

## **RUPERTO SULDAO, PETITIONER, VS. CIMECH SYSTEM CONSTRUCTION, INC. AND ENGR. RODOLFO S. LABUCAY, RESPONDENTS.**

*G.R. NO. 171392. October 30, 2006*

Ponente: YNARES-SANTIAGO, J.

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### **YNARES-SANTIAGO, J.:**

This petition for review on certiorari assails the Decision[1] dated June 23, 2005 of the Court of Appeals in CA-G.R. SP No. 83963, which reversed and set aside the February 27, 2004 Resolution[2] of the National Labor Relations Commission (NLRC) in NLRC CA No. 036963-03 and the August 5, 2003 Decision of the Labor Arbiter finding petitioner to have been constructively dismissed. Also assailed is the January 10, 2006 Resolution[3] denying petitioner's motion for reconsideration.

The facts are as follows:

Respondent Cimech Systems Construction, Inc. employed the services of petitioner Ruperto Suldao on August 31, 2001 as a machinist with a daily wage of P300.00 on a contractual status for a period of five months. After January 31, 2002, respondent continued to engage the services of petitioner as a machinist until he became a permanent employee.

Petitioner alleged that owing to a dearth in projects being handled by the respondent, he was ordered by Ms. Elsa Labocay to take a leave of absence from November 1 to 6, 2002. He reported for work on November 7, 2002 but was again ordered to take a leave of absence from November 7 to 14, 2002. On November 15, 2002, he was purportedly ordered to make a letter-request for field work transfer which he complied. The following day, he failed to report back for work because he was sick. On November 17, 2002, he reported for work but was allegedly barred from entering by the security guard on duty. On November 21, 2002, he was again barred from entering the premises, hence he filed the instant complaint[4] for constructive dismissal.[5]

Respondent alleged that due to lack of available work in the machine shop, petitioner was temporarily transferred to its fabrication department sometime in November 2002. Petitioner refused to accept the transfer and insisted to work as a machinist. Because of petitioner's arrogant and unruly behavior, he was led away by a guard. When petitioner returned for work, he purportedly demanded a salary increase and wages for the days that he did not work. Respondent considered the actuations of petitioner tantamount to insubordination, hence, it suspended[6] the petitioner for six days.

After his suspension on November 28, 2002, petitioner accepted his transfer to the fabrication department but worked for only one day. During the company's Christmas party on December 21, 2002, petitioner came and asked for his 13th month pay. On January 13, 2003, petitioner demanded to get his one day salary deposit but was told to secure a clearance which he failed to comply. Thereafter, petitioner filed the instant complaint for illegal dismissal.

On August 5, 2003, Labor Arbiter Melquiades Sol D. Del Rosario rendered a decision, the dispositive portion of which reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant to have been illegally dismissed constructively. Consequently, he should be reinstated to his former position and paid his backwages which has accumulated as of July 17, 2003 in the sum of P62,400.00 plus his one month separation pay of P7,800.00.

SO ORDERED.[7]

The NLRC concurred with the findings of the Labor Arbiter that petitioner was constructively dismissed.

Hence, respondent filed a petition for certiorari[8] which was granted by the Court of Appeals. In its assailed June 23, 2005 decision, the Court of Appeals reversed the NLRC by declaring:

WHEREFORE, premises considered, the Petition is hereby given DUE COURSE, and the February 27, 2004 Decision of the NLRC is hereby REVERSED and SET ASIDE. The December 20, 2002 Complaint is hereby DISMISSED.

SO ORDERED.[9]

Hence, this petition raising the sole issue of:

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF THE LABOR ARBITER AND THE NLRC THAT THE PETITIONER WAS CONSTRUCTIVELY DISMISSED.

As a general rule, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,[10] such as in this case where the findings of the Labor Arbiter and the NLRC vary from the findings of the Court of Appeals.

The petition is impressed with merit.

After a painstaking review of the records, we uphold the findings of the Labor Arbiter and of the NLRC that petitioner was constructively dismissed. Constructive dismissal or a constructive discharge has been defined as quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[11] In the instant case, there is constructive dismissal because the continued employment of petitioner is rendered impossible so as to foreclose any choice on his part except to resign from such employment.[12]

In cases of constructive dismissal, the burden of proof is on the employer to show that the employee was dismissed for a valid and a just cause.[13] In the instant case, respondent failed to discharge this burden. As aptly observed by the NLRC:

In essence, respondents would have it that they have not dismissed complainant, rather it was he who did not return to his job after 13 January 2003.

To begin with, the issues raised undoubtedly was factual, the determination of which lies within the competence of the Labor Arbiter's jurisdiction, over which this Commission will interfere only when grave abuse or serious errors were committed by him in the interpretation of the evidence on records.

In this case however, respondents failed to show by substantial proof the veracity of their assertion. For one, while claiming that complainant was placed on a six (6) days suspension for an alleged infraction, they failed nonetheless to adduce evidence showing that indeed complainant committed the offense and was placed as

such as disciplinary measure.

Relevant on this score is the observation and findings of the Labor Arbiter, to wit: Respondents' averment that complainant was arrogant, and did not want to be transferred to another position or department is belied by complainant's letter dated November 28, 2002.

Excerpts from complainant's letter reads:

"Na tinatanggap ko na utos ng kumpanyang ito na umako ng ibang gawain para sa kabutihan ng lahat. Na ang pagtanggap ko ng ibang trabaho ay pansamantala lang habang walang gawain sa dati ko puwesto or gawain trabaho sa kompanya.

Nang ang sulat salaysay kong ito ay aking isinagawa bilang pagtalima sa kautusan ng atin kumpanya.

x x x x

Complainant's claim that he was required to go on a leave of absence due to a dearth of work is consistent with respondent's claim that there was scarcity of work because of the economic crisis.

By all appearances, complainant does not have a high educational attainment and his skill is limited to being a machinist. As such, all he can do is to obey the biddings of his superior. So when required to go on leave, he meekly obeys.

Even his claim that he failed to report for work due to indisposition is supported by a medical certificate. As between the conflicting claims of the parties, this Arbitration Branch has to accord more weight to complainant's claim that he was no longer allowed to work because he was barred by the security guard of the company to enter the premises for reasons only known to respondents.

Had there been truth to respondents' claim that complainant abandoned his work because he did not want the job in the fabrication department, complainant would not have made a letter of conformity to do the bidding of the company. Moreover, complainant would not have taken steps to protect his rights like the institution of the present labor suit if he had abandoned his work because rather than spend time, effort and a little money in attending to the hearings of this case, he would have concentrated in his new job or in finding one in order to feed his family.[14]

While the decision to transfer employees to other areas of its operations forms part of the well recognized prerogatives of management, it must be stressed, however, that the managerial prerogative to transfer personnel must not be exercised with grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner in which that right is exercised. Thus it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker.[15]

In the instant case, while petitioner's transfer was valid, the manner by which respondent unjustifiably prevented him from returning to work on several occasions runs counter to the claim of good faith on the part of respondent corporation. By reporting for work, petitioner manifested his willingness to comply with the regulations of the corporation and his desire to continue working for the latter. However, he was barred from entering the premises without any explanation. This is a clear manifestation of disdain and insensibility on the part of an employer towards a particular employee and a veritable hallmark of constructive dismissal.

We cannot sustain the theory of respondent that since petitioner was allowed to join its 2002 Christmas Party, there can be no constructive dismissal. Petitioner's joining the Christmas party does not negate his illegal dismissal. Neither does it detract us from the fact that petitioner was prevented from entering the premises of the respondent corporation on previous occasions.

While the liability of the respondent corporation for the constructive dismissal of the petitioner has been clearly

established, the same does not hold true with the other respondent, Engr. Rodolfo S. Labucay, President and General Manager of the respondent corporation.[16] In finding Labucay also liable, the Labor Arbiter declared that:

The foregoing circumstances support the view that complainant was constructively dismissed in an illegal manner. Consequently, respondents, in solidum, are ordered to reinstate the complainant to his former position and pay complainant his backwages x x x.

A corporation is invested by law with a personality separate from that of its stockholders or members. It has a personality separate and distinct from those of the persons composing it as well as from that of any other entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not in itself sufficient ground for disregarding the separate corporate personality. A corporation's authority to act and its liability for its actions are separate and apart from the individuals who own it.

The veil of corporate fiction treats as separate and distinct the affairs of a corporation and its officers and stockholders. As a general rule, a corporation will be looked upon as a legal entity, unless and until sufficient reason to the contrary appears. When the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. Also, the corporate entity may be disregarded in the interest of justice in such cases as fraud that may work inequities among members of the corporation internally, involving no rights of the public or third persons. In both instances, there must have been fraud and proof of it. For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot be presumed.[17]

In the instant case, no reason exists that will justify the piercing of the veil of corporate fiction such as to hold Labucay, as the president and general manager of the respondent corporation, solidarily liable with it. Thus, the liability for the constructive dismissal of the petitioner solely devolves upon the respondent corporation. Consequently, the decision of the Labor Arbiter and of the NLRC should be modified in that only the respondent corporation should be held liable.

WHEREFORE, the petition is GRANTED. The June 23, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 83963 and its January 10, 2006 Resolution are REVERSED and SET ASIDE. The February 27, 2004 Resolution of the National Labor Relations Commission in NLRC CA No. 036963-03 affirming the decision of the Labor Arbiter finding that petitioner was constructively dismissed, is REINSTATED with MODIFICATION that only the respondent corporation, Cimech System Construction, Inc. is held liable.

No pronouncement as to costs.

### **SO ORDERED.**

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 122-129. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr.

[2] Id. at 107-113. Penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

[3] Id. at 141-142.

[4] Id. at 55-56.

[5] Id. at 58.

[6] Id. at 53.

[7] Id. at 91.

[8] Id. at 31-51.

[9] Id. at 129.

[10] Eastern Communications Philippines, Inc. v. Diamse, G.R. No. 169299, June 16, 2006.

[11] Unicorn Safety Glass, Inc. v. Basarte, G.R. No. 154689, November 25, 2004, 444 SCRA 287, 294.

[12] Mendiola v. Court of Appeals, G.R. No. 159333, July 31, 2006.

[13] Philippine Industrial Security Agency Corporation v. Aguinaldo, G.R. No. 149974, June 15, 2005, 460 SCRA 229, 236.

[14] Rollo, pp. 110-112.

[15] Blue Dairy Corporation v. National Labor Relations Commission, 373 Phil. 179, 186 (1999).

[16] See Board Resolution dated May 6, 2004, Rollo, p. 51.

[17] Secosa v. Heirs of Erwin Suarez Francisco, G.R. No. 160039, June 29, 2004, 433 SCRA 273, 281.

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