

BARON REPUBLIC THEATRICAL, MAJOR CINEMA, WILSON PASCUAL AND RODRIGO SALAZAR, PETITIONERS, VS. NORMITA P. PERALTA AND EDILBERTO H. AGUILAR, RESPONDENTS.

G.R. No. 170525. October 02, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court which seeks the reversal of the Decision[1] of the Court of Appeals (CA) dated March 31, 2005 in CA-G.R. SP No. 57483 and its Resolution[2] dated October 25, 2005, denying petitioners' Motion for Partial Reconsideration.[3] The CA Decision in question set aside the April 16, 1999 Decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA NO. 014340-98[4] and reinstated with modification the Decision of the Labor Arbiter dated August 15, 1997 in NLRC NCR CASE NO. 00-05-04048-94.[5]

The factual and procedural antecedents, as narrated by the CA, are as follows:

Petitioner [herein respondent], Normita P. Peralta ("PERALTA") was hired by BARON REPUBLIC THEATRICAL ("BARON") sometime in 1983 as a ticket seller and was later on promoted as General Manager. As General Manager she received a salary of Four Thousand Pesos (P4,000.00) a month.

On March 14, 1993, she was informed by the owner and operator of BARON, respondent [herein petitioner] Rodrigo Salazar ("SALAZAR") that her employment was already terminated effective that day. She was not given any reason why her services were being terminated. Thereafter, she filed a case for illegal dismissal with claim for reinstatement, payment of backwages, unpaid salary, 13[th] month pay, service incentive leave, damages and attorney's fees against her employer, BARON/SALAZAR.

As to petitioner [herein respondent] Edilberto H. Aguilar ("AGUILAR"), he was hired as electrician/air-conditioner operator at MAJOR CINEMA ("MAJOR") sometime in January of 1983. AGUILAR received a salary of NINETY-SEVEN PESOS (P97.00) per day and his salary was not increased even after the statutory minimum salary was increased.

In May 1994, he was informed by the owner-operator of MAJOR, [herein petitioner] Wilson Pascual ("PASCUAL"), that his employment was terminated effective that day. No explanation was given to AGUILAR why his service was being terminated. Hence, he filed a complaint against his employers, PASCUAL/MAJOR for illegal dismissal, payment of wage differentials as a result of underpayment, overtime pay, holiday and rest day/pay and service incentive leave pay.[6]

On August 15, 1997, the Labor Arbiter handling the case rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Ordering respondent Rodrigo D. Salazar to pay complainant NORMITA P. PERALTA, the following amounts:

13[th] month pay

P12,000.00

Service incentive leave pay

1,999.95

One month pay in lieu of notice

4,000.00

Separation pay (P2,000.00 x 4 years -

November 21, 1988 to March 14, 1993)

8,000.00

5% attorney's fees

1,300.00

TOTAL AWARD

P 27,299.95

2. Declaring the dismissal of complainant EDILBERTO H. AGUILAR by respondent WILSON PASCUAL to be illegal and ordering the latter to reinstate the former to his former position without loss of seniority rights and other privileges and pay him the following amount:

Backwages until reinstatement, computed

as of August 15, 1997

P149,158.50

13[th] month pay (P140,158.50 over 12)

11,679.90

Salary differentials (underpayment)

2,740.40

13[th] month pay for the underpayment

228.40

5 day per year SILP for 3 years

1,860.00

5% attorney's fees

7,833.75

TOTAL AWARD FOR AGUILAR

P164,501.25

All other claims are DISMISSED for insufficiency of evidence and/or lack of merit.

SO ORDERED.[7]

The Labor Arbiter ruled that Peralta's dismissal was not illegal as the establishment where she was working closed due to business losses and closure of business or establishment is one of the authorized causes recognized by law in dismissing an employee. On the other hand, the Labor Arbiter held that Aguilar's dismissal was illegal for failure of Pascual to present evidence that the former's dismissal was for a just cause.

On appeal, the NLRC modified the Decision of the Labor Arbiter. The decretal portion of the NLRC Decision reads as follows:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby modified and a new one entered:

1. Ordering respondent Rodrigo D. Salazar to pay complainant NORMITA P. PERALTA, the following amounts:

One month pay in lieu of notice

P 4,000.00

Separation pay (P2,000.00 x 4 yrs.

Nov.21, 1998 to March 14, 1993)

8,000.00

TOTAL AWARD

P12,000.00

2. Declaring that complainant EDILBERTO H. AGUILAR has voluntarily terminated his employment with respondent WILSON PASCUAL but ordering the latter to pay the former:

Salary differentials (underpayment)

P 2,740.40

13[th] month pay for the underpayment

228.40

TOTAL AWARD FOR AGUILAR

P 2,968.80

SO ORDERED.[8]

In its Decision, the NLRC reversed the Labor Arbiter's ruling that Aguilar was illegally dismissed. Instead, it gave credence to Pascual's representation that it was Aguilar who refused to return or report for work and was guilty of abandonment. The NLRC held that it is against logic for Pascual to terminate Aguilar on the spot without any substitute because his services are essential to Pascual's business. The NLRC ruled that, aside from his self-serving statements, Aguilar failed to show proof that he was indeed terminated.

Herein respondents filed a Motion for Reconsideration,[9] but the NLRC denied it in its Resolution[10] dated September 28, 1999.

Respondents then filed a petition for certiorari with the CA assailing the abovementioned Decision and Resolution of the NLRC.[11]

On March 31, 2005, the CA rendered its Decision, disposing as follows:

WHEREFORE, except as to the order deleting the award of Service Incentive Leave pay to PERALTA and AGUILAR, the decision of the NLRC dated April 16, 1999 is hereby SET ASIDE and the Decision of Labor Arbiter Ernesto S. Dinopol dated August 15, 1996 is REINSTATED with the MODIFICATION that the award of service incentive leave pay in favor of PERALTA and AGUILAR is DELETED and should the order reinstating AGUILAR be not feasible, MAJOR CINEMA and/or PASCUAL is hereby ORDERED to pay separation pay at the rate of one month for every year of service, with a fraction of at least six (6) months of service considered as one (1) year.

SO ORDERED.[12]

The CA held that as to Peralta, Salazar failed to discharge his burden of proving that he paid the former her 13[th] month pay. In the same manner, the appellate court ruled that Pascual failed to prove that Aguilar was guilty of abandonment. Moreover, the CA reinstated the award of attorney's fees holding that Peralta and Aguilar were

both forced to litigate in order to protect their rights and interests. On the other hand, the CA affirmed the ruling of the NLRC which deleted the award of service incentive leave pay to Peralta and Aguilar.

Aggrieved, herein petitioners filed a Motion for Partial Reconsideration,[13] but it was denied by the CA in its Resolution[14] dated October 25, 2005.

Hence, this petition for review raising the following issues as grounds:

I

WHETHER OR NOT THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEE WAS DISMISSED FOR A JUST CAUSE ABSENT ANY SHOWING OF AN OVERT OR POSITIVE ACT PROVING THAT THE EMPLOYER HAD DISMISSED THE EMPLOYEE

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REINSTATING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF PERALTA AND AGUILAR IN THE ABSENCE OF BAD FAITH ON THE PART OF THE PETITIONERS[15]

As to the first issue, petitioners contend that the CA erred in ruling that Pascual has the burden of proving that the dismissal of Aguilar was for a just cause; that the CA proceeded on the wrong premise that Aguilar was in fact dismissed from his employment; that petitioners' burden of proving the validity of Aguilar's dismissal comes only after the latter is able to prove that his alleged dismissal from employment was made through some overt or positive act on the part of petitioner Pascual indicating such dismissal; that Aguilar, in fact, refused to work and abandoned his job.

The Court is not persuaded.

It is a basic principle that in illegal dismissal cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.[16] In addition, in claims of abandonment by an employee, the settled rule is that the employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.[17] Moreover, in evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts.[18] 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 intent, manifested through overt acts, to sever the employer-employee relationship.[19]

In the present case, petitioner Pascual consistently denies that Aguilar was terminated from his employment and that, instead, he abandoned his work and never returned after his request for salary increase was rejected. However, denial, in this case, does not suffice; it should be coupled with evidence to support it.[20] In the instant case, the Court finds no error in the ruling of the CA that petitioners failed to adduce evidence to prove abandonment and rebut Aguilar's claim of dismissal.

Contrary to petitioners' asseveration that Aguilar is guilty of abandoning his job, the Court finds no error in the finding of the Labor Arbiter, as affirmed by the CA, that there was no clear intention on Aguilar's part to sever the employer-employee relationship. Considering that "intention" is a mental state, petitioners must show that respondent Aguilar's overt acts point unerringly to his intent not to work anymore. In this regard, petitioners failed.

In fact, Aguilar's filing of a complaint for illegal dismissal the day following his termination, as well as his subsequent prayer for reinstatement in his Position Paper,[21] are indications which strongly speak against the

petitioners' charge of abandonment. An employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work for it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal and pray for reinstatement.[22]

In a long line of cases, this Court has held that abandonment is negated where the immediate filing of a complaint for illegal dismissal was coupled with a prayer for reinstatement and that the filing of the complaint for illegal dismissal is proof enough of the desire to return to work.[23] The prayer for reinstatement, as in this case, speaks against any intent to sever the employer-employee relationship.[24]

In addition, the Court takes note of the fact established by respondents that Aguilar has been in-charge of the air-conditioning system of Major Cinema since 1983, or a total of more than 11 years. No evidence was shown that he had any record of infraction of company rules. Hence, the Court finds it difficult to accept petitioner Pascual's allegation that Aguilar simply walked away with the intent to abandon his job when his request for increase of wage was not granted. The Court agrees with the Labor Arbiter that abandonment after Aguilar's long years of service and the consequent surrender of benefits earned from years of hard work are highly unlikely.

Furthermore, the Court agrees with respondents when they argued in their petition filed with the CA that if an employee's aim is to secure the benefits due him from his employer, abandonment would surely be an illogical and impractical recourse, especially for simple laborers such as respondent Aguilar. Considering the difficult times in which our country is in it is illogical and even suicidal for an employee like Aguilar to abandon his work, knowing fully well of the widespread unemployment and underemployment problems as well as the difficulty of looking for a means of livelihood, simply because his employer rejected his demand for salary increase. Under the given facts, no basis in reason exists for the petitioners' theory that Aguilar abandoned his job.

With respect to the second issue, petitioners argue that attorney's fees are due only in cases where the plaintiff or complainant is compelled to litigate and that there must be a finding to this effect. Petitioners also assert that the totality of evidence does not support the claims of herein respondents that they were compelled to litigate.

The Court does not agree.

It is settled that in actions for recovery of wages or when the employee is illegally dismissed in bad faith or where an employee was forced to litigate and incur expenses to protect his rights and interests by reason of the unjustified acts of his employer, he is entitled to an award of attorney's fees.[25] This award is justifiable under Article 111 of the Labor Code,[26] Section 8, Rule VIII, Book III of its Implementing Rules,[27] and paragraph 7, Article 2208 of the Civil Code.[28]

Moreover, in cases for recovery of wages, the award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages.[29] There need only be a showing that the lawful wages were not paid accordingly.[30]

As to Peralta, it was established that she was denied her 13th month pay. Moreover, both the Labor Arbiter and the NLRC are in agreement that she was unceremoniously dismissed from her employment when her employer, Salazar, failed to serve her a written notice of her dismissal from employment at least 30 days prior to the supposed date of her termination. This is a clear evidence of bad faith on the part of Salazar. Hence, this circumstance, coupled with the denial of her benefits, prompted her to seek representation for the enforcement of her rights and the protection of her interests against the unjustified acts of her employer. Thus, the CA committed no grave abuse of discretion in sustaining the award of attorney's fees to Peralta.

With respect to Aguilar, it is clear that he was illegally terminated from his employment and that his wages and other benefits were withheld from him without any valid and legal basis. As a consequence, he is compelled to

file an action for illegal dismissal and for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. On these bases, the Court also finds that the CA did not commit grave abuse of discretion in upholding the grant of attorney's fees to Aguilar.

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals, dated March 31, 2005, and its Resolution of October 25, 2005 in CA-G.R. SP No. 57483, are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Regalado E. Maambong, with Associate Justices Martin S. Villarama, Jr. and Lucenito N. Tagle, concurring; rollo, pp. 24-38.

[2] Id. at 39-40.

[3] CA rollo, p. 368.

[4] Id. at 20.

[5] Id. at 38.

[6] Id. at 323-324.

[7] Id. at 73-74.

[8] Id. at 110.

[9] Id. at 112.

[10] Id. at 121.

[11] Id. at 2.

[12] Id. at 334-335.

[13] Id. at 368.

[14] Id. at 416.

[15] Rollo, p. 17.

[16] Harbor View Restaurant v. Reynaldo Labro, G.R. No. 168273, April 30, 2009.

[17] Pentagon Steel Corporation v. Court of Appeals, et al., G.R. No. 174141, June 26, 2009.

[18] Id.

[19] Id.

[20] Padilla Machine Shop v. Javilgas, G.R. No. 175960, February 19, 2008, 546 SCRA 351, 360.

[21] CA rollo, pp. 73-74.

[22] Aliten v. U-Need Lumber & Hardware, G.R. No. 168931, September 12, 2006, 501 SCRA 577, 589; New Ever Marketing, Inc. v. Court of Appeals, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 296.

[23] South Davao Development Co., Inc., et al. v. Sergio L. Gamo, et al., G.R. No. 171814, May 8, 2009; Megaforce Security and Allied Services, Inc. v. Lactao, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 118; Mame v. Court of Appeals, G.R. No. 167953, April 4, 2007, 520 SCRA 552, 563; Remington Industrial Sales Corporation v. Castaneda, G.R. Nos. 169295-96, November 20, 2006, 507 SCRA 391, 413.

[24] Pentagon Steel Corporation v. Court of Appeals, *supra* note 17.

[25] M+W Zander Philippines, Inc, et al.. v. Trinidad M. Enriquez, G.R. No. 169173, June 5, 2009; Placewell International Services Corporation v. Camote, G.R. No. 169973, June 26, 2006, 492 SCRA 761, 770.

[26] ART. 111. Attorney's fees. -- (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered; (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

[27] SEC. 8. Attorney's fees. -- Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

[28] ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

x x x x

[29] Norkis Trading Co., Inc. v. Genilo, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 296.

[30] *Id.*

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