

**E.G. & I. CONSTRUCTION CORPORATION AND EDEL GALEOS,
PETITIONERS, VS. ANANIAS P. SATO, NILO BERDIN, ROMEO M.
LACIDA, JR., AND HEIRS OF ANECITO S. PARANTAR, SR., NAMELY:
YVONNE, K...**

G.R. No. 182070. February 16, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated October 24, 2007 and the Resolution[2] dated March 3, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 02316.

The factual and procedural antecedents of the case are as follows:

Respondent Ananias P. Sato (Sato) was hired in October 1990 by petitioner E.G. & I. Construction Corporation as a grader operator, which is considered as technical labor. He held the position for more than thirteen (13) years. In April 2004, Sato discovered that petitioner corporation had not been remitting his premium contributions to the Social Security System (SSS). When Sato kept on telling petitioners to update his premium contributions, he was removed as a grader operator and made to perform manual labor, such as tilling the land in a private cemetery and/or digging earthworks in petitioner corporation's construction projects.[3] In July 2004, an inspection team from the SSS went to petitioner corporation's office to check its compliance with the SSS law. On July 22, 2004, petitioners told Sato that they could no longer afford to pay his wages, and he was advised to look for employment in other construction companies.[4] Sato, however, found difficulty in finding a job because he had been blacklisted in other construction companies and was prevented from entering the project sites of petitioners.[5]

Respondent Nilo Berdin (Berdin) was hired by petitioners in March 1991 as a steelman/laborer; respondent Anecito S. Parantar, Sr.[6] (Parantar) was hired in February 1997 as a steelman; and respondent Romeo M. Lacida, Jr.[7] (Lacida) was hired in March 2001 as a laborer.[8] At the start of their employment, they were required by petitioners to sign several documents purporting to be employment contracts.[9] They immediately signed the documents without verifying their contents for fear of forfeiting their employment.[10]

Respondents were required to work from 7:00 a.m. until 5:00 p.m. While in the employ of petitioners, they devoted their time exclusively in the service of petitioners and were assigned to various construction projects of petitioners. They were tasked to set up steel bars used in the building foundation, to mix cement, and to perform other tasks required of them by petitioners.[11]

On July 24, 2004, the project engineer of respondents Berdin, Parantar, and Lacida instructed them to affix their signatures on various documents. They refused to sign the documents because they were written in English, a language that they did not understand. Irrked by their disobedience, the project engineer terminated their

employment. On the same date, they were given their weekly wages. However, the wages that were paid to them were short of three (3) days worth of wages, as penalty for their refusal to sign the documents. The following day, they were not allowed to enter the work premises.[12]

On July 26, 2004, respondents filed their respective complaints with the Regional Arbitration Branch of Cebu City for illegal dismissal, underpayment of wages (wage differentials), holiday pay, thirteenth (13th) month pay, and service incentive leave pay.[13]

Petitioners, on the other hand, admitted that respondents were employed by them and were assigned in their various construction projects. However, they denied that they illegally terminated respondents' employment. According to petitioners, respondents abandoned their work when they failed to report for work starting on July 22, 2004. Petitioner corporation sent letters advising respondents to report for work, but they refused. Petitioner corporation maintained that respondents are still welcome, if they desire to work.[14]

As to respondent Sato, petitioner corporation alleged that it admonished respondent for having an illicit affair with another woman; that, in retaliation, Sato complained to the SSS for alleged non-remittance of his premium contributions; that Sato's work was substandard; and that he also incurred unexplained absences and was constantly reprimanded for habitual tardiness.

On July 27, 2005, the Labor Arbiter rendered a decision[15] finding that respondents were illegally dismissed from employment. In lieu of reinstatement, due to the strained relations of the parties and as prayed for by respondents, each of them was granted separation pay equivalent to one (1) month pay for every year of service. The Labor Arbiter likewise awarded respondents' claim for wage differentials, 13th month pay, holiday pay, and service incentive leave pay. The Labor Arbiter ruled in favor of granting the monetary claims of respondents because of petitioner corporation's failure to effectively controvert the said claims by not presenting proof of payment, such as payrolls or vouchers.[16] The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent [petitioner] E.G. & I. Construction Corporation to pay [respondents] the following:

1. Ananias P. Sato - P 107,250.00
 2. Anecito Parantar - 120,944.00
 3. Nilo Berdin - 152,144.00
 4. Romeo M. Lacida, Jr. - 138,594.00
- Total Award P 518,932.00

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The other claims and the case against respondent Edsel Galeos are dismissed for lack of merit.

SO ORDERED.[17]

On appeal, the National Labor Relations Commission (NLRC) reversed the ruling of the Labor Arbiter in a decision[18] dated July 31, 2006. The fallo of the NLRC decision reads:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby SET ASIDE and VACATED and a new one entered Dismissing the case. Respondents are however ordered to pay complainants' proportionate 13th month [pay] for the year 2004 computed as follows:

1. Ananias Sato - P 3,180.00
2. Anecito Parantar - 2,520.00
3. Nilo Berdin - 2,700.00
4. Romeo Laceda - _2,520.00

Total P 10,920.00

SO ORDERED.[19]

In reversing the decision of the Labor Arbiter, the NLRC ratiocinated that, other than respondents' bare allegation that they were dismissed, they failed to present a written notice of dismissal,[20] and that respondents' individual complaints opted for the payment of separation pay instead of reinstatement.[21] The NLRC opined that illegal dismissal was inconsistent with the prayer for separation pay instead of reinstatement. As for the monetary reliefs prayed for by respondents, the NLRC withdrew the grant of the same because of petitioner corporation's submission of the copies of payrolls, annexed to its memorandum on appeal.[22]

Respondents filed a motion for reconsideration. However, the same was denied in a resolution[23] dated October 9, 2006.

Aggrieved, respondents filed a petition for certiorari under Rule 65 of the Rules of Court before the CA. On October 24, 2007, the CA rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this petition is GRANTED. The Decision and Resolution of the NLRC, dated July 31, 2006 and October 9, 2006, respectively, are hereby REVERSED and SET ASIDE. The Decision of the labor arbiter, dated July 27, 2005, is REINSTATED.

Costs against private respondents.

SO ORDERED.[24]

The CA ruled that respondents were illegally dismissed. A written notice of dismissal is not a pre-requisite for a finding of illegal dismissal.[25] Respondents did not abandon their work. They were refused entry into the company's project sites.[26] As to the award of monetary claims, the CA decided in favor of the grant of the same. Petitioner corporation belatedly submitted copies of the weekly time record, payroll, and acknowledgement receipts of the 13th month pay. There was no explanation given why the said documents were not submitted before the Labor Arbiter in order to establish their authenticity and correctness, and to give respondents the opportunity to refute the entries therein.[27]

Hence, this petition.

The issue to be resolved in this case is whether the CA erred in reinstating the decision of the Labor Arbiter, declaring that respondents were illegally terminated from employment by petitioner corporation, and that respondents are entitled to their monetary claims.

We sustain the ruling of the CA. Petitioner corporation failed to prove that respondents were dismissed for just or authorized cause. In an illegal dismissal case, the onus probandi rests on the employer to prove that the dismissal of an employee is for a valid cause.[28]

For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[29] The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.[30]

In this case, petitioner corporation claims that respondent Sato committed unexplained absences on May 20, 24, and 25, 2004 and on June 7, 18, and 23, 2004. However, based on the findings of fact of the CA, respondent Sato

worked on May 20, June 18 and 23, 2004. This was based on the weekly time record and payroll of respondent Sato that were presented by petitioner corporation in its appeal before the NLRC. On respondent Sato's alleged absences on May 24 and 25 and on June 7, 2004, no time record and payroll documents were presented by petitioner corporation. With regard to respondents Berdin, Lacida, and Parantar, petitioner corporation alleges that they failed to report for work starting on July 22, 2004, and that petitioner even sent them letters advising them to report for work, but to no avail.

Notwithstanding these assertions of petitioner corporation, we sustain the ruling of the CA. The reason why respondents failed to report for work was because petitioner corporation barred them from entering its construction sites. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[31] The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[32] Petitioner corporation failed to show overt acts committed by respondents from which it may be deduced that they had no more intention to work. Respondents' filing of the case for illegal dismissal barely four (4) days from their alleged abandonment is totally inconsistent with our known concept of what constitutes abandonment.

We sustain the ruling of the CA on respondents' money claims. As a rule, one who pleads payment has the burden of proving it. Even as the employee must allege non-payment, the general rule is that the burden rests on the employer to prove payment, rather than on the employee to prove non-payment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances, and other similar documents -- which will show that overtime, differentials, service incentive leave, and other claims of the worker have been paid -- are not in the possession of the worker but in the custody and absolute control of the employer.[33]

In this case, the submission of petitioner corporation of the time records and payrolls of respondents only on their appeal before the NLRC is contrary to elementary precepts of justice and fair play. Respondents were not given the opportunity to check the authenticity and correctness of the same. Thus, we sustain the ruling of the CA in the grant of the monetary claims of respondents. We are guided by the time-honored principle that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is the rule in controversies between a laborer and his master that doubts reasonably arising from the evidence, or in the interpretation of agreements and writing, should be resolved in the former's favor.[34]

WHEREFORE, in view of the foregoing, the Decision dated October 24, 2007 and the Resolution dated March 3, 2008 of the Court of Appeals in CA-G.R. SP No. 02316 are hereby AFFIRMED.

Costs against the petitioners.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier, concurring; rollo, pp. 40-54.

[2] *Id.* at 56-58.

[3] CA Decision, *id.* at 41; NLRC decision, *id.* at 61-62; LA decision, *id.* at 142.

[4] CA Decision, *id.* at 41-42; NLRC decision, *id.* at 62; LA decision, *id.* at 142-143.

[5] CA Decision; *id.* at 42.

[6] Also known as Aniceto S. Parantar, Sr. in other documents.

[7] Also known as Romeo Laceda in other documents.

[8] CA Decision; rollo, p. 41.

[9] CA Decision, id. at 42; NLRC decision, id. at 62; LA decision, id. at 143.

[10] CA Decision, id. at 42.

[11] Id.; NLRC decision, id. at 62; LA decision, id. at 143.

[12] Id.

[13] Id.

[14] CA Decision, id. at 43; NLRC decision, id. at 62-63; LA decision, id. at 143-144.

[15] Penned by Labor Arbiter Ernesto F. Carreon; id. at 142-148.

[16] Id. at 145.

[17] Id. at 147-148.

[18] Penned by Commissioner Oscar S. Uy, with Presiding Commissioner Gerardo C. Nograles and Commissioner Aurelio D. Menzon, concurring; id. at 61-67.

[19] Id. at 66.

[20] Id. at 63.

[21] Id. at 64.

[22] Id. at 65.

[23] Id. at 73-76.

[24] Id. at 53.

[25] Id. at 47.

[26] Id.

[27] Id. at 50.

[28] THE LABOR CODE, Art. 277(b); Pepsi Cola Products Philippines, Inc. v. Santos, G.R. No. 165968, April 14, 2008, 551 SCRA 245, 252.

[29] Padilla Machine Shop v. Javilgas, G.R. No. 175960, February 19, 2008, 546 SCRA 351, 357.

[30] Uniwide Sales Warehouse Club v. National Labor Relations Commission, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 239.

[31] Id.

[32] Agabon v. National Labor Relations Commission, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 606.

[33] Id. at 618.

[34] De Castro v. Liberty Broadcasting Network, Inc., G.R. No. 165153, September 23, 2008, 566 SCRA 238, 251.

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