

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**CINDY AND LYNSY GARMENT and its
General Manager, KIL HUAN SY,
Manager, VIRGINIA PULA SY,
*Petitioner,***

-versus-

**G.R. No. 108369
January 7, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER
NIEVES V. DE CASTRO, ERNA N.
BATALLA, CRISTINA P. KING and
SUSAN N. CARACAS,
*Respondents.***

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DECISION

MENDOZA, J.:

This is a Petition for *Certiorari* to Annul the Decision of the National Labor Relations Commission, dated April 23, 1992, and its resolution, dated October 29, 1992, affirming the decision, dated October 29, 1991, of Labor Arbiter Nieves de Castro in NLRC-NCR-Case No. 00-03-01919-91, ordering petitioners Cindy and Lynsy Garment, Kil Huan and Virginia Pula Sy to reinstate private respondents to their

former positions and to pay them backwages, thirteenth month pay, service incentive leave pay and salary differentials.

Petitioner Cindy and Lynsy Garment is a company engaged in the manufacture and sale of brassieres. Virginia Pula Sy is the owner and operator, while petitioner Kil Huan Sy is her husband, who assists in the management of the business.

Private respondents were employed by petitioners as promo girls. They were assigned to various outlets, Erna N. Batalla, who commenced working on August 3, 1986, was assigned to the Uniwide Sales in Cubao, Quezon City; Cristina P. King, who was employed on March 18, 1985, was stationed at the Manuela Crossing in Mandaluyong City; while Susan N. Caracas, who started to work on July 22, 1988, was assigned to the Plaza Fair, Makati City.^[1] Private respondents are members of the National Organization of Workingmen (NOWM).

On March 23, 1991, private respondents were called to the office of Virginia Sy, during which they were asked why they were putting up a union in the company. Private respondents took the occasion to make their complaints and demanded an increase in their daily wages and the payment to them of other benefits under the law. They were told that their demands would be submitted to the management for consideration.

On March 26, 1991, private respondents were offered separation pay as they were notified they were going to be laid off. They were told that they had until March 31, 1991 to inform the management whether they were accepting the company's offer.

The following day, private respondents filed a complaint with the Arbitration Branch of the National Labor Relations Commission for illegal dismissal, underpayment of wages, nonpayment of labor standards benefits and noncoverage under the Social Security Law. On April 15, 1991, private respondents filed an amended complaint in which the claim for underpayment of wages was deleted and instead an allegation of unfair labor practice was added.

Conciliation conferences were then held during which petitioners were represented by Atty. Corazon Paulino. Petitioners were required to submit their position paper on or before July 2, 1991 and, as they failed to do so, were given an extension up to July 23, 1991, but, despite this opportunity, petitioners' counsel failed to do so. Accordingly, upon motion of private respondents, the case was submitted for resolution.

On October 29, 1991, Labor Arbiter Nieves de Castro, rendered a decision granting the claims of private respondents, including that for underpayment, but excluding the claims for unfair labor practice, nonpayment of legal holiday pay and Social Security benefits. The dispositive portion of her decision reads:^[2]

Premises considered, respondents Cindy and Lynsy Garments Inc. is hereby directed to:

1. Reinstate all individual complainants to their former position as Promo Girls effective November 1, 1991;
2. To pay complainants the following:
 - 2.1 Backwages P70,416.00
 - 2.2 13th month 15,604.00
 - 2.3 incentive leave pay 3,889.00
 - 2.4 Salary Diff. 49,667.50
3. All other claims are hereby dismissed either for lack of merit and/or lack of jurisdiction.

Respondent is further notified:

1. that reinstatement order is immediately executory even pending appeal, meaning, that the appeal will not stop the execution of the reinstatement aspect, however, respondent may chose between actual

reinstatement and/or payroll reinstatement, pending appeal;

2. that failure to reinstate either in the payroll or actually, shall be penalized in accordance with RA 6715 whereby the maximum fine of P10,000.00 per payroll period of non-compliance shall be imposed.

SO ORDERED.

On April 23, 1992, the decision was affirmed by the National Labor Relations Commission.^[3] Petitioners filed a motion for reconsideration, but their motion was denied on October 29, 1992 for lack of merit.^[4] Hence this petition.

After due consideration of the petition, we think the petition should be dismissed for being without merit.

First. Petitioners contend that private respondents were not dismissed but only considered to have abandoned their jobs for having failed to report for work on the last week of March. They deny that private respondents were dismissed because of union activities because allegedly, there was no union in the company and no employee of the company was affiliated to one.

This contention is untenable. In order to justify a finding of abandonment the following requisites must be present: (1) there must be an unjustifiable failure to report for work and (2) there must be a clear and deliberate intent to discontinue one's employment without any intention to return back.^[5] In this case, private respondents did not report for work after March 26, 1991 because they were told that they were being dismissed and were given until March 31, 1991 to indicate to the management whether they were accepting the separation pay offered to them. The clearest proof that they were not giving up their jobs was the fact that on March 27, 1991, the day after they were told they were going to be dismissed, they filed the complaint in this case.

In any event, if it was not petitioners' intention to dismiss private respondents, it would have been an easy matter for them to tell

private respondents so and accept them back, instead of insisting that petitioners had abandoned their jobs. That petitioners considered them dismissed from employment effective March 31, 1991 only confirms private respondents' claim that on March 26 petitioners told them they were going to be dismissed, obviously because of management's suspicion that they were forming a union in the company.

Second. Petitioners nevertheless contend that private respondents had no cause of action on March 27, 1991 when they filed their complaint for illegal dismissal because their dismissal was made only on March 31, 1991. The rule is that lack of a cause of action must appear on the face of the complaint.^[6] Here the complaint stated a sufficient cause of action by averring that private respondents had been dismissed on March 26, 1991 without cause.

Third. Petitioners complain that they were denied due process because the decision was based solely on the private respondents' position paper and affidavits. They claim that their counsel, Atty. Corazon Paulino, failed to file a position paper in their behalf because she was seriously ill (She died in July 1993 and was replaced by Atty. Honorio S. Laguilles, Jr.). They therefore argue that they were denied the opportunity to present their side.

It does not appear, however, that Atty. Paulino was so sick as not to be able to file the position paper. In the first place no claim to this effect was ever made in any motion to give petitioners a chance to present their evidence. In the second place, Atty. Paulino did not die until after two years from the time she was required to file the position paper. In fact, even after July 2, 1991, when she was first required to file the position paper, she was still able to represent petitioners in all the hearings before the labor arbiter, appeal the labor arbiter's decision to the NLRC, and even file the petition for *certiorari* in this case on January 19, 1993. All these belie petitioners' claim that because of illness their former counsel was not able to submit a position paper in their behalf.

It is well settled that the requirement of due process is satisfied as long as a party is given reasonable opportunity to present his side.^[7] As the NLRC in its decision on the petitioners' appeal noted,

petitioners' counsel failed to file their position paper in spite of two resettings and an extension given by the labor arbiter.^[8] The petitioners in this case had therefore more than enough time to file their position paper or even replace their then attorney in favor of more capable counsel. Hence, they have only themselves to blame for their failure to present evidence.

Fourth. Petitioners argue that the labor arbiter had no jurisdiction to pass upon the claim for underpayment of wages, because this claim was deleted from the complaint of private respondents and replaced with an allegation of unfair labor practice when private respondents amended their complaint on April 15, 1991. As the Solicitor General points out, however, although the claim for salary differential was not reproduced in the amended complaint, nevertheless in the joint affidavit of private respondents attached to the amended complaint, the claim was clearly set forth. At the very least, therefore, there is doubt whether private respondent intended to delete this claim. The omission could have been inadvertent.

In any event, the joint affidavit attached to the amended complaint, which clearly set forth private respondents' claim for salary differential, constituted their evidence. Since its presentation was not objected to by petitioners, the labor arbiter correctly considered it in deciding the case. Thus, Rule 10, §5 of the 1997 Rules of Civil Procedure provides:

Rule 10, §5. Amendment to conform to an authorized presentation of evidence. — When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues.

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.

Regalado, Puno and Martinez, *JJ.*, concur.

- [1] Rollo, p. 17.
- [2] Id., p. 26.
- [3] Id., pp. 27-34.
- [4] Id., pp. 35-37.
- [5] Labor vs. NLRC, 248 SCRA 183 (1995); Jackson Building Condominium Corp. vs. NLRC., 246 SCRA 329(1995); See PASUDECO vs. NLRC, G.R. No. 112650, May 29, 1997.
- [6] E.g., Sumulong vs. Court of Appeals, 232 SCRA 372(1994).
- [7] Pakistan International Airlines Corporation vs. Ople, 190 SCRA 90 (1990).
- [8] Rollo, p. 32.