L.C. ORDOÑEZ CONSTRUCTION, A.C. ORDOÑEZ CONSTRUCTION, L.C. ORDOÑEZ GRAVEL AND SAND AND TRUCKING, AND/OR LAMBERTO ORDOÑEZ, PETITIONERS, VS. IMELDA NICDAO, RODRIGO SICAT AND ROMEO...

G.R. NO. 149669. July 27, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari seeking the reversal of the Decision[1] of the Court of Appeals (CA) dated March 13, 2001 and the CA Resolution dated August 27, 2001 denying petitioner's Motion for Reconsideration thereof.

The antecedent facts, as accurately narrated by the CA in its Decision, are as follows:

> Imelda Nicdao was employed as Secretary/Cashier, while Rodrigo Sicat and Romeo Bautista were truck drivers of respondent firm. The aforenamed petitioners [herein respondents] claim that they were hired respectively in June 1985, February 1981 and March 1988.
>
> Sometime in January 1993, petitioners inquired from private respondents about the delay of their salaries, non-payment of holiday pay, rest day allowances, service incentive leave, 13th month pay and the like. Private respondents [herein petitioners] allegedly were infuriated and uttered invectives at petitioners, especially to Nicdao, and threatened them with termination of their employment. To avoid a confrontation, petitioner Nicdao filed a leave of absence for six (6) working days on January 28, 1993. When petitioners reported for work on February 1, 1993, private respondents told them that their services were no longer needed and their employment was already terminated. From then on, petitioners were barred from entering the company premises of private respondents. As a consequence, petitioners filed a complaint for illegal dismissal on February 5, 1993.
>
> In their position paper, private respondents did not deny petitioners' employment. They argued, however, that Imelda Nicdao was employed only in May 1989, while Romeo Bautista started working in June 1991. Private respondents further argued that Rodrigo Sicat and Romeo Bautista are drivers on a per trip basis and had not become regular employees; that Imelda Nicdao abandoned her work when she was confronted with the reported misappropriation of cash collection from sales of sand and filing (sic) materials; that Rodrigo Sicat and Romeo Bautista simply failed to report for work despite receipt of "show cause letter" why their services should not be terminated.
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> After the parties had submitted their respective position papers and other responsive pleadings with documentary and testimonial evidence, the case was submitted for resolution.
>
> The Regional Arbitration Branch No. III, San Fernando, Pampanga, presided by Labor Arbiter Quintin C. Mendoza, promulgated its Decision dated June 21, 1994, holding that petitioners were illegally dismissed, to wit:
> WHEREFORE, premises considered, a decision is hereby issued declaring the dismissal of the remaining

> complainants illegal, and dismissing the complaint of the other (11) for having desisted on their complaints, and for lack of interest as regards Antonio Sicat. As a consequence, respondents A.C. Ordonez Construction, L.C. Ordonez Construction and L.C. Ordonez Gravel and Sand and Trucking and individual respondent Lamberto Ordonez are hereby ordered to pay complainants jointly and severally, including their separation the following amounts to which each of them are entitled, to wit:
>
> 1) Imelda Nicdao ---------- P 107,006.25
> 2) Rodrigo Sicat ---------- P 93,083.23
> 3) Romeo Bautista ---------- P 72,149.95
>
> All in the aggregate of two hundred seventy two thousand two hundred thirty nine pesos and 43/100 centavos (P272,293.43), plus attorney's fee representing ten (10%) percent of the total award, the rest being dismissed for lack of merit.
>
> SO ORDERED.
>
> (pp. 43-44, Rollo)
>
> On appeal to the NLRC, private respondents assailed the Labor Arbiter's decision on the following grounds:
> a) There are serious errors in the findings of facts which, if not corrected, would cause grave or irreparable damage or injury to the applicants.
>
> b) Serious reversible errors constituting evidence of abuse of discretion were committed by the Labor Arbiter."
>
> (p. 26, ibid)

The National Labor Relations Commission, Third Division, in its Decision of June 15, 1995, reversed and set aside the Labor Arbiter's decision, the dispositive portion of which is hereto quoted as follows:

WHEREFORE, premises considered, the Decision dated 21 June 1994 is Set Aside and a new one entered ordering respondents, jointly and severally, to pay complainants the following:

1) Imelda Nicdao:

13[th] month pay P2,000.00
Service incentive leave pay 2,006.25
Indemnity pay 1,000.00
Total P5,006.25

2) Rodrigo Sicat:

Separation pay P5,233.32
13[th] month pay 1,350.00
Service incentive leave pay 1,500.00
Total P8,083.32

3) Romeo Bautista:

Separation pay P7,849.98
13[th] month pay 2,700.00
Service incentive leave pay 1,500.00
Total P12,049.98

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SO ORDERED.

(p. 30, ibid)

On July 5, 1995, petitioners filed a Motion for Reconsideration; however, the same was denied by the NLRC in its Resolution dated November 7, 1995 for lack of compelling or valid reason (pp. 33-34, ibid).[2]

Herein respondents then filed a petition for certiorari with the CA. On March 13, 2001, the CA promulgated its Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Decision of the National Labor Relations Commission dated June 15, 1995 and its Resolution dated November 7, 1995 are hereby SET ASIDE. The Decision of the Labor Arbiter dated June 21, 1994 is REINSTATED, with the modification that private respondents should pay only the difference between the allowable 13th month pay and Christmas bonus already given to the petitioners; that private respondents also give service incentive leave pay and pay attorney's fees equivalent to ten percent (10%) of the total award. No pronouncement as to costs.
>
> SO ORDERED.[3]

The CA granted the petition and ruled that respondents are not guilty of abandonment since it was only after the management informed them that their services were no longer needed that they failed to report for work, and the fact that they immediately filed a complaint for illegal dismissal is a clear indication that they had no intention of abandoning their employment. The CA also ruled that with regard to respondents Sicat and Bautista, petitioners failed to give them the required two notices, thus, tainting their termination with illegality. As for petitioners' averment that the dismissal of respondent Nicdao was due to her misappropriation of cash collections amounting to P327,006.37, the CA found this claim not worthy of belief because petitioners only filed a complaint for estafa against Nicdao five months after the latter had filed the complaint for illegal dismissal against petitioners. Thus, the CA concluded that the filing of the estafa case against Nicdao was merely an attempt by petitioners to create a leverage against the former.

Petitioners moved for reconsideration of the CA Decision but in its Resolution dated August 27, 2001 the CA denied reconsideration.

> Hence, this petition for review on certiorari on the following grounds:
>
> - THE COURT OF APPEALS ABUSED ITS DISCRETION IN REVIEWING AND RE-EXAMINING THE FINDINGS OF FACTS OF THE NLRC DESPITE THE FACT THAT SAID FINDINGS OF THE NLRC ARE SUPPORTED BY SUBSTANTIAL EVIDENCE ON RECORD;
>
> - THE COURT OF APPEALS DECIDED THE QUESTION OF RESPONDENTS' DISMISSAL IN A WAY NOT IN ACCORD WITH THE LAW AND CLEARLY SETTLED JURISPRUDENCE ON THE MATTER WHEN IT -
>
> 2.1 DID NOT CONSIDER RESPONDENT IMELDA NICDAO AS HAVING ABANDONED HER JOB;
>
> 2.2 TREATED THE DISMISSAL OF RESPONDENTS ROMEO BAUTISTA AND RODRIGO SICAT AS LEGAL [sic].[4]

It is emphasized at the outset that the CA committed no error in reviewing the findings of fact of the National Labor Relations Commission (NLRC). In Mayon Hotel & Restaurant v. Adana,[5] the Court held thus:

> x x x [W]hen the factual findings of the Labor Arbiter and the NLRC are diametrically opposed and this disparity of findings is called into question, there is, necessarily, a re-examination of the factual findings to ascertain which opinion should be sustained. As ruled in Asuncion v. NLRC.

> Although, it is a legal tenet that factual findings of administrative bodies are entitled to great weight and respect, we are constrained to take a second look at the facts before us because of the diversity of the opinions of the Labor Arbiter and the NLRC. A dis-harmony between the factual findings of the Labor Arbiter and those of the NLRC opens the door to a review thereof by this Court.
>
> The CA, therefore, did not err in reviewing the records to determine which opinion was supported by substantial evidence.[6] (Emphasis supplied)

The next question then is, was the CA correct in sustaining the findings of the Labor Arbiter?

Petitioners first argue that with regard to respondent Nicdao, the CA should have given more credence to the statement of petitioners that Nicdao was employed only in the year 1989 and not in 1985. To support their argument, petitioners point out that Nicdao's claim as to the date of her employment should not be believed as she has lost her credibility when she made inconsistent statements regarding the date of her employment as stated in her Affidavit[7] dated January 21, 1994 stating that she was employed in August 1991, as opposed to the date of employment stated as June 1985 in her complaint and position paper.

On this point, the Court rules in favor of petitioner. Indeed, even if petitioners were not able to present any employment records, respondent Nicdao's Affidavit[8] dated January 21, 1994 submitted to the Labor Arbiter in support of her complaint for illegal dismissal militates against her for it stated that "I am a regular employee of respondent Ordonez, having been employed on [sic] August 1991, x x x." In Rufina Patis Factory v. Alusitain,[9] the Court held that:

> It is a basic rule in evidence, however, that the burden of proof is on the part of the party who makes the allegations - ei incumbit probatio, qui dicit, non qui negat. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[10] (Emphasis ours)

In said case, respondent Alusitain was claiming retirement benefits from his employer, alleging that he was employed until 1995. The employer countered that Alusitain was employed only until February 20, 1991, presenting as proof Alusitain's resignation letter dated February 19, 1991, and his Affidavit of Separation from Employment submitted to the Social Security System, stating that he was separated from his last employer on February 20, 1991. The Court held therein that the resignation letter and affidavit are admissions against Alusitain's own interest that belie his claim of retiring on January 31, 1995. Moreover, the Court pointed out that since the Affidavit is a notarial document, it has in its favor the presumption of regularity and to contradict the facts stated therein, there must be evidence that is clear, convincing and more than merely preponderant.[11]

Applying the foregoing ruling in Rufina to the case at bar, it was incumbent upon Nicdao to present competent evidence that she was indeed employed beginning 1985. The burden of proof rests upon respondent Nicdao since she is the party claiming entitlement to separation pay and other employee benefits computed from 1985. However, Nicdao herself made an admission against her own interest by stating in her affidavit that she was employed only in August 1991. Nicdao did not even present any explanation for the variance between the date of employment stated in her affidavit as against the date stated in her complaint and position paper. Nor has she presented any other evidence to overturn the statement in her own affidavit that she was employed only in August 1991. Having made such an admission against her interest, Nicdao's statement in her affidavit freed petitioners from the burden of presenting evidence, i.e., the employment records, to prove their assertion in their position paper that they only employed Nicdao in May 1989.

Since the Court cannot rely on Nicdao's inconsistent statements as to the date of her employment, the only persuasive evidence on record regarding Nicdao's date of employment is petitioners' admission that they

employed her in May 1989. Based on the evidence on record, Nicdao must then be deemed to have been employed by petitioners only in May 1989.

Next, petitioners insist that there is no illegal dismissal in this case because respondents abandoned their employment.

Our guiding principle in resolving the issue of whether or not respondents were illegally dismissed is stated in Litonjua Group of Companies v. Vigan,[12] as follows:

> For emphasis, We shall quote with seeming triteness the dictum laid down in Mendoza v. NLRC (supra) regarding the unflinching rule in illegal dismissal cases:
>
> "that the employer bears the burden of proof. To establish a case of abandonment, the employer must prove the employees' deliberate and unjustified refusal to resume employment without any intention of returning. . .
>
> mere absence from work, especially where the employee has been verbally told not to report, cannot by itself constitute abandonment. To repeat, the employer has the burden of proving overt acts on the employee's part which demonstrate a desire or intention to abandon her work..." [13] (Emphasis ours)

The foregoing was further elucidated in Hodieng Concrete Products v. Emilia,[14] where the Court held:

> The rule is that before abandonment can be considered a valid cause for dismissal, there must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work.
>
> In Samarca v. Arc-Men Industries, Inc., we held:
>
> "x x x. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.
>
> x x x
>
> Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.
>
> Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work. x x x." [15] (Emphasis ours)

Were petitioners able to discharge their burden of proof? The answer is a categorical no.

First, with regard to the case of Nicdao, the Court finds difficulty believing petitioners' allegation that when they confronted Nicdao with discrepancies in the payrolls of employees, she filed a leave of absence and never returned to work. Petitioners reason out that it would have been illogical for them to dismiss Nicdao in February of 1993 because, she being their Secretary-Cashier, petitioners badly needed her services to shed light on the audit being conducted at that time. Petitioners further insist that as a result of the audit, Nicdao was found to have misappropriated the amount of P327,006.37 and they filed a criminal case for estafa against her. In petitioners' view, such charge against Nicdao constituted just cause for her dismissal but by then, Nicdao had allegedly abandoned her employment.

The glaring lack of convincing evidence on record to support petitioners' allegations, however, makes it impossible for the Court to give any weight to petitioners' version of what supposedly transpired.

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If, indeed, the true reason for Nicdao's filing a leave of absence on January 28, 1993 was because she was confronted by Mrs. Ordoñez regarding a report of one Gregorio Lito, a truck driver, that she pocketed some cash sales remitted to her, then why is there no statement on record from said Gregorio Lito? The only truck drivers who submitted a Joint Affidavit[16] are Alfredo Angeles, Jr. and Renato Bucud, but they only stated that they received their salaries and money for spare parts from Nicdao and in turn, they also remit their cash collections from customers to Nicdao. Said truck drivers never alluded to any misconduct being committed by Nicdao. Although petitioners presented the Affidavit[17] dated July 5, 1993 and the Audit Report[18] dated May 19, 1993, both executed by Accountant Gloria De Leon, said documents merely show that the audit was completed in March 1993 and it was in the audit report where the accountant placed on record the supposed anomalies in cash collections.[19] Said documents do not show when the audit began or when the supposed anomalies were first discovered. There is, therefore, no evidence on record, except petitioners' bare allegation, to prove that as early as January 28, 1993, petitioners had already received information that Nicdao had misappropriated their funds, and such discovery led them to confront Nicdao. Verily, Nicdao's narration of facts that petitioners became infuriated with her when she questioned petitioners regarding their delayed salaries and non-payment of some benefits and eventually refused to allow her to return to work, is the more credible version of what actually happened.

> The Court agrees with the observation of the CA, to wit:
>
> > The truth is, the charge of estafa through misappropriation of funds imputed against petitioner Nicdao was filed before the Investigating Judge of the Municipal Trial Court of Guagua Pampanga (p. 120, Rollo) five (5) months after the filing of the illegal dismissal case or on July 5, 1993. If indeed petitioner Nicdao really committed the acts imputed against her, private respondents should have taken action as early as possible before dismissing her on that ground, or they should have filed the criminal case in court before effecting the dismissal of petitioner Nicdao. Hence, the filing of the estafa case some five (5) months after she filed the complaint for illegal dismissal is an obvious attempt to create a leverage against petitioner Nicdao.[20] (Emphasis ours)

The foregoing circumstances clearly show that petitioners' imputation of anomalous handling of funds against respondent Nicdao is merely a desperate attempt to create some semblance of a just cause for Nicdao's dismissal.

In the case of respondents Bautista and Sicat, petitioners allege that the two merely stopped reporting for work and failed to answer the "show cause letters" sent to them by petitioners. Again, documentary evidence on record shows otherwise. The "show cause" letter[21] sent to one of the original complainants, requiring him to explain why he had not been reporting for work since March 4, 1993, was dated April 14, 1993. Note, however, that the complaint for illegal dismissal was filed by respondents way back in February 5, 1993. Moreover, as shown by the Registry Return Receipt[22] on record, petitioners had received Summons for the complaint filed against them by respondents as early as February 15, 1993. Why, then, would petitioners still send such a "show cause" letter in April 1993 when they were already aware that respondents are accusing them of illegal termination? Thus, it is quite apparent that the sending of such "show cause" letter was only a belated attempt by petitioners to make it appear that they had complied with the notice requirement for the dismissal of employees.

Once more, petitioners fail to present credible proof of any overt acts on the part of respondents to abandon their employment. Petitioners have not presented any evidence, other than the bare allegations in their pleadings, to support their defense that respondents Sicat and Bautista had abandoned their employment.

In fact, respondents' immediate filing of a complaint for illegal dismissal unambiguously shows that respondents had no intention whatsoever to abandon their employment. Human experience tells us that no employee in his right mind would go through the trouble of filing a case unless the employer had indeed terminated the services of the employee. In Hodieng Concrete Products v. Emilia,[23] the Court reiterated the long-standing rule that the

filing of the complaint for illegal dismissal negates the allegation of abandonment.

Petitioners' argument that the lack of a prayer for reinstatement in respondents' complaint is a sign that respondents really intended to abandon their employment is tenuous. Respondents sufficiently explained in their complaint that they are no longer seeking reinstatement because of the strained relationship with their employer.

> In Mayon Hotel and Restaurant v. Adana,[24] the Court emphasized that:
>
> [I]n termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just or authorized cause. Where there is no showing of a clear, valid and legal cause for termination of employment, the law considers the case a matter of illegal dismissal.[25]

Petitioners having utterly failed to discharge their burden of proving that there was any just cause for dismissing respondents and that they complied with due process requirements, they are clearly liable for illegally dismissing respondents.

IN LIGHT OF THE FOREGOING, the petition is PARTLY GRANTED. The Decision of the Court of Appeals dated March 13, 2001 is AFFIRMED with the MODIFICATION that separation pay and other benefits to which respondent Imelda Nicdao is entitled should be computed only from May 1989, the date of her employment.

SO ORDERED.

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

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[1] Penned by Associate Justice Fermin A. Martin, Jr. (now retired) and concurred in by Associate Justices Wenceslao I. Agnir, Jr. (now retired) and Mercedes Gozo-Dadole.

[2] Rollo, pp. 30-33.

[3] CA rollo, pp. 187-188.

[4] Rollo, p. 8.

[5] G.R. No. 157634, May 16, 2005, 458 SCRA 609.

[6] Id. at 623-624.

[7] NLRC records, p. 103.

[8] Id.

[9] G.R. No. 146202, July 14, 2004, 434 SCRA 418.

[10] Id. at 428.

[11] Id. at 428-430.

[12] 412 Phil. 627 (2001).

[13] Id. at 641.

[14] G.R. No. 149180, February 14, 2005, 451 SCRA 249.

[15] Id. at 253-254.

[16] NLRC records, between pp. 127 and 128.

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[17] Id. at 118.

[18] Id. at 119.

[19] Note that Accountant Gloria De Leon stated in her Affidavit dated July 5, 1993 that the first audit report wherein she revealed the supposed anomalies was dated March 23, 1993.

[20] CA Decision, rollo, pp. 37-38.

[21] NLRC records, p. 68.

[22] Id. at 8.

[23] Supra note 14, at 254.

[24] Supra note 5.

[25] Id. at 639.

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