CITY TRUCKING, INC. / JOHN EDLES, PETITIONERS, VS. ANTONIO BALAJADIA, RESPONDENT.

G.R. NO. 160769. August 09, 2006

Ponente: PUNO, J.

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PUNO, J.:

On appeal are the Decision[1] and Resolution[2] of the Court of Appeals, dated July 10, 2003 and November 13, 2003, respectively, in CA-G.R. SP No. 75401, affirming the Decision[3] and Resolution[4] of the National Labor Relations Commission (NLRC), dated August 30, 2002 and October 30, 2002, respectively, that petitioners illegally dismissed respondent from employment, with the modification that respondent should be immediately reinstated to his former or equivalent position without loss of seniority rights and other privileges.

The facts:

Petitioner City Trucking, Inc. is primarily engaged in the hauling and disposal of waste matters from the City of Manila to the San Mateo landfill in Rizal. Petitioner John Edles, a.k.a. Caesar T. Edles, is its General Manager.

On June 20, 1994, petitioners employed respondent Antonio Balajadia as a helper mechanic and part of their maintenance staff. His duties included doing errands for petitioners like buying spare parts, picking up repaired parts from machine shops, and assisting other employees performing maintenance or repair work on the dump trucks owned by petitioners. His working hours were from 8:00 a.m. to 5:00 p.m., Mondays to Sundays with a salary of One Hundred Fifty Pesos (P150.00) a day.

On December 31, 2000, the San Mateo landfill was closed down. In January 2001, while respondent Balajadia was performing his work, Honorato Edles, the chief mechanic and cousin of petitioner John Edles, informed him that he may continue to work for petitioners, but he should not expect to be paid his salary, unless petitioners get to collect from their clients. A few days later, Rowena Edles, the company secretary and sister of petitioner John Edles, asked respondent why he was still working when he had already been terminated from employment. Thus, beginning January 7, 2001, respondent stopped reporting for work.

On January 18, 2001, respondent went to John Edles's office to request for a Certificate of Employment. Petitioner company granted the request and issued the Certification which reads:

> This is to certify that Mr. Antonio Balajadia has been an Assistant Mechanic at Citywide Builders & Trucking, Inc. from January 1990 to December 2000.
>
> This certification is being issued upon the request of Mr. Balajadia, for whatever legal purpose it may serve.
>
> (signed)
> CAESAR T. EDLES
> General Manager[5]

On January 24, 2001, respondent filed a complaint for illegal dismissal with the Public Assistance and Complaints

Unit (PACU) of the Department of Labor and Employment (DOLE). The PACU set a conference between the parties before Atty. Catalina Marasigan on March 1, 2001.[6] During the conference, petitioner company was informed of the details of respondent's money claims. It requested more time to go over its records, in order to respond to the allegations of respondent. Thus, a second conference was scheduled on April 4, 2001.

Before the said scheduled date or on March 14, 2001, respondent filed the complaint for illegal dismissal with the NLRC.[7]

On August 31, 2001, Labor Arbiter Cresencio G. Ramos, Jr. ruled in favor of respondent. The dispositive portion of the decision reads:

> WHEREFORE, in the light of the foregoing premises, judgment is hereby rendered declaring that complainant Antonio Balajadia had indeed been illegally dismissed from his employment. Accordingly, respondents are hereby directed to pay said complainant the sum of P28,000.00 as separation pay in lieu of reinstatement, as well as P33,930.00 as full backwages.
>
> SO ORDERED.

Petitioners appealed to the NLRC, which affirmed the decision of the labor arbiter. The NLRC also denied petitioners' motion for reconsideration.

On petition for certiorari with the Court of Appeals, the latter upheld the ruling of the NLRC, with the modification that respondent should be immediately reinstated to his former or equivalent position without loss of seniority rights and other privileges. Petitioners' Motion for Reconsideration[8] was denied.

Hence, this appeal.[9] Petitioners raise the following issues for resolution:

> - Whether or not an employee's act of requesting a Certificate of Employment after failing to report to work can be construed of his intention to abandon his work.
>
> - Whether or not a former employee could be reinstated despite his admission of strained relations between him and his employer and his prayer for separation pay in lieu of reinstatement.
>
> - Whether or not an employee who did not appeal the decision is entitled to backwages during the pendency of the appeal even if the assailed labor arbiter's decision did not order his reinstatement.[10]

The main issue is whether respondent abandoned his employment, and hence was not dismissed by petitioners.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[11] It is one form of neglect of duty, hence, a just cause for termination of employment by the employer.[12] Mere absence does not equate to abandonment. To constitute abandonment, there must be a concurrence of: (1) the failure to report for work or absence without valid or justifiable reason;[13] (2) a deliberate intent of the employee to leave his work permanently;[14] and (3) overt act/s from which it may be inferred that the employee had no more intention to resume his work.[15] This burden of proving that there was a deliberate and unjustified refusal on the part of the employee to resume his employment without any intention of returning rests on the employer.[16]

Petitioners contend that respondent's intention to abandon his work can be gleaned from his history of absenteeism, his request for a Certificate of Employment, and the belated filing of the complaint for illegal dismissal.

We hold that absenteeism per se is not an overt act which would prove an unequivocal intent on the part of the employee to discontinue employment. In the case at bar, respondent was able to explain his alleged absenteeism. He did not report for work beginning January 7, 2001 because the chief mechanic and cousin of petitioner

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informed him that he may continue working but should not expect to be paid his salary. Later, the company secretary and sister of petitioner John Edles told him point-blank that his services have already been terminated. Petitioners neither controverted nor denied these incidents.

We also rule that respondent's request for a Certificate of Employment does not show that he abandoned his work. Respondent requested for the issuance of the Certificate of Employment after he has been told that his services have already been terminated. Getting a Certificate of Employment is normal. To contend that it is evidence of abandonment is non sequitur.

We also hold that respondent did belatedly file his complaint for illegal dismissal. Respondent filed his complaint against petitioners with the PACU on January 24, 2001. The PACU serves as the briefing and referral area of walk-in clients especially those who are "first-timers" to DOLE.

"The PACU is similar to that of a police blotter wherein detailed records of the complaints and the complainants are kept."[17] Most complainants of illegal dismissal cases before the PACU are advised to file a formal complaint before the NLRC.[18] In the instant case, the proceedings before the PACU were not completed because respondent subsequently filed his complaint for illegal dismissal before the NLRC on March 14, 2001. Hence, it took respondent only 17 days from his last day at petitioners' employ to protest his dismissal before the PACU, and another 49 days to file his complaint for illegal dismissal before the NLRC. In Kingsize Manufacturing Corp. v. NLRC,[19] this Court even considered a lapse of nine months before filing a complaint for illegal dismissal a non-issue. Under the law, an employee has four years within which to institute his action for illegal dismissal.[20] An employee who forthwith takes steps to protest his removal from employment cannot, by any stretch of imagination, be said to have abandoned his work.

Be that as it may, the Court of Appeals should not have ordered the reinstatement of respondent. As both parties emphasized, the Labor Arbiter and the NLRC did not order the reinstatement of the respondent, and the latter did not appeal the decision. A party who has not appealed cannot obtain from the appellate court any affirmative relief other than those granted in the appealed decision.[21] Moreover, we have ruled in many instances that reinstatement is no longer viable where the business of the employer has closed, or where the relations between the employer and the employee have been so severely strained that it is not advisable to order reinstatement, or where the employee decides not to be reinstated.[22] Respondent expressly prayed for an award of separation pay in lieu of reinstatement from the very start of the proceedings at the PACU and the NLRC. By so doing, he forecloses reinstatement as a relief by implication.[23]

IN VIEW WHEREOF, the petition is partially GRANTED. The assailed Decision and Resolution of the Court of Appeals are affirmed with the modification that the order reinstating the respondent to his former or equivalent position is deleted.

No costs.
SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna and Garcia, JJ., concur.

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[1] CA rollo, pp. 147-153.

[2] Id. at 186.

[3] Id. at 24-28.

[4] Id. at 29-30.

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[5] Rollo, p. 77.

[6] CA rollo, p. 36.

[7] Id. at 37.

[8] Id. at 84-86.

[9] Rollo, pp. 22-36.

[10] Id. at 26.

[11] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 605, citing Columbus Philippine Bus Corporation v. NLRC, 364 SCRA 606, 622 (2001).

[12] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 605, citing De Paul / King Philip Customs Tailor v. NLRC, 304 SCRA 448, 458 (1999).

[13] Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 605.

[14] Veterans Security Agency, Inc. v. Gonzalvo, Jr., G.R. No. 159293, December 16, 2005.

[15] Micro Sales Operation Network v. NLRC, G.R. No. 155279, October 11, 2005.

[16] Veterans Security Agency, Inc. v. Gonzalvo, Jr., G.R. No. 159293, December 16, 2005.

[17] http://www.pia.gov.ph/press/p030814a.htm#story3.

[18] Ibid.

[19] G.R. Nos. 110452-54, November 24, 1994, 238 SCRA 349, 356.

[20] Callanta v. Carnation Phils., Inc., G.R. No. 70615, October 28, 1986, 145 SCRA 268; Art. 1146, Civil Code, The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;
x x x

[21] Coca-Cola Bottlers Phils., Inc. v. Daniel, G.R. No. 156893, June 21, 2005, citing Filflex Industrial & Manufacturing Corp. v. NLRC, G.R. No. 115395, 286 SCRA 245 (1998).

[22] Solidbank Corp. v. CA, G.R. No. 151026, August 25, 2003, 409 SCRA 554, citing Nagusara v. NLRC, 290 SCRA 245 (1998).

[23] Solidbank Corp. v. CA, G.R. No. 151026, August 25, 2003, 409 SCRA 554, citing Capili v. NLRC, 270 SCRA 488 (1997).

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