

JACKSON BUILDING CONDOMINIUM CORPORATION AND/OR RAZUL REQUESTO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FERDINAND GUMOGDA, RESPONDENTS.

G.R. No. 111515. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court to set aside the Decision of National Labor Relations Commission (NLRC), which affirmed the Decision of the Labor Arbiter dated October 30, 1992. The latter decision ordered petitioners to reinstate private respondent and to pay him back wages, differential pay, thirteenth-month pay and service-incentive leave pay for 1991.

I

On November 22, 1989, private respondent was employed as a janitor by petitioner with a monthly salary of P2,340.00 or a daily wage of P90.00.

On November 15, 1992, private respondent filed a 45-day leave of absence from November 15, 1991 to December 29, 1991 to undergo an appendectomy, which would necessitate complete bed rest for about thirty days from the date of operation as shown by his medical certificate (Annex "C-1", Rollo, p. 28). This was granted by petitioner.

On January 3, 1992, private respondent informed petitioner Razul Requesto, president of petitioner corporation, that he was physically fit to assume his work. However, petitioners refused to accept him back contending that he had abandoned his work.

On March 24, 1992, private respondent filed with the Labor Arbiter a complaint against petitioners for illegal dismissal, underpayment of wages and non-payment of thirteenth-month pay and service-incentive leave pay (Annex "C", Rollo, pp. 20-26).

On July 12, 1992, petitioners submitted their position paper wherein they alleged that private respondent was not dismissed but was merely advised to rest for health reasons until he could procure a medical certificate attesting that he was fit to work. They further alleged that private respondent failed to return to his workplace or to submit the required medical certificate.

On October 30, 1992, the Labor Arbiter rendered a decision in favor of private respondent.

Petitioners then appealed to NLRC, alleging that the Labor Arbiter committed grave abuse of discretion. However, NLRC affirmed in toto the decision of the Labor Arbiter. A subsequent motion for reconsideration was denied.

II

The issues for consideration of this Court are whether private respondent abandoned his work and whether petitioners are liable for the payment of private respondent's back wages, differential pay, thirteenth-month pay and service-incentive leave pay for 1991.

III

Petitioners contend that private respondent was still weak when he reported back for work and they had to ask him to secure a medical clearance. They claim that he failed to submit one or to report for work; hence they considered him as having abandoned his work.

Petitioners raise questions of fact which have already been passed upon by the Labor Arbiter and NLRC. This Court does not disturb the findings of fact of administrative agencies when supported by substantial evidence (*Wyeth-Suaco Laboratories, Inc. v. National Labor Relations Commission*, 219 SCRA 356 [1993]).

For abandonment to be a valid ground for dismissal, two requisites must be compresent: the intention by an employee to abandon coupled with an overt act from which it may be inferred that the employee had no more intention to resume his work (*People's Security, Inc. v. National Labor Relations Commission*, 226 SCRA 146 [1993]).

In the instant case, the said requisites are not present.

As found by the Labor Arbiter, private respondent's physician advised him to rest for 30 days before reporting back for work in order to recuperate. Private respondent heeded this advise and even exceeded the number of days recommended by his doctor for his recuperation. In fact, he reported back for work 50 days after his operation. This would clearly show that private respondent was ready to assume his responsibilities considering that he had fully recovered from the operation. Furthermore, the filing of a complaint for illegal dismissal by private respondent is inconsistent with the allegation of petitioners that he had abandoned his job. Surely, an employee's posture will be illogical if he abandons his work and then immediately files an action for his reinstatement (*Remerco Garments Manufacturing v. Minister of Labor and Employment*, 135 SCRA 167 [1985]).

Petitioners also urged that private respondent is not entitled to any remuneration during the period that he did not report for work under the principle of "a fair day's work for a fair day's pay."

The law on the matter refutes this legal challenge of petitioners.

Section 31 of R.A. No. 6715 which amended Article 279 of the Labor Code of the Philippines provides that "an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full back wages, 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 his actual reinstatement."

The award of back wages by NLRC to private respondent was predicated on the ground that he was illegally dismissed and not on his failure to report for work (*Llosa-Tan v. Silahis International Hotel*, 181 SCRA 738 [1990]).

Private respondent is likewise entitled to the thirteenth-month pay. Presidential Degree No. 851, as amended by Memorandum Order No. 28, provides that employees are entitled to the thirteenth-month pay benefit regardless of their designation and irrespective of the method by which their wages are paid.

WHEREFORE, the Court Resolved to DISMISS the petition.

SO ORDERED.

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

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