

HENLIN PANAY COMPANY AND/OR EDWIN FRANCISCO/ ANGEL LAZARO III, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND NORY A. BOLANOS, RESPONDENTS.

G.R. No. 180718. October 23, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated October 9, 2007 and the Resolution[2] dated November 26, 2007 of the Court of Appeals in CA-G.R. SP No. 98814. The appellate court had affirmed the Resolution[3] dated January 31, 2007 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-08-06773-05[4] declaring petitioners liable for illegally dismissing respondent Nory A. Bolanos.

The facts as found by the appellate court and the NLRC are as follows:

Private respondent Nory A. Bolanos started working on September 26, 2004 as service crew for petitioner Henlin Panay Company where she worked for eight hours a day from Sunday to Friday and was paid P325 per day. Henlin Panay is owned by VMD Food House Company whose president is petitioner Angel Lazaro III.

On July 8, 2005, around 7:00 p.m., while Bolanos was manning Henlin Panay's Counter B, her brother-in-law, Febe Javier (Javier), arrived and ordered wanton mami from her. Javier gave her a 500-peso bill for his order and was given his corresponding change. Petitioner Edwin Francisco (Francisco), the store supervisor, who was just near the counter and was about to take his break, asked Bolanos who her customer was to which she replied that he is her brother-in-law. Afterwards, Francisco took his break.

Bolanos served one more customer before she closed Counter B. Later, Javier ordered an additional siopao and softdrink from Counter A manned by Fe Niyam Combo (Combo).

After taking his break, Francisco returned to the dine-in area and noticed that Javier was already having siopao and softdrink. He then checked the journal tape of Counter B but did not find said food items punched in the cash register. At that time, Javier already left Henlin Panay. Francisco then asked Bolanos about the additional items ordered by Javier, but she told him that they were ordered at Counter A. When Francisco scrutinized the journal tape of Counter A, it did not also reflect the siopao and softdrink ordered by Javier. Francisco asked Combo about the matter and the latter told him that she remembered giving Javier siopao and softdrink. Combo said that she might have made an erroneous entry in the cash register by punching in siomai and lemonade instead. When Bolanos and Combo checked the order slips, where the order of each customer was first written before being punched in the cash register, they found one indicating siopao and softdrink. Despite Combo's admission of her mistake, Francisco did not believe her. Bolanos offered to bring along her brother-in-law the next day to prove that the additional food items were ordered from and paid for at Counter A, but Francisco dismissed the idea and remarked that Javier would naturally side with her. He just instructed her to call him the following day.

As instructed, Bolanos called Francisco the next day, and was ordered not to report the following day. She

inquired why she was being penalized as she did nothing wrong, to which Francisco replied that she was not only being suspended but was already dismissed from service. Bolanos protested as she was not served a notice of termination. However, Francisco simply replied that he has the authority to terminate the employment of employees; hence, a notice of termination was not necessary. Bolanos wanted to go to VMD's office to explain her side further, but Francisco remained adamant. He told her that even if she brought her lawyer along with her, his decision would not change.

On July 11, 2005, Bolanos went to the NLRC and was advised that she might have been illegally dismissed. The NLRC scheduled a mediation between Bolanos and petitioners on July 26, 2005, but the same failed. Hence, Bolanos filed an illegal dismissal complaint[5] on August 3, 2005, docketed as NLRC NCR Case No. 00-08-06773-05.

Petitioners, for their part, presented a different version of the events.[6] They alleged that when Francisco did not see in the journal tapes of both Counters A and B the additional food items ordered by Javier, he asked Bolanos why said items were not punched in or unpaid. Bolanos allegedly did not give an explanation and merely said, "Babayaran ko na lang yan." Francisco replied, "Di iyon ang point ko doon. Ang point ko ay naglabas ka ng pagkain na hindi nabayaran at dishonesty yun." Bolanos became speechless. After her duty that night, Francisco instructed her to call him the next day.

During their phone conversation on July 9, 2005, Francisco told Bolanos that he had already informed Susan Lim of VMD and Cecille Navarro of M & H Food Corporation, owner of the Henlin franchise, about the incident and both said that the matter should be investigated. Before the call ended, Bolanos remarked, "Siguro ginagawa mo iyon dahil alam mo." Francisco replied that it was just part of his job to watch out for fraudulent schemes like "passing out" of food.

On July 11, 2005, Lim informed Bolanos to report to her and explain her side. When she came later that day, Lim told her that there was no decision yet since the investigation was still ongoing and requested that Bolanos obtain the receipt from Javier if he still has it. Lim likewise required Bolanos to report for work that day, but the latter said that she will just go to work on July 12, 2005.

On July 12, 2005, Bolanos called Lim and said that she cannot go to work as she accidentally slipped. Lim then just told her to take a rest.

The following day, Lim was surprised to receive a Notice/Invitation[7] from the NLRC Conciliation and Mediation Center with an Information Sheet[8] executed by Bolanos charging Henlin Panay of illegal dismissal.

On February 28, 2006, the Labor Arbiter rendered a Decision,[9] the dispositive portion of which reads:

WHEREFORE, premises considered, the claim for illegal termination is dismissed.

However, respondent is directed to pay the complainant a proportionate 13th month pay for 2005 in the amount of P4,386.96 ($1/2/05 - 7/9/05 = 6.23 \text{ mos.}; P325 \times 26 \text{ days} \times 6.23 \text{ mos./12}$).

SO ORDERED.[10]

Bolanos appealed to the NLRC, which reversed the Labor Arbiter's decision on January 31, 2007 as follows:

WHEREFORE, the foregoing premises considered, the instant appeal is GRANTED. The decision appealed from is REVERSED and SET ASIDE, thereby declaring the respondents-appellees guilty of illegal dismissal.

Accordingly, respondents-appellees are ordered to pay the complainant-appellant her full backwages computed from the time she was dismissed up to the finality of this Resolution and separation pay equivalent to one (1) month's salary plus her proportionate 13th month pay for the year 2005. As computed, complainant-appellant

is entitled to the following monetary award as of January 23, 2007, viz:

A) Backwages

1.

Basic salary

7/10/05-1/23/07

$P325 \times 26 \times 18.43$

P155,733.50

2.

13[th] mo. pay

$P155,733.50/12$

12,977.80

3.

SILP

$P325 \times 5/12 \times 18.43$

2,495.73

171,207.03

B) Separation Pay

9/26/04-1/23/07

16,900.00

$P 325 \times 26 \times 2$

C)

Proportionate 13[th] mo. [P]ay

1/2/05-7/9/05

$P325 \times 26 \times 6.23/12$

4,386.96

Total Award

P192,493.99

SO ORDERED.[11]

Petitioners elevated the case to the Court of Appeals which affirmed the findings of the NLRC. Petitioners now come before us raising the following arguments for this Court's consideration:

I.

THE HONORABLE COURT OF APPEALS HAD DISMISSED PETITIONERS' PETITION FINDING NO GRAVE ABUSE OF DISCRETION ON THE PART OF RESPONDENT NLRC FINDING PETITIONERS GUILTY OF ILLEGAL DISMISSAL NOTWITHSTANDING THAT THE SAME WAS UTTERLY NOT IN ACCORDANCE WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT ... ON THE MATTER; AND

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT DISMISSING PRIVATE RESPONDENT'S COMPLAINT FOR ILLEGAL DISMISSAL.[12]

Simply stated, the issue is whether petitioners are liable for illegal dismissal.

Petitioners argue that no illegal dismissal took place. They aver that Francisco just informed Bolanos that her case was still under investigation. Indeed, the Henlin Panay management did not give her any notice of termination nor prevented her from coming to work. Neither was she stripped of her right to work in the premises. They insist that it was Bolanos who, after the incident, refused to work despite being required to report for duty. They aver that Francisco had no authority to dismiss employees.

Bolanos for her part, counters that she was not only suspended, but was in fact dismissed from her job by Henlin Panay through Francisco. She belies petitioners' claim that she refused to report to work, and argues that petitioners have the burden of proof to show that she abandoned her work.

After careful consideration, we find that the petition lacks merit.

To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. Two elements must concur: (1) failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[13] It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[14]

In the instant case, petitioners failed to prove that it was Bolanos who refused to report for work despite being asked to return to work. Petitioners merely presented the affidavits of the officers of Henlin Panay narrating their version of the facts. These affidavits, however, are not only insufficient but also undeserving of credit as they are self-serving. Petitioners failed to present memoranda or show-cause letters served on Bolanos at her last known address requiring her to report for work or to explain her absence, with a warning that her failure to report would be construed as abandonment of work. Also, if indeed Bolanos abandoned her work, petitioners should have served her a notice of termination as required by law. Petitioners' failure to comply with said requirement bolsters Bolanos's claim that she did not abandon her work but was dismissed.

Moreover, if Bolanos had indeed forsaken her job, she would not have bothered to file a complaint for illegal dismissal. It is well settled that the filing by an employee of a complaint for illegal dismissal is proof of her desire to return to work, thus negating the employer's charge of abandonment.[15]

Also, as correctly held by the appellate court, there is no basis for petitioners' theory that it is only in Bolanos's mind that she was dismissed from her job. It is hard to believe that Bolanos would imagine or think that she was dismissed from work when in fact she was not. Petitioners claim that being a mere store supervisor, Francisco had no authority to dismiss employees from their employment. However, Francisco may have convincingly appeared to have authority to dismiss employees for Bolanos to think that she was indeed fired from work. Petitioners could have dispelled this false belief of Bolanos, if after the alleged dismissal they required her to report for work

through a memorandum or letter. This, however, they failed to do. Hence, even if Francisco had no authority to dismiss employees, his act of dismissing Bolanos was ratified by the management when it failed to rectify Francisco's pretense which was allegedly beyond the scope of his functions as store supervisor.

Clearly, Bolanos's case is one of illegal dismissal. First, there is no just or authorized cause for petitioners to terminate her employment. Her alleged act of dishonesty of "passing out" food for free was not proven. Neither was there incompetence on her part when some food items were not punched in the cash register as she was not the cashier manning it when the food items were ordered. In fact, the other cashier even owned up to said mistake. Second, Bolanos was not afforded due process by petitioners before she was dismissed. A day after the incident, she was verbally dismissed from her employment without being given the chance to be heard and defend herself.

Article 279[16] of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement without loss of seniority rights, full backwages and other benefits or their monetary equivalent computed from the time her compensation was withheld from her up to her actual reinstatement.

In the instant case, however, we will not order Bolanos's reinstatement as she did not pray for it and considering that antagonism caused a severe strain in the parties' employer-employee relationship. Instead, she is awarded separation pay pegged at one month pay for every year of service reckoned from her first day of employment up to the finality of this decision.

This Court notes that the NLRC awarded backwages, 13[th] month pay, and service incentive leave pay from July 10, 2005 to January 23, 2007 only. It is evident that these should not be limited to said period. These should be computed from the date of her illegal dismissal until this decision attains finality. Though Bolanos did not appeal the computation of the NLRC's award as affirmed by the Court of Appeals, we are not barred from ordering its modification. This Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice. Besides, substantive rights like the award of backwages, 13[th] month pay and service incentive leave pay resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The computation of the award for backwages and other benefits from the time the compensation was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that respondent was illegally dismissed by petitioners.[17]

WHEREFORE, the petition is DENIED. The assailed Decision dated October 9, 2007 and the Resolution dated November 26, 2007 of the Court of Appeals in CA-G.R. SP No. 98814 are AFFIRMED with MODIFICATION. Private respondent's separation pay is to be reckoned from the first day of employment up to the finality of this decision while her backwages, 13[th] month pay, and service incentive leave pay are to be computed from the date of illegal dismissal up to the finality of this decision.

Let the records of this case be remanded to the Labor Arbiter for the proper computation of the exact amounts due respondent Nory A. Bolanos.

SO ORDERED.

Carpio[*], Carpio Morales, Bersamin[**], and Abad, JJ., concur.

[*] Additional member per Special Order No. 757.

[**] Additional member per Special Order No. 765.

- [1] Rollo, pp. 26-38. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Myrna Dimaranan Vidal concurring.
- [2] Id. at 40-41.
- [3] CA rollo, pp. 24-31.
- [4] Also docketed as NLRC NCR CA No. 048820-06.
- [5] Records, p. 2.
- [6] Id. at 16-20, 22.
- [7] Id. at 21.
- [8] CA rollo, p. 36.
- [9] Records, pp. 69-78.
- [10] Id. at 77-78.
- [11] CA rollo, p. 30.
- [12] Rollo, pp. 10-11.
- [13] *Camua, Jr. v. National Labor Relations Commission*, G.R. No. 158731, January 25, 2007, 512 SCRA 677, 682.
- [14] *City Trucking Inc., v. Balajadia*, G.R. No. 160769, August 9, 2006, 498 SCRA 309, 315; *Big AA Manufacturer v. Antonio*, G.R. No. 160854, March 3, 2006, 484 SCRA 33, 45.
- [15] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, G.R. No. 159293, December 16, 2005, 478 SCRA 298, 305; *Hodieng Concrete Products v. Emilia*, G.R. No. 149180, February 14, 2005, 451 SCRA 249, 254.
- [16] ART. 279. Security of Tenure. --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.
- [17] *Cocomangas Hotel Beach Resort and/or Susan Munro v. Federico F. Visca, et al.*, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 722.

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