

JESUS TANUCO, JUAN GOOD, LIBERATO BANADA, AND LEONARDO CAÑAS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION (FORMERLY FOURTH DIVISION), PUBLIC RESPONDEN...

Ponente: DIY, J.

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DIY, J.:

Before Us is a Petition[1] for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the following Resolutions which were issued by herein public respondent National Labor Relations Commission, Seventh (7th) Division (formerly Fourth Division) (hereafter, “NLRC,” for brevity):

A. Decision dated April 30, 2010[2] (hereafter referred to as the “assailed decision”) – which affirmed with modification the decision of the Labor Arbiter dated November 25, 2009.[3] The assailed decision deleted the award of separation pay and directed herein private respondents to recall petitioners back to work and for the latter to report back to work. Said decision also directed private respondents to deliver to petitioners their 13th month pay for the years 2006, 2007, and 2008; and

B. Resolution dated July 15, 2010[4] (hereafter referred to as the “assailed resolution”) – which affirmed the assailed decision but with minor modification deleting the award of 13th month pay for the years 2006 and 2007.

The Antecedents

The facts, as found by both the Labor Arbiter and the NLRC, are as follows:

Private respondent Rattan Center International Corporation (hereafter referred to as “RCIC”) is a business entity engaged in the manufacture and sale of rattan furniture, primarily for export. It is managed by private respondent Mark Jerald Du Jarantilla (hereafter, “Jarantilla”, for brevity).

Petitioners Jesus Tanuco, Juan Good, Liberato Banada, and Leonardo Cañas are employees of RCIC. Liberato Banada (hereafter, “Banada”, for brevity) works a welder. Leonardo Cañas (hereafter, “Cañas”, for brevity) is from the Parts Preparation Department. Jesus Tanuco (hereafter, “Tanuco”, for brevity) and Juan Good (hereafter, “Good”, for brevity) are both framers.

On August 30, 2008, private respondents wrote the Department of Labor and Employment (DOLE) – Regional Office VII, through its Regional Director, informing said office of their plan to go on temporary shutdown for three (3) months beginning October 01, 2008. The reason cited for the shutdown was the decline of sales due to private respondents’ foreign customers. Because of the decline in sales, private respondents claim that they could not afford to pay the salaries of their workers.

On September 03, 2008, private respondents called a meeting with the employees informing them of the work stoppage. It appears from the record that all pending customer orders at the time would be completed by September 16, 2008 and production shall cease if no new customer orders will be placed. The Poles and Machinery Departments were to complete the work orders on September 9, 2008. The Framing Department was

to complete the work orders on September 13, 2008, and the Weaving and Sanding Department were to complete their orders on September 16, 2008.

On November 10, 2008, petitioners Cañas and Banada were given job orders by their supervisor Marlou Mars Mamac. However, Cañas left the workplace before the job was done and did not come back while Banada did not work on his assigned work order.

Tanuco and Good also reported at the work premises on November 10, 2008. However, they were not given job orders because there were no jobs available for them yet since the materials were still being processed. Both Tanuco and Good were asked to report back to work on November 12, 2008. They, however, no longer reported for work. These omissions by petitioners caused delay in the production process.

Petitioners, on the other hand, claim that they were informed by the company president Jarantilla not to report for work from October 16, 2008 until November 09, 2008. When they returned to work on November 10, 2008, they were allegedly barred from entering the company premises. They pleaded for their jobs but to no avail.

On the same date (November 10, 2008), petitioners filed their respective individual complaints[5] for illegal dismissal with money claims and damages before the National Labor Relations Commission Regional Arbitration Branch – VII.

On November 25, 2009, The Labor Arbiter issued the Decision on the complaint, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, a decision is hereby rendered declaring that there is no illegal dismissal. However, respondent Rattan Center International Corporation is ordered to pay herein complainants separation pay as follows:

Jesus Tanuco P 45,123.00

Juan Good 62,478.00

Liberato Banada 31,239.00

Leonardo Cañas 62,478.00

P 201,318.00

plus ten percent (10%) thereof as attorney's fees.

All other claims are DISMISSED for lack of merit.

SO ORDERED.

Aggrieved by the foregoing Decision, both parties appealed the same before the NLRC.[6]

On April 30, 2010, the NLRC issued the assailed decision, the dispositive portion of which provides:

WHEREFORE, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION deleting the award of SEPARATION PAY. The respondents are hereby directed to recall the complainants back to work within ten (10) days from receipt of this decision and the complainants to report back to work as may be directed by the respondents in compliance with this decision. Finally, the respondents are hereby directed to pay the 13th month pay of the complainants for the years 2006, 2007, and 2008.

SO ORDERED.

Still aggrieved by the assailed decision, both parties filed their respective motions for reconsideration of the

assailed decision.[7]

On July 15, 2010, the NLRC issued the assailed resolution, the dispositive portion of which provides:

WHEREFORE, Our decision promulgated on 30 April 2010 STANDS with minor modification by deleting the award of 13th month pay for the years 2006 and 2007.

SO ORDERED.

Hence, this petition.

Attached to the instant petition is a Motion to Litigate as Pauper Litigant.[8]

On March 18, 2011, this Court issued a resolution[9] granting petitioners' Motion to Litigate as Pauper Litigant. On October 20, 2011, this Court issued another resolution[10] requiring the parties to submit simultaneous memoranda.

On November 25, 2011, petitioners submitted their memorandum.[11] In said memorandum, petitioners contend that they have been illegally dismissed from employment. Petitioners claim that the NLRC erred when it ruled that petitioners failed to prove the fact of their dismissal since all that was presented are mere general allegations lacking specifics. Petitioners invoke jurisprudence that the burden of proving the fact of dismissal or lack of it, or of its legality, if dismissal is proved, lies with the employer and not the employee. They also raise the jurisprudential doctrine that employers must not rely on the weakness of the evidence for the employee but on the strength of its own proof. And granting in arguendo that petitioners have the burden of proving the fact of dismissal, they have adequately discharged such burden as they were all consistent in their sworn testimony that they had been illegally dismissed. If any doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

Petitioners also argue that the prompt filing of the complaints before the Labor Arbiter belies the finding of abandonment of their jobs and supports their claim that they were illegally dismissed from employment. As cited by petitioners, before abandonment can be considered a valid cause for dismissal, there must be concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work. And since the filing of the complaint was made on the same day that they were denied entry to the workplace, then petitioners cannot be said to have abandoned their jobs. Petitioners argue that an employee who took steps to protest, and thereafter filed complaints to seek back their work cannot be said to have been guilty of abandonment of work. According to petitioners, there was no proof that they received the notices to return to work. They saw the notices for the first time at the hearings before the Labor Arbiter. Furthermore, petitioners aver that the NLRC cannot penalize them for refusing to return to work as private respondents' hostility renders continued work unbearable.

Lastly, petitioners contend that, as a normal consequence of illegal dismissal, they are entitled to the payment of backwages and separation pay. They also claim entitlement to vacation leave pay, sick leave pay, holiday pay, rest day pay, and overtime pay. Since private respondents have not presented any proof of payment of wages and benefits as mandated by law, petitioners are, therefore, entitled to receive the same. Petitioners also allege bad faith on the part of private respondents regarding petitioners' dismissal. Hence, the latter also assert that they are entitled to moral and exemplary damages, litigation costs, and attorney's fees.

On November 29, 2011, private respondents submitted their Memorandum.[12] In said memorandum, private respondents contend that petitioners' employment was never severed since they were even called back for work a month after the temporary partial shutdown. Private respondents aver that the documentary proof they presented weigh more than the mere allegations of petitioners. Private respondents cite jurisprudence pronouncing that the

substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed.

It is also posited that petitioners are not entitled to backwages and separation pay because such entitlement presupposes illegal termination, which is absent in this case. It is also averred that the other monetary claims (i.e., holiday pay, rest day pay, separation pay, etc.) were not asked for in the causes of action in their complaints. In addition, private respondents claim that petitioners were already paid their salaries and labor standards benefits provided for them by law.

The Ruling of the Court

The petition is bereft of merit.

Petitioners adamantly insist that employers have the burden of proving that there was no illegal dismissal, that petitioners' allegations and testimonies are sufficient to establish their claim of illegal dismissal, and that the prompt filing of their complaint before the Labor Arbiter negates the allegation of abandonment and supports their claim of illegal dismissal.

We do not agree.

All of these arguments were resolved in the negative by the Supreme Court in a recent similar case^[13] where the latter ruled that there was no illegal dismissal, ratiocinating in this wise:

We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

x x x

We are not persuaded by petitioners' contention that nothing was presented to establish their intention of abandoning their work, or that the fact that they filed a complaint for illegal dismissal negates the theory of abandonment.

It bears emphasizing that this case does not involve termination of employment on the ground of abandonment. As earlier discussed, there is no evidence showing that petitioners were actually dismissed. Petitioners' filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether they have been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account.

(Emphasis Ours; internal citations omitted)

Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish the fact of his or her dismissal.^[14] And even supposing that the employer indeed has the burden of proving that there was no illegal dismissal, private respondents were able to sufficiently establish the same by substantial evidence.

Well entrenched is the rule that the quantum of evidence required to establish a fact in quasi-judicial bodies (like the NLRC) is substantial evidence. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might opine

otherwise.[15]

Petitioner's evidence regarding their alleged dismissal consists only of a verified allegation found in their position paper that they were refused entry inside the company work premises on November 10, 2008. Petitioners' allegations are too general, observably lacking specifics. They claim that they were barred from entering the company premises. There is, however, no allegation, or any evidence identifying those responsible for barring their entry or the reasons for such prohibition. Petitioners claim to have pleaded entry into their work premises. However, no evidence was presented showing that they did so or as to whom such pleas were addressed. Petitioners' allegations have not been corroborated by other independent and relevant evidence to ensure credibility.

On the other hand, private respondents' evidence[16] that they did not terminate petitioners from employment consists of affidavits executed by petitioners' supervisors namely, Marlou Mars Mamac, Feoda Fler A. Dabo, and Greglina A. Billones. Said officers all attested to the fact that petitioners did not report for work anymore. There were also written return to work orders served on petitioners that were not heeded.

Petitioners aver that they did not receive any notice regarding the return to work orders yet during the November 20, 2008 conciliation and mediation conference, the representative of private respondents asked petitioners to return back to work but the latter refused. Worthy of note is the fact that said conciliation and mediation conference occurred after just ten (10) days from the date petitioners claimed they were barred entry from the work premises. It baffles this Court why petitioners still refused to work despite such offer if indeed they were sincere in pleading for their jobs.

Petitioners argue that their refusal to return to work should not be held against them since "private respondents' hostility renders continued work unbearable." With respect to this argument, the Supreme Court has this to say:[17]

x x x [T]he doctrine of strained relations is not applied indiscriminately as to bar reinstatement, especially when the employee has not indicated an aversion to returning to work or does not occupy a position of trust and confidence in or has no say in the operation of the employer's business. Although litigation may also engender a certain degree of hostility, it has likewise been ruled that the understandable strain in the parties' relations would not necessarily rule out reinstatement which would, otherwise, become the rule rather than the exception in illegal dismissal cases.

(Internal citations omitted)

In the instant petition, petitioners have not indicated any circumstance leading to aversion to returning to work. They likewise neither occupy a position of trust and confidence nor do they have any say in the operation of the business of the employer as they serve only in the furniture production line. We are also perplexed as to why petitioners used the argument --"private respondents' hostility renders continued work unbearable"-- when they have not rendered work since the alleged barring incident on November 10, 2008. How were they able to experience hostility in the workplace which led them to state that continued work was unbearable? Accordingly, petitioners cannot invoke the doctrine of strained relations to justify their refusal to return to work.

With all the foregoing, We rule that petitioners were not dismissed from their employment.

Anent the issue of payment of the other monetary claims, We agree with the ruling of NLRC that the instant controversy does not show the existence of a condition where separation pay may be awarded.

The award of separation pay is authorized in the situations contemplated under Articles 283 and 284 of the Labor Code and in cases where there is illegal dismissal but reinstatement would no longer be feasible under Section

4(b), Rule 1, Book VI, of the Implementing Rules and Regulations of the Labor Code. Exceptionally, however, separation pay is granted to stand as a measure of social justice even when the employee is validly dismissed for cause as long as it is not for serious misconduct or those other causes that reflect on his moral character.[18] None of these instances are obtaining in this case, hence, the claim for separation pay must necessarily be denied.

Regarding petitioners' other monetary claims, private respondents submitted evidence[19] that the 13th month pay for the years 2006 and 2007 had already been paid, leaving petitioners entitled to the 13th month pay for the year 2008. Likewise, there is also no proof that petitioners worked during rest days and holidays and that they rendered overtime on certain dates. As held by the Supreme Court, in the absence of any concrete proof that additional service beyond the normal working hours and days had indeed been rendered, the award of rest day pay and overtime pay is unwarranted.[20]

WHEREFORE, premises considered, the instant petition is DENIED. The Decision of the National Labor Relations Commission Seventh (7th) Division dated April 30, 2010 as partially modified by its Resolution dated July 15, 2010 is hereby AFFIRMED.

SO ORDERED.

Delos Santos, E.L., (Chairperson) and Maxino, P.A.A., JJ., concur.

[1] Rollo, pp. 3-166.

[2] Rollo, pp. 139-146.

[3] Ibid., pp. 77-82.

[4] Ibid., pp. 148-151.

[5] Rollo, pp. 18-21.

[6] Petitioners filed their appeal on December 18, 2009 while private respondents filed their appeal on December 21, 2009, as stated on the first page of the NLRC Decision dated April 30, 2010. Rollo, p. 139.

[7] Petitioners filed their motion for reconsideration on June 11, 2010 while private respondents filed their motion for reconsideration on June 15, 2010, as stated on the first page of the NLRC Resolution dated July 15, 2010. Rollo, p. 148.

[8] Ibid., pp. 152-165.

[9] Ibid., p. 168.

[10] Ibid., p. 192.

[11] On November 25, 2011, petitioners submitted a Manifestation (Rollo, pp. 193-194) adopting their Memorandum on Authorities (Rollo, pp. 181-191), which was earlier submitted on May 25, 2011, in compliance with the resolution of this Court dated October 20, 2011.

[12] Rollo, pp. 195-204.

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

[14] Ibid.

[15] Ricardo Portuguese vs. GSIS Family Bank, et al., G.R. No. 169570, March 2, 2007.

[16] As adduced by the Labor Arbiter and the NLRC, as stated in the latter's Decision dated April 30, 2010.

[17] Leopard Security and Investigation Agency vs. Tomas Quitoy, et al., G.R. No. 186344, February 20, 2013.

[18] San Miguel Corporation vs. Alfredo B. Lao, G.R. Nos. 143136-37, July 11, 2002.

[19] Private respondents submitted payslips of the 13th month payments made to petitioners in support of their Motion for Partial Reconsideration dated June 10, 2010 in the proceedings before the NLRC.

[20] Abduljuahid R. Pigcaulan vs. Security and Credit Investigation, Inc., et al., G.R. No. 173648, January 16, 2012.

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