

BUILDING CARE CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, FIRST DIVISION, AND ROGELIO RODIL, RESPONDENTS.

G.R. No. 94237, February 26, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In dismissing this petition, the Court reiterates the well-entrenched doctrine that (1) a motion for reconsideration, as a rule, is an indispensable pre-condition to the filing of a petition for certiorari, and (2) findings of facts of the National Labor Relations Commission (NLRC), affirming those of the Labor Arbiter, are binding upon the Supreme Court.

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the Decision[1] promulgated on May 9, 1990 of the First Division[2] of public respondent in NLRC Case No. NCR-00-04-01605-88 which affirmed the decision of Labor Arbiter Quintin C. Mendoza. The dispositive portion of the affirmed decision of the labor arbiter reads:[3]

"WHEREFORE, decision is hereby rendered for the complainant declaring his suspension and dismissal illegal and ordering the respondent to reinstate him plus backwages from time his (sic) dismissal at the adjusted rate under R.A. 6640 and retaining whatever seniority rights in the job he has (sic) plus his legal holidays pay of P1,178.00 and differential pay of P369.40 and attorney's fees of not more than ten (10%) of the total award."

The Facts

The facts as found by public respondent are as follows:[4]

"Complainant (herein private respondent) alleged that his wages, 13th month pay and service incentive leave pay were unpaid; that he was not paid for work rendered during legal holidays; that on February 11, 1988, he was suspended for one week by his supervisor, H. Silvestre, for no apparent reason; that the suspension was illegal because of the absence of just cause and respondent's (herein petitioner) non-compliance with the requirements of due process; that thereafter, he was not given any assignment, despite repeated follow-ups, summarized as follows:

Date

Person Approached

Result

2-19-88

Supervisor H. Silvestre

Required complainant to return (on) 2-20-88

2-20-88

FEBTC

Worked for one pay (should be day); no time card & pay

2-23-88

Mr. Adriatico

Referred to Silvestre not given work

2-23-88

Mr. Barbosa, FEBTC

Told to go home; promise(d) to talk to Silvestre

2-26-88

Supervisor Ms. Carol

Told to return the following day

2-27-88

Supervisors Silvestre/Ms. Carol

Not given work

2-29-88

Silvestre

Not given work

3-04-88

Supervisors Silvestre, Viray, Melanie

No results

3-23-88

Silvestre

No results

3-25-88

Ms. Malig

Promised to ask supervisors what happened

3-28&29-88

Ms. Malig

Told supervisors not around

4-04-88

Ms. Malig

Informed he would no longer be given Work

Respondent contended that complainant was paid his wages and holiday pay in accordance with law; that it was unable to comply with R.A. 6640 immediately because of its client's delay in approving the adjusted contract rates; that it was ready to pay complainant P369.40 representing salary differentials from December 14, 1987 to February 11, 1988; that on February 9, 1988, FEBTC complained that complainant's area of responsibility was improperly cleaned; that complainant was twice instructed to report to respondent's night shift supervisor, but on both times, he failed to do so; that because of such defiance, he was verbally warned that drastic disciplinary action would be taken against him should he persist in failing to report as directed; that on February 11, 1988, the assistant supervisor erroneously noted on the logbook that complainant was being suspended; that the suspension was not carried out as complainant was allowed to work the following day, as shown by his daily time record; that he was advised to report to respondent's office the following day; that, instead, complainant took a long absence without leave starting on February 12, 1988; that he showed up at respondent's office only on March 28, 1988; that he was required to submit a written explanation of his long absence without leave, frequent absences in the post and deteriorating performance; that complainant wrote that he failed to report because his supervisor suspended him for no apparent reason; that he was told that an investigation of his alleged suspension would be conducted and, in view of the forthcoming non-working holidays, advised to report on April 4, 1988; that, in the meantime, respondent's supervisor reported that FEBTC had indicated that it would no longer accept complainant; that complainant was advised of FEBTC's decision on April 4, 1988; that for humanitarian reasons, complainant was advised that he was going to be temporarily assigned as reliever at respondent's office while there was no available post in its other clients; that complainant requested for a week-long leave, allegedly because he had to bring his family to Quezon Province; that complainant again failed to report for work on April 18, 1988; that he was sent a letter advising him to report to respondent's office; that he never went back to respondent's office; but instead, filed the instant case.

Complainant maintained that he did his work properly; that he was absent from January 18-22 (1988) because he was sick, and he duly advised respondent of his sickness; that he was absent from February 1-8 (1988) because he had to take care of his wife who was sick, as shown by her medical certificate; that he was absent again for one week starting February 12, 1988 because he was illegally suspended; that thereafter, he was never given another assignment, contrary to respondent's untruthful averments; that he was denied due process of law by respondent; that respondent may have sent him a letter after April 4, 1988, but it was too late because he had already instituted the instant case.

Respondent submitted the affidavits of Wendel Viray, Hernani Silvestre and Germel Villamor, its over-all Supervisor and janitor, respectively, stating that instead of implementing the suspension, complainant was transferred from the night shift to the day shift; that complainant requested to be returned to the night shift, but his request was not granted; that he was given a chance to work at respondent's office, but he failed to report there as instructed."(Citations omitted)

Hence, on April 19, 1988, private respondent filed with the Arbitration Branch of the NLRC a complaint for illegal dismissal, underpayment and non-payment of legal holiday pay against petitioner. At the initial hearing, private respondent was offered reinstatement, but he insisted on being paid his backwages because of his alleged unjustified dismissal. Petitioner did not agree. Thus, after the parties submitted their respective position papers and other documentary evidence, the Labor Arbiter issued a decision in favor of private respondent.[5]

The Issue

Petitioner raises single issue in its petition, to wit:[6]

"With all due respects to the Hon. National Labor Relations Commission, First Division, petitioner submits that in affirming the decision of the Hon. Labor Arbiter and (in) dismissing petitioner's appeal, public respondent committed grave abuse of discretion and acted arbitrarily and capriciously as the questioned (Decision) is contrary to law and evidence."

Petitioner alleges that the labor arbiter "relied only on complainant's" affidavit. Public respondent "failed to consider" that the Labor Arbiter gave very little or no probative value to evidence adduced by petitioner, both documentary and testimonial. Petitioner further claims that both public respondent and the Labor Arbiter missed the antecedent and most important issue of whether or not private respondent had really been dismissed by petitioner.[7] According to petitioner, the employer is tasked with the burden of proving just cause for dismissal but "the primary burden of proving the fact of dismissal itself rests upon the complaining employee." [8]

Petitioner states that even if it is assumed that private respondent was dismissed, there were just causes for the termination of his service; [9] the conduct of private respondent was inconsistent with proper subordination." [10]

Petitioner alleges too that private respondent failed to prove that he was not paid amounts corresponding to the legal holidays" and there being no merit to private respondent's complaint, attorney's fees should not be awarded either. [11]

Public respondent in affirming the decision of the labor arbiter reasoned as follows: [12]

"Contrary to respondent's (herein petitioner) argument on appeal, the burden of proof in dismissal cases is borne by the employer, who has to prove the existence of a just cause (*Asphalt & Cement Pavers, Inc. vs. Leogardo, Jr.*, 162 SCRA 312). This is even more true if, like the respondent, the employer puts up the defense of abandonment. The rule is that the defense of abandonment should be proved (*Penaflor vs. NLRC*, 120 SCRA 68; *Polymedic General Hospital vs. NLRC*, 134 SCRA 420).

We have perused the entire records, and We are inclined to conclude that respondent's theory of abandonment has not been sufficiently proven.

Complainant's (herein private respondent) claim that he was suspended for no apparent reason for one week is borne out by the logbook entry for February 11, 1988 and by his letter-explanation dated March 28, 1988. It should also be noted that complainant stood pat on this claim throughout the entire proceedings.

On the other hand, respondent, in its position paper filed on July 13, 1988, simply contended that complainant failed, without prior leave, to report for work despite respondent's repeated instructions. In the affidavits submitted on September 21, 1988, three of respondent's employees averred that complainant was transferred to the day shift and he quit his job because he was against such transfer. This is an entirely new twist which did not appear in the memoranda and logbook entries earlier submitted by respondent, nor even in its position paper. For this reason, said averment appears to be an afterthought, which cannot be given much weight.

x x x x x x x x

Finally, We find no compelling reason to disturb the award of holiday pay amounting to P1,178.00 and salary differentials amounting to P369.40. If respondent had really paid complainant holiday pay, it could easily have presented its payrolls, which constitute the best proof of payment. These are necessarily in the possession of respondent, so complainant cannot be blamed for their non-production. Moreover, respondent admitted its failure to comply with the wage increase mandated by R.A. 6640." (Citations omitted).

The Court's Ruling

The contention of petitioner is without merit. We totally support the Decision of the National Labor Relations Commission.

At the outset, we note that the petition suffers from a procedural defect that warrants its outright dismissal. Petitioner prematurely acted. It did not file a motion for reconsideration with public respondent before availing of the special civil action of certiorari. This premature action constitutes a fatal infirmity as ruled in a catena of cases, most recently in the case of Interior Maritime Enterprises, Inc., et al. vs. National Labor Relations Commission, et al.[13]in this wise:

“x x x The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent. In the instant case, the plain and adequate remedy expressly provided by the law was a motion for reconsideration of the assailed decision, based on palpable or patent errors, to be made under oath and filed within ten (10) calendar days from receipt of the questioned decision.

(T)he filing of such a motion is intended to afford public respondent an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Petitioner's inaction or negligence under the circumstances is tantamount to a deprivation of the right and opportunity of the respondent Commission to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed. x x x

x x x And for failure to avail of the correct remedy expressly provided by law, petitioner has permitted the subject Resolution to become final and executory after the lapse of the ten day period within which to file such motion for reconsideration.”

On the merits, petitioner wants this Court to determine if private respondent was really dismissed. This is a question of fact which cannot be raised in a petition for certiorari under Rule 65.

“It should be noted, in the first place, that the instant petition is a special civil action for certiorari under Rule 65 of the Revised Rules of Court. An extraordinary remedy, its use is available only and restrictively in truly exceptional cases -- those wherein the action of an inferior court, board or officer performing judicial or quasi-judicial acts is challenged for being wholly void on grounds of jurisdiction. The sole office of the writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of public respondent NLRC's evaluation of the evidence and factual findings based thereon, which are geerally accorded not only great respect but even finality.”[14]

The recitation of facts evidently shows that public respondents did not rely on the evidence presented by private respondents. All the evidence presented for or against, the position of private respondents have been duly considered in arriving at its conclusion.

“Both the Labor Arbiter and the respondent NLRC gave credence to the evidence of the private respondents that he was illegally dismissed. We are not free to tamper with their calibration of the weight of evidence in the absence of a clear showing that it is arbitrary and bereft of any rational basis.”[15]

Indeed if petitioner wanted to prove its payment of holiday pays and salary differentials, it could have easily presented proofs of such monetary benefits. But it did not. It had failed to comply with the mandate of the law. As public respondent ruled, the burden of proof in this regard belongs to the employer, nor to the employee.

We also sustain the award of the attorney's fees. “It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fee's.”[16]

WHEREFORE, premises considered, the Petition is DISMISSED and the assailed Decision is AFFIRMED. Double costs against petitioner.

SO ORDERED.

Narvasa, C. J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1]Rollo, pp. 15-26.

[2]Composed of Presiding Commissioner Bartolome S. Carale, ponente, and Commissioners Vicente S.E. Veloso III and Romeo P. Putong, concurring.

[3] Rollo, p. 15.

[4] Ibid., pp. 16-20.

[5] Ibid., p. 149.

[6] Ibid., p. 5.

[7] Ibid., p. 6.

[8] Ibid., p. 7.

[9] Ibid., p. 207.

[10]Ibid., p. 211.

[11] Ibid., p. 12.

[12]Ibid., pp. 22-25.

[13] G.R. No. 115497, September 16, 1996 citing cases of Restituto C. Palomado vs. National Labor Relations Commission, G.R. No. 96520, June 28, 1996; Pure Foods Corporation vs. NLRC, 171 SCRA 415, 425, March 21, 1989; Philippine National Construction Corporation (PNCC) vs. National Labor Relations Commission, 245 SCRA 668, 674-675, July 7, 1995.

[14]Flores vs. National Labor Relations Commission, 253 SCRA 494, 497, February 9, 1996 citing cases of Sajonas vs. NLRC, 183 SCRA 182, March 15, 1990; Special Events & Central Shipping Office Workers Union vs. San Miguel Corporation, 122 SCRA 557, May 30, 1983.

[15] Magnolia Corporation vs. National Labor Relations Commission, 250 SCRA 332, 339, November 24, 1995.

[16]Rasonable vs. National Labor Relations Commission, 253 SCRA 815, 819, February 20, 1996, Citing Article 2208 (7) & (2) of the Civil Code (*italics in the original text*).

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