

**MIGUEL A. PILAPIL, EDUARDO GODEN, GAUDENCIO C. BAURA,
ISMAEL ESPANOLA, JEREMIAS B. CUBIAN, JR., NELSON A. CAL,
RAMON G. GILLO, MARIO ENEGENTE, MARLON C. ERONICO, JULIAN
C. RODAD...**

G.R. No. 178229. October 23, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners, 188 in all, were employees of C. Alcantara and Sons, Inc. (CASI) and members of the Nagkahiusang Mamumuo sa Alsons, Southern Philippines Federation of Labor (NAMAAL-SPFL or the union). NAMAAL-SPFL and CASI forged a collective bargaining agreement (CBA) effective January 10, 1995 up to December 31, 1999.

On the proposal of NAMAAL-SPFL, negotiation for the modification of the CBA was commenced but ended in a deadlock.

On July 8 1998, NAMAAL-SPFL filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) on the ground of "deadlock in collective bargaining."

As conciliation efforts failed, a vote was conducted in which majority of the employees voted for the holding of a strike. NAMAAL-SPFL, led by its president Felixberto Irag, thereupon staged a strike at 11:00 P.M. of August 23, 1998. With makeshift structures, huge streamers and banners, the strikers barricaded the main private road leading to, and prevented ingress to and egress from, the CASI compound, thereby paralyzing CASI's operations.

On August 26, 1998, CASI, amid received reports that the strikers harassed and intimidated its managerial and supervisory employees entering the compound, filed a petition to declare the strike illegal before the National Labor Relations Commission (NLRC), RAB No. XI, Davao City, docketed as NLRC Case No. RAB-11-08-010664-98, against the officers and members of the union, excluding petitioners, who were alleged to be responsible for some of the prohibited and illegal activities during the strike.

CASI alleged that the striker-respondents conducted illegal activities and violated the "no-strike-no-lock-out clause" of the CBA. It prayed for the issuance of a writ of preliminary injunction with a prayer for the issuance of a temporary restraining order (TRO) ex-parte and writ of preliminary injunction.

The NLRC issued a TRO but the strikers defied it. The NLRC later issued a Writ of Preliminary Injunction ordering the striking union officers and their agents and sympathizers to lift their barricades and remove all obstructions to the CASI premises.[1] The attempt to enforce the writ on two occasions was foiled by the strikers. The third attempt to enforce was met with violent confrontation during which at least 23 non-striking workers were injured. After still several attempts, with the assistance of the city officials of Davao and some church representatives, the writ was finally enforced on October 28, 1998.

CASI thereupon resumed operations. On November 7, 1998, it sent letters directing petitioners to return to work within two (2) days from receipt thereof, with the caveat that if they don't, it would take necessary measures for the protection of its interest.[2]

Petitioners ignored CASI's directive.

By Decision dated June 29, 1999, Labor Arbiter (LA) Antonio M. Villanueva declared the strike illegal. On appeal, the NLRC affirmed the LA's decision with modification, prompting NAMAAL-SPFL to file a petition for certiorari before the Court of Appeals.

In the meantime, or on October 21, 2001, 61 of the present petitioners wrote CASI stating:

Until now we have not found any job equal to the positions we held in Alsons. We understand that many of the strikers had returned to work, including some of those who were convicted of illegal strike. Thus, the picketing had been lifted.

We awaited for [sic] the outcome of the strike since August 23, 1998, and only recently we were informed that we were not among those included in the case filed by the Company against the Nagkahiusang Mamumu-o sa Alsons (NMAAL)-SPFL).

For these reasons, we are therefore voluntarily offering to return to work.[3] (Underscoring supplied)

By letter of January 4, 2002, CASI, through counsel, refused the offer in this wise:

x x x x

We are informed that sometime in 1998, all the striking workers/members of NAMAAL-SPFL, were advised by our client to return to work as the company had resumed operations after the preliminary injunction issued by the National Labor Relations Commission (5[th] Division) was implemented despite your violent opposition thereto. Several management representatives went to the extent of personally relaying the company's resumption of operations to you and the other striking members of NAMAAL-SPFL. The common reply was the stand of the union through your president Felixberto Irag that you will not return to work until the strike case shall have been decided. This reply we understand, was premised on the assurance by Irag that all of you will be reinstated with full payment of strike duration pays. Because of your adamant refusal to heed the request of management, our client was constrained to make do with the workers who returned to work. Thus presently, the company is operating smoothly with these ample number of workers.

As you must be aware, the strike was declared illegal by Labor Arbiter Antonio Villanueva of the Davao City Branch of the NLRC in his decision dated June 29, 1999. Said decision was affirmed with partial modification by the NLRC (5[th] Division) on November 8, 1999. Your union then filed a petition for certiorari before the Court of Appeals last July 10, 2000 where it is presently pending resolution. Since it is your desire to wait until the case is decided, so be it.

In the light of the foregoing, our client regrets that it cannot accede to your request.[4] (Underscoring supplied)

Petitioners thereupon filed separate complaints[5] (NLRC Case No. RAB-1-02-00164-02 and related cases) for constructive dismissal which were consolidated.

In the meantime or on March 20, 2002, the Court of Appeals affirmed the NLRC decision finding the strike illegal.[6]

By Decision of December 27, 2002, LA Miriam A. Libron-Barroso found in NLRC Case No. RAB-11-02-00164-02 and the related cases that petitioners had abandoned their jobs and were not constructively dismissed, but that CASI failed to perform the final operative act to declare complainants to have abandoned their

jobs pursuant to the rules. Thus the LA disposed:

WHEREFORE, premises considered, judgment is hereby rendered dismissing for lack of merit the complaint for constructive dismissal. However, complainants' dismissal being improper, respondent C. Alcantara and Sons, Inc. is hereby ordered to pay the above-mentioned complainants the total amount of PESOS: TWENTY TWO MILLION EIGHT HUNDRED FOURTEEN THOUSAND SIX HUNDRED NINETY SIX and 77/100 (P22,814,696.77) representing separation pay.

The monetary award of Samuel Ocular shall be computed during the execution stage for his failure to state in the complaint the date of his employment.

All other claims are dismissed for lack of merit.

SO ORDERED.[7]

Both petitioners and CASI appealed to the NLRC.[8] The NLRC, finding merit only in the appeal of CASI, nullified the Decision of the LA.

Their Motion for Reconsideration[9] having been denied,[10] petitioners assailed the dismissal of their complaint for constructive dismissal via Certiorari[11] before the Court of Appeals which it dismissed by Decision[12] of September 21, 2006.

Hence, the present Petition for Review[13] contending that contrary to the findings of the Court of Appeals,

- X X X ARTICLE 264 (A) OF THE LABOR CODE IS SQUARELY APPLICABLE IN THE CASE AT BAR.
- X X X THE PETITIONERS WERE EITHER ACTUALLY OR CONSTRUCTIVELY DISMISSED.
- X X X THE PETITIONERS DID NOT ABANDON THEIR EMPLOYMENT.
- X X X THE PETITIONERS ARE ENTITLED TO REINSTATEMENT, BACKWAGES, DAMAGES AND ATTORNEY'S FEES AS PRAYED FOR IN THE PETITION.[14] (Underscoring supplied)

The petition is bereft of merit.

Petitioners' citation in their favor of Article 264 (A) of the Labor Code which provides that "mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike" is misplaced. First, the strike in which petitioners participated was declared illegal. Second, petitioners were not dismissed for their participation in the strike but for abandonment of their jobs.

For abandonment to exist, it is essential that (a) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (b) there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[15]

In petitioners' case, despite the directive cum caveat of CASI for them to report back for work within two days from receipt thereof, they failed to comply therewith. After three years, as reflected above, they offered to return to work. Their intention to sever the employer-employee relationship with CASI is manifested, however, by the length of time they refused to return to work, for they had, in the interim, been looking for other jobs.

Petitioners' justification for their delay in heeding CASI's directive - that they had been "recently" informed that they were not parties to the case filed by CASI against the union - does not persuade. As the Court of Appeals observed, petitioners "were never summoned to appear in said case, [but e]ven granting that they were confused,

they would have verified from the union's counsel if they were part of those sued [but] they did not x x x." [16]

In fine, as petitioners were not constructively dismissed for they abandoned their jobs, they are not entitled to reinstatement, backwages, damages, and attorney's fees.

WHEREFORE, the petition is DENIED.

Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio[*], Bersamin[**], and Abad, JJ., concur.

[*] Additional member per Special Order No. 757 dated October 12, 2009.

[**] Additional member per Special Order No. 765 dated October 21, 2009.

[1] Vide NLRC records, Vol. 2, pp. 48.

[2] CA rollo, p. 759. Vide NLRC records Vol. 1, pp. 127-255.

[3] Id. at 294.

[4] Id. at 300-301.

[5] Id. at 1-84.

[6] Vide id. at 271-279.

[7] Id. at 375-376.

[8] NLRC records Vol. 2, pp. 1-39, 145-175.

[9] Id. at 561-593.

[10] Id. at 660-666.

[11] CA rollo, pp. 2-44.

[12] Penned by Court of Appeals Associate Justice Teresita Dy-Liacco Flores, with the concurrence of Associate Justices Rodrigo F. Lim, Jr. and Mario V. Lopez, CA rollo, pp. 742-766.

[13] Rollo, pp. 15-69.

[14] Id. at 30.

[15] Kams Int'l., Inc. v. NLRC, 373 Phil. 950, 958 (1999).

[16] CA rollo, p. 760.

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