

**HERMINIO TORIBIO, DOING BUSINESS UNDER THE NAME AND
STYLE BERGMANN'S FOOD INDUSTRY, PETITIONER, VS. HON.
NATIONAL LABOR RELATIONS COMMISSION, ROGELIO SIMON,
WILLIAM ALARCON, IRE...**

G.R. No. 74513. August 19, 1988

Ponente: PARAS, J.

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PARAS, J.:

Petitioner is doing business under the name and style of Bergmann's Food Industry, a domestic corporation, which is engaged in the manufacture of noodles in Baliwag, Bulacan. Private respondents were among petitioner's employees listed as follows:

Names

Date Employed Daily Wage

1. Rogelio Simon

Mar. 8, 1979-May 24, 1983

P37.00

2. William Alarcon

June 27, 1979-May 24, 1983

36.00

3. Absalon Futol

Mar. 9, 1980-Jan. 1983

26.00

4. Ireneo delos Santos

Nov. 2, 1979-May 24, 1983

31.00

5. Edmundo Gumba

Aug. 12, 1979-Jan. 1983

31.00

On June 14, 1983, private respondents filed with the office of the Regional Arbitration Branch in San Fernando, Pampanga a complaint for the non-payment of a) separation pay b) Sunday and holiday pay 3) overtime pay and d) 13th-month pay.

The hearing of the case was set for July 28, October 14 and December 12 and 29, 1983, and again for February 24, 1984. Complainants were always in attendance but petitioner failed to appear. The Labor Arbiter therefore considered the repeated non-appearance of petitioner as a waiver to present his evidence and the case was deemed submitted on the basis of the parties' position papers.

Complainants, private respondents herein, filed their position paper on July 29, 1983 while petitioner complied several months thereafter on November 14, 1983.

On March 15, 1984, Arbiter Othello Tongio rendered the decision which was affirmed by the NLRC in its assailed resolution dated September 27, 1985, its dispositive portion reading as follows:

"WHEREFORE, all things considered, judgment is hereby rendered:

"1. Ordering the respondent company and/ or Herminio Toribio to pay the separation benefits of complainants, as indicated hereunder:

Rogelio Simon -----

P3,848.00

William Alarcon -----

3,744.00

Absalon Futol -----

2,208.00

Ireneo delos Santos -----

3,224.00

Edmundo Gumba -----

__2,418.00

Total

P15,442.00

"2. Dismissing the claims for Sunday and holiday pay and premium, overtime pay, 13th month pay and underpayment of salaries for lack of merit.

"SO ORDERED." (pp. 25-26, Rollo)

Hence the filing of the present petition to annul said resolution.

Petitioner submits that in affirming the decision of the Labor Arbiter, respondent NLRC gravely abused its discretion and acted arbitrarily and capriciously as the decision is contrary to law and the evidence.

Petitioner argues that private respondents were not terminated. Respondents Absalon Futol and Edmundo Gumba left the company without notice and transferred employment to another noodle factory at San Fernando,

Pampanga in 1982. Respondents Rogelio Simon, William Alarcon and Ireneo delos Santos were temporarily laid off sometime in May, 1983, the operations of the company being seasonal, as the process involved in the manufacture of their product depends on the existence of sunlight for drying purposes. Petitioner argues further that that award given to private respondents is contrary to the express provision of Art. 287 of the Labor Code, as amended, which provides among others that the bonafide suspension of operations of a business or undertaking for a period not exceeding six (6) months shall not terminate employment.

Petitioner's contention is meritless. A perusal of the evidence on record shows that private respondents were employed by petitioner for more or less four (4) years continuously. During the whole period of their employment it has not been shown that they were ever temporarily laid-off or that the company had suspended its operations. Neither was there evidence to show that they were re-employed after six (6) months - limit requirement if petitioner really wanted to re-employ them. As to petitioner's allegation that respondents Futol and Gumba voluntarily left their employment, We find no valid evidence to substantiate such claim. What was presented was merely an affidavit of the firm's operation manager which is self-serving and of little probative value.

NLRC's affirmance of the Arbiter's award of one (1) month separation pay for every year of private respondents' service is in accord with the provision of the Labor Code (Art. 284) and should be upheld. The law is clear on this and explicitly mandates the higher rate of one month separation pay for every year of service and not one-half (1/2) month pay for each year as erroneously contended.

WHEREFORE, premises considered, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Sarmiento, JJ., concur.

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