

TWINPACK CONTAINER CORPORATION / DANNY FLORES, CARL VALENTIN AND ALLAN ANGKAY, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), (SECOND DIVISION), AND LORAIN H. ARR...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari^[1] under Rule 65 of the Rules of Court, as amended with prayer for temporary restraining order (TRO) and/ or preliminary injunction, seeking to annul and set aside the following issuances of respondent National Labor Relations Commission, Second Division (NLRC), in NLRC LAC No. 03-001064-12: 1) Resolution^[2] dated October 31, 2012, which affirmed the Labor Arbiter's decision; and 2) Resolution^[3] dated May 15, 2013 denying petitioners' motion for reconsideration.

The facts of the case are as follows:

On March 12, 2009, petitioners Twinpack Container Corporation/ Danny Flores, Carl Valentin and Allan Angkay hired private respondent Loraine H. Arrabe as checker with salary of P382.00 per day.

On June 7, 2011, the Twinpack Workers Union (TWU) of which private respondent is a member, filed a petition for cancellation of union registration of the Samahan Manggagawa sa Twinpack (SMT) and the registration of the Collective Bargaining Agreement (CBA) between SMT and petitioners.

In her position paper,^[4] private respondent averred that she and other members of the TWU were summoned by the personnel office of the company and were confronted by Clarissa Partolan, the Human Resources Department (HRD) Head and Myra Lanusa, owner of RDMCL Agency; that they were told that in order for them to continue employment with petitioners, they must transfer and sign a new contract with the RDMCL Agency to which she said she would think it over; that they were promised separation pay and SSS coverage by the agency; and that on June 30, 2011, she, together with her co-workers were barred from entering the company premises. Private respondent also said that on the same day, her counsel wrote a letter to petitioners asking for her reinstatement within 24 hours; that on July 1, 2011, she and another co-employee who is also a member of TWU resumed their work; that at around 10:00 in the morning, they were directed to go to the conference room and were told to sign the agency contract; that when she refused, she was told that she is already terminated; that the HRD Head said to them, "ang tigas ng mga ulo n'yo. Bahala nga kayo. Kung ayaw ninyo lumipat sa Agency, wala na kayong trabaho dito. Umalis ka na, wag mo na tapusin yung trabaho mo;" that on July 5, 2011, she received a notice from petitioners stating that she was absent from June 30, 2011 to July 4, 2011; that petitioners ignored her demand for reinstatement; and that on July 5, 2011, she filed a complaint for illegal dismissal, unfair labor practice, illegal lock-out with claims for reinstatement, full backwages, moral and exemplary damages and attorney's fees.

For their part, petitioners averred in their position paper^[5] that on February 23, 2005, the company filed voluntary recognition of the SMT union as the sole bargaining agent of its rank and file employees; that they and the SMT entered into a CBA; that during the pendency of the petition for cancellation of union registration of

SMT by the TWU, several employees who are members of the latter, including the private respondent, assembled outside the company premises at around 6:35 in the morning; that the incident caused temporary stoppage of work in the company; that the incident was reported to the barangay authorities; that upon arrival of the barangay authorities, the protesting employees dispersed at around 7:30 in the morning; that private respondent no longer reported for work; that they sent a letter to private respondent regarding her unauthorized absences and directed her to report for work; that private respondent was not illegally dismissed because the latter abandoned her work after she and other members of the TWU assembled outside the premises of the company; that private respondent refused to report back to work despite their order; and that they did not commit an unfair labor practice because private respondent and her group were not prevented from exercising their union activities.

On February 14, 2012, the Labor Arbiter rendered a decision[6], the pertinent portion of which reads:

"Finding that complainant did not abandon her employment, she is therefore entitled to backwages from July 1, 2011 to February 14, 2012 and reinstatement under Article 279 of the Labor Code, as amended. Considering however, the apparent animosity between the respondent company and the complainant, a more equitable disposition is to order the payment of separation pay of complainant. Thusly, complainant's backwages shall be computed from March 12, 2009 to February 14, 2012.

While this Arbitration Office finds complainant illegally dismissed, this Office is not however, convinced that respondent committed unfair labor practice. Though it might be true that respondent company intended to transfer the employment of complainant to an agency, such alleged act of the company does not ipso facto constitute unfair labor practice. For an act to constitute unfair labor practice, the act complained of must have a proximate and causal connection with the exercise of the employees' right to self-organization. The burden of proof to establish the existence of unfair labor practice rests on the employee for basic is the rule in evidence that he who alleges a critical fact has the burden of proving it by substantial evidence. (Central Azucarera De Bais Employees Union-NFL (CABEU-NFL) vs. Central Azucarera De Bais (CAB), G.R. 186605, November 17, 2010). Inasmuch as complainant failed to explain and support the causal connection of her alleged transfer with her right to self-organization, the alleged unfair act of respondent company does not fall within the meaning of unfair labor practice under Article 248 (1) of the Labor Code, as amended.

CONFORMABLY FROM ALL THE FOREGOING, respondent Twinpack Container Corporation is hereby ordered to pay complainant the amount of Php90,533.91 representing her backwages and separation pay computed at Php31,512.00.

SO ORDERED."

Petitioners and private respondent filed their separate appeal before the National Labor Relations Commission (NLRC). On October 31, 2012, the NLRC rendered a resolution[7], the dispositive portion of which reads:

"WHEREFORE, premises considered, the respective partial appeals of the complainant and the respondents are DISMISSED for lack of merit. The assailed Decision dated February 14, 2012 is hereby AFFIRMED.

SO ORDERED."

Petitioners filed a motion for reconsideration.[8] In a resolution[9] dated May 15, 2013, the NLRC denied the said motion.

In the instant petition for certiorari, petitioners raised the following grounds:

"I
RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE
ASSAILED RESOLUTIONS AS IT WAS ARRIVED AT CONTRARY TO ESTABLISHED
JURISPRUDENCE RELYING SOLELY ON THE FALSE, BASELESS AND SELF-SERVING

ALLEGATIONS OF PRIVATE RESPONDENT."

II

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT BASED ITS RESOLUTIONS ON SURMISES, SUPPOSITIONS, CONJECTURES AND FALSE CONCLUSIONS WHICH HAVE NO BASIS IN FACT AND IN LAW."[10]

Petitioners contend that private respondent was not illegally dismissed; that the latter displayed her lack of interest in returning to work and she voluntarily terminated her employment with them; and thus, private respondent is not entitled to an award of separation pay and backwages.

The petition is impressed with merit.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty that constitutes just cause for the employer to dismiss the employee.[11]

To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The employee's absence must be accompanied by overt acts that unerringly point to the employee's clear intention to sever the employment relationship.[12] To successfully invoke abandonment, whether as a ground for dismissing an employee or as a defense, the employer bears the burden of proving the employee's unjustified refusal to resume his employment. Mere absence of the employee is not enough.

This Court shall first discuss the issue of whether there was abandonment by private respondent. Record shows that petitioners failed to prove the abandonment of private respondent. There was no proof of some overt act of private respondent that clearly and unequivocally shows her intention to abandon her job. Aside from bare allegation, the only evidence that the petitioners submitted to prove abandonment was the photocopy of the letter they served on private respondent regarding her absences from June 30 to July 4, 2011 and their reply to the demand letter of the latter. A reading of the July 4, 2011 letter would show that there was no clear and manifest directive to the private respondent to report back for work. Neither was there a directive for the latter to explain in writing as to her alleged violation in relation to her absences. These pieces of evidence, even when considered collectively, indeed failed to prove the clear and unequivocal intention, on the part of private respondent to abandon her job.

On the contrary, private respondent demanded from petitioners, thru a letter dated June 30, 2011, that she and her co-employees be reinstated immediately within a period of twenty-four (24) hours from receipt of the letter. Moreover, private respondent lost no time in filing the illegal dismissal case against petitioners. To recall, she filed the complaint on July 4, 2011 or the very day she received the letter of petitioners charging her of absence without official leave (AWOL). Her immediate filing of an illegal dismissal complaint is proof enough of her intention to return to work and negates petitioners' charge of abandonment.[13]

Notwithstanding the foregoing, other than private respondent's unsubstantiated allegation of having been verbally terminated from her work, there was no evidence showing that she was indeed dismissed from work or was prevented from returning to her work. In the absence of any showing of an overt or positive act proving that petitioners dismissed private respondent, the latter's claim of illegal dismissal cannot be sustained – as the same would be self-serving, conjectural and of no probative value.[14]

A review of the letter dated July 4, 2011[15] of petitioners shows that private respondent was merely warned and informed of her absences and was directed to coordinate with the Human Resources Department with regard to

her employment. There was, however, no evidence that private respondent was terminated from work. There were no express words or manifestation whatsoever implying actual or constructive dismissal. Thus, this Court finds that there was no dismissal based on the clear intent of the letter contrary to private respondent's general allegation that she was verbally dismissed from the service.

Petitioners could not be blamed for failing to order private respondent to return back to work. Records show that private respondent immediately filed the complaint for illegal dismissal on July 4, 2011 or the very day she received the letter of petitioners. For petitioners to order private respondent to report back to work, after the latter had already filed a case for illegal dismissal, would be unsound.[16]

With these circumstances, taken together with the lack of evidence of dismissal and lack of intent on the part of private respondent to abandon her work, the remedy is reinstatement but without backwages.[17] However, considering that reinstatement is no longer applicable due to the strained relationship between the parties, each party must bear his or her own loss, thus, placing the parties on equal footing. Verily, 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.[18]

WHEREFORE, the petition is GRANTED. The resolution of the National Labor Relations Commission, Second Division (NLRC), in NLRC LAC No. 03-001064-12 is ANNULLED and SET ASIDE. The complaint of illegal dismissal is DISMISSED for lack of merit.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 3-33.

[2] Rollo, pp. 35-47.

[3] Rollo, pp. 49-51.

[4] Rollo, pp. 113-124.

[5] Rollo, pp. 70-82.

[6] Rollo, pp. 141-147.

[7] Rollo, pp. 35-47.

[8] Rollo, pp. 52-66.

[9] Rollo, pp. 49-51.

[10] Rollo, pp. 12-13.

[11] *Diamond Taxi vs. Llamas, Jr.*, G.R. No. 190724, March 12, 2014.

[12] *Ibid.*

[13] See *Diamond Taxi vs. Llamas, Jr.*, G.R. No. 190724, March 12, 2014.

[14] See *MZR Industries vs. Colambot*, G.R. No. 179001, August 28, 2013.

[15] Rollo, p. 129.

[16] See MZR Industries vs. Colambot, G.R. No. 179001, August 28, 2013.

[17] MZR Industries vs. Colambot, G.R. No. 179001, August 28, 2013 citing Exodus International Construction Corporation vs. Biscocho, G.R. No. 166109, February 23, 2011.

[18] MZR Industries vs. Colambot, G.R. No. 179001, August 28, 2013.

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