

**EMILIANO A. RIZADA, DOING BUSINESS UNDER THE NAME AND
STYLE CEBU STAR PRESS AND REGINO ALVAREZ, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION, TEOFILO RADAZA,
FELIZARDO L...**

G.R. No. 96982. September 21, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court assailing the Decision of the National Labor Relations Commission in NLRC Case No. RAB VII-0604-87 dated October 10, 1990 and the Resolution of December 14, 1990 denying the Motion for Reconsideration.

The pertinent facts are as follows:

On December 7, 1987, Teofilo Radaza, et al. brought a Complaint before the Regional Arbitration Branch, Region VII, Cebu City, docketed as RAB Case No. 0604-87 for Violation of Labor Standard Laws on Minimum Wage, ECOLA, 13th Month Pay, Service Incentive Leave Pay, Premium Pay on Holidays and Termination Pay, Moral and Exemplary Damages and Attorney's Fees, alleging thus:

“xxx xxx xxx

a) Teofilo Radaza

Date Employed: January 15, 1962-November 30, 1987

Position: Typesetter

Weekly Salary for 5 days: P175.00

Cola for 5 days: P96.00

SSS Shares: P3.11

Christmas bonus received: 1984 - P300.00

1985 - P320.00

1986 - P350.00

b) Felizardo Legazpi

Date Employed: October 16, 1967-November 30, 1987

Position: Typesetter

Weekly Salary for 5 days: P192.50

Cola for 5 days: P96.00

SSS Share: P3.11

Christmas Bonus Received:

1984 - P375.00

1985 - P360.00

1986 - P400.00

c) Teofilo Lubas

Date Employed: July 20, 1980-November 30, 1987

Position: Offset Operator

Weekly Salary for 5 days: P160.00

Cola for 6 days: P96.00

SSS Share: P5.05

Christmas Bonus Received:

1984 - P300.00

1985 - P300.00

1986 - P300.00

d) Felipe C. Abarquez

Date Employed: March 3, 1969-November 30, 1987

Position: Utility Messenger

Weekly Salary for 5 and 1/2 days: P143.43

Cola for 6 and 1/2 days: P85.80

SSS Share: P3.11

Christmas Bonus Received:

1984 - P200.00

1985 - P230.00

1986 - P250.00

e) Eleno B. Locaylocay

Date Employed: January 4, 1979-November 30, 1987

Position: Typesetter

Weekly Salary for 5 days: P140.00

Cola for 6 days: P79.20

SSS Share: P3.11

Christmas Bonus Received:

1984 - P230.00

1985 - P250.00

1986 - P230.00

f) Herman T. Aresco

Date Employed: June 2, 1983-November 30, 1987

Position: Typesetter

Weekly Salary for 5 days: P120.00

Cola for 6 days: P43.20

SSS Share: P3.11

Christmas Bonus Received:

1984 - P150.00

1985 - P150.00

1986 - P200.00

g) Francisco C. Vargas

Date Employed: July 4, 1983-November 30, 1987

Position: Driver

Weekly Salary for 5 days: P120.00

Cola for 6 days: P43.20

SSS Share: P2.35

Christmas Bonus Received:

1984 - P210.00

1985 - P210.00

1986 - P220.00

h) Demetrio Abejar

Date Employed: July 20, 1958-November 30, 1987

Position: Folding Machine Operator

Weekly Salary for 5 days: P130.00

Cola for 6 days: P87.90

SSS Share: P2.35

Christmas Bonus Received:

1984 - P230.00

1985 - P230.00

1986 - P230.00

i) Armando Alvarez

Date Employed: May 22, 1979-November 30, 1987

Position: Folding Machine Operator

Weekly Salary for 5 days: P130.00

Cola for 6 days: P87.90

SSS Share: P2.35

Christmas Bonus Received:

1984 - P230.00

1985 - P230.00

1986 - P230.00

j) Francisco Abellana

Date Employed: January 1946-November 30, 1987

Position: Utility Man

Weekly Salary for 5 days: P130.00

Cola for 5 days: P72.50

SSS Share: P5.00

Christmas Bonus Received

1984 - P200.00

1985 - P200.00

1986 - P200.00

3. That respondents have not accorded complainants herein the legislated benefits and by way of circumventing the safeguards set forth in our labor standard laws, respondents required the complainants to affix their respective signatures on blank vouchers and payroll forms when the truth of the matter is that complainants only received by way of salary and other monetary benefits the amount reflected in the machine tapes initialed by the cashier indicating the breakdown of employees' salary for a given week; xxx

4. That sometime in the month of October, 1987 complainants were verbally informed by respondent Regino Alvarez that ownership of Cebu Star Press had been transferred to a certain Mel Rizada without however showing to the complainant the corresponding documents of transfer in order to afford the latter the opportunity to verify and seek protection of their status of employment considering that most of them have put in long years of service with the company;

5. That complainants' reasonable request for such information regarding the alleged sale only merited acrimonious reaction from respondent Regino Alvarez in that complainants were dared instead to initiate a complaint against them despite the fact that under existing law, respondents are legally required to report such document of sale or transfer to Department of Labor and Employment for its approval prior to the consummation of the same; said respondent further threatened to file Bankruptcy case with the net effect of nullifying complainants' claims arising out of their employment;

6. That evidentiary of respondents' violation is the fact that in the quarterly inspection conducted by the DOLE for 1987; respondents Cebu Star Press and Regino Alvarez were meted a fine of P10,8000.00 (sic) for having violated the provision on Service Incentive Leave Pay which penalty until now has not been satisfied by said respondents;

7. That sometime on November 28, 1987 complainants herein were served a notice of termination of their employment effective November 30, 1987 by the management of respondent Cebu Star Press; xxx

8. That respondent Emiliano Rizada is in effect the alter ego of respondent Cebu Star Press and Regino Alvarez and as such held solidarily liable under the instant case together with the other remaining respondents;

9. That when complainants reported for duty on December 1, 1987 they were refused entry by management; as a matter of fact, they were not even given a chance to seek clarification and reconsideration from management re the letter-termination received by them in the afternoon of November 28, 1987;

10. That having persevered all these years in their employment despite the sub-standard benefits they were receiving from the respondents, complainants were shocked into sleeplessness when their employment was summarily terminated almost at Christmastime; hence complainant should be entitled to recover by way of moral damages an amount left at the discretion of this Honorable Office;

11. That in like manner, to deter others from emulating respondents' malpractice, complainants are entitled to recover from the respondents an amount left to the discretion of this Honorable Office by way of exemplary damages;

12. That complainants, for the protection of their rights and enforcement of their claim have engaged the services of counsel to whom they obligated themselves to pay an amount equivalent to 10% of whatever sum they may recover under the case at bar by way of attorney's fees.[1]

On March 17, 1988, the private respondents sent in their position paper, to wit:

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Besides, even assuming arguendo that there were prior violations on labor standard laws by the respondents on the previous years, they have so become unenforceable after the lapse of three years. xxx And for this purpose they have executed a quitclaim acknowledging receipt of their salaries, benefits and privileges as for by labor standard laws.

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On the other hand, the new management can not of course be held liable for the length of service that the complainants had with the old management. It is trite saying that the management has the right to select its employees. And it was in the best exercise of such management prerogative that the new management had

selected the employees they would want to hire. To hold contrariwise would be to render naught the management prerogative appurtenant to an employer. In the same vein, the new management prerogative in the selection employees (sic) would be rendered meaningless if it would be made responsible for the previous length of service of the employees of the old management by way of holding them liable for termination pay.”[2]

On August 11, 1989, the Labor Arbiter in NLRC Case No. RAB VII-0604-87 decided in favor of the complainants, disposing as follows:

“RESPONSIVE, to all the foregoing, judgment is hereby entered, ordering respondent Cebu Star Press, Regino C. Alvarez and Emiliano A. Rizada, Jr., to pay jointly and severally complainants representing their separation pay severally complainants representing their separation pay, ECOLA and Service Incentive Leave, in the case of Francisco Abellana the sum of P29,314.2; Demetrio Abejar, P20,615.62; Teofilo Radaza, P18,608.25; Felizardo Q. Legazpi, P14,593.62; Felipe C. Abarquez, P13,924.37; Eleno Locaylocay, P7,233.12; Armando Alvarez, P7,233.12; Teofilo Lubas, P6,564.00; Herman T. Aresco, P3,887.50 and Francisco Vargas, P3,887.50 or that total amount of P125,861.35.

Complainants are further awarded the sum of P12, 586.13 in concept of Attorney’s fees, or the aggregate amount of ONE HUNDRED THIRTY-EIGHT THOUSAND FOUR HUNDRED FORTY-SEVEN PESOS and 48/100 (P138,447.48) to be deposited with this office within ten (10) days from receipt of this Decision for appropriate disposition. Other claims of complainants are hereby Dismissed for lack of merit.”[3]

On September 25, 1989, the private respondents below, Emiliano Rizada, et al., submitted their Memorandum on appeal, arguing:

“If such an allegation was true, the petitioners should have presented other witnesses to substantiate his testimony.

Standing alone and unsubstantiated, the testimony of complainant Locaylocay cannot demolish the clear intent and expression of the quitclaims, releases and waiver documents.

Be that as it may, it can be safely stated that respondent Emiliano Rizada, Jr. bought and paid the CEBU STAR PRESS from respondent Regino Alvarez on July 30, 1988, that is eight (8) months after the complaint was filed.

Evidently, and as shown by the records of this case, respondent Emiliano Rizada, Jr. assumed and took over full control of the management of CEBU STAR PRESS after he had fully paid the entire consideration of the printing establishment. Surely, it would be an anachronism to assert that respondent Emiliano Rizada, Jr. had exercised control of management before he had fully paid the CEBU STAR PRESS. Such an assertion would be utterly baseless and devoid of merit.

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It is therefore apparent that the aforementioned letter did not actually terminate the employment of complainants. The plain and simple purpose of said letter was to work out with the old management and the complainants an arrangement for their continuous employment with the new management.

Sad to state, however, that before the matter was placed on the bargaining table for discussing between the old and new owner, the complainants abandoned their job.

During the cross-examination, Mr. Locaylocay admitted that they (complainants) were not at all terminated but a discussion was held on their length of service.

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Records show that respondent Emiliano Rizada, Jr. made a downpayment for the purchase of the CEBU STAR PRESS in the amount of FOUR HUNDRED FIVE THOUSAND NINE HUNDRED TWENTY FIVE & 84/100 (P405,925.84) on November 21, 1987, in accordance with the Schedule of Payment xxx Respondent Emiliano Rizada, Jr., upon the execution of the Deed of Absolute Sale on July 30, 1988, thereafter, took over and assumed full control of the management of the Cebu Star Press. In effect, respondent Emiliano Rizada, Jr. assumed full control of the management of the Cebu Star Press eight (8) months after the filing of the complaint dated December 7, 1987.

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xxx It is also shown in the schedule of payment xxx that the liabilities of respondent Regino Alvarez were specifically assumed and paid by respondent Emiliano Rizada, Jr. Accordingly, all payments made by Emiliano Rizada, Jr. were deducted from the total purchase price of Cebu Star Press.

Moreover, the new management was only exercising its prerogative to select its own employees when it gave notice to the affected employees thru Regino Alvarez that it cannot consider their continuous employment. Further, said employees who are now complainants in this case were advised to re-apply to the new management.

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Respondent Emiliano Rizada, Jr. has proved by clear and convincing evidence that it is respondent Regino Alvarez who should be solely responsible and answerable for the violation of Standard Labor Laws which were committed under the old management. As we have amply emphasized earlier, the claims of complainants were already paid by respondent Regino Alvarez. Accordingly, there is no basis to award the claims which were already paid.”[4]

On October 10, 1990, the Fourth Division of the National Labor Relations Commission dismissed the appeal for lack of merit and affirmed the Decision appealed from on the basis of the following rationcination:

“Obviously, the complainants were pushed from one back to another, they were made like balls on the pingpong table, they were made the “it” in a game of hide and seek. Such an attitude, is intolerable, it violates the basic policy of the state to afford protection to labor and the underlying principle to free the people from poverty, to promote full employment and an improved quality of life for all. Under these circumstances We affirmed the conclusion of the Arbiter that the complainants were illegally terminated by virtue of the letter respondent Rizada dated November 13, 1987 to respondent Alvarez, which letter was served on complainants on November 28, 1987, only (2) days prior to the date of their termination on November 30, 1987.

The respondents also contended that it is erroneous to hold respondent Emiliano Rizada jointly and severally liable with respondent Regino Alvarez for the claims of the complainants. Firstly, respondent Rizada argued that respondent Alvarez who is his uncle made him believe that the complainants already received the benefits due them under the existing laws and it was for this assurance that he consumated (sic) the sale and took full control of the operations on July 30, 1988 or eight months after the filing of the case on December 7, 1987. This is contrary to the facts and evidence on record because as early as November 13, 1987, he already informed the respondent Alvarez that the complainants’ services shall be until November 30, 1987, or they have to re-apply with the new management. Furthermore respondent Alvarez alleged and admitted in his position paper xxx that respondent Emiliano Rizada, Jr. took complete control on the operations of Cebu Star Press sometime on November 30, 1987. Additionally, respondent Rizada should have dealt with directly with the complainants to inquire before the sale, whether or not they have pending or existing claims against the respondent Cebu Star Press instead of taking as Gospel truth the assurance of his uncle respondent Regino Alvarez. We likewise dismiss the assertion of respondent Rizada that he cannot be held liable for the length of service of the complainants with the old management, otherwise it would render at naught management prerogative to select the employees it would want to hire. The same is basically untenable, the complainants

herein are regular and permanent employees, mostly with many years of service with respondent Cebu Star Press.

As held in *Central Azucarera del Danao v. Court of Appeals* 137 SCRA 295, ‘the disposition of assets (sic), or change of ownership xxx of a business does not automatically terminate employer - employee relationship, especially when the purchaser xxx continued the integral business operation of the former management (employer) in an essentially unchanged manner, the same not being one of the causes for termination of employees under the law. We also noted that the “Deed of Sale” xxx executed by respondent Regino Alvarez in favor of co-respondent Emiliano Rizada, Jr. did not mention at all anything about the status of his employees at Cebu Star Press hence, it is presumed that respondent Rizada assumed responsibility for such employees.

With respect to the grant of the cost of living allowance and service incentive leave, the record shows that there is no plausible evidence to show compliance with such benefits by the respondents. On the contrary the production of various machine tapes xxx showing the amounts received by the complainants and the deduction for the SSS and canteen vales strongly corroborated the allegations of the complainants as to their salary and benefits they enjoyed from the respondents.

As to the conflicting version on the complainants starting period of employment We agree with the Arbiter that the respondent has failed to controvert the complainants assertion on the matter by competent evidence. While this is one of the assigned errors allegedly committed by the Labor Arbiter xxx the respondents failed to support or present valid argument in relation to the said assigned errors. Relative to this, Section 10, Rule X, Book III of the Implementing Rules of the Labor Code required the employers to keep employment records of the employees within the company premises. In the absence of such record or any other controverting evidence, the findings of the Labor Arbiter stands un rebutted.”[5]

With the denial by NLRC of their Motion for Reconsideration on December 14, 1990, petitioners found their way to this Court via the present Petition for Certiorari, ascribing grave abuse of discretion below, and contending that:

“THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN AFFIRMING THE DECISION OF THE LABOR ARBITER.

1. The Honorable Commission gravely abused its discretion, amounting to lack of jurisdiction, amounting to lack of jurisdiction, in upholding the unsubstantiated findings and conclusions of the labor arbiter regarding the probative value of the quitclaims and resignation letters.
2. The Honorable Commission gravely abused its discretion, amounting to lack of jurisdiction, in concluding that complainants were terminated illegally.
3. The Honorable Commission gravely abused its discretion, amounting to lack of jurisdiction, in awarding monetary benefits to complainants based on preposterous canteen vales and machine tapes and in discrediting the payroll and the findings of the Department of Labor and Employment.
4. The Honorable Commission gravely abused its discretion amounting to lack of jurisdiction in holding petitioner Emiliano A. Rizada, Jr. jointly liable with petitioner Regino C. Alvarez for alleged non-payment of wages and the separation pay of private respondents.”[6]

Anent the issue of propriety of the quitclaims and waivers executed by subject employees, the same are contrary to public policy.[7] In the case of *Peftok Integrated Services, Inc. vs. National Labor Relations Commission and Eduardo Abugho, et al.*, 293 SCRA 507, 509, 512, this Court held:

“Pacta privata juri publico derogare non possunt. Private agreements (between parties) cannot derogate from public right.

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xxx It should be borne in mind that in this jurisdiction, quitclaims, waivers, or releases are looked upon with disfavor. xxx They are commonly frowned upon as contrary to public policy and ineffective to bar claims for the full measure of the workers' legal rights.

The court gives credence to the testimony of Eleno Locaylocay, quoted hereunder:

xxx 'after I was admitted by Cebu Star Press as Typesetter in 1979 I was made to affix my signature in a bunch of paper as was the standard operation procedure for newly hired employees where said employees are made to sign and affix their signature in blank sheet of paper.' (NLRC Decision, August 11, 1989, p. 8.)

Anent the issue of illegal dismissal, the Court upholds the respondent commission on its finding that the herein employees were unlawfully dismissed and did not abandon their work. Their filing complaints for illegal dismissal effectively negates the employer's theory of abandonment.

"To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Abandoning one's job means the deliberate, unjustified refusal of the employee to resume his employment and the burden of proof is on the employer to show a clear and deliberate intent on the part of the employee to discontinue employment." [8]

"Abandonment is a matter of intention and cannot be lightly inferred, much less legally presumed from certain equivocal acts." (Shin I Industrial v. National Labor Relations Commission, 164 SCRA 8).

"An employee who forthwith took steps to protest his dismissal cannot be said to have abandoned his work." (Toogoe v. National Labor Relations Commission, 238 SCRA 241), as where the employee immediately filed a complaint for illegal dismissal to seek reinstatement" (Tolong Aqua Culture Corp., et. al v. National Labor Relations Commission, G.R. 122268, November 12, 1996, Third Division Minute Resolution.

Similarly, the employees were deprived of due process when the employer did not give them the requisite notice of dismissal. Here, what was given was just a three-day notice before the employees' termination on November 30, 1987. There was non-compliance with the indispensable requirement of one month-notice before termination. The existence of just cause will not suffice. Equally important to comply with is the requirement of procedural due process. [9]

"Furthermore, this Court has repeatedly held that to meet the requirements of due process, the law requires that an employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, that is, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice, after due hearing, which informs the employee of the employer's decision to dismiss him." (Tanala v. National Labor Relations Commission, et al., G.R. No. 116588, 28 January 1996, Second Division, Regalado, J.)

What is more, the factual findings by the Labor Arbiter and the respondent Commission which, in the absence of grave abuse of discretion, are not to be disturbed, indicate that:

"Granting arguendo that there was abandonment in this case, it nonetheless cannot be denied that notice still has to be served upon the employee sought to be dismissed, as the second sentence of Section 2 of the pertinent implementing rules of the Labor Code explicitly requires service thereof at the employee's last known address. While it is conceded that it is the employer's prerogative to terminate the services of an employee, especially when there is a just cause therefor, the requirements of due process cannot be taken lightly. The law does not countenance the arbitrary exercise of such a power or prerogative when it has the effect of undermining the

fundamental guarantee of security of tenure in favor of the employee.”[10]

On the issue of petitioners’ obligation in solidum, the point is well-taken. The submission of petitioner Rizada - that the employees were terminated on November 30, 1987 and on November 21, 1987, he tendered his downpayment in the amount of P405,925.84 while he assumed control of Cebu Star Press only on July 30, 1988, when the Deed of Absolute Sale was executed in his favor, is not impressed with merit. Neither can he (Rizada) rely on the assurance by the former owner, who is his uncle, that the claims of subject employees were fully satisfied. Before buying Cebu Star Press, he very well knew that the employer had outstanding obligations to the employees, so much so that he required them to apply anew as a condition sine qua non to their re-employment. In the case of *Antonio M. Villanueva v. Abednego O. Adre*, 172 SCRA 876 (1989) and *Valderrama v. NLRC*, 256 SCRA 466 (1996) citing *A. C. Ransom Labor Union-CCLU v. NLRC*, 142 SCRA 269 (1986), the court held:

“Considering that non-payment of the backwages of the 22 strikers has been a continuing situation, it is our opinion that the personal liability of the RANSOM President, at the time the backwages were ordered to be paid should also be a continuing joint and several personal liabilities of all who may have thereafter succeeded to the office of president, otherwise, the 22 strikers may be deprived of their rights by the election of a President without leviable assets.”

As regards the factual finding by the respondent Commission on the competence of the machine tapes and vales, the Court finds the same credible. The stance of petitioners that they complied with the quarterly inspection by the Department of Labor and Employment is anemic of sufficient evidentiary support. A closer scrutiny of the records shows that there was a violation of the said directive and petitioners were fined therefor.

WHEREFORE, for want of merit, the Petition is DISMISSED and the Decision of the National Labor Relations Commission in NLRC Case No. RAB VII-0604-87, dated October 10, 1990, AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur. Vitug, J., took no part, on official business during the deliberation.

[1] Complaint, Annex “A”, Petition, pp. 1-5, Rollo, pp. 21-25.

[2] Respondents’ Position Paper, Annex “B” of the Petition, pp. 5-6; Rollo, pp. 41-42.

[3] Decision, p. 18, Rollo, p. 74.

[4] Memorandum of Appeal of the Respondents, pp. 4-7, 9, 11-12; Rollo, pp. 80-81, 83, 85.

[5] Decision, pp. 10-13; Rollo, pp. 98-101.

[6] Petition, p. 6; Rollo, p. 9.

[7] Article 1306 of the New Civil Code. – The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[8] *Premier Development Bank, Porkpie C. Reyes, Pacita M. Araos and Renato Dionisio v. NLRC and Teodoro Labanda*, G.R. No. 114695, July 23, 1998.

[9] Section 2, Rule XIV, Termination of Employment

Notice of Dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

Section 11. Report of dismissal. The employer shall submit a monthly report to the Regional Office having jurisdiction over the place of work all dismissals effected by him during the month, specifying therein the names of the dismissed workers, the reasons for their dismissal, the dates of commencement and termination of employment, the position last held by them and such other information as may be required by the Ministry for policy guidance and statistical purposes.

[10] *Ysari III v. NLRC*, 231 SCRA 173.

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