

FERNANDITO P. DE GUZMAN, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE RABBIT BUS LINE COMPANY AND NATIVIDAD NISCE, RESPONDENTS.

G.R. NO. 167701. December 12, 2007

Ponente: PUNO, C.J.

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PUNO, C.J.:

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court, seeking the reversal of the decision[1] and resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76220 which dismissed the petition of petitioner Fernandito De Guzman but reinstated the Labor Arbiter's award of financial assistance equivalent to one-half month salary for every year of service.

First, the facts.

Petitioner De Guzman was employed as a bus conductor by private respondent Philippine Rabbit Bus Line Company (company) on October 9, 1979.

On September 1, 1995, petitioner filed an application for leave of absence at the company's main office in Tarlac, Tarlac, a copy of which was sent through a fellow conductor to the Branch Manager stationed at the company's EDSA Office. Petitioner again filed applications for leave of absence on September 12 and 19, 1995 at the company's main office in Tarlac, Tarlac. The company's secretary assisted petitioner in preparing his leave application and a copy was sent through a co-employee to the Branch Manager stationed at their EDSA Office. As reason for the applications, petitioner alleged that he was experiencing chronic pain from the gunshot wounds he sustained in January 1984 when he tried to defend the earnings of the company from "brigands." According to petitioner, this incident resulted in life-threatening injuries. His leg shrunk by at least two (2) inches and three (3) feet of his intestines had to be removed. A bullet was still imbedded in his leg which allegedly still gave him chronic pain.

In a notice dated September 26, 1995,[3] the company's Operations Manager, Nicholas Nisce, informed petitioner that he was being placed under preventive suspension for his absence without an approved leave of absence since September 1, 1995. Petitioner was directed to report to a certain Mr. T. Cunanan within three (3) days from receipt of the notice at the company's Main Office to explain his side in a formal investigation.

On October 13, 1995, petitioner gave a statement on the reason for his absences.[4] According to him, he did not report for duty since September 1, 1995 because the left side of his body above his thigh was very painful and rendered him unable to stand. He explained that he sent his wife to respondent company's Operations Department to bring his handwritten letter addressed to the Traffic Department. The letter stated that he will not be able to report for work for around three days. He sent his wife back on September 12, 1995 to inform the office that he could still not report for work. On September 19, 1995, petitioner himself went to the Operations Department and filed a leave application for three (3) days from September 19-21, 1995. He further stated that after September 21, 1995, he could not report for work as their place was under water due to strong rain and he did not want to go out

for fear that he might again suffer severe pain. At that time, his wife was also sick, hence, could not travel to inform the office of his absence. After the water receded, he allegedly still felt the pain. Hence, he could not go to work. When asked how he was feeling and if he felt that he could already perform his job, petitioner said that if he forced it, he could already work. But he still felt the pain in his body.

On October 21, 1995,[5] petitioner received a Memorandum dated October 11, 1995[6] from the company's Operations Assistant, Fernando Villanueva. The memorandum reads:

Our records show that you have not been reporting for duty nor had been heard of since September 01, 1995 up to this writing. Hence, you are considered to have abandoned your job.

Company policy provides that employees who have abandoned their jobs for a period of one (1) month are summarily terminated from the service.

You are therefore directed to report at the Operations Department, Tarlac Main Station, within two (2) days from receipt of this notice. Otherwise, we shall be constrained to consider you as having completely abandoned your job and have resigned constructively.

For your guidance and information. (emphases supplied)

According to petitioner, he reported at their office and tried to seek an audience with the company president, respondent Natividad Nisce, to explain his side. However, he failed to see her and was told to return some other day.

In a Memorandum dated October 24, 1995,[7] petitioner was directed to report to the company's Tarlac Main Office immediately upon receipt of the notice upon the instruction of the company president, respondent Nisce.

According to petitioner, he again went to their office and tried to talk to the company president, to no avail. He allegedly returned on several occasions but still failed to talk to respondent Nisce. It was only on November 3, 1995 that petitioner was able to talk to respondent Nisce and the latter told him that he would be allowed to return to work on the following day. When he reported for work, however, he was not given any assignment. Petitioner then reported for work regularly thereafter but he was not given any work assignment. Sensing that he was being given the "run-around," petitioner secured copies of his applications for leave.

On May 24, 1996, petitioner filed a Complaint[8] against respondents for illegal dismissal, underpayment/nonpayment of overtime pay, premium pay for holiday and rest day and service incentive leave pay, as well as moral and exemplary damages.

On November 13, 2000, the Labor Arbiter rendered a decision[9] dismissing the complaint but directing respondent company to pay petitioner separation pay of one-half month pay for every year of service.

The Labor Arbiter held that "[a]n unacted application for leave has the effect of abandonment if an employee begins to enjoy a leave of absence even before its approval." He further observed during the investigation that "complainant has the propensity to offer excuses whenever pinned down on his failure to exercise other options in his failure to notify respondents of his absences." The Labor Arbiter dismissed complainant's monetary claims for failure to substantiate the same. The claims for moral and exemplary damages were also denied as there was no allegation of malice or ill will in the dismissal of petitioner. However, since petitioner "has spent the best years of his life with respondents being employed [therein] since October 9, 1979 until October 11, 1995 or a period of sixteen (16) years coupled by the fact that his stint was abbreviated by a shooting incident while on duty," the Labor Arbiter awarded separation pay to petitioner in the amount equivalent to one-half month pay for every year of service.

Petitioner and respondents filed their respective appeals to the National Labor Relations Commission (NLRC). Petitioner questioned the Labor Arbiter's finding that the dismissal was valid. On the other hand, private respondents questioned the award of separation pay, contending that "[t]o award separation pay [to petitioner] for having abandoned his job would mean a reward for abandonment of work."

On September 17, 2002, the NLRC promulgated its decision,[10] the dispositive portion of which states:

WHEREFORE, the appeal is granted and the Decision appealed from is modified in that the financial assistance is limited to P10,000.00.

In so ruling, the NLRC noted that there is jurisprudence "justifying the award of separation pay as financial assistance as measure of social justice on those instances where the employee was validly dismissed for cause other than serious misconduct or those reflecting on moral character." [11] However, considering the circumstances attendant to the dismissal of complainant, the NLRC reduced the financial assistance to P10,000.00.

Petitioner filed a Motion for Reconsideration raising, among others, the concern that the NLRC overlooked his appeal as the only issue it resolved in its decision was the one raised by private respondents, viz.: whether the grant of separation pay was proper. His motion, however, was denied for lack of merit.[12]

Petitioner then filed a petition for certiorari under Rule 65 of the Rules of Court with the CA. On July 30, 2004, the CA promulgated its decision reinstating the award of the Labor Arbiter. The dispositive portion of the decision states:

WHEREFORE, the petition is DISMISSED. The Decision of public respondent National Labor Relations Commission dated September 17, 2002 is however MODIFIED in that the award of financial assistance equivalent to one-half month salary for every year of service granted by the Labor Arbiter to petitioner is reinstated.

SO ORDERED.

Although the CA agreed with the award granted by the Labor Arbiter, it followed a different tack. It found no basis to declare petitioner validly dismissed as it found no evidence to show that respondents had terminated his employment. The CA cited *Asia Fancy Plywood Corp. v. NLRC* [13] that if the dismissal is unsubstantiated, the employee should simply be ordered to return to work and the employer to accept him to his former, if not substantially equivalent position, without backwages. However, in the instant case, the CA found petitioner to have foreclosed reinstatement as a relief. Hence, he was considered to have resigned from his employment. However, the CA reinstated the award of financial assistance equivalent to one-half month pay for every year of service "considering that there was no evidence of previous misconduct of petitioner while in the employ of private respondent for a period of sixteen (16) years."

Petitioner filed a Motion for Reconsideration but was denied.

Hence, this petition in which petitioner raises the following issues:

WHETHER THE PETITIONER WAS ILLEGALLY DISMISSED FROM EMPLOYMENT.

WHETHER THE PETITIONER IS ENTITLED TO PAYMENT OF OVERTIME PAY AND OTHER MONEY CLAIMS.

The issues to be resolved are (a) whether petitioner was dismissed from employment, (b) in the affirmative, whether petitioner's dismissal was valid, and (c) whether petitioner is entitled to his money claims.

First. The issue of whether there was in fact a dismissal needs to be settled before tackling the issue of the validity of the dismissal. It is noteworthy that the CA hinged its decision on the finding that respondent company did not dismiss petitioner at all.

We find the CA to have committed a reversible error in finding that there was no dismissal. The telling sign is that neither party disputes this fact. From their position paper before the Labor Arbiter to their Comment before this Court, private respondents have consistently advanced the theory that petitioner's dismissal was valid for abandonment of work. Clearly then, the respondent company itself admits that there was, in fact, a dismissal.

Second. It is well-settled that for a dismissal to be completely valid and faultless, the employer must show that the dismissal was for a just or authorized cause and that it observed procedural due process by giving the employee two notices: one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss; and an opportunity to answer and rebut the charges against him, in between such notices.[14]

In the case at bar, private respondents contend that petitioner was validly dismissed for abandonment of work. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient.[15] The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment.[16]

In this case, the respondent company failed to discharge this burden. Certain facts dissuade us from believing that petitioner intended to sever his employment relations with respondent company. First, it is undisputed that petitioner filed applications for leave on September 1, 1995, and again on September 12 and 19, 1995. The filing of applications for leave is inconsistent with petitioner's alleged abandonment.[17] Second, petitioner exerted much effort in complying with the memoranda issued by respondent company. When petitioner was given a Memorandum dated September 26, 1995[18] that he was being placed under preventive suspension and was directed to report to a certain Mr. T. Cunanan within three (3) days from receipt of the notice, petitioner promptly reported to respondent company's Main Office and explained his side in a formal investigation. When, on October 21, 1995,[19] petitioner received respondent company's Memorandum dated October 11, 1995[20] that he was deemed to have abandoned his job and unless he reports to work within two (2) days from receipt of the memorandum, he shall be considered to have constructively resigned, petitioner likewise promptly reported to their office and tried to seek an audience with the company President, private respondent Nisce. He made several attempts to talk to private respondent Nisce until finally, he was allowed to return to work on November 4, 1995. Third, he reported regularly after he was allowed to do so starting November 4, 1995 except that respondent company did not give him any work assignment. These acts clearly show that petitioner was still interested in his job.

Notably, petitioner commenced this suit on May 24, 1996 or more than six (6) months after respondent company stopped giving him any work assignment. This lapse of time can hardly be considered as "precipitous," as held by the CA.

Under Article 286 of the Labor Code, the bona fide suspension of the operation of a business or undertaking for a period not exceeding six months shall not terminate employment. Consequently, when the bona fide suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. By the same token and applying said rule by analogy, if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed.[21]

We searched, in vain, for respondent company's reason for not giving petitioner any work assignment for said period. Instead of explaining said omission, respondent company stated in its position paper before the Labor Arbiter that "[a]fter giving his statement on October 13, 1995, complainant never reported back for work." [22] In its Reply before the Labor Arbiter, it likewise alleged that petitioner "did not report to the Operations Department as directed [under the company's Memorandum dated October 11, 1995]." This is inconsistent with its Comment before this Court, wherein it adopted the findings of the CA, which states:

Petitioner's dismissal by reason of abandonment has not been convincingly established. Petitioner received from private respondent a notice of preventive suspension dated September 26, 1995 in connection with his prolonged absence. A memorandum dated October 11, 1995 then required petitioner to report to the Main Office on pain of being considered constructively resigned. Another memorandum dated October 24, 1995 once again directed petitioner to report to the Main Office upon instructions of the company president. The last two communications sent to petitioner can hardly be considered as a subsequent notice of termination especially in the light of the fact that the company president later on notified petitioner personally that he could report back to work on November 4, 1995. Unfortunately, only a few days at work without any assignment being given to him, petitioner simply stopped showing up at work and precipitously filed a complaint for illegal dismissal against private respondent. It must be noted that petitioner made no efforts (sic) to inquire or verify even from the company president herself whether he was being terminated from his employment and for what cause. (emphasis supplied)

Respondent company also does not question the CA's statement of facts, the pertinent portion of which states:

Petitioner reported for work on October 13, 1995 at which time he gave a statement explaining his absences. In another memorandum dated October 24, 1995, petitioner was directed to report at the Main Office upon instructions of the company president, Mrs. Natividad Nisce, who later advised petitioner during their meeting on November 3, 1995 that he would be allowed to return to work the following day. Petitioner then reported for work regularly thereafter but he was not given any work assignment at all. Sensing that he was being given the run-around, petitioner secured copies of his application for leave and later filed a complaint for illegal dismissal against respondent company. [23] (emphases supplied)

Moreover, as correctly observed by the CA, "[t]he last two communications (Memoranda dated September 26, 1995 and October 11, 1995) sent to petitioner can hardly be considered as a subsequent notice of termination." This shows that the dismissal of petitioner was procedurally defective.

Under Article 279 of the Labor Code, an illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. There are instances, however, where reinstatement is no longer viable as 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. [24] Since petitioner prayed for an award of separation pay in lieu of reinstatement, he forecloses reinstatement as a relief by implication. Consequently, in addition to full backwages, petitioner is entitled to separation pay equivalent to one month pay for every year of service, from the time of his illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.

Private respondents' contention that the Labor Arbiter, the NLRC and the CA unanimously ruled that petitioner was validly dismissed, hence, the Supreme Court should accord their findings not only with but with finality is unavailing.

A bare reading of the NLRC decision shows that it merely ruled on the issue of whether petitioner is entitled to

financial assistance. It did not rule on the issue of the validity of petitioner's dismissal. On the other hand, the CA found no basis to conclude that petitioner has been validly dismissed for abandonment of work as it held that petitioner was not dismissed at all.

Third. Petitioner reiterates his entitlement to unpaid overtime pay, premium pay for holiday and rest day, service incentive leave pay and moral and exemplary damages. The NLRC and the CA have been remiss in not ruling on this issue even if petitioner consistently raised the same in his pleadings as an employee's entitlement to labor standard benefits is a separate and distinct concept from payment of separation pay arising from illegal dismissal, and is governed by different provisions of the Labor Code.

It is settled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which he alleged that the employer failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it, and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[25]

The Labor Arbiter's denial of petitioner's money claims "for failure to state the particulars to substantiate the same" is therefore erroneous. It is respondent company which has the burden of proof to show, by substantial evidence, the payment of petitioner's money claims. Respondent company miserably failed to discharge this burden by presenting, as its sole evidence, the collective bargaining agreement (CBA) between the Union and respondent company. The Labor Arbiter took "judicial notice of the fact that a CBA cannot be recognized and registered unless the provisions thereof comply with the labor standards." Even if this is true, however, the same simply proves that petitioner is entitled to what are provided under the CBA. It does not prove by substantial evidence that petitioner was indeed paid what was provided therein.

Moreover, in its Reply before the Labor Arbiter, respondent company "reserve[d] the right to discuss [petitioner's claims for unpaid overtime pay, premium pay for holiday and rest day, service incentive leave pay] in their rejoinder as said money claims will have to be check[ed] and re-check[ed] on respondent['s] records." It even stated a warning that "[s]hould however it be found that complainant is lying and thus committed perjury, respondents likewise reserve the right to file any action in the proper court against him." Private respondents, however, did not present the pertinent employee records to prove payment of petitioner's monetary claims. By choosing not to fully and completely disclose information and present the necessary documents to prove payment of labor standard benefits due to petitioner, private respondents failed to discharge the burden of proof.[26] It is a rule that failure of employers to submit the necessary documents which as employers are in their possession, in spite of orders to do so, gives rise to the presumption that their presentation is prejudicial to its cause.[27] This rule equally applies to the instant case where respondent company undertook to present the necessary documents but failed to do the same.

As to the claims for damages, it is a rule that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[28] Exemplary damages are proper when the dismissal was effected in a wanton, oppressive or malevolent manner, and public policy requires that these acts must be suppressed and discouraged.[29]

We believe that the circumstances of this case warrant the award of moral damages in the amount of P15,000 since the dismissal was procedurally defective and without just cause, as well as exemplary damages in the amount of P15,000.[30]

IN VIEW WHEREOF, the petition is GRANTED. The Decision dated July 30, 2004 and Resolution dated April

5, 2005 of the Court of Appeals are REVERSED and SET ASIDE. Private respondent Philippine Rabbit Bus Line Company is ORDERED to pay petitioner:

- Separation pay equivalent to one month pay for every year of service, from the time of his illegal dismissal up to the finality of this judgment;
- Full backwages;
- Unpaid overtime pay, premium pay for holiday and rest day, and service incentive leave pay;
- Moral damages of P15,000; and
- Exemplary damages of P15,000.

The case is REMANDED to the Labor Arbiter for the RECOMPUTATION of the total monetary benefits awarded and due petitioner in accordance with this decision. The Labor Arbiter is ORDERED to submit his compliance thereon within thirty (30) days from notice of this decision, with copies furnished to the parties.

SO ORDERED.

Ynares-Santiago, Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Dated July 30, 2004; rollo, pp. 211-217.

[2] Dated April 5, 2005; id. at 225.

[3] Id. at 52.

[4] Id. at 69-70.

[5] Id. at 45.

[6] Id. at 53.

[7] Id. at 54.

[8] Id. at 43.

[9] Id. at 125-137.

[10] Id. at 169-171.

[11] Citing *Del Monte Philippines, Inc. v. NLRC*, G.R. No. 87371, August 6, 1990, 188 SCRA 370; *Aguilar v. NLRC*, G.R. No. 100878, December 2, 1992, 216 SCRA 207; *Lemery Saving v. NLRC*, G.R. No. 96439, January 27, 1992, 205 SCRA 492.

[12] Rollo, p. 179.

[13] G.R. No. 113099, January 20, 1999, 301 SCRA 189.

[14] See *MGG Marine Services, Inc. v. NLRC*, G.R. No. 114313, July 29, 1996, 259 SCRA 664, 677.

[15] *Labor v. NLRC*, G.R. No. 110388, September 14, 1995, 248 SCRA 183, 198 (citations omitted).

[16] *Metro Transit Organization, Inc. v. NLRC*, G.R. No. 119724, May 31, 1999, 307 SCRA 747, 753.

[17] *Metro Transit Organization, Inc. v. NLRC*, G.R. No. 122046, January 16, 1998, 284 SCRA 308, 312.

[18]Rollo, p. 52.

[19]Id. at 45.

[20]Id. at 53.

[21]Valdez v. NLRC, G.R. No. 125028, February 9, 1998, 286 SCRA 87, 92 citing Agro Commercial Security Services Agency, Inc. v. NLRC, G.R. Nos. 82823-24, July 31, 1989, 175 SCRA 790.

[22] Rollo, p. 61.

[23] Id. at 212.

[24] Solidbank Corporation v. CA, G.R. No. 151026, August 25, 2003, 409 SCRA 554, 560-561 citing Nagusara v. NLRC, G.R. Nos. 117936-37, May 20, 1998, 290 SCRA 245.

[25]Mayon Hotel & Restaurant v. Adana, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 641-642 citing Sevillana v. I.T. (International) Corp., G.R. No. 99047, April 16, 2001, 356 SCRA 451.

[26] Id. at 643-644, citing National Semiconductor (HK) Distribution Ltd. v. National Labor Relations Commission, G.R. No. 123520, June 26, 1998, 291 SCRA 348 and Building Care Corporation v. National Labor Relations Commission, G.R. No. 94237, February 26, 1997, 268 SCRA 666.

[27]Id. at 644, citing National Semiconductor (HK) Distribution, Ltd. v. NLRC, *supra*.

[28]Id. at 639, citing Equitable Banking Corp. v. NLRC, G.R. No. 102467, June 13, 1997, 273 SCRA 352; Litonjua Group of Companies v. Vigan, G.R. No. 143723, June 28, 2001, 360 SCRA 194; and Airline Pilots Association of the Philippines v. NLRC, G.R. No. 115224, July 26, 1996, 259 SCRA 459. See Maglutac v. NLRC, G.R. No. 78345, September 21, 1990, 189 SCRA 767 citing Guita v. Court of Appeals, 139 SCRA 576.

[29]See *id.* at 648-649.

[30]See Mendoza v. NLRC, G.R. No. 122481, March 5, 1998, 287 SCRA 51.

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