

BERNARDO NAZAL AND C.B. NAZAL TRADING, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ERNESTO CASTRO, RESPONDENTS.

G.R. No. 122368. June 19, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

This petition for certiorari assails the decision[1] of the National Labor Relations Commission (NLRC), dated July 17, 1995, which reversed and set aside the appealed decision of the labor arbiter dismissing for lack of merit the complaint for illegal dismissal of private respondent.

Respondent Ernesto Castro was hired by petitioner as a special service employee and, four years thereafter, as a security guard, until his services were terminated on May 15, 1985. He subsequently filed a complaint for illegal dismissal with prayer for reinstatement and back wages against herein petitioners, which case was assigned to and heard by Labor Arbiter Emerson C. Tumanon. Herein petitioners contended therein that respondent Castro was not dismissed but that he failed to report for work for almost eight months, and that abandonment of work is a ground for dismissal.

On the bases of the complaint and the position papers submitted by the parties, Arbiter Tumanon rendered a decision on December 11, 1986 dismissing the complaint for illegal dismissal on the ground that respondent Castro was not dismissed from employment but that he actually abandoned his place of work, and that such conduct constitutes a gross neglect of duty which is a valid cause for dismissal under Article 283 of the Labor Code.[2]

On appeal, the NLRC rendered a decision,[3] dated August 31, 1987, remanding the case to the labor arbiter for further appropriate proceedings, on its finding that herein petitioners failed to present concrete evidence that respondent Castro had really intended to abandon his job or had actually abandoned it. It held that petitioners' claim of abandonment was premised merely upon unsupported and bare allegations. It pointed out that for abandonment to constitute a valid cause for termination of employment, there must be a deliberate and unjustified refusal of the employee to resume employment.

Petitioners filed a motion for reconsideration from this decision of the NLRC, but the same was denied. Thus, the case was remanded to the labor arbiter for reception of additional evidence.

On March 7, 1989, Labor Arbiter Tumanon rendered his second decision[4] reiterating the dismissal of the complaint for failure of respondent Castro to substantiate his claim of illegal dismissal. From said decision, private respondent appealed to the NLRC which, this time, set aside the decision of the labor arbiter and ordered herein petitioners to pay private respondent back wages in the amount of P41,580.00, separation pay of P9,240.00, and attorney's fees equivalent to 10% of the total monetary awards.

Petitioners submit that respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction in

rendering the questioned decision. They allege that the decision of the labor arbiter was based on substantial evidence; that in both his first and second decisions, Arbiter Tumanon consistently found that herein private respondent was not dismissed from employment but had abandoned his work; that private respondent failed to explain why it took him eight months before filing the complaint for illegal dismissal; and that the decision of the NLRC has no legal and factual basis.

We find no merit in this petition which, for that matter, appears to be dilatory.

Right in their aforesaid initiatory pleading, herein petitioners admit that no formal termination of private respondent's services had been effected by them.[5] In fact, no evidence was ever adduced to show that respondent Castro was accorded due process prior to his dismissal. In her testimony before the labor arbiter, petitioners' lone witness, Mrs. Grisela N. Nazal, admitted that they did not even write respondent Castro a letter regarding his work which she claims had been abandoned by him.[6] Incredibly, this witness, who is the General Manager of petitioner C.B. Nazal Trading, further averred that she likewise did not know why Castro was no longer working with them, nor the reason for his dismissal.[7]

Such testimony borders on the absurd considering that by reason of her general management and stewardship over the business and administrative affairs of the company, it was incumbent upon Mrs. Nazal to know everything about their employees. If indeed respondent Castro had abandoned his work, it is surprising that Mrs. Nazal could not give a categorical answer or even hazard a reasonable opinion as to the cause of the former's dismissal.

According to petitioners, respondent Castro failed to report for work after learning of the investigation being conducted by them relative to the pilferage or loss of diesel oil stored in the vessel being guarded by Castro. Curiously, petitioner would nevertheless want it to appear that they were not imputing any crime against Castro, and that it was the latter who simply disappeared. Their stance on this score thereby raises a seeming cloud of mystery on a matter easily susceptible of verification.

In the Memorandum[8] filed by herein respondent as complainant before the NLRC, he argued as follows:

"Complainant testified that he was dismissed by respondents without any justifiable cause and that when he confronted Bernardo Nazal as to the reason (for) the dismissal he was merely told that his services (were) no longer needed. Thus -

Q Did you ask him the reason why he doesn't want you to work anymore?

A Well, I ask(ed) him the reason (for) my dismissal and he told me that my services are no longer needed.

Q When was that?

A May 15.

Q You mean (on) May 16, you are not working with him?

A No more, since then up to the present I have not been employed by the respondent. (tsn, August 19, 1988, pp. 10-11)" (Corrections in parentheses supplied.)[9]

This particular testimony of respondent Castro was never refuted by petitioners, either before the NLRC or in their petition for certiorari filed with this Court. Hence, it may be safely concluded that when he filed his complaint on January 27, 1986, respondent Castro had been prevented from working for more than eight months, because as of May 15, 1985 his services were already terminated by petitioners.

The alleged efforts exerted by petitioners in trying to locate respondent Castro, supposedly by inquiring from his brother as to his whereabouts, is not the kind of due process contemplated by the law. It would be straining the meaning of the law if such self-serving acts of going through the motions of locating him were to be accorded

even the semblance of a valid compliance.

The burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.[10] We repeat, as was correctly pointed out by the NLRC, that mere allegations and conjectures do not constitute conclusive proof of abandonment.

We have repeatedly stressed that for abandonment to be a valid cause for dismissal, there must be a concurrence of intention to abandon and some overt act from which it may be inferred that the employee had no more interest to continue working in his job. An employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work.[11] We, therefore, agree with the holding of the NLRC that the filing by herein private respondent of a complaint for illegal dismissal negates the imputation or even the very idea of abandonment.

One procedural aspect posed by the Solicitor General calls for clarification. To bolster his position in this case, he further submits that the basic petition should have been dismissed outright for failure of petitioners to file a motion for reconsideration from the questioned resolution of the NLRC.[12] He invites attention to the requirement therefor in the internal rules of the NLRC, as clarified in *Zapata vs. NLRC, et al.*[13]

We note, however, that a motion for reconsideration had previously been filed by petitioners against the first decision of the NLRC,[14] the findings wherein were substantially reiterated in its second decision. The facts involved, as well as the evidence presented and discussed in the two decisions, were virtually the same, hence it would have been a ceremonious duplication to require another motion for reconsideration as a prerequisite for this second recourse by petitioners against the NLRC.

For purposes of the present petition, therefore, not only has there been substantial compliance with the requirement for a prior motion for reconsideration, but such motion may be dispensed with since the questions raised here have been duly passed upon by the lower tribunal[15] or are the same as those raised and decided therein.[16] At all events, it is best that the adverse ruling here against petitioners should not go off merely on procedural objections but in recognition of the lack of substantial merit in their pretensions.

Petitioners would capitalize on the fact that private respondent filed his complaint only around eight months after his dismissal. The Solicitor General explains the apparent delay through pragmatic and realistic considerations readily understandable in view of the plight of a workingman. The delay, says the Solicitor General and we agree with him, is attributable to several factors. Certain pre-needs have yet to be met, such as consultations and advice, moral and professional assistance, as well as the opportune time. Over and above all this is the need for raising the necessary wherewithal for litigation expenses which is undeniably formidable to one in private respondent's jobless predicament.[17]

Public respondent, in turn, debunked such argument of petitioners from the legal standpoint, thus:

“Respondents (petitioners herein) may argue that complainant (private respondent herein) is guilty of laches since he filed the complaint only on January 27, 1986 when he was dismissed on May 15, 1985. We say that complainant is not guilty of laches. He has four (4) years, not three (3) years, within which to institute the action for illegal dismissal (see *Callanta vs. Carnation Philippines, Inc. and NLRC*, G.R. No. 70615, October 28, 1986).”[18]

WHEREFORE, no grave abuse of discretion having attended the foregoing disposition of public respondent, the same is hereby **AFFIRMED** and the instant petition is **DISMISSED** with treble costs against petitioners.
SO ORDERED.

Romero, Puno, Mendoza, and Torres, Jr., JJ., concur.

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- [1] NLRC NCR Case No. 1-313-86 (First Division); Commissioner Alberto R. Quimpo, ponente, and Commissioner Vicente S.E. Veloso, concurring, with Presiding Commissioner Bartolome S. Carale on leave.
- [2] Rollo, 35.
- [3] Ibid., 46.
- [4] Ibid., 83.
- [5] Petition, 7; Rollo, 12.
- [6] Rollo, 95.
- [7] Ibid., 94-95.
- [8] Annex J, Petition; Rollo, 55.
- [9] Rollo, 57-58.
- [10] Philippine Manpower Services, Inc., et al. vs. National Labor Relations Commission, et al., G.R. No. 98450, July 21, 1993, 224 SCRA 691.
- [11] Bontia, et al. vs. National Labor Relations Commission, et al., G.R. No. 114988, March 18, 1996, 255 SCRA 167.
- [12] Rollo, 146-147.
- [13] G.R. No. 77827, July 5, 1989, 175 SCRA 56.
- [14] Rollo, 8; 49-53.
- [15] Fortich-Celdran, et al. vs. Celdran, et al., L-22677, February 28, 1967, 19 SCRA 502.
- [16] Pajo, etc., et al. vs. Ago, et al., 108 Phil. 905 (1960); Legaspi Oil Co. vs. Geronimo, L-28101, March 31, 1977, 76 SCRA 174.
- [17] Rollo, 16-17.
- [18] Annex G, Petition; Rollo, 47.

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