



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court's First Division, issued a Resolution dated November 22, 2023 which reads as follows:

“G.R. No. 254118 (NEIL PAPAS, Petitioner v. CARMEN COPPER CORPORATION, Respondent). — This Appeal by *Certiorari*¹ seeks to reverse and set aside the August 28, 2018 Decision² and the March 17, 2020 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 11707, which reversed and set aside the December 29, 2017 Decision⁴ and the February 28, 2018 Resolution⁵ of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-11-000655-2017. The NLRC affirmed with modifications the September 28, 2017 Decision⁶ of the Labor Arbiter (LA) in NLRC RAB VII Case No. 06-1286-17, which found that respondent Carmen Copper Corporation (CCC) constructively dismissed petitioner Neil Papas (*Papas*).

¹ *Rollo*, pp. 10-38.

² *Id.* at 39-54. The Decision was penned by Associate Justice Edgardo L. Delos Santos (a retired Member of the Court) and concurred in by Associate Justices Edward B. Contreras and Louis P. Acosta of the 19th Division, Court of Appeals, Cebu.

³ *Id.* at 55-57. The Resolution was penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Marilyn B. Lagura-Yap and Carlito B. Calpatura of the Special Former 19th Division, Court of Appeals, Cebu.

⁴ *Id.* at 148-158. The Decision was penned by Commissioner Nendell Hanz L. Abella and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Julie C. Rendoque of the Seventh Division, NLRC, Cebu.

⁵ *Id.* at 177-178. The Resolution was penned by Commissioner Nendell Hanz L. Abella and concurred in by Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Julie C. Rendoque of the Seventh Division, NLRC, Cebu.

⁶ *Id.* at 114-124. The Decision was penned by Labor Arbiter Bertino A. Ruaya, Jr. of the Regional Arbitration Branch No. VII, NLRC, Cebu.

- over – eighteen (18) pages ...

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The Antecedents

The instant Appeal arose out of a Complaint⁷ for illegal dismissal with prayer for damages and attorney's fees filed by Papas against CCC and some of its top officials, namely: CCC's President Enrico Nera (*Nera*), Human Resources (*HR*) Administration Assistant Vice-President Mia Cuenco (*Cuenco*), Division Manager Abel Pintor (*Pintor*), Recruitment and Policies Department Head Jeffrey Oyao (*Oyao*), and Jonathan Swain (collectively, *Nera et al.*).

Papas alleged that he was constructively dismissed by CCC when he was forced to avail of CCC's early retirement program. He joined CCC as its Community Relations Superintendent on June 1, 2013.⁸ At the time of the alleged constructive dismissal, he was receiving a monthly salary of PHP 85,490.00. He was the head of the Community Relations Office (*ComRel*) of CCC. His main task was to implement CCC's Social Development and Management Program (*SDMP*), the social component of its mining operations. He marshalled resources to carry out the program in strict accordance with the social development provisions of the Implementing Rules and Regulations (*IRR*) of Republic Act No. 7942 or the Philippine Mining Act of 1995.⁹

In 2016, SM Investment Corporation (*SMIC*) took over CCC, leading to changes in the internal affairs of CCC. The new HR executive of CCC conducted a company-wide evaluation or examination of the superintendents and the general superintendents of the different departments aimed at gauging their management skills. Nera, CCC's president, allegedly called Papas to his office and congratulated him on the result of his examination.¹⁰

In the middle of 2016, Nera went into a panic due to reports that the then Secretary of the Department of Environment and Natural Resources (*DENR*), Gina Lopez (*Secretary Lopez*), will be implementing an industry-wide audit of all mining companies in the country.¹¹

Papas claimed that, long before the reported audit, he had already informed Nera that of the funds required to be allocated for the SDMP, the company's spending for said program was deficient by PHP 300 million. This may cause CCC to be cited for violation of mining laws. Papas likewise pointed out that the company's Table of Organization, specifically that involving his position, may be violative of the provisions of the IRR of the

⁷ *Id.* at 59-dorsal portion thereof.

⁸ *Id.* at 16.

⁹ *Id.* at 40.

¹⁰ *Id.*

¹¹ *Id.*

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mining law. However, this was allegedly not addressed. Instead, Nera and CCC's Assistant Vice-Presidents Lai Lawson and Ignas Albuero instructed him to submit a sanitized Table of Organization to conform with the requirements when the audit occurs.¹²

As the audit drew nearer, it allegedly caused more panic among the top management. Their apprehensions heightened, causing them to allegedly resort to looking for a designated fall guy. For reasons known only to them, Papas was the chosen scapegoat.¹³

In meetings and emails, Papas explained that the blame should not be placed on him alone. He asserted that his office had been dutiful in identifying, prioritizing, and planning for SDMP projects in compliance with the social development provisions of the mining law. His office had been diligent in submitting and proposing projects for the approval of the top management. Unfortunately, SMIC Executive Vice-President Tristan Choa, then detailed at CCC, allegedly ordered his department not to spend for SDMP projects since they are so expensive.¹⁴

Moreover, sometime in September 2016, SMIC allegedly sent a retired military general to CCC to set the direction of the ComRel notwithstanding Papas's presence as its incumbent head.¹⁵

Despite everything, Papas remained loyal to CCC. He allegedly continued to look for ways to mitigate CCC's audit-related problems. He even engaged a friend close to Secretary Lopez, the city mayor and city council, the barangay councils, non-government organizations and people's organizations, the academe, etc., to come up with manifestos endorsing CCC's responsible mining operations – copies of which were personally handed over to Secretary Lopez.¹⁶

When the actual mining audit transpired in August 2016, the social team of the audit group found that CCC's Table of Organization violated Section 136-C of DENR Administrative Order No. 2010-21. The auditors also found out that CCC was PHP 300 million short of its required SDMP spending.¹⁷

As a remedy, Papas made representations to the head of the social team of the audit group to allow CCC to commit to the spending of PHP 200 million

¹² *Id.* at 40-41.

¹³ *Id.* at 41.

¹⁴ *Id.* at 18, 41.

¹⁵ *Id.* at 41.

¹⁶ *Id.*

¹⁷ *Id.* at 41-42.

before the end of 2016, considering that the ComRel already submitted project proposals, which were put on hold by the top management. The auditor allegedly agreed. Papas, thus, drafted a letter of commitment to spend PHP 200 million, which was reviewed, signed, and thereafter submitted by Nera as president of CCC.¹⁸

As a result of the industry audit, several mining companies were suspended by the DENR; CCC was not among them. This positive development happened despite the defects and violations of CCC. Thus, the mitigating measures taken by Papas were effective. At this time, the ComRel started implementing the SDMP projects according to CCC's commitment.¹⁹

However, the top management, composed of people from SMIC, allegedly created a hostile and toxic work environment where Papas and his staff would receive unjustified criticisms, as well as vague and unfounded accusations of poor performance, contrary to the finding of the auditor that commended them for their work. His department was allegedly set up to fail.²⁰

Sometime in 2017, a fault-finding expedition was purportedly launched by CCC. The HR was allegedly asked to investigate Papas for absences without leave, despite the fact that his emergency leave had been approved by Nera. This created an intimidating, hostile, degrading, humiliating, or offensive environment, which constituted harassment.²¹

Also in 2017, there was purging of some of CCC's officials. The employees with the ranks of superintendent and above were relieved by the management based on questionable charges.²²

On March 16, 2017, Papas was invited to the HR office for a meeting. In attendance were Cuenco, Pintor, and Oyao. In said meeting, several charges were read to him. As an option, Papas was offered the opportunity to avail of early retirement. Allegedly, he was left without any choice but to avail of the early retirement, which he claimed constituted constructive dismissal.²³

For its part, CCC asserted that, at said meeting, Papas was informed that the company was to serve him a Notice to Explain²⁴ (NTE), dated March 17, 2017, regarding several alleged infractions. As stated, the notice was read to Papas during the meeting. The notice included charges concerning

¹⁸ *Id.* at 42.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 20, 42.

²² *Id.* at 42.

²³ *Id.* at 43.

²⁴ *CA rollo*, pp. 105-108.

conversion of funds, negligence in effectively and efficiently carrying out various projects, acts constituting serious misconduct and willful disobedience, loss of trust and confidence, discrepancies and inconsistencies between funds requested by the ComRel against funds actually utilized, failure in monitoring and ensuring project completion, and wanton disregard of work-related priorities.²⁵

The above charges purportedly constituted violations of the company's Uniform Code of Conduct, particularly: (1) Work Performance, Item #1 or "Gross and Habitual Neglect by the Employee of his/her Duties; (2) Work Performance, Item #26 or "Taking of, misappropriating, or converting Company funds, money, or property for personal gain or for that of another; and (3) Others, Item #4 or "Loss of Confidence." The penalty for (1) and (2) for the first offense is discharge.²⁶

At the same time, Papas was informed that he had five days from receipt of said NTE to submit his written explanation and that an administrative investigation was scheduled on March 21, 2017.²⁷

Papas allegedly requested that he be shown the NTE so that he could personally read the same. Thereafter, Papas allegedly asked if he had any options to have a graceful exit from the company. Thus, representatives of CCC present at the meeting mentioned to Papas about the optional retirement program offered to its employees aged 55 years old and above.²⁸

Papas then asked for a moment to ponder on his options. He stepped outside the office. After a few minutes, he came back and talked to the HR team about his intention to gracefully exit from the company. He then voluntarily submitted a handwritten letter of application for an early retirement.²⁹ The handwritten letter reads as follows:

March 17, 2017

The HRD
Carmen Copper Corporation
DAS, Toledo City

Dear Ma'am/Sir,

May I request to avail the optional retirement of Carmen Copper Corporation?

²⁵ *Rollo*, p. 43.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 44.

²⁹ *Id.*

Thank you for your consideration.

Truly yours,
[signed]
NEIL L. PAPAS³⁰

The application was immediately approved.³¹

Papas was paid his retirement pay and benefits, which, according to CCC, was more than what was provided for under the law. Consequently, the scheduled administrative investigation was no longer pursued. However, to their surprise, Papas filed a Complaint for constructive dismissal against them after he had already received his retirement pay.³²

The LA Ruling

In its September 28, 2017 Decision, the LA held that Papas was constructively dismissed by CCC. The *fallo* of its Decision states:

WHEREFORE, premises considered, judgment is hereby rendered finding respondent guilty of constructive dismissal.

Consequently, respondent **CARMEN COPPER CORPORATION** is hereby ordered to pay the complainant his backwages, separation pay, moral and exemplary damages and attorney's fees in the aggregate amount of **ONE MILLION FIFTY[-]FOUR THOUSAND NINE HUNDRED PESOS ([PHP] 1,054,900.00)** less the amount of **[PHP] 481,553.00** which he already received or the remaining amount of **SIX HUNDRED SEVENTY[-]EIGHT THOUSAND EIGHT HUNDRED THIRTY[-]SIX PESOS & 50/100 ([PHP] 678,836.50)**.

All other claims are dismissed for lack of merit.

SO ORDERED.³³

The LA held that Papas neither availed of the retirement package nor voluntarily resigned, but was constructively dismissed by CCC. It declared that Papas's separation was involuntary in nature. It found that CCC failed to discharge the burden of proof that his availment of early retirement was voluntary. It observed that CCC's check was made on March 16, 2017, while Papas's request to avail of optional retirement was penned on March 17, 2017. Further, said request did not contain any words of gratitude. It declared that Papas's submission of his letter requesting to avail of optional retirement was

³⁰ *Id.* at 77.

³¹ *Id.* at 44.

³² *Id.*

³³ *Id.* at 123-124.

a product of an unintelligent and confused decision due to the disdain shown by CCC. It seemed to have lent credence to Papas's claim that he was intimidated into availing of the optional retirement due to CCC's questioning of his competency and efficiency. Thus, the LA found CCC liable to Papas and awarded backwages in the amount of PHP 512,940.00, separation pay in the amount of PHP 150,000.00, moral damages in the amount of PHP 100,000.00, exemplary damages in the amount of PHP 100,000.00, and attorney's fees equal to 10% of the total monetary awards. No judgment was rendered against Nera et al.³⁴

CCC and Papas interposed their respective appeals.³⁵ Papas, in his partial appeal, merely sought reinstatement to his former position.³⁶ The fact that there was no finding of liability against Nera et al. was not raised as an issue by either of the parties.

The NLRC Ruling

In its December 29, 2017 Decision, the NLRC affirmed with modifications the LA Decision. The dispositive portion provides:

WHEREFORE, premises considered, the Decision dated September 28, 2017 of the Honorable Labor Arbiter Bertino A. Ruaya, Jr. is[] hereby AFFIRMED with MODIFICATIONS. Complainant NEIL L. PAPAS is hereby reinstated to his former position. Respondent CARMEN COPPER CORPORATION is hereby ordered to pay the complainant the amount of FIVE HUNDRED TWELVE THOUSAND FOUR HUNDRED THIRTEEN and 60/100 PESOS ([PHP] 512,413.60) representing the balance of complainant's backwages, moral and exemplary damages and attorney's fees.

SO ORDERED.³⁷

The NLRC found that Papas was constructively dismissed. His constructive dismissal stemmed from the involuntariness of his retirement. For the NLRC, this was evident from the following factual antecedents: (1) The check and voucher for Papas's optional retirement had already been prepared and was presented to him at the conference called by the HR despite the fact that he did not apply for the optional retirement program; (2) the voucher containing the signature of CCC's comptroller is dated March 16, 2017, or a day prior to Papas's request for optional retirement; (3) Papas was made to avail of the optional retirement despite the fact that he was not yet qualified to avail of it; and (4) Papas did not even submit a written request to avail of optional retirement on or before the

³⁴ *Id.* at 121-123.

³⁵ *Id.* at 125-143, 144-146.

³⁶ *Id.* at 144.

³⁷ *Id.* at 157.

prescribed deadline for submission, which was on December 31, 2016. Thus, Papas's retirement was involuntary because he was compelled to sign the documents presented to him. However, it deleted the LA's award of separation pay and, instead, ordered Papas's reinstatement. It also reduced the award of moral and exemplary damages from PHP 100,000.00 to PHP 50,000.00 each. It affirmed the award of attorney's fees.³⁸

CCC filed a Motion for Reconsideration, which was denied by the NLRC in its February 28, 2018 Resolution.

CCC thereafter filed a Petition for *Certiorari* before the CA. In its June 27, 2018 Resolution,³⁹ the CA granted CCC's prayer for issuance of a temporary restraining order against the orders of the NLRC.

WHEREFORE, the motion for reconsideration of herein petitioner is hereby GRANTED. The 25 April 2018 [R]esolution of this Court is hereby VACATED and a new one is hereby issued granting herein petitioner's prayer for an injunctive relief. **Accordingly, a TEMPORARY RESTRAINING ORDER (TRO)** is hereby issued effective for sixty (60) days, unless sooner lifted, conditioned upon posting of a bond in the amount of Two Hundred Thousand Pesos ([PHP] 200,000). Accordingly, the respondents, their agents, representatives, assigns or anybody acting in their behalf are hereby enjoined to refrain from enforcing and/or implementing the assailed 28 December 2017 *Decision* and the 28 February 2018 *Resolution* of NLRC, 7th Division, Cebu City.

SO ORDERED.⁴⁰ (Citations omitted)

The CA Ruling

In its assailed August 28, 2019 Decision, the CA granted the Petition for *Certiorari* and reversed the NLRC Decision and Resolution in NLRC Case No. VAC-11-000655-2017. It dismissed Papas's Complaint for illegal dismissal, *viz.*:

WHEREFORE, foregoing premises considered, the present petition is hereby GRANTED. Accordingly, the assailed decision of herein public respondent in NLRC Case No. VAC-11-000655-2017 is hereby reversed and set aside and a new one is hereby rendered dismissing herein private respondent's illegal dismissal complaint for lack of basis.

³⁸ *Id.* at 152-157.

³⁹ *Id.* at 227-230. The Resolution was penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Edward B. Contreras and Louis P. Acosta of the 19th Division, Court of Appeals, Cebu.

⁴⁰ *Id.* at 229.

SO ORDERED.⁴¹

The CA held that Papas failed to establish by substantial evidence his allegation that he was merely forced to avail of CCC's early retirement program and, thus, was constructively dismissed. It considered vital in determining the voluntariness of Papas's act the position he held and his educational attainment. It quoted jurisprudence saying that it is highly improbable that a well-educated employee holding a managerial position could easily be duped into signing a retirement letter against his will. Papas is not an ordinary employee. He held a managerial position as head of the ComRel, which is essential in obtaining the support and cooperation of communities and the government. His department is vital to the company's long-term sustainability, and failure on the part of the ComRel would have serious consequences on the mining operation of the company.⁴²

The CA, thus, found it perplexing or difficult to believe that a person who is well-educated and possesses impeccable skills in negotiations, as well as solving complicated managerial problems, would easily succumb to intimidation and pressure to force him in availing of early retirement. Considering his position and educational attainment, Papas knew the consequences of his actions. Further, the allegations against him were still subject to investigation. There was no showing that he was already being dismissed by CCC at that time.⁴³

The CA further observed that he submitted a handwritten letter requesting to avail of early retirement and signed a Release Waiver and Quitclaim⁴⁴ on the same date. It declared that there is no showing that Papas was physically forced to affix his signature or threatened into writing the letter. It further observed that it took Papas more than three months after he retired to file the Complaint for illegal dismissal. To the CA, it shows that the filing of the Complaint may only be an afterthought when Papas faced difficulty in finding other employment. It upheld the validity of the quitclaim executed by Papas since all the requisites for its validity were complied with. The early retirement allowed him to receive a considerable amount of money upon his exit. It likewise allowed Papas a graceful exit from the company. Papas availed of the early retirement voluntarily and there was no dismissal at all.⁴⁵

Papas filed a Motion for Reconsideration,⁴⁶ which the CA denied in its March 17, 2020 Resolution, to wit:

⁴¹ *Id.* at 53.

⁴² *Id.* at 50.

⁴³ *Id.* at 50-51.

⁴⁴ *CA rollo*, p. 69.

⁴⁵ *Rollo*, pp. 51-52.

⁴⁶ *CA rollo*, pp. 412-417.

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WHEREFORE, petitioner's Vehement Opposition (to Respondent's Motion for Reconsideration) dated 22 October 2018 and private respondent's Amended Motion for Reconsideration dated 03 October 2018 are **NOTED**.

The Motion to Withdraw Cash Bond dated 22 January 2019 is **DENIED**.

The Motion for Reconsideration dated 28 September 2018 is **DENIED**, for lack of merit.

SO ORDERED.⁴⁷

Hence, this Petition.

The Petition

First, Papas argues that he did not hold a position of trust and confidence. He argues that any confidentiality in his position would be detrimental "as it could involve sanitation of real earnings *vis-à-vis* its legal obligation in favor of the host and community."⁴⁸ *Second*, Papas insists that he was forced to avail of the optional retirement program. The letter he submitted requesting the same does not bear the earmarks of voluntariness. Further, the amount he received as retirement pay was not substantial. He posits that the documents prepared by the HR a day before the conference and the accusations of misconduct constitute fraud or deceit.⁴⁹

In its May 10, 2021 Comment,⁵⁰ CCC argues that Papas contradicted himself by seeking reinstatement since the essence of constructive dismissal is the fact that continued employment has become unbearable due to certain acts committed by the employer. CCC stands firm that Papas was not constructively dismissed considering that his consent was not vitiated when he wrote his retirement letter, or when he signed the voucher, the Release Waiver and Quitclaim, as well as the Non-Disclosure Undertaking. It points out that it took Papas two months from the time he tendered his retirement letter to request for a Single Entry Approach Conciliation Conference. Reinstatement is also no longer tenable because of the strained relations between Papas and CCC, especially since Papas occupied a position of trust and confidence.⁵¹

⁴⁷ *Rollo*, pp. 56-57.

⁴⁸ *Id.* at 27.

⁴⁹ *Id.* at 27-30.

⁵⁰ *Id.* at 267-300.

⁵¹ *Id.* at 282-283.

CCC insists that the CA correctly reversed the NLRC and the LA. It quoted the CA's discussion extensively. It added that the fact that the check and the voucher were prepared before the meeting does not automatically mean that Papas was coerced or intimidated into applying for retirement or signing the Release Waiver and Quitclaim and the Non-Disclosure Undertaking, both of which were duly notarized.⁵²

Further, the allegations in the NTE do not rise to the level of intimidation or coercion sufficient to vitiate consent. Rather, Papas was conscious and rationally disposed when he wrote the retirement letter and signed the other documents. Retirement was economically the better option for him. CCC points out that Papas cannot avoid compliance with the Release Waiver and Quitclaim, as well as the Non-Disclosure Undertaking, and that none of the grounds for a finding of vitiation of consent are present.⁵³

Finally, CCC asserts that Papas is not entitled to his money claims. Papas is not entitled to backwages because such award presupposes that he was illegally dismissed. An award of moral damages is also not proper. The right to issue the NTE and the right to grant optional retirement falls within CCC's prerogatives under the law. He is also not the only employee whose application for optional retirement was approved beyond the December 31, 2016 deadline.⁵⁴

In his Reply⁵⁵ dated June 9, 2021, Papas argues that there is no contradiction between his prayer for reinstatement and his allegation of constructive dismissal. It cited several cases where, allegedly, the Court granted reinstatement despite a finding of constructive dismissal.⁵⁶ He also asserts that the fact that the documents had been prepared prior to the conference shows that CCC was "hell bent" to get rid of him at all costs. The severance pay he received, equal to five months' salary, is not sufficient. CCC and Nera et al. employed fraud and deceit in this case.⁵⁷ He added that to summon an employee for no reason, then to flash the NTE for several charges of gross misconduct, coupled with an offer of early retirement, is contrary to law, public order, public policy, morals, or good customs.⁵⁸ Further, the manner in which his retirement letter was written demonstrates its "glaring coercive nature."⁵⁹

⁵² *Id.* at 284-288.

⁵³ *Id.* at 288-295.

⁵⁴ *Id.* at 295-296.

⁵⁵ *Id.* at 351-361.

⁵⁶ *Torreda v. Investment and Capital Corporation of the Philippines*, 839 Phil. 1087, 1108 (2018) [Per J. Gesmundo, Third Division]; *Manila Hotel Corp. v. De Leon*, 836 Phil. 595, 617 (2018) [Per, J. Tijam, First Division]; *Grande v. Philippine Nautical Training College*, 806 Phil. 601 (2017) [Per J. Peralta, Second Division].

⁵⁷ *Rollo*, pp. 351-352.

⁵⁸ *Id.* at 354.

⁵⁹ *Id.* at 356.

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The Issues

The Petition raises the following issues:

I

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND/OR REVERSIBLE ERROR IN REVERSING ITSELF AND GRANTED A TEMPORARY RESTRAINING ORDER *SANS ANY FACTUAL BASIS AND JUSTIFIABLE REASON*[.]

II

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND/OR REVERSIBLE ERROR IN STATING THAT “TO FORCE REINSTATEMENT IS VIOLATIVE OF HEREIN PETITIONER’S RIGHT TO EXERCISE MANAGEMENT PREROGATIVE IN SELECTING EMPLOYEES THAT WOULD HOLD CONFIDENTIAL AND CRITICAL POSITIONS[.]”

III

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND/OR REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE THE WELL-REASONED DECISIONS OF BOTH THE LABOR ARBITER AND THE NLRC *WITHOUT FACTUAL BASIS*.⁶⁰

Simply put, the Petition raises the question of whether the CA erred in finding that Papas’s resignation was voluntary and that there was no constructive dismissal.

The Court’s Ruling

Preliminarily, while the Petition names all the original co-respondents in the labor case as respondents in the instant case, it must be pointed out that Nera et al. (the individual officers of CCC) named as co-respondents other than CCC should be considered dropped as parties to the instant case. With the ruling of the LA failing to adjudge any personal liability on the part of Nera et al., this effectively constitutes a dismissal of the complaint as against them. Since no appeal was taken from such aspect of the decision, and that only CCC appealed to the NLRC and the CA, such ruling is final and binding upon the parties.

⁶⁰ *Id.* at 25-26.

Going to the substance of the case, the instant appeal must be denied for lack of merit. The CA did not commit any reversible error when it dismissed Papas's complaint for illegal dismissal.

Papas failed to prove the fact of his illegal dismissal. His availment of early optional retirement was voluntary in nature, not a by-product of intimidation, deceit, or fraud, as alleged. There is no constructive dismissal in the instant case.

The Court may validly take cognizance of the instant Appeal despite the mixed questions of fact and law raised

Admittedly, the instant Appeal involves mixed questions of fact and law. It requires the Court to determine whether CCC constructively dismissed Papas. In resolving this question, the Court must ascertain which version of events – that of Papas or CCC – occurred. Once ascertained, the Court will then determine if the events constitute constructive dismissal.

As a rule, only questions of law may be raised in a Rule 45 petition.⁶¹ This is because in a Rule 45 review, the Court has to view the CA Decision in the same context that the petition for *certiorari* it ruled upon was presented to it; whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision before it.⁶² As a result, the Court cannot reexamine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the NLRC.⁶³ “The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.”⁶⁴

However, this general rule admits of certain exceptions,⁶⁵ such as when the findings of the CA are contrary to those of the labor tribunal.⁶⁶

⁶¹ *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9 (2012) [Per J. Brion, Second Division].

⁶² *Id.*, n.17.

⁶³ *Id.*

⁶⁴ *Id.* at 10, n.20.

⁶⁵ (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record (*Medina v. Asistio, Jr.*, 269 Phil. 225, 232 [1990] [Per J. Bidin, Third Division]).

⁶⁶ *Philemploy Services and Resources, Inc. v. Rodriguez*, 520 Phil. 828, 842, n.20 (2006) [Per J. Carpio, Third Division].

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In the instant case, the CA's ruling is contrary to those of the LA and the NLRC. Hence, the Court may validly entertain the instant appeal despite the mixed questions of fact and law raised.

Papas was not constructively dismissed, but voluntarily availed of optional early retirement

It is well-established that the burden of proof in illegal dismissal cases rests on the employer to establish that the dismissal was valid. However, when the fact of dismissal is disputed by the employer, the complainant must duly prove the fact of dismissal first. After all:

One who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. **The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.**⁶⁷ (Emphasis supplied)

In the instant case, Papas failed to prove the fact of his dismissal. The circumstances surrounding Papas's availment of early retirement do not constitute constructive dismissal.

Papas contends that it was the officers of CCC who brought up early retirement after showing him the NTE with several charges of gross misconduct. On the other hand, CCC insists that it was Papas who asked for other options when confronted with the NTE, and, when presented with the option of early retirement, signified his intent to avail of the same.

The Court is inclined to believe that the idea of early retirement originated from CCC. CCC did not deny that the voucher and check for Papas's optional retirement was prepared a day ahead (March 16, 2017) of Papas's letter request (March 17, 2017). From this alone, it is evident that CCC had in mind the optional retirement of Papas when it was preparing for the HR meeting, and offered Papas the option during the conference.

Nonetheless, this begs the question of whether CCC's act of offering optional retirement to Papas simultaneous with, or subsequent to, a notice to explain constitutes constructive dismissal.

⁶⁷ *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209-210, n.24, 25 (2006) [Per J. Callejo, Sr., First Division].

The Court answers in the negative.

The Court previously discussed the difference between constructive dismissal and voluntary resignation:

...[C]onstructive dismissal is defined as quitting or cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay and other benefits. It exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. There is involuntary resignation due to the harsh, hostile, and unfavorable conditions set by the employer. **The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his employment/position under the circumstances.**

On the other hand, "[r]esignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, **the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.**"⁶⁸ (Emphasis supplied)

Here, Papas submitted a letter request for early retirement. Thus, it is incumbent upon him to prove that such letter request was a product of coercion or intimidation.⁶⁹

Unfortunately, Papas failed to do so.

In the case of *St. Michael Academy v. National Labor Relations Commission*,⁷⁰ the Court outlined the requisites to establish that resignation was forced upon an employee:

For intimidation to vitiate consent, the following requisites must be present: (1) that the intimidation caused the consent to be given; (2) that the threatened act be unjust or unlawful; (3) that the threat be real or serious, there being evident disproportion between the evil and the resistance which all men can offer, leading to the choice of doing the act which is forced on the person to do as the lesser evil; and (4) that it produces a well-grounded

⁶⁸ *Gan v. Galderma Phils., Inc.*, 701 Phil. 612, 638-639, n.32-35 (2013) [Per J. Peralta, Third Division].

⁶⁹ *Italkarat 18, Inc. v. Gerasmio*, 886 Phil. 433, 447, n.45 (2020) [Per J. Hernando, Second Division], citing *Gan v. Galderma Phils., Inc.*, *id.* at 640.

⁷⁰ 354 Phil. 491 (1998) [Per J. Puno, Second Division].

fear from the fact that the person from whom it comes has the necessary means or ability to inflict the threatened injury to his person or property.⁷¹

None of the requisites detailed above are present in the instant case. CCC merely informed Papas that he was to be served the NTE in relation to several charges against him. This is neither unjust nor unlawful. It is clearly within the employer's prerogative to investigate its employees for any alleged misconduct.

Further, it must be emphasized that Papas's narration of events is absent of any allegation that CCC threatened to fire or dismiss him if he did not avail of early retirement. Papas merely relied on the fact that CCC showed him the NTE and then offered him the option of early retirement. This simply does not rise to the level of coercion or intimidation necessary to vitiate Papas's consent.

At the end of the day, a notice to explain alleged acts of misconduct, by itself, cannot be characterized, in any manner whatsoever, as threat, coercion, or intimidation such that any resignation arising from the same constitutes constructive dismissal. If the Court were to rule in that manner, any employer issuing a notice to explain to an employee would be open to a charge of constructive dismissal. This cannot be countenanced. Again, an employer has the right to investigate its employees provided it is done within the bounds of due process, both substantive and procedural.

In addition to the foregoing, as pointed out by the CA, Papas filed the instant Complaint for illegal dismissal on June 30, 2017,⁷² or more than three months after retiring. Papas, if he truly felt wronged by what transpired during the conference with CCC on March 17, 2017, would have immediately acted on such sentiment. The substantial interval of time between the availment of early retirement and the filing of the Complaint for illegal dismissal lends credence to the finding that Papas voluntarily retired.

At this juncture, the Court notes that Papas changed his tune in his Reply to CCC's Comment. There, he argues that CCC employed fraud or deceit to compel him to submit the request letter for early retirement.

Once more, Papas's allegation cannot be given any weight.

⁷¹ *Id.* at 509-510, n.32.

⁷² *CA rollo*, p. 42. Allegedly, Papas filed his request for Single Entry Approach sometime in May 2017 (*Id.* at 416).

Aside from his bare allegation of deceit or fraud, Papas did not substantiate such claim. There is nothing in the facts before the Court that would indicate, much less prove, that fraud or deceit was employed by CCC.

Considering that Papas failed to prove the fact of his illegal dismissal, he is not entitled to any of his monetary claims.

*The Release Waiver and Quitclaim
executed by Papas is valid and
binding*

The Court also does not find any merit in Papas's allegation that the amount he received from CCC as retirement benefits is unreasonable.

To recount, the Court previously held that a quitclaim, to be valid, must comply with the following requisites: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration of the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.⁷³

All of these requisites are present in the instant case.

As previously mentioned, Papas did not allege, much less prove, any instance of deceit or fraud employed by CCC in the instant case.

Next, the consideration of the quitclaim is reasonable. Papas received the amount of PHP 481,553.50⁷⁴ as his final pay. This final pay is composed of his remaining payroll related benefits (in the total amount of PHP 139,493.50) and his retirement pay (in the amount of PHP 341,960.00). His payroll related benefits included basic pay, allowances, leaves, 13th month pay, housing allowance, and withholding tax refund, subject to certain deductions. Meanwhile, his retirement pay was computed by multiplying his monthly salary of PHP 85,490.00 by 4, since his tenure with the company was only 3.79 years. This breakdown evenly demonstrates that the final pay received by Papas as consideration for the quitclaim was reasonable.

Finally, there is no showing that the quitclaim executed by Papas is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

⁷³ *Dionio v. ND Shipping Agency and Allied Services, Inc.*, 838 Phil. 953, 981 (2018) [Per J. Gesmundo, Third Division].

⁷⁴ *Rollo*, p. 84.

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It must also be emphasized that the Release Waiver and Quitclaim is a notarized document.⁷⁵ Thus, all things considered, the validity and enforceability of said quitclaim must be upheld.

Evidently, Papas was not constructively dismissed; he voluntarily retired.

FOR THIS REASON, the Appeal is **DENIED**. The August 28, 2018 Decision and the March 17, 2020 Resolution of the Court of Appeals, Cebu City in CA-G.R. SP No. 11707 are hereby **AFFIRMED**.

SO ORDERED.” (*Zalameda, J., on official leave.*)

By authority of the Court:



MARIA TERESA B. SIBULO
Division Clerk of Court *off 12/19*

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DEC 19 2023

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⁷⁵ *Id.* at 288.