

RBC CABLE MASTER SYSTEM AND/OR EVELYN CINENSE, PETITIONERS, VS. MARCIAL BALUYOT, RESPONDENT.

G.R. No. 172670. January 20, 2009

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 85254 which modified the Decision[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034129-03. The NLRC reversed the Decision[3] of the Labor Arbiter in RAB II CN. 01-0007-02 dismissing the complaint for illegal dismissal filed by respondent Marcial Baluyot against petitioners RBC Cable Master System and/or Evelyn Cinense. On certiorari, the Court of Appeals affirmed the NLRC's finding that respondent was illegally dismissed with modification of the award of separation pay.

As found by the Court of Appeals, the facts are as follows:

Herein petitioner RBC Cable Master System (petitioner RBC) is a cable firm engaged in the business of providing home cable service, owned and managed by Engr. Reynaldo Cinense and his wife, co-petitioner Evelyn Cinense.

Sometime in March 1996, petitioner RBC hired herein private respondent Marcial Baluyot as a Lineman. As lineman, private respondent received a compensation of P110.00 per day plus an allowance of P100 as driver of the motorcycle he leased to petitioner. He was also given free gasoline and maintenance allowance, free cable subscription and other benefits accorded by law. In 1999, private respondent was appointed as collector, which position he held up to March 2001 when he was allegedly illegally dismissed. Beginning March 2000, petitioner RBC imposed a new salary scheme for collectors where they are no longer paid monthly salaries and instead their remuneration was computed at the rate of 5% percent (sic) based on the total collections for a given month.

In the middle part of the year 2000, private respondent learned that his outstanding loan from cash advances accumulated to P18,000.00. The cash advances he made [were] pursuant to a long time practice for the employees of petitioner RBC to advance amounts of money in the form of cash vales with the condition that the same be deducted from their monthly salaries on a staggered or periodic basis.

Private respondent averred that upon the urgings of petitioner for him to promptly settled (sic) his obligations, the latter delivered a Yamaha motorcycle registered in his name, valued at P40,000.00 as a security for the loan. This agreement was evidenced by a Deed of Chattel mortgage executed in favor of petitioner RBC.

Petitioner RBC, on the other hand, alleged that it leased the said motorcycle from private respondent in connection with its various cable TV operations, for an agreed price of P100.00 per day. The lease of the motorcycle was terminated only after private respondent ceased owning the said motorcycle for failing to pay Eagle Financial Services, Group inc. (sic), his monthly amortizations for the same and after the motorcycle was re-possessed by said financing company. Petitioner RBC eventually purchased from Eagle Financial Services the said motorcycle for use in its Cable TV business.

On February 1, 2001, when private respondent reported for work, he was informed that no blank official receipts could be issued to him for his collection job for that day or for a month because he is being suspended. Thus, for one month, he did not report for work and when he reported back to duty, he was told by petitioner RBC that he is now out of job and is considered terminated.

Petitioner RBC denied dismissing private respondent by contending that it was private respondent who abandoned his work, when, sometime in March 2001, he left without any notice and never returned back for work. Petitioner RBC also alleged that private respondent in the course of his employment, committed several infractions, to wit:

a)

On several occasions, private respondent Marcial Baluyot did not issue Official Receipts to subscribers for the monthly subscriptions and dues he collected from them;

b)

Worst, private respondent willfully and deliberately did not remit to petitioner the amounts he collected from said subscribers.

c)

That private respondent misappropriated said amounts for his own personal use. Because of private respondent's misappropriation of his collection of monthly cable rentals and subscription fees and theft of money belonging to petitioner, the latter filed a criminal case for Estafa against private respondent.

d)

In order to cover up his misappropriations, private respondent falsified documents by making it appear that three customers paid to him in checks. The said checks were remitted to petitioner RBC but which all bounced because the account was already closed. And upon inquiry it was discovered that said checks were drawn against the current account of private respondent's wife who was then abroad. Because of this incident, petitioner RBC filed another Criminal case against private respondent for Falsification arising from his acts of forging and falsifying the aforementioned checks to be able to cover up for the amounts he misappropriated.

e)

That private respondent was also engaged in illegal installation of cable lines to TV sets of persons who are not clients of petitioner.

f)

That private respondent also twice stole a motorcycle belonging to petitioner RBC resulting in the filing of a criminal case against him for qualified theft.

Because of the foregoing infractions and misdeeds allegedly committed by private respondent, petitioner RBC was forced to suspend private respondent for one (1) month effective February 1, 2001 to February 28, 2001. Thereafter, private respondent was recalled back to work on March 1, 2001 and he executed a promissory note for the amount of his unremitted collections which included an undertaking that he will not repeat his various infractions, otherwise, he submits himself to automatic termination of his employment. Petitioner RBC, however alleged that sometime in the same month of March 2001, private respondent did not report for work without permission from and/or prior notice to petitioner that is why petitioner considered private respondent absent without official leave (AWOL).

Private respondent however contended that after his suspension, he reported back to work. Upon his return,

petitioner RBC told him that he is now out of job and is considered terminated. Thus, on January 8, 2002, private respondent filed a case for illegal dismissal before the Regional Arbitration Board in Tuguegarao City, Cagayan.

On November 5, 2002, the labor arbiter rendered a decision dismissing the complaint for illegal dismissal for lack [of] merit. The Labor Arbiter anchored his decision on the strength of his finding that private respondent abandoned his job and committed acts of dishonesty such as theft of company funds and property.

On appeal, the National Labor Relations Commission (NLRC), in the now assailed Decision dated December 10, 2003 reversed and set aside the decision of the labor arbiter and ruled that private respondent did not abandon his job but was illegally dismissed. The dispositive portion of the said assailed decision reads as follows:

WHEREFORE, finding merit in the appeal, the decision dated November 5, 2002 is hereby reversed and set aside. A new judgment is entered finding respondents to have illegally dismissed complainant from his employment. Accordingly, respondents are hereby ordered to pay complainant his backwages from March 1, 2001 to November 5, 2002, the date of the decision of the labor arbiter. In addition complainant is entitled to separation pay in lieu of reinstatement equivalent to one-half (1/2) pay for every year of service from March 1996 to March 2001 based on his wage rate of P4,200. (Rollo, pp. 23-24)[4]

As aforesated, the Court of Appeals affirmed the decision of the NLRC with the modification that the award of separation pay be computed at one (1) month pay for every year of service reckoned from March 1, 2001 up to finality of its decision as follows:

WHEREFORE, in view of the foregoing, the instant Petition for Certiorari is DENIED and the assailed Decision of the National Labor Relations Commission dated December 10, 2003 is hereby AFFIRMED with modification that the award of separation pay be computed at one (1) month pay for every year of service reckoned from March 1, 2001 up to the finality of this decision.[5]

A motion for reconsideration of the Court of Appeals' decision was filed but the same was denied in a Resolution[6] dated April 10, 2006.

Hence, this Petition, raising the following grounds:

- The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in impliedly acknowledging that the NLRC can pass upon and resolve an un-litigated issue (abandonment) by making use of the same un-litigated issue to justify its finding of illegal dismissal.
- The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in ruling that there was no abandonment even if it had no factual or legal basis for such finding.
- The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in ruling that private respondent was illegally dismissed despite overwhelming evidence of acts of dishonesty such as misappropriation of collections, falsification of documents to cover up said misappropriation, theft of company funds and property as well as abandonment - all Just Causes for Dismissal under Article 282 of the Labor Code of the Philippines as amended.
- The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in ruling that the acts of dishonesty and other infractions were already condoned by petitioner since private respondent was already suspended and was even required to report back to work after his suspension.
- The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in affirming the NLRC's award of Backwages and Separation Pay.[7]

The petition is unmeritorious.

There are two key issues in this case: (1) whether the issue of abandonment cannot be passed upon by the NLRC for not being raised on appeal; and (2) on the basis of other grounds, whether respondent was illegally dismissed.

On the first issue, we hold that the NLRC did not abuse its discretion when it resolved the issue on abandonment. Petitioners argue that the NLRC committed grave abuse of discretion when it went beyond the issues raised before it on appeal. Petitioners contend that Rule IV, Section 3-C of the 1990 NLRC Rules of Procedure limits the review powers of the NLRC in cases of perfected appeals, to those specific issues raised on appeal. According to petitioners, the assignment of errors in respondent's Appeal Memorandum[8] before the NLRC did not question the fact that he abandoned his job since nowhere therein did he raise any issue regarding the matter of abandonment.

We disagree. Respondent's Appeal Memorandum states:

GROUND FOR APPEAL:

- THERE IS EVIDENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE LABOR ARBITER; AND
- THERE ARE SERIOUS ERRORS IN HIS FINDINGS OF FACT WHICH WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE APPELLANTS.

ASSIGNMENT OF ERRORS:

- The Honorable Executive Labor Arbiter committed serious error in dismissing the above-entitled case for lack of merit;
- The Honorable Executive Labor Arbiter erred seriously IN admitting respondent's position paper after issuing an order submitting the case for resolution;
- The Honorable Executive Labor Arbiter gravely erred in not expunging the respondent's position paper from the records;
- The Executive Labor Arbiter committed serious error in misconstruing Annexes "L" and "M" presented by Appellee as admission of the offenses imputed against appellant;

the executive labor arbiter committed serious error in failing to appreciate the evidences presented by appellant[.]

[9](Emphasis added)

Although respondent did not specifically cite abandonment above, it is evident from the foregoing that he questioned the Labor Arbiter's factual finding that he was not illegally dismissed in his appeal before the NLRC. Moreover, contrary to petitioners' assertion, respondent never admitted that he abandoned his job. A perusal of respondent's pleadings filed in the proceedings below shows that he maintained that he did not abandon his job and the reason why he did not report to work for a month was because he was suspended by petitioners. Indeed, the pivotal issue in this case is whether or not he was illegally dismissed. The matter of abandonment has to be necessarily discussed for being corollary to the main issue of illegal dismissal. Petitioners' argument that the issue of abandonment was not properly raised on appeal is therefore incorrect. At any rate, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.[10]

Now, on the other issues.

It is elementary rule that the Supreme Court is not a trier of facts. However, since the findings of the Labor Arbiter, on one hand, and the NLRC and the Court of Appeals, on the other, are conflicting, we are constrained to determine the facts of the case.

There are two reasons given by petitioners to support their contention that respondent was not illegally dismissed. First, respondent committed several infractions during the course of his employment. Second, respondent abandoned his job.

After a careful review of the case, we find sufficient evidence to warrant the finding that respondent was illegally dismissed.

First, we note that the memoranda[11] covering the alleged infractions committed by respondent during the course of his employment and respondent's written explanations[12] thereto were all executed prior to the Promissory Note[13] dated March 5, 2001 signed by respondent which states:

I, Marcial Baluyot, an authorized collector commission basis of RBC CABLE has been earlier suspended due to unauthorized spending of my collection worth P6,330.00 pesos.

On March 1, 2001, I had been (sic) reported back to work with a promised (sic) not to repeat the abovementioned violation, otherwise, I will submit myself for automatic termination from my work.

Furthermore, I promised (sic) to pay the amount of P7,279.50 pesos including the interest equivalent to the amount spent with in (sic) a period of 3 (three) months which will be deducted from my commission, every 15[th] and 30[th] of the month.

As can be gleaned above, after respondent was punished with suspension by petitioners, he was admitted back to work on the condition that he will not repeat the same violations and he will pay back the sums he owed. Hence, we agree with the Court of Appeals that these prove that petitioners had condoned the infractions previously committed by the respondent.

Petitioners, however, insist that there was no condonation of the misdeeds committed by respondent. According to petitioners, the suspension of respondent was in the nature of a preventive suspension and he was admitted back to work in order for him to face the administrative process. Also, petitioners contend that the alleged penalty imposed upon respondent only pertains to the unauthorized appropriation of the amount of P6,330.00 and not to his other acts of dishonesty such as theft of company funds and property, illegal installation of cable lines and falsification of checks. It is also contended that the said promissory note was merely intended to prove the civil liability of respondent for the amount he misappropriated.

Petitioners' arguments deserve scant consideration. The tenor of the promissory note stating the conditions under which he will be admitted back to work negates petitioners' argument that his suspension was only preventive in nature. The facts that: (1) the other infractions were already known to petitioners and they have accepted respondent's explanations on the same prior to the execution of the promissory note; and (2) they continued to employ him thereafter lead us to believe that the penalty imposed covered his other infractions. Moreover, it should be noted that the promissory note obliges respondent to pay P7,279.50 with interest for a period of three (3) months which clearly contradicts petitioners' assertion that the penalty imposed was only for the misappropriation of the sum of P6,330.00.

We therefore affirm the finding of the Court of Appeals that the real controversy arose only when, after the execution of the promissory note, respondent allegedly failed to report back to work without notice to petitioners.

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. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[14]

The evidence in the case at bar shows that respondent has always humbly accepted his fault and asked for petitioners' forgiveness, to wit:

xxx

Ipagdarasal ko sa Diyos na sana palambutin ang inyong puso at bigyan pa po ninyo ako nang isang pang pagkakataong mapatunayan ang pagmamalasakit ko sa kompanyang ito at tuluyang maituwid ang aking pagkakamali.[15]

Hence, we find it hard to believe that he will just abandon his job after petitioners gave him a chance to continue working for them. We uphold the following findings of the Court of Appeals that respondent did not abandon his job:

In the case at bar, the charge of abandonment is belied by the following circumstances: First, the high improbability of private respondent to intentionally abandon his work considering that he had already served a penalty of suspension for his infractions and violations as well as the petitioner's tacit condonation of the infractions he committed, by permitting him to go back to work and by asking him to execute a promissory note. It is incongruent to human nature, that after having ironed things out with his employer, an employee would just not report for work for no apparent reason. Secondly, there was no proof that petitioner sent private respondent a notice of termination on the ground of abandonment, if indeed it is true that he really failed to go back to work. Section 2, Rule XVI, Book V, Rules and regulations implementing the Labor Code provides that any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular act or omission constituting the ground for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address (*Icawat vs. National Labor Relations Commission*, 334 SCRA 75, 81 [2000]). For this reason, We are constrained to give credence to private respondent's assertion that he attempted to report back to work but he was just asked to leave as he was considered terminated. And lastly, private respondent's filing of a case for illegal dismissal with the labor arbiter negates abandonment. As held by the Supreme Court, 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 (*Globe Telecom, Inc. vs Florendo-Flores*, 390 SCRA 201, 2002[sic]-203 [2002]).[16]

Finally, an employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee.[17] In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one (1) month salary for every year of service.[18] Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.[19]

In the case at bar, considering the strained relations between the parties brought about by petitioners' filing of criminal cases against respondent, reinstatement is not viable. The Court of Appeals is therefore correct in awarding separation pay equivalent to one (1) month pay for every year of service computed from the date of his illegal dismissal on March 1, 2001 up to the finality of the decision.

IN VIEW WHEREOF, the petition is DENIED. The decision of the Court of Appeals is affirmed.

SO ORDERED.

Carpio, Corona, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Rollo, pp. 32-45; dated November 25, 2005, penned by Justice Jose C. Reyes, Jr. and concurred in by Justices Eugenio S. Labitoria and Eliezer R. de los Santos.

[2] Id. at 92-96; dated December 10, 2003, penned by Commissioner Angelita A. Gacutan and concurred in by Commissioners Raul T. Aquino and Victoriano R. Calaycay.

[3] Id. at 82-90; dated November 5, 2002, penned by Executive Labor Arbiter Ricardo N. Olarez.

[4] Supra note 1 at 32-37.

[5] Id. at 44.

[6] Rollo, p. 48.

[7] Id. at 14-15.

[8] Id. at 97-108.

[9] Id. at 100-101.

[10] Radio Communications of the Philippines, Inc. v. NLRC, G.R. Nos. 101181-84, June 22, 1992, 210 SCRA 222, citing Vda. De Javellana v. Court of Appeals, G.R. No. L-60129, July 29, 1983, 123 SCRA 799.

[11] Rollo, pp. 53-55, 62.

[12] Id. at 56-58.

[13] Id. at 81.

[14] Labor v. National Labor Relations Commission, G.R. No. 110388, September 14, 1995, 248 SCRA 183.

[15] Rollo, p. 57.

[16] Supra note 1 at 42-43.

[17] Torillo v. Leogardo, Jr., G.R. No. 77205, May 27, 1991, 197 SCRA 471.

[18] Gaco v. National Labor Relations Commission, G.R. No. 104690, 23 February 1994, 230 SCRA 260.

[19] Petron Corporation v. National Labor Relations Commission, G.R. No. 154532, October 27, 2006, 505 SCRA 586.

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