

TWINPACK CONTAINER CORPORATION, DANNY FLORES, CARL VALENTIN AND CLARISSA PARTOLAN, PETITIONERS, VS. DE GUIA-SALVADOR, R., CHAIRMAN NATIONAL LABOR RELATIONS COMMISSION (3RD DIVIS...

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, the petition for certiorari at bench seeks to nullify and set aside the Decision^[1] dated July 26, 2012 of the National Labor Relations Commission in NLRC-LAC Case No. 03-001123-12, which reversed the Decision dated January 31, 2012 of the Labor Arbiter in NLRC-NCR 07-10550-11 which, in turn, dismissed private respondent Eric John Dandoy Launio's complaint for illegal dismissal. The dispositive portion of the NLRC Decision reads:

“WHEREFORE, premises considered, the appealed Decision is REVERSED. Accordingly, respondents are hereby ORDERED to reinstate the complainant to his former position without loss of seniority rights and other benefits, and to pay his full backwages from date of dismissal up to actual reinstatement.

All other claims are denied for lack of merit.

SO ORDERED.”^[2]

The Facts

Petitioner Twinpack Container Corporation (Twinpack) is a domestic corporation engaged in the business of manufacturing, importing, buying and selling of cardboard, paper board, and corrugated carton containers. On February 21, 2005, Twinpack recognized the Samahang Manggagawa sa Twinpack (SMT) as the sole and exclusive bargaining agent of its rank-and-file employees. Consequently, a notice of voluntary recognition was thereafter filed with the Department of Labor and Employment (DOLE).

On January 5, 2010, Twinpack hired private respondent Eric John Dandoy Launio (Launio) as a Grablift Operator with a starting daily wage rate of P 300.00.

On July 20, 2010, Twinpack entered into a collective bargaining agreement (CBA) with SMT. The CBA was duly ratified and registered with the DOLE on August 3, 2010.

Sometime in April of 2011, Launio, together with 55 other co-employees, formed their own union which they named as Twinpack Workers Union (TWU). TWU was registered with the DOLE Camanava Field Office under Certificate of Registration No. NCR-CFO-UR-04-2011-07.^[3] On June 7, 2011, TWU filed before the DOLE a petition to cancel the registration of SMT and the registration of the CBA between Twinpack and SMT on the ground of fraud and misrepresentation.

On July 5, 2011, Launio's counsel, Atty. Alfredo L. Bentulan, sent Twinpack a demand letter^[4] seeking the reinstatement of Launio and his 7 other co-employees to their respective positions/jobs, for the following reasons:

“Your acts of NOT anymore allowing Ranario, et. al., [including Launio] to report for work/duty since July 1, 2011 because they refused to be transferred to the Agency, and they do not wear Uniform and the I.D. Of your Agency, the RDMCL Manpower Services Corporation, are grossly ILLEGAL and INHUMAN, to say the least. Also, your acts of coercing and inducing Ranario, et. al, [including Launio] to disown and abandon their membership with the Twinpack Workers Union are doubly ILLEGAL.”[5]

In reply, Twinpack's counsel, Atty. Antonio Gerardo B. Collado, refuted as without factual basis the claim of Launio and his other co-employees that they had been prevented from reporting for work after they had refused to sever their membership with TWU and to sign contracts with RDMCL Manpower Services, thus:

“Our Client TWINPACK Container Corporation has referred to us your letter dated June 30, 2011 regarding allegations of your clients, Mr. Jeffrey Batican et. al., [including Launio], that they were prevented from reporting to work on that day if they refuse to affix their signature on a document as well as wear the uniform and I.D. of RDMCL Manpower Services Corporation. With due respect, these claims of your clients are without factual basis. According to our client, they were the ones who converged in front of the company's premises in an effort to slow down and paralyze its normal business operations and pursue their union activities. The said incident had been reported to the management prompting the latter to conduct an investigation. In fact, separate memoranda were sent to your clients directing them to report for work and explain their absence and the incident. Thus, it would be best for your clients not to fabricate stories and commit acts that would disrupt the normal operations of the company and hamper industrial peace.

Furthermore, the claim of your clients that they were being coerced and forced to sever their membership with their union is not true. Though, there is a pending case before the Department of Labor and Employment (DOLE) where issues between the union you are representing of which your clients are members, and the existing union are being heard, and which the company has been falsely accused of interfering with union affairs, We prefer that your clients in the exercise of their union activities refrain from accusing or doing acts that would put the company in a bad light.”[6]

On July 5, 2011, Twinpack also sent Launio a memo[7] charging him with Absence Without Official Leave and Abandonment of Work. It stressed that failure on the part of Launio to coordinate with the Human Resources Department as to his intention regarding his employment will mean waiver of his right to be heard, and that necessary administrative action will be imposed on him.

On July 11, 2011, Launio filed before the Labor Arbiter a complaint[8] for illegal dismissal with claims for reinstatement and backwages against Twinpack. In his position paper, Launio narrated the following events which led to his dismissal, to wit:

“5. From out of the blue, the misfortune of dismissal came as a lightning rod upon complainant when on July 1, 2011 at just a few minutes before 7:30 P.M. he and his co-worker, Lito Valenzuela, were not allowed by the guard to enter company premises and to use the biometric machine to log in. When they inquired about the matter, they were told to report to the conference room of the Company, where they faced and talked with respondent Carl Valentin, VP for Finance. When complainant and his co-worker, Valenzuela, asked why they were held/barred from entering and using the biometrics at the guard, Valentin told them if they want to continue working they should just sign up with the Agency and even added, “total babayaran naman kayo sa mga taon ninyo sa Twinpack.” To this complainant merely answered that he would still have to think about it and he also implored upon Valentin not to dismiss him from his job. Valentin merely told him that he should sign up with the RDMCL Agency as soon as possible because “yung ang utos ni Boss Danny”. After that Valentin told them to just go home and think about signing with the Agency. So with very heavy hearts, complainant and Valenzuela were forced to leave that conference room with no hope in sight. But just as complainant was getting ready to leave the company premises, he was called back by Carl Valentin because apparently there was no other grablift operator on duty that night and complainant's services were

indispensable. So, complainant, even when he had just been unlawfully dismissed by respondents, still rendered work/services that fateful night all in the hope that his dismissal would not push through since he was already a regular employee.

6. However the next night, on July 2, 2011, when complainant reported back to work, he was again held at the guard and being refused to use the biometric to log in. Again, he was approached and confronted by respondent, Carl Valentin, VP for Finance. When complainant asked why he was being held/barred, Valentin told him flatly that it was the order of respondent Danny Flores to hold and refuse him and all the other employees who refuse to sign with the Agency, entrance and work until they give in and sign the contract with the Agency, RDMCL.”[9]

Denying Launio's allegation of illegal dismissal, Twinpack raised the defense of abandonment of work. It averred that at around 6:35 in the morning of June 30, 2011, Launio together with several other employees, converged outside the company's premises in furtherance of their union activities, thereby causing temporary stoppage of work and interruption in its business operations. Since then, Launio no longer reported for work. During the series of hearings conducted before the Labor Arbiter, Twinpack allegedly offered Launio to return to work but he refused to do so.

On January 31, 2012, the Labor Arbiter rendered a Decision¹⁰ dismissing for lack of merit Launio's complaint for illegal dismissal. It found that Launio voluntarily severed his employment with Twinpack by choosing not to report for work and filing said complaint, instead of answering the administrative charge against him for absences without leave.

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter's decision upon the following findings and conclusion:

“We find the allegations of the complainant more credible than those of the respondents. The principal defense of the respondents is that the complainant was never dismissed, and that he simply failed to report for work. This is contrary to human experience and the natural order of things. The complainant has a family to feed, and he has nowhere to go. He appears to have been caught in the cross fire between the company and the union.

During mediation, the complainant was allegedly offered back his work. We notice, however, that respondents never appeared during the mandatory preliminary conferences in this case. So the offer cannot be true. In fact, complainant moved that the alleged offer be scheduled for conference to determine its sincerity. The alleged offer cannot be trusted. First, the occasion on which it was made was doubtful. Second, the offer is categorically denied.

Finally, the defense of abandonment cannot be given credence. The immediate filing of the complaint for illegal dismissal, coupled with the motion to hear the offer of reinstatement and the complainant's manifestation of continuing desire for reinstatement (at the expense of monetary settlement), militate against the fact of abandonment. For abandonment to obtain, there must be an unjustifiable refusal to work and an over act from which intent not to return to work can be deduced. These elements are simply absent in this case.

The complaint for unfair labor practice is dismissed for insufficiency of evidence.”[11]

In a Resolution[12] dated August 31, 2012, the NLRC denied Twinpack's motion for reconsideration. Hence, this petition for certiorari.

The Issues

In urging the nullity of the assailed decision, petitioner faults public respondent NLRC as follows:

“PUBLIC RESPONDENT NLRC (3RD DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE LABOR ARBITER A QUO DISMISSING THE COMPLAINT FOR ILLEGAL DISMISSAL RELYING SOLELY ON THE CONFLICTING, FALSE, SWEEPING, MALICIOUS, BASELESS AND SELF-SERVING STATEMENTS MADE BY PRIVATE RESPONDENT THAT HE WAS ILLEGALLY DISMISSED WITHOUT GIVING DUE CONSIDERATION TO THE EVIDENCE ON RECORD AND PERTINENT FACTS AND LAW RELIED UPON BY THE SAID LABOR ARBITER.

PUBLIC RESPONDENT NLRC (3RD DIVISION) LIKewise ERRED IN ITS APPRECIATION OF CERTAIN ESTABLISHED FACTUAL AND EVIDENTIARY MATTERS WHICH, IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE INJURY TO PETITIONER.”[13]

The Court's Ruling

We find partial merit in the petition.

As a general rule, factual issues are not proper subjects for certiorari which is limited to the issue of jurisdiction and grave abuse of discretion. It does not include an inquiry into the correctness of the evaluation of evidence which was the basis of the labor agency in reaching its conclusion. Neither is it for this Court to re-examine conflicting evidence, re-evaluate the credibility of witnesses or substitute the findings of fact of an administrative body which has gained expertise in its specialized field.[14] However, where the findings of the NLRC contradict those of the Labor Arbiter, as in this case, this Court must of necessity examine the records and the evidence presented to determine which finding should be preferred as more conformable with the evidentiary facts.[15]

Likewise settled is the rule that allegations in the complaint must be duly proven by competent evidence and the burden of proof lies on the party making the allegation.[16] Applying this rule to illegal dismissal cases, it is incumbent upon the employees to first establish the fact of their dismissal with substantial evidence before the burden is shifted to the employer to prove that such dismissal was in fact legal.[17] As held in *Exodus International Construction Corp. and Javalera vs. Biscocho, et al.*,[18] although the employer bears the burden of proof to show that the termination was for a valid or authorized cause, the employees must first establish by substantial evidence that they had been dismissed. Absent initial proof of such dismissal, there can be no question as to the legality or illegality thereof.[19]

In the case at bar, Launio failed to first establish by substantial evidence that he had been dismissed from work. In support of such claimed dismissal, Launio presented a demand letter[20] dated July 4, 2011 seeking his reinstatement on account of Twinpack's alleged refusal to allow him and his co-employees to report for work, unless they sign a contract with and wear the uniform of RDMCL Manpower Services, and renounce their membership in TWU. Allegedly, Twinpack ignored such demand for reinstatement.[21] However, contrary to Launio's claim, the record shows that twinpack's counsel wrote Launio's and his co-employees' counsel, refuting their allegation for being without factual basis.[22] Twinpack's counsel also pointed out that separate memoranda had been sent to Launio and his co-employees, directing them to report for work and explain their absence. In a memorandum[23] dated July 4, 2011, Twinpack informed Launio that he was considered to have gone on absence without official leave and abandoned his work in view of his four-day absence from July 1 to July 5, 2011, and further directed him to coordinate with the Human Resources Department (HRD). Instead of heeding the directive and reporting to the HRD, Launio went on to file a complaint for illegal dismissal on July 11, 2011.

From the foregoing factual antecedents, We find that there was no overt act of dismissal on the part of Twinpack. Rather, it was Launio who precipitately concluded that he had already been terminated from work, a conclusion that remains at best a mere allegation bereft of concrete proof. It bears to stress that the burden of proving the fact of dismissal rests on Launio, and the evidence to prove such fact must be substantial, a requirement which the

latter sorely failed to muster.

Neither do We find merit in Twinpack's claim that Launio abandoned his work. Jurisprudence states the requisites for abandonment as follows:

“For abandonment to exist, two requisites must concur: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts. The second element is the more determinative factor. Abandonment as a just ground for dismissal thus requires clear, willful, deliberate, and unjustified refusal of the employee to resume employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.”[24]

Twinpack failed to establish the above requisites for abandonment. To show Launio's failure to report for work since June 30, 2011 after having joined his co-employees in converging outside the company's premises and refusing to leave unless the management talked to them, Twinpack solely relied on the incident reports of its guard-on-duty[25] and the Barangay official.[26] A perusal of these reports shows nothing beyond Launio's and his co-employees participation in an illegal strike. There is no evidence on record to substantiate that Launio's absence is accompanied by overt acts unerringly pointing to a lack of intention or desire on his part to continue working for petitioner. It failed to establish the intent of Launio to relinquish his employment. Intention, being a mental state, maybe judged from the overt acts that point to the employee's lack of desire to work.[27] Verily, the operative act is still the laborer's ultimate undertaking of putting an end to his employment.[28] The employer must prove the employee's deliberate and unjustified refusal to resume employment without any intention of returning.[29]

More to the point, the July 4, 2011 letter sent by Launio's counsel to Twinpack seeking reinstatement negatives the allegation of abandonment. It has been held that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot, by any stretch of logic, be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[30]

Granted that an illegal strike may be a just cause for dismissal under the Labor Code, jurisprudence,[31] however, distinguishes between ordinary worker and union officers as to the liability for such illegal strike. While a union officers may lose employment if he knowingly participates in an illegal strike, or knowingly participates in the commission of illegal activities during a strike (whether legal or illegal), an ordinary union member may lose employment status only if he knowingly participates in illegal activities, such as, acts of violence, coercion, intimidation, and destruction of property, during a strike.

In this case, Twinpack failed to prove by substantial evidence that Launio was a union leader, that he participated in an illegal strike, or knowingly participated in illegal activities during such strike. Hence, even on the ground of taking part in an illegal strike, Launio cannot be validly dismissed.

In fine, there being neither a sufficient showing of any dismissal, much less an illegal dismissal that may be attributed against Twinpack, nor abandonment of post that can be ascribed against Launio, We find valid ground to order the reinstatement of Launio sans the award of backwages, consistent with jurisprudence that in cases where there is no evidence of dismissal, the remedy is reinstatement but without backwages.[32] “In a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.”[33]

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The assailed Resolution dated July 26, 2012 of the public respondent National Labor Relations Commission is MODIFIED to delete the award of full

backwages in favor of private respondent Eric John Dandoy Launio.

SO ORDERED.

CERTIFICATION

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

Garcia, R.R., and [*]Sorongon, E.D., JJ., concur.

[*] Vice Justice Danton Q. Bueser, as per Office Order No. 223-14-ABR dated May 21, 2014.

[1] Rollo, pp. 47-59.

[2] Id., pp. 58-59.

[3] Id., p. 164.

[4] Id., pp. 161-162.

[5] Id., p. 161

[6] Id., p. 124

[7] Id., p. 122.

[8] Id., pp. 125-127.

[9] Id., p. 154.

[10] Id., pp. 174-185.

[11] Id., pp. 57-58

[12] Id., pp. 61-62.

[13] Id., p. 18

[14] G&S Transport Corporation vs. Infante, G.R. No. 160303, September 13, 2007.

[15] Sta. Catalina College vs. NLRC, G.R. No. 144483, November 19, 2003.

[16] Saronas vs. NLRC, et al., G.R. No. 185280, January 18, 2012.

[17] Basay, et al. vs. Hacienda Consolacion, et al., G.R. No. 175532, April 19, 2010.

[18] G.R. No. 166109, February 23, 2011.

[19] Id.

[20] Rollo, p. 161

[21] Id., p. 156

[22] Id., p. 124

[23] Id., p. 122

[24] Fe La Rosa, Ofelia Velez, Cely Domingo, Jona Natividad and Edgar De Leon vs. Ambassador Hotel, G.R. No. 177059, March 13, 2009. (emphasis supplied)

[25] Rollo, p. 121

[26] Id., p. 151

[27] Baron Republic Theatrical, et al. vs. Peralta and Aguilar, G.R. No. 170525, October 2, 2009.

[28] Dimagan vs. Dacworks United, Incorporated, and/or Dean A. Cancino, G.R. No. 191053, November 28, 2011, citing Hodieng Concrete Products, Inc. vs. Emilia, G.R. No. 149180, February 14, 2005

[29] Litonjua Group of Companies vs. Vigan, 412 Phil. 627 (2001).

[30] GSP Manufacturing Corporation vs. Cabanban, G.R. No. 150454, July 14, 2006.

[31] Manila Diamond Hotel vs. Manila Diamond Hotel Employee's Union, G.R. No. 158075, June 30, 2006; Solid Bank Corp. vs. Solid Bank Union, G.R. No. 159460-61, November 15, 2010

[32] Exodus International Construction Corp. and Javalera vs. Biscocho, G.R. No. 166109, February 23, 2011

[33] Leonardo vs. NLRC and Reynaldo's Marketing Corporation, et al., G.R. No. 125303, June 16, 2000.

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