

JOSAN, JPS, SANTIAGO CARGO MOVERS, AND MARY GRACE S. PARUNGAO, PETITIONERS, VS. EDUARDO RAMOS ADUNA, RESPONDENT.

G.R. No. 190794. February 22, 2012

Ponente: SERENO, J.

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SERENO, J.:

Before the Court is a Petition filed under Rule 45 of the Rules of Court, assailing the 21 October 2009 Decision and 16 December 2009 Resolution of the Court of Appeals (CA).[1] The Petition involves a Complaint for illegal dismissal and nonpayment of employment benefits filed by respondent Eduardo Ramos Aduna (Aduna) against petitioners JO-SAN Trucking Corporation, Santiago Cargo Movers, Inc., JPS Santiago Cargo Movers, Inc., and Mary Grace S. Parungao (Parungao).

Facts

Petitioners are engaged in the trucking business under the sole proprietorship of Parungao,[2] their president-manager. Sometime in January 2001, petitioners hired Aduna as a delivery truck driver. He was tasked to make deliveries of various ingredients used in the production of poultry feeds. His payment was on a per trip basis, the amount of which depended on the length of the trip or the distance to the point of destination.

The factual circumstances surrounding the case are contentious.

Petitioners narrate that on the morning of 5 December 2005, Parungao told Aduna to come to work later in the day to make deliveries. When he reported for work a little before 5 p.m. that afternoon, Parungao noticed that he was drunk. She then advised him not to make deliveries anymore on account of his inebriated condition. Allegedly, respondent reacted discourteously by hurling invectives at her. He purportedly uttered, “Hindi lang sa inyo makakapagtrabaho dahil maraming kompanya,” after which he threw out the keys of the vehicles assigned to him and stormed out of the office. On his way out, he met a co-employee, Raymond dela Cruz (Dela Cruz). The two had a confrontation within company premises, which eventually led to respondent’s punching Dela Cruz several times.

Aduna did not report for work until about 50 days from the date of the incident. On 24 January 2006, when he returned to the office, he allegedly informed a certain Maria Agnes del Castillo that he no longer wished to continue working with petitioners. He then purportedly asked for a certificate of employment, which he would use in applying for a new job. Thus, petitioners posit that they did not terminate him as it was actually respondent who had refused to work. He no longer worked for petitioners thereafter.

Respondent, on the other hand, denies being drunk when he went to work. According to him, he only had a bottle of beer early that day. He also rejects the allegation that he hurled invectives at Parungao, as he had never been instructed to cease carrying out his delivery assignments in the first place. He also denies punching Dela Cruz, explaining that they simply had a misunderstanding. Supposedly, Dela Cruz was just displeased with how the new

driver, whom Aduna had recommended, was being treated favorably by petitioners. Respondent then alludes to the police blotter of Dela Cruz, who only mentioned being elbowed by Aduna. Respondent then narrates that after the incident of 5 December 2005, he was told to “lie low” until further notice in order to set an example to other employees. Despite his objections, he eventually acceded to the instruction.

Thereafter, respondent claims that he was no longer given any delivery assignments and was even prevented from entering company premises. He argues that petitioner voluntarily issued to him a Certificate of Employment without his asking, and that he was told to look for work for the time being. He thus contends that he did not abandon his job. Consequently, he filed a Complaint for illegal dismissal and nonpayment of overtime, holiday, 13th month, and service incentive leave pays.

Findings of the Labor Arbiter

The labor arbiter (LA) ruled that there was no basis to hold petitioners liable for illegal dismissal. Indeed, he found that the confrontation between respondent and Dela Cruz, which happened within company premises, was tantamount to a just cause for dismissal. However, he also found that there was no evidence to show that respondent had been terminated verbally or in writing. The LA gave credence to the assertion of petitioner that it was Aduna who was no longer interested in returning to work; respondent was already contemplating finding another job, as evidenced by his request for the issuance of a certificate of employment. Consequently, the LA ruled that respondent’s failure to report for work may be considered abandonment, which in turn is a valid ground for dismissal.[3]

Findings of the National Labor Relations Commission

The National Labor Relations Commission (NLRC) reversed the LA’s finding and ruled that respondent had been illegally dismissed. According to the NLRC, there was no showing that petitioners exerted efforts to question the absences of respondent. They did not require him to return to work, which could have enabled them to determine with certainty whether he really wanted to cease working for them. The NLRC pronounced that it must be clearly established that there was deliberate and unjustified refusal on the part of the employee to return to work through a manifestation of a clear intention to abandon his employment.

Petitioners were found to have failed to discharge this burden. They relied heavily on the information allegedly given by their company secretary that Aduna was no longer interested in the job. The NLRC took note of the absence of an affidavit from the secretary confirming the actual statement relayed to her by respondent. On the contrary, the commission viewed the request for a certificate of employment as respondent’s way of ascertaining his actual status after he was not recalled for some time. The NLRC admitted as fact that petitioners told respondent to “lie low” and to wait for further notice; however, no such notice was given to him. He was simply eased out of his job. The Commission reasoned that it was difficult to believe that a worker would forgo his job simply by abandoning it, without any alternative source of income or prospect of another employment. Thus, according to the NLRC, the continued and prolonged unemployment was unreasonable, inconvenient, prejudicial to respondent, and can be equated with constructive dismissal.[4]

Findings of the Court of Appeals

The CA affirmed the Decision and the Resolution of the NLRC. It ruled that respondent’s failure to come to work for 50 days was not indicative of his intention to discontinue employment. According to the appellate court, he did not report for work, as he was told to “lie low” and to wait for further notice. It reasoned that, if indeed he had been absent for such a long period of time, it was implausible for petitioners not to even exert any effort to call his attention, considering that habitual absenteeism is a just cause for dismissal. Neither was there any order from

petitioners requiring him to return to work. It pointed out that a company is expected to call the attention of an employee to any undesirable act or omission within a reasonable time. Failure of petitioners to take any disciplinary action against respondent for his alleged absences undermined their claim that these absences were overt acts of abandonment.[5] The court also held that Aduna's request for a certificate of employment did not, ipso facto, equate with abandonment. The CA ruled that petitioners failed to establish that respondent had a clear intention to abandon his work. Consequently, it found that he had been illegally dismissed. The CA later on denied petitioners' Motion for Reconsideration. Hence this Petition for Review on Certiorari.

Issue

The sole issue in this case is whether respondent was illegally dismissed.

Discussion

We rule in the affirmative.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts, especially during times of hardship.[6] Thus, we have ruled in a series of cases that there are two elements that must concur in order for an act to constitute abandonment: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship.[7] The second element is the more determinative factor, which must be manifested by some overt acts.[8] Mere absence or failure to report for work does not, ipso facto, amount to abandonment of work.[9] To prove abandonment, the employer must show that the employee deliberately and unjustifiably refused to resume his employment without any intention of returning.[10]

The NLRC and the CA found that the true reason why respondent did not report for work for about 50 days was that he had been told by petitioners to "lie low." This is a finding of fact, which we shall no longer disturb. Thus, when respondent realized that he was no longer going to receive work assignments, he wasted no time in filing a case for illegal dismissal against petitioners. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work.[11] A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal.[12] The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.[13]

Respondent must therefore be deemed to have been constructively dismissed. There is constructive dismissal when continued employment is rendered impossible, unreasonable, or unlikely.[14] In this case, although Aduna agreed to "lie low" because of the incident, it became clear that petitioners no longer had the intention to give him future assignments. In fact, they already deemed the issuance of the Certificate of Employment as a sign of abandonment of work. The continued failure of petitioners to offer him a new assignment makes the former liable for constructive dismissal.[15] Clearly, the instruction to temporarily "lie low" was meant to be for a permanent cessation from work. With the absence of any proof of dire exigency that would justify the failure to give further assignments, the only logical conclusion is that respondent was constructively dismissed.[16]

In an illegal dismissal case, the onus probandi rests on the employer, who has to prove that the dismissal of an employee was for a valid cause. [17] Since petitioners based their defense on abandonment by respondent, it is likewise incumbent upon them, as employers, to prove that he clearly, voluntarily, and intentionally abandoned his work.[18] As previously discussed, it is clear from the evidence on record that petitioners failed to discharge this burden.[19] As we have consistently affirmed, if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter.[20] Accordingly, the finding of illegal dismissal must be upheld.[21]

Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to

reinstatement without loss of seniority rights and other privileges; to his full back wages, inclusive of allowances; and to other applicable benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.[22] However, in recognition of the strained relations between petitioners and respondent, the former are instead liable to give separation pay as found by the CA.

WHEREFORE the Petition is DENIED. The 21 October 2009 Decision and 16 December 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 108996 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Villarama,[**] Perez, and Reyes, JJ., concur..

[*] The case title indicated in the Petition filed before this Court was followed. However, a review of court records reveals that petitioners were also referred to as “JO-SAN trucking corporation / SANTIAGO cargo MOVERS, inc. / JPS SANTIAGO cargo MOVERS, inc., and mary grace s. parungao.” See respondent’s Position Paper, pp. 1-3; rollo, pp. 53-55.

[**] Designated as Acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1195 dated 15 February 2012.

[1] Both the Decision and the Resolution in CA-G.R. SP No. 108996 were penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose Catral Mendoza and Romeo F. Barza.

[2] Petition for Review on Certiorari, p. 2; rollo, p. 10. However, records are inconsistent as to the true form of the business organization of petitioner-entities. A perusal of respondent’s Position Paper, as quoted in the labor arbiter’s Decision, indicates that the entities are duly organized domestic corporations. It also mentioned that the business names “JO-SAN Trucking Corporation” and “JPS Santiago Cargo Movers, Inc.” are, in fact, the former or alternative names of the business entity “Santiago Cargo Movers, Inc.” (See respondent-complainant’s Position Paper, pp. 2-3; rollo, pp. 54-55).

[3] LA Decision, pp. 7-8; rollo, pp. 80-81.

[4] NLRC Decision, pp. 4-6; rollo, pp. 100-102.

[5] CA Decision, pp. 6-7; rollo, pp. 37-38.

[6] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506 (2003).

[7] *Icawat v. National Labor Relations Commission*, 389 Phil. 441 (2000).

[8] *Id.*

[9] *Samarca v. Arc-Men Industries, Inc.*, supra note 6.

[10] *Icawat v. National Labor Relations Commission*, supra note 7.

[11] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, 21 July 2008, 559 SCRA 110.

[12] *Icawat v. National Labor Relations Commission*, supra note 7.

[13] *Megaforce Security and Allied Services, Inc. v. Lactao*, supra note 11.

[14] *Philippine Wireless, Inc. (Pocketbell) v. NLRC*, 369 Phil. 907 (1999); *Ledesma & Co. v. National Labor Relations Commission*, 316 Phil. 80 (1995).

[15] Megaforce Security and Allied Services, Inc. v. Lactao, supra note 11.

[16] See Mobile Protective & Detective Agency v. Ompad, 497 Phil. 621 (2005).

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Megaforce Security and Allied Services, Inc. v. Lactao, supra note 11.

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