

WILFREDO LLAGUNO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND PIN PIN PROTECTIVE & #038; SECURITY AGENCY, RESPONDENTS.

Ponente: BARRIOS, J.

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BARRIOS, J.:

In this special civil action for certiorari, Wilfredo Llaguno (or hereafter Llaguno) pleads that the Decision and Resolution of the National Labor Relations Commission (or NLRC) promulgated on May 20, 2002 and July 29, 2002 be reversed and set aside for having been issued with grave abuse of discretion. The assailed Decision modified the Decision of October 27, 2000 of Labor Arbiter Facundo Leda holding Llaguno's dismissal illegal while the assailed Resolution denied the motion for its reconsideration.

Starting July 31, 1996, Llaguno was employed by the respondent PIN PIN Security & Protective Agency (hereafter PINPIN) as security guard. He was detailed at LA Foods Ubdystruesm Ube and was thereafter transferred to Pasig Light Industrial Park (or Pasig Light) in Manggahan Village, Pasig City. But for allegedly acting as realtor agent or brokering the sale of townhouses while on duty, PINPIN relieved Llaguno from his post on January 18, 1999. Thereafter he was not given any assignment.

Llaguno initially filed with the Labor Arbiter a complaint for underpayment of wages and non-payment of overtime, premium, holiday and service incentive leave pays. But since he was not given any assignment since February 1999, he amended his complaint on November 18, 1999 to include the allegation of illegal dismissal. Also, he prayed for reinstatement with backwages.

PINPIN denied that it dismissed Llaguno. It averred that Llaguno was brokering the sales of units in Manggahan Village while on duty and so Pasig Light requested for his immediate transfer. Llaguno however refused and thereafter stopped reporting for work. PINPIN also denied the claim for underpayment of wages and non-payment of other benefits.

On October 27, 2000, the Labor Arbiter rendered a Decision decreeing that:

WHEREFORE, decision is hereby rendered declaring that complainant was illegally dismissed and was underpaid of his salaries.

However, considering that the relationship between the parties has already become strained, the respondents are ordered to pay complainant, jointly and severally, his separation pay, in lieu of reinstatement, backwages and salary differentials as computed in the total amount of THREE HUNDRED TEN THOUSAND SEVEN HUNDRED FIFTY FIVE & 35/100 (P310,752.35)

SO ORDERED. (pp. 27-28)

PINPIN appealed this to the NLRC which rendered the assailed Decision disposing that:

WHEREFORE, the decision appealed from is hereby MODIFIED in that the award of backwages is deleted and set aside.

All other findings are affirmed.

SO ORDERED. (p. 36, rollo)

Llaguno filed a motion for its reconsideration but this was denied by the NLRC in its Resolution of July 29, 2002. Defeated, Llaguno seeks relief through this Petition for Certiorari advancing the following grounds for the allowance of his petition:

- THE PUBLIC RESPONDENT GRIEVOUSLY ERRED WHEN IT RESOLVED THAT PETITIONER DID NOT ALLEGE A COMPLAINT FOR ILLEGAL DISMISSAL DESPITE THE FACT THAT AN AMENDED COMPLAINT WAS FILED WHERE IT STATED THIS ILLEGAL DISMISSAL AS A CAUSE OF ACTION.
- THE PUBLIC RESPONDENT IN ITS ATTEMPT TO WEAVE AND INCORPORATE TECHNICALITY HAD INTENTIONALLY SENT THE DECISION TO ANOTHER LAWYER KNOWING FULLY WELL THE NAME AND ADDRESS OF THE PETITIONER COUNSEL ON RECORD.
- PUBLIC RESPONDENT GRIEVOUSLY ERRED WHEN IT MODIFIED THE DECISION OF LABOR ARBITER, FACUNDO LEDA WHOSE DECISION IS BASED ON FULL BLOWN TRIAL, OTHER THAN THE SUBMISSION OF AFFIDAVITS AND POSITION PAPERS.
- THE PUBLIC RESPONDENT ERRED IN DELETING THE AWARD FOR BACKWAGES AND THE PRONOUNCEMENT THAT THERE IS NO COMPLAINT FOR ILLEGAL DISMISSAL. (p. 12, rollo)

The NLRC reversed the Labor Arbiter reasoning that:

. . . The form complaint and even his position paper are very clear that complainant-appellee did not seek and claim that he was dismissed. Thus, the decision of the Labor Arbiter a quo finding the dismissal of the complainant illegal and awarding full backwages is set aside. (p. 35, rollo)

Indeed Llaguno's original complaint was only for underpayment of wages and non-payment of other benefits. It was a standard and form complaint where he filled in the blanks. But mark that Llaguno filed an amended complaint on November 18, 1999 where he included illegal dismissal as his cause of action and prayed for his reinstatement with backwages (vide: Annex "D", rollo, p. 41). If this was not abundantly clear by then, it was made so in Llaguno's Supplemental Position Paper (pp. 75-79) and in PINPIN's Comment (pp. 80-81) where it denied Llaguno's claim of illegal dismissal. The NLRC thus acted whimsically in reversing the Labor Arbiter's ruling on the basis of its erroneous reasoning that illegal dismissal was never raised.

Having established that illegal dismissal was one of Llaguno's causes of action, We shall now determine whether PINPIN validly dismissed him.

Llaguno posits that PINPIN illegally dismissed him, on the other hand PINPIN claimed that Llaguno abandoned his job. It is well settled that in illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employee with clear and convincing evidence (*Casol vs. Purefoods Corporation*, G.R. No. 166550, September 22, 2005, 470 SCRA 585). Thus, it was incumbent upon PINPIN to show that the two requirements for a valid dismissal on ground of abandonment existed. In this case, unfortunately for PINPIN it failed to prove any such cause for Llaguno's dismissal.

On the other hand, to constitute abandonment, these two factors must concur: (i) the failure to report for work or absence without valid or justifiable reason; and (ii) clear intention to sever employer-employee relationship (*Chavez vs. NLRC*, G. R. No. 146530, January 17, 2005, 448 SCRA 478). Obviously, Llaguno did not intend to sever his relationship with PINPIN for at the time when he allegedly abandoned his job, he had just filed a complaint for underpayment of wages and non-payment of other benefits which was followed with an amendment

to include illegal dismissal. 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 (*Chavez vs. NLRC*, supra).

Also, if it were true that Llaguno abandoned his job, then PINPIN should have served him with a notice of termination on the ground of abandonment as required under Section 2, Rule XIV, Book V, Rules and Regulations Implementing the Labor Code (*Floren Hotel vs. National Labor Relations Commission*, G. R. No. 155264, May 6, 2005). But PINPIN failed to comply with the foregoing requirement, thereby bolstering further Llaguno's claim that he did not abandon his work but was rather illegally dismissed. As correctly found by the Labor Arbiter:

. . . it is quite perplexing why respondents at first anchored their position on the charge that it was their client, RFM, which demanded the relief of complainant for the reason that he was brokering on the sale of condominium or town house units to the prejudice of his job as security guard. This defense is averred in their Position paper and reiterated in their "Comment on the Supplemental Position paper of Complainant and Other Position Paper."

Surprisingly, as shown in the Joint Affidavit (Regarding testimony of Wilfredo Llaguno) of Edwin Tupaz and Ernesto Manatad, dated February 15, 2000, the respondents tried a new line of defense in that complainant was relieved from his post because he was caught sleeping by commander Molina of RFM while on duty at around midnight of January 16, 1999; that he was relieved upon demand of Commander Molina, then offered a new post at Western Marketing, Cubao, Quezon City but he rejected it demanding that he be returned to his assignment at RFM. This Office is not impressed by the submission of respondents. Considering that jobs are hard to find these days, it is hard to believe that complainant would be so selective of his job assignment. We find lucid and credible the latter's allegation that after his relief from RFM he went to respondent's office several times to ask for a new assignment.

It is well settled that in complaint for illegal dismissal, the defense of abandonment is incompatible with the immediate filing of the complaint for illegal dismissal. Moreover, if it were true that complainant went on AWOL and did not report for work anymore, the respondents would have written him and required him to explain his absence and/or to report for work.

The offer by respondents to accept complainant back for work after the filing of this complaint is only an afterthought and does not deserve any credence. (pp. 24-26, rollo)

Thus the lack of a valid and just cause in terminating Llaguno rendered his dismissal illegal. Under Article 279 of the Labor Code, an employee who is unjustly dismissed is entitled to reinstatement, without loss of seniority rights and other privileges, and to the payment of full backwages, inclusive of allowances, and other monetary benefits or their monetary equivalent computed from the time the compensation was withheld from him up to the time of his actual reinstatement (*Chavez vs. NLRC*, supra). However, as found by the Labor Arbiter, the circumstances obtaining in this case do not warrant Llaguno's reinstatement. A more equitable disposition would be an award of separation pay in addition to his full backwages, allowances and other benefits.

Hoary is the rule that a writ of certiorari is intended to redress grave abuse of discretion or lack of jurisdiction on the part of the public respondent (*Sy vs. Commission on Settlement of Land Problems*, G. R. No. 140903, September 12, 2000). We find that Llaguno has sufficiently alleged and shown, that the NLRC committed grave abuse of discretion in the issuance of its assailed Decision and Resolution. Indeed grave abuse of discretion may arise, as in this case, when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence (*Banal vs. Panganiban*, G. R. No. 167474, November 15, 2005). Hence the grant of certiorari in favor of Llaguno is proper under the premises.

WHEREFORE, the instant petition is GRANTED. The assailed Decision and Resolution of the NLRC are

REVERSED and SET ASIDE, and concomitantly the Decision dated October 27, 2000 of the Labor Arbiter is REINSTATED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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