

ODILON L. MARTINEZ, PETITIONER. VS. B&B FISH BROKER/ NORBERTO M. LUCINARIO RESPONDENT.

G.R. No. 179985. September 18, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Challenged via petition for review on certiorari is the Court of Appeals Decision of September 27, 2007[1] setting aside the Resolution of the National Labor Relations Commission (NLRC) and reinstating that of the Labor Arbiter.

Odilon L. Martinez (petitioner) was employed as a cashier on February 2000 by B&B Fish Broker, a partnership owned and managed by respondent Norberto M. Lucinario (Lucinario) and Jose Suico.

On November 24, 2002, Lucinario called petitioner's attention to his alleged shortages in his cash collections and ordered him to, as he did, take a leave the following day. When petitioner reported back for work on November 26, 2002, he was relieved of his position and reassigned as company custodian.

As cashier, petitioner's duties consisted of issuing receipts on items taken and bought and balancing of the cash on hand and receipts issued at the close of the business day.

On December 2, 2002, petitioner filed an application for a four-day leave effective on even date due to an inflamed jaw. His application, addressed to Lucinario, was received by a co-employee, Arielle Penaranda.

On December 9, 2002, petitioner discovered that his name had been removed from the company logbook and was prevented from logging in. And he was informed that his application filed on December 2, 2002 for a four-day leave of absence had been denied. The following day or on December 10, 2002, petitioner, having understood that the removal of his name from the logbook amounted to the termination of his employment, tried to confer with Lucinario but to no avail, hence, filed on December 19, 2002 a complaint against B&B Fish Broker and/or Lucinario, for illegal dismissal, underpayment and non-payment of wages with prayer for reinstatement, before the Arbitration Branch of the National Labor Relations Commission, docketed as NLRC-NCR Case No. 12-11217-02.[2]

Lucinario countered that as early as April 2000, petitioner had been incurring shortages in his cash collections; that despite petitioner's preventive suspension in 2001 and several verbal warnings from the management, discrepancies in petitioner's cash collections continued; and that on December 6, 2002, he, through Head Cashier, Diosdado Deynate (Deynate), required petitioner to report and explain the shortages/discrepancies in his collections but he did not show up for work.

Denying petitioner's charge that his services were illegally terminated, Lucinario claimed, in effect, that petitioner abandoned his job. In support thereof, he presented the affidavits of Head Cashier Deynate and that of Leoncia M. Teonson (Teonson), an employee of B&B Fish Broker, who added that they even persuaded petitioner to report back for work. He also presented index cards showing the regularity of petitioner's incurring of shortages in his

collections.

As to petitioner's claim that his name had been taken off the company logbook, Lucinario stated that the company practice is for employees to personally affix in the logbook their names and the time they arrive for work.

By Decision of September 26, 2003[3], the Labor Arbiter, crediting Lucinario's side, dismissed petitioner's complaint and ordered B&B Fish Broker and/or Lucinario to reinstate petitioner but without backwages, and to pay him the amount of P29,576.87 representing salary differentials, unpaid salaries and pro-rata 13[th] month pay.

Thus the Labor Arbiter disposed:

WHEREFORE, premises considered judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit. Respondents B&B Fish Broker and/or Norberto Lucinario are ordered to reinstate complainant Odilon L. Martinez without backwages. Respondents are further ordered to pay complainant the amount of P29,576.87 representing salary differentials, unpaid salaries and pro-rata 13[th] month pay.

All other claims are dismissed for lack of merit.[4] (Emphasis and underscoring supplied)

On petitioner's partial appeal, the National Labor Relations Commission (NLRC), by Resolution of March 31, 2005,[5] found that the Labor Arbiter erred in placing heavy reliance on the self-serving affidavits of Deynate and Teonson submitted by Lucinario. In any event, the NLRC held that the records did not support Lucinario's claim that petitioner had abandoned his job. It thus found petitioner have been illegally dismissed. Thus it disposed:

WHEREFORE, for serious error on the part of the Arbiter a quo, the assailed Decision dated 26 September 2003 is MODIFIED. Finding that complainant-appellant dismissal as illegal, respondents are hereby ordered to reinstate complainant-appellant to his former position with payments of full backwages from the date of his dismissal until his reinstatement.

SO ORDERED. (Emphasis and underscoring supplied)

His motion for reconsideration having been denied,[6] Lucinario challenged the NLRC Decision via Certiorari before the Court of Appeals, faulting the NLRC in, inter alia, not giving credence and probative value to the affidavits of Deynate and Teonson and in relying solely on the bare and unsubstantiated allegations of petitioner.

By the assailed Decision,[7] the Court of Appeals upheld Lucinario's contention that petitioner was not dismissed, it ruling that there is no requirement for affiants-witnesses to take the witness stand as the Rules on Evidence are not strictly observed in administrative proceedings similar to those conducted by the Labor Arbiter.

Hence, the present petition for review on certiorari, petitioner faulting the Court of Appeals in reversing the findings of the NLRC, and praying that he is further entitled to reimbursement of costs and attorney's fees.

The petition is impressed with merit.

Oddly, while Lucinario contends that petitioner abandoned his job, the bulk of his (Lucinario's) evidence relates to petitioner's incurring of shortages in his collections to justify the transfer of petitioner's assignment from cashier to company custodian and his alleged previous suspension. Parenthetically, documentary evidence relating thereto, which could lend light on petitioner's performance, was not presented.

On to Lucinario's claim that petitioner abandoned his employment:

It is axiomatic that in a petition for review on certiorari, only questions of law may be raised. The rule admits of certain exceptions, however, one of which is when there is variance on the appreciation of facts of the case. In the present case, the Labor Arbiter ruled that there is no illegal dismissal, yet she ordered petitioner's reinstatement. The NLRC found otherwise - that petitioner was illegally dismissed. On appeal, the appellate court reversed the

findings of the NLRC. This constrains the Court to reassess the evidence of the parties.

Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, Lucinario must prove, by substantial evidence, the concurrence of petitioner's failure to report for work for no valid reason and his categorical intention to discontinue employment.

Indeed, Lucinario, however, failed to establish any overt act on the part of petitioner to show his intention to abandon employment. As reflected above, petitioner, after being informed of his alleged shortages in collections and despite his relegation to that of company custodian, still reported for work. He later applied for a 4-day leave of absence. On his return, he discovered that his name was erased from the logbook, was refused entry into the company premises, and learned that his application for a 4-day leave was not approved. He thereupon exerted efforts to communicate with Lucinario on the status of his employment, but to no avail. To the Court, these circumstances do not indicate abandonment.

Finally, that petitioner immediately filed the illegal dismissal complaint with prayer for reinstatement should dissipate any doubts that he wanted to return to work.

What thus surfaces is that petitioner was constructively dismissed. No actual dismissal might have occurred in the sense that petitioner was not served with a notice of termination, but there was constructive dismissal, petitioner having been placed in a position where continued employment was rendered impossible and unreasonable by the circumstances indicated above.

WHEREFORE, the petition is, in light of the foregoing discussions, GRANTED. The assailed Decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The March 31, 2005 Resolution of the National Labor Relations Commission is REINSTATED.

SO ORDERED.

Ynares-Santiago,[*] Brion, Del Castillo, and Abad, JJ., concur.

[*] Additional member per Special Order No. 691 dated September 4, 2009.

[1] Penned by former Associate Justice Vicente Q. Roxas with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia.

[2] Petitioner filed an Amended Complaint on January 6, 2003, to include his prayer for moral and exemplary damages and attorney's fees. Vide rollo, p. 106.

[3] Id. at 84-92

[4] Id. at p. 92.

[5] Id. at 93-100.

[6] Id. at 101-104, Resolution of December 23, 2005.

[7] Id. at 72-83.

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