

RAFAEL DE PADUA, JR., PETITIONER, VS. HON. NIEVES E. VIVAR-DE CASTRO, HON. JOSEPH GERARD E. MABILOG AND HON. ISABEL G. PANGANIBAN-ORTIGUERRA, IN THEIR CAPACITIES AS COMMISSIONER...

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Before Us is an invocation of the extraordinary Writ of Certiorari[1] via the Petition[2] to nullify the Decision[3] dated July 27, 2012 and Resolution[4] dated October 19, 2012 of public respondent National Labor Relations Commission.

On March 22, 2011, private respondents Virgilio Eusebio, Jr. and Johnson Tañon filed a Complaint[5] for illegal dismissal against herein petitioner Rafael de Padua, Jr., James L. Ching and Lazertek Development Corporation. James L. Ching was the Manager and Rafael de Padua, Jr. was the President of the company.

Per their Position Paper,[6] Virgilio Eusebio, Jr. declared that his date of employment was on April 19, 2010 but he was dismissed on March 14, 2011, while complainant Johnson Tañon averred that he was employed in March, 2010 and he was dismissed on March 8, 2010. They further asserted that they were employed by Lazertek as electricians and worked from Monday to Saturday from 7:00 in the morning to 4:30 in the afternoon with a salary of P350 a day. They alleged that they did not receive their 13th month pay, overtime pay and service incentive leave.

Petitioner submitted an Affidavit[7] and invoked a fall out between the partners. Hence, he was no longer connected with Lazertek since May 30, 2011. The company closed down in June, 2011 due to financial losses and debts. After the closure, no communication ensued among the partners.

On February 14, 2012, Labor Arbiter Gaudencio P. Demaisip, Jr. rendered a Decision[8] which directed petitioner to pay private respondents their differentials, proportionate 13th month pay and separation pay in the total amount of Sixty Eight Thousand Six hundred Forty Six Pesos and 93/100 (P68,646.93).

Petitioner appealed[9] the Decision of the Labor Arbiter to the NLRC, later docketed as LAC No. 05-001523-12.

On July 27, 2012, the NLRC rendered a Decision[10] which ruled that the Labor Arbiter erred when it only adjudged petitioner solely liable for the monetary award of private respondents. It was the NLRC's belief that Lazertek Development Corporation was formed as a partnership with three partners, two of whom were Ching and petitioner, and it arrived at the conclusion in this manner:

“WHEREFORE, the Decision of the Labor Arbiter dated February 14, 2012 is hereby MODIFIED by holding the Respondents namely, Lazertek Development Co., James L. Ching and Rafael (Jon) de Padua solidarily liable to pay the Complainants' monetary award in the amount of P68,646.93.

The rest of the Decision is AFFIRMED.

SO ORDERED.”[11]

Petitioner sought reconsideration[12] of the NLRC Decision but it was denied in the assailed Resolution[13] dated October 19, 2012.

Unfazed, petitioner filed a Petition for Certiorari[14] anchored on these ascriptions:[15]

“THERE WAS ABSOLUTELY NO ILLEGAL DISMISSAL HEREIN AS PRIVATE RESPONDENTS ABANDONED THEIR EMPLOYMENT

ASIDE FROM LAZERTEK, JAMES L. CHING IS THE ACTUAL EMPLOYER OF PRIVATE RESPONDENTS AS HE IS THE ONE WHO HAS ACTUAL CONTROL OVER THE LATTERS' EMPLOYMENT. ”[16]

The thrust of petitioner's argument was that he had nothing to do with the separation of private respondents from Lazertek and therefore, he should not be made personally liable. Petitioner likewise argued that private respondents were not dismissed from their employment but instead voluntarily abandoned their jobs when they were not given their salaries.

We do not find petitioner's argument persuasive.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is one form of neglect of duty, hence, a just cause for termination of employment by the employer. Mere absence does not equate to abandonment. To constitute abandonment, there must be a concurrence of: (1) the failure to report for work or absence without valid or justifiable reason; (2) a deliberate intent of the employee to leave his work permanently; and (3) overt act/s from which it may be inferred that the employee had no more intention to resume his work. This burden of proving that there was a deliberate and unjustified refusal on the part of the employee to resume his employment without any intention of returning rests on the employer.[17]

In the present case, however, petitioner failed to prove that private respondents indeed stopped reporting for work without any justifiable cause. In fact, petitioner admitted that private respondents' refusal to report for work was due to the fact that they were not paid their salaries. Hence, even assuming that private respondents did not report for work, We still cannot construe an abandonment.

It should likewise be stressed that if the dismissal is based on a just cause under Article 282 of the Labor Code, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard and, after hearing or opportunity to be heard, a notice of the decision to dismiss.[18] Failure to observe the rules is a violation of the employee's right to procedural due process.[19]

Ergo, if private respondents indeed walked out of their jobs, petitioner should have afforded them due process by serving them written notices, with a concomitant chance to explain their side, as required by law.

Besides, the rule in labor cases is that the employer has the burden of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[20]

In fine, petitioner's argument that private respondents abandoned their jobs did not wash. Thus, the lawful consequence of private respondents' illegal dismissal was reinstatement in accord with Article 279 of the labor Code.[21] Nevertheless, where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative.[22]

As to whether or not petitioner should be held solidarily liable with Lazertek, the Court agrees with the NLRC.

Although corporate officers should not be held solidarily liable with the corporation for separation pay for it is settled that a corporation is invested by law with a personality separate and distinct from those of the persons composing it,[23] the rule admits of exceptions. One of such saving clause is when the employer corporation is no longer existing and is unable to satisfy the judgment in favor of the employee, in which case the officers should be held liable for acting on behalf of the corporation.[24]

In *Gudez v. NLRC*,[25] the Supreme Court made it plain that when the company ceased to operate, the officers, particularly the President, may be held liable for the payment of the employee's claims. Similarly, in *Equitable Banking Corporation vs. NLRC*,[26] in the absence of a clear identification of the officer directly responsible for failure to pay backwages or other monetary claims, the President of the corporation should be considered as the officer who should be held liable.

In this case, the employees can no longer claim their monetary awards from the company because it had already ceased operation. Therefore, the partners should be considered as officers who should be held liable.

As a final point, Article 1824 of the Civil Code ordains that all partners are liable solidarily with the partnership for everything chargeable to the partnership under Articles 1822 and 1823.

WHEREFORE, premises considered, the Petition for Certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.

De Leon, M.M., (Chairperson), and Cruz, S.C., JJ., concur.

[1] Filed on January 4, 2013, raffled to Justice Ybanez on January 7, 2013, re-raffled to the ponente on August 7, 2013.

[2] Petition for Certiorari dated December 28, 2012, Rollo, pp. 3-19.

[3] Rollo, pp. 20-25.

[4] Rollo, pp. 27-28.

[5] Complaint dated Match 22, 2011, Rollo, pp. 32-33.

[6] Position Paper dated May 18, 2011, Rollo, pp. 36-41.

[7] Affidavit dated February 17, 2012, Rollo, page 35

[8] Decision dated February 14, 2012, Rollo, pp. 78-82.

[9] Notice of Appeal, March 26, 2012, Rollo, pp. 59-74.

[10] Decision dated July 27, 2012, Rollo, pp. 20-25.

[11] See Decision dated July 27, 2012, Rollo, p. 25.

[12] Motion for Reconsideration dated August 16, 2012, Rollo, pp. 25.

[13] Resolution dated October 19, 2012, Rollo, pp. 27-29.

[14] Petition for Certiorari dated December 28, 2012, Rollo, pp. 3-19.

[15] Petition for Certiorari dated December 28, 2012, Rollo, pp. 11.

[16] Petition for Certiorari dated December 28, 2012, p.9. Rollo, page 11.

[17] City Trucking, Inc. vs. Balajadia, G.R. NO. 160769, August 09, 2006.

[18] Dup Sound Phils. vs. Court of Appeals, G.R. No. 168317, November 21, 2011.

[19] Goma vs. Pamplona Plantation Incorporated, G.R. No. 160905, July 04, 2008.

[20] Supra Note 19.

[21] Art. 279. Security of Tenure — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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, inclusive of allowances, and to his other benefits or other monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[22] Prudential Guarantee and Assurance Employee Labor Union vs. NLRC, G.R. No. 185335, June 13, 2012.

[23] Art. 1768 of the Civil Code, a partnership has a juridical personality separate from the individual partners.

[24] Big AA Manufacturer vs. Antonio, G.R. NO. 160854, March 03, 2006.

[25] G.R. No. 183023, March 22, 1990.

[26] G.R. No. 102467, June 13, 1997.

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