

**MEY I. SARMIENTO, DARLEN B. CABRIA AND MA. LUISA D. CASADOR,
PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (
THIRD DIVISION), COPYTRADE DIGITAL COPY SYSTEMS, CESAR J.
ORB...**

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a petition for Certiorari[1] filed by Mey Sarmiento, Darlen Cabria and Ma. Luisa Casador ("petitioners") pursuant to Rule 65 of the 1997 Revised Rules of Court seeking to reverse and set aside the Decision[2] promulgated by the Third Division of the National Labor Relations Commission ("NLRC") dated June 30, 2014 in NLRC NCR Case CN. 06-08114-13 and 06-08991-13 which reversed and set aside the Decision promulgated by Labor Arbiter Joel Lustria ("Labor Arbiter") on December 20, 2013. Likewise assailed in the instant petition is the Resolution[3] promulgated by the NLRC on July 30, 2014 which denied reconsideration of the June 30, 2014 Decision.

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

Private respondent Copytrade Digital Copy Systems ("Copytrade" for brevity) is a domestic corporation, duly registered under Philippine laws and engaged in the business of duplicating or copying various documents and selling copy supplies such as bond paper, toner, copying machines, spare parts and the like. Individual respondents Cesar J. Orbe and Mylene Policarpio are the president and area manager of Copytrade, respectively.

On the other hand, herein petitioners, Mey I. Sarmiento (Sarmiento), Darlen B. Cabria (Cabria) and Ma. Luisa D. Casador (Casador) ("petitioners") were employed by Copytrade as machine operators. As such machine operators, the petitioners were paid on purely commission basis or per task basis.

Petitioners filed a consolidated complaint against Copytrade and its officers on June 4, 2013 for purported acts of illegal dismissal. After the parties failed to amicably settle their differences, the Labor Arbiter directed them to submit their respective position papers.

In their position paper, the petitioners alleged the following acts of illegal dismissal which were purportedly committed by Copytrade, to wit:

"WE, MEY ICAMEN SARMIENTO, DARLEN B. CABRIA and MA. LUISA D. CASADOR, Filipinos, of legal ages, single/married and with common address at Blk. 6, Lot 10 St. Francis St., Maricaban, Pasay City, after having been duly sworn to an oath, depose and state as follows:

"x x x

"3. That our dismissal was illegal because:

"a.

There was no just cause as we did not commit any violation.

"b.

No due process as we were not first investigated.

"c.

No termination letter stating the cause.

"d.

We did not left or abandoned, we were dismissed.

"e.

We were not recalled back to work.[4]"

In the aforesaid position paper, petitioner Sarmiento stated that she was hired as a machine operator at Copytrade's branch in Sta. Mesa and that she had been receiving an average commission of Php1,651.00 every 15 days. Sarmiento further stated that the said branch of Copytrade closed on May 15, 2013 and the latter never gave her a new assignment.

As for petitioner Cabria, she stated that she was a machine operator assigned at Isetann-Recto branch of Copytrade and had been receiving an average commission of Php1,651.00 every 15 days. She admitted that she was absent from August 25 to September 3, 2012, but she contended that she had a prior permission from Copytrade's management. Cabria further asseverated that she reported back for work but Copytrade refused to accept her.

Meanwhile, petitioner Casador, stated that she was also a machine operator who was initially assigned at Copytrade's Metropoint branch. Casador evinced that she was transferred several times to Copytrade's different branches. However, she lamented that, in all instances of her transfer, she was not given any machine to work on.

For its part, private respondent Copytrade, alleged in its Position Paper[5] that there was no illegal and/or constructive dismissal in this case, as there was no actual dismissal to speak of. Copytrade alleged that the petitioners stopped reporting for work, apparently after they were transferred to another branch by the former. In fact, Copytrade exerted efforts to require the petitioners to report back to work by sending them letters through registered mail to their last known addresses. It even tried to convince the petitioners to report back for work during the preliminary conferences set by the labor arbiter, but to no avail.

Copytrade averred that, even the petitioners admitted in their own position paper, that no termination letters were issued to them. Hence, even if the law imposes the burden to prove the legality of employees' dismissal to employers, it must first be established for a fact that the employees were dismissed.

Moreover, Copytrade alleged that its act or decision to transfer the petitioners from one branch to another did not constitute illegal dismissal, as this was a valid exercise of management prerogative.

Subsequently, on December 20, 2013, the Labor Arbiter ruled in favor of the herein petitioners. The dispositive portion of the Labor Arbiter's Decision provides:

"WHEREFORE, premises considered, judgment is hereby rendered, declaring respondents guilty of illegal dismissal. Accordingly, respondent are hereby ordered jointly and severally liable:

1)

To reinstate complainants MEY I. SARMIENTO, DARLEN CABRIA and MA. LUISA CASADOR to their former and/or substantially equivalent positions, without loss of seniority rights, privileges, and other benefits.

2)

To pay complainants their backwages. As of this date, their backwages amounted to, as follows:

NAMES

BACKWAGES

Mey I. Sarmiento

P77,775.36

Darlen Cabria

P183,293.76

Ma. Luisa Casador

P139,426.56

3)

To pay complainants 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."

Unsatisfied with the foregoing disposition by the Labor Arbiter, Copytrade appealed from the same to the NLRC. On June 30, 2014, the NLRC promulgated the assailed Decision, which reads:

"WHEREFORE, premises considered, respondents' Partial Appeal is GRANTED.

"The Decision of the Labor Arbiter is REVERSED and SET ASIDE. The above-entitled case is DISMISSED for lack of merit.

"SO ORDERED.[6]"

Herein petitioners sought for a reconsideration of the said Decision rendered by the NLRC. On July 30, 2014, the NLRC promulgated a Resolution which denied the herein petitioners' Motion for Reconsideration.

Unstirred by the foregoing disquisition of the NLRC, petitioners filed the instant petition with this Court raising the following issue of grave abuse of discretion purportedly committed by the NLRC:

WHETHER THE NLRC WAS CORRECT AND DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN THEY REVERSED THE ARBITER'S DECISION AND DISMISSED THE CASE FOR LACK OF MERIT.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be devoid of merit.

In the present case, the petitioners alleged that the NLRC committed grave abuse of discretion when it declared that the petitioners were not illegally dismissed from their employment as there was no actual dismissal made; hence, petitioners are not entitled to the reliefs prayed for. Petitioners insisted that they were, in fact, illegally dismissed from their employment by the herein private respondents. Petitioners argued that:

"The NLRC reversed the Arbiter's Decision below because allegedly there was no evidence that petitioners

were dismissed by the respondents from their employment. Allegedly, respondent did not issue them any Termination Letter and was not prevented from entering the premises after they were given assignments.

"It is submitted that the NLRC committed grave abuse of discretion in their findings of facts.

"The allegation of respondents that petitioners abandoned their work is far from the truth. The truth was that they were not given assignment at all. The letters which respondents allegedly sent to petitioners and which they presented in evidence were all fake. Petitioners never receive those letters. There was no proof thereof. They were never recalled back to work. Petitioners never absented from work without valid reasons. They never have any intention to severed their employer-employee relationship with respondents. They love their work and they wanted to continue working. That was the reason why they immediately filed this case for illegal dismissal with prayer for reinstatement and backwages.[7]"

Likewise, petitioners claimed that the Labor Arbiter correctly ruled that:

"The Labor Arbiter below correctly held that that petitioners were illegally dismissed. It was correctly held that the respondents failed to carry out the burden providing that the dismissal of petitioners was for a valid and authorized cause. They have not introduced substantial evidence that the termination of petitioners from their employment was validly made. This being the case, they failed to discharge their duty that their dismissal was justified.

"The Labor Arbiter validly ruled that respondent's argument that they were never terminated has no basis in fact and in law. While respondents argue that petitioners were the one who reused to work, they still have to show that their transfer was done in good faith and was not motivated by ill will. The management prerogative to transfer personnel must be exercised without grave abuse o discretion and putting to mind the basic element of justice and fair play. In this case, respondents failed to sufficiently prove that the transfer is for just and valid cause and it is not unreasonable, inconvenient, or prejudicial to the employee making it liable for illegal dismissal.[8]"

Petitioners' contentions, ingenious as they may seem, are utterly baseless and devoid of merit.

Verily, while the employer bears the burden in illegal dismissal cases to prove that the termination was for valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service.[9]

In a termination dispute, the burden of proof of the dismissal of an employee for a just and valid cause rests on the employer. Such probative burden is premised upon the fact that dismissal is already well established or undisputed. But when the overt act of dismissal is denied by the employer, the burden of proof is shifted upon the employee to prove that he or she was indeed dismissed. Here, the petitioners failed to prove that they were, indeed, dismissed from their employment.

In the case of Sarmiento, she repeatedly claimed that she was illegally dismissed when Copytrade failed to transfer her to another branch or give her a new assignment. Petitioner Casador, on the other hand, alleged that she was transferred from one branch to another but she was not given a machine to work on. As for petitioner Cabria, she admitted that she had absented herself from work but this was purportedly with prior authorization from the management.

We, however, find it preposterous that none of the petitioners could provide a single evidence to substantiate their claims, except for the self-serving joint affidavit that they executed. They even admitted in their own position paper that no termination letter was issued to each one of them. We are also doubtful on Cabria's statement that she had filed the complaint immediately after the purported illegal dismissal. The record of this case, however, showed that she consolidated her claim with the other petitioners a year after she claimed to be illegally

dismissed.

Case law recognizes the employer's right to transfer or assign employees from one area of operation to another[10] or one office to another or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits and other privileges and it is not motivated by discrimination or made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[11] This matter is a prerogative inherent in the employer's right to effectively control and manage the enterprise.[12]

We had painstakingly reviewed the records of this case but we did not find any evidence or even allegation by the petitioners that their transfer to another branch was motivated by ill will. Evidently, the transfer of the petitioners was brought about by the business' need which is considered to be a valid exercise of management prerogative. The petitioners could not simply refuse to obey the management and then file a case for illegal termination after.

On this score, the NLRC's ratiocination in its Decision dated June 30, 2014 is apropos, to wit:

"Totality of the circumstances on record shows that aside from mere allegations, no evidence was proffered by the complainants that they were indeed dismissed from employment. There was no termination letter sent to complainants or any evidence that they were prevented from entering respondent's premises after they were not given any assignments and machines to work on.

"Further, complainants allegation of illegal dismissal is belied by the fact that after they failed to report for work, respondents sent them a letter informing them to return to work via registered mail. In fact, respondents have been consistent in their pleadings that complainants, up to the time of the filing of the above-entitled complaint, are still their employees and may report to work at any time. Complainants, in their pleadings, however, never professed their intention to return to work, despite prayer for reinstatement.

"Moreover, We disagree with the Labor Arbiter's findings that the letter notice sent to complainant were mere afterthought. Perusal of the said letter notices shows that the same were sent to complainants via registered mail days after they failed to report for work and prior to the filing of the above-entitled complaint. Mere denial of complainants that they did not receive said letter cannot overrule its evidentiary weight."

Indeed, the Supreme Court's ruling in the case of *Basay, et al. v. Hacienda Consolacion, et al.*[13] is instructive, to wit:

"We are not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause; however, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment. The one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. In this case, aside from mere allegations, no evidence was proffered by the petitioners that they were dismissed from employment. The records are bereft of any indication that petitioners were prevented from returning to work or otherwise deprived of any work assignment by respondents.

"xxx.

"It bears emphasizing that this case does not involve termination of employment on the ground of abandonment. As earlier discussed, there is no evidence showing that petitioners were actually dismissed. Petitioners' filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether they have been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account.

"In *Abad v. Roselle Cinema*, we ruled that the substantial evidence proffered by the employer that it had not terminated the employee should not be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. We held that such non sequitur reasoning

cannot take the place of the evidence of both the employer and the employee.

"Given that there was no dismissal to speak of, there can be no question as to the legality or illegality thereof."

The petitioners further contended that the "return-to-work" letters of Copytrade were "fake" and that none of them received the said letters. They also contended that the registry receipts were not sufficient to prove receipt of the said letters.

The petitioners, however, had only relied solely on their bare allegation that the letters presented by Copytrade were "fake". They, however, failed to at least substantiate their claim that these letters are, indeed, spurious. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[14] It is a well-settled rule in this jurisdiction that the onus probandi falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence.[15]

While we agree with the petitioners that the registry receipts were insufficient to prove that they did receive the "return-to-work" letters, we could not however disregard the fact that Copytrade was able to substantiate the fact of mailing. In their Rejoinder, Copytrade presented the copies of the registry return cards[16] from the Philippine Postal Corporation with a handwritten note "Unknown" by the postmaster.

Indubitably, in *Protector's Services, Inc. v. Court of Appeals*[17], the Supreme Court ruled that, when a mail matter is sent by registered mail, there exists a presumption set forth under Section 3(v) of Rule 131 of the Rules of Court that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid and (b) that it was mailed.

Accordingly, what is essential to prove the fact of mailing is the registry receipt issued by the Bureau of Posts or the Registry return card which would have been signed by the petitioner or her authorized representative.[18] Here, Copytrade was able to establish the fact that it had actually mailed the letters to the last known addresses of the petitioners based on its record.

All told, the herein assailed Decision dated June 30, 2014 and the Resolution dated July 30, 2014 of the NLRC do not appear to have been issued with grave abuse of discretion. Evidently, there was no hint of whimsicality nor gross and patent abuse of discretion as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law.

Thus, we find the assailed decision of the NLRC to be in accord with law and jurisprudence. There is no quibble that the NLRC applied the basic precepts of law and jurisprudence in promulgating its assailed decision and resolution.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case for lack of merit.

SO ORDERED.

[*]Paredes, and [**]Corales, JJ., concur.

[*] Acting Senior Member per Office Order No. 461-14-ABR dated, November 3, 2014

[**] Acting Junior Member vice J. Elbinias per Office Order No. 461-14-ABR dated, November 3, 2014

[1] Rollo, pages 3 – 16.

[2] Rollo, Annex "4", pages 21 – 28.

- [3] Rollo, Annex "5", pages 29 – 31.
- [4] Ibid, page 43.
- [5] Rollo, Annex "8", pages 45 – 64.
- [6] Ibid, pages 27 – 28.
- [7] Ibid, page 11.
- [8] Ibid, pages 10 – 11.
- [9] Montederamos v. Tri-Union Corporation, G.R. No. 176700, September 4, 2009.
- [10] Tan v. NLRC, 359 Phil. 499, 513 (1998).
- [11] Phil. Telegraph and Telephone Corp. v. Laplana, G.R. No. 76645, 23 July 1991, 199 SCRA 485, 492.
- [12] Escobin v. NLRC, 351 Phil. 973, 998 (1998).
- [13] G.R. No. 175532, April 19, 2010 .
- [14] LNS International Manpower Services v. Padua, G.R. No 179792, March 5, 2010.
- [15] Javier v. Flyace Corporation/Flordelyn Castillo, G.R. No. G.R. No. 192558, February 15, 2012
- [16] Ibid, pages 106 - 108
- [17] 386 Phil. 611, 623 (2000).
- [18] Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue, G.R. No. 150764, August 7, 2006.

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