

PHILIPPINE LAMP POST OFFICE MANUFACTURING CORPORATION AND/OR JESSICA R. MERCEDES, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND SIXTH DIVISION AND OLIVER MALAYA, RESP...

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

This is a Petition for Certiorari[1] under Rule 65 of the Revised Rules of Court, filed by petitioners Philippine Lamp Post Manufacturing Corporation and Jessica Mercedes, seeking the reversal and the setting aside of the 15 December 2009 Decision[2] and the 29 January 2010 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 12-003321-07. In its assailed Decision and Resolution, the NLRC affirmed the 30 October 2007 Decision[4] of the Labor Arbiter which found respondent Oliver Malaya illegally dismissed from employment.

FACTS OF THE CASE

On 4 May 1998, Oliver Malaya (Malaya) was employed as a welder by Philippine Lamp Post Corporation (PLPC) with a daily wage of P350.00. After working as a welder for almost nine years, Malaya, on 16 October 2006, was informed by Jessica Mercedes (Mercedes), President of PLPC, that effective immediately, he will no longer work as a welder but will assume the duties of a mere helper. Malaya immediately manifested his protest since his new designation involves a demotion in rank but he nevertheless continued to report to work until he was purportedly harassed by a certain policeman, in collusion with Mercedes' brother, who threatened him to stop reporting to work. The harassment allegedly took place on 17 October 2006, when the said certain policeman, who was accompanied by Junjun Mercedes, brother of Mercedes, allegedly threatened him and asked him to go home and not to report to work again. The incident was reported by Malaya to the barangay where it was recorded in the blotter report.[5]

This prompted Malaya to file an action for illegal dismissal against petitioners before the Labor Arbiter. In addition to his prayer that his severance from employment be declared unlawful and that he be awarded separation pay, Malaya likewise prayed for the payment of emergency cost of living allowance and 13th month pay.[6]

To refute the allegation in the Complaint, petitioners countered in their Position Paper[7] that Malaya was not terminated from employment but failed to report to work in the morning of 19 October 2006. For also failing to report to work on the succeeding days, Malaya is deemed to have abandoned his work.

In a Decision[8] dated 30 October 2007, the Labor Arbiter sustained the complaint for illegal dismissal filed by Malaya and found petitioners liable for separation pay, backwages and proportionate 13th month pay. The labor official held that Malaya was constructively dismissed from employment because his continued employment was rendered impossible by the threats employed by the petitioners. It was likewise pointed out that nothing on the records suggests any positive act on the part of the complainant indicative of his intention to abandon his job. The

decretal portion of the Labor Arbiter Decision reads:

"WHEREFORE, premises above considered, the decision is hereby rendered declaring the dismissal of the complainant illegal, and as a consequence, ordering respondent corporation through the individual respondents to pay him separation pay equivalent to one (1) month pay for every year of service in the amount of P45,000.00 since reinstatement appears to be no longer feasible plus backwages equivalent to twelve (12) months in the amount of P109,200.00 and proportionate 13th month pay for 2006 as above computed, all in the aggregate of P161,927.41, plus 10% of the total award as attorney's fees. "

On appeal, the NLRC affirmed the findings of the Labor Arbiter that Malaya was constructively dismissed from employment. According to the NLRC, petitioners failed to adduce substantial evidence to prove that an overt act was performed by Malaya to sever his employment. What further negates the employer's abandonment theory was the immediate filing of the complaint for illegal dismissal which is inconsistent with abandonment. On the contrary, the NLRC found the version of Malaya that he was constructively dismissed from employment worthy of belief and held that when Malaya protested to his demotion, petitioners employed threats and harassed him and thus leaving him with no other choice but to leave his employment.[9]

The NLRC refused to reconsider its earlier Decision in its Resolution[10] dated 29 January 2010.

Undaunted, petitioners elevated the adverse NLRC Decision and Resolution via this instant Petition for Certiorari before this Court praying for the allowance of their petition raising the sole issue of:

ISSUE:

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE LABOR ARBITER.[11]

THIS COURT'S RULING

The petition is bereft of merits.

At the onset, we must stress the well-settled rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality by the courts when supported by substantial evidence, i.e., the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In fact, judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest.

Prescinding from the foregoing principles, we rule that the contention of petitioners that the NLRC abused its discretion in ruling that Malaya was illegally dismissed from employment is devoid of merits. The findings of the NLRC, sustaining that of the Labor Arbiter, that there was constructive dismissal in the instant case in accord with the settled statutory and jurisprudential principles.

Instructive on this point is the case of *Verdadero v. Barney Autolines Group of Companies Transport, Inc.* where the Supreme Court, once again, elaborated on the concept of constructive dismissal:

"Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that could foreclose any choice by him except to forego his continued employment. "

It is ineluctably clear that eventhough Malaya was not forthrightly dismissed by petitioners, yet, by demoting him from being a welder to that of a helper which necessarily involves a diminution in pay manifest their clear intent to ease him out of employment. What made it more impossible or unacceptable for Malaya to resume work was when his employers went to the extent of hiring a policeman to verbally threaten him not to return to work again after the latter refused to yield to his demotion. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal.[12] In the case at bar, Malaya's demotion was rightly declared by the Labor Arbiter and the NLRC as an unlawful constructive dismissal, petitioners having failed to show substantial proof that Malaya's demotion was for a valid and just cause.

Assuming for the sake or argument that there was some basis for the demotion, the case records are bereft of any showing that Malaya was notified in advance of his impending demotion. Nor was he given an opportunity to refute the employer's grounds or reasons for demotion. In *Aurelio Fuerte v. Raul T. Aquino*,[13] it was noted:

"While due process required by law is applied on dismissals, the same is also applicable to demotions as demotions likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should as in cases of dismissals, be given a chance to contest the same."

Similarly unworthy of credence is petitioners' argument that Malaya was not terminated from work but abandoned his job. We have pored on the records and we found nothing therein indicative of Malaya's intention to abandon his work. Malaya's continued absence from work should not be taken in isolation but must be construed in light of the existence circumstances and should not lead to the drastic conclusion that he had chosen to abandon his work. Settled is the rule that for abandonment to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[14] No evidence on the records would prove that Malaya intended to relinquished his job. Further, what militates strongly against the stance of petitioner that there was abandonment was the act of Malaya in immediately filing the complaint for illegal dismissal. It is highly illogical for an employee to "abandon" his employment and thereafter file a complaint for illegal dismissal. Needless to say, petitioners' charge of abandonment of work by Malaya does not hold water when taken in light of the complaint for constructive dismissal.

In fine, our perusal of the record yielded no showing of satisfactory attempt on the part of the petitioners' to prove the validity of the Malaya's dismissal. For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.[15] Verily, petitioners did not succeed in discharging the aforesaid onus.

For petitioners' failure to comply with the legal requirements for the valid dismissal of an employee, Malaya's constructive dismissal is rendered illegal on this ground. The award of the Labor Arbiter as affirmed by the NLRC must, therefore, be upheld.

WHEREFORE, premises considered, the instant petition is DISMISSED and the 15 December 2009 Decision and 29 January 2010 Resolution of the National Labor Relations Commission in NLRC LAC Case No. 12-003321-07, are hereby AFFIRMED.

SO ORDERED.

Salazar-Fernando (Chairperson) and Bruselas, Jr., JJ., concur.

[1] Rollo, pp. 3-19.

[2] Id. at 81-87.

[3] Id. at 93-96.

[4] Id. at 66-71.

[5] Id. at 22-35.

[6] Id. at 21.

[7] Id. at 41-45.

[8] Id. at 66-71.

[9] Id. at 81-87.

[10] Id. at 96-97

[11] Id. at 12.

[12] Peckson v. Robinsons Supermarket, G.R. No. 198534, July 3, 2013.

[13] G.R. No. 126937. June 16, 2000.

[14] Philippine American Life General Insurance v. Gramaje, G.R. No. 156963, 11 November 2004.

[15] Vicente Sy v. Court of Appeals, G.R. No. 142293. February 27, 2003.

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