



SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

Republic of the Philippines  
Supreme Court  
Manila

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**SECOND DIVISION**

**REMEGIO E. BURNEA,**  
Petitioner,

**G.R. No. 231038**

- versus -

Present:

**SECURITY TRADING  
CORPORATION, NONPAREIL  
INTERNATIONAL FREIGHT  
AND CARGO SERVICES, INC.,  
FAR EASTERN KNITTING  
CORPORATION, JOSE CHING,  
and ESPERANZA CHING,**  
Respondents.

**PERLAS-BERNABE, S.A.J.,**  
*Chairperson,*  
**LAZARO-JAVIER,  
M. LOPEZ,  
ROSARIO, and  
J. LOPEZ,\* JJ.**

Promulgated:

**APR 26 2021**

[Signature]

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**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in the instant petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated December 2, 2016 and the Resolution<sup>3</sup> dated April 10, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 143770, which affirmed the Decision<sup>4</sup> dated September 29, 2015 and the Resolution<sup>5</sup> dated October 30, 2015 of the National Labor Relations Commission (NLRC) in LAC No. 07-

\* Designated Additional Member per Special Order No. 2822 dated April 7, 2021.

<sup>1</sup> *Rollo*, pp. 12-33.

<sup>2</sup> *Id.* at 39-50. Penned by Associate Justice Rodil V. Zalameda (now a member of the Court) with Associate Justices Edwin D. Sorongon and Pedro B. Corales, concurring.

<sup>3</sup> *Id.* at 52-52A.

<sup>4</sup> *Id.* at 180-185. Penned by Commissioner Nieves E. Vivar-De Castro with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring.

<sup>5</sup> *Id.* at 192-194.

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001948-15 finding petitioner Remegio E. Burnea (petitioner) not entitled to his money claims.

### The Facts

Petitioner claimed that in February 2005, respondents-spouses Jose T. Ching and Esperanza R. Ching (spouses Ching) hired him as a construction worker for their company, respondent Security Trading Corporation (STC), a domestic corporation engaged in the business of construction, equipment, materials, and supplies. Upon completion of STC's construction project, petitioner was hired as stay-in security guard of STC's premises with a monthly salary of ₱8,500.00.<sup>6</sup> On March 1, 2010, he was transferred to respondent Far Eastern Knitting Corporation (Far Eastern), a company also owned by spouses Ching, to protect and secure the said company's property. Because of the trust reposed upon him by spouses Ching, petitioner was issued an Authority to Sell<sup>7</sup> the Far Eastern's property that he was guarding. On November 15, 2013, Far Eastern's property was eventually sold<sup>8</sup> to respondent Nonpareil International Freight & Cargo Services, Inc. (Nonpareil). After he was paid his commission, petitioner was no longer paid his salary for the period of November 1-15, 2013 and was purportedly told by Far Eastern's management that his services were no longer needed and to just go back to his province.<sup>9</sup>

Aggrieved with the foregoing developments, petitioner initially filed on September 25, 2014 a complaint<sup>10</sup> against Far Eastern *via* Single-Entry Approach (SENA) before the Regional Conciliation and Mediation Board – NCR for money claims, non-payment/underpayment of wages, non-payment of overtime pay, night shift differential pay, service incentive leave, holiday pay, SSS, Pag-Ibig, PhilHealth, unfair labor practice, *illegal dismissal, separation pay*, and payment of labor standard law benefits (SENA Complaint). The SENA Complaint was, however, deemed closed and terminated<sup>11</sup> due to petitioner's filing of a similar complaint<sup>12</sup> before the National Labor Relations Commission (NLRC) against respondents STC, Nonpareil, Far Eastern, and spouses Ching for underpayment of salary/wages and 13<sup>th</sup> month pay, and non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, separation pay, ECOLA, and night shift differential, docketed as NLRC NCR Case No. 11-13578-14 (NLRC Complaint). Notably, while petitioner included the payment of separation pay in the causes of action in the NLRC complaint, he failed to include a cause of action for illegal dismissal. Nonetheless, a reading of

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<sup>6</sup> See *id.* at 13 and 77.

<sup>7</sup> *Id.* at 106.

<sup>8</sup> See Deed of Absolute Sale dated September 17, 2013; *id.* at 134-137.

<sup>9</sup> See petitioner's Position Paper dated January 27, 2015, *id.* at 75-94.

<sup>10</sup> *Id.* at 127.

<sup>11</sup> See *id.* at 128. See also *id.* at 81-82.

<sup>12</sup> See Third Amended Complaint dated December 19, 2014; *id.* at 73-74.

petitioner's Position Paper<sup>13</sup> would show that he specifically argued that he was illegally dismissed, and hence, entitled to, among others, separation pay.<sup>14</sup>

The NLRC Complaint was dropped as against spouses Ching on the ground of lack of jurisdiction due to failure to serve summons on them, while STC was deemed to have waived its right to be heard for failure to appear at the mandatory conferences despite receipt of summons.<sup>15</sup> Similarly, records are bereft of showing that Far Eastern filed any position paper or participated in the proceedings before the Labor Arbiter (LA).

For its part, Nonpareil denied having any business relationship with Far Eastern asserting that it is a separate and distinct entity and that its only association with the latter was the purchase of its property. It likewise denied any employer-employee relationship with petitioner, claiming that the latter was never in its payroll and that there was no agreement to absorb him as its employee after the sale.<sup>16</sup>

### **The LA Ruling**

In a Decision<sup>17</sup> dated March 27, 2015, the LA partially ruled in favor of petitioner, ordering STC to pay him salary differentials, holiday pay, and service incentive leave pay, subject to the three (3)-year prescriptive period, to be reckoned from November 3, 2011 up to the date of his dismissal on November 17, 2013 as alleged in the complaint, or in the aggregate amount of ₱75,576.38.<sup>18</sup> All other claims were, however, dismissed for lack of merit and/or lack of jurisdiction.<sup>19</sup>

At the outset, the LA found Nonpareil as an entity separate and distinct from STC and Far Eastern, and hence, not liable to pay petitioner's claims, considering that it only bought the property where Far Eastern used to hold office. Relatedly, the LA declared STC as the true employer of petitioner as it was STC that paid his salaries/wages as shown by the payslips and that he was merely transferred to Far Eastern with the approval of STC's President, Jose T. Ching.<sup>20</sup>

With respect to petitioner's money claims, the LA held that petitioner is entitled to salary differentials, holiday pay, and service incentive leave pay, subject, however, to the three (3)-year prescriptive period provided by law, as

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<sup>13</sup> Id. at 75-94.

<sup>14</sup> See id. at 82-86, 89, and 91.

<sup>15</sup> See id. at 110 and 165.

<sup>16</sup> See Position Paper dated January 26, 2015 filed by Nonpareil; id. at 129-133.

<sup>17</sup> Id. at 165-169. Penned by Labor Arbiter Marie Josephine C. Suarez.

<sup>18</sup> See Re: Computation of Complainant's Monetary Award as per Decision of Honorable Labor Arbiter Marie Josephine C. Suarez computed by Jocelyn B. Crisostomo, Administrative Officer IV; id. at 170.

<sup>19</sup> Id. at 169.

<sup>20</sup> See id. at 166-167.

STC failed to show that it correctly paid the same to petitioner. However, the LA denied petitioner's claims for 13<sup>th</sup> month pay, night shift differentials, overtime pay, holiday premium, and rest day premium for his failure to either discuss or provide proof of his entitlement thereto in his position paper. Similarly, the LA rejected petitioner's claims for SSS, Pag-Ibig, and PhilHealth contributions for lack of jurisdiction. Furthermore, the LA rejected petitioner's claim for separation pay, pointing out that separation pay is only granted in cases of illegal dismissal, and that illegal dismissal is not among the causes of action listed in petitioner's complaint before the NLRC. In ruling for such rejection, the LA cited Section 12 (c) of the 2011 NLRC Rules of Procedure (2011 NLRC Rules), which provides that the parties' position paper shall only cover claims and causes of action stated in the complaint or amended complaint. Finally, petitioner's claims for damages and attorney's fees were likewise rejected on the same ground.<sup>21</sup>

Dissatisfied, petitioner appealed to the NLRC, asserting his entitlement to all his money claims as no payments were shown to have been made by his employer, and that his claim for illegal dismissal was uncontested. As such, he insists on his entitlement to, *inter alia*, full backwages, separation pay, damages, and attorney's fees in accordance with law.<sup>22</sup>

### The NLRC Ruling

In a Decision<sup>23</sup> dated September 29, 2015, the NLRC affirmed the LA Decision, holding that the alleged underpayment of 13<sup>th</sup> month pay and night shift differentials were not specifically claimed in petitioner's position paper, while the non-payment of overtime, holiday premium, and rest day were not substantiated. It likewise sustained the denial of separation pay, damages, and attorney's fees, ruling that the complaint, despite having been amended three (3) times, neither included a claim for illegal dismissal nor other claims as causes of action. Lastly, it did not give merit to the belated submission of cash vouchers to prove non-payment of petitioner's money claims as the same only showed the fact of underpayment, and that the failure to prove payment of the other money claims did not necessarily result in its outright grant pointing out that the claimant must prove his entitlement thereto.<sup>24</sup>

Petitioner moved for reconsideration<sup>25</sup> which was denied in a Resolution<sup>26</sup> dated October 30, 2015. Hence, the matter was elevated to the CA via a petition for *certiorari*,<sup>27</sup> docketed as CA-G.R. SP No. 143770.

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<sup>21</sup> See *id.* at 167-169.

<sup>22</sup> See Notice and Memorandum of Appeal dated July 6, 2015; *id.* at 171-178.

<sup>23</sup> *Id.* at 180-185.

<sup>24</sup> See *id.* at 182-184.

<sup>25</sup> *Id.* at 186-189.

<sup>26</sup> *Id.* at 192-194.

<sup>27</sup> Dated December 18, 2015. *Id.* at 53-69.

### The CA Ruling

In a Decision<sup>28</sup> dated December 2, 2016, the CA affirmed the NLRC ruling. The CA ruled that the NLRC did not gravely abuse its discretion in not passing upon the issues of illegal dismissal and petitioner's entitlement to separation pay, damages, and attorney's fees in connection therewith as the same were not raised in his complaint. It also sustained the denial of petitioner's 13<sup>th</sup> month pay, overtime pay, holiday premium, rest day premium, and night shift differential for failure to prove his entitlement thereto. On the other hand, it found the LA correct in awarding salary differentials as well as holiday pay and service incentive leave but only for the period from November 3, 2011 up to November 17, 2013. It likewise agreed that respondents Nonpareil and Far Eastern were two separate entities, absent any evidence linking the two corporations.<sup>29</sup>

Petitioner's motion for reconsideration<sup>30</sup> was likewise denied in a Resolution<sup>31</sup> dated April 10, 2017; hence, this petition.

### The Issue Before the Court

The issue before the Court is whether or not the CA correctly ruled that the NLRC did not gravely abuse its discretion in: (a) denying petitioner's money claims for 13<sup>th</sup> month pay, overtime pay, holiday premium, rest day premium, and night shift differential; and (b) not ruling on the issue of illegal dismissal and consequently, denying petitioner's entitlement to money claims in connection therewith since the same was not raised in his complaint.

### The Court's Ruling

The petition is denied.

Anent petitioner's money claims for 13<sup>th</sup> month pay, overtime pay, holiday premium, rest day premium, and night shift differential, suffice it to say that the labor tribunals and the CA correctly found that he was unable to prove his entitlement thereto, essentially on the ground that he failed to properly allege by how much he was being underpaid and for what period. Absent any of the recognized exceptions, factual findings of the labor tribunals, as affirmed by the CA, are binding on the Court,<sup>32</sup> as in this case.

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<sup>28</sup> Id. at 39-50.

<sup>29</sup> See id. at 43-49.

<sup>30</sup> Dated December 27, 2016. Id. at 225-237.

<sup>31</sup> Id. at 52-52A.

<sup>32</sup> See *Protective Maximum Security Agency, Inc v. Fuentes*, 753 Phil. 482, 504-506 (2015).

With respect to the issues on illegal dismissal and the money claims concomitant thereto, such as separation pay, damages, and attorney's fees, the labor tribunals and the CA refused to resolve the same on pure technicality. Particularly, they ruled that since these money claims arise from a finding of illegal dismissal and the latter was not among the causes of action listed in petitioner's NLRC Complaint, they are precluded from passing on the issue of illegal dismissal, pursuant to Section 12, Rule V of the 2011 NLRC Rules. This provision, which governs the rules on submission of position papers and replies before the NLRC, reads:

SECTION 12. SUBMISSION OF POSITION PAPER AND REPLY. –

- (a) Subject to Sections 9 and 10 of this Rule, the Labor Arbiter shall direct the parties to submit simultaneously their verified position papers with supporting documents and affidavits, if any, on a date set by him/her within ten (10) calendar days from the date of termination of the mandatory conciliation and mediation conference.
- (b) No amendment of the complaint or petition shall be allowed after the filing of the position papers, unless with leave of the Labor Arbiter.
- (c) ***The position papers of the parties shall cover only those claims and causes of action stated in the complaint or amended complaint,*** accompanied by all supporting documents, including the affidavits of witnesses, which shall take the place of their direct testimony, excluding those that may have been amicably settled.
- (d) Within ten (10) days from receipt of the position paper of the adverse party, a reply may be filed on a date agreed upon and during schedule set before the Labor Arbiter. ***The reply shall not allege and/or prove facts and any causes of action not referred to or included in the original or amended complaint or petition or raised in the position paper.*** (Emphases supplied)

Sub-paragraph (c) purportedly limits the coverage of the position papers of the parties to only those claims and causes of action stated in the complaint or amended complaint; whereas sub-paragraph (d) directs that the reply shall only allege and prove facts and causes of action contained in the original or amended complaint or in the position paper. At this juncture, it is well to take judicial notice of the fact that initiatory complaints filed before the NLRC are just blank forms wherein the employee-complainant simply inputs his/her details, the respondent's details, and ticks off a checklist of causes of action which are applicable to him/her. It is only upon the filing of position papers that the complainant is able to expound on the employer's acts or omissions which constitute his/her causes of action against the latter. Given the foregoing, it is only reasonable to infer that notwithstanding the aforementioned provision, the complaint cannot be the sole basis in determining the complainant's causes of action given that it is in the position paper that the ultimate facts are presented and established by the submission of all relevant documents and affidavits to support the same and prove their respective causes of action. Otherwise stated, the filing of the position paper,

and not the mere complaint, is the operative act that should foreclose the raising of matters constitutive of the employee-complainant's cause of action.<sup>33</sup> The Court believes that it is for this reason why sub-paragraph (d) of Section 12, Rule V of the 2011 NLRC Rules allows the replies to discuss matters not only covered by the complaint or amended complaint, but also those covered by the position papers. Furthermore, this interpretation is in accord with the settled norm that “[i]n labor cases, rules of procedure should not be applied in a very rigid and technical sense,”<sup>34</sup> and that “labor officials should use all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, in the interest of due process.”<sup>35</sup>

In this case, records show that petitioner initially filed a SENA Complaint which includes, illegal dismissal and the concomitant claim of separation pay as his causes of action. Petitioner's SENA Complaint was, however, deemed closed and terminated when he filed his NLRC Complaint – which, while including separation pay as among the causes of action indicated therein, did not include illegal dismissal. Nonetheless, petitioner went ahead and presented arguments supporting his claim for illegal dismissal in his position paper. Verily, these circumstances raise doubts as to whether petitioner indeed intended to remove his cause of action for illegal dismissal when he essentially refiled his SENA Complaint as his NLRC Complaint. In view of the foregoing, and in the interest of substantial justice, the Court hereby resolves the issue of whether or not petitioner has been illegally dismissed from employment, and hence, entitled to, among others, separation pay.

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause. However, it is well to clarify that before the employer bears such burden, it is imperative for the employee to first establish by substantial evidence that he/she was indeed dismissed from employment. Absent such dismissal, there could be no question as to its legality or illegality.<sup>36</sup>

Here, other than petitioner's self-serving allegation that he was terminated from work and told to go back to his province, no evidence was presented to establish the same. In fact, petitioner failed to identify the person from Far Eastern who purportedly terminated his services. It bears stressing that a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process, which petitioner failed to discharge. Moreover, since he was merely transferred by STC to guard Far Eastern's property, its sale to Nonpareil should have prompted petitioner to return to

<sup>33</sup> See *Dee Jay's Inn and Café v. Rañeses*, 796 Phil. 574, 588-589 (2016), citing *Tegimenta Chemical Phils. v. Buensalida*, 577 Phil. 534, 542 (2008).

<sup>34</sup> *Millenium Erectors Corporation v. Magallanes*, 649 Phil. 199, 204 (2010).

<sup>35</sup> *Loon v. Power Master, Inc.*, 723 Phil. 515, 528 (2013).

<sup>36</sup> See *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 794 (2017).

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STC, his original employer, which he failed to show. When there is a claim of dismissal, much more illegal, the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss before the burden is shifted to the employer to prove that the dismissal was legal.<sup>37</sup> Evidently, absent substantial proof, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion that he was dismissed or prevented from reporting for work by respondents, petitioner's claim of illegal dismissal cannot stand.

Consequently, having ruled out the claim of illegal dismissal, and the issue of separation pay arising as a consequence thereof, petitioner's claim for payment of the same must necessarily be denied.<sup>38</sup> In the same vein, there is likewise no legal basis to award damages to petitioner absent any showing of malice or bad faith on the part of respondents.

Nonetheless, since petitioner was awarded salary differentials, holiday pay, and service incentive leave pay, subject to the three (3)-year prescriptive period, to be reckoned from November 3, 2011 up to the date of his dismissal on November 17, 2013 as alleged in the complaint, he is also entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award in accordance with Article 111<sup>39</sup> of the Labor Code and Article 2208<sup>40</sup> of the Civil Code, as the latter was clearly compelled to litigate to protect his rights and interests thereto. Finally, in line with prevailing jurisprudence, all monetary awards due to petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.<sup>41</sup>

**WHEREFORE**, the petition is **DENIED**. The assailed Decision dated December 2, 2016 and the Resolution dated April 10, 2017 of the Court of

<sup>37</sup> *Mehitabel, Inc. v. Alcuizar*, 822 Phil. 863, 873 (2017).

<sup>38</sup> See *7K Corporation v. Albarico*, 712 Phil. 372, 382-385 (2013).

<sup>39</sup> Article 111 of the Labor Code reads:

Article 111. *Attorney's fees.* –

(a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

<sup>40</sup> Article 2208 of the Civil Code reads:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws[.]

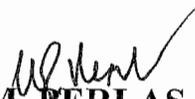
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<sup>41</sup> See *Nacar v. Gallery Frames*, 716 Phil. 267, 279-283 (2013).

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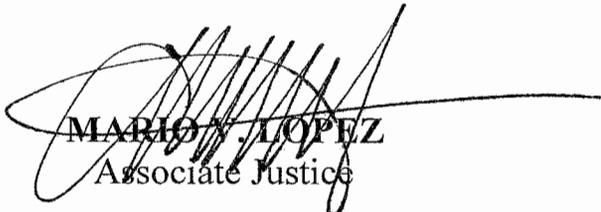
Appeals in CA-G.R. SP No. 143770 are hereby **AFFIRMED with MODIFICATIONS**, awarding to petitioner Remegio E. Burnea attorney's fees equivalent to ten percent (10%) of the monetary awards due to him, and imposing on all monetary awards legal interest at the rate of six percent (6%) per annum from finality of the Decision until fully paid.

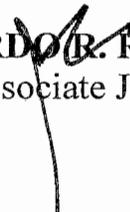
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**WE CONCUR:**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

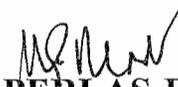
  
**MARIO N. LOPEZ**  
Associate Justice

  
**RICARDO B. ROSARIO**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
Chief Justice