

**STANDARD ELECTRIC MANUFACTURING CORPORATION,
PETITIONER, VS., STANDARD ELECTRIC EMPLOYEES
UNION-NAFLU-KMU AND ROGELIO JAVIER, RESPONDENTS.**

G.R. NO. 166111. August 25, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari seeking to review the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76657, which annulled and set aside the Resolution of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's Decision[3] in NLRC NCR Case No. 00-08-04760-96.

Rogelio Javier was employed by the Standard Electric Manufacturing Corporation (SEMC) on January 15, 1973 as radial spot machine operator in its Production Department. Javier was a member of the Standard Electric Employees Union-NAFLU (Union).[4]

On July 31, 1995, Javier failed to report for work. He failed to notify the SEMC of the reason for his absences. On August 9, 1995, he was arrested and detained for the charge of rape upon complaint of his neighbor, Genalyn Barotilla. After the requisite preliminary investigation, an Information for rape was filed in the Regional Trial Court (RTC) of Pasig, docketed as Criminal Case No. 108593.[5]

On January 13, 1996, the SEMC received a letter[6] from Javier, through counsel, informing the SEMC that Javier was detained for the charge of rape and for that reason failed to report for work. He requested the SEMC to defer the implementation of its intention to dismiss him, citing the ruling of this Court in *Magtoto v. NLRC*. [7] The SEMC denied Javier's request and issued a Memorandum terminating his employment for (a) having been absent without leave (AWOL) for more than fifteen days from July 31, 1995; and (b) for committing rape.[8]

On May 17, 1996, the RTC issued an Order[9] granting Javier's demurrer to evidence and ordered his release from jail. Shortly thereafter, Javier reported for work, but the SEMC refused to accept him back.

A grievance meeting between the Union, Javier and the SEMC was held, but SEMC refused to re-admit Javier. On August 2, 1996, the Union and Javier filed a Complaint[10] for illegal dismissal against the SEMC before the NLRC. He averred that since the reason for his detention for rape was non-existent, the termination of his employment was illegal. Javier cited the ruling of this Court in *Magtoto v. NLRC*. [11]

For its part, the SEMC averred that Javier's prolonged absences caused irreparable damages to its orderly operation; he had to be replaced so that the continuity and flow of production would not be jeopardized. It could not afford to wait for Javier's indefinite return from detention, if at all. The SEMC insisted that conformably with its Rules and Regulations, it was justified in dismissing Javier for being absent without leave for fifteen days or so.

On January 14, 1997, the Labor Arbiter rendered judgment ordering the dismissal of the complaint.[12] The

Labor Arbiter ruled that the complaint was within the exclusive jurisdiction of the Voluntary Arbitrators or Panel of Arbitrators. On appeal, the NLRC reversed the Labor Arbiter's decision and ruled that the latter had jurisdiction over the complaint; it thus ordered the remand of the case to the Labor Arbiter for resolution on the merits.[13]

On August 16, 1999, the Labor Arbiter rendered judgment ordering the dismissal of the complaint.[14] However, the SEMC was ordered to pay separation pay to the complainant. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the complaint for illegal dismissal is hereby ordered DISMISSED for lack of merit.

The respondents Standard Electric Manufacturing Corporation and Mr. Jose Uy are, however, ordered to pay complainant Rogelio Javier the amount of SEVENTY-ONE THOUSAND SEVEN HUNDRED SIXTY PESOS (P71,760.00) representing his financial assistance/separation pay.

SO ORDERED.[15]

On appeal, the NLRC affirmed the Labor Arbiter's ruling in its Resolution of September 24, 2002. The NLRC declared that:

Appellants' contention is baseless. A perusal of the evidence on record clearly shows that prior to his dismissal from his job by respondents-appellees, he was made to explain his side (Exhibit "5," respondents' Formal Offer of Evidence). Evidence on record further shows that a grievance machinery as provided for in the CBA was activated by respondents-appellees for the purpose of affording complainant a chance to present his side prior to his dismissal. (Exhibits "4" to "4-b," respondents' Formal Offer of Evidence).

Considering the adequate evidence presented by respondents-appellants on which the findings of the Labor Arbiter were based, this Commission finds no merit on complainants-appellants' contention that the Labor Arbiter had committed serious errors in his findings of facts and the law in this instant case.

Hence, the assailed decision must stand for "the matter of evaluating the merits and demerits of the case, as long as the Decision is supported by the facts and the evidence, is left to the sound discretion of the Labor Arbiter." (Metropolitan Bank and Trust Company vs. NLRC, et al., 235 SCRA 400, 403).

WHEREFORE, in the light of the foregoing premises, [the] Decision of the Labor Arbiter dated August 16, 1999 is hereby AFFIRMED.

SO ORDERED.[16]

When the NLRC denied the motion for reconsideration of the said decision, Javier and the Union filed a petition for certiorari with the CA, questioning such ruling, as follows:

I
PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT HOLDING THAT RESPONDENT COMPANY VIOLATED PETITIONER ROGELIO JAVIER'S RIGHT TO PRIOR NOTICE RELATIVE TO THE LATTER'S DISMISSAL.

II
PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT PETITIONER ROGELIO JAVIER WENT AWOL (ABSENCE WITHOUT LEAVE) FROM HIS JOB.

III
PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN NOT APPLYING THE RULING IN MAGTOTO VS. NLRC TO THE INSTANT CASE.[17]

In the Decision[18] dated August 19, 2004, the CA reversed the findings of the Labor Arbiter and the NLRC. The

fallo of the decision reads:

WHEREFORE, the NLRC's Resolution dated September 24, 2002 is ANNULLED and SET ASIDE. Private respondent Standard Electric Manufacturing Corporation is hereby ORDERED to REINSTATE Rogelio Javier to his former position, without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time of his dismissal until he is actually reinstated, or to pay him separation pay, if reinstatement is no longer feasible.

SO ORDERED.

The appellate court cited the rulings of this Court in *Magtoto v. NLRC*[19] and *City Government of Makati City v. Civil Service Commission*[20] as precedents. It declared that it was not Javier's intention to abandon his job; his incarceration reasonably justified his failure to report for work and negated the theory that he was on AWOL. Likewise, the CA held that Javier could not be terminated on the ground of commission of a crime, as when he was acquitted of the rape charges, the second ground relied upon by the SEMC ceased to have factual basis. Hence, despite the fact that Javier was allegedly afforded the opportunity to explain his side, the same was unnecessary since, in the first place, there was no just or authorized cause for the dismissal.

The motion for reconsideration seasonably filed by the SEMC on August 19, 2004 was denied by the CA in its November 23, 2004 Resolution.[21] Hence, this recourse.

The issues posed by the petitioner are the following:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN APPLYING THE CASE OF MAGTOTO VS. NLRC IN THIS CASE.

II

WHETHER OF NOT THE HONORABLE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN APPLYING THE CASE OF CITY GOVERNMENT OF MAKATI CITY IN THIS CASE.

III

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN REINSTATING [RESPONDENT] ROGELIO JAVIER AND GRANTING HIM FULL BACKWAGES.

IV

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED PATENT AND REVERSIBLE ERROR IN TOTALLY DISREGARDING THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION AND THE LABOR ARBITER A QUO.[22]

The Court finds that the petition is bereft of merit.

The petitioner asserts that the ruling of the Court in *Magtoto* finds no application in the present case. It argues that in *Magtoto*, no criminal information was filed in the regular court against the employee, as the city prosecutor found no probable cause to hold the respondent therein for trial. The petitioner argues that respondent Javier was indicted for the crime of rape in the RTC. Another difference, the petitioner points out, is that the employee in the cited case was dismissed solely on account of his absences during his imprisonment; respondent Javier was terminated due to truancy prior to his detention from July 31, 1995, to his detention for rape on August 9, 1995, until his release on May 24, 1996. Respondent Javier never informed the petitioner why he was absent on the said dates, and subsequent thereto. It was only on January 13, 1996 that respondent Javier, through his counsel,

informed the petitioner of his detention for rape for the first time.

The petitioner avers that the ruling of this Court in *City Government of Makati City* is not applicable because respondent Javier was dismissed on a demurrer to evidence, and not because he did not commit the offense alleged. The case was dismissed because of the prosecution's failure to prove his guilt beyond reasonable doubt. In marked contrast, the petitioner notes, the employee in *City Government of Makati City* was acquitted by reason of the prosecution's failure to prove her complicity in the crime.

The petitioner maintains that the mere filing of the Information for the crime of rape against respondent Javier rendered its Rules and Regulations operational, particularly Serious Offense No. 7. It avers that substantial proof, not clear and convincing evidence or proof beyond reasonable doubt, is sufficient basis for the imposition of any disciplinary action over an erring employee.

The petitioner's contentions are wrong.

Respondent Javier was dismissed by the petitioner effective February 5, 1996 for (a) being AWOL from July 31, 1995 up to January 30, 1996; and (b) committing rape. However, on demurrer to evidence, respondent Javier was acquitted of the charge. With respondent Javier's acquittal, the cause of his dismissal from his employment turned out to be non-existent.

In the *Magtoto* case, Alejandro Jonas Magtoto was arrested by virtue of an Arrest, Search and Seizure Order dated September 1, 1980. He was charged with violation of Article 136 (Conspiracy and Proposal to Commit Rebellion) and Article 138 (Inciting to Rebellion or Insurrection) of the Revised Penal Code (RPC). Although Magtoto informed his employer and pleaded that he be considered as "on leave" until released, his employer denied the request. On April 10, 1981, or about seven (7) months after his arrest, Magtoto was released after the City Fiscal dismissed the criminal charges for lack of evidence. On the same date, he informed his employer of his intent to start working again, but the employer rejected the offer. In ruling that his termination was illegal, the Supreme Court ruled as follows:

The employer tries to distance itself from the detention by stressing that the petitioner was dismissed due to prolonged absence. However, Mr. Magtoto could not report for work because he was in a prison cell. The detention cannot be divorced from prolonged absence. One caused the other. Since the causes for the detention, which in turn gave the employer a ground to dismiss the petitioner, proved to be non-existent, we rule that the termination was illegal and reinstatement is warranted. A non-existent cause for dismissal was explained in *Pepito v. Secretary of Labor* (96 SCRA 454).

...

"... A distinction, however, should be made between a dismissal without cause and a dismissal for a false or non-existent cause. In the former, it is the intention of the employer to dismiss his employee for no cause whatsoever, in which case the Termination Pay Law would apply. In the latter case, the employer does not intend to dismiss the employee but for a specific cause which turns out to be false or non-existent. Hence, absent the reason which gave rise to his separation from employment, there is no intention on the part of the employer to dismiss the employee concerned. Consequently, reinstatement is in order. And this is the situation here. Petitioner was separated because of his alleged involvement in the pilferage in question. However, he was absolved from any responsibility therefor by the court. The cause for his dismissal having been proved non-existent or false, his reinstatement is warranted. It would be unjust and unreasonable for the Company to dismiss petitioner after the latter had proven himself innocent of the cause for which he was dismissed." [23]

The facts in *Pedroso v. Castro* [24] are similar to the set of facts in the present case. The petitioners therein were arrested and detained by the military authorities by virtue of a Presidential Commitment Order allegedly for the commission of Conspiracy to Commit Rebellion under Article 136 of the RPC. As a result, their employer hired

substitute workers to avoid disruption of work and business operations. They were released when the charges against them were not proven. After incarceration, they reported back to work, but were refused admission by their employer. The Labor Arbiter and the NLRC sustained the validity of their dismissal. Nevertheless, this Court again held that the dismissed employees should be reinstated to their former positions, since their separation from employment was founded on a false or non-existent cause; hence, illegal.

Respondent Javier's absence from August 9, 1995 cannot be deemed as an abandonment of his work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. To constitute as such, two requisites must concur: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts, with the second element being the more determinative factor. Abandonment as a just ground for dismissal requires clear, willful, deliberate, and unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.[25]

Moreover, respondent Javier's acquittal for rape makes it more compelling to view the illegality of his dismissal. The trial court dismissed the case for "insufficiency of evidence," and such ruling is tantamount to an acquittal of the crime charged, and proof that respondent Javier's arrest and detention were without factual and legal basis in the first place.

The petitioner acted with precipitate haste in terminating respondent Javier's employment on January 30, 1996, on the ground that he had raped the complainant therein. Respondent Javier had yet to be tried for the said charge. In fine, the petitioner prejudged him, and preempted the ruling of the RTC. The petitioner had, in effect, adjudged respondent Javier guilty without due process of law. While it may be true that after the preliminary investigation of the complaint, probable cause for rape was found and respondent Javier had to be detained, these cannot be made as legal bases for the immediate termination of his employment.

Moreover, the petitioner did not accord respondent Javier an opportunity to explain his absences from July 31, 1995. The petitioner's reliance on the alleged Letter dated August 17, 1995 is misplaced. There is no evidence on record that respondent Javier received such letter, and its sudden presence is highly suspect. The Court agrees with respondent Javier's observation that the letter was not mentioned nor annexed in the petitioner's Position Paper, Rejoinder and even in its Opposition to the Appeal. The letter surfaced only on a much later date, in 1999, when it was formally offered in evidence[26] and referred to in the petitioner's Memorandum[27] before the Labor Arbiter - a clear inference that the said letter was but an afterthought to justify petitioner's termination of respondent Javier's employment.

Further, we cannot subscribe to the petitioner's contention that the due process requirement relative to the dismissal of respondent Javier was duly complied with when he was allowed to explain his side during the grievance machinery conferences. Indeed, in the case at bar, the petitioner did not conduct any investigation whatsoever prior to his termination, despite being informed of respondent Javier's predicament by the latter's siblings, his Union and his counsel.[28] The meetings held pursuant to the grievance machinery provisions of the collective bargaining agreement were only done after his dismissal had already taken effect on February 5, 1996. Clearly, well-meaning these conferences might be, they can not cure an otherwise unlawful termination.

It bears stressing that for a dismissal to be validly effected, the twin requirements of due process - notice and hearing - must be observed. In dismissing an employee, an employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought; and (2) the other to inform him of his employer's decision to dismiss him. As to the

requirement of a hearing, the essence of due process lies in an opportunity to be heard, and not always and indispensably in an actual hearing.[29]

Finally, in line with the rulings of this Court in Magtoto and Pedroso on the matter of backwages, respondent Javier is not entitled to any salary during the period of his detention. His entitlement to full backwages commenced from the time the petitioner refused his reinstatement. In the instant case, when respondent Javier was freed on May 24, 1996 by virtue of the judgment of acquittal dated May 17, 1996, he immediately proceeded to the petitioner but was not accepted back to work; hence, the reckoning point for the grant of backwages started therefrom.

IN LIGHT OF ALL THE FOREGOING, the instant petition is hereby DISMISSED for lack of merit. The assailed Decision of the Court of Appeals is AFFIRMED WITH MODIFICATION. Petitioner is hereby ORDERED to reinstate respondent Rogelio Javier to his former position or, if no longer possible, a substantially equivalent position without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time it refused to allow his reinstatement on May 24, 1996 until actually reinstated; or, if reinstatement is no longer feasible, to pay him separation pay equivalent to one (1) month salary for every year of service.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Edgardo P. Cruz and Mariano C. Del Castillo, concurring; Rollo, pp. 39-40.

[2] Rollo, pp. 47-48.

[3] Penned by Labor Arbiter Fatima Jambaro-Franco.

[4] CA Rollo, p. 80.

[5] Id. at 52, 102.

[6] Id. at 53.

[7] No. L-63370, 18 November 1985, 140 SCRA 58.

[8] CA Rollo, p. 55.

[9] CA Rollo, pp. 102-104.

[10] Rollo, p. 318.

[11] Supra.

[12] CA Rollo, pp. 79-87.

[13] CA Rollo, pp. 93-98.

[14] Id. at 109-114.

[15] Id. at 114.

[16] CA Rollo, pp. 27-28.

[17] Id. at 12.

[18] Rollo, pp. 39-46.

[19] Supra, see note 7.

[20] G.R. No. 131392, 6 February 2002, 376 SCRA 248.

[21] Rollo, pp. 47-48.

[22] Rollo, p. 20.

[23] Magtoto v. NLRC, supra, pp. 64-65.

[24] No. L-70361, 30 January 1986, 141 SCRA 252.

[25] R.P. Dinglasan Construction, Inc. v. Atienza, G.R. No. 156104, 29 June 2004, 433 SCRA 263; Hantex Trading Co., Inc. v. Court of Appeals, G.R. No. 148241, 27 September 2002, 390 SCRA 181; Del Monte Philippines v. NLRC, G.R. No. 126688, 5 March 1998, 287 SCRA 71; and Labor v. NLRC, G.R. No. 110388, 14 September 1995, 248 SCRA 183.

[26] Rollo, pp. 200-203.

[27] Id. at 190-199.

[28] CA Rollo, p. 53.

[29] Tan v. NLRC, G.R. No. 128290, 24 November 1998, 299 SCRA 169.

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