

FE LA ROSA, OFELIA VELEZ, CELY DOMINGO, JONA NATIVIDAD AND EDGAR DE LEON, PETITIONERS, VS. AMBASSADOR HOTEL, RESPONDENT.

G.R. No. 177059. March 13, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On April 17, 2002, employees of Ambassador Hotel including herein petitioners filed before the National Labor Relations Commission (NLRC) several complaints, docketed as NLRC Case Nos. 04-02018-02, 30-04-02019-02, 08-06442-02 and 02-03643-02, for illegal dismissal, illegal suspension, and illegal deductions against the hotel (respondent) and its manager, Yolanda L. Chan. They alleged that, following their filing of complaints with the Department of Labor and Employment-NCR which prompted an inspection of the hotel's premises by a labor inspector, respondent was found to have been violating labor standards laws and was thus ordered to pay them some money claims. This purportedly angered respondent's management which retaliated by suspending and/or constructively dismissing them by drastically reducing their work days through the adoption of a work reduction/rotation scheme. Criminal cases for estafa were likewise allegedly filed against several of the employees involved, some of which cases were eventually dismissed by the prosecutor's office for lack of merit.

The complaints against respondent subject of the present petition were consolidated. By Decision[1] of September 30, 2003, the labor arbiter found respondent and its manager Yolanda L. Chan guilty of illegal dismissal and ordered them to pay petitioners' separation pay at ½ month for every year of service with full backwages, and 10% of the monetary award as attorney's fees.

Respondent appealed to the NLRC which, by Decision[2] dated September 8, 2005, affirmed the labor arbiter's ruling with the modification that five of the complainants, namely Diana P. Castillo, Lorena L. Hildao, Gilbert Ongjoco, Salvador So and Ma. Pilar A. Barcenilla, were directed to report back to work, and respondent was directed to accept them without having to pay them backwages. With respect to petitioners, the NLRC held that Edgar de Leon was "actually dismissed but illegally" on November 7, 2001 and that with respect to the four other petitioners, they were constructively dismissed on April 15, 2002 by virtue of respondent's memorandum of even date.

Thus, the NLRC disposed:

WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED. Diana P. Castillo, Lorena I. Hildao, Gilbert Ongjoco, Salvador So and Ma. Pilar A. Barcenilla were not dismissed. They are ordered to report back to work and respondents to accept them back, but without backwages.

[Herein petitioners] Fe La Rosa, Ofelia Velez, Cely Domingo and Jona Natividad were constructively dismissed, and Edgar de Leon actually dismissed but illegally. Accordingly, the awards made in their favor are AFFIRMED.

SO ORDERED.[3] (Underscoring supplied)

On respondent's motion for reconsideration, the NLRC, by Decision[4] dated January 27, 2006, modified its decision by, among other things, absolving respondent's manager Yolanda L. Chan of any personal liability.

Respondent appealed and prayed for the issuance of an injunctive writ before the Court of Appeals, faulting the NLRC to have committed grave abuse of discretion 1) in finding that petitioners were illegally dismissed, 2) in awarding backwages and separation pay, and 3) in requiring it to pay them the monetary equivalent of their service incentive leaves. Respondent maintained that its act of reducing the number of work days per week was valid, as it was done to save its business from bankruptcy due to economic reverses.

The appellate court granted respondent's prayer for a temporary restraining order (TRO) and subsequently for a writ of preliminary injunction.

By Decision[5] dated December 12, 2006, the appellate court reversed the NLRC decision and dismissed petitioners' complaints, holding that there was no constructive dismissal because petitioners "simply disappeared from work" upon learning of the work reduction/rotation scheme; and that in their position paper submitted before the NLRC, petitioners only prayed for separation pay and not for reinstatement, hence, following settled jurisprudence, the latter relief has been foreclosed.

The appellate court went on to hold that respondent's adoption of the work reduction/rotation scheme, as well as its reassignment of petitioners, was a valid exercise of management prerogative, absent any showing that the same was done out of vengeance. It further held inapplicable the rule that the institution of a complaint for illegal dismissal is inconsistent with abandonment, because petitioners failed to pray for reinstatement as they instead prayed for separation pay.

Petitioners' motion for reconsideration having been denied by the appellate court by Resolution[6] dated March 7, 2007, they instituted the present petition for review on certiorari.

Petitioners deny having abandoned their jobs. And they take exception to the appellate court's finding that they did not pray for reinstatement, they inviting attention to paragraph 14, page 5 of their verified position paper reading: "x x x Hence they are entitled to reinstatement with full backwages, or in the alternative to full separation pay of one month per year of service," as well as to their prayer in the pro-forma complaints filed before the labor arbiter asking for the same relief.

Petitioners question as bereft of specific proof the appellate court's ruling that the work reduction/rotation scheme adopted by respondent was a valid exercise of management prerogative.

Finally, petitioners question the issuance by the appellate court of a TRO, and subsequently of a writ of preliminary injunction conditioned on respondent's posting of a bond which was lower than the judgment award, hence, prejudicial to them.

The petition is impressed with merit.

While it is settled that the Court is not a trier of facts and does not, as a rule, re-examine the evidence presented by the parties to a case, there are a number of recognized exceptions, such as when the judgment is based on a misapprehension of facts; when the findings of facts of lower courts are conflicting; or when the findings of facts are premised on the supposed absence of evidence but which are contradicted by the evidence on record.[7]

The appellate court predicated its reversal of the NLRC decision that petitioners were illegally dismissed on petitioners' supposed abandonment of their jobs, and justified the work rotation/reduction scheme adopted by respondent as a valid exercise of management prerogative in light of respondent's business losses.

The records fail, however, to show any documentary proof that the work reduction scheme was adopted due to

respondent's business reverses. Respondent's memorandum[8] dated April 5, 2000 (sic, should be 2002) informing petitioners of the adoption of a two-day work scheme effective April 5, 2002 made no mention why such scheme was being adopted. Neither do the records show any documentary proof that respondent suffered financial losses to justify its adoption of the said scheme to stabilize its operations.

What is undisputed, as found by both the labor arbiter and the NLRC and admitted by respondent itself, is that the complaints for violation of labor standards laws were filed by petitioners against respondent at the DOLE-NCR, some of which complaints were partially settled; and that almost immediately after the partial settlement of the said complaints, the work reduction/rotation scheme was implemented.

Case law holds that constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.[9] Respondent's sudden, arbitrary and unfounded adoption of the two-day work scheme which greatly reduced petitioners' salaries renders it liable for constructive dismissal.

Respecting the appellate court's ruling that petitioners "simply disappeared" from their work, hence, they are guilty of abandonment, the same does not lie.

Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.

x x x x

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts. The second element is the more determinative factor. Abandonment as a just ground for dismissal thus requires clear, willful, deliberate, and unjustified refusal of the employee to resume employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.[10] (Emphasis and underscoring supplied)

Respondent, which has the onus of proving that petitioners abandoned their work, failed to discharge the same, however.

Upon the other hand, petitioners' immediate filing of complaints for illegal suspension and illegal dismissal after the implementation of the questioned work scheme, which scheme was adopted soon after petitioners' complaints against respondent for violation of labor standards laws were found meritorious, negates respondent's claim of abandonment. An employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.[11]

As for the appellate court's ruling that petitioners are not entitled to reinstatement because they did not pray for it in their complaints, the same does not lie. In all the pro-forma complaints[12] filed by petitioners before the NLRC, they prayed for reinstatement or, in the alternative, for the award to them of separation pay. And they reiterated this prayer in their Position Paper,[13] specifically in paragraph 14 thereof, viz:

14. Due process was not followed in the constructive dismissal of the complainants. Hence they are entitled to reinstatement with full backwages or in the alternative to full separation pay of one month per year of service. (Emphasis and underscoring supplied)

Besides, under Article 279[14] of the Labor Code and based on settled jurisprudence, an employee dismissed without just cause and without due process, like petitioners herein, are entitled to reinstatement and backwages or payment of separation pay.

In fine, the Court finds that petitioner Edgar de Leon was illegally dismissed on November 7, 2001, and the rest of the petitioners were illegally dismissed on April 15, 2002 from which dates the payment of backwages (cum separation pay), at the above-stated rate determined by the Labor Arbiter and affirmed by the NLRC, are to be reckoned with. This leaves it unnecessary to still pass on the issue of the propriety of the appellate court's issuance of a TRO and injunctive writ.

WHEREFORE, the petition is GRANTED.

The Court of Appeals Decision dated December 12, 2006 and Resolution dated March 7, 2007 are REVERSED and SET ASIDE. The National Labor Relations Commission Decision dated September 8, 2005 and Resolution dated January 21, 2006 are REINSTATED.

SO ORDERED.

Quisumbing[*], (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[*] Acting Chief Justice.

[1] Records, pp. 96-100. Penned by Labor Arbiter Ariel Cadiente Santos

[2] Id. at 269-279. Penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[3] CA rollo, p. 118

[4] Records, pp. 300-303.

[5] CA rollo, pp. 254- 261. Penned by then Associate Justice, now Presiding Justice Conrado M. Vasquez, Jr., and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso.

[6] Id. at 351. Penned by then Associate Justice (now Presiding Justice) Conrado M. Vasquez, Jr. and concurred in by Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso.

[7] *Insular Life v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[8] Records, p. 48.

[9] *Uniwide Sales v. NLRC*, G.R. No. 154503, February 29, 2008.

[10] *Seven Star Textile Company v. Dy*, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 499.

[11] *Samarca v. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168.

[12] Records, pp. 1-3, 11,

[13] Id. at 41-47.

[14] Art. 279. Security of Tenure. - x x x

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.

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