AGRICULTURAL AND INDUSTRIAL SUPPLIES CORPORATION, DAILY HARVEST MERCANTILE, INC., JOSEPH C. SIA HETIONG AND REYNALDO M. RODRIGUEZ, PETITIONERS, VS. JUEBER P. SIAZAR AND THE HONO...

G.R. No. 177970. August 25, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case dwells on circumstances that spell dismissal from work although the company insists that such circumstances indicate abandonment of work.

The Facts and the Case

On July 3, 1997 respondent Jueber P. Siazar (Siazar) filed a complaint for illegal dismissal and unfair labor practice against petitioner Agricultural and Industrial Supplies Corporation (AISC) and others before the National Labor Relations Commission (NLRC) in NLRC-NCR Case 00-07-04689-97.

Siazar claimed that he first worked for the Daily Harvest Mercantile, Inc. (DHMI) on April 12, 1993 but was transferred after three years in June 1996 to AISC[1] as product designer, mold maker, and CNC programmer with a monthly salary of P25,000.00.[2]

In early 1997, Siazar discovered that his company was not remitting much of his SSS premiums although the computations appeared on his pay slips. When he told his co-employees about it, they made their own inquiries, too.[3] On Siazar's arrival at work on June 17, 1997, the company guard refused him entry and handed him two notes from the management: one said that he was not to report for work;[4] the other said that he was to report after two days on June 19, 1997 to Atty. Rodriguez at his office in Binondo.[5]

Too anxious over the matter, Siazar did not wait for June 19 and went straightaway to see Atty. Rodriguez. The latter told Siazar that the company had decided to abolish his department because of redundancy and he could no longer work. Atty. Rodriguez asked Siazar to make a computation of what amount he expected from the company and return to the lawyer with such computation on the following day and the company would immediately pay him.[6]

When Siazar told his co-employees about this development, they thought that the company removed him from work because of fear that he would agitate them into forming a union, given the non-remittance of the correct amounts of their SSS contributions.[7]

When Siazar and his wife saw Atty. Rodriguez again at his office on June 19, 1997, the latter insisted on getting Siazar to do the computation he asked. Because of the lawyer's insistence, Siazar finally gave him a computation of his claims against the company on June 23, 1997. As Siazar was unsure of his situation, however, he consulted a lawyer on that same day. This lawyer went with him back to Atty. Rodriguez who confirmed that Siazar had

indeed been dismissed because his department was no longer earning money. This surprised Siazar because his department did not generate income on its own, being a mere support unit of the company.[8] Since all attempts at negotiation proved futile, Siazar filed his complaint.

AISC had a different version. It claimed the company thought of closing down Siazar's department where he worked solo since it was no longer making money. Thus, they wrote him the two notes on June 17, 1997.[9] Atty. Rodriguez did not say, however that the company was already dismissing Siazar.[10] The latter simply decided on his own to drop out of work after learning of the company's plan regarding his department.[11] What Atty. Rodriguez and Siazar discussed was how the latter might be compensated if the company's plan went through. In response, Siazar even submitted a proposal that the company found excessive.[12]

On December 14, 1998 the Labor Arbiter found that the company did not yet dismiss Siazar from work[13] since they were still negotiating for a financial package for him. He rather stopped reporting for work of his own accord after learning of the plan to retrench him. Indeed, the company gave Siazar no letter of dismissal or retrenchment.[14] Consequently, the Labor Arbiter dismissed the complaint but ordered the company to give Siazar separation pay, his unpaid salary, and a proportionate 13[th] month pay for 1997.[15]

Siazar appealed to the NLRC, which ruled[16] on June 3, 1999 to uphold the Labor Arbiter's finding that the company did not dismiss him from work and that, misunderstanding its action, he ceased to report for work. It was all a misunderstanding, said the NLRC, and each party must bear his own loss to place them on equal footing.[17] The NLRC sustained the award of separation pay, to be reckoned from June 1996 to June 1997, the time Siazar worked for AISC. The NLRC also affirmed the grant to him of his unpaid salary and proportionate 13[th] month pay.[18] Siazar asked for reconsideration but the NLRC denied it.[19]

Not dissuaded, Siazar went up to the Court of Appeals (CA)[20] but on December 21, 2005[21] the latter court affirmed the NLRC decision. On motion for reconsideration, however, the CA rendered an Amended Decision[22] on December 13, 2006, finding sufficient evidence that the company indeed illegally dismissed Siazar from work. The CA based its finding on the following: (a) Rodriguez told Siazar that he had been terminated; (b) the company did not allow Siazar to enter its premises; (c) it wanted to close his department and retrench him from work; (d) Rodriguez asked Siazar to compute what he expected was to be his separation pay; (e) the company neither gave Siazar notice nor informed him of the reason for his dismissal; and (f) it showed no valid or just cause for the dismissal.

The CA thus ordered the company to reinstate Siazar and pay him full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time of his dismissal up to the time of his actual reinstatement.[23] The company filed a motion for reconsideration, but the CA denied the same on May 22, 2007,[24] hence the present petition for review on certiorari.

Issues Presented

Two issues are presented:

- Whether or not the company dismissed Siazar from work; and

- In the affirmative, whether or not his dismissal was valid.

Court's Ruling

The company insists that the Court should reinstate the original CA decision, given the findings of the Labor Arbiter and the NLRC that it had not dismissed Siazar.[25] Ordinarily, the Court will not, on petition for review

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on certiorari, reexamine the facts of the case. Here, however, since the CA overturned its earlier ruling and its factual findings now differ from those of the Labor Arbiter and the NLRC, the Court is making an exception.[26]

From an examination of the record, the Court has ascertained that the evidence supports the CA's finding that the company dismissed Siazar from work. This is evident from the following:

One. On company's orders, the guard prevented Siazar from entering its premises to work. The company even gave him notice not to report for work and instead told him to see the company's external counsel after two days. If the company had not yet decided to close down Siazar's department and wanted merely to explore that possibility with him,[27] it had no reason to require him to stay away from work in the meantime. Barring him from work simply meant that the company had taken away his right to continue working for it.

Two. It is simply preposterous for Siazar or any employee like him to just give up a job that paid P25,000.00 a month when, according to the company, it had not yet decided to carry out its plan and fire him.

Three. That Siazar lost no time in filing a complaint for illegal dismissal negates the notion that he voluntarily left or abandoned his job.[28] An employee who files a suit to claim his job back raises serious doubts that he even entertained the idea of leaving it in the first place.

Four. Despite Siazar's failure to show up for work, the company did not summon him back or ask him to explain his long absence. Normally, an employer would not stand by when an employee just stops coming to work as this would affect its business. That the company just sat by when Siazar did not come to work strengthens his contention that it had dismissed him. Further, the company failed to substantiate its claim that it reported Siazar's irregular behavior to the Department of Labor and Employment.[29] The Court cannot consider allegations that have not been proved.[30]

All these show that the company indeed terminated the services of Siazar. The question now is this: was his termination valid?

Here, the company did not adduce any evidence to prove that Siazar's dismissal had been for a just or authorized cause as in fact it had been its consistent stand that it did not terminate him and that he quit on his own. But given that the company dismissed Siazar and that such dismissal had remained unexplained, there can be no other conclusion but that his dismissal was illegal.[31]

The Court has held that, under Article 279 of the Labor Code, separation pay may be awarded to an illegally dismissed employee in lieu of reinstatement when continued employment is no longer possible where, as in this case, the continued relationship between the employer and the employee is no longer viable due to strained relations between them[32] and reinstatement appears no longer practical due to the length of time that had since passed.[33]

In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to one month salary for every year of service[34] reckoned from the first day of employment until the finality of the decision.[35] Payment of separation pay is in addition to payment of backwages.[36] And if separation pay is awarded instead of reinstatement, backwages shall be computed from the time of illegal termination up to the finality of the decision.[37]

The separation pay in this case shall be reckoned from the time Siazar worked for AISC, from June 1996 until the finality of this decision. The Court could not hold AISC liable for his work with DHMI for lack of evidence that the latter was simply an alter ego of AISC and had been established to evade an existing obligation, justify a wrong, or protect a fraud.[38]

WHEREFORE, the Court AFFIRMS the Court of Appeals' Amended Decision dated December 13, 2006 and Resolution dated May 22, 2007 in CA-G.R. SP 56228 subject to the MODIFICATION that the liability for respondent Jueber P. Siazar's illegal dismissal shall be the sole liability of petitioner Agricultural and Industrial Supplies Corporation and that, in lieu of reinstatement with backwages, the latter shall pay Siazar (a) separation pay in the amount equivalent to one month pay for every year of service computed from June 1996 up to the finality of this decision; and (b) full backwages computed from the date of his illegal dismissal on June 17, 1997 up to the finality of the decision.

Let the records of this case be REMANDED to the Labor Arbiter for the proper computation of the awards.

SO ORDERED.

Carpio, Nachura, Peralta, and Mendoza, JJ., concur.

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[1] Rollo, p. 265.

[2] Records, p. 137; rollo, pp. 247-248.

[3] Rollo, p. 248.

[4] Records, p. 51.

[5] Id.

[6] Rollo, pp. 248-249.

[7] Id. at 249.

[8] Id. at 250-251.

[9] Id. at 219; records, p. 54.

[10] Records, p. 54.

[11] Id. at 147; rollo, p.16.

[12] Rollo, p. 219.

[13] Records, pp. 198-208.

[14] Id. at 201-206.

[15] Id. at 207-208.

[16] Docketed as NLRC-NCR CA 018523-99, rollo, pp. 39-68.

[17] Id. at 54-58.

[18] Id. at 63.

[19] Id. at 66-68.

[20] Docketed as CA-G.R. SP 56228.

[21] Rollo, pp. 180-186. Penned by Associate Justice Danilo B. Pine, with Associate Justices Marina L. Buzon and Arcangelita M. Romilla-Lontok concurring.

[22] Id. at 198-202. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Marina L. Buzon and Martin S. Villarama, Jr. (now a member of this Court) concurring.

[23] Id. at 201.

[24] Id. at 238-239.

[25] Id. at 24-25.

[26] Aklan College, Inc. v. Enero, G.R. No. 178309, January 27, 2009, 577 SCRA 64, 77-78. Factual findings are not reviewable by this Court in petitions for review on certiorari, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion: (4) When the judgment is based on a misapprehension of facts: (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court: (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[27] Rollo, p. 219.

[28] L.C. Ordoñez Construction v. Nicdao, G.R. No. 149669, July 27, 2006, 496 SCRA 745, 758; Harborview Restaurant v. Labro, G.R. No. 168273, April 30, 2009, 587 SCRA 277, 282.

[29] Records, p. 55.

[30] Cabalen Management Co., Inc. v. Quiambao, G.R. No. 169494, March 14, 2007, 518 SCRA 342, 357.

[31] See: EDI-Staffbuilders International, Inc. v. National Labor Relations Commission, G.R. No. 145587, October 26, 2007, 537 SCRA 409, 430-432; Seven Star Textile Company v. Dy, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 498.

[32] Session Delights Ice Cream and Fast Foods v. The Honorable Court of Appeals, G.R. No. 172149, February 8, 2010.

[33] Macasero v. Southern Industrial Gases Philippines, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507, citing Velasco v. National Labor Relations Commission, G.R. No. 161694, June 26, 2006, 492 SCRA 686, 699.

[34] Macasero v. Southern Industrial Gases Philippines, supra note 33; Pangilinan v. Wellmade Manufacturing Corporation, G.R. No. 149552, March 10, 2010.

[35] Henlin Panay Company v. National Labor Relations Commission, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 371.

[36] Macasero v. Southern Industrial Gases Philippines, supra note 33.

[37] RBC Cable Master System v. Baluyot, G.R. No. 172670, January 20, 2009, 576 SCRA 668, 679; General Milling Corporation v. Casio, G.R. No. 149552, March 10, 2010.

[38] Velarde v. Lopez, Inc., 464 Phil. 525, 537 (2004); Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission, G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 616.

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