DUP SOUND PHILS. AND/OR MANUEL TAN, PETITIONERS, VS. COURT OF APPEALS AND CIRILO A. PIAL, RESPONDENTS.

G.R. No. 168317. November 21, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in the present petition for review on certiorari under Rule 45 of the Rules of Court are the Decision[1] dated November 24, 2004 and Resolution[2] dated May 16, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 81251. The CA nullified and set aside the June 30, 2003 Decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 033103-02, while the CA Resolution denied petitioners' Motion for Reconsideration.

The instant petition arose from a complaint for illegal dismissal filed by herein private respondent Cirilo A. Pial (Pial) on November 5, 2001 with the NLRC, Quezon City. In his Position Paper, Pial alleged that he was an employee of herein petitioner DUP Sound Phils. (DUP), which is an entity engaged in the business of recording cassette tapes for various recording companies; petitioner Manuel Tan (Tan) is the owner and manager of DUP; Pial was first employed in May 1988 until December 1988; on October 11, 1991, he was re-employed by DUP and was given the job of “mastering tape”; his main function was to adjust the sound level and intensity of the music to be recorded as well as arrange the sequence of the songs to be recorded in the cassette tapes; on August 21, 2001, Pial got absent from work because he got sick; when he got well the following day and was ready for work, he called up their office in accordance with his employer's policy that any employee who gets absent shall first call their office before reporting back to work; to his surprise, he was informed by the office secretary that the latter was instructed by Tan to tell him not to report for work until such time that they will advise him to do so; after three weeks, without receiving any notice, Pial again called up their office; this time the office secretary advised him to look for another job because, per instruction of Tan, he is no longer allowed to work at DUP; Pial asked the office secretary regarding the reason why he was not allowed to return to his job and pleaded with her to accept him back, but the secretary simply reiterated Tan's order not to allow him to go back to work. Pial prayed for the payment of his unpaid service incentive leave pay, full backwages, separation pay, moral and exemplary damages as well as attorney's fees.[3]

In their Position Paper, herein petitioners DUP and Tan denied the material allegations of Pial contending that on or about January 1996 they hired Pial as a laborer; on August 21, 2001, the latter failed to report for work following an altercation with his supervisor the previous day; on September 12, 2001, Pial called up their office and informed the office secretary that he will be going back to work on September 17, 2001; however, he failed to report for work on the said date; petitioners were subsequently surprised when they learned that Pial filed a complaint for illegal dismissal against them; Pial was never dismissed, instead, it was his unilateral decision not to work at DUP anymore; Tan even offered him his old post during one of the hearings before the NLRC hearing officer, but Pial refused such offer or any other offer of amicable settlement.[4]

On July 25, 2002, the Labor Arbiter (LA) handling the case rendered a Decision5 declaring Pial to have been

illegally dismissed and ordering DUP and Tan to reinstate him to his former position and pay him backwages, cost of living allowance, service incentive leave pay and attorney's fees.

On appeal, the NLRC, in its Decision promulgated on June 30, 2003, modified the Decision6 of the LA by deleting the award of backwages and attorney's fees. The NLRC ruled that there was no illegal dismissal on the part of DUP and Tan, but neither was there abandonment on the part of Pial.

Pial filed a Motion for Reconsideration,[7] but the NLRC denied it in its Resolution[8] dated October 7, 2003.

Pial then filed a special civil action for certiorari with the CA.[9]

On November 24, 2004, the CA issued its presently assailed Decision setting aside the June 30, 2003 Decision of the NLRC and reinstating the July 25, 2002 Decision of the LA.

DUP and Tan filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution dated May 16, 2005.

Hence, the instant petition for review on certiorari based on the following grounds:

> THE ASSAILED DECISION OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.
>
> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF [THE] NLRC AND, THUS, REINSTATING THE LABOR ARBITER'S DECISION.
>
> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT TAKING INTO CONSIDERATION PRIVATE RESPONDENT PIAL'S ADAMANT REFUSAL TO RETURN TO HIS WORK WITHOUT VALID REASON DURING AND AFTER THE PENDENCY OF THE INSTANT CASE.[10]

Petitioners’ basic contention in the instant petition is that the CA erred in finding that they terminated private respondent's employment, much less illegally, and that private respondent failed to prove that he was terminated from his employment.

The petition lacks merit.

At the outset, the Court finds it proper to reiterate the well-established rule that the jurisdiction of this Court in cases brought before it via Rule 45 of the Rules of Court is limited to reviewing errors of law.[11] However, one of the admitted exceptions to this rule is where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[12]

In this case, while the LA, the NLRC, and the CA were unanimous in their finding that private respondent is not guilty of abandonment, the NLRC's finding that private respondent was not illegally dismissed is contradictory to the ruling of the Labor Arbiter and the CA that petitioners are guilty of illegal dismissal. Hence, the Court deems it proper to reexamine the above factual findings.

After a review of the records at hand, the Court finds no cogent reason to depart from the concurrent findings of the Labor Arbiter and the CA that private respondent was illegally dismissed. Like the Labor Arbiter, the NLRC and the CA, this Court cannot give credence to petitioners' claim that private respondent abandoned his job.

The settled rule in labor cases is that the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal

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is not justified and, therefore, illegal.[13] In the instant case, what betrays petitioners' claim that private respondent was not dismissed from his employment but instead abandoned his job is their failure to prove that the latter indeed stopped reporting for work without any justifiable cause or a valid leave of absence. Petitioners merely presented the affidavits of their office secretary which narrated their version of the facts. These affidavits, however, are not only insufficient to prove their defense but also undeserving of credence because they are self-serving.[14]

Moreover, considering the hard times in which we are in, it is incongruous for private respondent to simply give up his work without any apparent reason at all. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking for a means of livelihood nowadays. Certainly, no man in his right mind would do such thing.[15]

Petitioners further claim that private respondent's absence caused interruption in the workflow which caused damages to the company. It is, thus, logical that petitioners would have wanted private respondent to return to work in order to prevent further loss on their part. In such a case, they could have immediately sent private respondent a notice or show-cause letter at his last known address requiring him to report for work, or to explain his absence with a warning that his failure to do so would be construed as abandonment of his work. However, petitioners failed to do so. Moreover, if private respondent indeed abandoned his job, petitioners should have afforded him due process by serving him written notices, as well as a chance to explain his side, as required by law. It is settled that, procedurally, if the dismissal is based on a just cause under Article 282[16] of the Labor Code, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard and, after hearing or opportunity to be heard, a notice of the decision to dismiss.[17] Again, petitioners failed to do these. Thus, the foregoing bolsters private respondent's claim that he did not abandon his work but was, in fact, dismissed.

The consistent rule is that the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[18] In addition, the employer must also observe the requirements of procedural due process. In the present case, petitioners failed to submit sufficient evidence to show that private respondent's dismissal was for a justifiable cause and in accordance with due process.

The Court also agrees with private respondent that petitioners' earnestness in offering re-employment to the former is suspect. It was only after two months following the filing of the complaint for illegal dismissal that it occurred to petitioners, in a belated gesture of goodwill during one of the hearings conducted before the NLRC, to invite private respondent back to work. If petitioners were indeed sincere, they should have made their offer much sooner. Under circumstances established in the instant case, the Court doubts that petitioners' offer would have been made if private respondent had not filed a complaint against them.

Neither may private respondent's refusal to report for work subsequent to the Labor Arbiter's issuance of an order for his reinstatement be considered as another abandonment of his job. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[19] As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[20] It is a form of neglect of duty, hence, a just cause for termination of employment by the employer.[21] For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work.[22] The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[23] In the instant case, private respondent

claimed that his subsequent refusal to report for work despite the Labor Arbiter's order for his reinstatement is due to the fact that he was subsequently made to perform the job of a “bodegero” of which he is unfamiliar and which is totally different from his previous task of “mastering tape.” Moreover, he was assigned to a different workplace, which is a warehouse, where he was isolated from all other employees. The Court notes that petitioners failed to refute the foregoing claims of private respondent in their pleadings filed with the CA. It is only in their Reply filed with this Court that they simply denied and brushed off private respondent's assertion that he was made to work as a “bodegero.” The Court is, thus, led to conclude that petitioners' failure to immediately refute the claims of private respondent is an implied admission thereof. In the same vein, the Court treats petitioners' belated denial of the same claims of private respondent as mere afterthought which is not worthy of credence.

Under the existing law, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights.[24] Article 279[25] of the Labor Code clearly provides that an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof.[26] Article 223 of the same Code also provides that an employee entitled to reinstatement shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or, at the option of the employer, merely reinstated in the payroll. It is established in jurisprudence that reinstatement means restoration to a state or condition from which one had been removed or separated.[27] The person reinstated assumes the position he had occupied prior to his dismissal.[28] Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position which is substantially equivalent or of similar nature as the one previously occupied by the employee.[29] Based on the foregoing principles, it cannot be said that petitioners intended to reinstate private respondent neither to his former position under the same terms and conditions nor to a substantially equivalent position. To begin with, the notice that petitioners sent to private respondent requiring the latter to report back for work is silent with regard to the position or exact nature they wanted the private respondent to assume. Indeed, as it turned out, petitioners had other plans for private respondent. Thus, private respondent's assignment to a different job, as well as transfer of work assignment without any justification therefor, cannot be deemed as faithful compliance with the reinstatement order.

As earlier discussed, private respondent may not be faulted for rejecting what petitioners claim as compliance with the order to reinstate the former given the totally different nature of the job he was afterwards given and the conditions and working environment under which he was to perform such job. Thus, private respondent found it unacceptable to work for petitioners. That he was placed in an untenable situation which practically left him with no choice but to leave his assigned task also shows the strained relations that has developed between the parties.

This Court has ruled in many instances that reinstatement is no longer viable where, among others, the relations between the employer and the employee have been so severely strained, that it is not in the best interest of the parties, nor is it advisable or practical to order reinstatement, or where the employee decides not to be reinstated.[30] In the instant case, the resulting circumstances show that reinstatement would be impractical and would hardly promote the best interest of the parties. Resentment and enmity between petitioners and private respondent necessarily strained the relationship between them or even provoked antipathy and antagonism as shown by the acts of the parties subsequent to the order of reinstatement. Besides, private respondent expressly prayed for an award of separation pay in lieu of reinstatement from the very start of the proceedings before the Labor Arbiter. By so doing, he forecloses reinstatement as a relief by implication.

Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. This has been the consistent ruling in the award of separation

pay to illegally dismissed employees in lieu of reinstatement.[31]

Private respondent, however, failed to prove his allegation that he was employed by petitioners since 1991. On the other hand, petitioners were able to present evidence to show that private respondent was employed only in January 1996. Hence, private respondent's separation pay must be reckoned from January 1996, when he began working with petitioners, until finality of this Decision, consistent with established jurisprudence.[32]

With respect to private respondent's backwages, the same shall be reckoned from the date he was illegally dismissed on August 22, 2001 until finality of this Decision, in accordance with prevailing jurisprudence.33

WHEREFORE, the instant petition is DENIED. The November 24, 2004 Decision of the Court of Appeals, which reinstated the July 25, 2002 Decision of the Labor Arbiter, is AFFIRMED with MODIFICATION to the effect that, instead of reinstatement, petitioners are directed to pay private respondent separation pay equivalent to one month salary for every year of service from January 1996 until finality of this Decision. Petitioners are also ordered to pay private respondent backwages counted from August 22, 2001 until finality of this Decision.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Perez,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1152, dated November 11, 2011.

[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente, concurring; rollo, pp. 33-40.

[2] Id. at 54-55.

[3] CA rollo, pp. 27-34.

[4] Id. at 35-42.

[5] Id. at 70-78.

[6] Id. at 16-22.

[7] Id. at 98-106.

[8] Id. at 23-24.

[9] Id. at 2-15.

[10] Rollo, p. 8.

[11] Union Industries, Inc. v. Vales, G.R. No. 140102, February 9, 2006, 482 SCRA 17, 22.

[12] Luna v. Allado Construction Co., Inc., G.R. No. 175251, May 30, 2011, citing Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 691-692.

[13] Salvaloza v. National Labor Relations Commission, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 194; Leopard Integrated Services, Inc. v. Macalinao, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 197; Macahilig v. National Labor Relations Commission, G.R. No. 158095, November 23, 2007, 538 SCRA 375, 384.

[14] Henlin Panay Company v. National Labor Relations Commission, G.R. No. 180718, October 23, 2009, 604

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SCRA 362, 369.

[15] Hantex Trading Co., Inc. v. Court of Appeals, G.R. No. 148241, September 27, 2002, 390 SCRA 181, 189.

[16] Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[17] R.B. Michael Press v. Galit, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 35; Metro Eye Security, Inc. v. Salsona, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 391.

[18] Lima Land, Inc. v. Cuevas, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 52; Metro Construction, Inc. v. Aman, G.R. No. 168324, October 12, 2009, 603 SCRA 335, 344.

[19] Uniwide Sales Warehouse Club v. National Labor Relations Commission, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 239.

[20] Forever Security & General Services v. Flores, G.R. No. 147961, September 7, 2007, 532 SCRA 454, 468; Nueva Ecija Electric Cooperative, (NEECO) II v. National Labor Relations Commission, G.R. No. 157603, June 23, 2005, 461 SCRA 169, 182.

[21] City Trucking, Inc. v. Balajadia, G.R. No. 160769, August 9, 2006, 498 SCRA 309, 315.

[22] Camua, Jr. v. National Labor Relations Commission, G.R. No. 158731, January 25, 2007, 512 SCRA 677, 682.

[23] E.G. & I. Construction v. Sato, G.R. No. 182070, February 16, 2011.

[24] Cabatulan v. Buat, G.R. No. 147142, February 14, 2005, 451 SCRA 234, 247.

[25] Art. 279. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be 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.

[26] Macasero v. Southern Industrial Gases Philippines, Inc., G.R. No. 178524, January 30, 2009, 577 SCRA 500, 506.

[27] Pfizer, Inc. v. Velasco, G.R. No. 177467, March 9, 2011.

[28] Id.

[29] Id.

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[30] City Trucking, Inc. v. Balajadia, supra note 21, at 317; Golden Ace Builders v. Talde, G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289; AFI International Trading Corp. (Zamboanga Buying Station) v. Lorenzo, G.R. No. 173256, October 9, 2007, 535 SCRA 347, 355; Cabatulan v. Buat, supra note 24.

[31] Diversified Security, Inc. v. Bautista, G.R. No. 152234, April 15, 2010, 618 SCRA 289, 296; Macasero v. Southern Industrial Gases Philippines, Inc., supra note 26, at 507.

[32] Genuino Ice Co. v. Lava, G.R. No. 190001, March 23, 2011; Javellana, Jr. v. Belen, G.R. Nos. 181913/182158, March 5, 2010, 614 SCRA 342, 352-353; Session Delights Ice Cream and Fast Foods v. Court of Appeals, G.R. No. 172149, February 8, 2010, 612 SCRA 10, 26-27; Rasonable v. NLRC, G.R. No. 117195, February 20, 1996, 253 SCRA 815, 823-824.

[33] Javellana, Jr. v. Belen, supra; Cabatulan v. Buat, supra note 24, at 246-248.

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