

SEVEN STAR TEXTILE COMPANY, PETITIONER, VS. MARCOS DY AND GUILLERMO CAHILLO, RESPONDENTS.

G.R. NO. 166846. January 24, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Court of Appeals (CA) Decision[1] in CA-G.R. SP No. 66402, which annulled and set aside the resolutions of the National Labor Relations Commission (NLRC), as well as the Resolution[2] dated January 21, 2005 denying the motion for reconsideration thereof.

As found by the CA, the present petition stemmed from the following backdrop:

[Respondents] Marcos Dy and Guillermo Cahillo were former employees of [petitioner] Seven Star Textile Company (SSTC, for brevity). Dy started his employment with SSTC on January 21, 1993 as Personnel Head and was later designated as Finishing Supervisor. On the other hand, Cahillo was employed as driver on August 17, 1993.

On June 9, 1998, Dy and Cahillo filed their complaint for illegal dismissal and non-payment of overtime pay, premium pay for holiday and rest day, service incentive leave pay and 13[th] month pay against SSTC and its President/General Manager, Lin Ang Pang.

The complaint alleged that Dy and Cahillo were dismissed from employment on May 2, 1998 and May 19, 1998, respectively, because of their refusal to render overtime work. Dy claimed that on April 30, 1998, he was asked to render overtime work but he refused to do so when he was told, upon his inquiry, that the company could not afford to pay overtime premium, considering that his previous overtime work had not yet been paid; that he reported for work on May 2, 1998, but he was not able to find his time card; that Mrs. Chit Ong, Personnel Officer of SSTC, told him that his services were terminated in view of his refusal to render overtime work; that Mrs. Ong told him to come back on May 5, 1998 to get his salary; that on May 5, 1998, he was told to return on May 8, 1998, on which date, he was asked to sign a blank sheet of paper and to accept the amount of P17,400.00 as separation pay; and that he refused the offer of SSTC as he was still interested to work with the company because of the difficulty of looking for another job. For his part, Cahillo alleged that he complained to Mrs. Ong that he had not been paid for the overtime work that he had rendered since he started working and requested for the payment thereof; that he subsequently refused to render overtime work because of the non-payment of his previous overtime work; that he reported for work on May 19, 1998, but he was not able to find his time card; that he asked for his time card from Rolly Tan, Assistant Production Manager, and the latter told him that his time card was in the office of Mrs. Ong and that he could get it after he had delivered some goods; that when he returned to the company at 6:15 p.m. on said day, he called Mrs. Ong, who told him of his dismissal from work effective the following day because of his refusal to render overtime work; and that Mrs. Ong told him to come back on May 25, 1998 to get his 13[th] month pay and when he did, he was asked to sign a resignation letter to be entitled to separation pay in the amount of P11,000.00, but he refused to do so. Both Dy and Cahillo claimed that they were dismissed without cause and without prior notice.

SSTC denied that Dy and Cahillo were dismissed from work, claiming that the two did not report for work

after they were reprimanded for refusing to render overtime work; that Cahillo had committed several infractions of company rules and regulations; that Dy held a supervisory position involving trust and confidence, so that a high degree of loyalty and respect was expected of him; and that Dy committed numerous absences and tardiness, acts of insubordination and willful disobedience of orders of his superiors, which warrant the loss of trust and confidence reposed on him; and that being a managerial employee, Dy is not entitled to his claims for monetary benefits.

Lin Ang Pang claimed that he is a mere stockholder of SSTC and was thus erroneously impleaded in the complaint.[3]

On November 17, 1999, Labor Arbiter Eduardo J. Carpio rendered his Decision[4] dismissing the complaint for lack of merit. The dispositive portion reads:

WHEREFORE, decision is hereby rendered dismissing the present case for lack of merit. Respondents are however ordered to pay Cahillo the amount of P2,004.16 representing his unpaid 13th month pay (proportionate) for 1998.

SO ORDERED.[5]

The Labor Arbiter declared that contrary to respondents Marcos Dy and Guillermo Cahillo's claim, they were not dismissed from employment; they abandoned their work. Since respondents had voluntarily terminated their employment, petitioner Seven Star Textile Co. was no longer mandated to comply with the requirement to send notices to respondents. The Labor Arbiter explained:

x x x [T]he requirement of the law that respondents should have sent notice to complainants to report for work in order to establish abandonment is not applicable in this case. Respondents did not terminate the services of complainants on the ground of abandonment. They merely interposed abandonment as a matter of defense and not as a valid ground for complainants' termination. In other words, respondents raised abandonment of work to negate complainants' contention that they were terminated from employment and not as a valid ground for termination since respondents strongly deny said termination. There being no employment termination obtaining in this case, the charge of illegal dismissal must fall for lack of factual and legal basis.[6]

On appeal,[7] the NLRC affirmed the Labor Arbiter's decision. It declared, among others, that no termination paper existed; thus, there was no dismissal to speak of. Respondents' unjustified refusal to render overtime work amounted to voluntary resignation. The NLRC also pointed out that respondents' infraction of company policies had eroded the trust and confidence which their employer had reposed upon them. This, coupled with their recent unjustified refusal to render overtime work, would justify their dismissal. The NLRC also ruled that respondent Dy was a Finishing Supervisor - a managerial employee who, under the Labor Code of the Philippines, is not entitled to labor standard benefits. The decretal portion of the decision reads:

WHEREFORE, the assailed Decision of November 17, 1999 is AFFIRMED with MODIFICATION. Respondent Seven Star Textile Co. is ordered to pay complainant Cahillo's service incentive leave pay for three years in the total amount of P2,970.00 and the proportionate amount of his 13th month pay in the sum of P2,004.16 or a total aggregate of P4,974.16.

SO ORDERED.[8]

Respondents' motion for reconsideration of the NLRC Decision was denied for lack of merit.[9]

Thereafter, respondents assailed the NLRC ruling via a petition for certiorari under Rule 65 with the Court of Appeals. The petition was docketed as CA-G.R. SP No. 66402.

In its Decision[10] dated May 7, 2004, the CA ruled in favor of respondents and granted the petition. The decretal

portion reads:

WHEREFORE, the petition is GRANTED. The Resolutions of the National Labor Relations Commission dated November 23, 2000, which affirmed the decision of Labor Arbiter Eduardo J. Carpio dismissing petitioners' complaint for illegal dismissal, as well as the Resolution dated May 31, 2001 denying the motion for reconsideration thereof, are ANNULLED and SET ASIDE.

Private respondent Seven Star Textile Company is DIRECTED to REINSTATE petitioners Marcos Dy and Guillermo Cahillo to their former positions, without loss of seniority rights and privileges, and to pay their full backwages and other benefits, such as service incentive leave pay for three (3) years and 13th month pay, from the dates of their dismissal up to the date of their actual reinstatement.

SO ORDERED.[11]

In finding the petition meritorious, the appellate court noted that respondents reported for work on May 2, 1998 and May 19, 1998; they were informed, however, that their services were already terminated. Petitioner even offered to give them separation pay, but respondents refused and filed the complaint for illegal dismissal with prayer for reinstatement. The CA reiterated the rule that in termination cases, the burden of proving that the dismissal of the employee is for a valid and authorized cause rests on the employer. It explained that petitioner did not send any notice of dismissal to respondents, let alone any notice requiring them to return to work. Thus, the two-notice rule was not properly observed. The CA also found that petitioner failed to prove its allegation that respondent Dy held a supervisory position, since the policies that were supposed to be executed were not identified. While respondent Dy supervised the packing, inventory and receiving of garments, petitioner did not present any evidence to show that respondent Dy had the authority to hire or fire employees of lower rank or that he had the authority to make such recommendations. Not being a managerial employee, respondent Dy was entitled to labor standard benefits under the Labor Code.

Petitioner filed its motion for reconsideration which the CA denied for lack of merit.[12]

In the present recourse, petitioner raises the following arguments:

- RESPONDENTS DY AND CAHILLO ARE NOT ENTITLED TO PROCEDURAL DUE PROCESS BECAUSE ABANDONMENT WAS USED MERELY AS A DEFENSE AND NOT AS A GROUND FOR TERMINATION OF EMPLOYMENT.[13]
- II. THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT FOUND THAT PETITIONER DISMISSED THE RESPONDENTS CONTRARY TO THE FINDINGS OF BOTH THE LABOR ARBITER AND THE NLRC THAT THERE WAS NO DISMISSAL.[14]

Petitioner claims that it did not dismiss respondents Dy and Cahillo from employment. After having been reprimanded for their refusal to render overtime work, respondents never reported back to work. Since the fact of termination had not been established, petitioner asserts that the employer's burden to comply with substantive and procedural due process did not even arise.

Petitioner further avers that the CA abused its discretion when it substituted its own findings for that of the Labor Arbiter, as affirmed by the NLRC. It points out that both the Labor Arbiter and the NLRC found that respondents were not terminated from employment, and that this finding is not only entitled to great respect but also given the stamp of finality. Petitioner argues that in the absence of a clear showing that the findings are arbitrary and bereft of any rational basis, it is not for this Court to examine their truth or falsehood. Since the CA did not declare that the Labor Arbiter and the NLRC acted arbitrarily in rendering their respective decision and resolutions, such findings should not be disturbed. Petitioner contends that the Labor Arbiter and the NLRC are triers of facts on

specific matters within their field of expertise. They are in a better position to assess and evaluate the credibility of the contending parties' claims and evidence. Petitioner cites *Philippine Long Distance Telephone Company v. Montemayor*,^[15] and posits that as far as judicial review of labor cases is concerned, this Court is only limited to issues of jurisdiction or grave abuse of discretion.

For their part, respondents Dy and Cahillo maintain that the appellate court did not err when it found that they were illegally dismissed for non-observance of due process and absence of valid cause.

The petition is bereft of merit.

To counter respondents' claim that they were dismissed from employment, petitioner interposed a bifurcated defense in its Position Paper: (a) that respondents abandoned their work on account of their unjustified refusal to render overtime services as ordered by petitioner; and (b) that respondents were dismissed from employment on the ground of serious misconduct or willful disobedience of the lawful orders of petitioner as employer, and loss of confidence with respondent Dy. The pertinent portion of petitioner's arguments follows:

- In this case, the herein respondent merely required complainants to render overtime work sometime in April 1998 to meet the demands of their clients for their product but they refused and deliberately walked out from the company premises.

- Complainants' refusal to render overtime work for no reason at all is a willful act of disobedience and insubordination to the lawful orders of their employer or its representative. Likewise, they knew that the respondents are trying to meet the demands of their clients for their products, they wittingly and deliberately walked out from the company's premises when they noticed that no other employees could make the deliveries to the clients. Under the Labor Code, the employer may terminate an employment on the grounds of serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection [with] his work. Deliberate disregard or willful disobedience of the employer's lawful orders belongs to this category. This is in accordance with Article 282, paragraphs (b) and (e) of the Labor Code of the Philippines, as amended, which provides, to wit:

x x x x

- Hence, there could not had been any dismissal in the instant case simply because the herein complainants were never terminated from their employment but they did not report for work after they were reprimanded for refusal to render overtime work. Abandonment is itself a form of voluntary resignation as the initiative to terminate the employer-employee relation emanates from the employee. This is manifested in this case.

- Complainants' bad faith is quite evident in the institution of the instant complaint for illegal dismissal when they knew that respondent SEVEN STAR did not terminate them. This Honorable Office should not give any credence to the complainants' baseless allegation of illegal dismissal. The complainants not only had been guilty of insubordination and willful disobedience but also maliciously imputing their refusal to work as a fault on the part of the respondents, hoping to collect separation pay and other monetary claims.

- Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which have been engaged to discharge. (*San Miguel Corporation vs. Ubaldo*, 218 SCRA 293). These requisites are present in this case.

- The service record of complainant CAHILLO would reveal the following infractions: (1) abandoning the company's delivery truck before reaching the assigned destination; (2) drinking liquors inside the dormitory, grave threat, intimidating his other co-employees by means of a deadly weapon and inflicting physical injuries

to a woman co-employee. Proofs of these incidents are hereto attached as Annexes “3” to “5” and made an integral part hereof.

- With respect to the complainant DY, he held a supervisory position as he was tasked to execute policies and/or standards regarding personnel management of the respondent SEVEN STAR, and that his position entails trust and confidence of the respondents. As such, a high degree of loyalty and respect to his employer is highly expected of him. As reflected in his service records which are hereto attached as Annexes “6” to “18,” complainant DY’s neglect of his employment as shown by his commission of numerous absences, and late in coming to work, repeated acts of insubordination and willful disobedience of the orders of his superior warrant the lost of the trust and confidence that his employer had reposed on him. This is pursuant to Article 282, paragraph (c) of the Labor Code of the Philippines, as amended, which provides as follows:

x x x x

- In the case of *Micro Systems vs. National Labor Relations Commission*, 157 SCRA 410, the Supreme Court held that:

No employer may rationally be expected to continue in employment a person whose lack of morals, respect and loyalty to his employer, regard for his employer’s rules and appreciation of the dignity and responsibility of his office, has so plainly and completely been bared.

- The Supreme Court, in the case of *San Miguel Corporation vs. Ubaldo*, 218 SCRA 293, has this to say:

The employer cannot be compelled to continue the employment of a person who was found guilty of maliciously committing acts which are detrimental to his interests. It will be highly prejudicial to the interests of the employer to impose on him the charges that warranted his dismissal from employment. Indeed, it will demoralize the rank and file if the undeserving, if not undesirable, remain in the service. It may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe.

- 16. Since it was established that the complainants were dismissed for a just and valid cause, they are not entitled to receive separation pay. (*Samson Alcantara*, *Philippine Labor and Social Legislation*, Annotated, Volume I, Revised (1992) Edition, page 632.) This is pursuant to Rule 1, Book VI, Section 7 of the Implementing Rules and Regulations of the Labor Code of the Philippines, as amended, which provides as follows:

Rule I, Book VI, Section 7. Termination of employment by employer. – The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in this Code, xxx” (underscoring supplied)[16]

Thus, as correctly held by the CA, petitioner admitted in its Position Paper that respondents had been “dismissed” from employment:

It should be noted that in its position paper, SSTC argued that Dy and Cahillo were not dismissed from work and that the latter’s refusal to render overtime work is a willful act of disobedience and insubordination to the lawful orders of their employer, which constitutes a valid ground for termination of employment; and that since Dy and Cahillo were dismissed for a just and valid cause, they are not entitled to separation pay. Thus, SSTC admitted that Dy and Cahillo were, in fact, dismissed from employment, although it argued that their dismissal was for a just and valid cause. However, no evidence was presented by SSTC to prove compliance with the twin requirements of notice of hearing or that a notice to return to work was served by them on Dy and Cahillo.[17]

The rule that factual findings of administrative tribunal are accorded respect and even finality admits an exception: that is, when it is clear that a palpable mistake was committed by the quasi-judicial tribunal which needs rectification. The CA found that the Labor Arbiter and the NLRC committed an obvious mistake in

declaring that respondents failed to substantiate their claim of illegal dismissal. The Court agrees with the CA's pronouncement that in cases of illegal dismissal, it is incumbent upon the employer to show by substantial evidence that the employees' dismissal was validly made, and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal. As the appellate court correctly held:

Settled is the rule that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the termination of the employment of the employees was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal. On the other hand, abandonment as a just and valid ground for dismissal requires the deliberate, unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, after notice to return, is not enough to amount to such abandonment.

It should be noted that in its position paper, SSTC argued that Dy and Cahillo were not dismissed from work and that the latter's refusal to render overtime work is a willful act of disobedience and insubordination to the lawful orders of their employer, which constitutes a valid ground for termination of employment; and that since Dy and Cahillo were dismissed for a just and valid cause, they are not entitled to separation pay. Thus, SSTC admitted that Dy and Cahillo were, in fact, dismissed from employment, although it argued that their dismissal was for a just and valid cause. However, no evidence was presented by SSTC to prove compliance with the twin requirements of notice of hearing or that a notice to return to work was served by them on Dy and Cahillo.[18]

Thus, the burden of proof to show that respondents' dismissal from employment was for a just cause falls on petitioner as employer. Petitioner cannot discharge this burden by merely alleging that it did not dismiss respondents; neither can it escape liability by claiming that respondents abandoned their work. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal. Petitioner desperately tries a convoluted, if not absurd, argument - that it only raised abandonment as a defense and not as a ground for dismissing respondents, and as such, is not bound to observe due process. However, whether abandonment is alleged as a ground for dismissing an employee or a mere defense, the employer has the legal duty to observe due process.

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, 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. The second element is the more determinative factor. Abandonment as a just ground for dismissal thus requires clear, willful, deliberate, and unjustified refusal of the employee to resume employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.[19]

The Court further notes the circumstances which strengthen the case for respondents. When respondents reported back to work, they could no longer find their time cards. When they inquired from petitioner, they were told that their employment had already been terminated. Petitioner even offered to pay them separation pay. Moreover, their refusal to accept the offer and the fact that they immediately filed an illegal dismissal case against petitioner negates abandonment.[20]

From the foregoing, we hold that the CA did not commit any error or grave abuse of discretion when it reversed and set aside the resolutions of the NLRC in NLRC NCR Case No. 00-06-04698-98.

IN LIGHT OF ALL THE FOREGOING, the instant petition is DENIED. The Court of Appeals' Decision dated May 7, 2004 in CA-G.R. SP No. 66402 is AFFIRMED.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Mariano C. Del Castillo and Magdangal M. De Leon, concurring; rollo, pp. 27-40.

[2] Rollo, pp. 53-54.

[3] Id. at 27-29.

[4] CA rollo, pp. 7-10.

[5] Id. at 10.

[6] Id. at 9-10.

[7] The case was docketed as NLRC NCR CA No. 022754-2000.

[8] CA rollo, p. 19.

[9] Id. at 21.

[10] Rollo, pp. 27-40.

[11] Id. at 39-40.

[12] Id. at 53-54.

[13] Id. at 15.

[14] Id. at 17.

[15] G.R. No. 88626, October 12, 1990, 190 SCRA 427, 431.

[16] Records, pp. 14-18.

[17] Rollo, p. 36.

[18] Id.

[19] *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*, G.R. No. 166111, August 25, 2005, 468 SCRA 316, 327.

[20] In the case of *Philtranco Service Enterprises, Inc. v. National Labor Relations Commission*, 351 Phil. 827, 835 (1998), we held that, “Time and again, we have held that the immediate filing of a complaint for illegal dismissal by an employee, as in this case, is inconsistent with abandonment.”

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