

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**IMELDA B. DAMASCO,
*Petitioner,***

-versus-

**G.R. No. 115755
December 4, 2000**

**NATIONAL LABOR RELATIONS
COMMISSION, MANILA GLASS
SUPPLY and BONIFACIO K. SIA,
*Respondents,***

X-----X

**BONIFACIO K. SIA and MANILA GLASS
SUPPLY,
*Petitioners,***

-versus-

**G.R. No. 116101
December 4, 2000**

**NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER
DOMINADOR B. SALUDARES, DEPUTY
SHERIFF ANTONIO T. DATU and
IMELDA B. DAMASCO,
*Respondents.***

X-----X

DECISION

QUISUMBING, J.:

These two Petitions for Certiorari seek to annul the Decision promulgated by public respondent National Labor Relations Commission (NLRC) on March 21, 1994 in NLRC CA No. L-001159, and its resolution dated May 11, 1994, which denied petitioners' respective motions for reconsideration.

Ms. Imelda Damasco is the petitioner in G.R. No. 115755 and private respondent in G.R. No. 116101. She was a regular sales clerk in Manila Glass Supply in Olongapo City.

Manila Glass Supply is private respondent in G.R. No. 115755 and petitioner in G.R. No. 116101. It is a sole proprietorship engaged in the sale of glass with main store in Olongapo City and branch in Metro Manila. Bonifacio K. Sia is private respondent in G.R. No. 115755 and petitioner in G.R. No. 116101. He is the owner of Manila Glass Supply.

The factual background of this case as summarized by the labor arbiter is as follows:

“That she [Damasco] was employed by respondents [Manila Glass Supply and Bonifacio K. Sia] as Sales Clerk on January 30, 1992, receiving lately a daily wage of P140.00; that as sales clerk, she was ordered to do almost all the works related to the glass business of respondents including the cutting, sales and delivery of glass as well as balancing, accounting and checking of capital and profits every end of the month; that she was made to work from 8:30 in the morning up to 9:30 in the evening continuously from Monday to Sunday without having been paid overtime pay, rest day pay and holiday pay; that during the period of her employment, she was not paid any 13th month pay as well as five (5) days service incentive leave pay; that on

August 28, 1992 at around 7:00 o'clock in the evening, while she was working, respondent Bonifacio Sia called her up and told her to finish all her works that night, but she told respondent that she would not be able to finish them all because it was already late; that she then left respondent's room but respondent called her again and asked her why she could not finish what she was told to do, to which complainant [Damasco] answered that it was already late and there were still a lot of things to do; that respondent asked her what she was doing since he (respondent) left for Manila, to which complainant told him that she was attending to the sales, to the field and to other things relative to the business of respondent, to which respondent got mad at her; that respondent asked complainant why she was not teaching her two (2) other co-workers on what to do, and she answered she would not do it anymore because if the other co-workers should commit mistakes in accounting, she was the first one to be lambasted by respondent and even required to share in paying the shortages; that when respondent heard this, he picked up and swiped an ashtray in front of complainant and it broke, after which, he threw some notebooks at complainant who began to tremble in fear and her whole body shook; respondent ordered her to go out of the room, lambasted her again and told her that he (respondent) does not want to see her face anymore ("ayaw ko nang makita ang pagmumukha mo rito"); that after respondent had left, complainant again trembled and she could not prevent herself from crying, her co-workers applied alcohol on her because her body was cold, given water to drink and after about an hour, complainant decided not to finish her work anymore because she felt weak; that one of his co-workers, Alma, brought her home and since then, she did not report for work anymore because she developed a phobia of respondent.

Disputing the claim of complainant, respondents maintain as follows: That sometime in the late part of August 1992, complainant was instructed by respondent to report for work in their store in Metro Manila as there is a necessity for her detail thereat for reasons that the employees there are new and do not have the experience and know-how in running the store specifically with regards (sic) to the sale of glass; that complainant manifested her objection to such detail

for reasons that her husband is working in Olongapo City and she does not want to work in Manila; that thereafter, complainant did not report for work in the respondent's store in Olongapo City, so respondent sent some of his employees to the house of complainant but were told that she is sick and cannot report for work; that sometime in the first week of January 1993, respondent received a copy of the instant complaint filed by complainant; that immediately, respondent thru counsel sent a letter to complainant directing her to report for work on January 13, 1993 at its store in Olongapo City; that complainant ignored the letter despite receipt thereof, hence, on January 15, 1993, respondent again sent complainant another letter directing her to report for work on January 22, 1993 but just the same, complainant failed and refused to report for work; that it is not true as claimed by complainant that respondent shouted at her and swiped an ashtray from the table and threw at her some notebooks"^[1]

On December 7, 1992, Damasco filed before the NLRC Regional Arbitration Branch in San Fernando, Pampanga, a complaint against Bonifacio Sia and Manila Glass Supply (jointly referred hereafter as "Sia" for easy reference). In the one-page complaint form of the NLRC, Damasco indicated that she is suing her employer for illegal dismissal and non-payment of overtime pay.^[2] However, in her complaint affidavit and position paper filed later before the labor arbiter, Damasco additionally charged her employer with non-payment of 13th month pay, service incentive leave pay, holiday pay and night shift differential.^[3]

On September 2, 1993, the labor arbiter rendered judgment in favor of Ms. Damasco. The labor official declared that Sia has not shown any just or authorized cause in terminating the services of Damasco, except for wild, generalized and self-serving statements that Damasco committed serious misconduct or willful disobedience of the lawful orders in connection with her work. The labor arbiter also ruled that Damasco is entitled to 13th month pay, service incentive leave pay, holiday pay, overtime pay, and disposed of the case, thus:

“WHEREFORE, premises considered, judgment is hereby entered in favor of the complainant and against respondents, ordering the latter, as follows:

1. To pay the total sum of P112,570.32 representing unpaid 13th month pay, holiday pay, overtime and premiums pay, five (5) days service incentive leave pay, backwages and separation pay of complainant;
2. To pay attorney's fees in the sum of P11,257.00 which is ten (10%) percent of the award; and
3. All other claims or issues, for want of substantial evidence, are hereby DISMISSED.

SO DECIDED.”^[4]

On appeal, the NLRC upheld the labor arbiter's finding that Damasco was illegally dismissed but modified the labor official's judgment, thus:

“PREMISES CONSIDERED, the Decision of September 2, 1993, is hereby MODIFIED. Respondents are directed to pay complainant the following:

I.	Backwages	P43,680.00
II.	Separation Pay	36,400.00
III.	13th month pay	10,920.00
IV.	Service Incentive Leave Pay	2,100.00
V.	Holiday Pay	4,200.00
VI.	Attorney's fees	1,722.00

	T O T A L	P99,022.00
		=====

SO ORDERED.”^[5]

Both parties filed motions for reconsideration which were denied.

On July 4, 1994, the NLRC issued an entry of judgment stating that the aforesaid judgment of the labor tribunal has become final and executory.

On July 7, 1994, the labor arbiter, upon motion of Damasco, issued a writ of execution. In compliance therewith, public respondent deputy sheriff issued the next day a notice of garnishment addressed to Far East Bank and Trust Company, Olongapo City, against all credits and deposits of Bonifacio Sia and/or Manila Glass Supply maintained in said bank, sufficient to cover the monetary award in favor of Damasco.^[6]

In her petition, Damasco alleged that the NLRC committed grave abuse of discretion:

“IN DELETING THE AWARD FOR OVERTIME PAY AND REDUCING THE ATTORNEY’S FEES IN FAVOR OF PETITIONER.”^[7]

In his memorandum, Sia raised the following issues for resolution, thus:

A

WHETHER OR NOT PUBLIC RESPONDENT LABOR ARBITER SALUDARES DEPRIVED PETITIONERS OF THEIR RIGHT TO DUE PROCESS AND THUS COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION

B

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN AFFIRMING, ALBEIT WITH MODIFICATIONS, THE LABOR ARBITER’S PATENTLY NULL AND VOID DECISION.”^[8]

In our view, the crucial issue for resolution is whether or not the NLRC committed grave abuse of discretion in affirming the decision of the labor arbiter which held that Damasco was illegally dismissed from her job.

On August 1, 1994, we decided to consolidate the two petitions inasmuch as they involve the same parties and intertwined issues. Likewise, we issued a temporary restraining order, effective immediately and continuing until further orders from this Court, enjoining the parties concerned from implementing the subject writ of execution and notice of garnishment dated July 7 and 8, 1994, which were respectively issued by the labor arbiter and deputy sheriff of NLRC Regional Arbitration Branch III, San Fernando, Pampanga.^[9]

We note that both petitioners did not comply with the rule on certification against forum shopping. The certifications in their respective petitions were executed by their lawyers, which is not correct.^[10] The certification of non-forum shopping must be by the petitioner or a principal party and not the attorney. This procedural lapse on the part of petitioners could have warranted the outright dismissal of their actions.^[11]

But, the Court recognizes the need to resolve these two petitions on their merits as a matter of social justice involving labor and capital. After all, technicality should not be allowed to stand in the way of equitably and completely resolving herein the rights and obligations of these parties.^[12] Moreover, we must stress that technical rules of procedure in labor cases are not to be strictly applied if the result would be detrimental to the working woman.^[13]

Sia contends that he was deprived of his right to due process as the labor arbiter failed to conduct a hearing for the reception of evidence. He also claims that the labor arbiter's finding that Damasco was illegally dismissed is not supported by substantial evidence. On the contrary, Sia insists, Damasco abandoned her work as she refused to be detailed at her employer's store in Metro Manila.

Sia's contentions are bereft of merit. His words cannot hide the oppressive acts obviously directed to deprive Ms. Damasco of her employment and erode her dignity as a worker.

It is now axiomatic that the essence of due process in administrative proceedings is simply an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling

complained of.^[14] A formal or trial-type hearing is not at all times and in all instances essential to due process, the requirements of which is satisfied where parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.^[15]

As noted by the Solicitor General and petitioner Damasco, the labor arbiter set the case several times for preliminary conference but the parties failed to reached an amicable settlement.^[16] The labor arbiter then ordered the parties to submit their position papers. In compliance therewith, the parties submitted position papers where they set out and argued the factual as well as the legal bases of their position. Damasco filed her position paper, computation of money claims and affidavit. For his part, Sia filed his position paper and affidavit. Damasco, in turn, filed her affidavit in reply to the affidavit of Sia. After both parties had filed their replies, the case was deemed submitted for resolution as the labor arbiter did not find it necessary to conduct a trial-type hearing. Note that the filing of position papers and supporting documents fulfills the requirements of due process.^[17] Further, it is within the discretion of the labor arbiter to determine if there is a need for a hearing.^[18] Thus, we cannot subscribe to Sia's posturing that the labor arbiter gravely abused its discretion when he dispensed with the hearing to receive further evidence.^[19]

Moreover, Sia was given additional opportunity to argue his case on appeal before the NLRC in a memorandum and motion for reconsideration which pleadings were likewise considered by that labor agency in the course of resolving the case. Sia cannot thereafter interpose lack of due process since he was given sufficient time and ample chances to be heard in the present case. Consequently, the alleged defect in the proceedings in the labor arbiter, if there be any, should be deemed cured.^[20] All told, Sia's due process argument must fail.

On Sia's assertion that the labor arbiter's finding is not supported by ample evidence, suffice it to state that judicial review of labor cases does not go as far as to evaluate the sufficiency of evidence upon which the labor arbiter and NLRC based their determinations.^[21] Moreover, this Court does not review supposed errors in the decision of the NLRC which raise factual issues because findings of agencies exercising quasi-judicial functions are accorded not only respect but

even finality aside from the consideration that this Court is not a trier of facts.^[22] In any case, in our view, the labor arbiter used every reasonable means to ascertain the facts by giving the parties ample opportunity to present evidence. It is worth stressing that in controversies between a worker and her employer doubts reasonably arising from evidence or in the interpretation of agreements should be resolved in the former's favor.^[23] Thus, the labor arbiter had reasonable ground to sustain the version of Ms. Damasco on how she was unceremoniously dismissed from her job. Furthermore, Sia did not quite succeed to convince the NLRC to rule otherwise. Finally, the mere fact that the worker seeks reinstatement and backpay directly rebuts the employer's bare claim of abandonment by the worker of his employment.

Thus, going now to the specific issue of abandonment, we find no merit in Sia's allegation that Ms. Damasco abandoned her job. 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 when manifested by some overt acts.^[24] 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.

In this case, there are no overt acts established by Sia from which we can infer the clear intention of Damasco to desist from employment. Sia's letters dated January 7 and 15, 1993, for Damasco to report for work deserve scant consideration. Note that those orders were made four months after Damasco was told not to show herself again in the store, and after Sia had received a copy of Damasco's complaint for illegal dismissal. It is indeed highly incredible for an employer to require his employee without an approved leave to report to work only after four months of absence. If at all, the charge of abandonment is disingenuous to say the least. Moreover, as noted by the NLRC, it was unlikely that Damasco had abandoned her job for no reason at all considering the hardship of the times. In addition, if Damasco had truly forsaken her job, she would not have bothered to file a complaint for illegal dismissal against her employer and prayed

for reinstatement. An employee who forthwith took steps to protect her layoff could not by any logic be said to have abandoned her work.^[25]

As to Sia's allegation that Ms. Damasco committed serious misconduct or willful disobedience of lawful order in connection with her work, we find no tenable support. Even if Sia directed her to be assigned at his store in Metro Manila, her act of refusing to be detailed in Metro Manila could hardly be characterized a willful or intentional disobedience of her employer's order. It was Sia's order that appears to us whimsical if not vindictive. Reassignment to Metro Manila is prejudicial to Ms. Damasco, as she and her family are residing in Olongapo City. This would entail separation from her family and additional expenses on her part for transportation and food. Damasco's reassignment order was unreasonable, considering the attendant circumstances.^[26]

In sum, we conclude there is no valid and just cause to terminate the employment of Ms. Damasco. The NLRC did not gravely abuse its discretion in upholding the finding of the labor arbiter that Ms. Damasco's dismissal was not for cause.

An employee who is unjustly dismissed from work is entitled to reinstatement without loss of seniority rights and other privileges as well as to his full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[27] However, in our view, the circumstances obtaining in this case do not warrant the reinstatement of Ms. Damasco. Antagonism caused a severe strain in the relationship between her and her employer. A more equitable disposition would be an award of separation pay equivalent to one (1) month's pay for every year of service with the employer.^[28]

Now, as regards Ms. Damasco's contention that public respondent gravely abused its discretion in deleting the award for overtime pay for lack of factual basis, we find the same impressed with merit. We note that Sia has admitted in his pleadings that Damasco's work starts at 8:30 in the morning and ends up at 6:30 in the evening daily, except holidays and Sundays. However, Sia claims that Damasco's

basic salary of P140.00 a day is more than enough to cover the “one hour excess work” which is the compensation they allegedly agreed upon.^[29]

Judicial admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive, no further evidence being required to prove the same, and cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was made.^[30] In view of Sia’s formal admission that Ms. Damasco worked beyond eight hours daily, the latter is entitled to overtime compensation. No further proof is required. Sia already admitted she worked an extra hour daily. Thus, public respondent gravely erred in deleting the award of overtime pay to Ms. Damasco on the pretext that the claim has no factual basis.

Still, even assuming that Damasco received a wage which is higher than the minimum provided by law, it does not follow that any additional compensation due her can be offset by her pay in excess of the minimum, in the absence of an express agreement to that effect. Moreover, such arrangement, if there be any, must appear in the manner required by law on how overtime compensation must be determined. For it is necessary to have a clear and definite delineation between an employee’s regular and overtime compensation to thwart violation of the labor standards provision of the Labor Code.^[31]

With regard to the award of attorney’s fees the ten percent (10%) attorney’s fees is provided for in Article 111 of the Labor Code. Considering the circumstances of this case, said award is in order.

WHEREFORE, in G.R. No. 115755, the petition is **GRANTED**. The judgment of the Labor Arbiter in favor of petitioner Imelda B. Damasco dated September 2, 1993 is **REINSTATED** in full. In G.R. No. 116101, the petition of Bonifacio K. Sia and Manila Glass Supply is **DISMISSED** for lack of merit. Costs against petitioners Bonifacio K. Sia and Manila Glass Supply.

SO ORDERED.

Bellosillo, Mendoza, Buena and De Leon, Jr., JJ., concur.

- [1] Rollo, G.R. No. 115755, pp. 34-36-A; G.R. No. 116101, pp. 92-95.
- [2] Docketed as RAB,-III-12-3051-92, Rollo, G.R. No. 116101, p. 53.
- [3] Rollo, G.R. No. 116101, pp. 55, 67.
- [4] Id. at 97-100.
- [5] Id. at p. 45.
- [6] Id. at 49-52.
- [7] Rollo, G.R. No. 115755, p.6.
- [8] Id. at 191.
- [9] Rollo, G.R. No. 116101, p. 138.
- [10] Rollo, G.R. No. 115755, p. 14; G.R. No. 116101, pp. 33-34.
- [11] Condo Suite Club Travel Inc. vs. NLRC, G.R. No. 125671, January 28, 2000, p. 6.
- [12] Philippine Scout Veterans Security and Investigation Agency Inc. vs. NLRC, 299 SCRA 690, 694 (1998).
- [13] Judy Phils. Inc. vs. NLRC, 289 SCRA 755, 764 (1998).
- [14] CMP Federal Security Agency Inc. vs. NLRC, 303 SCRA 99, 111 (1999).
- [15] NFL vs. NLRC, 347 Phil. 555, 565 (1997).
- [16] Rollo, G.R. No. 116101, pp. 198-200; G.R. No. 115755, p. 169.
- [17] Fernandez vs. NLRC, 285 SCRA 149, 169 (1998).
- [18] New Rules of Procedure of NLRC, Rule V, Section 4.
- [19] Rollo, G.R. No. 116101, p. 15.
- [20] Audion Electric Co. Inc. vs. NLRC, 308 SCRA 340, 354 (1999).
- [21] Travelaire & Tours Corp. vs. NLRC, 294 SCRA 505, 510 (1998).
- [22] Aurora Land Projects Corp. vs. NLRC, 334 Phil. 44, 52 (1997).
- [23] Triple Eight Integrated Services Inc. vs. NLRC, 299 SCRA 608, 614-615 (1998).
- [24] Tomas Lao Construction vs. NLRC, 344 Phil. 268, 284 (1997).
- [25] Villar vs. NLRC, G.R. No. 130935, May 11, 2000, p. 7.
- [26] Escobin vs. NLRC, 289 SCRA 48, 68 (1998).
- [27] Article 279, Labor Code.
- [28] Mabeza vs. NLRC, 338 Phil. 386, 401(1997).
- [29] Rollo, G.R. No. 116101, pp. 73, 80.
- [30] Philippine American General Insurance Inc. vs. Sweet Lines Inc., 212 SCRA 194, 204 (1992).
- [31] PESALA vs. NLRC, 329 Phil. 581, 599 (1996).