained that such filing was three days late.[27]

Ruling of the Court of Appeals

On January 21, 2010, the CA rendered the assailed Decision[28] granting the Petition for Certiorari, the decretal portion of which reads:

FOR THE STATED REASONS, the petition is GRANTED and the assailed decisions, dated April 30, 2009 and June 30, 2009 of the National Labor Relations Commission (Second Division), awarding private respondent Edilberto Etom of unpaid wages, 13[th] month pay and holiday pay are hereby REVERSED and SETASIDE.xxx

SO ORDERED.[29]

The CA held that respondent timely filed a motion for reconsideration of the NLRC Decision. It added that "if the motion for reconsideration was filed out of time, the NLRC would have dismissed it outright, instead of resolving it on its merit." [30]

Moreover, the CA explained that for having executed an earlier notarized affidavit stating that he received wages above the required minimum salary, petitioner could not subsequently claim that he was underpaid by respondent.[31] It also declared that there is no factual basis to support the grant of 13[th] month pay and holiday pay in favor of petitioner.[32]

On July 2, 2010, the CA denied petitioner's motion for reconsideration.[33]

Hence, petitioner filed the instant Petition raising the following assignment of errors:

- THE HONORABLE COURT OF APPEALS COMMITTED A VERY GRAVE ERROR WHEN IT BASED ITS CONCLUSION THAT HEREIN RESPONDENT'S] MOTION FOR RECONSIDERATION OF THE DECISION OF THE NLRC WAS NOT FILED OUT OF TIME, ON CONJECTURES [sic] DESPITE THE CATEGORICAL ADMISSION OF HEREIN RESPONDENTS [sic] AND THE MACHINE RECEIVED COPY OF SAID MOTION.

- THE HONORABLE COURT OF APPEALS COMMITTED A VERY GRAVE ERROR WHEN IT UPHELD THE JOINT-AFFIDAVIT OF HEREIN PETITIONER AND HIS CO-EMPLOYEE AS ADMISSION AGAINST INTEREST DESPITE THE DOCUMENTARY EVIDENCE THAT PETITIONER WAS NOT PAID HIS MINIMUM WAGE AND DESPITE DECISIONS OF THE HONORABLE SUPREME COURT ON QUITCLAIMS AND WAIVERS.

- THE COURT OF APPEALS COMMITTED A VERY GRAVE ERROR WHEN HEREIN PETITIONER WAS NOT GIVEN THE OPPORTUNITY TO FILE A REPLY AND SUCH OTHER RESPONSIVE PLEADING TO THE PETITION FOR CERTIORARI, PURSUANT TO SECTION 6 OF RULE 65, AND/OR MEMORANDUM PURSUANT TO SECTION 8 THEREOF.[34]

Petitioner reiterates that respondent's motion for reconsideration of the NLRC Decision was filed beyond the reglementary period.[35] He also maintains that he was underpaid, and was not given 13[th] month pay and holiday pay by respondent.[36]

In addition, petitioner alleges that his affidavit dated March 19, 2004 was executed during the pendency of a criminal case against him. He contends that respondent pressured him to sign it.[37] He likewise avers that he is illiterate and does not understand the implication of said affidavit.[38] He further explains that he was unable to disclaim the voluntary execution and authenticity of the affidavit because he was not given the chance to file a memorandum where he could have discussed all the issues in the Petition for Certiorari.[39]

For its part, respondent reiterates the timely filing of its motion for reconsideration before the NLRC. It also agrees with the CA ruling giving evidentiary value to petitioner's affidavit.[40]

Our Ruling

As a rule, the perfection of appeal within the period required by law is mandatory and jurisdictional. Failure to appeal within such period results in the assailed decision becoming final and executory. As regards a motion for reconsideration of a decision of the NLRC, the same must be filed within 10 days from the receipt of the assailed decision. It must, nevertheless, be emphasized that the NLRC is not bound by the technical rules of procedure. Thus, in deciding labor cases, the NLRC is allowed to liberally apply its rules.[41]

In this case, petitioner alleges that the subject motion for reconsideration was filed beyond the 10-day reglementary period. However, we note the explanation made by respondent for the seeming late filing of its motion to wit:

x x x [I]t is public knowledge that May 23, 2009 happens to be a Saturday, hence, under established rules and relevant jurisprudence, the filing of petitioners' (herein respondent) Motion for Reconsideration should be on

May 25, 2009, the next working day after May 23, 2009. On May 25, 2009, Petitioners filed their Motion for Reconsideration before the public respondent, however, through a glitch in the docket machine date and time puncher of the NLRC at that date and hour, the petitioners' Motion for Reconsideration date of filing was erroneously marked and stamped as May 26, 2009 1:47 A.M. Petitioners only managed to take notice of the mistake in the date and time of the docket of their Motion for Reconsideration on the following day, May 26, 2009, the real May 26, 2009. Petitioners thence quickly went to the NLRC Docket Section to report the mistake and x x x was [sic] told by the Docket Section Personnel that they have already corrected the erroneous date and time of petitioners' docketed Motion for Reconsideration to the x x x correct May 25, 2009, 1:47 P.M. and have forwarded the Motion for Reconsideration of the [petitioners to the NLRC x x x Indeed, it would be plainly absurd for a government office docket section like that of the public respondent NLRC to be open for business at such unholy hour of 1:47 A.M. x x x[42]

Based on the foregoing explanation, we are convinced that respondent timely filed its motion for reconsideration of the NLRC Decision. In fact, the NLRC took cognizance of it and decided the motion on the merit.

In any event, we held in *Opinaldo v. Ravina*[43] that the NLRC may liberally apply its rules and decide a motion for reconsideration on the merits. We upheld the liberal application by the NLRC of its technical rules to resolve the issues on the merits because "a full resolution of the case on the merits is the more palpable explanation for the liberal application of its rules." [44]

Petitioner also argues that he failed to disclaim the voluntary execution of the affidavit - where he admitted to have been paid wages beyond the minimum required by law - because he was not given the opportunity to file a memorandum.

His contention is unmeritorious.

Section 6,[45] Rule 65 of the Rules of Court provides that before the court gives due course to a petition for certiorari, it may require the respondent to file a comment to the petition. Afterwards, the court may require the filing of a reply and such pleadings as it may deem necessary. In turn, Section 8[46] of Rule 65 states that after the comment or other pleadings are filed or the period for their filing has expired, the court may require the parties to file memoranda.

It is thus clear that the filing of a reply and other subsequent pleading, as well as memoranda, is subject to the sound judgment of the court. "The word 'may' when used in a statute is permissive only and operates to confer discretion x x x." [47] In this case, the CA, in the exercise of its judgment, may or may not require the filing of any pleading and submit the case for resolution, after the petition and the comment thereto had been filed.

Anent the substantive issue raised by petitioner, the power of the Court to review a CA Decision in labor cases is limited. Specifically, in a petition for review under Rule 45 of the Rules of Court, the Court has to resolve whether the CA properly determined the presence of grave abuse of discretion on the part of the NLRC in rendering its Decision, and not whether the NLRC Decision on the merits was correct. However, while the strict inquiry on the correctness of evaluation of evidence is not required in a certiorari proceeding, it is still necessary to determine that the conclusions of labor tribunals were supported by substantial evidence. This is because a decision unsupported by substantial evidence is a judgment rendered with grave abuse of discretion.[48]

In addition, as a rule, once the employee has asserted with particularity in his position paper that his employer failed to pay his benefits, it becomes incumbent upon the employer to prove payment of the employee's money claims. In fine, the burden is on the employer to prove payment, rather than on the employee to establish non-payment.[49]

Both the LA and the NLRC held that respondent did not pay petitioner the required minimum wage, holiday pay

and 13[th] month pay. The CA, however, overturned the factual findings of these labor tribunals. Thus, we deem it necessary to review the facts on record.

While a notarized document is presumed to be regular such presumption is not absolute and may be overcome by clear and convincing evidence to the contrary. The fact that a document is notarized is not a guarantee of the validity of its contents.[50]

Here, petitioner is an unlettered employee who may not have understood the full import of his statements in the affidavit. Notably, petitioner, along with a co-worker did not state the specific amount of what they referred as salary above the minimum required by law. Their statement only reads as follows:

Na kami ay namamasukan bilang mga 'roomboy' sa naturang Aroma Lodge magmula pa noong taong 2000 at bilang mga regular na mga empleyado nito, kami ay nakakatanggap ng pasueldo na lagpas sa 'minimum wage' na takda ng batas, bukod pa sa libreng tirahan (stay-in), pagkain, [paggamit] ng ilaw at tubig, at mga 'tips' at komisyon sa mga parokyano ng Aroma Lodge.[51]

As found by the LA, respondent did not present substantial evidence that it paid the required minimum wage, 13[th] month pay and holiday pay in favor of petitioner.[52] Respondent's mere reliance on the foregoing affidavit is misplaced because the requirement of established jurisprudence is for the employer to prove payment, and not merely deny the employee's accusation of non-payment on the basis of the latter's own declaration.

In conclusion, we find that the CA erred in ascribing grave abuse of discretion on the part of the NLRC in awarding salary differential, 13[th] month pay and holiday pay in favor of petitioner.

WHEREFORE, the Petition is GRANTED. The January 21, 2010 Decision and July 2, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 110901 are REVERSED and SET ASIDE. Accordingly, the April 30, 2009 Decision and June 30, 2009 Resolution of the National Labor Relations Commission in NLRC LAC No. 09-003303-08 are REINSTATED and AFFIRMED.

SO ORDERED.

Carpio,[*] (Chairperson), Brion, Perlas-Bernabe,**] and Leonen, JJ., concur.

[*] Designated Acting Chief Justice per Special Order No. 2265 dated November 2, 2015.

[**] Per Special Order No. 2271 dated November 9, 2015.

[1] Rollo, pp. 10-29.

[2] CA rollo, pp. 352-363; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Remedios A. Salazar-Fernando and Apolinario D. Bruselas, Jr.

[3] Id. at 3-25.

[4] Id. at 98-105; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Angelita A. Gacutan.

[5] Id. at 112-114.

[6] Id. at 26-29.

[7] Id. at 411-415.

[8] Rollo, pp. 55-57.

[9] Ch rollo, p. 115.

[10] Id. at 222.

[11] Id. at 223.

[12] Id. at 229.

[13] Id. at 116.

[14] Id.

[15] Id. at 117.

[16] Id. at 142.

[17] Id. at 117.

[18] Id. at 26-29.

[19] Id. at 30-37.

[20] Id. at 95-96.

[21] Id. at 34.

[22] Id. 36.

[23] Id. at 98-105.

[24] Id. at 112-113.

[25] Id. at 11.

[26] Id. at 19.

[27] Id. at 261.

[28] Id. at 352-363.

[29] Id. at 362.

[30] Id. at 357.

[31] Id. at 360.

[32] Id. at 361.

[33] Id. at 411-415.

[34] Rollo, pp. 12-13.

[35] Id. at 18-20.

[36] Id. at 20-22.

[37] Id. at 23-24.

[38] Id. at 25.

[39] Id. at 24.

[40] Id. at 73-75,

[41] Opinaldo v. Ravina, G.R. No. 196573, October 16, 2013, 707 SCRA 545, 558.

[42] CA rollo, pp. 276-277.

[43] Supra note 41 at 559.

[44] Id. at 560.

[45] Section 6. Order to Comment. — x x x

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In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper. (6a)

[46] Section 8. Proceedings After Comment is Filed. — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for to which the petitioner is entitled.

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[47] PCL Shipping Phils. Inc. v. National Labor Relations Commission, 502 Phil. 554, 561 (2005).

[48] Leus v. St. Scholastica's College Westgrove, G.R. No. 187226, January 28, 2015.

[49] Heirs of Manuel H. Ridad v. Gregorio Araneta University Foundation, G.R. No. 188659, February 13, 2013, 690 SCRA 575, 582.

[50] Lazaro v. Agustin, 632 Phil. 310, 323 (2010).

[51] CA rollo, p. 95.

[52] Id. at 29.

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