

MERCEDES M. BONOTAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND BONIFACIO ONGPAUCO, DOING BUSINESS UNDER THE NAME "BARRIO FIESTA", RESPONDENTS.

G.R. No. 104321. October 25, 1994

Ponente: PUNO, J.

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PUNO, J.:

Petitioner Mercedes M. Bonotan prays for the reversal of the decision of the National Labor Relations Commission, dated February 27, 1992, dismissing her complaint for unfair labor practice and illegal separation.

Petitioner worked as a food checker at the "Barrio Fiesta" -- Ermita Branch -- owned by private respondent Bonifacio Ongpaucio. Petitioner charged that the management, particularly the floor manager of the restaurant, prevented her from performing her union duties. Allegedly, she was dismissed due to her union activities on May 21, 1990. She filed a complaint for unfair labor practice and illegal dismissal on August 15, 1990, praying for the award of backwages and separation pay.

Private respondent had a different version. He claimed that in May 1990, their head waiter approached petitioner to follow-up on an order of a customer. Petitioner ignored him. The Operations Manager, Mr. Virgilio Montenegro, personally checked on the order. Petitioner was peeved and shouted at Mr. Montenegro.

Petitioner's demeanor constituted insubordination under item no. 12 of the company's rules and regulations^[1] which warrants a ten-day suspension. Accordingly, in a Memorandum dated May 21, 1990,^[2] petitioner was suspended from work for ten (10) days, effective May 22, 1990 until June 2, 1990. Petitioner, however, refused to acknowledge receipt of the Memorandum.

On June 3, 1990, after the lapse of her suspension, petitioner still failed to report for work. Private respondent sent a representative, Mr. Reymer Regencia, to petitioner requesting her to return to work as her services were badly needed in the restaurant. Petitioner still refused.

Hence, in a letter dated June 5, 1990,^[3] petitioner was required to explain her refusal to return to work. Petitioner was also warned that unless she give a satisfactory explanation, she would be considered as having abandoned her work.

Private respondent received no word from petitioner. Two (2) months later, petitioner informed private respondent of her intention to resign. However, she demanded payment of separation pay. Private respondent refused since petitioner abandoned her job. On August 15, 1990, petitioner filed a complaint for illegal dismissal and unfair labor practice.

In due time, Labor Arbiter Ricardo C. Nora rendered judgment^[4] in favor of petitioner ruling that the latter was illegally dismissed from service.

The judgment was reversed on appeal by the second division of the National Labor Relations Commission (NLRC). It held that petitioner was not dismissed from service. She was ordered to report back to work, without any award of backwages, within five (5) days from receipt of the decision, otherwise she would be considered as having abandoned her job.[5]

Hence this petition, where petitioner contends:

I

RESPONDENT NLRC HAS NO JURISDICTION TO ENTERTAIN PRIVATE RESPONDENT'S APPEAL.

II

RESPONDENT NLRC GRAVELY ERRED/ABUSED ITS DISCRETION IN SETTING ASIDE AND REVERSING THE DECISION OF THE LABOR ARBITER, DATED JUNE 21, 1991:

BY HOLDING THAT PRIVATE RESPONDENT DID NOT DISMISS, MUCH, LESS ILLEGALLY, HEREIN PETITIONER

BY HOLDING THAT PETITIONER HAD ABANDONED HER WORK WITH PRIVATE RESPONDENT

BY HOLDING THAT PETITIONER HAD BELATEDLY FILED HER FORMAL COMPLAINT

III

RESPONDENT NLRC GRAVELY ERRED/ABUSED ITS DISCRETION IN NOT SUSTAINING THE AFORESAID DECISION OF THE LABOR ARBITER DATED JUNE 21, 1991.

The petition is devoid of merit.

In support of her first assigned error, petitioner claims that public respondent NLRC had no jurisdiction to entertain private respondent's appeal for no appeal bond was filed to support it. Further, petitioner contends that the appeal was filed beyond the reglementary period.

Petitioner's stance is not sustained by the records of the case. A perusal of the records will reveal that private respondent's appeal was duly supported by a supersedeas bond with the Philippine Charter Insurance Corporation as surety.[6] Likewise, the appeal was filed on time as explained by public respondent in its Comment[7] viz:

"With regard to petitioner's claim that there was no allegation on the part of private respondent of the date when it received a copy of the Labor Arbiter's decision, we must point out that in fact said date is contained in the first page, first paragraph of the appeal. Petitioner's counsel however must have overlooked the mentioned portion of the appeal which states:

Respondent-appellant, by counsel, respectfully brings this appeal before the Honorable Commission, challenging the 21 June 1991 decision of the Labor Arbiter Ricardo Nora finding that complainant was illegally dismissed. The dispositive portion of the decision, copy of which was received 5 July 1991, reads: x x x"

In support of the second assigned error, petitioner maintains that: (1) she was dismissed due to her union activities; (2) she did not receive any notice of her suspension, and (3) she did not abandon her job.

The evidence on record repudiates the pretension of petitioner.

At best, petitioner could only make a vague and general charge of union busting and illegal dismissal against her employer. Her claim that she was prohibited from reporting for union activities and that her dismissal from

service was due to her affiliation with the company's labor union require substantial evidence. No concrete evidence or specific circumstance was cited by petitioner to prove her accusations.

Similarly, petitioner's insistence that she had no notice of her suspension is belied by the evidence. The records will bear that on May 21, 1990, petitioner had an argument with the operations manager of the restaurant. Immediately, on the same day, at around 10:35 p.m., private respondent issued a Memorandum to petitioner informing the latter of her ten-day suspension from work for insubordination. Petitioner, however, refused to acknowledge receipt of the Memorandum. Her presence at the restaurant and refusal to receive service of the Memorandum were witnessed by three (3) of her co-employees.[8] After the lapse of her suspension, a representative of private respondent, Mr. Reyamar Regencia, went to petitioner's residence and informed the latter of the lapse of her suspension and that her services were badly needed at the restaurant. Petitioner paid no heed. She still did not report for work. Finally, on June 5, 1990, private respondent sent another letter to petitioner requiring her to explain her continued absence from work, with a warning that unless a satisfactory explanation is given, petitioner shall be considered as having abandoned her job. Again, there was no response from petitioner. After a couple of days, petitioner went to see private respondent and demanded from the latter her separation pay. Understandably, private respondent refused for petitioner was never dismissed but has, in fact, abandoned her work. Further, it should be stressed that petitioner's failure to return to work without justifiable cause and her prolonged absence without leave has been duly recorded by private respondent in petitioner's time card. A report relative thereto was also submitted to the Department of Labor pursuant to Section II, Rule XIV of the Rules Implementing Batas Pambansa 130.[9]

It bears emphasis that at no time in the proceedings below and in this Court did petitioner ever deny the occurrence of the May 21, 1990 incident and the charge of insubordination against her which precipitated her suspension from work. Instead, petitioner claims ignorance regarding her ten-day suspension and, to this day, insists that she was never notified of the same.

However, her actions subsequent to the issuance of the suspension order contradict her claim of lack of notice. Firstly, petitioner's altercation with the manager which resulted in her suspension happened on May 21, 1990. Petitioner insists that the Memorandum was not served on her and she had no notice that she was suspended from work for ten (10) days, effective May 22, 1990. The records, however, show that petitioner did not report for work on May 22, 1990, the first day of her suspension. She did not offer any explanation therefor nor did she file any leave for her absence. The reasonable conclusion is that she did not report for work on May 22, 1990 for she has knowledge in fact that she was suspended from work. Secondly, even assuming that she was not served the May 21, 1990 Memorandum informing her of her suspension, private respondent may be deemed to have substantially complied with the requisite notice and hearing. It will be noted (and again, it was never denied by petitioner) that after the lapse of the period of her suspension, a representative of private respondent, Mr. Reyamar Regencia, personally went to her residence informing her of the same and requesting her to go back to work. She did not. In a final move, private respondent sent a letter to petitioner on June 5, 1990 requiring her to explain her continued absence from work. Still, nothing was heard from petitioner until more than two (2) months later, or on August 15, 1990, when petitioner filed a complaint for illegal dismissal. Taking into account the factual circumstances of the case, petitioner cannot reasonably claim ignorance of the fact of her suspension from work and the cause thereof. Knowledge of the issuance of the suspension order must thus be imputed to petitioner.

Abandonment of work on the part of an employee is never taken lightly. It requires clear and convincing evidence of: (1) the employee's intention to abandon his job, and (2) some overt act from which it may be inferred that the employee had no more intent to work.[10] These two (2) requisites were sufficiently proved and established by private respondent as discussed above.

We thus accord finality to the factual finding of public respondent NLRC, supported as it is by substantial evidence, that petitioner abandoned her work and unjustifiably refused to return to work after the lapse of her suspension therefrom. However, in the case of *Sampang v. Inciong*,^[11] the Court ruled that in determining the penalty to be imposed on an erring employee, due consideration must be given to the employee's length of service and the number of violations he committed during his employ.

In the case at bench, since petitioner has been in the service of Barrio Fiesta for the past twenty-six (26) years^[12] and nowhere in the records does it appear that she committed any previous violation of company rules and regulations, we find that the decision of public respondent NLRC ordering her to return to work without backwages is just and equitable. Petitioner's dismissal from work would be too severe a penalty under the circumstances.

IN VIEW WHEREOF, the petition is DENIED for lack of showing of any grave abuse of discretion on the part of public respondent NLRC. The impugned decision of public respondent is thus affirmed. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Annex "D", Petition, Rollo, at p. 62.

II. UGALI AT GAWI SA TRABAHO

12. Pagtangi o di pagsunod sa utos ng supervisor o mga nakakataas o harapang pagbabalewala sa instruksyon nito tungkol sa operasyon ng negosyo, safety measures, performance of work or disobedience.

[2] Annex "E", Petition, Rollo, p. 69.

[3] Annex "K", Petition, Rollo, p. 75.

[4] Decision dated June 21, 1991, Annex "A", Petition, Rollo, pp. 16-22.

[5] Decision, dated February 27, 1992, Annex "B", Petition, Rollo, pp. 24-31.

[6] Annexes "N" and "O", Comment, Rollo, pp. 78-80.

[7] Rollo, at pp. 48-49.

[8] Annex "E", Comment, Rollo, p. 69.

[9] See Annexes "F", "G", "L" and "M", Comment, Rollo, pp. 70-71 and 76-77.

[10] *C. Alcantara & Sons, Inc. v. NLRC*, G.R. No. 73521, January 5, 1994, 229 SCRA 109; *People's Security, Inc. v. NLRC*, G.R. No. 96451, September 8, 1993, 226 SCRA 146.

[11] G.R. No. L-50992, June 19, 1985, 137 SCRA 56; citing the case of *Philippine Air Lines v. Philippine Air Lines Employees Association*, G.R. No. L-246226, June 28, 1974, 57 SCRA 489, at p. 496.

[12] Petitioner's Memorandum, Rollo, at p. 139.

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