

EXECUTIVE CARRIER & SERVICES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND VICTORIO R. SOLOMO, RESPONDENTS.

Ponente: BARZA, J.

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BARZA, J.:

Through this petition for certiorari, Executive Carrier & Services, Inc. seeks to nullify the Decision[1] of the National Labor Relations Commission (NLRC) dated April 30, 2012 and the subsequent Resolution[2] dated June 25, 2012. The assailed decision declared private respondent Victorio Solomo to have been constructively dismissed consequently setting aside the decision of the labor arbiter. The Resolution denied petitioner's motion for reconsideration.

The factual antecedents:

Respondent was hired by petitioner as a bus driver on October 24, 1998. He was designated to ply the route Manila-Bicol and vice-versa. On April 11, 2011, the bus which respondent was driving got involved in an accident. Due to said accident, petitioner incurred expenses in the amount of P104,099.58, which was billed against respondent.

Respondent paid P27,500.00 out of the cash bond which was deducted from his salary and commission. Petitioner demanded payment of the balance of P76,509.58 but he was not able to pay because of lack of savings.

According to respondent, when he could not pay the balance of the accident expenses, he was harassed by petitioner. On June 13, 2011, while respondent was at petitioner's office, he was being forced to pay the aforesaid balance and when respondent said that he could not afford it, petitioner, through Eduardo Oliva and Lito Arias, told him that he will not be allowed to drive a bus unless he pays the accident expenses. Because of this, respondent asked for a termination letter but petitioner refused to give him.

On June 17, 2011, respondent filed a complaint before the NLRC for constructive dismissal with prayer for separation pay and illegal deduction.

Petitioner admitted having employed respondent as driver on commission basis. It also admitted that it deducted the expenses brought about by the April 11, 2011 accident from respondent's cash bond leaving a balance of P76,509.58. According to petitioner, this is not the first accident involving respondent. On November 17, 2009, respondent also figured in another accident when he recklessly maneuvered Bus No. 8280 inside its Cubao terminal which resulted to damage also to petitioner's Bus No. 8078. Petitioner also alleged that respondent committed other infractions such as short remittances. On June 23, 2011,[3] petitioner sent a letter to respondent ordering the latter to pay the balance of the expenses of the accident but instead of complying, he filed a case for illegal dismissal before the labor arbiter.

In its decision dated November 14, 2011, the labor arbiter held that it was respondent who stopped reporting for work. Consequently, it dismissed respondent's complaint for illegal dismissal.

On appeal to the NLRC, it was found that petitioner was guilty of constructive dismissal and awarded respondent of his money claims and ordered that the amount of P76,509.58, representing the balance from the expenses incurred in the accident, be deducted from the total award due to respondent.

The fallo of the NLRC's decision dated April 30, 2012, states:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated November 14, 2011 is hereby REVERSED AND SET ASIDE. Judgment is rendered FINDING complainant constructively dismissed and ORDERING respondent Executive Carrier & Services, Inc. to pay complainant the following subject to deduction as discussed above.

(a) P108,941.21 as backwages

(b) P115, 544.00 as separation pay

(c) 10% of the total amount as attorney's fees.

The computation of the said awards is as follows:

1. Full Backwages

A. Basic Pay

06/13/11-04/3/12

404x22x10.57

93,946.16

B. 13[th] Month Pay

93,946.16/12

7,828.85

C. SILP

06/13/11-04/30/12

404X5/12X10.57

1,779.28

D. ECOLA

5/26/11-04/30/12

P22X22X11.13

5,386.92

P108,941.21

2. Separation Pay

10/24/1998-04/30/2012

404x22x13 years

115,544.00

3. Attorney's Fees

22,448.52

TOTAL AWARD

P246,933.73[4]

Petitioner sought reconsideration of the NLRC's decision but was denied in the resolution dated June 25, 2012.[5]

Petitioner now comes to this Court assigning the following errors in support of its petition, to wit:

I

THE HONORABLE PUBLIC RESPONDENT NLRC (SIXTH DIVISION) GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSED THE FINDING OF THE HONORABLE LABOR ARBITER THAT THERE WAS NO ILLEGAL DISMISSAL;

II

THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FURTHER DECREED MONETARY AWARDS IN FAVOR OF PRIVATE RESPONDENT VICTORIO SOLOMO.[6]

In view of the variance in the findings of fact of the labor arbiter with those of the NLRC, as well as the allegation of grave abuse of discretion, this Court opts to review the facts of the case, as an exception to the rule that factual findings of quasi-judicial agencies, like the NLRC, are accorded respect and finality, if supported by substantial evidence.[7]

The labor arbiter's basis in declaring that respondent was not terminated from his employment was the lack of evidence of a written notice of dismissal, nor any proof that complainant was barred/prevented from entering the premises of petitioner.[8] That it was respondent who stopped reporting for work.[9] What makes this conclusion tenuous is the fact that respondent claimed not actual dismissal but constructive dismissal.

The decision of the NLRC that respondent was constructively dismissed and he did not abandon his job was more consonant with the evidence on record.

On constructive dismissal:

The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank or diminution in pay. It exists when the resignation on the part of the employee was

involuntary due to the harsh, hostile and unfavorable conditions set by the employer. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary.[10] Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[11]

The claim of constructive dismissal was supported by the facts of the case. It was established that petitioner demanded from respondent to settle the balance of the expenses incurred in the accident and was told that he would not be allowed to work unless he pays the same. The NLRC therefore correctly conclude that respondent did not report for work because of petitioner's insistence for respondent to settle the accident expenses in full before being allowed to drive again. Considering respondent's financial condition, the demand of petitioner for respondent to pay in full the balance of the accident expenses is considered harsh, hostile or unfavorable leading respondent to forego his continued employment.

Further, the NLRC correctly held that:

“Thus, the situation of the complainant was either to pay or remain without being assigned to any work, or not being allowed to perform work. Having no means of income or savings, which situation was clear to respondent, the complainant was placed in a state of indefinite suspension that is equivalent to constructive dismissal.”[12]

On the claim of abandonment:

The jurisprudential rule on abandonment is constant. It is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and, (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship.[13]

Petitioner failed to establish clear evidence of respondent's intention to abandon his employment. Except for petitioner's bare assertion that respondent did not report for work, no proof was offered to prove that respondent intended to sever the employer-employee relationship. Petitioner presented as evidence a letter dated June 23, 2011[14] advising respondent to settle with petitioner the balance of the accident expenses. However, this evidence could not support petitioner's claim that respondent abandoned his work. The NLRC aptly said:

“x x x We are convinced that the letter that was dated June 23, 2011, or six (6) days after the filing of herein complaint was merely an afterthought. Also, it is in the nature of a demand letter and not a notice to report to work nor to explain his alleged absences.”[15]

Anent the award of backwages, separation pay, 13th month pay, sick leave with pay, ecola and attorney's fees, the NLRC did not err when it granted the same. 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 benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. However, as found by the NLRC, reinstatement is no longer warranted because of the strained relationship created by the filing of the complaint. Thus, a more equitable disposition would be an award of separation pay. As held, where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[16]

In fine, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of

discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[17] Petitioner failed to discharge this burden.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Abdulwahid (Chairperson) and Cruz, JJ., concur.

[1] pp. 22-28, rollo.

[2] pp. 18-20, rollo.

[3] p. 66, rollo.

[4] pp. 27-28, rollo.

[5] Supra at note 2.

[6] p. 7, rollo.

[7] Rosario Gatus vs. Quality House, Inc., et al., G.R. No. 156766, April 16, 2009.

[8] p. 33, rollo.

[9] p. 34, rollo.

[10] Siemens Philippines, Inc., et al. vs. Enrico Domingo, G.R. No. 150488, January 28, 2008.

[11] Candido Gemina, Jr. vs. Bankwise, Inc., et al., G.R. No. 175365, October 23, 2013.

[12] p. 26, rollo.

[13] Nationwide Security and Allied Services Inc. vs. Valderama, G.R. No. 186614, February 23, 2011.

[14] Supra at note 3.

[15] p. 25, rollo.

[16] Golden Ace Builders vs. Jose Taldeg, G. R. No. 178524, January 30, 2009, citing the case of Macasero v. Southern Industrial Gases Philippines, G.R. No. 178524, January 30, 2009.

[17] Ceferina Lopez Tan vs. Spouses Antazo, G.R. No. 187208, February 23, 2011.

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