

**PANGANIBAN, C.J., CHAIRPERSON, EDNA ABAD, JOSEPH MARTINEZ
AND ELISEO ESCANILLAS, JR., PETITIONERS, VS. ROSELLE CINEMA,
SILVER SCREEN CORPORATION AND VERMY TRINIDAD,
RESPONDENTS**

G.R. NO. 141371. March 24, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Edna Abad, Joseph Martinez and Eliseo Escanillas, Jr. (petitioners) filed the present petition for review assailing the Decision^[1] dated September 30, 1999 and Resolution dated December 10, 1999, issued by the Court of Appeals (CA) in CA-G.R. SP No. 53246.

This case originated from individual complaints filed by petitioners against Roselle Cinema, Silver Screen Corporation and Vergy Trinidad (respondents) for illegal dismissal, underpayment, non-payment of overtime pay, premium for holiday, premium pay for rest day, holiday pay, service incentive leave, night shift differentials, separation pay, damages, and attorney's fees. These complaints were later consolidated.

In a Decision dated April 17, 1998, the Labor Arbiter (LA) of the National Labor Relations Commission (NLRC) in Iloilo City ruled that petitioners were not illegally dismissed. The LA dismissed petitioners' complaints primarily on the ground that petitioners failed to substantiate their claims, as they have only their bare allegations to support it and no corroborative evidence to refute respondents' substantial evidence showing that they voluntarily terminated their relationship with respondents. The LA also denied their money claims because their allegations were belied by documentary evidence showing that these claims have been properly paid to petitioners.^[2]

On appeal, the NLRC reversed the LA in its Decision dated December 24, 1998, declaring that petitioners were illegally dismissed and ordering respondents to pay the moneys claimed by petitioners. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the decision appealed from rendered on April 17, 1998, is hereby REVERSED AND SET ASIDE and a new one entered ordering respondents, Roselle Cinema and/or Silver Screen Corporation, to pay complainants the following:

- a) Edna Abad, the amount of P107,318.00
- b) Joseph Martinez, the amount of P97,586.38
- c) Eliseo Escanillas, Jr. the amount of P102,074.60

P306,978.98

and 10% attorney's fees 30,697.90

GRAND TOTAL P337,676.88

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All other claims are hereby dismissed for lack of merit.

SO ORDERED.[3]

The NLRC's main reasons for reversing the LA's Decision were due to the fact that respondents failed to adduce clear and convincing evidence to support their defense, and that petitioners' filing of a case for illegal dismissal negated respondents' defense that petitioners abandoned their work.[4] Consequently, the NLRC ordered the award of separation pay and other monetary claims in favor of petitioners.[5]

Respondents' motion for reconsideration was denied by the NLRC in its Resolution dated April 16, 1999.[6]

Thereafter, respondents filed a special civil action for certiorari with the CA which, in its assailed Decision dated September 30, 1999, reversed the NLRC Decision and reinstated the LA Decision, dismissing the complaint of petitioners.

The CA sustained the LA's findings that there was no illegal dismissal, as petitioners voluntarily left their jobs, and that their money claims were not supported by evidence. The CA stated that the NLRC should not have dealt with the issue of abandonment since respondents did not raise this as a defense.[7]

Petitioners sought reconsideration, but the CA denied the motion in its assailed Resolution dated December 10, 1999.[8]

Hence, the present petition for review.

Petitioners argue that if the issue in this case is the illegality of their dismissal, then why should the CA conclude that "the decision of the NLRC was not supported by evidence adduced and the applicable law and jurisprudence" (page 5), when in such a situation it is the respondents that would adduce evidence.[9] Petitioners further argue that the award of wage differentials were obliterated in the decision of the CA without expressing therein clearly and distinctly the law on which it is based.[10] Lastly, petitioners insist that the CA should have dismissed the petition before it because it was filed late on June 16, 1999, the NLRC decision having been received by respondents on February 10, 1999, and their motion for reconsideration being pro forma, the last day to file the petition was on April 12, 1999.[11]

On the other hand, respondents contend that petitioners were not dismissed from work; they voluntarily left their jobs without notice. According to respondents, petitioner Escanillas last reported for work on January 5, 1997; petitioner Martinez on January 15, 1997; and petitioner Abad on January 31, 1997. They take exception to the NLRC's finding that they failed to substantiate their allegation that petitioners abandoned their jobs, and insist that they did not raise such ground as a defense.

As a rule, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, as petitions for certiorari under Rule 65 involve only jurisdictional issues, or grave abuse of discretion amounting to lack or excess of jurisdiction.[12] However, when the NLRC and the Labor Arbiter have come up with differing opinions, the Court is constrained to review the evidence on record,[13] as in the present case.

The petition raises three issues, as follows: (1) whether petitioners were illegally dismissed; (2) whether they are entitled to their money claims; and (3) whether the NLRC Decision had become final and executory.[14]

On the third issue, petitioners claim that the motion for reconsideration of the NLRC decision is pro forma and therefore said decision had become final and executory. The same does not merit any serious consideration inasmuch as petitioners failed to show why the motion for reconsideration should be considered pro forma.

The Court answers the remaining two issues in the negative because the records are bereft of any evidence which will substantiate petitioners' claims.

In their appeal to the NLRC, petitioners stated that they were "summarily dismissed from employment at Roselle Cinema without notice and just cause." [15] Petitioners, however, did not elaborate on how their dismissal was effected by respondents, i.e., whether respondents refused to admit them back to work; whether their wages were withheld from them; or whether respondents elicited any other act that can be virtually construed as termination of their employment. Even in their petition before the Court, and in their Comment before the CA, petitioners merely alleged in general terms that they were "summarily dismissed," without anything more.

The Court is well-aware that in labor cases, the employer has the burden of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[16] The Court ruled in *Great Southern Maritime Services Corp. v. Acuña*, [17] to wit:

Time and again we have ruled that in illegal dismissal cases like the present one, the onus of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. Thus, petitioners must not only rely on the weakness of respondents' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process. x x x [18] (Emphasis supplied)

Respondents maintain that petitioners were not dismissed from work, but voluntarily left their jobs. In their Position Paper, respondents alleged that petitioners were their employees "until they voluntarily left their respective jobs without formally serving notice to their employers." [19] There was no dismissal to speak of in the first place in this case. It was petitioners who, by their acts, terminated the employer-employee relationship with respondents.

As found by the LA, petitioner Escanillas last reported for work on January 5, 1997 after he was chastised by respondent Trinidad for cleaning the semi-dark theater without a flashlight. When he did not report for work the next day, Trinidad sent an employee to check on him, and the employee reported that Escanillas was not sick, but was driving his tricycle. The next day, an employee was again sent to Escanillas to tell the latter that he should report for work. On January 16, 1997, Escanillas, who was then under the influence of alcohol, went to see Trinidad and confronted him. He was told to return only when he is sober. Escanillas left, and was heard muttering that he was better off driving his tricycle. Escanillas was also seen milling around the theater premises with other men, in what Trinidad perceived to be an attempt on Escanillas's part to make good his previous threat that he would pounce on Trinidad should Escanillas see him outside. He never reported for work again.[20] The company's security guard, Dominador Malocon, executed an affidavit on February 18, 1998, in support of these claims.[21]

With regard to petitioner Martinez, he last reported for work on January 15, 1997. In the evening of that day, Trinidad called him to replace a light bulb. Instead of complying, he told Trinidad that it was not his job to do it.

Despite this, Trinidad asked him to report for work early the next day because he has to assist the repairman that would be coming to fix the electric fan; but Martinez did not report for work the next day. It was discovered on January 16, 1997 that a part of the company vehicle that Martinez drove was missing, and the suspect for the loss was Martinez. Two days after he last reported for work, Martinez assumed his new job as driver with the Israel Pork and Beef Dealer,[22] as evidenced by a notarized certification issued by its proprietor.[23]

The LA also found that petitioner Abad was not dismissed. On January 31, 1997, Abad was asked to explain regarding the missing shortages and "overages" on the canteen stocks and remittances. She was also reminded to observe decorum in the workplace, as there were several instances when her suitors had been rude to Trinidad. Abad, however, stated that she would rather resign than her personal life be interfered with. Abad then verbally offered to resign and left her station without getting her wages.[24]

Petitioners failed to refute respondents' evidence. Unfortunately, petitioners have only the following lame statements to say:

x x x The flashlight story involving Escanillas does not jibe with facts of life because one cannot clean the semi-dark corner of the theater holding flashlight, broom and dustpan, all three at the same time. Besides, you clean the semi-dark corner of the theater before or after the showing when the light is on and during the showing you clean the lighted corridors, alleys and comfort rooms. While the story about bulb, electric fan and missing califer involving Martinez as told by Trinidad only shows his inadequacy as manager of the theater. As regards Edna Abad, love happens anywhere even in oval office, or perhaps, in some chambers, the news sometimes revealed, it could happen in theater canteen or in the seats. These circumstances as told by Trinidad are not enough to show that the private respondents voluntarily leave [sic] their works [sic]. x x x[25]

The Court agrees with the CA when it reinstated the LA decision. The Court upholds the LA when he declared that "x x x [r]espondents have submitted substantial evidence in support of their claim that complainants were not dismissed. Complainants [have] only their bare allegations in their position paper that they were dismissed. They have not presented any corroborative evidence to refute the allegations of respondents." [26]

The Court finds that the antecedent circumstances and petitioners' contemporaneous acts amply provide substantial proof of their voluntary termination of employment.

On the part of petitioner Escanillas, he was not deprived of his chance to return to work despite his disagreement with Trinidad, and in fact, he was reminded several times by Trinidad, through his employee, to report for work, but he did not do so; he was seen driving his tricycle on a certain day when Trinidad sent his employee to ask him to report for work; and he was heard muttering that he was better off driving his tricycle.

The same goes with petitioner Martinez. In spite of his earlier insubordination, when he refused to change the light bulb as ordered by Trinidad, he was asked to report early the next day, but, like Escanillas, he did not return to work. Instead, two days after he last reported for work with respondents, he took on another job as a driver with the Israel Pork and Beef Dealer.

With regard to petitioner Abad, apparently, she resented it when Trinidad asked her to explain the shortages on her charge, and when she was reminded to observe proper ethics in the workplace. Consequently, Abad was heard saying that she'd rather resign, after which she manifested her intention to terminate her employment by leaving her station without getting her pay check.

These notwithstanding, however, the NLRC relied heavily on the fact that petitioners filed a complaint for illegal dismissal, ruling that it negates respondents' theory of abandonment.

In the first place, this case does not involve abandonment as ground for termination. Abandonment, involves

termination of an employee by the employer.[27] The truth of the matter is that before respondent could dismiss petitioners on ground of abandonment, petitioners filed with the LA their complaint for illegal dismissal. In the present case, it must be stressed that there is no evidence showing that respondents were actually dismissed by petitioners, let alone, on ground of abandonment. Neither is there a showing that petitioners formally resigned from work. What is actually involved herein is the informal voluntary termination of employment by the petitioners employees.

Thus, petitioners' filing of the complaint for illegal dismissal should not have been the NLRC's sole consideration in determining whether, indeed, they have been illegally dismissed. The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries Inc. v. NLRC*, [28] the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. "This is clearly a non sequitur reasoning that can never validly take the place of the evidence of both the employer and the employee." [29]

Given that petitioners were not illegally dismissed, but voluntarily terminated their work, therefore, they are not entitled to an award of separation pay and backwages.[30] Also, petitioners Escanillas and Martinez are not entitled to any salary from January 16-31, 1997 since they have already left respondents' employ by then. With regard to petitioner Abad, the Court sustains the NLRC's award of her salary for said period in the amount of P1,710.19, as it was shown that she resigned only on January 31, 1997.

As to the award of service incentive leave pay (SILP), 13th month pay, overtime pay, rest day and holiday pay premium, the NLRC granted the award of these money claims as there is no proof that these labor standard benefits were paid to petitioners for the year 1996. As noted by the NLRC, the Department of Labor and Employment (DOLE) Regional Offices conduct their inspections yearly,[31] and the restitution payroll covered only the years 1994-1995,[32] which was admitted by respondents in their Position Paper.[33] Regional Director Carlos L. Boteros, in its Order dated February 16, 1998, stated that respondents have already restituted to petitioners their respective labor standards benefits as of February 13, 1996,[34] as signed and acknowledged by respondents' employees, which include petitioners, in the restitution payroll dated March 31, 1996.[35]

However, records show that respondents failed to prove that petitioners were actually paid these entitlements for the year 1996. The statement in the inspection report dated July 9, 1997, by DOLE Inspector Joselito dela Banda that "there were no labor standards violation" by respondents will not suffice to prove that these benefits, in fact, have been paid. Thus, the Court sustains the NLRC's award to petitioners of the following labor standard benefits for the year 1996, viz.:

(1) EDNA ABAD

SILP

P 437.50

13[th] month pay 2,850.31

Overtime pay 10,694.37

Rest day premium 1,338.75

Holiday pay premium 1,365.00

P 16,685.93

(2) JOSEPH MARTINEZ

SILP

P 429.17

13[th] month pay 2,796.02

Night Shift differential 4,613.43

Overtime pay NONE

Rest day premium 1,313.25

Holiday pay premium 1,339.00

P 10,490.87

(3) ELISEO ESCANILLAS, JR.

SILP

P 429.17

13[th] month pay 2,796.02

Night Shift differential 4,613.43

Overtime pay NONE

Rest day premium 1,313.25

Holiday pay premium 1,339.00

P 10,490.87

WHEREFORE, the petition is PARTIALLY GRANTED. The Court of Appeals Decision dated September 30, 1999 is AFFIRMED insofar only as it reinstated the Labor Arbiter's finding that there was no illegal dismissal. However, the NLRC's Decision dated December 24, 1998 granting monetary awards to petitioners Edna Abad, Joseph Martinez, and Eliseo Escanillas, Jr., is AFFIRMED but MODIFIED. Respondents Roselle Cinema and/or Silver Screen Corporation are ORDERED to pay petitioners the following:

(1) Edna Abad P16,685.93

including salary for

Jan. 16-31, 1997

1,710.19

Total P18,396.12

(2) Joseph Martinez

P10,490.87

(3) Eliseo Escanillas, Jr. P10,490.87

No pronouncement as to costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Marina L. Buzon and Edgardo P. Cruz, concurring.

[2] CA rollo, pp. 54-55.

[3] Id. at 43-44.

[4] Id. at 38-39.

[5] Id. at 39-43.

[6] Id. at 45-46.

[7] Id. at 119-125.

[8] Id. at 144.

[9] Rollo, p. 8.

[10] Id. at 9.

[11] Id. at 10.

[12] Pascua v. National Labor Relations Commission, 351 Phil. 48, 61 (1998).

[13] Id.; Manila Mandarin Employees Union v. National Labor Relations Commission, 332 Phil. 354, 368 (1996).

[14] Rollo, p. 8.

[15] Petitioners failed to attach in their pleadings their individual complaints for illegal dismissal and money claims filed before the Labor Arbiter.

[16] Pascua v. National Labor Relations Commission, supra note 12, at 62.

[17] G.R. No. 140189, February 28, 2005, 452 SCRA 422.

[18] Id. at 437.

[19] CA rollo, p. 72.

[20] CA rollo, p. 50-51.

[21] Id. at 84.

[22] Id. at 51-52.

[23] Id. at 85.

[24] Id. at 52-53.

[25] CA rollo, unpagged; Comment, p. 3.

[26] Id. at 54.

[27] *People's Security, Inc. v. National Labor Relations Commission*, G.R. No. 96451, September 8, 1993, 226 SCRA 146, 154.

[28] 338 Phil. 870 (1997).

[29] *Id.* at 876.

[30] *Sentinel Security Agency, Inc. v. National Labor Relations Commission*, 356 Phil. 434, 447 (1998).

[31] CA rollo, p. 40.

[32] *Id.*

[33] *Id.* at 73.

[34] *Id.*, at 82.

[35] *Id.* at 81.

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