

**GEORGE D. JONES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 4TH DIVISION, CEBU CITY; ABBOTT LABORATORIES (PHILS.), INC., AUBREY BOUT, AND ELENITO P. TUAZON, RESPONDENTS.**

*G.R. No. 107729. December 06, 1995*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

The crux of this controversy is whether under the facts of the case petitioner may be considered to have abandoned his job as to warrant his dismissal.

George D. Jones started working with Abbott Laboratories (Phils.), Inc. (ABBOTT) as a medical representative sometime in February 1971. In 1973 he was promoted as District Sales Manager for Western Visayas. At the time he was dismissed on 27 October 1989 he was receiving a monthly salary of P10,000.00 plus mid-year and Christmas bonuses equivalent to one month salary. Starting his eleventh year he was given, aside from the free use of a company car, six and a half (6-1/2) days vacation leave for every year of service. During his employment he was the recipient of various awards and commendations for his loyalty and exemplary performance.

On 3 August 1989 petitioner applied for and was granted a vacation leave which he availed of on 11 to 28 September 1989. Shortly before his leave expired he applied for sick leave to take effect 29 September 1989. The reason he gave was that he was hypertensive as shown in his medical certificate issued by Dr. Wilfredo Salvador on 29 August 1989 attached to his application. On 10 October 1989 ABBOTT disapproved his application for sick leave and directed him instead to report to its Director of Administration within five (5) days.

When petitioner failed to appear for work ABBOTT again wrote him on 25 October 1989 directing him to report on 27 October 1989, or two (2) days after, otherwise he would be dismissed for abandonment. Receiving no reply from petitioner, ABBOTT finally terminated his services on the day he was required to report. In the meantime, on 20 October 1989 petitioner wrote from Canada informing his employer that he would be reporting in the first week of December 1989 as he had been advised by his physician to rest and to undergo further medical examination.[1]

When he returned to the Philippines he was informed that he was already dismissed. Consequently, he filed a complaint for illegal dismissal with damages. Upon issues being joined, petitioner opted to rely on his position paper instead of adducing testimonial evidence. Private respondents, on the other hand, presented Dr. Mel Bacabac and private respondent Elenito P. Tuazon, Administrator of ABBOTT. After trial the Labor Arbiter decided in favor of private respondents by sustaining the dismissal of petitioner.

On appeal by petitioner, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. The NLRC found that notwithstanding the scheme of petitioner in extending his stay in Canada through vacation and sick leaves it could not sustain the conclusion that petitioner abandoned his employment.[2]

Private respondents moved for reconsideration claiming that petitioner was not sick at the time of his application for sick leave; that at the time he was dismissed he had already been absent without leave for several months showing lack of interest in his work; and, that there was no dispute regarding his refusal to work despite company directives for him to report.

Upon acting on the motion NLRC flip-flopped; it reversed itself. It ruled that petitioner was guilty of abandonment for going on sick leave without justifiable reason.[3]

Petitioner moved for reconsideration. It was denied; hence, this petition.

Petitioner insists that he has not abandoned his job, and protests his dismissal without due process. He claims he was abroad for medical examination because of his hypertension and cardiovascular problems. Dr. Mel Bacabac confirmed that petitioner had artery coronary heart disease which would require rest and reduced normal activities.[4]

Respondents maintain otherwise. According to private respondent Tuazon, as early as 9 February 1989 petitioner informed him of petitioner's intention to migrate to Canada together with his family; that petitioner wanted to resign and get a similar separation pay package extended to retrenched employees, i.e., three (3) months salary for every year of service, but that he informed petitioner that he could not get that much as he was not being retrenched. Tuazon also said that petitioner feigned illness to justify his unauthorized and prolonged trip to Canada in the hope that he could later exact benefits from the company through an action for illegal dismissal. Private respondents also contend that petitioner was guilty of dishonesty and gross misconduct when he lied about the seriousness of his alleged ailment just so he could extend his leave.[5] With respect to due process, respondents assert that petitioner was given two opportunities to explain his side but failed.[6]

We rule in favor of petitioner. The requisites to constitute a valid dismissal are: (a) the dismissal must be for any of the causes provided in Art. 282 of the Labor Code, and (b) only after the employee has been notified in writing and given the opportunity to be heard and defend himself, as required under Secs. 2 and 5, Rule XIV, Book V, of the Implementing Rules.[7]

Respondents' allegation that petitioner abandoned his job is belied by the fact that after learning that his services had been terminated petitioner forthwith filed a complaint for illegal dismissal. Abandonment of work is inconsistent with the filing of the complaint within the reglementary period.[8] An employee who takes steps to protest his lay-off cannot by any logic be said to have abandoned his work. Clear, deliberate and unjustified refusal to resume employment and not mere absence is required to constitute abandonment as a valid ground for termination of employment.[9] The fact that petitioner informed his employer on 20 October 1989 that he would be reporting for work in the first week of December 1989 showed that his absence was merely temporary and reflected his intention to continue working.

The reasons advanced by ABBOTT in disapproving the application for sick leave of petitioner were: (a) while petitioner was allegedly suffering from hypertension since 29 August 1989 he continued working until 11 September 1989 without any ill effect; (b) petitioner inappropriately applied on 3 August 1989 for a vacation leave instead of sick leave; (c) petitioner's application was for an indefinite duration and, (d) petitioner's application for sick leave appeared to be a mere attempt to prolong his vacation leave.

These reasons appear to be petty; they defy logic. The mere fact that petitioner was able to work from 29 August to 11 September 1989 without exhibiting any ill effect should not be taken against him. He should be commended in fact for working despite his physical condition. Again, there is nothing wrong with an application for sick leave which does not specify the date when the applicant would return for work. Certainly, private respondent could

have granted the application and fixed the duration or limited the period of the leave. Besides, the choice of whether to avail of his sick leave belongs to the employee and he cannot be faulted for going on leave to seek adequate medical treatment.

Under the circumstances, we cannot help concluding that the penalty of dismissal is too harsh and severe if not unjust, unreasonable and unwarranted especially when viewed against his long years of dedicated service that merited awards and commendations. The records fail to disclose any incident in the past that would make his loyalty and dedication questionable. This seems to be the first time that he is in trouble with his employer.

The records show that at the time he went on leave, which ended in his dismissal, he had eighty-five and a half (85-1/2) days of leave credit. He was employed with respondent for eighteen (18) years during which, as adverted to earlier, he was the recipient of many awards and commendations from the company.

Respondents would persuade us that petitioner was guilty of dishonesty for feigning illness, gross misconduct for intentional violation of company rules on leave applications, and gross insubordination for disobeying their return to work order. Fraud, serious misconduct or willful disobedience may constitute a just cause for termination of employment. But such grounds were never discussed in the proceedings below; only abandonment was raised. Unfortunately, contrary to private respondents' thesis, the facts on record do not disclose that petitioner indeed abandoned his job. The testimony of respondent Tuazon that petitioner went to Canada to seek employment is at most self-serving and hearsay. It cannot merit any probative value. But even if we assume the testimony to be true, petitioner has every right, if not a duty to himself and his family, to seek better opportunities.

On the issue of due process raised by petitioner, the law requires the employer to furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause or causes for termination and shall afford him ample opportunity to be heard and to defend himself with the assistance of a representative.[10] Specifically, the employer must furnish the worker with two (2) written notices before termination of employment can be legally effected: (a) notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (b) the subsequent notice which informs the employee of the employer's decision to dismiss him.[11]

The only notice which contained the statement of the cause for termination was respondent ABBOTT'S letter of 25 October 1989. Its earlier letter of 10 October 1989 cannot be considered a notice of dismissal since it did not state the cause for petitioner's termination. It merely informed petitioner that his application for sick leave was disapproved and that he should report for work five (5) days from receipt thereof. Actually, petitioner was dismissed on 27 October 1989, only two (2) days after the notice of 25 October 1989 was sent to him. Considering that the second letter was mailed from Manila to Bacolod City, and taking into account the condition of our postal service of which private respondents should be well aware, it was unreasonable for private respondents to expect petitioner to receive the letter and report for work in Manila within two (2) days.

Verily, the twin requirements of notice and hearing constitute the essential elements of due process. Neither of these elements can be eliminated without running afoul of the constitutional guaranty.[12] The dismissal of petitioner without giving him ample opportunity to adequately present his side is glaringly violative of his right to due process.

WHEREFORE, the resolutions of the National Labor Relations Commission promulgated 20 August and 12 October 1992 are REVERSED and SET ASIDE. Consequently, private respondents are directed to REINSTATE petitioner GEORGE D. JONES to his former position immediately with back wages and without loss of seniority rights and other benefits to which he is entitled under the law.

**SO ORDERED.**

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

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[1] Decision, NLRC, 14 July 1992, pp. 1-2; Rollo, pp. 36-37.

[2] Id., pp. 3-6; Rollo, pp. 38-41.

[3] Resolution, NLRC, 20 August 1992, pp. 1-3; Rollo, pp. 32--34.

[4] Petition, 25 November 1992, pp. 12-18; Rollo, pp. 20-26.

[5] Comment of Private Respondent Abbott, 5 March 1993, pp. 10-13; Rollo, pp. 81-84; Comment of Public Respondent NLRC, 1 June 1993, pp. 6-7, 13-14; Rollo, pp. 122-123, 129-130.

[6] Id., pp. 20-22; Rollo, pp. 91-93.

[7] Imperial Textile Mills, Inc. v. NLRC, G.R. No. 101527, 19 January 1993, 217 SCRA 237, 245 citing Shoemart, Inc. vs. NLRC, 176 SCRA 385.

[8] Santos v. NLRC, G.R. No. 76991, 28 October 1988, 166 SCRA 759, 764, 765.

[9] Batangas Laguna Tayabas Bus Company v. NLRC, G.R. No. 101858, 21 August 1992, 212 SCRA 792, 800.

[10] Art. 277, par. (b), Labor Code.

[11] Pepsi-Cola Bottling Co. v. NLRC, G.R. No. 101900, 23 June 1992, 210 SCRA 277, 286.

[12] Pili v. NLRC, G.R. No. 96895, 21 January 1993, 217 SCRA 338, 345; Abiera v. NLRC, G.R. No. 102023, 6 November 1992, 215 SCRA 476, 480.

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