

TAN BROTHERS CORPORATION OF BASILAN CITY THROUGH ITS OWNER/MANAGER, MAURO F. TAN, PETITIONERS, VS. EDNA R. ESCUDERO, RESPONDENT.

G.R. No. 188711. July 08, 2013

Ponente: PEREZ, J.

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PEREZ, J.:

The elements of abandonment of employment as a defense against a charge of illegal dismissal are primarily at issue in this Rule 45 Petition for Review on Certiorari which seeks the reversal of the 16 February 2009 Decision[1] rendered by the Twenty First Division of the Court of Appeals (CA), Mindanao Station, in CA-G.R. SP No. 01028-MIN,[2] the decretal portion of which states:

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Resolutions of public respondent National Labor Relations Commission (NLRC), 5th Division, Cagayan De Oro City, in NLRC CA No. M-008350-2005 (RAB IX 09-00255-2004), promulgated on November 30, 2005 and January 31, 2006, respectively, are hereby AFFIRMED. Costs against petitioner,

SO ORDERED.[3]

The Facts

In July 1991, respondent Edna R. Escudero (Escudero) was hired as bookkeeper by petitioner Tan Brothers Corporation of Basilan City (Tan Brothers), a corporation primarily engaged in the real estate business. On 1 September 2004, Escudero filed against Tan Brothers a complaint for illegal dismissal, underpayment of wages, cost of living allowance and 13th month pay which was docketed before the arbitral level of the Regional Arbitration Branch No. IX of the National Labor Relations Commission (NLRC) as NLRC Case No. RAB-09-09-00255-2004. In support of the complaint, Escudero alleged in her position paper that, starting July 2003, her monthly salary of P2,500.00 was not paid on time by Tan Brothers. After having the corporation's office remodeled in the early part of 2004, Tan Brothers allegedly rented out the office space Escudero used to occupy and ceased giving her further assignments. Eventually constrained to stop reporting for work because of her dire financial condition, Escudero claimed that Tan Brothers "shrewdly maneuvered" her illegal dismissal from employment.[4]

In its position paper, on the other hand, Tan Brothers averred that Escudero was paid a daily wage of P155.00, and she abandoned her employment when she stopped reporting for work in July 2003. Aside from taking with her most of the corporation's payrolls, vouchers and other material documents evidencing due payment of wages and labor standard benefits, Tan Brothers maintained that, without its knowledge and consent, Escudero appropriated for herself an Olivetti typewriter worth P15,000.00. With Escudero's refusal to heed its demands for the return of the typewriter, Tan Brothers asseverated that it was left with no choice but to lodge a complaint with the barangay authorities of Seaside, Isabela City on 6 September 2004. In support of its claim of due payment of its employees' wages and benefits, Tan Brothers submitted copies of its remaining vouchers and payrolls from 24 December

1997 to 31 July 2000 which were prepared by Escudero and the result of the inspection conducted by the Department of Labor and Employment (DOLE) Regional Office No. 9 that cleared it of violations of labor standard laws.[5]

On 24 November 2004, Labor Arbiter Joselito B. De Leon rendered a decision, finding Tan Brothers guilty of constructively dismissing Escudero from employment. Rejecting Tan Brothers' claim that Escudero resigned from and/or abandoned her employment, the Labor Arbiter ruled that the former circumvented the substantive and procedural requirements of due process when it withheld the latter's salaries and stopped utilizing her services despite her presence at work. Also brushed aside was Tan Brother's claim regarding the typewriter allegedly taken by Escudero on the ground that the cause of action relative thereto, if any, pertained to the regular courts. While giving credence to the pieces of documentary evidence adduced by Tan Brothers to prove due payment of wages and labor standard benefits to its employees, the Labor Arbiter ruled that, as a consequence of her constructive dismissal, Escudero was entitled to separation pay in the sum of P48,508.80 and backwages in the sum of P68,720.80 or a total of P117,229.60 in monetary awards.[6]

On appeal, the Labor Arbiter's decision was affirmed in toto in the 30 November 2005 Resolution issued by the Fifth Division of the NLRC in NLRC CA No. M-008350-2005. Echoing the Labor Arbiter's conclusion that Escudero was constructively dismissed, the NLRC further ruled that Tan Brother's claim of loss of the typewriter, having been made after said employee's institution of the case a quo, was retaliatory and a mere afterthought.[7] Its motion for reconsideration of the foregoing resolution[8] denied for lack of merit in the NLRC's Resolution dated 31 January 2006,[9] Tan Brothers filed the Rule 65 petition for certiorari docketed before the CA as CA-G.R. SP No. 01028-MIN. In support of its petition, Tan Brothers faulted the NLRC with grave abuse of discretion for not finding that Escudero abandoned her employment despite her admission that she unilaterally stopped reporting for work. On the theory that abandonment is a serious misconduct which constituted a just cause for termination of employment under Article 282 of the Labor Code of the Philippines, it was, likewise, argued that the award of backwages and separation pay in favor of Escudero were bereft of legal basis.[10]

On 16 February 2009, the CA rendered the herein assailed decision, denying Tan Brothers' petition and affirming the NLRC's resolution of its appeal. Finding that Escudero was constructively dismissed when Tan Brothers stopped paying her salaries and giving her work assignments, the CA ruled out abandonment absent any showing that the former intended to sever the employer-employee relationship with the latter. Considered not established by an employee's mere absence or failure to report to work, abandonment was likewise held to be contradicted by the filing of an action for illegal dismissal. The CA also gave a short shrift to Tan Brothers' claim that Escudero took its typewriter and corporate records for lack of showing that the latter was confronted with and was given an opportunity to refute the charges against her.[11] Tan Brothers' motion for reconsideration of the decision[12] was denied for lack of merit in the CA's 26 June 2009 Resolution.[13] Hence, this petition.[14]

The Issues

Tan Brothers essentially argues that Escudero abandoned her employment and that the same was not negated by the filing of her complaint for illegal dismissal more than one year after she stopped reporting for work.[15]

The Court's Ruling

The petition is bereft of merit.

At the outset, it bears stressing that, in petitions for review on certiorari like the one at bench, the scope of this Court's judicial review of decisions of the CA is generally confined only to errors of law[16] and does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination.[17] Whether Escudero has abandoned her job or was illegally dismissed are questions of fact better

left for determination by quasi-judicial agencies[18] which have acquired expertise because their jurisdiction is confined to specific matters.[19] Corollarily, the rule is settled that the factual findings of the Labor Arbiter and the NLRC, especially when affirmed by the CA, are accorded not only great respect but also finality, and are deemed binding upon this Court so long as they are supported by substantial evidence.[20] Time and again, we have reiterated the dictum that the Supreme Court is not a trier of facts and this applies with greater force in labor cases.[21]

As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[22] It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 of the Labor Code.[23] To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, 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.[24] Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[25] It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[26]

Repeating its defense of abandonment, Tan Brothers argues that Escudero unilaterally stopped reporting for work in July 2003. In addition to the latter's prolonged absence from work, Tan Brothers calls our attention to Escudero's supposed appropriation of the corporation's typewriter and records which supposedly evinced her intention to sever the parties' employer-employee relations. It is argued that, having committed the foregoing infraction to get even with her employer, it would have been unthinkable for Escudero to plan on further reporting for work. Considering that the complaint did not pray for reinstatement and was filed only on 1 September 2004 or more than one year after Escudero's supposed last attendance at work, Tan Brothers also faults the CA for applying the rule that abandonment is negated by the employee's filing of a complaint for illegal dismissal. Ultimately, Tan Brothers maintains that the award of backwages and separation pay should have been disallowed in view of Escudero's abandonment of her employment.[27]

On the theory that the same is proof enough of the desire to return to work,[28] the immediate filing of a complaint for illegal dismissal – more so when it includes a prayer for reinstatement – has been held to be totally inconsistent with a charge of abandonment.[29] While it is true that Escudero's complaint prayed for separation pay in lieu of reinstatement, Tan Brothers loses sight of the fact, however, that it had the burden of proving its own allegation that Escudero had abandoned her employment in July 2003. As allegation is not evidence, the rule has always been to the effect that a party alleging a critical fact must support his allegation with substantial evidence[30] which has been construed to mean such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[31] Confronted with Escudero's assertion that she reported for work despite irregular payment of her salaries and was forced to stop doing so after her wages were not paid in May 2004, the record shows that Tan Brothers proffered nothing beyond bare allegations to prove that Escudero had abandoned her employment in July 2003.

It is, on the other hand, doctrinal that abandonment is a matter of intention[32] and cannot, for said reason, be lightly inferred, much less legally presumed from certain equivocal acts.[33] Viewed in the light of Escudero's persistence in reporting for work despite the irregular payment of her salaries starting July 2003, we find that her subsequent failure to do so as a consequence of Tan Brothers' non-payment of her salaries in May 2004 is hardly evincive of an intention to abandon her employment. Indeed, mere absence or failure to report for work, even after a notice to return work has been served, is not enough to amount to an abandonment of employment.[34]

Considering that a notice directing Escudero to return to work was not even issued in the premises, we find that the CA committed no reversible error in ruling out Tan Brother's defense of abandonment.

The same may be said of the CA's rejection of the employer's contention that the employee signified her intention to sever the parties' employer-employee relationship when she illegally appropriated for herself the corporation's typewriter and took its payrolls, vouchers and other material documents. Since unsubstantiated accusation, without more, is not synonymous with guilt,[35] the CA correctly brushed aside Escudero's supposed infraction which Tan Brothers reported to the barangay authorities of Seaside, Isabela City only on 6 September 2004 or after the filing of the complaint a quo. In order to terminate an employee's services for a just cause, moreover, it is essential that the two-notice requirement must be complied with by the employer, to wit: a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefor.[36] The requirement of these notices is not a mere technicality, but a requirement of due process to which every employee is entitled.[37]

Neither are we inclined to disturb the CA's finding that Escudero was constructively dismissed by Tan Brothers which, as employer, had the burden of proving that said employee was dismissed for a just and valid cause.[38] Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit.[39] The test is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances.[40] Much though Tan Brothers may now be inclined to disparage the same as mere alibis, the fact that Escudero was deprived of office space, was not given further work assignment and was not paid her salaries until she was left with no choice but stop reporting for work all combine to make out a clear case of constructive dismissal.

Having been constructively dismissed, Escudero was correctly found entitled to backwages and attorney's fees by the Labor Arbiter, the NLRC and the CA. Under Article 279 of the Labor Code, as amended, employees who have been illegally terminated from employment are entitled to the twin reliefs of reinstatement without loss of seniority rights and to the payment of full back wages[41] corresponding to the period from their illegal dismissal up to actual reinstatement.[42] Reinstatement is a restoration to the state from which one has been removed or separated,[43] while the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal.[44] Proper where reinstatement is not advisable or feasible as when antagonism already caused a severe strain in the relationship between the employer and the employee,[45] separation pay may also be awarded where, as here, reinstatement is no longer practical or in the best interest of the parties or when the employee decides not to be reinstated anymore.[46]

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 01028-MIN is AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Romulo V. Borja and Mario V. Lopez.

- [2] Rollo, pp. 9-19.
- [3] Id. at 18-19.
- [4] Id. at 71-72.
- [5] Id. at 72-74.
- [6] Id. at 71-77.
- [7] Id. at 79-82.
- [8] Id. at 83-86
- [9] Id. at 88-89.
- [10] Id. at 50.
- [11] Id. at 46-56.
- [12] Id. at 57-62.
- [13] Id. at 64-65.
- [14] Id. at 31-44.
- [15] Id. at 38-42.
- [16] DMA Shipping Philippines, Inc. v. Cabillar, 492 Phil. 631, 638 (2005).
- [17] Flourish Maritime Shipping v. Almanzor, G.R. No. 177948, 14 March 2008, 548 SCRA 712, 717.
- [18] Mame v. Court of Appeals, G.R. No. 167953, 4 April 2007, 520 SCRA 552, 531.
- [19] Crewlink, Inc. v. Teringtering, G.R. No. 166803, 11 October 2012, 684 SCRA 12, 19.
- [20] Calipay v. National Labor Relations Commission, G.R. No. 166411, 3 August 2010, 626 SCRA 409, 421.
- [21] Perez v. The Medical City General Hospital, 519 Phil. 129, 133 (2006).
- [22] DUP Sound Phils. v. Court of Appeals, G.R. 168317, 21 November, 2011, 660 SCRA 461, 470.
- [23] CRC Agricultural Trading v. National Labor Relations Commission, G.R. No. 177664, 23 December 2009, 609 SCRA 138,148.
- [24] Columbus Philippine Bus Corp. v. NLRC, 417 Phil. 81, 100 (2001).
- [25] MSMG-UWP v. Hon.Ramos, 383 Phil. 329, 372 (2000).
- [26] Henlin Panay Company v. National Labor Relations Commission, G.R. No. 180718, 23 October 2009, 604 SCRA 362, 369.
- [27] Rollo, pp. 39-42.
- [28] Pentagon Steel Corporation v. Court of Appeals, G.R. No. 174141, 26 June 2009, 591 SCRA 160, 173.
- [29] Chavez v. NLRC, 489 Phil. 444, 460 (2005).
- [30] De Paul/King Philip Customs Tailor v. NLRC, 364 Phil. 91, 102 (1999).

- [31] *Ingusan v. Court of Appeals*, 505 Phil. 518, 524 (2005).
- [32] *Macahilig v. National Labor Relations Commission*, G.R. No. 158095, 23 November 2007, 538 SCRA 375, 386.
- [33] *Garden of Memories Park v. National Labor Relations Commission*, G.R. No. 160278, 8 February 2012, 665 SCRA 293, 309.
- [34] *New Ever Marketing, Inc. v. Court of Appeals*, 501 Phil. 575, 586 (2005).
- [35] *Pepsi Cola Distributors of the Philippines v. National Labor Relations Commission*, 338 Phil. 773, 781 (1997).
- [36] *Mantle Trading Services, Inc. v. NLRC*, G.R. No. 166705, 28 July 2009, 594 SCRA 180, 190-191.
- [37] *CRC Agricultural Trading v. NLRC*, *supra* note 23 at 150.
- [38] *Suldao v. Cimech System Construction, Inc.*, 536 Phil. 976, 981 (2006).
- [39] *The University of Immaculate Conception v. National Labor Relations Commission*, G.R. No. 181146, 26 January 2011, 640 SCRA 608, 618-619.
- [40] *Philippine Veterans Bank v. National Labor Relations Commission*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 213.
- [41] *Henlin Panay Company v. National Labor Relations Commission*, *supra*, note 26 at 371.
- [42] *Valdez v. National Labor Relations Commission*, 349 Phil. 760, 768 (1998).
- [43] *DUP Sound Phils. v. Court of Appeals*, *supra* note 22 at 472.
- [44] *Chronicle Securities Corporation v. National Labor Relations Commission*, 486 Phil. 560, 570 (2004).
- [45] *Leopard Security Investigation Agency v. Quitoy*, G.R. No. 186344, 20 February 2013.
- [46] *Velasco v. National Labor Relations Commission*, 525 Phil. 749, 754 (2006).

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