

PENTAGON STEEL CORPORATION, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION AND PERFECTO BALOGO, RESPONDENTS.

G.R. No. 174141. June 26, 2009

Ponente: BRION, J.

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BRION, J.:

Before this Court is the Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by Pentagon Steel Corporation (the petitioner). It seeks to set aside:

(a) the Decision of the Court of Appeals (CA) dated June 28, 2006[2] modifying the Decision of the National Labor Relations Commission (NLRC) dated January 31, 2005;[3] and

(b) the Resolution of the CA dated August 15, 2006,[4] denying the motion for reconsideration that the petitioner subsequently filed.

THE FACTUAL ANTECEDENTS

The petitioner, a corporation engaged in the manufacture of G.I. wire and nails, employed respondent Perfecto Balogo (the respondent) since September 1, 1979 in its wire drawing department. The petitioner alleged that the respondent absented himself from work on August 7, 2002 without giving prior notice of his absence. As a result, the petitioner sent him a letter by registered mail dated August 12, 2002, written in Filipino, requiring an explanation for his absence. The petitioner sent another letter to the respondent on August 21, 2002, also by registered mail, informing him that he had been absent without official leave (AWOL) from August 7, 2002 to August 21, 2002. Other letters were sent to the respondent by registered mail, all pointing out his absences; however, the respondent failed to respond. Thus, the petitioner considered him on AWOL from August 7, 2002.[5]

On September 13, 2002, the respondent filed a complaint with the Arbitration Branch of the NLRC for underpayment/nonpayment of salaries and wages, overtime pay, holiday pay, service incentive leave, 13th month pay, separation pay, and ECOLA. The respondent alleged that on August 6, 2002, he contracted flu associated with diarrhea and suffered loose bowel movement due to the infection. The respondent maintained that his illness had prevented him from reporting for work for ten (10) days. When the respondent finally reported for work on August 17, 2002, the petitioner refused to take him back despite the medical certificate he submitted. On August 19, 2002, the respondent again reported for work, exhibiting a note from his doctor indicating that he was fit to work. The petitioner, however, did not allow him to resume work on the same date. Subsequently, the respondent again reported for work on August 21 and 23, 2002 and October 10 and 18, 2002, to no avail. He was thus driven to file a complaint against the petitioner.[6]

During the conciliation proceedings on October 9, 2002, the respondent presented the medical certificate covering

his period of absence. The petitioner required him, however, to submit himself to the company physician to determine whether he was fit to return to work in accordance with existing policies. On October 22, 2002, still during the conciliation proceedings, the respondent presented a medical certificate issued by the company physician; according to the petitioner, the respondent refused to return to work and insisted that he be paid his separation pay. The petitioner refused the respondent's demand for separation pay for lack of basis.

On January 20, 2003, the respondent formally amended his complaint to include his claim of illegal dismissal.[7]

The Labor Arbiter Ruling

On October 27, 2003, the labor arbiter rendered his decision dismissing the illegal dismissal charge, but directed the petitioner "to pay the complainant his SIL and 13[th] month pay in the amount of Five Thousand One Hundred Sixty-Six Pesos and 66/100 (P5,166.66)."[8]

In dismissing the respondent's claim of illegal dismissal, the labor arbiter found that no dismissal took place; thus, the petitioner never carried the burden of proving the legality of a dismissal. The labor arbiter noted that the respondent's allegation that he reported for work is not reliable for lack of corroborating evidence, as the respondent in fact failed to respond to the petitioner's memoranda. Thus, the decision was confined to the directive to pay service incentive leave and 13[th] month pay.

The NLRC Ruling

The respondent appealed the labor arbiter's decision to the NLRC on November 14, 2003, specifically questioning the ruling that no illegal dismissal took place. On January 31, 2005, the NLRC Third Division vacated and set aside the decision of the labor arbiter.[9] The decision directed the company to pay the respondent separation pay, backwages, 13[th] month pay, and service incentive leave.[10]

The NLRC ruled that the petitioner's defense of abandonment has no legal basis since there was no clear intent on the respondent's part to sever the employer-employee relationship. The NLRC found it difficult to accept the petitioner's allegation that the respondent absented himself for unknown reasons; this kind of action is inconsistent with the respondent's twenty-three (23) years of service and lack of derogatory record during these years. As a consequence, the NLRC held that the respondent was illegally dismissed. Together with this conclusion, however, the NLRC also considered the strained relationship existing between the parties and, for this reason, awarded separation pay in lieu of reinstatement, in addition to backwages. On March 31, 2005, the NLRC denied the petitioner's motion for reconsideration.

The CA Ruling

On May 6, 2006, the petitioner filed a special civil action for certiorari[11] with the CA, alleging grave abuse of discretion on the part of the NLRC in ruling that illegal dismissal took place, and in awarding the respondent separation pay and backwages.

In a Decision dated June 28, 2006, the CA affirmed the NLRC's finding that the dismissal was illegal, but modified the challenged decision by adding reinstatement and the payment of "full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." [12]

The CA held that the respondent was constructively dismissed when the petitioner repeatedly refused to accept the respondent back to work despite the valid medical reason that justified his absence from work. The CA concluded that the respondent complied with the petitioner's directive to submit a written explanation when the former presented the medical certificate to explain his absences.

The CA also disregarded the petitioner's charge of abandonment against the respondent. The appellate court ruled that the petitioner failed to prove a clear and deliberate intent on the respondent's part to discontinue working with no intention of returning. The CA took note of the respondent's eagerness to return to work when he obtained a note from his doctor about his fitness to return to work. The CA also ruled that the respondent's filing of a complaint for illegal dismissal with a prayer for reinstatement manifested his desire to return to his job, thus negating the petitioner's charge of abandonment.

The CA, however, disagreed with the NLRC's application of the doctrine of "strained relations," citing jurisprudence that the doctrine should be strictly applied in order not to deprive an illegally dismissed employee of his right to reinstatement. The CA also held that to deny the respondent the benefits due from his long service with the company would be very harsh since his long service would not be amply compensated by giving him only separation pay.

Petitioner moved for reconsideration of the decision, but the CA denied the motion for lack of merit in the Resolution dated August 15, 2006.[13]

In this present petition, the petitioner imputes grave abuse of discretion against the CA:

- 1) in basing its decision on the proceedings that transpired when the parties were negotiating for a compromise agreement during the preliminary conference of the case;
- 2) in declaring that respondent was illegally dismissed by the petitioner; and
- 3) in ordering that respondent be reinstated to his former position with backwages.

THE COURT'S RULING

We do not find the petition meritorious.

Before going into the substantive merits of the controversy, we shall first resolve the propriety of the CA's consideration of the proceedings that transpired during the mandatory preliminary conference of the case.

Statements and/or agreements made at conciliation proceedings are privileged and cannot be used as evidence

The petitioner contends that the CA cannot use the parties' actions and/or agreements during the negotiation for a compromise agreement as basis for the conclusion that the respondent was illegally dismissed because an offer of compromise is not admissible in evidence under Section 27, Rule 130 of the Rules of Court.[14]

We agree with the petitioner, but for a different reason. The correct reason for the CA's error in considering the actions and agreements during the conciliation proceedings before the labor arbiter is Article 233 of the Labor Code which states that "[i]nformation and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them." This was the provision we cited in *Nissan Motors Philippines, Inc. v. Secretary of Labor*[15] when we pointedly disallowed the award made by the public respondent Secretary; the award was based on the information NCMB Administrator Olalia secured from the confidential position given him by the company during conciliation.

In the present case, we find that the CA did indeed consider the statements the parties made during conciliation; thus, the CA erred by considering excluded materials in arriving at its conclusion. The reasons behind the exclusion are two-fold.

First, since the law favors the settlement of controversies out of court, a person is entitled to "buy his or her peace" without danger of being prejudiced in case his or her efforts fail; hence, any communication made toward that end will be regarded as privileged.[16] Indeed, if every offer to buy peace could be used as evidence against a person who presents it, many settlements would be prevented and unnecessary litigation would result, since no prudent person would dare offer or entertain a compromise if his or her compromise position could be exploited as a confession of weakness.[17]

Second, offers for compromise are irrelevant because they are not intended as admissions by the parties making them.[18] A true offer of compromise does not, in legal contemplation, involve an admission on the part of a defendant that he or she is legally liable, or on the part of a plaintiff, that his or her claim is groundless or even doubtful, since it is made with a view to avoid controversy and save the expense of litigation. It is the distinguishing mark of an offer of compromise that it is made tentatively, hypothetically, and in contemplation of mutual concessions.[19]

While we agree with the petitioner that the CA should not have considered the agreements and/or statements made by the parties during the conciliation proceedings, the CA's conclusion on illegal dismissal, however, was not grounded solely on the parties' statements during conciliation, but was amply supported by other evidence on record, which we discuss below. Based on these other pieces of evidence, the respondent was illegally dismissed; hence, our ruling regarding the statement made during conciliation has no effect at all on our final conclusion.

Respondent did not abandon his job

The rule is that the burden of proof lies with the employer to show that the dismissal was for a just cause.[20] In the present case, the petitioner claims that there was no illegal dismissal since the respondent abandoned his job. The petitioner points out that it wrote the respondent various memoranda requiring him to explain why he incurred absences without leave, and requiring him as well to report for work; the respondent, however, never bothered to reply in writing.

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.[21] 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. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.[22]

We agree with the CA that the petitioner failed to prove the charge of abandonment.

First, the respondent had a valid reason for absenting himself from work. The respondent presented a medical certificate from his doctor attesting to the fact that he was sick with flu associated with diarrhea or loose bowel movement which prevented him from reporting for work for 10 days. The petitioner never effectively refuted the respondent's reason for his absence. We thus concur with the CA's view that the respondent submitted a valid reason for his absence and thereby substantially complied with the petitioner's requirement of a written explanation. We quote with approval the following discussion in the CA's decision:

In his case, Balogo should be judged as having fully complied with the petitioner's directive by his presenting of the medical certificate to justify or explain his absences because the medical certificate already constituted the required "written explanation." Another written explanation from him would be superfluous and even redundant if the facts already appearing in the medical certificate would inevitably be stated again in that other written explanation.

Why the petitioner persistently refused to accept Balogo back despite his presentation of the medical certificate and the doctor's note about his fitness to work was not credibly explained by the petitioner. The refusal is indicative of the petitioner's ill motive towards him, using the lack of written explanation as a clever ruse to terminate Balogo's employment.

Second, there was no clear intention on the respondent's part to sever the employer-employee relationship. Considering that "intention" is a mental state, the petitioner must show that the respondent's overt acts point unerringly to his intent not to work anymore.[23] In this case, we see no reason to depart from the unanimous factual findings of the NLRC and the CA that the respondent's actions after his absence from work for ten (10) days due to illness showed his willingness to return to work. Both tribunals found that after the respondent presented his medical certificate to the petitioner to explain his absence, he even went back to his doctor for a certification that he was already fit to return to work. These findings of fact we duly accept as findings that we must not only respect, but consider as final, since they are supported by substantial evidence.[24]

In addition, the respondent's filing of the amended complaint for illegal dismissal on January 20, 2003 strongly speaks against the petitioner's charge of abandonment, for it is illogical for an employee to abandon his employment and, thereafter, file a complaint for illegal dismissal.

That abandonment is negated finds support in a long line of cases where the immediate filing of a complaint for illegal dismissal was coupled with a prayer for reinstatement; the filing of the complaint for illegal dismissal is proof enough of the desire to return to work.[25] The prayer for reinstatement, as in this case, speaks against any intent to sever the employer-employee relationship.[26]

We additionally take note of the undisputed fact that the respondent had been in the petitioner's employ for 23 years. Prior to his dismissal, the respondent's service record was unblemished having had no record of infraction of company rules. As the NLRC correctly held, we find it difficult to accept the petitioner's allegation that the respondent absented himself for unjustifiable reasons with the intent to abandon his job. To our mind, abandonment after the respondent's long years of service and the consequent surrender of benefits earned from years of hard work are highly unlikely. Under the given facts, no basis in reason exists for the petitioner's theory that the respondent abandoned his job.

Respondent was constructively dismissed

The above conclusion necessarily leads us to sustain the NLRC's finding, as affirmed by the CA, that the respondent was dismissed without just cause. Again, we quote with approval the CA's disquisition:

That Balogo was dismissed in contravention of the letter and spirit of the Constitution and the Labor Code on the security of tenure guaranteed to him as employee is clear for us. A dismissal need not be expressed orally or in writing, for it can also be implied. When the employer continuously refuses to accept the employee back despite his having a valid reason for his absence from work, illegal dismissal results because the employee is thus prevented from returning to work under the façade of a violation of a company directive.

A dismissal effected through the fig leaf of an alleged violation of a company directive is no less than an actual illegal dismissal that jurisprudence has labeled as a constructive dismissal. *Hyatt Taxi Services, Inc. v. Catinoy*[27] describes this type of company action when it ruled that "[c]onstructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges - there may be constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."

The respondent's situation is no different from what Hyatt defined, given the result of the petitioner's action and

the attendant insensibility and disdain the employer exhibited. We significantly note that by reporting for work repeatedly, the respondent manifested his willingness to comply with the petitioner's rules and regulations and his desire to continue working for the latter. The petitioner, however, barred him from resuming his work under the pretext that he had violated a company directive. This is a clear manifestation of the petitioner's lack of respect and consideration for the respondent who had long served the company without blemish, but who had to absent himself because of illness. The petitioner's actions, under these circumstances, constitute constructive dismissal.[28]

The respondent's illegal dismissal carries the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[29] The imposition of this legal consequence is a matter of law that allows no discretion on the part of the decision maker, except only to the extent recognized by the law itself as expressed in jurisprudence.

Respondent is entitled to reinstatement not separation pay

As the CA correctly ruled, the NLRC erred when it awarded separation pay instead of reinstatement. The circumstances in this case do not warrant an exception to the rule that reinstatement is the consequence of an illegal dismissal.

First. The existence of strained relations between the parties was not clearly established. We have consistently ruled that the doctrine of strained relations cannot be used recklessly or applied loosely to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.[30] Indeed, labor disputes almost always result in "strained relations," and the phrase cannot be given an overarching interpretation; otherwise, an unjustly dismissed employee can never be reinstated.[31]

In the present case, we find no evidentiary support for the conclusion that strained relations existed between the parties. To be sure, the petitioner did not raise the defense of strained relationship with the respondent before the labor arbiter. Consequently, this issue - factual in nature - was not the subject of evidence on the part of both the petitioner and the respondent. There thus exists no competent evidence on which to base the conclusion that the relationship between the petitioner and the respondent has reached the point where their relationship is now best severed.[32] We agree with the CA's specific finding that the conflict, if any, occasioned by the respondent's filing of an illegal dismissal case, does not merit the severance of the employee-employer relationship between the parties.

Second. The records disclose that respondent has been in the petitioner's employ for 23 years and has no previous record of inefficiency or infraction of company rules prior to his illegal dismissal from service. We significantly note that payment of separation pay in lieu of respondent's reinstatement will work injustice to the latter when considered with his long and devoted years in the petitioner's service. Separation pay may take into account the respondent's past years of service, but will deprive the respondent of compensation for the future productive years that his security of tenure protects. We take note, too, that the respondent, after 23 years of service, shall in a few years retire; any separation pay paid at this point cannot equal the retirement pay due the respondent upon

retirement.

For all these reasons, we uphold the CA ruling that the respondent should be reinstated to his former position or to a substantially equivalent position without loss of seniority rights.

WHEREFORE, premises considered, we hereby DENY the petition, and, consequently, AFFIRM the Decision of the Court of Appeals dated June 28, 2006 and its Resolution dated August 15, 2006 in CA-G.R. SP No. 89587.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

Quisumbing, (Chairperson), Ynares-Santiago,[*] Chico-Nazario,**] and Leonardo-De Castro,[***] JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 645 dated May 15, 2009.

[**] Designated additional Member of the Second Division effective June 3, 2009, per Special Order No. 658 dated June 3, 2009.

[***] Designated additional Member of the Second Division effective May 11, 2009, per Special Order No. 635 dated May 7, 2009.

[1] Rollo, pp. 3-23.

[2] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), and concurred in by Associate Justice Martin S. Villarama, Jr. and Associate Justice Celia C. Librea-Leagogo; id. , pp. 144-155.

[3] Id., pp. 88-96.

[4] Id. , pp. 178-180.

[5] Id., pp. 145.

[6] Id., p. 145.

[7] Id., pp. 45-46.

[8] Penned by Labor Arbiter Gaudencio P. Demaisip, Jr.; id., pp. 71-77.

[9] Penned by then Presiding Commissioner Lourdes C. Javier, concurred in by Commissioner Tito F. Genilo; id., pp. 88-96.

[10] The dispositive portion reads:

WHEREFORE, the decision dated 27 October 2002 is VACATED and SET ASIDE. The respondent company is directed to pay complainant the following computed as of date herein promulgated.

1.

Separation Pay (one month for every Year of service)

Sept. 1, 1979 - Jan.31, 2005 (25 yrs.)

=

P 182,000.00

2.

Backwages

Salary August 6, 2002 - Jan. 31, 2005

P250 x 26 x 29.83

=

193,895.00

3.

13[th] Month Pay

=

16, 157.92

4.

Service Incentive Leave Pay

P250 x 5/12 x 29.83

=

3,107.29

P 395,160.21

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The other claims are dismissed.

[11] Docketed as CA-G.R. SP No. 89587; rollo, pp. 117-143.

[12] Supra note 2, p. 154.

[13] Supra note 4, pp. 178-180.

[14] Sec. 27. Offer of compromise not admissible. - In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror.

[15] G.R. Nos. 158190-91, June 21, 2006, 401 SCRA 604, 626-627.

[16] 32 C.J.S. Evidence § 522.

[17] Marshall v. Taylor, 168 Mo. 9, 240, 248, 153 S.W. 527; Perkins v. Concord R. Co., 44 H.H. 223; Pirie v. Wyld, 11 Ont. 422; New Country Corp. v. Toronto Gravel Road, etc. C., 3 Ant. 584.

[18] 15 A.L.R.3d 13, §2 (a).

[19] Supra note 16.

[20] Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals, G.R. No. 165910, April 10, 2006 487 SCRA 78; Aliten v. U-Need Lumber & Hardware, G.R. No. 168931, September 12, 2006, 501 SCRA 577.

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

[22] Labor, et al. v. NLRC and Gold City Commercial Complex, Inc., and Uy, G.R. No. 110388, September 14, 1995, 248 SCRA 183.

[23] Lambo v. National Labor Relations Commission, G.R. No. 111042, October 26, 1999, 317 SCRA 420; Dagupan Bus Company v. National Labor Relations Commission, G.R. No. 94291, November 9, 1990, 191 SCRA 328.

[24] Duldulao v. Court of Appeal, G.R. No. 164893, March 1, 2007, 517 SCRA 191; Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals, G.R. Nos. 155056-57, October 19, 2007, 537 SCRA 96.

[25] Supra note 19.

[26] Big AA Manufacturer v. Antonio, et al., G.R. No. 160854, March 3, 2006, 484 SCRA 33.

[27] G.R. No. 143204, June 26, 2001, 359 SCRA 686.

[28] See Ruperto Suldao v. Cimech System Construction, Inc., et al., G.R. No. 171392, October 30, 2006, 506 SCRA 256.

[29] Premiere Development Bank v. Mantal, G.R. No. 167716, March 23, 2006, 485 SCRA 234; Philippine Amusement Gaming Corporation v. Angara, G.R. No. 142937, July 25, 2006, 496 SCRA 453.

[30] Industrial Corporation v. Morales, G.R. No. 161158, May 9, 2005, 458 SCRA 339,347 citing Procter and Gamble Philippines v. Bondesto, G.R. No. 139847, March 5, 2004, 425 SCRA 1.

[31] Quijano v. Mercury Drug Corporation, G.R. No. 126561, July 8, 1998, 292 SCRA 109, citing Capili v. NLRC, 270 SCRA 488, 295 (1997).

[32] Id., p.120.

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