

EVELYN DACARA-OCAY, LOUELA D. SIASICO & MARICEL MISSION, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION, 8TH DIVISION AND ORO WONDER DRUG, REPRESENTED BY SPOUSES RUBEN...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Petitioners, by way of a petition for certiorari[1] under Rule 65 of the Rules of Court, seek the nullification of the Decision dated March 23, 2011[2] of the 8[th] Division of the National Labor Relations Commission of Cagayan de Oro City which affirmed the September 23, 2010 Decision[3] of the Regional Arbitration Branch No.9, Zamboanga City in NLRC Case No. RAB-09-05-00112-2010[4], which dismissed petitioners' complaint for lack of merit; and the Resolution dated May 23, 2011[5] of the NLRC, which denied for lack of merit petitioners' motion for reconsideration of the March 23, 2011 Decision.

The Antecedents

The facts, as culled by the Executive Labor Arbiter and the NLRC, are as follows:

Oro Wonder Drug is a business establishment owned by respondent Lily Chua, with main office along Climaco Avenue, corner Pura Brillantes Street, Zamboanga City. It is engaged in retailing pharmaceutical products, groceries and jewelry. It also has pawnshop operations.

The complainants were employed by the respondents on the following dates:

Evelyn Dacara-Ocay----- November 11, 2001

Maricel Mission----- July 2008

Louela Siasico----- February 21, 2006

Complainant Ocay's last position with the respondents was as section supervisor and custodian of jewelry at respondent firm's main branch along Climaco Avenue. She was in charge of giving jewelry, cellphones, load cards and funds to all Oro Wonder Drug branches. She had access to the password for the computer system where she was supposed to record all transactions.

Complainant Siasico was a section head, pawnshop appraiser and vault custodian at the Oro Wonder Drug branch along P. Brillantes Street, fronting the Puericulture Center.

Complainant Mission was a sales clerk at the Oro Wonder Drug main branch along Climaco Avenue, and then transferred to the warehouse at the Murga Compound, Santa Catalina, Zamboanga City.

Sometime in the first week of November 2009, when respondent Chua was out-of-town, complainant Ocay took a Nokia 7210 from the vault and indicated it as a bad order but did not turn it over to the proper custodian together with the requisite withdrawal slip. The incident came to be known by Evelyn Francisco, respondent Chua's

executive assistant, who reported it to the latter. Respondent Chua confronted complainant Ocam and asked her to explain her actuation.[6]

Subsequently, respondent Chua ordered an audit allegedly leading to the discovery of missing jewelry items worth Php300,000.00 and to unliquidated accounts of complainant Ocam amounting to Php26,833.20.

On November 23, 2009, petitioner Ocam submitted her voluntary resignation from respondents' service.[7]

On the other hand, petitioners Siasico and Mission stopped reporting for work on December 1, 2009.[8]

On December 3, 2009, the three petitioners together with two others, filed their complaints with the NLRC Regional Arbitration Branch No. 9, docketed as NLRC Case No. 09-12-00220-2009. This, however, was dismissed on January 28, 2010 due to their unexplained failure to file their Position Paper.

On May 21, 2010, the herein petitioners, now only three (3) in number, re-filed their complaints.

On September 23, 2010, the Executive Labor Arbiter dismissed the complaint for lack of merit.

As aptly stated by the NLRC in the assailed Decision, in resolving the dispute, the Executive Labor Arbiter held that complainant Evelyn Dacara-Ocam was not dismissed but voluntarily resigned effective on November 23, 2009. He ratiocinated that while she was asked to first reconcile her records before leaving, this does not diminish or alter the nature of her voluntary resignation since under Article 205 (a) of the Labor Code, an employee who wants to terminate without just cause the employer-employee relationship is required to serve a written notice to the employer at least one (1) month in advance. Regarding complainants Louela D. Siasico and Maricel Mission, the executive Labor Arbiter ruled that they abandoned their work when they failed to report for work after November 30, 2009 for no apparent reason. According to the Executive Labor Arbiter, the fact that complainants Siasico and Mission sought separation pay, and not reinstatement, belies their claim that they were illegally dismissed. On complainants' money claims, the Executive Labor Arbiter gave weight to the payrolls presented in evidence by respondents showing payment thereof, apart from his finding that complainants Ocam and Siasico are managerial employees who are not legally entitled to the payment of overtime pay, rest day, holiday pay, service incentive leave pay and 13[th] month pay.

Aggrieved, petitioners elevated the matter to the NLRC. On March 23, 2011, the NLRC dismissed the appeal and affirmed the Executive Labor Arbiter's Decision dated September 23, 2010. The NLRC concurred with the Executive Labor Arbiter's findings that Ocam voluntarily resigned from her employment and that complainants Siasico and Mission abandoned their work.

Petitioners filed a motion for reconsideration which was, however, denied by the NLRC through a Resolution dated May 23, 2011.

Hence, the instant petition.

ASSIGNMENT OF ERRORS

Petitioners come before this Court with the following assignment of errors:

- The National Labor Relations Commission, 8th Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that petitioners were not illegally terminated.

- The National Labor Relations Commission, 8th Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that petitioners were not entitled to their claims for labor standard

benefits and claims for moral damages, exemplary damages and attorney's fees.

This Court's Ruling

A writ of certiorari is a remedy to correct errors of jurisdiction, for which reason it must clearly show that the public respondent has no jurisdiction to issue an order or to render a decision. Rule 65 of the Rules of Court has instituted the petition for certiorari to correct acts of any tribunal, board or officer exercising judicial or quasi-judicial functions with grave abuse of discretion amounting to lack or excess of jurisdiction. This remedy serves as a check on acts, either of excess or passivity, that constitute grave abuse of discretion of a judicial or quasi-judicial function.[9]

The petition is without merit. The assigned errors shall be discussed jointly for being interrelated.

The Court finds no error committed by the NLRC in affirming the Decision of the Labor Arbiter. We find no reason to deviate from the oft-repeated tenet that the findings of fact and conclusions of the NLRC when supported by substantial evidence are generally accorded not only great weight and respect but even finality, and are thus deemed binding.[10] As petitioners are well aware of, factual findings of the NLRC, particularly when they are in agreement with those of the labor arbiter, are deemed binding and conclusive on this Court. As long as their decisions are devoid of any unfairness or arbitrariness in their evaluation of the evidence, all that is left for us to do is stamp our affirmation.[11]

On this matter, the settled rule is 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 support a conclusion. The Supreme Court emphasized, nonetheless, that these findings are not infallible. When there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts. The CA can then grant a petition for certiorari if it finds that the NLRC, in its assailed decision or resolution, has made a factual finding that is not supported by substantial evidence. It is within the jurisdiction of the CA, whose jurisdiction over labor cases has been expanded to review the findings of the NLRC.[12]

This Court finds no basis for deviating from said doctrine without any clear showing that the findings of the Labor Arbiter, as affirmed by the NLRC, are bereft of substantiation.

As regards petitioner Evelyn Dacara-Ocay, both the Labor Arbiter and the NLRC found that petitioner Ocay voluntarily resigned from her employment. Her contention that when she tendered her resignation, respondent refused to accept her resignation and instead offered to increase her salary is unsubstantiated. It was never given credence by both the Labor Arbiter and the NLRC which had the first opportunity to fully ascertain the matter and require submission of evidence in support thereof.

It is not disputed that Ocay voluntarily tendered her irrevocable resignation letter effective November 23, 2009.[13] It is her contention that her resignation was not accepted as she was asked by respondent to first reconcile her records before leaving. We agree with both the Labor Arbiter and the NLRC that petitioner Ocay indeed voluntarily resigned. The fact that she was asked by her employer to first reconcile her records cannot be taken to mean as refusal to accept her resignation. It is her right as an employee to terminate without just cause the employer-employee relationship. Article 285(a) of the Labor Code states:

"An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages."

As found by the Labor Arbiter and as affirmed by the NLRC, petitioner Ocay failed to serve the notice one (1) month in advance. Hence, instead of making her liable for damages, the respondent exercised its management prerogative by asking her to reconcile first the records before her resignation would become effective. Such exercise of management prerogative does not amount to a rejection of her voluntary resignation. Rather, it was done as a consequence of the result of the audit conducted wherein missing jewelry items and unliquidated accounts of petitioner Ocay were discovered. This was also a necessary consequence of the fact that she was the section supervisor and custodian of jewelry items. As correctly found by the NLRC, since Ocay did not anymore report to respondent's office after she tendered her irrevocable resignation effective on November 23, 2009, it is proof enough that she already terminated her employment with respondent effective on that date irrespective of the acceptance thereof by the respondent. Moreover, the fact that petitioner Ocay was asked by respondent to first reconcile her records before leaving is a clear indication of respondent's acceptance of her irrevocable resignation, only that the discovered unliquidated accounts must be settled first. Furthermore, there is not even a single manifestation of withdrawal of the said resignation. The rule that filing of a complaint for illegal dismissal is inconsistent with resignation does not hold true in this case. The filing of the complaint after the alleged termination, coupled with the clear tenor of her resignation letter should be taken to mean that petitioner Ocay's filing of the illegal dismissal case was a mere afterthought. Hence, it cannot be said that she was illegally dismissed.

With respect to petitioners Siasico and Mission, it is their claim that they were dismissed because of their demand for the payment of 13[th] month pay. As found by the LA and the NLRC, such claim has no leg to stand on in the light of respondents' payrolls showing payment thereof. Siasico and Mission were found by the Labor Arbiter and the NLRC to have abandoned their work. As basis thereof, the LA and the NLRC relied on the evidence presented by the respondent consisting of DTR14 of Louela Siasico dated November 1-December 10, 2009 and the DTR15 of Maricel Mission dated November 1-December 10, 2009. The said petitioners unilaterally stopped reporting for work beginning on November 28, 2009 and November 30, 2009, respectively. The petitioners never disputed the DTRs presented by the respondents.

As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[16] It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 of the Labor Code.[17] To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[18] Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[19]

Based on the foregoing elements, it can be gathered that petitioners Siasico and Mission abandoned their work. First, they failed to report for work without any valid or justifiable reason. Second, We note that in filing the complaint for illegal dismissal and other money claims, petitioners Siasico and Mission only sought separation pay rather than reinstatement. In *Jo v. NLRC*, [20] the Supreme Court held:

"Moreover, public respondent's assertion that the institution of the complaint for illegal dismissal manifests private respondent's lack of intention to abandon his job is untenable. The rule that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal is not applicable in this case. Such rule applies where the complainant seeks reinstatement as a relief. Corollarily, it has no application where the complainant does not pray for reinstatement and just asks for separation pay instead as in the present case. It goes without saying that the prayer for separation pay, being the alternative remedy to reinstatement, contradicts private respondent's stance. That he was illegally dismissed is belied by his own pleadings as well as

contemporaneous conduct.”

Hence, the filing of the complaint for illegal dismissal against respondent praying for separation pay rather than reinstatement is a clear indication of petitioners Siasico and Mission’s intention to sever the employer-employee relationship. Moreover, there is no evidence on record that petitioners attempted to return to their work. Thus, petitioners were never dismissed, but they instead voluntarily terminated their employment. There was no overt act of termination on the part of respondent to warrant the conclusion that petitioners were dismissed. The termination was belied by the DTRs presented by respondent, showing their unauthorized absences. Furthermore, the voluntary termination was apparent when petitioners filed the complaint for illegal dismissal and prayed for separation pay, in lieu of their reinstatement.

The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it declared that petitioners were not illegally terminated. As to the monetary claims of petitioners, the NLRC found the same to have been duly paid. Such finding of the NLRC is substantiated by the payrolls[21] presented in evidence by the respondents bearing the amounts and signatures of the petitioners acknowledging receipt thereof. Not having been illegally dismissed from employment, petitioners are, therefore, not entitled to their claims for separation pay, labor standard benefits and claims for moral damages, exemplary damages and attorney’s fees. The findings of both the Labor Arbiter and the NLRC are supported by substantial evidence and this court finds no persuasive or cogent reason to depart therefrom.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED and the assailed decision of the National Labor Relations Commission 8[th] Division is hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, pp. 3-29.

[2] Rollo, pp.35-43.

[3] Annex “A” of the Petition, Id., pp. 30-34.

[4] For illegal dismissal, non-payment of wages, overtime pay, holiday pay and premium, rest day premium, service incentive leave, 13th month pay, and separation pay; illegal deduction; damages; and attorney’s fees.

[5] Annex “D” of the Petition, Id., pp. 52-53.

[6] Id, Annex “4”, Affidavit, Respondent’s Position Paper, p.82.

[7] Id, Annex “1”, p. 78.

[8] Id, Annexes “2” to “2-1”, p. 79-80.

[9] AGG Ttrucking and/or Alex Ang Gaeid v. Yuag, G.R. No. 195033, October 12, 2011.

- [10] Acebedo Optical v. National Labor Relations Commission, G.R. No. 150171, July 17, 2007.
- [11] GSP Manufacturing Corporation and Charo Apacible v. Paulina Cabanban, G.R. No. 150454, July 14, 2006.
- [12] Prince Transport, Inc. v. Garcia, G.R. No. 167291, January 12, 2011.
- [13] Annex “1”, p. 78.
- [14] Exhibit “2”, Respondent’s Position Paper.
- [15] Exhibit “3”, Id.
- [16] DUP Sound Phils. v. Court of Appeals, G.R. 168317, November 21, 2011.
- [17] CRC Agricultural Trading v. National Labor Relations Commission, G.R. No. 177664, December 23, 2009.
- [18] Columbus Philippine Bus Corp. v. NLRC, G.R. Nos. 114858-59, September 7, 2001.
- [19] MSMG-UWP v. Hon.Ramos, G.R. No. 113907, Feb. 28, 2000.
- [20] G.R. No. 121605, February 2, 2000.
- [21] Exhibits “6”-“16”, Respondents’ Position Paper.

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