

DANNY MAME, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, VIRGILIO CUERPO AND NORILYN CUERPO, RESPONDENTS.

G.R. NO. 167953. April 04, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 81797 and its Resolution[2] denying the motion for reconsideration thereof.

The antecedent facts are as follows:

The spouses Virgilio and Norilyn Cuerpo were engaged in the construction business under the business name "V.C. Building Trade and Woodworks." They employed carpenters and workers, including petitioner Danny Mame, who was tasked to supervise their workers at the Bonifacio Firing Range project. In January 1988, the couple promoted Mame to foreman carpenter for the following projects:

PROJECT LOCATION

Aureliade Residence Las Pinas-Alabang

Gruit Residence San Juan, M.M.

Caraan Residence Valle Verde, Pasig

Alexandra Condo. Ortigas Ave., Pasig

Center Point Building

Meralco Avenue

Gotesco Mall Commonwealth Ave.

Rustan's Makati City

Royal Duty Free Clark Air Base, Angeles City, Pampanga

Ram Sy Residence Ayala, Alabang

I-Bank Sucat, Parañaque

Cuerpo Residence

Bobby Cuerpo Residence

Olivares Residence

Bayot Residence Baguio City[3]

Mame received a daily wage of P440.00.

In May 2001, respondents were contracted to construct the Bayot residence in Baguio City. On September 18, 2001, respondent Norilyn Cuerpo called Mame's attention regarding the wrong installation of expensive narra planks on the stairs of the Bayot residence. The architect in charge of the project had earlier complained of the wrong installation. Consequently, the couple had to rectify the error and pay for the costs.

According to Mame, the couple told him "Umalis ka na, ayaw na kitang makita dito. Tanggal ka na sa trabaho," followed by scathing insults. Thus, he had no choice but to leave his employment.

For their part, the couple averred that Norilyn merely called petitioner's attention to the complaint of the architect and reprimanded him. He resented the incident and opted to stay in the crew barracks.

On September 28, 2001, petitioner filed a Complaint for Illegal Dismissal against the spouses Cuerpo before the National Labor Relations Commission (NLRC). He prayed that judgment be rendered in his favor, as follows:

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Office render a decision declaring the respondents to be liable for illegal dismissal and ordering them to:

- Immediately reinstate and give full backwages to the complainant;
- Pay complainant the following:
 - a) holiday pay
 - b) holiday premium pay
 - c) service incentive leave pay
 - d) 13th month pay
- Pay complainant moral and exemplary damages in a sum as the Honorable Office may deem just and equitable under the premises;
- Pay complainant attorney's fees.

Other reliefs just and equitable under the premises are, likewise, prayed for.[4]

In their Position Paper, respondents averred that petitioner walked out from his employment and abandoned his work. They had the right to call his attention since his work was deficient. Instead of being remorseful, complainant even threatened to convince his co-workers to walk out from their jobs. In her reply, respondent Norilyn denied that she terminated the employment of complainant and insulted him on September 21, 2001. Petitioner was a troublemaker and had difficulty with authority figures.

On September 30, 2002, the Labor Arbiter rendered a Decision dismissing the complaint for lack of merit. The Labor Arbiter found that it was complainant who walked out on respondents when his attention was called due to his poor installation of the narra planks in the Bayot residence. He had no one to blame but himself for losing his job.[5] The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit. However, respondents are ordered to pay complainant his 13th month pay, service incentive leave, and holiday pay computed at:

Start Begin Mos. Min. Wage 13[th] Month Pay SIL Holiday Pay TOTAL

9/29/98 12/31/98 3.1 198.00 1,329.90

1/1/99 10/30/99 10.067 198.00 4,318.60 990.00 1,980.00
10/31/99 12/31/99 2.0333 223.50 984.64
1/1/00 10/31/00 10.133 223.50 4,907.07 1,117.50 2,235.00
11/1/00 12/31/00 2 250.00 1,083.33
1/1/01 9/18/01 8.6667 250.00 4,694.44 1,500.00
36
17,317.99 2,107.50 5,715.00 25,140.49

All other claims are dismissed for lack of merit.[6]

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Aggrieved, Mame appealed the decision to the NLRC on the following grounds:

- THE HONORABLE ARBITER COMMITTED SERIOUS ERROR IN COMPUTING COMPLAINANT-APPELLEE'S MONETARY AWARD ON THE BASIS OF THE MINIMUM WAGE LAW, WHEN HIS LATEST WAGE AS OF SEPT. 2001 IS P440.00 A DAY, MONEY-CLAIMS: HOLIDAY PAY, HOLIDAY PREMIUM PAY, SERVICE INCENTIVE LEAVE PAY;
- THE HONORABLE ARBITER COMMITTED GRAVE ABUSE OF DISCRETION BY DECLARING THAT COMPLAINANT-APPELLANT WAS NOT ILLEGALLY DISMISSED.[7]

He averred that respondents failed to prove that he abandoned his job. He insisted that walking out of respondent Norilyn Cuerpo after being reprimanded does not constitute abandonment. His filing of the complaint for illegal dismissal and respondents' failure to serve him with the requisite two notices are evidence that he did not abandon his job.

In reply, respondents countered that Mame abandoned his job because he no longer reported for work and remained in the workers' barracks in Baguio City while his co-workers continued with the construction. They could not have served him with the requisite two notices because they did not know that he had decided not to report back to work. It was only when complainant filed his complaint that respondents learned of his decision.

On August 26, 2003, the NLRC rendered judgment granting the appeal.[8] The NLRC set aside and reversed the decision of the Labor Arbiter. According to the NLRC:

Appellees failed to establish any overt act from which we can infer the clear intention of appellant to desist from employment. Appellees admitted that after the walk-out and alleged abandonment of work on 18 September 2001, appellant still stayed for several days at the construction crew barracks of the Bayot residence project in Baguio City and refused to work for no reason other than his attention being called because of the wrong installation of the narra planks. Appellant was within easy reach of appellees. Yet, during this period, appellees never took any step to compel appellant to return to work, did not question his alleged continued refusal to work and did not institute any investigation or proceedings to cause his termination from work due to abandonment. Appellees did not give appellant written notice of his termination on the ground of abandonment. Failure to do so makes the termination illegal. (Appellees' Position Paper, p. 19).

It is true that appellees have every right to call appellant's attention for any work that he has made poorly. It is also true that appellant should not have walked-out on appellee Cuerpo. However, installing the narra planks erroneously and walking-out on appellee Cuerpo, while being reprimanded or told of his wrong installation, are insufficient to warrant appellant's dismissal. Appellees agree that dismissal, under these circumstances, was unwarranted as they, in fact, admitted that they did not terminate appellant's services.

Neither can the alleged dissension and unrest among respondents' workers caused by appellant justify his separation from employment. This allegation was uncorroborated with any evidence of statement from anyone of appellant's co-workers. Notwithstanding, even granting that appellant caused any such dissension and unrest, appellees did not observe due process in terminating his services. They never informed appellant of the reasons why he should be terminated and never gave him the opportunity to explain. He was simply dismissed from work.[9]

The NLRC declared that petitioner did not seek reinstatement. The dispositive portion of the decision reads:

WHEREFORE, the appeal is hereby GRANTED and the Decision of the Labor Arbiter dated 30 September 2002 is REVERSED and SET ASIDE. In lieu thereof, a new order is hereby issued declaring appellant to have been illegally dismissed from his employment by appellees.

Consequently, appellees are hereby directed to pay appellant, jointly and severally, the amount of P475,995.66, representing his claims for unpaid 13th month pay, SILP and holiday pay for the period of three (3) years, 19 September 1998 to 18 September 2001, separation pay equivalent to fifteen (15) month's salary, and backwages, 13th month pay and SILP from the date the same was withheld from appellant on 18 September 2001 up to the promulgation of this Decision, and such additional backwages, 13th month pay and SILP from this date and up to actual payment thereof.

SO DECIDED.[10]

Not satisfied, respondents filed a petition for certiorari with the CA against petitioner on the following grounds:

- With all due respect, the Honorable Public Respondent committed grave abuse of discretion in reversing the factual findings and conclusions of the Labor Arbiter and disregarding the admission of private respondent that he walked out.
- The Honorable Public Respondent committed grave, patent and palpable error in finding that there was illegal dismissal.
- The Honorable Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in awarding money claims which private respondent himself did not pray for nor was he able to prove entitlement thereto.[11]

Petitioner countered that since he filed his complaint shortly after he was reprimanded by respondent Norilyn Cuerpo, his "walkout" did not constitute abandonment.

On January 17, 2005, the CA rendered judgment granting the petition. The appellate court set aside and reversed the decision of the NLRC on its finding that petitioner was not dismissed from his employment, but that he abandoned his job merely because he was reprimanded by respondents. According to the CA:

For having walked out, the private respondent provided a factual and legal basis for the petitioners to consider him as having abandoned his work and to terminate his services for said reason. Despite the existence of said reason, the petitioners did not. There exists no fact from which an opposite conclusion can be inferred. There is simply no evidence that petitioners terminated him for having abandoned his work. It cannot even be characterized as constructive dismissal. Despite the same, the public respondent reversed the finding of the Labor Arbiter reasoning out that "it is beyond logic to believe that a worker whose income and livelihood comes and depends upon his employer's good graces would defy them with such abandon."

Other than that reckoning, the public respondent had no other cogent justification for its judgment of reversal. On record, it decided against the petitioners for the reason that "Appellees (petitioners) did not give appellant (private respondent) written notice of his termination on the ground of abandonment." On that baseless premise, it concluded that "failure to do so makes the termination illegal." In so resolving, the public

respondent stated: "Appellant was within easy reach of appellees. Yet, during this period, appellees never took any step to compel appellant to return to work, did not question his alleged continued refusal to work and did not institute any investigation or proceedings to cause his termination from work due to abandonment."

We find it difficult to follow the logic of the public respondent. How can failure to take any step to compel private respondent to return to work, failure to question his alleged continued refusal to work, and failure to institute any investigation or proceedings to cause his termination from work due to abandonment, be considered as proof that petitioners had terminated him for abandonment? The rationalization of the public respondent, in the absence of any overt act on the part of the petitioners, defies logic considering that it even acknowledged: "Appellees agree that dismissal, under these circumstances, was unwarranted as they, in fact, admitted that they did not terminate appellant's services."

It is erroneous on the part of the public respondent to fault petitioners for not initiating any formal investigation. It is unfounded as it proceeds from a presumption that petitioners terminated his services for abandonment. Why would they do so if they were not contemplating the termination of his services for said reason? It must be remembered that he has been working for them since January of 1988. For such a petty misunderstanding, the petitioners had no reason to expect that private respondent would consider himself as terminated and precipitately file a case. How can a few days of non-communication be deemed a decision to terminate him? Obviously, his rash filing of the complaint was premature. As the Labor Arbiter stated: "x x x complainant's complaint for dismissal cannot be sustained there being no showing that the employee was prevented from returning to his work. It was he who walked out when his attention was called to the wrong installation of narra planks x x."

That the private respondent did walk out was viewed by the public respondent as "beyond logic." It is hardly surprising, however. The petitioner had been rendering his services for several employers in the business whenever these were needed. Because of his skill, he had no difficulty earning a living. Thus, it could be said that he had many clientele and could well-afford to leave the petitioners. To take with him their money for no sweat at all, however, the Court cannot countenance.[12]

The motion for reconsideration filed by petitioner was denied.

Thus, petitioner filed the instant petition, relying on the following ground:

x x x THE HON. COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DETERMINING THAT PETITIONER ABANDONED HIS JOB AND WAS NOT, THEREFORE, ILLEGALLY DISMISSED.[13]

Petitioner alleges that respondents failed to prove that he abandoned his job. He avers that he was subjected to insults, the very reason why he walked out of his job. Thus, his absence was work-related, due to respondent Norilyn's hostile treatment. Nonetheless, his mere absence or failure to report for work does not amount to abandonment. He was not issued written notices to report back to work, nor was he asked to explain why he was absent. Considering that he had been working for respondents for 12 years, it was unlikely that he would abandon his job. The fact that he was not given a written notice of termination due to abandonment makes the termination illegal. To buttress his arguments, petitioner cites the ruling of this Court in *Tan v. National Labor Relations Commission*.^[14]

For their part, respondents maintain that petitioner was not illegally dismissed - he walked out and abandoned his job.

The petition is meritorious.

It must be stressed that in petitions for review under Rule 45, only questions of law must be raised. Whether petitioner abandoned his job or was illegally dismissed are questions of fact better left to quasi-judicial agencies to determine. In this case, the Labor Arbiter was convinced that petitioner was not dismissed; it was petitioner

who left his job. The NLRC, while admitting that petitioner "walked out," ruled that there was illegal dismissal because respondents did not observe procedural due process. We are, therefore, constrained to take a second look, particularly since the appellate court reversed the findings of the NLRC.

We find that contrary to the rulings of the NLRC and the CA, petitioner prayed for his immediate reinstatement with full back wages plus assorted monetary benefits in his Position Paper.[15] He made the same prayer in his Memorandum on Appeal in the NLRC.[16] However, petitioner declared therein that the decision of the NLRC (which declared that he was entitled to separation pay) was correct; and, in his petition in this Court, he prayed that the decision of the NLRC be reinstated. In fine, petitioner is no longer praying for reinstatement to his former employment with respondents.

We also reject the ruling of the CA that petitioner's "walk-out" and his failure to report to work afterwards is not sufficient to anchor a finding of abandonment. It must be noted that petitioner must have been so humiliated when respondent Norilyn blamed him for the erroneous installation of narra planks on the stairs of the Bayot residence. He sulked and remained in the crew barracks. He did not immediately leave the site. Thus, it cannot be concluded solely by such circumstances that petitioner thereby abandoned his job. Notwithstanding, respondents themselves did not consider petitioner as having abandoned his job by his mere absence from September 18, 2001 to September 28, 2001 when he left Baguio City and arrived in Manila to file his complaint in the NLRC. The ten-day interval from the time of the incident between petitioner and respondent Norilyn Cuerpo up to the time he filed the complaint for illegal dismissal is so short that it is quite absurd to expect respondents to consider that petitioner had abandoned his job. In fact, respondents were not actually aware that petitioner quit his job.

In cases where abandonment is the cause for termination of employment, two factors must concur: (1) there is a clear, deliberate and unjustified refusal to resume employment; and (2) a clear intention to sever the employer-employee relationship.[17] The burden of proof that there was abandonment lies with the employer. Where the employee takes steps to protest his layoff, it cannot be said that he has abandoned his work because a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement.[18]

There is logic in the finding of the NLRC that it was quite improbable for petitioner to have abandoned his job after having been employed with respondents for twelve years. If, as the CA ruled, petitioner had decided to do so, petitioner should have immediately left Baguio City to file his complaint; however, he remained in the workers' barracks until September 28, 2001.

Respondents failed to prove that petitioner had indeed tried to convince his co-workers to abandon their jobs. They failed to submit any affidavit of any of the co-workers of petitioner to prove this claim.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision and Resolution of the Court of Appeals are REVERSED AND SET ASIDE. The Decision of the NLRC is REINSTATED. No costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Godardo A. Jacinto and Edgardo P. Cruz, concurring; rollo, pp. 58-68.

[2] Rollo, pp. 70-71.

[3] CA rollo, pp. 175-176.

[4] Id. at 177-178.

[5] Rollo, p. 46.

[6] Id. at 46-47.

[7] CA rollo, p. 75.

[8] Rollo, pp. 49-56.

[9] Id. at 53.

[10] Id. at 56.

[11] CA rollo, p. 13.

[12] Rollo, pp. 65-66.

[13] Id. at 13.

[14] G.R. No. 116807, April 14, 1997, 271 SCRA 216.

[15] CA rollo, pp. 55-56.

[16] Id. at 78.

[17] Chavez v. National Labor Relations Commission, G.R. No. 146530, January 17, 2005, 448 SCRA 478, 494.

[18] Stamford Marketing Corporation v. Julian, G.R. No. 145496, February 24, 2004, 423 SCRA 633, 649.

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