

**COMGLASCO AGUILA GLASS CORP./ FLORANTE G. AGUILA &#038;  
MA. CHONA T. CASTILLO, PETITIONERS, VS. NATIONAL LABOR  
RELATIONS COMMISSION (SIXTH DIVISION, QUEZON CITY) AND  
DENMARK S. ALVAR...**

Ponente: GARCIA, R. R. J.

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**GARCIA, R. R. J.:**

Before Us is a Petition for Certiorari[2] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision[3] dated March 22, 2013 of public respondent National Labor Relations Commission (NLRC) which modified the Labor Arbiter's Decision[4] dated November 23, 2012 in that private respondents April Ann V. Blay and Laarni S. Limaco were declared illegally dismissed; and the Resolution[5] dated May 31, 2013 denying the motion for reconsideration thereof.

**THE FACTS**

The instant case stemmed from a complaint for illegal dismissal, illegal deduction, moral and exemplary damages and attorney's fees filed on April 3, 2012[6] with the Arbitration Branch of public respondent National Labor Relations Commission (NLRC) by private respondents Laarni S. Limaco and April Ann V. Blay, together with their co-employees Ahleli Theresa C. Gernale and Denmark S. Alvaran, against petitioners Comglasco Aguila Glass Corp, its president Florante G. Aguila and general manager Chona Castillo.

In their position paper[7], private respondents and their co-employees averred that they are all former employees of petitioner company. Private respondent Limaco was hired as customer service assistant on March 11, 2011 with a monthly salary of P12,000.00 and allowance of P1,000.00. Private respondent Blay was initially employed on March 26, 2011 as industrial engineer and was later promoted as product manager with a monthly salary of P20,000.00 and allowance of P4,000.00. On the other hand, the latest position held by Alvaran was that of a senior assistant general manager; while Gernale held the position of area sales manager.[8] As a matter of company policy, they were all required to post a cash bond in favor of petitioner company equivalent to one (1) month of their basic salary.

On March 16, 2012, private respondents and Gernale were summoned by petitioners Aguila and Castillo to proceed to petitioner Aguila's office. Petitioner Aguila informed them that the company was then investigating irregularities involving sales personnel. They were forced to surrender their cellular phones, both personal and company-issued, upon the threat that they will be immediately terminated and criminal charges will be filed against them if they will not surrender their phones. Thereafter, petitioners Aguila and Castillo read all text messages, emails and call logs contained in the cellular phones. They even browsed the Facebook and Twitter accounts of private respondents and Gernale. Petitioner Castillo ordered the transcription of text messages contained in the phones.

Thereafter, petitioner Aguila confronted private respondent Blay and accused her of being a spy for petitioner company's competitor. Right then and there, petitioner Aguila terminated the services of private respondent Blay.

At petitioner company's legal department, the lawyers convinced private respondent Blay to tender her resignation. When she refused, she was immediately escorted by the security guards out of the company premises.

On March 19, 2012, or three (3) days after the confiscation of the cellular phones, private respondent Limaco and Gernale were again asked to proceed to petitioner Aguila's office. Thereat, they were directed by petitioners Aguila and Castillo to execute an affidavit to the effect that private respondent Blay was involved in the irregularities of certain sales personnel. Petitioner Aguila threatened them with personal harm and criminal charges if they will not comply. Notwithstanding the threats, private respondent Limaco and Gernale did not execute the affidavit required of them. As a result, private respondent Limaco was instantly terminated and was escorted by the security guards out of the company premises when she refused to tender her resignation.

On the other hand, Gernale was asked to remain in petitioner Aguila's office. She was then confronted by petitioner Castillo about the intimate and personal text messages with her boyfriend found in her cellular phone. She was told that the text messages will be made public to the employees of the company should she refuse to execute the affidavit required of her. True enough, the transcript of the text messages was made known to Gernale's co-employees. On March 23, 2012, Gernale tendered her resignation.

It was further alleged that on October 15, 2011, while Alvaran was on his way to a client visit, he received a phone call from petitioner Aguila who was in the United States at that time. During the phone conversation, he was confronted by petitioner Aguila about the alleged irregularities reported to him by petitioner Castillo. When Alvaran tried to explain his side, he was angrily halted by petitioner Aguila and was fired on the spot. Sometime in November 2011, he was asked by petitioner company's legal counsel to go to latter's office. When he reported thereat, he was asked to execute a resignation letter in exchange for the partial release of his salary.

Private respondents, Alvaran and Gernale claimed that their employment was illegally terminated without a just cause. Neither was there a compliance with the two (2)-notice rule required under the law. As such, they are entitled to full backwages, reinstatement, moral and exemplary damages and attorney's fees.

In their traverse, petitioners alleged that on March 16, 2012, petitioners discovered that some of their employees were engaged in spying for a known competitor, NOVA, and were receiving commissions therefrom while being employed in petitioner company. During the initial investigation conducted by petitioner company's assistant general manager Lucia Santos, one of its former employees in the person of Dennis Javier admitted that he and other employees were defrauding petitioner company by diverting some of its clients to NOVA and divulging confidential business information to the latter. It was also found out that the persons behind NOVA were former employees of petitioner company. The discovery of the matter urged the management to immediately conduct an overall investigation. Consequently, petitioner company's account executives and executive assistants, including private respondents, were advised to cooperate in the investigation. A day after they were advised about the investigation, however, private respondents no longer reported for work without reasonable grounds. Because of private respondents' absence, a Notice to Explain<sup>[9]</sup> was sent to private respondents' respective addresses but they failed to provide an explanation for their absence. They also did not exert any effort to communicate their whereabouts.

After the investigation conducted by petitioners, it was found that several employees of petitioner company, including private respondents, conspired with Dennis Javier in defrauding petitioners by diverting some of the company's clients to NOVA and divulging confidential business information to the competitor company. In exchange, these employees received commissions from NOVA. Thus, petitioner company filed against these employees, including private respondents, a criminal complaint under Article 318 of the Revised Penal Code.

On March 29, 2012, petitioners terminated herein private respondents on the ground of abandonment of work.<sup>[10]</sup>

Anent the case of Gernale, petitioners averred that for the period of June to October 2011, she was frequently tardy. Resultantly, the human resource department issued several notices admonishing her about her tardiness. Despite the admonitions, Gernale's attendance did not improve. On March 23, 2012, probably sensing that she may be subject to performance evaluation by the management, Gernale tendered her resignation. Petitioners in turn paid Gernale her cash bond.

As to the case of Alvaran, it was alleged that he voluntarily tendered his letter of resignation dated November 11, 2011 due to personal reasons.

In a Decision[11] dated November 23, 2012, the Labor Arbiter dismissed the case for illegal dismissal. It was ruled that the dismissal of private respondents was justified under Article 282 of the Labor Code. Their acts of diverting petitioner company's clients and divulging confidential business information to a competitor constitute serious misconduct, fraud and willful breach of trust. Their conduct showed that they could not be trusted with their duties and their continuance in the service is inimical to the company's interest. However, the manner of dismissing private respondents fell short of the two (2)-notice requirement. While petitioners claim that they furnished private respondents with a Notice to Explain dated March 23, 2012 and an Order of Termination dated March 29, 2012, there was no proof that such notices were actually received by them. As such, petitioners were ordered to pay private respondents nominal damages in the amount of P30,000.00 on account of the violation of private respondents' right to statutory due process. Upon the other hand, the Labor Arbiter ruled that Alvaran and Gernale voluntarily tendered their resignation letters whereby they expressed their appreciation and gratitude to petitioner company. Petitioners were ordered to refund private respondents and Alvaran their respective cash bonds. The dispositive portion of the Labor Arbiter's decision is quoted:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. dismissing the complaint for lack of merit; and
2. ordering respondents to pay complainants Blay and Limaco P30,000.00 each as nominal damages; and
3. ordering respondents to refund to complainants Alvaran, Blay and Limaco their respective cash bond.

All money claims are denied for lack of merit.

The computation of the cash bond and one month salary of April Ann Blay by the Computation and Examination Unit of this Commission is hereto attached as "Annex A" and forms part of this Decision.

SO ORDERED.[12]

Private respondents filed an appeal[13] with public respondent NLRC which, in the assailed Decision[14] dated March 22, 2013 reversed the Labor Arbiter and ruled that private respondents were illegally dismissed. The defense of abandonment was not given merit in the absence of substantial evidence to show that the notices to explain allegedly furnished by petitioners were indeed received by private respondents. Petitioners likewise failed to sufficiently establish, by substantial evidence, the guilt of private respondents anent their alleged involvement in irregular transactions with petitioner company's rival company. There was no proof that private respondents were apprised of the charges against them and that they were able to fully air their side and put forth their defenses against the charges. Petitioners also failed to mention in detail how private respondents committed deceit against petitioner company. As a consequence of their illegal dismissal, private respondents are entitled to reinstatement and full backwages. On account of the strained relationship between private respondents and petitioners, however, separation pay was awarded in lieu of reinstatement. Private respondents are also entitled to a refund of their cash bonds. On the other hand, Alvaran and Gernale were not dismissed as they voluntarily resigned from their employment. Alvaran must be refunded his cash bond since there is no showing that the same has been refunded to him. The pertinent portions of the assailed decision are quoted:

Respondents alleged that complainants Blay and Limaco abandoned their employment when they learned that they were being investigated for some anomalous dealings with a rival company. When required to explain aforesaid complainants failed to submit their explanation. Consequently, respondents terminated their employment.

A perusal of the Notice to Explain and the Order of Termination shows that the two letters bore the notation “refused to receive” xxx. In several cases, the Supreme Court held that the notation “refused to receive” is not sufficient to conclude that the notices were indeed served on the employee. xxx

xxx

Premises considered, we find that there was no substantial service of the Notice to Explain and the Order of Termination to complainants Blay and Limaco.

Respondents further alleged that complainants Blay and Limaco were involved in irregular transactions with a rival company named Nova. They were accused of spying for a competitor company in exchange for commission. xxx However, the Position Paper and even the Complaint-Affidavit in the criminal case failed to mention in detail how complainants committed deceit against the company. xxx

In both the Position Paper and Complaint-Affidavit of respondents, there was no mention of how complainants Blay and Limaco were involved in the scheme to defraud respondent company despite respondents' claim that a meticulous investigation was conducted by them.

In termination disputes, the burden to show that an employee's dismissal was based on just and valid cause lies with the employer. xxx

In the instant case, respondents failed to sufficiently establish, by substantial evidence, the guilt of complainants Blay and Limaco. There was no proof that complainants were apprised of the charges against them and that they were able to fully air their side and put forth their defenses against these charges. No record of investigation that was supposedly conducted, was presented. Clearly, Respondents concluded that complainants were guilty of the charges without presenting the factual and legal bases of their conclusion. This is not the quantum of evidence that would convince us of the existence of a just and valid ground for the termination of complainants' employment.

Thus, we are convinced that complainants Blay and Limaco were illegally dismissed from work as their dismissal was effected without their guilt on the charges against them having been established.

As a consequence of their illegal dismissal, complainants Blay and Limaco are entitled to the twin relief[s] of reinstatement and the award of full backwages. Since there already exists a strained relationship between complainants and respondents brought about by the filing of the instant labor case and the criminal case, the former are instead awarded separation pay equivalent to one (1) month pay for every year of service to be computed from the time of their employment up to the finality of this Decision. Additionally, they are awarded backwages reckoned from their dismissal also up to the finality of this Decision. Complainants Blay and Limaco are also entitled to a refund of their respective cash bond as respondents failed to refute this claim.

Complainants Alvaran and Gernale were not dismissed as they voluntarily resigned from their employment. However, complainant Alvaran must be refunded his cash bond, for failure of respondent to show that the same has been refunded to him.

WHEREFORE, premises considered, the Appeal is PARTLY GRANTED and the November 23, 2012 Decision is MODIFIED in that complainants Blay and Limaco are declared to have been illegally dismissed and respondents are ordered to pay them separation pay and backwages and return their cash bonds.

Further, respondents are ordered to refund to complainant Alvaran his cash bond.

The rest of the decision of the Labor Arbiter stays.

SO ORDERED.[15]

Petitioners' motion for reconsideration was denied in a Resolution[16] dated May 13, 2013.

Hence, the instant petition for certiorari which raised the following grounds for its allowance:

I

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN NOT FINDING THAT THE DISMISSAL OF PRIVATE RESPONDENTS BLAY AND LIMACO WERE FOR A JUST CAUSE; AND

II

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT MISAPPLIED, IF NOT ALTOGETHER DISREGARDED, THE LAW WHEN IT AFFIRMED THE DECISION OF THE LABOR ARBITER THAT PETITIONERS DID NOT COMPLY WITH PROCEDURAL DUE PROCESS.

#### THE ISSUE

The only issue to be resolved in the instant case is whether or not public respondent NLRC committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in ruling that private respondents were illegally dismissed.

#### THE RULING

The petition is bereft of merit.

At the outset, it is well to note that the propriety of the labor tribunals' findings that Gernale and Alvaran voluntarily resigned was no longer questioned in this instant petition for certiorari. As such, the same is already binding upon them and this Court will no longer discuss the matter. Our ruling will center on the correctness of public respondent NLRC's decision that herein private respondents were illegally dismissed.

Petitioners essentially argue that private respondents' dismissal was for a just cause. Their acts of spying and receiving commissions from a competitor while being employed with petitioner company constitute serious misconduct, fraud and willful breach of trust. Their scheme of defrauding petitioner company by diverting its clients to NOVA and divulging confidential business information to the latter reveals bad faith. Also, private respondents are guilty of abandonment when they failed to report for work without proper notice and justifiable reason notwithstanding several demands. Their acts of abandonment, coupled with their refusal to take part in the investigation conducted by petitioner company's management, are sufficient causes for private respondents' dismissal. Furthermore, private respondents were afforded procedural due process. The human resource department of petitioner company conducted an investigation of the anomalous transactions which involved private respondents.

We are not persuaded.

The Labor Code provides that the burden of proving that the termination of an employee is for a just or authorized cause lies with the employer.[17] The employer's case succeeds or falls on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt.[18] Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[19] Failure of the employer to discharge the foregoing onus would mean that the dismissal is not justified and therefore illegal.[20]

In the case at bench, petitioners failed to show that a just and valid cause exists to terminate the services of private respondents.

Article 282 of the Labor Code enumerates the just causes of dismissing an employee as follows: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing.

In the case at bench, petitioners' defense is based on paragraphs (a), (b) and (c) of Article 282 of the Labor Code. Petitioners argue that private respondents' alleged acts of referring some clients of petitioner company to its competitor, divulging confidential business information to the latter and receiving commissions therefrom in exchange of the foregoing acts, constitute serious misconduct, fraud and willful breach of trust. They also claim that private respondents are guilty of abandonment, which is tantamount to neglect of duty under paragraph (b) of the said legal provision. A scrutiny of the records reveals, however, that petitioners' case should fall in the absence of substantial evidence to support their assertions.

Petitioners' defense of abandonment was correctly rejected by public respondent NLRC. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship.[21] For abandonment to be a valid cause for dismissal, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.[22]

Here, the elements of abandonment are lacking. Petitioners failed to show any overt act on the part of private respondents which would manifest a deliberate and clear intent on their part to sever their employment with petitioner company. In a catena of cases[23], it has been held that mere absence or failure to report for work is not tantamount to abandonment of work. Even the failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment. In the case at bench, petitioners claim that they sent to private respondents a notice to explain their absence for six (6) consecutive days. There is no showing, however, that private respondents were able to receive the same. In fact, it has not been convincingly shown by petitioners that such notice was indeed sent to private respondents' last known address. Petitioners' allegation that the notices were personally served upon private respondents by the company's messenger but that private respondents refused to receive the same is not well-taken. Notably, petitioners did not present any affidavit of the messenger who allegedly served the notices.

Furthermore, private respondents' immediate act of filing the instant complaint for illegal dismissal barely a few days after they were terminated indubitably negates the allegation of abandonment. Had they intended to forsake their jobs, they would not have found it necessary to institute this case against petitioners. In *Nationwide Security and Allied Services, Inc. vs. Valderama*[24], the Supreme Court pronounced that the fact that an employee filed a complaint for illegal dismissal negates any intention on his part to abandon his work. The filing of a complaint is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.

In the same wise, petitioners' claim that the dismissal of private respondents is justified on account of the latter's involvement in the anomalous and fraudulent acts of favoring the competitor of petitioner company deserves scant consideration in the absence of proof, documentary or otherwise, to support the same. While petitioners allege

that an overall investigation was conducted by petitioner company anent the said irregularities involving private respondents, no single document was presented to show what transpired during such investigation. Neither did petitioners mention any detail as to the names of the persons who conducted the same, the specific date and time when the investigation was held, and the documents and testimonies used as basis to arrive at the conclusion that private respondents were indeed involved in the irregularities. Worse, petitioners failed to provide pertinent details as to when and how the alleged fraudulent scheme was undertaken. Noticeably, they also did not mention the names of petitioner company's clients who were diverted to the company's competitor. In view of all these, petitioners' assertion of private respondents' involvement in a fraudulent scheme favoring its competitor remains to be a mere accusation which is not substantiated by any proof. As such, the same cannot be the basis of private respondents' termination from work. Verily, an employee's fate cannot be justly hinged upon conjectures, surmises and mere suspicions[25].

Having been illegally dismissed, private respondents are entitled to the twin reliefs of full backwages and reinstatement. Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages.[26] Under the doctrine of strained relations, however, the payment of separation pay equivalent to one (1) month salary for every year of service is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[27] In the case at bench, the accusations hurled by petitioners against private respondents and the instant judicial controversy have indubitably caused animosity between the parties and strain in their employer-employee relationship. Public respondent thus correctly awarded to private respondents separation pay equivalent to one (1) month for every year of service, pursuant to prevailing jurisprudence[28].

In fine this Court finds no reason, cause or justification for the issuance of the extraordinary writ of certiorari. It is well to stress that the writ of certiorari is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[29] Such is not the case here.

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby DISMISSED.

**SO ORDERED.**

Dimagiba, L. R., and [\*]Sempio Diy, M. E., JJ., concur.

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[1] Mistakenly included as a respondent in the instant case, see Rollo, p. 4.

[\*] Acting Junior member per Office Order No. 15-15-ABR dated January 20, 2015.

[2] Rollo, pp. 3-19.

[3] Rollo, pp. 21-31.

[4] Rollo, pp. 38-50.

[5] Rollo, pp. 33-35.

- [6] Rollo, p. 24.
- [7] Rollo, pp. 132-148.
- [8] Rollo, pp. 133-137 and 59-60.
- [9] Rollo, pp. 105-106.
- [10] Rollo, pp. 107-108.
- [11] Supra, at Note 2.
- [12] Rollo, p. 50.
- [13] Rollo, pp. 157-176.
- [14] Supra, at Note 2.
- [15] Rollo, pp. 27-31.
- [16] Supra, at Note 4.
- [17] Alps Transportation, et al. vs. Rodriguez, G.R. No. 186732, June 13, 2013, citing Article 277 of the Labor Code.
- [18] Functional, Inc. vs. Granfil, G.R. No. 176377, November 16, 2011.
- [19] Ibid.
- [20] Ibid.
- [21] Nationwide Security and Allied Services, Inc. vs. Valderama, G.R. No. 186614, February 23, 2011.
- [22] Concrete Solutions, Inc./Primary Structures Corporation vs. Cabusas, G.R. No. 177812, June 19, 2013.
- [23] Concrete Solutions, Inc./Primary Structures Corporation vs. Cabusas, G.R. No. 177812, June 19, 2013; JOSAN, et al. vs. Aduna, G.R. No. 190794, February 22, 2012; and Maxi Security and Detective Agency, et al. vs. National Labor Relations Commission, G.R. No. 162850 December 16, 2005.
- [24] G.R. No. 186614, February 23, 2011.
- [25] Vide: Eastern Telecommunications Phils., Inc. vs. Diamse, G.R. No. 169299, June 16, 2006.
- [26] Leopard Security and Investigation Agency vs. Quitoy, et al., G.R. No. 186344, February 20, 2013.
- [27] Golden Ace Builders, et a. vs. Talde, G.R. No. 187200, May 5, 2010.
- [28] Ibid.
- [29] C.F. Sharpe Crew Management, Inc., et. al. vs. Taok, G.R. No. 193679, July 18, 2012.

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