

LUIS P. DANAOS, DOING BUSINESS UNDER THE NAME AND STYLE AS DANASAN MANPOWER AND MANAGEMENT SERVICES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION) AND MARK...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Certiorari[1] filed by petitioner Luis P. Danao pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to annul and set aside the Decision[2] promulgated by the Sixth (6th) Division of the National Labor Relations Commission (NLRC) on July 31, 2014 in NLRC LAC No. (L)-03-000285-14 which, inter alia, affirmed the Decision[3] of Labor Arbiter Joel S. Lustria dated February 19, 2014 in NLRC NCR Case No. 09-12918-13 (“assailed decision”). Likewise assailed in the instant petition is the subsequent Resolution[4] that was issued by the NLRC on September 17, 2014 denying the motion for reconsideration of the assailed decision that was filed by the petitioner in the said case for lack of merit (“assailed resolution”).

The material and relevant facts of the case, as culled from the record, are as follows:

Petitioner Danasan Manpower and Management Services (“petitioner”) is a duly licensed recruitment agency engaged in the recruitment of Filipino workers for deployment abroad. It is owned and operated by petitioner Luis P. Danao. In July 2003, the petitioner, acting as an agent to its foreign principal, Raffles Human Resources PTE LTD., hired and contracted private respondent Mark Anthony B. Casem (“private respondent”) for the position of Restaurant Supervisor in Singapore for a period of twelve (12) months with a monthly salary of SD\$2,000.00. For his deployment abroad, the private respondent paid a placement fee in the amount equivalent to his one month salary or SD\$2,000.00.

Thus, on July 16, 2013, the private respondent started to work as a Restaurant Supervisor at Shin Minori Japanese Restaurant in Singapore. However, two (2) months later or, on September 12, 2013, the private respondent filed a Complaint[5] against herein petitioner in the NLRC for illegal dismissal, payment of his salary for the unexpired portion of his contract, non-payment of salary for two (2) months and refund of placement fee. The said case was docketed as NLRC NCR Case No. (L) 09-12918-13. In his complaint, the private respondent alleged that his foreign employer changed the nature of his work from Restaurant Supervisor to Restaurant Cook. Moreover, the private respondent averred that he was not paid his salary in accordance with the contract of employment which he entered into with the petitioner.

Further, the private respondent narrated that he demanded for the payment of his salary for the first two (2) months of his work but his foreign employer told him that his salaries were already paid to herein petitioner for his placement fee. Nonetheless, because of his persistent complaints regarding the change in the nature of his work and payment of his salary, the private respondent's employer told him to quit his job, to pack up his belongings and to go straight to the airport as somebody would be monitoring his movement. Fearing for his safety, the private respondent claimed that he bought his plane ticket out of his remaining pocket money and flew

back to the Philippines. Thus, the private respondent maintained that, after working for two (2) months in Singapore, he was repatriated without substantive and procedural due process.

On the other hand, the petitioner countered that there was no violation of the private respondent's contract of employment. In fact, the petitioner insisted that the private respondent received his first month salary after a month of service to his employer. However, the petitioner submitted that, starting on September 11, 2013, the private respondent no longer reported for work for unknown reasons. This prompted his employer to report the said incident to the police, as well as to herein petitioner agency. Thereafter, they discovered that the private respondent had already returned to the Philippines without giving them any notice.

On February 19, 2014, Labor Arbiter Joel S. Lustria rendered a Decision[6] declaring the termination of the private respondent from work as illegal. The dispositive portion of the said decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered, declaring respondents guilty of illegal dismissal.

“Accordingly, respondents are hereby ordered jointly and severally liable:

“1.) To pay complainant the amount of SD20,000.00, or its equivalent in Philippine currency prevailing at the exchange rate at the time of payment, representing his unrealized earnings for the unexpired portion of his employment contract;

“2.) To pay complainant the amount of SD2,000.00, or its equivalent in Philippine Currency prevailing at the exchange rate at the time of payment, representing his one (1) month unpaid salary;

“3.) To pay complainant the amount of P47,600.00, representing the reimbursement of his placement fee;

“4.) To pay complainant an amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.

“Other claims are dismissed for lack of merit.

SO ORDERED.”

Aggrieved by the foregoing disposition of Labor Arbiter Lustria, herein petitioner appealed from the same to the NLRC, insisting that there was no illegal dismissal in that it was the private respondent who pre-terminated his employment contract by his own act of not reporting for work anymore. According to the petitioner, the private respondent's act of failing to report for work without any notice or valid reason was a clear case of abandonment. The petitioner likewise insisted that the private respondent was not entitled to his claim for salaries for the unexpired portion of his employment contract.

Thus, on July 31, 2014, the NLRC rendered the herein assailed decision affirming the February 19, 2014 decision of the Labor Arbiter. The dispositive portion of the assailed decision states:

“WHEREFORE, premises considered, the Decision dated February 19, 2014 is AFFIRMED.

SO ORDERED.”

Aggrieved by the foregoing disposition of the NLRC, herein petitioner sought for a reconsideration of the said assailed decision but the motion for reconsideration that was filed by the petitioner was likewise denied by the NLRC in its subsequent assailed resolution dated September 17, 2014.

Undaunted, the petitioner filed the present petition before this Court assigning the lone act of grave abuse of discretion that was purportedly committed by the NLRC, to wit:

THE PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE LABOR ARBITER DATED FEBRUARY 19, 2014 WHICH, IN TURN, RULED THAT THE PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED FROM WORK.

In sum, the main issues to be passed upon by us in this case are as follows: (1) whether or not the private respondent had abandoned his employment, and (2) whether or not the private respondent was illegally dismissed from work by the petitioner.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find that the NLRC did not commit a grave abuse of discretion in ruling that the private respondent did not abandon his work and, consequently, in finding his dismissal from employment as illegal.

In the instant petition, the petitioner averred that the private respondent abandoned his employment as shown by his absence from work starting on September 11, 2013 without giving any notice to his employer.

The contention of the petitioner is untenable.

Abandonment, as a just and valid ground for dismissal, means the deliberate and unjustified refusal of an employee to resume his or her employment. It is well-settled that, for abandonment of work to be a valid ground for dismissal, there must be a deliberate and unjustified refusal on the part of an employee to resume his work. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment.[7] This intent cannot be lightly inferred or legally presumed from certain ambivalent acts.[8]

Corollary thereto, mere absence from work is not sufficient.[9] There must be evidence not only of the failure of an employee to report for work or his or her absence without valid or justifiable reason, but also of his or her intention to sever the employer-employee relationship. This must be accompanied by manifest acts unerringly pointing to the fact that the employee simply does not want to work anymore.[10] In the case at bench, the petitioner failed to adduce evidence of any overt act of the private respondent which would show his actual intent to abandon his employment. It must be noted that the private respondent continued to work without receiving his salary. What merely prompted him to go home to the Philippines was when his employer told him to quit his job, pack up his belongings and go straight to the airport as somebody would monitor his movement.

More importantly, thereafter, the private respondent immediately filed a complaint for illegal dismissal on September 12, 2013, or just two (2) days after his arrival to the Philippines from Singapore. This alone negates any intention on the part of the private respondent to abandon his work. In this regard, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal could not, by logic, be said to have abandoned his or her work.[11] It could not, therefore, be rightfully said that the private respondent had abandoned his employment. On the contrary, it was his employer who prevented him from performing his duties and who ordered him not to report for work anymore.

At this point, it cannot be overly emphasized that the dismissal of an employee should be for any of the just and authorized causes enumerated in the Labor Code. Since the petitioner in this case utterly failed to justify the private respondent's discharge on the basis of abandonment of work, we agree with the finding of the Labor Arbiter and the NLRC that he was illegally dismissed from work by the petitioner.

Further, it must be stressed that abandonment of work does not, per se, sever the employer-employee relationship. It is merely a form of neglect of duty which is, in turn, a just cause for termination of employment. The operative act that would ultimately put an end to this relationship is the dismissal of the employee after complying with the

procedure prescribed by law. The employer must furnish the worker or employee sought to be dismissed with two (2) written notices, i.e., (a) notice which appraises the employee of the particular acts or omissions for which his dismissal is sought; and, (b) subsequent notice which informs the employee of the employer's decision to dismiss him.

It must be noted, however, that no written notice was ever sent by the petitioner informing the private respondent that he had been terminated due to abandonment of work. Private respondent was, thus, denied the opportunity to defend the charges against him. This failure on the part of the petitioner to comply with the twin-notice requirement further underscored the irregularity surrounding his dismissal from work.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case and AFFIRMING the Decision dated July 31, 2014 and Resolution dated September 17, 2014 issued by the National Labor Relations Commission in NLRC LAC No. (L)-03-000285-14 (NLRC NCR Case No. (L)-09-12918-13).

SO ORDERED.

Ybañez, and Paredes, JJ., concur.

[1] Rollo, pages 3-13.

[2] Ibid, Annex "B", pages 26-34.

[3] Ibid, pages 15-25.

[4] Ibid, Annex "C", pages 36-38.

[5] Ibid., page 41.

[6] Ibid., pp. 15-25.

[7] Metro Transit Organization, Inc. vs. NLRC, G.R. No. 119724, May 31, 1999 citing De Paul/King Philip Customs Tailor vs. NLRC, G.R. No. 129824, March 10, 1999.

[8] De Paul/King Philip Customs Tailor vs. NLRC, supra.

[9] Lambo vs. NLRC, G.R. No. 111042, October 26, 1999.

[10] Ibid.

[11] Supra on note 9.

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