

PRINCE OF WALES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND LEONIDES CALISAY, RESPONDENTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion, the Decision[1] of the National Labor Relations Commission (NLRC) dated October 20, 2003 which affirmed the Decision[2] of the Labor Arbiter dated December 21, 2001 finding petitioner guilty of illegal dismissal and ordered the reinstatement of petitioner to her former position plus full backwages, service incentive leave pay and 13th month pay. Likewise assailed is the Resolution[3] of the NLRC dated December 7, 2004 denying petitioner's motion for reconsideration.

The antecedent facts:

Sometime on May 1992, private respondent Leonides Calisay was employed as kitchen staff/helper at Prince of Wales at Makati City, a pub and restaurant owned and managed by Universal Gourmet Foods, Inc. She regularly worked from Tuesday to Sunday, from 7:00 a.m. to 4:00 p.m. Her assigned rest day is Monday.

On May 3, 2000, private respondent was terminated from employment for allegedly being gainfully employed in another restaurant. Private respondent alleged that her dismissal from work stemmed from an incident that happened on April 30, 2000, Sunday, when she absented herself for work due to extreme colds and flu. She also did not report for work on Monday, May 1, 2000, considering that it was her rest day and at the same time, a legal holiday (Labor Day). On May 2, 2000, private respondent was still physically indisposed and was advised by her doctor at St. Martin Medical Laboratory Clinic to take a rest for three to four days.

When private respondent reported for work on May 3, 2000, a memorandum[4] for termination was given to her and informing her that she was gainfully employed by another restaurant and that her absences from April 30 to May 2, 2000 was considered by management as abandonment.

Hence, private respondent filed a complaint for illegal dismissal with claims for non-payment of overtime pay, service incentive leave pay, premium pay for holiday, rest day pay and 13th month pay. She contends that petitioner did not comply with the substantial and procedural due process prior to her dismissal.

For its part, petitioner alleged that private respondent started working in February 1998 and ended her employment on May 3, 2000 with a Quitclaim, Release and Waiver. Although private respondent worked with the company in 1992, she worked on and off and her latest employment was in February 1998. Petitioner maintains that private respondent was not illegally dismissed because she abandoned her work by her failure and refusal to report for work for an unreasonable length of time. Petitioner claims that private respondent's separation from the company was for a valid cause, citing therein Article 282 (a), (b) and (c) of the Labor Code, as amended. Private respondent has not been regularly reporting for work, habitually absented herself and neglected her duties. She requested for a shift change giving personal reason and has requested to work in the morning. Petitioner found out after investigation, however, that private respondent was employed by Glicerio Unas, petitioner's Cook who is

moonlighting as a Caterer illegally using the supplies of petitioner. This is clearly conflict of interest, willful breach of trust, and in willful disobedience of the orders of petitioner. Finally, petitioner avers that private respondent was accorded due process of law. She was called by management to explain where she admitted working for another, a serious misconduct under petitioner's policies and general practices of restaurants, which was made known to her from the start of her employment through her contract of employment. She was asked to choose between the two jobs and she chose the other. Thus, petitioner considered private respondent to have abandoned her employment, to which it issued the memorandum terminating her employment.

On December 21, 2001, the Labor Arbiter issued a Decision finding private respondent to have been illegally dismissed from employment, the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding the respondent company guilty of illegal dismissal.

In view thereof, respondent Prince of Wales – Makati, owned and operated by Universal Gourmet Corporation is hereby ordered to reinstate complainant Leonides Calisay to her former position plus full backwages from 3 May 2000 up to her actual reinstatement, computed as of even date as follows:

$P 223.50 \times 26 \text{ days} \times 16 \text{ months} = P 92,976.00$

Respondent company is also ordered to pay complainant Calisay her:

a.) Service Incentive Leave Pay for three (3) years:

$P 223.50 \times 5 \times 3 \text{ years} = P 3,352.50$

b.) 13th month pay for three (3) years:

$P 223.50 \times 26 \text{ days} \times 3 \text{ years} = P 17,433.00$

All other claims are dismissed for lack of merit and/or factual basis.

SO ORDERED.”

The NLRC dismissed petitioner's appeal through its Decision promulgated on October 20, 2003. Petitioner moved for reconsideration but it was likewise denied in the Resolution dated December 7, 2004. The NLRC ratiocinated that the Labor Arbiter was correct in stating that herein petitioner failed to substantiate its accusation that there was conflict of interest amounting to breach of trust and confidence for private respondent to maintain another job with the cook who was moonlighting as caterer and her alleged absence for an unreasonable length of time. Further, the quitclaim signed by private respondent cannot be used to bar her other claims as she signed it under protest, as indicated in the voucher, so that she can receive her salary and holiday pay.

Hence, this petition.

Petitioner contends that there was misappreciation of facts on the part of the NLRC in finding that the appealed decision is supported by substantial evidence. Private respondent's only evidence was the May 3, 2000 Memorandum while petitioner presented the Quitclaim duly admitted by petitioner, the memorandum given prior to termination, the voucher showing that private respondent received all her benefits under the law, and the payroll showing not only private respondent's receipt of all her benefits but also her habitual absenteeism and tardiness. The fact that private respondent chose the other employment is a clear evidence of abandonment and that there was no dismissal. Thus, NLRC committed grave abuse of discretion when it gave credence to the factual findings of the Labor Arbiter when there is no substantial evidence to support the same.

The petition is devoid of merit.

To constitute a valid dismissal, it is imperative that the employer shows that the employee was terminated for a

just or authorized cause and it must also prove that it observed procedural due process. In this case, petitioner anchors the validity of petitioner's dismissal on Article 282 (a), (b) and (c) of the Labor Code and maintains that it observed due process before it terminated the employment of petitioner. However, both the Labor Arbiter and the NLRC found, on the basis of the evidence proffered, that private respondent was illegally dismissed.

We have carefully and thoroughly reviewed the records of the case and found no grave abuse of discretion committed by the NLRC when it affirmed the decision of the Labor Arbiter finding petitioner guilty of illegal dismissal. Petitioner failed to fully substantiate its allegation that private respondent is gainfully employed by another restaurant, conflicting with her employment at the Prince of Wales. No other evidence was offered by petitioner other than the sworn statement of Rosalinda Ito to the effect that private respondent admitted, during a conference with the management, having maintained two (2) jobs of conflicting interest.[5]

To Our mind, this other restaurant referred to by petitioner is the catering business of Glicerio Unas, petitioner's Cook, who is moonlighting as a caterer. As stated by Unas, he used to accept catering projects and he would ask private respondent to assist him for a fee.[6] If this is the other job referred to by petitioner, it cannot be said, therefore, that private respondent is gainfully employed in another restaurant. Private respondent cannot be considered to have been permanently employed elsewhere. Nor can it be said, more importantly, that there is conflict of interest amounting to breach of trust and confidence for maintaining another job. Private respondent does not render her services to a business rival of petitioner. The catering business of Unas, to which private respondent assists, is not a business rival of petitioner, which is a pub and restaurant. Thus, We cannot say that there is an act of disloyalty, serious misconduct and willful breach of trust on the part of private respondent, which would justify her dismissal from employment.

We are aware of the fact that the salary of a regular rank-and-file employee, like private respondent, is just enough and sometimes not sufficient to meet her daily needs. Private respondent cannot be faulted for being resourceful in finding other ways to augment her meager salary by doing part-time job with Glicerio Unas in his catering business. Nowhere can it be found in the records that she has been absent for an unreasonable length of time because she was assisting in the catering business of Unas. If it is indeed true that private respondent has habitually absented herself from work, petitioner should have meted private respondent with a disciplinary action or a stern warning that a repetition of the same would cause her dismissal from employment. We cannot find any memorandum or notice to this effect.

Likewise, We cannot subscribe to petitioner's assertion that the fact that private respondent chose the other employment is a clear evidence of abandonment. For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employees has no more intention to work.[7]

In this case, it was not established that there was a deliberate and unjustified refusal on the part of private respondent to return to work. Her absence from April 30 to May 2, 2000 is justified by her illness. She was advised by her doctor at St. Martin Medical Laboratory Clinic to take a rest for three to four days, as evidenced by a Medical Certificate attached as Annex "B" to her Position Paper submitted before the Labor Arbiter. Mere absence is not sufficient to prove abandonment. It must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[8] Moreover, the charge of abandonment is negated by the immediate filing of private respondent of a complaint[9] for illegal dismissal against petitioner. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so, when it includes a prayer for reinstatement.[10] Furthermore, petitioner failed to provide substantial evidence that private respondent has been absent from work for an unreasonable length of time. Basing on the Payrolls

(from February 14, 1998 to December 15, 1998)[11] submitted by petitioner, We observed that private respondent was only absent for one, two or three days in several months, and her absences have been duly deducted from her gross pay. We have meticulously examined the Payrolls submitted by petitioner and We found that private respondent has no absent for the months of February,[12] March,[13] May,[14] June,[15] October[16] and November[17] 1998. She has one (1) absent in April,[18] September[19] and December,[20] two (2) days absent in July[21] and three (3) days absent in August[22] 1998. It appears that private respondent's absences cannot be considered as gross or habitual and that she was never absent for an unreasonable length of time, contrary to petitioner's asseverations.

Aside from the absence of a valid cause to justify the dismissal of private respondent, petitioner likewise failed to observe procedural due process. It failed to furnish private respondent with two written notices before termination of her employment – (1) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss her.[23] Perusing over the records of the case, petitioner only offered the second notice, which informs private respondent of its decision to dismiss her. It failed to furnish private respondent with the first of the required two (2) notices. The conference with management cannot be a substitute for the actual observance of notice and hearing.[24]

The execution of the Release, Waiver and Quitclaim[25] by private respondent does not estop her from recovering further benefits to which she is entitled under the law, considering that she signed the quitclaim under protest. While it is true that not all waivers and quitclaims are invalid as against public policy, it must be shown, however, that the person making the waiver did so voluntarily, with full understanding of what she was doing, and the consideration for the quitclaim is credible and reasonable.[26] That is not the case here. Thus, it is but proper that private respondent should be paid her service incentive leave pay and 13th month pay, to which she is legally entitled under the provisions of the Labor Code. However, We modify the award of 13th month pay to two (2) years only, considering that petitioner offered proof that it has paid private respondent her 13th month pay for the year 1998.[27]

It is a settled rule in administrative and quasi-judicial proceedings that in determining the legality of an employer's dismissal of an employee, substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[28] It is likewise a settled rule that the burden of proving the legality of an employee's dismissal rests on the employer and his failure to do so would result in a finding that the dismissal is unjustified and therefore, illegal. In this case, no sufficient and substantial evidence was offered by petitioner. More so, petitioner failed to discharge its burden in proving the validity of private respondent's dismissal from employment. Ineluctably, private respondent's dismissal from work is unjustified and therefore, illegal.

WHEREFORE, finding no grave abuse of discretion amounting to lack or excess of jurisdiction committed by public respondent National Labor Relations Commission (NLRC) in issuing the assailed Decision, the instant petition is DISMISSED. The Decision of the NLRC dated October 20, 2003 is hereby AFFIRMED, subject to a recomputation of the 13th month pay awarded to private respondent Leonides Calisay, excluding therein the year 1998.

SO ORDERED.

Dacudao, (Chairman) and Arevalo-Zenarosa, JJ., concur.

[1] Annex “B” of the Petition, Rollo, pp. 18-27.

[2] Annex “E” of the Petition, Rollo, pp. 153-158.

[3] Annex “A” of the Petition, Rollo, pp. 14-17.

[4] Rollo, p. 39.

[5] Rollo, pp. 189-190.

[6] Sworn Statement of Glicerio Unas, Rollo, p. 28.

[7] Agabon vs. NLRC, 442 SCRA 573, November 7, 2004, citing Sta. Catalina College vs. NLRC, 416 SCRA 233, November 19, 2003.

[8] De Ysasi III vs. NLRC, 231 SCRA 173, March 11, 1994.

[9] Annex “D” of the Petition, Rollo, p. 29.

[10] Globe Telecom, Inc. vs. Florendo-Flores, 390 SCRA 201, September 27, 2002, citing Icawat vs. NLRC, 334 SCRA 75, June 20, 2000.

[11] Annex “D” of Petitioner’s Position Paper, Rollo, pp. 55-141.

[12] Rollo, p. 58.

[13] Rollo, p. 61, 65.

[14] Rolo, p. 78, 81.

[15] Rollo, pp. 85-86.

[16] Rollo, p. 116, 121.

[17] Rollo, p. 125,

[18] Rollo, p. 69, 74.

[19] Rollo, p. 107,

[20] Rollo, p. 132.

[21] Rollo, p. 92, 96.

[22] Rollo, p. 100, 104.

[23] Pepsi-Cola Bottling Co. vs. NLRC, G. R. No. 101900, June 23, 1992.

[24] Ibid.

[25] Rollo, p. 38.

[26] Periquet vs. NLRC, G.R. No. 91298, June 22, 1990.

[27] Rollo, pp. 136-137.

[28] Jose Salvador vs. Philippine Mining Service Corporation, G.R. No. 14876, January 22, 2003.

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