

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**CMP FEDERAL SECURITY AGENCY,  
INC.,**

*Petitioner,*

*-versus-*

**G.R. No. 122107  
June 2, 1999**

**NATIONAL LABOR RELATIONS  
COMMISSION, VALENTIN TAPIS,  
LUISITO MACABUHAY, RAMON  
CAMBIADO, ADRIANO JUICO,  
MACARIO BAJA, ELPIDIO CERCADO,  
JULIO DULPINA, ROBERTO  
REBANCO, and REDOLF FABREAG,**

*Respondents.*

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**DECISION**

**BELLOSILLO, J.:**

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court by CMP Federal Security Agency, Inc. (CMP) seeking a partial review of the 8 June 1995 decision of public respondent National Labor Relations Commission.

Between 1988 to 1992 private respondents Valentin Tapis, Luisito Macabuhay, Ramon Cambiado, Adriano Juico, Macario Baja, Elpidio Cercado, Julio Dulpina, Roberto Rebanco, Redolf Fabreag along with Romeo Bainto, Meliton Alejo, Judy Saniatan, Ernesto Kalaw, Orlando Navarro and Benedicto Loto were employed by petitioner as security guards and assigned to its various clients. On 12 August 1992 respondent individuals filed a complaint against petitioner for illegal dismissal, illegal deduction (cash bond), underpayment of wages, overtime pay, holiday pay, premium pay for holiday and rest day, 13<sup>th</sup> month pay and service incentive leave pay.<sup>[1]</sup> Pending trial, Romeo Bainto, Meliton Alejo, Judy Saniatan, Ernesto Kalaw, Orlando Navarro and Benedicto Loto withdrew their complaints through their respective quitclaims and releases.<sup>[2]</sup>

The alleged illegal dismissal was premised on private respondents' lack of assignment for several months. On the other hand, petitioner interposed the defense of prematurity of the complaint due to the fact that it was filed even before the lapse of the six (6) months floating period allowed security agencies in posting assignments.

The Labor Arbiter acknowledged that "the complaint for illegal dismissal was prematurely filed considering that complainants were placed under floating status for lack of available posts."<sup>[3]</sup> He reasoned out however that "after the lapse of complainants' temporary off-details status, complainants were not posted and consequently they can validly assert that they were constructively dismissed from their job due to the failure of the respondent to reassign them."<sup>[4]</sup> Accordingly, the Labor Arbiter found that private respondents were constructively dismissed and were thus awarded back wages, separation pay, attorney's fees, differentials and the return of their cash bonds.

But on appeal, the National Labor Relations Commission reversed the finding of the Labor Arbiter that private respondents were constructively dismissed. The Commission premised its conclusion on the prematurity of the complaint. It ratiocinated that "complaints for illegal dismissal must necessarily be judged on the prevailing circumstances at the time of the filing of the complaint, and not on what has transpired at the time of the rendition of the judgment."<sup>[5]</sup> The Commission further elucidated that "to hold otherwise would be

to render nugatory the practice of allowing security agencies to place their employees on floating status not to exceed six months as and by way of consideration on the peculiarity of the demands for their services.”<sup>[6]</sup> On the strength of these findings, the NLRC deleted the back wages and separation pay. However, it maintained the differentials and the return of the cash bonds but reduced the attorney’s fees to conform with Art. 111 of the Labor Code.

Interestingly, private respondents did not appeal the decision of the Labor Arbiter; as such, they are bound by it. Only the petitioner is now before us imputing grave abuse of discretion on the part of the NLRC in not recomputing the wage differentials despite the fact that recomputation could not be avoided because of the modification of the decision of the Labor Arbiter on illegal dismissal, and in not affirming the award of attorney’s fees despite the absence of any justification therefor.

Thus, the finding of the NLRC on the legality of the supposed dismissal will no longer be disturbed, especially as there is no abuse of discretion as to its conclusion thereon.

The petition is without merit. The NLRC committed no grave abuse of discretion when it upheld the computation of the differentials by the Labor Arbiter. A cursory reading of the Labor Arbiter’s decision as to the basis of the differentials would show that the period wherein differentials were computed started only from the time of employment although limited by the 3-year prescriptive period, “till their last detail,” thus:<sup>[7]</sup>

Consequently, for lack of evidence (payrolls and time cards), complainants are entitled to their monetary claims from the time they started working with the respondents till their last detail or assignment but limited to the prescriptive period of three years. Their wage differentials should be computed under the minimum standard rate for employees who are tasked to work 12 hours a day including Sundays and Holidays. However, the salaries, overtime pay and 13<sup>th</sup> month pay received by the complainants should be deducted to arrive at the proper wage differentials.

This simply means that the basis for the differentials was never extended to cover the period when back wages were allowable. That this should be the case is explained by the very nature of back wages which demands that the period covered refers to the duration of unemployment, for back wages are the earnings lost by reason of the unjustified dismissal.<sup>[8]</sup> Wage differentials, on the other hand, are accrued and unpaid wages which necessarily require the employment of the wage earner at the time the wage differentials accrued. It would naturally follow that the differentials were never computed to include the time for which the back wages were awarded as erroneously contended by petitioner.

Furthermore, to give leeway to the contention of petitioner will require an inquiry on the correctness of the evaluation of the evidence on which the basis of the Labor Arbiter's decision was made. Such inquiry cannot be done in a petition for *certiorari* under Rule 65 of the Rules of Court. A judicial review thereunder is confined only to issues of want or excess of jurisdiction and grave abuse of discretion on the part of the rendering tribunal.<sup>[9]</sup> Considering further that petitioner had never provided the Labor Arbiter any evidence during the trial,<sup>[10]</sup> it is now estopped from questioning the Labor Arbiter's basis of computation.

Petitioner is likewise in error when it supposed that there was no basis for the award of attorney's fees. It is clear from the decision of the Labor Arbiter that the basis thereof is not only that private respondents were forced to litigate for their wages but, more importantly, petitioner unlawfully withheld their wages which resulted in wage differentials.<sup>[11]</sup> As a matter of policy, the fact that private respondents were constrained to sue for their rights demands a showing of malice and bad faith on the part of petitioner. But the mere withholding of wages mandated by law is already a valid basis for the award, as expressly provided for under Art. 111 of the Labor Code thus —

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 the wages, attorney's fees, which exceed ten percent of the amount of wages recovered.

Thus, Art. 111 of the Labor Code abovequoted is an exception to the declared policy of strict construction in the awarding of attorney's fees.<sup>[12]</sup> Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages required by the Minimum Wage Law. To provide otherwise would render the wage law ineffective. Hence, there need only be a showing that the lawful wages were not paid accordingly, as in this case.

**WHEREFORE**, the assailed Decision of public respondent National Labor Relations Commission dismissing the claims for illegal dismissal and modifying the decision of the Labor Arbiter by deleting back wages and separation pay therefrom while adopting the grant of wage differentials and the refund of cash bonds, as well as limiting the award of attorney's fees to ten percent (10%) pursuant to Art. 111 of the Labor Code, is **AFFIRMED**.

**SO ORDERED.**

**Puno, Mendoza, Quisumbing and Buena, JJ., concur.**

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[1] Rollo, p. 28.

[2] Id., p. 29.

[3] Id., p. 31.

[4] Ibid.

[5] Id., p. 25.

[6] Ibid.

[7] Id., p. 34.

[8] *Rasonable vs. NLRC*, G.R. No. 117195, 20 February 1996, 253 SCRA 815, 822.

[9] *Comsavings Bank vs. NLRC*, G.R. No. 98456, 14 June 1996, 257 SCRA 307, 317.

[10] See Note 7.

[11] See Note 1, p. 35.

[12] Valiant Machinery and Metal Corp. vs. NLRC, G.R. No. 105877, 25 January 1996, 252 SCRA 369, 378.

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