ANTONIO PARE, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ASIA RATTAN MANUFACTURING CO., INC., RESPONDENTS.

G.R. No. 128957. November 16, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This Petition for Certiorari assails the 31 October 1996 Decision of the National Labor Relations Commission dismissing the Complaint for illegal dismissal plus payment of service incentive leave pay, damages and attorney's fees filed by Antonio Pare against ASIA RATTAN MANUFACTURING CO., INC., as well as the 22 January 1997 Resolution denying reconsideration of the Decision.

ASIA RATTAN MANUFACTURING CO., INC., hired Antonio Pare in February 1987 as rattan framer. On 9 November 1992 Pare reported for work as usual but was simply refused entry into the company premises; instead, he was made to answer a certain letter of respondent company failing in which his services would be terminated. In his reply dated 25 November 1992 petitioner explained that he was absent on 29 October, 3, 6, 7 and 9 November 1992 because he took care of his wife who suffered a nervous breakdown. Petitioner's explanation was apparently accepted by Bienvenido Rivera, Industrial Relations Manager of respondent company, as he ordered his reinstatement but Amelito Quiazon, petitioner's immediate supervisor, refused to reinstate him; hence, this complaint for illegal dismissal.

ASIA RATTAN MANUFACTURING CO., INC., for its part, alleged that petitioner was not illegally dismissed but, on the contrary, it was petitioner who abandoned his work. On 26 November 1992 petitioner was instructed to report for work but he failed to do so. On 1 December 1992 ASIA RATTAN MANUFACTURING CO., INC., considered petitioner to have abandoned his job and on 28 January 1993 formally terminated his services.

The Labor Arbiter found the dismissal illegal holding that private respondent ASIA RATTAN MANUFACTURING CO., INC., was not able to prove abandonment on the part of petitioner. Thus, the firm was ordered to pay petitioner P4,494.00 representing his service incentive leave, P87,339.07 as back wages and P16,172.05 as separation pay.[1]

On appeal the NLRC reversed the Labor Arbiter and ruled that petitioner's unauthorized absences for several months were tantamount to abandonment, which was a valid ground for dismissal, the term "AWOL" being equivalent to abandonment.[2] His motion for reconsideration having been denied,[3] petitioner now comes to us through this Petition for Certiorari.

A careful perusal of the records reveals that petitioner did not abandon his job; hence, we grant the petition.

As shown in the letter to petitioner by ASIA RATTAN MANUFACTURING CO., INC., he was made to explain only his absences on 29 October, 3, 6, 7 and 9 November 1992; so he did in his explanation of 25 November 1992, which appeared satisfactory. On 9 November 1992 petitioner even reported for work only to be barred from

the company premises by his employer.

Quite understandably, petitioner could not be faulted for his previous absences allegedly for the entire months of August and September and half of October 1992. The letter sent to him only required him to explain his absences on 29 October, 3, 6, 7 and 9 November 1992. As correctly observed and aptly rationalized by the Labor Arbiter -

> The imputed absences have correspondingly and undisputedly been penalized by suspensions and reprimands, hence, respondents cannot again use same ground for dismissing herein complainant without violating the principle of placing him in double jeopardy.[4]

This Court similarly ruled in Pepsi-Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission[5] -

> Moreover, private respondent was already penalized with suspensions in some of the infractions imputed to him in this case x x x He cannot again be penalized for those misconduct. The foregoing acts cannot be added to support the imposition of the ultimate penalty of dismissal which must be based on clear and not on ambiguous and ambivalent ground.

Petitioner is not guilty of abandonment where, to be a valid cause for dismissal, there must be 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 protect his layoff cannot by any logic be said to have abandoned his work.[6] Abandonment as a just and valid ground for dismissal requires the deliberate, unjustified refusal of the employee to resume his employment. Two (2) elements must then be satisfied: (a) the failure to report for work or absence without valid or justifiable reason; and, (b) a clear intention to sever the employer-employee relationship. The second element is the more determinative factor and must be evinced by overt acts. Likewise, the burden of proof is on the employer to show the employee's clear and deliberate intent to discontinue his employment without intention of returning. Mere absence is insufficient.[7]

All the abovementioned elements are unavailing in the present case. First, petitioner's failure to report for work was with justifiable reason. His wife had just suffered a nervous breakdown. Petitioner was under extreme stress in coping with the day to day living. Under the circumstances, we find petitioner's absences supported with valid reason. Second, petitioner never intended to sever his working relationship with ASIA RATTAN MANUFACTURING CO., INC. Petitioner immediately complied with the memorandum sent by ASIA RATTAN MANUFACTURING CO., INC., requiring him to explain his unauthorized absences. Upon being informed of his termination from service, petitioner filed this complaint for illegal dismissal. Surely, these overt acts negate the conclusion of NLRC that petitioner wanted to sever his employer-employee relationship.

Granting that petitioner filed the complaint for illegal dismissal six (6) months after his termination, the same should not be interpreted as an indicium on his part to permanently cut his working ties with respondent company. Under the law, petitioner has four (4) years within which to institute his action for illegal dismissal.

WHEREFORE, the petition is GRANTED. The Decision of public respondent National Labor Relations Commission of 31 October 1996 dismissing petitioner Antonio Pare's Complaint for illegal dismissal and payment of his service incentive leave with damages and attorney's fees, as well as its Resolution of 22 January 1997 denying reconsideration, is REVERSED and SET ASIDE. Private respondent ASIA RATTAN MANUFACTURING CO., INC., is ordered to REINSTATE petitioner Antonio Pare to his former or equivalent position without loss of seniority rights and to PAY him full back wages, inclusive of allowances and other benefits or their monetary equivalent computed from the time these were withheld from him up to the time of his actual reinstatement. This case is ordered REMANDED to the Labor Arbiter for the proper computation of back wages and unpaid salaries due petitioner Antonio Pare. Costs against private respondent.

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SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Records, pp. 167-175.

[2] Id., pp. 282 and 289.

[3] Id., p. 300.

[4] Rollo, pp. 30-31.

[5] G.R. No. 106831, 6 May 1997, 272 SCRA 270.

[6] Nazal v. NLRC, G.R. No. 122368, 19 June 1997, 274 SCRA 350.

[7] Brew Master International, Inc. v. National Federation of Labor Unions (NAFLU), G.R. No. 119243, 17 April 1997, 271 SCRA 275.

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