

DE PAUL/KING PHILIP CUSTOMS TAILOR, AND/OR MILAGROS CHUAKAY AND WILLIAM GO, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), AND VICTORIANO SANTOS, BARTOLOME REB...

G.R. No. 129824. March 10, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for certiorari to annul and set aside the Order[1] of the Third Division of the National Labor Relations Commission[2] (NLRC) dated 19 February 1997 and its Resolution[3] dated 31 March 1997 denying the Motion for Reconsideration filed by petitioners De Paul/King Philip Customs Tailor. The disputed Order found, among others, petitioners guilty of illegally dismissing private respondents.

This case arose when private respondents, all employees of De Paul/King Philip Customs Tailor, formed a labor organization on 14 February 1993. They affiliated with the Federation of Free Workers on 26 February 1993 and their union was called the FFW-Kapatirang Manggagawa sa De Paul/King Philip Customs Tailor. A charter[4] was issued by the FFW in favor of the union and it was registered with the Bureau of Labor Relations.

On 10 March 1993, the union filed a certification election with the Department of Labor and Employment National Capital Region (DOLE-NCR). On 23 March 1993, it filed a notice of strike due to the dismissal of its union officers, an alleged unfair labor practice.

On 6 April 1993, the union president, private respondent Victoriano Santos, stopped working. This was followed by the "walk out" of the other private respondents from their jobs on 12 April 1993.

On 13 May 1993, the union filed against the petitioners a case[5] for unfair labor practice, illegal dismissal and non-payment of overtime pay before the NLRC National Capital Region Arbitration Branch.

On 26 May 1993, the petition for certification election was dismissed on the ground that the union cannot be the bargaining agent for two companies. The decision was not appealed.

On 21 June 1993, private respondents disaffiliated from the FFW. The disaffiliation was caused by the failure of FFW to send a representative in two hearings of the case of the private respondents before the labor arbiter.

On 28 June 1993, private respondents filed an amended complaint where they pursued the case in their individual capacities. Rogelio Bartolay joined as a party-complainant. Private respondents' date of hiring, termination and salary, were as follows:

Name

Date of Hiring

Termination

Salary

1. Victoriano Santos May 16, 1980 April 6, 1993 P5,200/mo.
2. Bartolome Rebamutan August 1987 April 12, 1993 6,000/mo.
3. Marina Velasco October 1977 April 12, 1993 4,000/mo.
4. Vicitacion Solis October 1979 April 12, 1993 300/day
5. Rosalinda Habolin April 1977 April 6, 1993 135/day
6. Rosalin Abelida November 1990 April 10, 1993 118/day
7. Teresita Daclan November 1985 April 6, 1993 120/day
8. Belen Alvarez September 1989 April 12, 1993 248/day
9. Rogelio Bartolay July 1987 April 12, 1993 4,200/mo.
10. Rita Lucero July 1990 April 12, 1993 172/day
11. Geminiano Maderazo February 1984 April 12, 1993 300/day
12. Adolfo Mulato May 1986 April 12, 1993 400/day
13. Amparo Egos February 1983 April 12, 1993 225/day
14. Gloria J. Cruz March 1992 April 12, 1993 248/day
15. Flora Navea April 1980 April 12, 1993 80/day
16. Gabriel Fernando February 1991 April 12, 1993 400/day
17. Priscila Villavecer April 1987 April 12, 1993 3,500/mo.
18. Renato Villavecer September 1977 April 12, 1993 4,000/day[6]

In their position paper[7] filed before Labor Arbiter Arthur L. Amansec on 12 July 1993, private respondents claimed that they were previously warned by the petitioners not to organize any labor group nor be a member of any existing labor organization. They were threatened with dismissal if they did so. Nevertheless, they formed the Kapatirang Manggagawa sa De Paul/King Philip Customs Tailor and affiliated with the Federation of Free Workers. This allegedly triggered their termination from employment.

In their position paper, petitioners averred that the private respondents were not serious in organizing a union and that the union was merely a ploy to exact money from them. Allegedly, this led to the disaffiliation of private respondents from the FFW. They denied the dismissal of private respondents. Petitioners contended that private respondents "walked out" from their jobs preparatory to their planned strike. However, the majority of the employees did not join the "walk out" and this embarrassed the private respondents who never returned to their work. Allegedly, notices were sent to the private respondents urging them to return to work. Except for Priscila Villavecer and Renato Villavecer, the other private respondents refused to receive the notices. Petitioners also manifested their willingness to accept some of the private respondents, except those who made threatening phone

calls. It was alleged that they already obtained employment in other tailoring shops.[8]

In a supplemental affidavit, private respondent Santos, as union president, denied that they were notified to return to work. He alleged that they were prevented from entering their work premises and were informed about their dismissal. Furthermore, they returned to work in the succeeding days but found out that their machines had been taken out of their office. He also alleged that they were harassed by "hired" policemen who showed fake warrants of arrest against the union leaders.

On 16 June 1994, Labor Arbiter Arthur L. Amansec dismissed private respondents' complaint for unfair labor practice. He premised his decision on the failure of private respondents to present letters of dismissal. Its dispositive portion states:

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"WHEREFORE, judgment is hereby rendered dismissing the complaint for unfair labor practice for lack of sufficient substantiation. Nonetheless, as a measure of compassionate justice, respondents are hereby ordered to pay complainants a separation pay equivalent to fifteen (15) days for every year of service.

Other claims are hereby dismissed for lack of merit."

Both parties appealed to the National Labor Relations Commission.

On 19 February 1997, the NLRC promulgated its questioned Order[9], as follows:

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"WHEREFORE, premises considered, the appeal of complainants insofar as the charge of illegal dismissal is concerned is granted. The appeal of respondent is denied. Accordingly, the appealed decision is set aside and a new one issued declaring respondents liable for complainants' illegal dismissal. As such, complainants, should be reinstated to their jobs and should be paid their back wages, computed from the time of their illegal dismissal until the time of their actual reinstatement, subject to the earning elsewhere rule. If the reinstatement be not practicable, complainants in lieu thereof should be awarded separation pay at one (1) month for every year of service.

SO ORDERED."

The motion for reconsideration filed by petitioners was denied by the NLRC in a Minute Resolution on 31 March 1997.

Petitioners now come to this Court raising the following grounds:

"A. PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO ACCORD RESPECT TO THE LABOR ARBITER'S FINDINGS OF FACT AND WHEN IT FOUND THAT PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED;

B. PUBLIC RESPONDENT NLRC ACTED IN EXCESS OF JURISDICTION WHEN IT EXACTED A STRINGENT APPLICATION OF THE TECHNICAL RULES OF PROCEDURE AND CONSIDERED PETITIONERS' RETURN TO WORK NOTICES AS MERE FABRICATIONS".[10]

In a Resolution on 27 August 1997, this Court required the respondents to file their comment on the petition. Private respondents complied on 3 November 1997 while the Office of the Solicitor General (OSG) filed a Manifestation and Motion in lieu of comment[11] on 3 February 1998. It recommended that the petition be granted. Due to the OSG's stand, the public respondent NLRC filed its own comment on the petition on 29

October 1998.[12]

The petition must fail.

Grave abuse of discretion is committed when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner. Abuse of discretion does not necessarily follow a reversal by the NLRC of a decision of a Labor Arbiter. Corollarily, mere variance in evidentiary assessment between the NLRC and the Labor Arbiter does not automatically call for a full review of the facts by this Court. The NLRC's decision, so long as it is not bereft of substantial support from the records, deserves respect from this Court.[13]

In the case at bar, the NLRC reversed the Labor Arbiter not without reason. We quote its order, viz:

"The findings of the Labor Arbiter leave much to be desired. While generally, the finding[s] of the trier of facts should merit respect, it should not be so in this case, as the same were patently defective. Suffice it to stress that the claim of illegal dismissal filed by the workers are (sic) intertwined (sic) with the issue on union busting constitutive of the unfair labor practice charge. Consequently, it would have been prudent for the labor arbiter to have ascertained the entirety of the issue on union busting rather than zeroing on (sic) as he did on the specific act of complainants' termination. xxx [Consequently], the inquiry of the Labor Arbiter on the specific proof i.e. the absence of "letters of termination" issued by the respondent to the complainant[s] that would show the unequivocal act of termination is a bit off-tangent. The absence thereof does not necessarily negate the claim made by the complainants.

It is worth mentioning that complainants are one in their stand that respondents, right from the start of their employment have cautioned them against joining a labor union. That is why, after they have insisted on forming one years (sic) after, the management's ire were [sic] bent on them. xxx As candidly claimed by the complainants, the President of the union, Mr. Victoriano Santos, along with two others who spearheaded the cause of the union were the first ones to be barred from entering the premises of the company on April 6, 1993, while the rest of the complainants followed suit on April 12, 1993. The prohibition for the complainants to work with the company did not come as explicit (sic) as it was said to others, like complainant Santos, since others were simply prohibited from performing their work on account of the removal of their machineries from their work premises. This was the unwavering account of the union President, Mr. Victoriano Santos, when he testified on cross during the trial. Consequently, we are more constrained to believe complainants' side of the story.

Complainant[s], of special note, have been in the employ of the company for quite a number of years. Some have been in the company for seventeen (17) long year[s], other (sic) ten (10) or more years which (sic) only few are relatively new. It would seem incomprehensible therefore that complainants would throw those productive years of their working life into oblivion by simply walking out and abandoning their jobs. Certainly, that runs counter to human experience.[14]

These findings negate the claim interposed by the petitioners that private respondents abandoned their jobs. Abandonment, as a just and valid ground for dismissal means the deliberate and unjustified refusal of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment. The intent can not be lightly inferred or legally presumed from certain ambivalent acts. For abandonment to be a valid ground for dismissal, two elements must be proved: the intention of an employee to abandon, coupled with an overt act from which it may be inferred that the employee has no more intent to resume his work.[15] As correctly found by the public respondent NLRC, it is unlikely that the private respondents abandoned their jobs considering the lengths of their employment. Moreover, no overt act was proven by the petitioner from which we can infer the clear intention of the private respondents to desist from their employment.

Petitioners and the Office of the Solicitor General also contend that the NLRC acted in excess of its jurisdiction when it considered the notices to return to work sent to private respondents as mere fabrications. In this regard, the OSG contended:

"(T)he latter's (labor arbiter) factual finding that petitioner did not dismiss private respondents is legally tenable because it is supported by the evidence on record. As correctly found by the labor arbiter:

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'A dismissal is a positive, unequivocal act of management. Such act is simply absent in the present case where there is not even a letter of dismissal sent by respondents to complainants. On the contrary, what is on record are formal notices sent by management to complainants to report for work, notices which complainants refused to heed.

Sample of this notice reads:

Dear-----

Since you walked out last April 6, 1993, you have not returned despite verbal notices through your co-workers. This is a violation of our company rule and regulations.

In view thereof, you are hereby directed to report for work within 48 hours and show cause upon receipt of this letter. Otherwise we will be forced to terminate your services with this company.

Please be guided accordingly.

Very truly yours,
Management'

(Annex "I" Petition, at p. 4 of Labor Arbiter's June 6, 1994 decision).

The fact that the said return-to-work notices were received by private respondents Renato Villavecera and Priscila Villavecera (please see Annexes "D" & "E", Petition), who did not deny said receipt, belies the NLRC's other finding that the said notices are mere fabrications (at p. 12 of the NLRC's February 19, 1997 order, Annex "A" supra). On the contrary, the receipt by private respondents Renato and Priscila Villavecera of the notice to return to work is a strong proof of the further fact that petitioner indeed sent the notices but the rest of the private respondents refused to receive the same."^[16]

We hold that public respondent NLRC correctly refused to consider these notices on the ground that "the existence thereof has not been duly testified on by the respondents. Neither have respondents cause[d] the one personally serving the same on the complainant of the fact of complainants' supposed 'refusal to receive' said notices".^[17]

Simple logic should tell us that the receipt of Renato and Priscila Villavecera of the notices sent to them is not proof that the other private respondents received their notices. Furthermore, these notices were sent after private respondents had been dismissed on 6 and 12 April 1993. By then, the illegal dismissal of the private respondents was already an accomplished fact. The letters cannot validate their illegal dismissal.

It must be stressed that abandonment of work does not per se sever the employer-employee relationship. It is merely a form of neglect of duty, which is in turn a just cause for termination of employment. The operative act that will ultimately put an end to this relationship is the dismissal of the employee after complying with the procedure prescribed by law. If the employer does not follow this procedure, there is illegal dismissal.

We are aware that technical rules of procedure are not strictly followed by the NLRC. Nevertheless, this does not

mean that the basic rules on proving allegations should be entirely dispensed with. A party alleging a critical fact must support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process.

There is, however, a need to modify the award of backwages made by the NLRC. It is now well settled that in accordance with R.A. 6715, an employee who is unjustly dismissed is entitled to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, from the time his actual compensation was withheld from him up to the time of his actual reinstatement.[18]

IN VIEW WHEREOF, the petition is DISMISSED. The questioned Order and Resolution of the National Labor Relations Commission are MODIFIED by awarding full backwages to private respondents from the time of their dismissal up to their actual reinstatement. The questioned Order and Resolution are affirmed in all other respect. No cost.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Rollo, pp. 6-20.

[2] Composed of Commissioner Lourdes C. Javier as Presiding Commissioner, Commissioner Ireneo B. Bernardo and Commissioner Joaquin A. Tanodra as members.

[3] Rollo, pp. 21-22.

[4] Ibid. p. 91.

[5] NLRC Case No. 00-05-03323-93

[6] Amended Complaint, Rollo, pp. 80-90.

[7] Rollo, pp. 80-90.

[8] Ibid., pp. 92-100.

[9] Penned by Commissioner Joaquin A. Tanodra.

[10] Petition for Certiorari, p. 5, Rollo, p. 30.

[11] Rollo, pp. 161-174.

[12] Ibid. pp. 199-205.

[13] See *Philippine Advertising Counselors, Inc. vs. NLRC*, G.R. No. 120008, 263 SCRA 395 (1996).

[14] Rollo, pp. 8-11.

[15] *Del Monte Philippines vs. NLRC*, G.R. No. 126688, March 5, 1998.

[16] Rollo, pp. 168-170.

[17] Order, p. 12, Rollo, p. 17.

[18] *Bustamante vs. NLRC*, G.R. No. 111651, 265 SCRA 61 (1996).

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