

ROBINSONS GALLERIA/ROBINSONS SUPERMARKET CORPORATION AND/OR JESS MANUEL, PETITIONERS, VS. NLRC FIRST DIVISION AND IRENE R. RANCHEZ, RESPONDENTS.

Ponente: DIMARANAN-VIDAL, J.

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DIMARANAN-VIDAL, J.:

Before us is a petition[1] under Rule 65 of the Revised Rules of Court filed by Petitioner ROBINSONS GALERIA/ROBINSONS SUPERMARKET CORPORATION and/or JESS MANUEL from the Decision[2] dated 20 October 2003 of the National Labor Relations Commission – First Division ordering the reinstatement of Private Respondent IRENE R. RANCHEZ with full backwages from 30 October 1997 until her actual reinstatement, and its Resolution[3] dated 21, July 2005 denying Petitioners’ Motion for Reconsideration[4]

THE FACTS

As summarized by Labor Arbiter BABIANO and as adopted by the NLRC:

“Complainant formerly worked as Cashier in the respondent company’s Quezon City supermarket branch. On October 30, 1997 she reported to her supervisor the loss of cash which she had placed in the company locker. It appears that after a cash count, the sum of P20,299.00 was found missing. Operation Manager Jess Manuel, a co-respondent herein, forthwith ordered complainant strip-searched but the same yielded nothing. Although complainant acknowledged her responsibility and requested that she be allowed to settle her obligation, Manuel referred the matter to the police which conducted an investigation and requested the Quezon City Prosecutor’s Office for an inquest (See Report, p. 58, record). On November 5, 1997 an information for Qualified Theft was filed with the Quezon City Regional Trial Court (See p. 61, record). Complainant was detained for two (2) weeks in jail. On March 12, 1998, complainant was sent by mail a notice of ‘Termination and/or Expiration of Probationary Employment’ dated March 9, 1998. “Complainant asserts that she was dismissed, albeit constructively when she was strip-searched and divested of all dignity and summarily thrown in jail. She could not have been expected to go back to work after being allowed to post bail because her continued employment had been rendered ‘impossible, unreasonable and unlikely’. Complainant pointed out that at the time the money was found missing, it was not with her but locked in a company locker and that the company had failed to provide them with ‘strong locks and proper security in the work place’. She stressed that she was not ‘caught in the act’ and even reported the money was missing. Complainant claims she was denied due process. “Respondents, on the other hand, assailed the reinstatement of complainant saying that she was a probationary employee and that her probationary contract of employment had in the meantime lapsed in March 14, 1998. Hence, her reinstatement was rendered moot and academic. Besides, even if her probationary contract had not yet expired, the offense that she committed would nonetheless militate against her regularization.[5]”

On 25 November 1997, Respondent filed a Complaint[6] for illegal dismissal with the Office of the Labor Arbiter, NLRC. On 10 August 1998, Labor Arbiter MELQUIADES DEL ROSARIO rendered a Decision[7] dismissing the claim for illegal dismissal but ordering Petitioners to accept Respondent to her former or equivalent work. Respondent filed her Motion for Reconsideration[8]. Petitioners for their part, filed a Motion for

Partial Reconsideration Cum Alternative Appeal[9]. On 20 October 2003, the NLRC First Division rendered the challenged decision *supra*, the dispositive portion of which reads:

WHEREFORE, the appealed decision is SET ASIDE. The respondents are hereby ordered to immediately reinstate complainant to her former or equivalent position without loss of seniority rights and privileges and to pay her full backwages computed from the time she was constructively dismissed on October 30, 1997 up to the time she is actually reinstated.

On 19 January 2004, Petitioners filed a Motion for Reconsideration *supra* of the above decision. However, the NLRC denied said motion in its assailed Resolution *supra*. Hence, the instant petition interposing the lone argument, to wit:

THE PUBLIC RESPONDENT NLRC – FIRST DIVISION HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION IN RULING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED BY THE PETITIONERS FOR SUCH RULING IS NOT SUPPORTED BY AND EVEN CONTRARY TO LAW AND FACTS ADDUCED AND ADMITTED BY THE PARTIES DURING THE PROCEEDINGS.[10]

OUR RULING

Petitioners anchor their allegation of grave abuse on the part of the NLRC based on the theory that Respondent (1) abandoned her work, (2) she did not qualify for regular employment, and (3) there is just cause for her dismissal.

We are not persuaded.

Abandonment has been defined as the deliberate and unjustified refusal of an employee to resume his employment – it is a form of neglect of duty, hence, a just cause for termination.[11] In *Unicorn Safety Glass, Inc. vs. Basarte*,[12] the Supreme Court discussed the requisites of abandonment, in this wise:

The requisites to constitute abandonment are: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship.

In the instant case, it was not denied that the Respondent was strip searched after she had reported the loss of the money. And thereafter placed in custody of the police, and thence charged with Qualified Theft for which she languished in jail for two weeks. The fact that she was brought to Station 8, Quezon City was confirmed by the Incident Report[13] executed by FRED DINAMPO and noted by Petitioner JESS MANUEL. Said treatment of the Respondent was tantamount to a predetermination that it was she who had taken the missing cash, constituting a clear discrimination of the Respondent. The highhanded method done by Petitioners upon the hapless Respondent when she was strip searched and incarcerated thereafter despite lack of sufficient evidence pointing to her as the culprit for the loss of the money definitely made Respondent's continued employment with Petitioner, at the very least, unlikely.

In their attempt to justify their stance that Respondent abandoned her job, Petitioners tried to pass the blame to the police authorities contending that they are merely protecting their rights when they made the complaint before the police and that after this referral, the matter was already under the jurisdiction of the police over which they have no control. They even tried to blame Respondent in not taking action against the police for the supposed harsh treatment they accorded her. Be that as it may, Respondent was placed in the hands of the police by no other than the Petitioners themselves. They referred Respondent to the police by reason of the alleged theft without, however, first determining the actual involvement of the Respondent therefor. Concededly, the Respondent may be a suspect being in custody of the money but absent any sufficient evidence to pin down the Respondent as the culprit, the least Petitioners could have done was to point out to the police about this circumstance which could

have spared the Respondent from the “harsh treatment” given her by the police, and accorded, ultimately, accorded the privilege of a preliminary investigation.

Consequently, Respondent could not be reasonably expected to report back for work considering that treatment she had experienced in the hands of the Petitioners, which significantly constitute constructive dismissal. In *Chiang Shek College vs. Court of Appeals*[14], the Supreme Court succinctly discussed what constitutes a constructive dismissal, to wit:

Case law defines constructive dismissal as a cessation from work because continued employment is rendered impossible, unreasonable, or unlikely; when there is a demotion in rank or a diminution of pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. (Underscoring supplied)

A fortiori, we rule out abandonment in this case for to constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship[15] which undoubtedly is absent in this case.

Anent the issue that Respondent did not qualify for regular employment after the expiration of her probationary employment contract, suffice it to say that the records is bereft of any showing that Respondent did not conform to the standards set to her at the time of her employment on 15 October 1997 nor is there any showing what are these standards. Article 281 of the Labor Code provides:

ART. 281. PROBATIONARY EMPLOYMENT Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee. (Underscoring supplied)

Anent the existence of a just cause for termination, Petitioners attribute to Respondent serious misconduct and fraud or breach of confidence under Article 282 of the Labor Code. However, as discussed above, there was no clear and sufficient evidence that Respondent was the culprit of the alleged theft in question. What the Petitioners have at most, as pointed out by the NLRC, is merely circumstantial evidence against the Respondent. In *Labor vs. NLRC*[16], the Supreme Court ruled:

A charge of dishonesty involves serious misconduct on the part of the employee, a breach of the trust reposed by the employer upon him. The rule that proof beyond reasonable doubt is not required to terminate an employee on the charge of loss of confidence and that it is sufficient that there is some basis for such loss of confidence is not absolute. The right of an employer to dismiss employees on the ground that it has lost its trust and confidence in him must not be exercised arbitrarily and without just cause. For loss of trust and confidence to be a valid ground for an employee’s dismissal, it must be substantial and not arbitrary, and must be founded on clearly established facts sufficient to warrant the employee’s separation from work. (Underscoring supplied)

Otherwise stated, the above ruling requires that facts constituting just cause should be clearly established to warrant the employee’s dismissal. However, in the present case, the evidence relied upon by Petitioners, being at the very best circumstantial, falls short of the standard required by law.

Moreover, it bears stressing at this juncture that the determination of probable cause and the filing of the criminal case for Qualified Theft against the Respondent by the Office of the Prosecutor of Quezon City is not binding to the labor tribunal which is precisely the point of the Petitioners’ cited case, *Starlite Plastic Industrial Corp., vs.*

NLRC[17] where the Supreme Court, in decreeing that there was failure to substantiate the theft charge against the dismissed employee, further ruled:

At the outset, the Court finds it necessary to emphasize that contrary to the tenor of the Labor Arbiter's decision, a dismissed employee is not required to prove his innocence of the charges leveled against him by his employer. The Court has laid down the rule that in termination cases, the burden of proving just cause of dismissing an employee rests on the employer and his failure to do so would result in the finding that the dismissal is unjustified.

The conviction of an employee in a criminal case is not indispensable to warrant his dismissal by his employer and the fact that a criminal complaint against the employee has been dropped by the city fiscal is not binding and conclusive upon the labor tribunal.

xxx; that although the dropping of a criminal prosecution for an employee's alleged misconduct does not bar his dismissal and proof beyond reasonable doubt is not necessary to justify the same, still the basis thereof must be clearly and convincingly established. (Underscoring supplied)

WHEREFORE, premises considered, the challenged Decision of the National Labor Relations Commission is **AFFIRMED** with **MODIFICATION** in that should reinstatement be no longer possible in view of the strained relation between the parties, Petitioners are ordered to pay Respondent separation pay[18] equivalent to one (1) month pay in addition to backwages from the date of dismissal until the finality of the assailed decision[19].

SO ORDERED.

Reyes, (Chairman) and Lampas Peralta, JJ., concur.

[1] Rollo, pp. 2-19

[2] Id, pp. 65-72

[3] Id pp. 86-88

[4] Id pp. 73-84

[5] Id. pp. 66-67

[6] Id. p. 25

[7] Id. pp. 47-53

[8] Id. pp. 61-64

[9] Id .pp. 54-57

[10] Id.p. 8

[11] Agabon vs. NLRC, 442 SCRA 573

[12] 444 SCRA 287

[13] Rollo, p. 89

[14] 437 SCRA 171

[15] Samarca vs. Arc-Men Industries, Inc., 413 SCRA 162.

[16] 248 SCRA 183**[17] 171 SCRA 315**

[18] Esmalin vs. NLRC, G.R. No. 67880, September 15, 1989.

[19] Gaco vs. NLRC, G.R. No. 104690, February 23, 1994.

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