

KING RICE MILL MILLING CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND DOMINADOR GARCIA, JR., RESPONDENTS.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

For resolution is petitioner King Rice Mill Milling Corporation's ("petitioner") petition for certiorari[1] under Rule 65 of the Rules of Court (the "Rules"), praying for the nullification of the Decision[2] of the Third Division of the public respondent National Labor Relations Commission ("NLRC"), in NLRC LAC No. 10-002931-13 promulgated on 30 October 2013, which modified the Decision[3] of the Labor Arbiter in NLRC Case No. RAB-III-02-19764-13, as well as the Resolution[4] of the NLRC denying petitioner's Motion for Reconsideration from the assailed Decision.

The 30 October 2013 Decision disposed:

"Wherefore, premises considered, the Decision dated September 16, 2013 is hereby MODIFIED by declaring that complainant DOMINADOR GARCIA, JR. was illegally dismissed and by ordering KING RICE MILL MILLING CORPORATION to pay complainant DOMINADOR GARCIA, JR, backwages and separation pay to be computed during the execution proceedings."

The assailed Resolution disposed:

"ACCORDINGLY, the instant Motion for Reconsideration is hereby DENIED for lack of merit.

No further Motions for Reconsideration shall be entertained.

SO ORDERED."

Now to the antecedents. The Labor Arbiter summarized the original position of the parties as follows:

" In complainant's position paper, he states that he was employed as a driver in respondent employer King Rice Mill from 1999 up to February 2013. He drove trucks for respondent in San Jose City, Nueva Ecija up to parts of Metro Manila and Southern Luzon. He alleges that he was not "on call" as he was suffered to remain with the rice mill and was required to be at a workplace all the time. He alleges that he was paid at P1,500.00 per trip, payable every trip. Further, complainant asserts that he suffered to work in an indefinite time beyond eight (8) hours per day and is required to be at work place (sic) seven days a week. He was at the workplace from 7:00 am to 7:00 in the evening. He also alleges that he used to work as mechanic of vehicles used in their trade.

Complainant further stresses that the amount of P1,500.00 per trip was being deducted of P300.00 per trip, allegedly for payment of vehicle parts that could possibly break down as a consequence of wear and tear due to the length of trip and weight of the cargo. He was also burden (sic) for paying of (sic) parking fees of the trucks he drove without the employer reimbursing him.

Complainant further claims that he was not (sic) required to work during holidays but no holiday pay was given to him as provided by law. He also was not paid or availed of Service Incentive Leave. In addition, he

alleges that he was not enrolled by his employer at (sic) Social Security System (SSS).

Sometimes (sic) in late June 2013, complainant was asked by the respondent to drive a closed-van truck carrying rice from San Jose City to Canlubang, Laguna. He arrived in Canlubang and unloaded the cargo. On his way back to San Jose City, the vehicle broke down when its oil filter was punctured. Thus, the vehicle was stuck somewhere in Sucat, Parañaque, and the same was towed by a designated towing company. Complainant further states that he called respondent Manuel Lim and the latter instructed him to remain with the truck. He stayed with the vehicle for two days before another employee of respondents caused the payment of the towing fee thus the release of impounded truck (sic).

Complainant contends that upon his return, he was allegedly confronted by respondent Lim and even (sic) uttered degrading remarks branding him as “bad luck” for the respondent corporation, and then blamed complainant for the broken truck and even demanded Garcia to look for another job.

After said meeting, complainant was no longer allowed to work at respondent ricemill and he never received anything from the respondents.

For their defense, respondents through Manuel Lim, avers that Complainant was not a regular employee but only “on call”, in the sense that he would only be summoned in the event no driver is available in the rice mill.

Sometimes (sic) on 31 December 2012, complainant drove respondents' cargo truck loaded with 470 cavans of rice for delivery to Laguna but instead of delivering 470 cavans of rice, he only delivered o (sic) 468 cavans of rice. He discovered from the receipt of the buyer that complainant only delivered 468 cavans with a balance of 2 cavans of rice, until respondent learned from his own truck helper, Raymond D. Lao, that complainant ordered them to unload 2 sacks of rice and sold the same to the “pakwan” vendor at Baliwag, Bulacan.

Respondents considered complainant committed qualified theft, and thus they filed a criminal case against him before the Office of City of Prosecutor (sic) of San Jose City (see Annexes “1”, “2” and “3” of respondent's Answer). Thereafter, complainant allegedly admitted that he committed such crime and he promised before respondent that he shall never do the same act. Respondent did not immediately institute any criminal action against the complainant and still allowed him to drive the truck on a case to case basis or on call basis. However, on January 1, 2013[5], respondents allege that due to complainant's negligence, the engine of the truck he was driving bogged down. Due to this, his truck was towed in Taguig City. Respondents further allege that complainant did not show his face until the (sic) received this instant complaint.”

Petitioner (then one of the respondents), by Reply, asserted that no employer-employee relationship between it and respondent Dominador Garcia, Jr. (“respondent”), the four elements of the relationship being absent. It also contended that respondent abandoned his work, and denied that respondent worked and was paid P1,500 daily, that his wage was slapped with deductions, and that respondent was dismissed.

Respondent countered by Rejoinder.

The Labor Arbiter dismissed respondent's Complaint. While it ruled that the four elements of an employer-employee relationship existed, and that respondent was a regular employee of petitioner, the Labor Arbiter found that petitioner could not be held liable for illegally dismissing the respondent, as alleged in the latter's Complaint.

The Labor Arbiter explained that respondent failed to substantiate his claim that he was dismissed in the first place. Further, granting that his employer had cursed him and exhorted him to find another job, the Labor Arbiter ruled that respondent failed to show that the same qualified as a dismissal.

Addressing petitioner's claims for unpaid overtime pay, holiday pay, right to service incentive leave, 13[th] month pay, and wage deduction, the Labor Arbiter denied all these for lack of merit.

According to the Labor Arbiter, respondent is a field personnel, being a non-agricultural employee who regularly performs his duty away from the principal place of business, and whose hours of work cannot be determined with reasonable certainty. Such personnel, held the Labor Arbiter, are not covered by the provisions of the Labor Code which provide for the benefits prayed for by the respondent[6].

The Labor Arbiter also held that respondent was not entitled to 13[th] month pay. According to the Rules and Regulations Implementing P.D. No. 851, employees who are paid a fixed amount for performing a specific work, and irrespective of time spent in performing the same, under which classification respondent fell, are not entitled to the particular benefit of the 13[th] month pay.

Lastly, the Labor Arbiter denied respondent from recovering the alleged deductions, as he adduced no evidence that petitioner indeed made those deductions.

The Labor Arbiter's Decision disposed:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit and basis.

All money claims of complainant are likewise denied for lack of basis.

SO ORDERED.”

The defeated respondent then appealed before the NLRC[7].

On 30 October 2013, the NLRC promulgated the assailed Decision, finding for the employee and ruling that he was illegally dismissed.

The NLRC agreed with the Labor Arbiter that respondent was a regular employee working for the petitioner. The NLRC, however, was unpersuaded that respondent abandoned his work. It held that for abandonment to prosper, the employee must have left his work for no valid or justifiable reason, and that there must be shown a clear intent to sever the employer-employee relationship. Such clear intent, the NLRC discussed, has not been manifested, considering that respondent, the employee, filed a charge for illegal dismissal against his employer, which act jurisprudence has held to be inconsistent with abandonment.[8]

Considering the absence of abandonment, the NLRC held that petitioner had dismissed respondent. Having dismissed its employee, it must then prove the presence of a just cause to validate the dismissal; petitioner, the NLRC found, failed to allege and prove the existence of such just cause.

The NLRC then observed that the relations between petitioner and respondent had been strained, and so ruled that respondent ought to receive separation pay rather than be reinstated. It then remanded the computation of backwages to the Labor Arbiter, following the insufficiency of information to compute respondent's monthly pay, based on a per-trip basis. It also ruled that it could not pass upon the issue of respondent's non-enrollment with the SSS, for lack of jurisdiction.

Petitioner filed a Motion for Reconsideration, but the same was denied.

Hence, this Petition.

Petitioner raised the following issues:

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING/REVERSING THE DECISION DATED SEPTEMBER 16, 2013 OF THE LABOR ARBITER BY DECLARING THE PRIVATE RESPONDENT TO HAVE BEEN ILLEGALLY DISMISSED DESPITE A CLEAR SHOWING THAT THE

LATTER WAS NOT DISMISSED BUT IT WAS HE WHO DID NOT SHOWED (sic) TO THE PETITIONER AFTER HE ABANDONED THE TRUCK HE WAS DRIVING AFTER ITS ENGINE BOGGED DOWN DUE TO HIS NEGLIGENCE.

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING/REVERSING THE DECISION DATED SEPTEMBER 16, 2013 OF THE LABOR ARBITER BY ORDERING PETITIONER TO PAY HIS (sic) BACKWAGES AND SEPARATION (sic) IN SPITE OF THE FACT THAT HE WAS NOT DISMISSED FROM HIS EMPLOYMENT BUT IT WAS HE WHO DID NOT REPORT TO PETITIONER CORPORATION.

Petitioner insists that respondent abandoned his work and that there was no dismissal. It argues that what actually happened when the truck, driven by respondent, broke down in Taguig on 1 February 2013, respondent simply fled the scene. It calls respondent's version, in which respondent returned to petitioner's office and was cursed and branded as "bad luck", a mere falsehood.

Petitioner adds that the pending criminal cases it had initiated against respondent puts to doubt the respondent's credibility. Furthermore, respondent did not adduce evidence to support his claim that he had been dismissed, much more, illegally dismissed.

Respondent filed his Comment[9] on 15 July 2014.

He avers that the petitioner failed to contradict the NLRC's finding that he was petitioner's employee, and hence, must have admitted the same. He also argues that the NLRC correctly ruled that he had not abandoned his work, as petitioner failed to establish that he clearly intended to sever his relations with the petitioner. He continues that his filing for illegal dismissal shows that he had no clear intent to abandon his employment.

Respondent then insists that he had indeed been dismissed, for no apparent just cause, after the truck he was driving had broken down and been towed. He denies abandoning it, alleging that he stayed with the vehicle, then reported back for duty, where he was cursed at and exhorted to look for work elsewhere.

Petitioner subsequently filed a Reply, reiterating its position that respondent renders work only on an "on-call" basis, to substitute only when there are no regular drivers who can drive for the petitioner. It maintains that respondent was never dismissed, that there is no proof of that dismissal. The correct conclusion, petitioner contends, is that respondent abandoned his work.

On 1 December 2014, respondent filed his Memorandum[10]. Petitioner did not file a Memorandum, and, following the lapse of the period to do so[11], We now resolve this case.

The core issue is whether or not respondent had been dismissed. In resolving this issue, We shall also confront the other side of the coin, that is, whether or not respondent had abandoned his work. Should We find respondent to have been dismissed, We consequently resolve whether the dismissal was illegal and whether respondent must be paid backwages and separation pay.

Preliminarily, We find that the issue of whether or not respondent is a regular employee of petitioner no longer needs elaborate discussion. While petitioner alleged that respondent is merely engaged on an on-call basis, a substitute for a regular driver if one is unavailable, petitioner failed to ascribe the NLRC's contrary finding as an error and failed to argue on its allegation. In fact, a perusal of its arguments leads to the conclusion that it has issue only with the NLRC's finding that respondent had been dismissed illegally.

Petitioner's lapse can be likened to that silence resulting from the failure to deny a material allegation; under the Rules of Court, which suppletorily applies in labor cases, such failure to mount a specific denial amounts to an

admission.[12]

In any case, even considering that respondent is merely on an “on call” basis, the status does not automatically preclude the possibility of an employment being regular.

Art. 280 of the Labor Code provides:

“Art. 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph; Provided, That any employee who has not rendered at least one year of service, whether such service is continuous or broken, shall be considered as a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.” (Emphasis Ours.)

It being undisputed that the respondent has been employed for the same position with the petitioner since 1999, and hence, for more than one year, he is considered a regular employee. The issue of an employer-employee relationship now having been put to rest, We now move to more pressing matters.

In labor cases involving illegal dismissal, the fact of dismissal is not assumed. The initial fact of dismissal must first be proved. Only after dismissal is established may the reviewing body determine whether it was valid or not.

Thus, in *Exodus International Construcion Corporation and Javalera v. Biscocho, et al.*[13], the Supreme Court teaches:

"[T]his Court is not unmindful of the rule that in cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause." But "[b]efore the [petitioners] must bear the burden of proving that the dismissal was legal, [the respondents] must first establish by substantial evidence" that indeed they were dismissed. "[I]f there is no dismissal, then there can be no question as to the legality or illegality thereof."

Since respondent, the employee here, alleges that he had been dismissed, he must prove the same and by clear, convincing, and positive proof.[14]

Relevantly, not every act of leaving the workplace or discontinuing work amounts to abandonment of work, as contemplated by our labor laws. To constitute abandonment, two requisites must concur: (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, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence, it has been held, is not sufficient. To prove abandonment, the employer must show that the employee deliberately and unjustifiably refused to resume his employment without any intention of returning.[15]

In resolving the issues concerning Us, We begin with the parties' contradicting versions of events. After an exhaustive review, We conclude that the employee's version is more convincing, and agree with the NLRC.

Both parties allege similar allegations leading up to the breaking down of the truck, driven by respondent, sometime in early February 2014. It was when after the truck stalled that the parties' stories differed. Respondent maintains that he returned to the employer and was thereafter sworn at, blamed for the damage to the truck, and told to look for other work. Petitioner, on the other hand, asserts two versions: in its petition, it avers that when

the truck broke down, respondent abandoned the truck without even informing its representative of the truck's condition, and thereafter, failed to report for work[16]; while the Sinumpaang Salaysay[17] of Manuel Lim ("Lim"), petitioner's General Manager, Lim alleges that respondent first called him, then abandoned the truck, and never returned.

Considering all the averred circumstances, We lean in favor of the respondent.

As We contend here mostly with testimonies, We recall that for such evidence to be believed, it must not only proceed from the mouth of a credible witness, it must be credible in itself. Evidence is credible when it is such as the common experience of mankind can approve as probable under the circumstances. There is no test of truth of human testimony, except its conformity to our knowledge, observation and experience.[18]

Respondent's version carries with it a ring of truth. It does not challenge belief that respondent would inform petitioner upon the truck's malfunctioning; that he would stay with it while it was being repaired; and that he would be scolded by Lim upon his return for costing the petitioner money. It is not far fetched that he would be cursed at and told to look for other work, considering that Lim already believes that respondent had stolen from the petitioner, as gleaned in the criminal charges petitioner has lodged against respondent.

On the other hand, serious questions arise if petitioner's claim were true. How had its representatives known the location and condition of the truck, were it not for respondent's call? Would respondent just abandon his work now, when he had earlier pleaded for petitioner's forgiveness following his transgression? Is it credible, that while respondent appealed to petitioner to take him back when the former allegedly stole from the latter, respondent would now abandon his work for a cause barely attributable to him, and in the middle of a city which is not his residence, wherein he has no connections? If respondent indeed abandoned his work in Sucat, why would he file for illegal dismissal in Pampanga?

The inconsistent versions of petitioner, which We have noted above, also erode the credibility of its version. Did respondent leave the truck immediately, or inform petitioner first of its condition and whereabouts? Considering that informing the employer of the truck – or not informing it- may be a factor in determining abandonment , petitioner's fluctuation taints its version of the events with doubt.

Assuming that respondent was not with the truck when petitioner's representatives claimed and paid for it, respondent's absence from the premises cannot be construed as abandonment. We observe that respondent was never informed when petitioner would return for the broken down vehicle. Granted, it is difficult to believe respondent's claim that he stayed with the vehicle for two days; common experience persuades that he would have to leave the vehicle for some periods, as when he has to eat and pass the time.

What this leads to is that even if respondent was not with the vehicle when petitioner's other workers came for it, this does not immediately mean abandonment. The two requisites for abandonment are not present. First, nothing indicates that respondent's absence from the truck was without valid or justifiable reason; and second, petitioner has not established that when respondent left the truck, he was already intent in severing the employer-employee relationship.

Further militating against petitioner's charge of abandonment is respondent's filing for illegal dismissal. In GSP Manufacturing Corporation and Apacible v. Cabanban,[19] the Court held:

“Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.”

Having upheld respondent's version, We similarly reach the conclusion that the acts of Lim - cursing the respondent, scolding him for being bad luck to the company, and telling him to look for another job – all representing petitioner, constitute an act of dismissal. In commanding respondent to just look for another job, Lim is clearly banishing the respondent from the workplace.

Considering that the dismissal came at the heels of the breaking down of petitioner's truck in respondent's hands, We surmise that, logically, the stalling was the primary consideration why respondent was dismissed. Regrettably, however, petitioner failed to show that the stalling of the vehicle under respondent's driving was a just cause to dismiss the employee, and also failed to observe procedural due process in dismissing the respondent.

At this point, We observe that petitioner consistently alleged that respondent had stolen 2 bags of rice from it in December 2012. However, petitioner admits that, through its General Manager, it had still allowed respondent to work for it even after respondent admitted to the offense. Thus, in letting the incident pass, petitioner had clearly pardoned that transgression, such that it can no longer be utilized to justify this much later act of termination. Parenthetically, the belated filing of the criminal charge in March 2013, as a result of the alleged theft of rice, shows the same only to be an afterthought to lend substance to petitioner's position before the Labor Arbiter.

The absence of a just cause behind respondent's dismissal now exposes the dismissal to be illegal and unjust. Now to the consequences.

Art. 279 of the Labor Code provides that when an employee has been unjustly dismissed from work, he shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of actual reinstatement.

If no reinstatement is no longer possible, then separation pay may be awarded in lieu thereof. In *Bani Rural Bank, Inc. v. De Guzman, et al.*,^[20] the Court revisited those factors which may call for payment of separation pay, instead of reinstating the employee: (a) when reinstatement is no longer possible, in cases where the dismissed employee's position is no longer available; (b) the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and (c) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved.

In this case, We agree with the NLRC that the award of separation pay, in lieu of reinstatement, is appropriate. The relations between petitioner and respondent are already strained, rendering respondent's re-entry impossible. Petitioner's General Manager has hurled hurtful words against the respondent, before dismissing him from work. He has also unearthed respondent's alleged act of theft, and, following respondent's filing for illegal dismissal, instituted criminal charges against him. In addition, the records bare that petitioner has not offered to welcome respondent back to its workforce.

Respondent, having been dismissed illegally, is also entitled to backwages. As with the NLRC, We also observe that the documents submitted by both sides make it difficult to compute respondent's backwages with accuracy. Therefore, the computation of the same, which includes allowances and benefits, as provided by the Labor Code, is remanded to the Labor Arbiter.

Hence, considering the above discussion, We find no reason to reverse the NLRC and hereby deny the petition for lack of merit.

WHEREFORE, premises considered, the PETITION is DENIED. The assailed 30 October 2013 Decision of the NLRC and the assailed 20 December 2013 Resolution in NLRC LAC No. 10-0002931-13 are AFFIRMED.

SO ORDERED.

Salazar-Fernando, R., Chairperson, and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 3-18.

[2] Rollo, pp. 19-26.

[3] Rollo, 62-74.

[4] Rollo, pp. 27-29.

[5] As indicated in the facts, see rollo, p. 66. This is obviously supposed to be 1 February 2013.

[6] Citing Art. 82 of the Labor Code.

[7] See Memorandum of Appeal, rollo, pp. 75-88.

[8] Citing GSP Manufacturing Corp. and Apacible v. Cabanban, G.R. No. 150454, 14 July 2006).

[9] Rollo, pp. 118-130.

[10] Rollo, pp. 148-159.

[11] See Resolution dated 21 September 2014.

[12] See Masonic Inc. and Balais/Reyes v. Madjos, et al., G.R. No. 185094, 25 November 2009.

[13] G.R. No. 166109, 23 February 2011.

[14] See Sime Darby Employees Association, et al., v. NLRC, et al., G.R. No. 148021, 6 December 2006.

[15] Icawat and Icawat v. NLRC, et al., G.R. No. 133573, 20 June 2000.

[16] Rollo, p. 9.

[17] Rollo, p. 35.

[18] Litton Mills Inc. v. Sales, G.R. No. 151400, 1 September 2004.

[19] G.R. No. 150454, 14 July 2006.

[20] G.R. No. 170904, 13 November 2013.

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