

CONCEPCION FAELDONIA, PETITIONER, VS. TONG YAK GROCERIES, JAYME GO AND MERLITA GO, RESPONDENTS.*G.R. No. 182499. October 02, 2009*

Ponente: YNARES-SANTIAGO, J.

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This Petition for Review on Certiorari assails the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated February 14, 2007 and March 18, 2008, respectively, in CA-G.R. SP No. 76651 which set aside the Decision[3] of the National Labor Relations Commission (NLRC) dated September 19, 2002 and its Resolution[4] dated January 27, 2003 finding that petitioner Concepcion Faeldonia was illegally dismissed.

Petitioner alleged that she worked at Tong Yak Groceries as sales/stock clerk from March 1978 until her dismissal on April 20, 2000; that on January 26, 2000, while on an errand for her employer, she stepped on a rusted half-inch nail which injured her foot and caused her to be absent from work; that respondent Jayme Go advised her to visit Dr. William Ty, who gave her antibiotics and pain killers as medications;[5] that after two weeks of medication, the wounds did not heal and even worsened; that she was brought to the Metropolitan Hospital in Sta. Cruz, Manila where she was also diagnosed to be diabetic; that her foot was operated on and she was confined at the hospital for 24 days; that the respondents paid the hospital bill amounting to P22,266.40;[6] that she was released from the hospital on March 1, 2000, but was advised to report daily for wound dressing for three weeks; and that respondents paid for all the expenses.[7]

Petitioner also alleged that on March 10, 2000, she was summoned by respondent Merlita Go who told her that, "ayaw na namin sa iyo dahil may sakit ka, paenggang-enggang kung lumakad at pagtatawanan ka lamang ng mga kasamahan mo dito;" however, petitioner did not give much attention to said statement;[8] that she was able to secure from the SSS a Sickness Notification[9] signed by Dr. William Ty certifying that she is fit to resume work by April 20, 2000; that petitioner reported back to work on April 20, 2000 but was told to resign and that she would be given a sum of money to start a business; that when petitioner asked how much financial assistance would be given her, respondent Merlita Go angrily stated, "Marami na akong nagastos sa pagpapa-ospital sa iyo." [10]

Thereafter, respondents no longer allowed petitioner to go back to work. Hence, she filed a complaint for illegal dismissal with money claims before the NLRC,[11] claiming that her dismissal was not for cause and without due process.

Respondents denied that they dismissed petitioner. They alleged that after petitioner's accident, they had extended the necessary medical and hospital assistance to her amounting to almost P70,000.00; that they had been lenient in her attendance at work; that petitioner demanded for separation pay citing her health condition; that they required petitioner to submit a certification issued by a government physician stating her fitness to work,[12] but petitioner no longer reported back for work; that although petitioner submitted a certification that she is fit to resume work, the same was not issued by a government physician; and that they were surprised to receive the Notice of Hearing

by the labor tribunal.[13]

On October 29, 2001, the Labor Arbiter rendered a decision finding that petitioner was not dismissed from employment, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding that complainant was not dismissed from work, legally or otherwise. Respondents are hereby ordered to pay as follows, to wit:

1.

Separation pay

$P223.50 \times 15 \text{ days} \times 22 \text{ years} =$

$=$

$P73,755.00 - 52,266.45$

$=$

$P21,488.55$

2.

Wage differential

$P3.50 \times 26 \times 5.5 \text{ months}$

$=$

$P 500.50$

3.

Service incentive leave

$P223.50 \times 15$

$=$

$P 3,352.50$

4.

13[th] Month Pay

$P223.50 \times 26 \times 2$

$=$

$P11,622.00$

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[14]

The Labor Arbiter found that the assistance given by respondents to petitioner by way of medical and hospital expenses amounting to about P73,755.00, belies the allegation that respondents asked petitioner to resign without

benefits. The arbiter also held that petitioner filed the complaint when her demand for separation pay was not granted for her failure to produce a certification from a public health physician. However, despite the finding that there was no dismissal, the labor arbiter awarded separation pay to petitioner considering her length of service and in accordance with Art. 284 of the Labor Code.

On appeal, the NLRC reversed the decision of the Labor Arbiter, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision under review is REVERSED and SET ASIDE. Judgment is hereby entered, declaring complainant Concepcion Faeldonia as illegally dismissed from her employment. Accordingly, respondents are ordered to REINSTATE the complainant to her former position without loss of seniority rights, and to pay the said complainant, jointly and severally, FULL BACKWAGES computed from April 20, 2000 until actually reinstated.

Respondents are likewise ordered to pay complainant, her salary differentials in the amount of P500.50, Service Incentive Leave Pay of P3,352.50 and 13[th] month pay of P11,622.00.

All other claims of the complainant are dismissed for lack of merit.

SO ORDERED.[15]

The NLRC found that respondents failed to prove that petitioner abandoned her job. It found that the submission of a certification that petitioner is fit to work is contrary to the claim that she is demanding for separation pay for health reasons. The NLRC thus stated:

Not only were the respondents unable to prove that the complainant abandoned her job. Evidence on hand corroborates the fact that there was no abandonment at all. Firstly, had there been truth to respondent's claim that the complainant opted to be separated from employment due to health reasons, and that she was not able to prove entitlement to separation benefits on account of her failure to produce a medical certification concerning her no longer fit to work as issued by a public health authority, she should not have, in the first place, requested the company physician to accomplish the SSS Sickness Notification form where the latter certified, in clear terms, that complainant was already fit to work on April 20, 2000. Secondly, respondents in fact admitted that the said Certification was submitted to them by the complainant. This again would not be the logical recourse of an employee seeking separation benefits on the representation that she is no longer physically fit to work, since the certification of respondents' physician actually pertains to complainant's being fit to resume her employment. In effect, the facts obtaining bolster complainant's assertion that she endeavored to present herself for resumption of her work, but was refused. This conclusion is far from being conjectural, as it is based on law, evidence on record, and the existing jurisprudential norm on the issue of abandonment. Hence, the finding that complainant was dismissed from employment, and that such dismissal is illegal.[16]

Respondents filed a motion for reconsideration but it was denied; hence, they filed a petition for certiorari before the Court of Appeals which issued on February 14, 2007 the herein assailed Decision,[17] the dispositive portion of which states—

WHEREFORE, the PETITION FOR CERTIORARI is GRANTED.

The decision promulgated on September 19, 2002 and the resolution dated January 27, 2003 of the National Labor Relations Commission are NULLIFIED AND SET ASIDE.

The decision dated October 29, 2001 of the Labor Arbiter is REINSTATED.

SO ORDERED.[18]

Hence, this petition.

Petitioner argues that the Court of Appeals erred in reversing the NLRC and in affirming the Labor Arbiter's ruling. She claims that the appellate court failed to consider the medical certificate she submitted which was issued by the company physician attesting her fitness to resume work. According to petitioner, this only supports her claim that she presented herself for work but was refused. She maintains that the findings of the NLRC were based on substantial evidence while those of the labor arbiter were groundless.

On the other hand, respondents assert that only questions of law may be raised in a petition for review on certiorari under Rule 45. Respondents also argue that the findings of the labor arbiter as affirmed by the Court of Appeals should be accorded not only respect but even finality because it was supported by substantial evidence.

The petition is meritorious.

The issue in the instant case is factual: whether petitioner abandoned her work or was illegally dismissed.

The factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality.[19] However, when there is a showing that they were arrived at arbitrarily or in disregard of the evidence on record, they may be examined by the courts.[20]

We find that the NLRC acted well within its appellate jurisdiction over the labor arbiter in reversing the latter's factual conclusions. The powers and jurisdiction of the NLRC as the country's labor court is well-defined in the Labor Code. Article 223 states that decisions, awards or orders of the Labor Arbiter may be appealed if there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter, or serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant[21] while Article 217 specifically provides that the Commission has exclusive appellate jurisdiction over all cases decided by the labor arbiters. Moreover, Article 218 (c) vests the Commission the power to "correct, amend, or waive any error, defect or irregularity whether in substance or form" in the exercise of its appellate jurisdiction.[22]

In termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.[23] In *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, the Court ruled:

The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. [24]

Following this principle, it is incumbent upon the respondents to prove by substantial evidence that petitioner abandoned her job. For abandonment to exist, it must be shown that (1) the employee has failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts.[25]

Respondents failed to discharge this burden. Mere absence of petitioner is not sufficient to establish the allegation of abandonment. The prolonged absence of petitioner was not without justifiable reason because it was established that her failure to report for work was due to the injury she suffered in the course of her employment and with sufficient notice to respondents. Petitioner also presented herself for work on the date stated in the medical certificate which stated that she is fit to resume work.

Above all, the intention to sever the employer-employee relationship was not duly established by respondents.

The prior submission of a medical certificate that petitioner is fit to resume work negates the claim of respondents that the former demanded for separation pay on account of her failing health. Certainly, petitioner cannot demand for separation benefits on the ground of illness while at the same time presenting a certification that she is fit to work. Respondents could have denied petitioner's demand at that instance and ordered her to return to work had it not been their intention to sever petitioner from their employ. Hence, we find the allegation that petitioner presented herself for work but was refused by respondents more credible.

It should be noted that respondents also failed to observe the requirements of procedural due process in effecting petitioner's dismissal. In dismissing an employee, the employer has the burden of proving that the dismissed worker has been served two notices: (1) the first to inform the employee of the particular acts or omissions for which the employer seeks his dismissal, and (2) the second to inform the employee of his employer's decision to terminate him. [26]

In cases of abandonment of work, the ground alleged by respondents, notice shall be served at the worker's last known address.[27] Here, no such notice was served to petitioner. Hence, for breach of the due process requirements, respondents shall also be liable in the amount of P30,000 as indemnity in the form of nominal damages.[28]

WHEREFORE, the petition is GRANTED. The Decision and Resolution of the Court of Appeals dated February 14, 2007 and March 18, 2008, respectively, in CA-G.R. SP No. 76651 are hereby REVERSED and SET ASIDE. The Decision of the National Labor Relations Commission dated September 19, 2002 declaring Concepcion Faeldonia as illegally dismissed is hereby REINSTATED and AFFIRMED with MODIFICATION that respondents are further ordered to pay nominal damages in the amount of P30,000.00.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Rollo, pp. 19-26. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Rodrigo V. Cosico and Estela M. Perlas-Bernabe.

[2] Id. at 28. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe.

[3] Id. at 95-110. Penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[4] Id. at 115-116.

[5] Id. at 48.

[6] Id. at 72.

[7] Id. at 48.

[8] Id. at 49, 55.

[9] Id. at 57.

[10] Id. at 49, 56.

[11] Id. at 46.

[12] Id. at 59.

[13] Id. at 60.

[14] Id. at 83-84.

[15] Id. at 109.

[16] Id. at 106-107.

[17] Id. at 19-26.

[18] Id. at 26.

[19] Bughaw v. Treasure Island Industrial Corporation, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316.

[20] R & E Transport, Inc. v. Latag, G.R. No. 155214, February 13, 2004, 422 SCRA 698, 704-705.

[21] Article 223 (a), (d).

[22] Judy Philippines, Inc. v. National Labor Relations Commission, 352 Phil. 593, 604 (1998).

[23] Philippine Long Distance Telephone Company, Inc. v. Tiamson, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

[24] Id.

[25] See Macahilig v. National Labor Relations Commission, G.R. No. 158095, November 23, 2007, 538 SCRA 375, 384-385.

[26] Coca-Cola Bottlers Philippines, Inc. v. Garcia, G.R. No. 159625, January 31, 2008, 543 SCRA 364, 372.

[27] Supra at 374.

[28] See Mobilia Products, Inc. v. Demecillo, G.R. No. 170669, February 4, 2009, 578 SCRA 39, 50; Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc., G.R. No. 167622, November 7, 2008, 570 SCRA 503, 527.

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