

TRANSLIFT SHIP MANAGEMENT, INC., PETITIONER, VS. ELMER D. OMONDANG AND NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), RESPONDENTS.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1688a9fe98df/>

MACALINO, J:

This is a petition for certiorari[1] under Rule 65 of the Rules of Court, questioning the March 14, 2013 Resolution[2] of the National Labor Relations Commission (“NLRC”) in NLRC NCR CN. 04-05368-11 [NLRC LAC No. 03-000952-12], which partially granted the Motion for Reconsideration of Translift Ship Management, Inc., modifying the November 23, 2012 Decision[3] of the NLRC and ordering Translift to reinstate Elmer D. Omondang.

The NLRC arrived at the following factual findings:

“[Elmer D. Omondang] avers that he commenced working for [Translift Ship Management, Inc.] on December 17, 2007 as Second Officer for M/T P. Cara as a probationary employee for six months. On June 18, 2008 he became a regular employee of [Translift] and was given a monthly pay of P38,000.00. Throughout his employment with [Translift] he was not charged of any infraction or violation of company policy that would warrant suspension or dismissal from service. On January 12, 2011 while they were at the port of Batangas, he was told by his superior, Captain Genaro M. Palomares that a certain Antonio Abella, Jr., would take over his position as his services is no longer needed by the company considering his age and health problem. He protested but his plea was unheeded. On January 31, 2011, he went to [Translift's] office to make a counter-report regarding his termination to Marine Superintendent Renato B. Sto. Domingo but the latter likewise ignored him. Consequently, he filed this case on April 1, 2011.

[Translift] on the other hand allege[s] that [Omondang] was not dismissed from service but he is under investigation for an offense while on board the company's vessel. He was advised to wait for the outcome of the investigation while the company conducts inquiries from the concerned personnel. The company later came up with a decision, to give [Omondang] another chance on February 27, 2011. However, he could not be reached through his mobile number. He actually severed his employment with Translift and sought employment elsewhere. In support of their contention, they attached copies of the affidavit of Corazon Reyes, crewing officer of the company and the report dated November 18, 2010 of Capt. Palomares on the alleged obstinacy and willful disobedience on board the vessel of [Omondang].

[Omondang] in his reply reiterated that he was terminated on January 12, 2011 due to his age and health condition and a certain Antonio Abella took over his position on even date. He even waited for several weeks for [Translift] to reconsider their decision. The affidavit of Reyes, purportedly justifying Omondang's termination should be brushed aside as self-serving and fabricated. Granting that there was an investigation of his alleged infraction, he was not informed about it, in violation of his right to notice and hearing. He did not abandon his work. The filing of this case is proof of his desire to return to work.

[Translift] in [its] reply, aver[s] that [Omondang] was merely placed on off-duty following investigation of the complaint against him for his work attitude and acts of disobedience on board M/T Petro Cara. Without waiting for the result of the investigation, [Omondang] filed this case and got employed with another shipping

company, precluding his return. As early as March 201[1], the company manifested its willingness to give him new assignment, but [Omondang] could not possibly report for work, as he is on board another company ship.

In a motion to admit, [Translift] submitted the affidavit of Capt. Genaro Palomares stating that on January 12, 2011, [Omondang] was informed that he would be relieved by Antonio Abella in accordance with the office crew movement advice. His disembarkation from the vessel was by reason of the disciplinary process undertaken on the complaint against him for his misbehavior on board which case was discussed in the monthly meeting. He was advised to report to the office to give his statement regarding the matter to the management. He denied having told [Omondang] that his services [are] no longer needed considering his age and health problem.

[Omondang] in his opposition to the motion to admit asserted that he was not aware that he was being placed under disciplinary process as he was not informed or given notice of his alleged infraction and reiterated that his termination was due to his old age and poor health which were the same words he heard from Capt. Palomares.”[4]

In a [5] dated January 24, 2012, the labor arbiter dismissed Omondang's complaint for illegal dismissal. The labor arbiter concluded that there was no illegal dismissal because there was no overt act of dismissal by Translift and Omondang was neither given a notice of dismissal. On appeal, the NLRC reversed the ruling of the labor arbiter and declared Omondang to have been illegally dismissed and Translift was ordered to immediately reinstate the former and pay him backwages. The NLRC declared that Omondang was placed on preventive suspension when he was asked to disembarked on January 12, 2011. However, Omondang was not informed of his suspension as well as of the reasons therefor and he was also not afforded an opportunity to defend himself. Both parties moved for the reconsideration of the NLRC decision. The NLRC, in its March 14, 2013 Resolution modified its decision and declared that there was neither dismissal nor abandonment in the instant case. It ordered Translift to reinstate Omondang without backwages. Unsatisfied, Translift took the present recourse on the sole ground that:

“THE HONORABLE COMMISSION COMMITTED GRAVE AND ABUSE OF DISCRETION IN ORDERING THE REINSTATEMENT OF PRIVATE RESPONDENT, CONSIDERING THE FACT THAT THE LATTER MANIFESTLY REFUSED TO GO BACK TO WORK, AND SHOULD BE CONSIDERED TO HAVE ALREADY VOLUNTARILY TERMINATED HIS EMPLOYMENT AS EARLY AS FEBRUARY 2011. HENCE, REINSTATEMENT TO HIS FORMER POSITION IS WITHOUT LEGAL BASIS.”[6]

Translift asserts that it did not dismiss Omondang but he voluntarily terminated his employment with the former. Omondang's disembarkation from the vessel was by reason of the disciplinary processes undertaken on the complaint against him for misbehavior on board. Translift maintains that his separation from the service was merely temporary and was supposedly an initiatory step for an investigation. Omondang however, did not wait for the outcome of the investigation and also did not follow up on the status of his case. Translift insists that it exerted efforts to communicate with Omondang for his new assignment in March 2011, but he refused to go back to work and instead, immediately transferred to another shipping company.

The petition lacks merit.

Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[7] In the present case, other than Omondang's allegation of having been verbally terminated from his work, there was no evidence presented to show that he was indeed dismissed from work or was prevented from returning to his work. As correctly observed by the NLRC in its questioned Resolution:

“For his part, [Omondang] merely averred in his Position Paper that on January 12, 2011, Captain Genaro M. Palomares (Captain Palomares) told him that a certain Antonio Abella, Jr. would replace him in the vessel as his services are no longer needed because of his age and health. According to him, his pleas for reconsideration fell on deaf ears.

This allegation cannot be considered as clear, convincing and positive evidence of his dismissal. It is undisputed that he was, in fact, disembarked from the vessel, but his mere disembarkation was not equivalent to dismissal. As stated by Cruz in her affidavit, [Omondang] was disembarked for the safety of the crew. Even [Omondang] confirms that there was a conflict between him and the captain. In his report to Captain Renato B. Sto. Domingo dated January 31, 2011, [Omondang] narrated that he almost had an altercation with Captain Palomares on board the vessel while they were testing a radar. Accordingly, the captain slapped his arm which caused him to protest. He allegedly told the captain that if he was no longer satisfied with his work, he could let him go. Under the circumstances, it was indeed for the best interest of the crew of the ship to allow [Omondang] to disembark.”[8]

There was neither abandonment of work in the present case. No evidence was presented showing Omondang's intent to abandon his work. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment. The burden of proof to show that there was unjustified refusal to go back to work rests on the employer. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be a clear proof of deliberate and unjustified intent to sever the employer-employee relationship. The operative act is still the employee's ultimate act of putting an end to his employment. Further, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.[9] The immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[10]

Thus, Translift has the burden of proof to show a deliberate and unjustified refusal on the part of Omondang to resume his employment without any intention of returning. It is incumbent upon Translift to ascertain Omondang's interest or non-interest in the continuance of his employment. Bare allegation that Omondang abandoned his employment is not evidence, especially in this case that a notice directing him to return to work was not issued. The lack of evidence of dismissal and the lack of intent on the part of the employee to abandon his work, the remedy is reinstatement but without backwages.[11]

WHEREFORE, the petition is DENIED. The Resolution of the NLRC dated March 14, 2013 in NLRC NCR CN. 04-05368-11 [NLRC LAC No. 03-000952-12], is AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusion in the above decision was reached in consultation before the case was assigned to the writer of the opinion of the Court.

Villon, S.E., Chairperson and Corales, P.B., JJ., concur.

[1] Rollo, pp. 3-22.

[2] Rollo, pp. 177-185.

[3] Rollo, pp. 118-126.

[4] Rollo, pp. 119-121.

[5] Rollo, pp. 78-85.

[6] Rollo, p. 10.

[7] MZR Industries, et al. v. Colambot, G.R. No. 179001, August 28, 2013.

[8] Rollo, p. 183.

[9] Tegimenta Chemical Phils. and Garcia v. Oco, G.R. No. 175369, February 27, 2013.

[10] Tan Brothers Corporation of Basilan City v. Escudero, G.R. No. 188711, July 8, 2013.

[11] Exodus International Construction Corporation and Javalera v. Biscocho, et al., G.R. No. 166109, February 23, 2011.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.