Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

ROBINA FARMS CEBU/UNIVERSAL ROBINA CORPORATION, Petitioner,	**G.R. No. 175869**
	Present:
	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN,
- versus -	PERLAS-BERNABE, and CAGUIOA, *JJ.*
	Promulgated:
ELIZABETH VILLA, Respondent.	APR 18 2016

x----------x

D E C I S I O N

BERSAMIN, *J.*:

The employer appeals the decision promulgated on September 27, 2006,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* and affirmed with modification the adverse decision of the National Labor Relations Commission (NLRC) declaring it liable for the illegal dismissal of respondent employee.

Antecedents

Respondent Elizabeth Villa brought against the petitioner her complaint for illegal suspension, illegal dismissal, nonpayment of overtime pay, and nonpayment of service incentive leave pay in the Regional Arbitration Branch No. VII of the NLRC in Cebu City.

---

[1] *Rollo*, pp. 48-60; penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justice Arsenio J. Magpale (retired/deceased) and Associate Justice Antonio L. Villamor (retired).

In her verified position paper,[2] Villa averred that she had been employed by petitioner Robina Farms as sales clerk since August 1981; that in the later part of 2001, the petitioner had enticed her to avail herself of the company's special retirement program; that on March 2, 2002, she had received a memorandum from Lily Ngochua requiring her to explain her failure to issue invoices for unhatched eggs in the months of January to February 2002; that she had explained that the invoices were not delivered on time because the delivery receipts were delayed and overlooked; that despite her explanation, she had been suspended for 10 days from March 8, 2012 until March 19, 2002; that upon reporting back to work, she had been advised to cease working because her application for retirement had already been approved; that she had been subsequently informed that her application had been disapproved, and had then been advised to tender her resignation with a request for financial assistance; that she had manifested her intention to return to work but the petitioner had confiscated her gate pass; and that she had since then been prevented from entering the company premises and had been replaced by another employee.

The petitioner admitted that Villa had been its sales clerk at Robina Farms. It stated that on December 12, 2001, she had applied for retirement under the special privilege program offered to its employees in Bulacan and Antipolo who had served for at least 10 years; that in February 2002, her attention had been called by Anita Gabatan of the accounting department to explain her failure to issue invoices for the unhatched eggs for the month of February; that she had explained that she had been busy; that Gabatan had referred the matter to Florabeth Zanoria who had in turn relayed the matter to Ngochua; and that the latter had then given Villa the chance to explain, which she did.

The petitioner added that after the administrative hearing Villa was found to have violated the company rule on the timely issuance of the invoices that had resulted in delay in the payment of buyers considering that the payment had depended upon the receipt of the invoices; that she had been suspended from her employment as a consequence; that after serving the suspension, she had returned to work and had followed up her application for retirement with Lucina de Guzman, who had then informed her that the management did not approve the benefits equivalent to 86% of her salary rate applied for, but only ½ month for every year of service; and that disappointed with the outcome, she had then brought her complaint against the petitioners.[3]

---

2 Id. at 103-109.
3 Id. at 86-87.

Ruling of the Labor Arbiter

On April 21, 2003, Labor Arbiter Violeta Ortiz-Bantug rendered her decision[4] finding that Villa had not been dismissed from employment, holding thusly:

> Complainant's application, insofar the benefits are concerned, was not approved which means that while her application for retirement was considered, management was willing to give her retirement benefits equivalent only to half-month pay for every year of service and not 86% of her salary for every year of service as mentioned in her application. Mrs. De Guzman suggested that if she wanted to pursue her supposed retirement despite thereof, she should submit a resignation letter and include therein a request for financial assistance. We do not find anything illegal or violative in the suggestion made by Mrs. De Guzman. There was no compulsion since the choice was left entirely to the complainant whether to pursue it or not.[5]

Although ordering Villa's reinstatement, the Labor Arbiter denied her claim for backwages and overtime pay because she had not adduced evidence of the overtime work actually performed. The Labor Arbiter declared that Villa was entitled to service incentive leave pay for the period of the last three years counted from the filing of her complaint because the petitioner did not refute her claim thereon. Thus, the Labor Arbiter disposed as follows:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering respondents ROBINA FARMS CEBU (a Division of UNIVERSAL ROBINA CORPORATION) and LILY NGOCHUA to REINSTATE complainant to her former position without loss of seniority rights and privileges within ten (10) days from receipt of this decision but without payment of backwages. Respondents are also ordered to pay complainant SEVEN THOUSAND ONE HUNDRED NINETY FOUR PESOS (₱7,194.00) as service incentive leave pay benefits.
>
> The other claims are dismissed for lack of merit.
>
> SO ORDERED.[6]

The parties respectively appealed to the NLRC.

Judgment of the NLRC

On February 23, 2005, the NLRC rendered its judgment dismissing the appeal by the petitioner but granting that of Villa,[7] to wit:

---

4 Id. at 85-93.
5 Id. at 89-90.
6 Id. at 92.
7 Id. at 117-130.

> **WHEREFORE**, premises considered, the appeal of respondents is hereby **DISMISSED** for non-perfection while the appeal of complainant is hereby **GRANTED**. The decision of the Labor Arbiter is **REVERSED** and **SET ASIDE** and a new one **ENTERED** declaring complainant to have been illegally dismissed. Consequently, respondents are hereby directed to immediately reinstate complainant to her former position without loss of seniority rights and other privileges within ten (10) days from receipt of this decision and to pay complainant the following sums, to wit:
>
> | | |
> |---|---|
> | 1. Backwages | ₱ 119,900.00 |
> | 2. SILP | ₱ 7,194.00 |
> | 3. Overtime Pay | ₱ 3,445.00 |
> | Total | ₱ 130,539.01 |
> | 4. Attorney's fees (10%) | 13,053.90 |
> | Grand Total | **₱ 143,592.91** |
>
> SO ORDERED.[8]

According to the NLRC, the petitioner's appeal was fatally defective and was being dismissed outright because it lacked the proper verification and certificate of non-forum shopping. The NLRC held the petitioner liable for the illegal dismissal of Villa, observing that because Villa's retirement application had been subject to the approval of the management, her act of applying therefor did not indicate her voluntary intention to sever her employment relationship but only her opting to retire by virtue of her having qualified under the plan; that upon informing her about the denial of her application, the petitioner had advised her to tender her resignation and to request for financial assistance; that although she had signified her intention to return to work, the petitioner had prevented her from doing so by confiscating her gate pass and informing her that she had already bee n replaced by another employee; and that the petitioner neither disputed her allegations thereon, nor adduced evidence to controvert the same.[9]

After the denial of its motion for reconsideration,[10] the petitioner filed a petition for *certiorari* in the CA.

Decision of the CA

The petitioner alleged in its petition for *certiorari* the following jurisdictional errors of the NLRC, to wit:

---

8 Id. at 130.
9 Id. at 117-130.
10 Id. at 137-141.

I

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DISMISSED PETITIONERS APPEAL MEMORANDUM ON A MERE TECHNICALITY AND NOT RESOLVE IT ON THE MERITS.

II.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DID NOT DISMISS PRIVATE RESPONDENT'S MEMORANDUM ON APPEAL EVEN THOUGH IT LACKED THE PROPER VERIFICATION AND PROCEEDED TO RESOLVE HER APPEAL ON THE MERITS.

III.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT THERE WAS ILLEGAL DISMISSAL AND THAT PRIVATE RESPONDENT BE IMMEDIATELY REINSTATED WITHOUT LOSS OF SENIORITY RIGHTS.

IV.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DIRECTED PETITIONERS INCLUDING PETITIONER LILY NGOCHUA TO PAY PRIVATE RESPONDENT BACKWAGES, SERVICE INCENTIVE LEAVE PAY, OVERTIME PAY AND ATTORNEY'S FEES.[11]

On September 27, 2006, the CA promulgated its assailed decision dismissing the petition for *certiorari*,[12] decreeing as follows:

> **WHEREFORE**, premises considered, the instant petition is hereby ordered **DISMISSED** for lack of merit. The assailed decision is **AFFIRMED** with **MODIFICATION**, in that petitioner Lily Ngochua should not be held liable with petitioner corporation. The other aspects of the assailed decision remains. Consequently, the prayer for a temporary restraining order and/or preliminary injunction is **NOTED**.
>
> SO ORDERED.[13]

The CA treated the petitioner's appeal as an unsigned pleading because the petitioner did not present proof showing that Florabeth P. Zanoria, its Administrative Officer and Chief Accountant who had signed the verification, had been authorized to sign and file the appeal. It opined that the belated submission of the secretary's certificate showing the

---

11 Id. at 52-53.
12 Supra note 1.
13 Id. at 59-60.

authority of Bienvenido S. Bautista to represent the petitioner, and the special power of attorney executed by Bautista to authorize Zanoria to represent the petitioner did not cure the defect. It upheld the finding of the NLRC that the petitioner had illegally dismissed Villa. It deemed the advice by Ngochua and de Guzman for Villa to resign and to request instead for financial assistance was a strong and unequivocal indication of the petitioner's desire to sever the employer-employee relationship with Villa.

The CA later denied the motion for reconsideration.[14]

Issues

Hence, this appeal in which the petitioner submits that:

I

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DID NOT RULE THAT THERE WAS NO VERIFICATION ATTACHED TO RESPONDENT VILLA'S NOTICE OF APPEAL AND MEMORANDUM ON APPEAL DATED MAY 29, 2003 AND THAT IT WAS AN UNSIGNED PLEADING AND WITHOUT LEGAL EFFECT, MOREOVER, IT COMMITTED UNFAIR TREATMENT

II

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DID NOT RULE THAT THE NATIONAL LABOR RELATIONS COMMISSION FOURTH DIVISION HAD NO JURISDICTION TO REVERESE AND SET ASIDE THE DECISION OF THE LABOR ARBITER DATED APRIL 21, 2003 WHICH HAD ALREA[D]Y BECOME FINAL AND IMMUTABLE AS FAR AS RESPONDENT IS CONCERNED

III

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT COMMITTED MISAPPREHENSION OF THE FACTS AND ISSUED ITS DECISION AND RESOLUTION CONTRARY TO THE EVIDENCE ON RECORD AND FINDINGS OF THE LABOR ARBITER.[15]

Ruling of the Court

The appeal lacks merit.

The petitioner prays that Villa's appeal should be treated as an unsigned pleading because she had accompanied her appeal with the same verification attached to her position paper.

---

[14] Id. at 62-63.
[15] Id. at 27.

The petitioner cannot be sustained. The NLRC justifiably gave due course to Villa's appeal.

Section 4(a), Rule VI of the *Amended NLRC Rules of Procedure* requires an appeal to be verified by the appellant herself. The verification is a mere formal requirement intended to secure and to give assurance that the matters alleged in the pleading are true and correct. The requirement is complied with when one who has the ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, or when the matters contained in the petition have been alleged in good faith or are true and correct.[16] Being a mere formal requirement, the courts may even simply order the correction of improperly verified pleadings, or act on the same upon waiving the strict compliance with the rules of procedure.[17] It is the essence of the *NLRC Rules of Procedure* to extend to every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[18] Accordingly, the substantial compliance with the procedural rules is appreciated in favor of Villa.

We cannot rule in the same way for the petitioner. For one, it belatedly submitted proof of Zanoria's authority to verify the pleading for the petitioner. Also, it did not submit the certification of non-forum shopping at the time of the filing of the appeal. The filing of the certification with the initiatory pleading was mandatory, and the failure to do so could not be cured by a later submission.[19] The non-submission of the certification, being a ground for dismissal, was fatal to the petition. There is no question that the non-compliance with the requirement for the certification, or a defect in the certification, would not be cured by the subsequent submission or the correction of the certification, except in cases of substantial compliance or upon compelling reasons.[20] Accordingly, the dismissal of the petitioner's appeal cannot be reversed or undone.

The petitioner next submits that the CA erred in holding that Villa had been illegally dismissed; that it had no intention to terminate her; that de Guzman had merely suggested to her that she should be filing the letter of resignation with the request for financial assistance because the management had disapproved her application for the 86% salary rate as basis for her retirement benefits; that it was Villa who had the intention to sever the employer-employee relationship because she had kept on following up her application for retirement; that she had prematurely filed the complaint for illegal dismissal; that she had voluntarily opted not to report to her work;

---

[16] *Jacinto v. Gumaru, Jr.*, G.R. No. 191906, June 2, 2014, 724 SCRA 343, 356; *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 597.

[17] *Panaguiton, Jr. v. Department of Justice*, G.R. No. 167571, November 25, 2008, 571 SCRA 549, 557.

[18] *Mangali v. Court of Appeals*, August 21, 1980, 99 SCRA 236, 247.

[19] Section 5, Rule 7, 1997 Rules of Procedure; See *Fuji Television Network, Inc. v. Espiritu*, G.R. No. 204944-45, December 3, 2014, 744 SCRA 31, 52.

[20] *Jacinto v. Gumaru, Jr.*, supra note 16, at 344.

and that she had not presented proof showing that it had prevented her from working and entering its premises.[21]

The petitioner's submissions are bereft of merit.

We note that the CA and the NLRC agreed on their finding that the petitioner did not admit Villa back to work after the completion of her 10-day suspension. In that regard, the CA observed:

> It is undeniable that private respondent was suspended for ten (10) days beginning March 8, 2002 to March 19, 2002. Ordinarily, after an employee [has] served her suspension, she should be admitted back to work and to continue to receive compensation for her services. ***In the case at bar, it is clear that private respondent was not admitted immediately after her suspension.*** Records show that when private respondent reported back after her suspension, she was advised by Lucy de Guzman not to report back anymore as her application was approved, which was latter [sic] on disapproved. It is at this point that, said Lucy de Guzman had advised private respondent to tender a resignation letter with request for financial assistance. Not only Lucy De Guzman has advised her to tender her resignation letter. The letter of petitioner Lily Ngochua dated April 11, 2002 to private respondent which reads:
>
> > "As explained by Lucy de Guzman xxx your request for special retirement with financial assistance of 86%/year of service has not been approved. Because this offer was for employees working in operations department and not in Adm. & Sales.
> >
> > "However, as per Manila Office, you can be given financial assistance of ½ per year of service if you tender letter of resignation with request for financial assistance."
>
> shows that petitioner Lily Ngochua has also advised private respondent to the same. These acts are strong indication that petitioners wanted to severe [sic] the employer-employee relationship between them and that of private respondent. This is buttressed by the fact that when private respondent signified her intention to return back to work after learning of the disapproval of her application, she was prevented to enter the petitioner's premises by confiscating her ID and informing her that a new employee has already replaced her.
>
> It should be noted that when private respondent averred this statement in her position paper submitted before the Labor Arbiter petitioners did not refute the same. Neither did they contest this allegation in their supposed Appeal Memorandum nor in their Motion for Reconsideration of the assailed decision of public respondent. Basic is the rule that matters not controverted are deemed admitted. To contest this allegation at this point of proceeding is not allowed for it is a settled rule that matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are

[21] *Rollo*, pp. 31-33.

> raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[22]

Neither did Villa's application for early retirement manifest her intention to sever the employer-employee relationship. Although she applied for early retirement, she did so upon the belief that she would receive a higher benefit based on the petitioner's offer. As such, her consent to be retired could not be fairly deemed to have been knowingly and freely given.

Retirement is the result of a bilateral act of both the employer and the employee based on their *voluntary* agreement that upon reaching a certain age, the employee agrees to sever his employment.[23] The difficulty in the case of Villa arises from determining whether the retirement was voluntary or involuntary. The line between the two is thin but it is one that the Court has drawn. On one hand, voluntary retirement cuts the employment ties leaving no residual employer liability; on the other, involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is decisive. In determining such intent, the relevant parameters to consider are the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion.[24]

In case of early retirement programs, the offer of benefits must be certain while the acceptance to be retired should be absolute.[25] The acceptance by the employees contemplated herein must be explicit, voluntary, free and uncompelled.[26] In *Jaculbe v. Silliman University*,[27] we elucidated that:

> [A]n employer is free to impose a retirement age less than 65 for as long as it has the employees' consent. Stated conversely, **employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer. Thus, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by her, respondent was guilty of illegal dismissal.**[28] (bold emphasis supplied)

---

22 Id. at 55-56.

23 *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, July 28, 2008, 560 SCRA 115, 132.

24 *Quevedo v. Benguet Electric Cooperative, Incorporated*, G.R. No. 168927, September 11, 2001, 599 SCRA 438, 446.

25 *Korean Air Co., Ltd. v. Yuson*,G.R. No. 170369, June 16, 2010, 621 SCRA 53, 69.

26 *Cercado v. Uniprom, Inc.*, G.R No.188154, October 13, 2010, 633 SCRA 281, 290.

27 G.R. No. 156934, March 16, 2007, 518 SCRA 445.

28 Id. at 452.

Under the circumstances, the CA did not err in declaring the petitioner guilty of illegal dismissal for violating Article 282[29] of the *Labor Code* and the twin notice rule.[30]

The petitioner posits that the CA erroneously affirmed the giving of overtime pay and service incentive leave pay to Vi lla; t hat she did not adduce proof of her having rendered actual overtime work; that she had not been authorized to render overtime work; and that her availment of vacation and sick leaves that had been paid precluded her claiming the service incentive leave pay.

We partly agree with the petitioner's position.

Firstly, entitlement to overtime pay must first be established by proof that the overtime work was actually performed before the employee may properly claim the benefit.[31] The burden of proving entitlement to overtime pay rests on the employee because the benefit is not incurred in the normal course of business.[32] Failure to prove such actual performance transgresses the principles of fair play and equity.

And, secondly, the NLRC's reliance on the daily time records (DTRs) showing that Villa had stayed in the company's premises beyond eight hours was misplaced. The DTRs did not substantially prove the actual performance of overtime work. The petitioner correctly points out that any employee could render overtime work only when there was a prior authorization therefor by the management.[33] Without the prior authorization, therefore, Villa could not validly claim having performed work beyond the normal hours of work. Moreover, Section 4(c), Rule I, Book III of the *Omnibus Rules Implementing the Labor Code* relevantly states as follows:

> Section 4. *Principles in determining hours worked.* — The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:
>
> (a) x x x.
>
> (b) x x x.
>
> (c) If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no

---

[29] Now Article 297 pursuant to DOLE Advisory Order No. 1, series of 2015.

[30] *Rollo*, p. 58.

[31] *Lagatic v. National Labor Relations Commission*, G.R. No. 121004, January 28, 1998, 285 SCRA 251, 262.

[32] *Loon v. Power Master, Inc.*, G.R. No. 189404, December 11, 2013, 712 SCRA 441, 457.

[33] *Rollo*, p. 36.

> replacement, **all time spent for such work shall be considered as hours worked, if the work was with the knowledge of his employer or immediate supervisor.** (bold emphasis supplied)
>
> (d) x x x.

We uphold the grant of service incentive leave pay.

Although the grant of vacation or sick leave with pay of at least five days could be credited as compliance with the duty to pay service incentive leave,[34] the employer is still obliged to prove that it fully paid the accrued service incentive leave pay to the employee.

The Labor Arbiter originally awarded the service incentive leave pay because the petitioner did not present proof showing that Villa had been justly paid.[35] The petitioner submitted the affidavits of Zanoria explaining the payment of service incentive leave after the Labor Arbiter had rendered her decision.[36] But that was not enough, for evidence should be presented in the proceedings before the Labor Arbiter, not after the rendition of the adverse decision by the Labor Arbiter or during appeal. Such a practice of belated presentation cannot be tolerated because it defeats the speedy administration of justice in matters concerning the poor workers. [37]

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for lack of merit; **AFFIRMS** the decision promulgated on September 27, 2006 by the Court of Appeals, with the **MODIFICATION** that the award of overtime pay in favor of respondent Elizabeth Villa is **DELETED**; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

---

[34] Article 95, *Labor Code*.
[35] *Rollo*, p. 91.
[36] Id. at 148-149.
[37] *Filipinas (Pre-fabricated Bldg.) Systems "FILSYSTEMS," Inc. v. National Labor Relations Commission*, G.R. No. 153859, December 11, 2003, 418 SCRA 404, 408.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice