SUPREME COURT
FIRST DIVISION

T/SGT ALDORA LARKINS,
***Petitioner*,**

-versus-

G.R. No. 92432
February 23, 1995

NATIONAL LABOR RELATIONS COMMISSION, HON. IRINEO BERNARDO, DANIEL HERRERA, MARIETTA DE GUZMAN, JOSELITO CATACUTAN, JOSEPH GALANG, ROBERTO HERRERA, DELPIN PECSON, CARLOS CORTEZ, JAIME CORTEZ, ARSENIO DIAZ, ROBERTO SAGAD and MARCELO LOZANO,
***Respondents*.**
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D E C I S I O N

QUIASON, *J.*:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court to set aside the Resolutions dated August 31, 1989 and February 5, 1990 of the National Labor Relations Commission (NLRC) in NLRC Case No. RAB-III-08-0572-88.

We grant the petition.

I

Petitioner was a member of the United States Air Force (USAF) assigned to oversee the dormitories of the Third Aircraft Generation Squadron (3 AGS) at Clark Air Base, Pampanga.

On August 10, 1988, 3 AGS terminated the contract for the maintenance and upkeep of the dormitories with the De Duzman Custodial Services. The employees thereof, including private respondents, were allowed to continue working for 3 AGS. It was left to the new contractor, the JAC Maintenance Services owned by Joselito Cunanan, to decide whether it would retain their services.

Joselito Cunanan, however, chose to bring in his own workers. As a result, the workers of the De Guzman Custodial Services were requested to surrender their base passes to Lt. Col. Frankhauser or to petitioner.

On August 12, 1988, private respondents filed a complaint with the Regional Arbitration Branch No. III of the NLRC, San Fernando, Pampanga, against petitioner, Lt. Col. Frankhauster, and Cunanan for illegal dismissal and underpayment of wages (NLRC Case No. RAB-III-08-0572-88). On September 9, 1988, private respondents amended their complaint and added therein claims for emergency cost of living allowance, thirteenth-month pay, service incentive leave pay and holiday premiums.

The Labor Arbiter, with the conformity of private respondents, ordered Cunanan dropped as party respondent.

Petitioner and Lt. Col. Frankhauser failed to answer the complaint and to appear at the hearings. They, likewise, failed to submit their position paper, which the Labor Arbiter deemed a waiver on their part to do so. The case was therefore submitted for decision on the basis of private respondents' position paper and supporting documents.

On November 21, 1988, the Labor Arbiter rendered a decision granting all the claims of private respondents. He found both Lt. Col. Frankhauser and petitioner "guilty of illegal dismissal" and ordered them to reinstate private respondents with full back wages, or if that is no longer possible, to pay private respondents' separation pay (Rollo, p. 78).

Petitioner appealed to the NLRC claiming that the Labor Arbiter never acquired jurisdiction over her person because no summons or copies of the complaints, both original and amended, were ever served on her. In her "Supplemental Memorandum of Appeal," petitioner argued that the attempts to serve her with notices of hearing were not in accordance with the provisions of the R.P. — U.S. Military Bases Agreement of 1947 (Rollo, pp. 35-37).

On August 31, 1989, NLRC issued a Resolution affirming the decision of the Labor Arbiter, but declared that:

> "In the event this decision is executed and/or enforced, and considering our finding that the real party respondent is the United States Government through its Armed Forces stationed at Clark Air Base, let such execution be made subject to existing international agreements and diplomatic protocol" (Rollo, p. 95).

Petitioner moved for reconsideration, which NLRC denied on February 5, 1990 (Rollo, p. 101).

Petitioner then elevated the matter to us.

On July 11, 1990, the Office of the Solicitor General filed a Manifestation stating that it "cannot legally support the decision of the Labor Arbiter" and therefore prayed that it be relieved from the responsibility of filing the required Comment for the public respondents (Rollo, pp. 117-118). In view of this Manifestation, on July 18, 1990, we resolved to require NLRC to file its own comment to the petition, which NLRC did on November 29, 1990 (Rollo, pp. 120, 133-139).

II

It is petitioner's contention that the questioned resolutions are null and void because respondent Labor Arbiter did not acquire jurisdiction to entertain and decide the case. Petitioner alleges that she never received nor was served, any summons or copies of the original and amended complaints, and therefore the Labor Arbiter had no jurisdiction over her person under Article XIV of the R.P. — U.S. Military Bases Agreement.

We agree.

The "Agreement Between the Republic of the Philippines and the United States of America Concerning Military Bases," otherwise known as the R.P. — U.S. Military Bases Agreement, governed the rights, duties, authority, and the exercise thereof by Philippine and American nationals inside the U.S. military bases in the country.

Article XIV thereof, governing the procedure for service of summons on persons inside U.S. military bases, provides that:

> "No process, civil or criminal, shall be served within any base except with the permission of the commanding officer of such base; but should the commanding officer refuse to grant such permission he shall forthwith take the necessary steps . . . to serve such process, as the case may be, and to provide the attendance of the server of such process before the appropriate court in the Philippines or procure such server to make the necessary affidavit or declaration to prove such service as the case may require."

Summonses and other processes issued by Philippine courts and administrative agencies for United States Armed Forces personnel within any U.S. base in the Philippines could be served therein only with the permission of the Base Commander. If he withholds giving his permission, he should instead designate another person to serve the process, and obtain the server's affidavit for filing with the appropriate court.

Respondent Labor Arbiter did not follow said procedure. He instead, addressed the summons to Lt. Col. Frankhauser and not the Base Commander (Rollo, p. 11).

Respondents do not dispute petitioner's claim that no summons was ever issued and served on her. They contend, however, that they sent notices of the hearings to her (Rollo, pp. 12-13).

Notices of hearing are not summonses. The provisions and prevailing jurisprudence in Civil Procedure may be applied by analogy to NLRC proceedings (Revised Rules of the NLRC, Rule I, Sec. 3). It is basic that the Labor Arbiter cannot acquire jurisdiction over the person of the respondent without the latter being served with summons (cf. Vda. de Macoy vs. Court of Appeals, 206 SCRA 244 [1992]; Filmerco Commercial Co., Inc. vs. Intermediate Appellate Court, 149 SCRA 193 [1987]). In the absence of service of summons or a valid waiver thereof, the hearings and judgment rendered by the Labor Arbiter are null and void (cf. Vda. de Macoy vs. Court of Appeals, supra.)

Petitioner, in the case at bench, appealed to the NLRC and participated in the oral argument before the said body. This, however, does not constitute a waiver of the lack of summons and a voluntary submission of her person to the jurisdiction of the Labor Arbiter. She may have raised in her pleadings grounds other than lack of jurisdiction, but these grounds were discussed in relation to and as a result of the issue of the lack of jurisdiction. In effect, petitioner set forth only one issue and that is the absence of jurisdiction over her person. If an appearance before the NLRC is precisely to question the jurisdiction of the said agency over the person of the defendant, then this appearance is not equivalent to service of summons (De los Santos vs. Montera, 221 SCRA 15 [1993]).

Be that as it may, on the assumption that petitioner validly waived service of summons on her, still the case could not prosper. There is no allegation from the pleadings filed that Lt. Col. Frankhauser and petitioner were being sued in their personal capacities for tortuous acts (United States of America vs. Guinto, 182 SCRA 644 [1990]). However, private respondents named 3 AGS as one of the respondents in their complaint (Rollo, p. 10).

It is worth noting that NLRC admitted that:

> "At the outset, let it be made clear that We are aware as to who is the real party respondent in this case; it is the Government of the United States of America which is maintaining military facilities in the Philippines, one of which is located inside Clark Air Base. The 3 AGS where the appellees previously worked as dormitory attendants is just one of the various units of the United States Armed Forces (USAF) inside the said military base. While individual respondents, particularly Lt. Col. William Frankhauser and T/Sgt. Aldora Larkins, are mere elements of the USAF assigned to the 3 AGS. Thus, whatever awards, monetary or otherwise, the appellees are entitled to by virtue of this case are the primary liabilities of their real employer, i.e., the United States Government" (Rollo, pp. 91-92).

Private respondents were dismissed from their employment by Lt. Col. Frankhauser acting for and in behalf of the U.S. Government. The employer of private respondents was not Lt. Col. Frankhauser nor petitioner. The employer of private respondents, as found by NLRC, was the U.S. Government which, by right of sovereign power, operated and maintained the dormitories at Clark Air Base for members of the USAF (United States of America vs. Guinto, 182 SCRA 644 [1990]; United States of America vs. Ruiz, 136 SCRA 487 [1985]).

Indeed, assuming that jurisdiction was acquired over the United States Government and the monetary claims of private respondents proved, such awards will have to be satisfied not by Lt. Col. Frankhauser and petitioner in their personal capacities, but by the United States government (Sandres vs. Veridiano II, 162 SCRA 88 [1988]).

Under the "Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Relating to the Employment of Philippine Nationals in the United States Military Bases in the Philippines" otherwise known as the Base Labor Agreement of May 27, 1968, any dispute or disagreement between the United States Armed Forces and Filipino employees

should be settled under grievance of labor relations procedures established therein (Art. II) or by the arbitration process provided in the Romualdez-Bosworth Memorandum of Agreement dated September 5, 1985. If no agreement was reached or if the grievance procedure failed, the dispute was appealable by either party to a Joint Labor Committee established in Article III of the Base Labor Agreement.

Unquestionably therefore, no jurisdiction was ever acquired by the Labor Arbiter over the case and the person of petitioner and the judgment rendered is null and void (Filmerco Commercial Co. vs. Intermediate Appellate Court, supra.; Sy vs. Navarro, 81 SCRA 458 [1978]).

WHEREFORE, the petition for certiorari is **GRANTED**.

SO ORDERED.

Padilla, Davide, Jr., Bellosillo and Kapunan, *JJ.*, concur.
