

**CARLOS VELASCO, IN HIS CAPACITY AS RECEIVER OF THE
BUSINESS UNDER THE NAME AND STYLE, “CENTRAL
ENGINEERING,” PETITIONER, VS. HON. AMADO G. INCIONG,
NATIONAL LABOR RELATIONS COMM...**

G.R. No. 50871. August 04, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

This petition for certiorari with preliminary injunction seeks, among others, to annul the proceedings in NLRC Case No. RB-IV-12722-77, entitled "George Mendoza vs. Central Engineering" for lack of jurisdiction.

The undisputed facts of the case are:

Private respondent George Mendoza is an Office Clerk[1] of the Central Engineering Shop (hereinafter, the Company), a machine shop under receivership because of a legal dispute over the ownership thereof, pending in the then Court of First Instance of Rizal, Branch V, Quezon City, docketed as Civil Case No. Q-20108. From 28 February 1977 to 5 March 1977, Mendoza did not report for work. Thus, on 8 March 1977, the Company, thru its receiver Carlos Velasco, filed a report with the Regional Office of the Department of Labor, Manila, charging Mendoza with abandonment.[2] On the other hand, on 23 March 1977, Mendoza opposed the Company's charge of abandonment, by filing, with the Department of Labor, a complaint against the Company for illegal dismissal and suspension.[3]

Meanwhile, in Civil Case No. Q-20108, upon motion of therein defendant Ely Chan Velasco, the trial court, on 9 May 1977, authorized said defendant "to designate [her] representative with authority to stay in the premises of the Central Engineering during office hours for the purpose of watching or overseeing the management and/or operation there-of by the duly appointed receiver." [4] And, pursuant there-to, respondent Mendoza was duly designated as the representative of said Ely Chan Velasco.

On 12 December 1977, as a consequence of the Company's charge of abandonment against respondent Mendoza, and the latter's complaint for illegal dismissal and suspension against the former, the Labor Arbiter, after hearing, rendered a decision in NLRC Case No. RB-IV-12772-77, ordering the Company to reinstate Mendoza but without backwages; [5] as a result, Mendoza appealed to the National Labor Relations Commission (NLRC) the portion of said decision which denied him backwages.

Meanwhile, on 1 January 1978, the Company ceased operating due to the impossibility of renewing its license; as a consequence, on 15 March 1978, the Company was leased to a certain Mr. Lorenzo Tan, with the subsequent approval of the trial court having jurisdiction over the Company's receiver-ship.

On 30 May 1978, the NLRC rendered a decision holding that the Labor Arbiter erred in not finding that Mendoza was illegally dismissed by the Company, and it ordered his reinstatement with full backwages; [6] whereupon, the Company appealed the case to the Secretary of Labor. [7] On 7 May 1979, the Deputy Minister of Labor,

herein respondent Hon. Amado G. Inciong, by authority of the Minister of Labor, issued an Order, this time, modifying the appealed NLRC decision. Said Order required the Company to pay Mendoza backwages, but only from 7 March 1977 up to 31 December 1977 when the Company stopped its operations, and separation pay, equivalent to one (1) month salary for every year of service.[8]

Hence, this Petition by the Company.

Petitioner contends that private respondent Mendoza was not dismissed;[9] that when it filed the report for abandonment on 18 March 1977, it acted in good faith and on the belief that he (Mendoza) was no longer interested in his job, that, consequently, it cannot be held responsible for illegally dismissing said private respondent. Likewise, petitioner alleges that the NLRC's finding that Mendoza was illegally dismissed on 7 March 1977 is "not supported by any scintilla of fact"[10] and is thus null and void.

The contentions are without merit.

In the first place, the procedure followed by petitioner in seeking a declaration from the Regional Office, Department of Labor to the effect that respondent Mendoza had abandoned his employment, was erroneous. Under the then applicable rules, an application for clearance to dismiss an employee was required to be filed with the Regional Office, Department of Labor, at least ten (10) days before the intended dismissal and accompanied by proof that a copy of the application had been served upon the employee concerned.[11] Said application could be opposed by the employee within ten (10) days from receipt of the copy of the application,[12] after which, a summary investigation was conducted by the Regional Director on whether to deny or certify the same.[13]

Where the ground for the dismissal of an employee constituted an unfair labor practice or it did not fall under any of the grounds enumerated under the law as just causes for termination, the application was denied by the Regional Director, Department of Labor.[14] However, the requirement of a prior clearance for dismissal allowed certain exceptions. Under such exceptions[15] the employer was merely required to submit a report of termination of an employee to the Regional Office.

The alleged abandonment of Mendoza cannot, however, be deemed a resignation from his job, and, therefore, requiring only a report to, instead of a clearance from, the Regional Office, Department of Labor.

But, even on the assumption that abandonment by the employee required only a report to, and not a clearance from, the Regional Office, Department of Labor, the evidence in this case does not support the petitioner's allegation of abandonment by Mendoza of his employment.

The petitioner calls attention to the findings of fact of the Labor Arbiter that respondent Mendoza "failed to report for work from 28 February to 5 March, 1977; that he attended the hearing in the City Court presided by Judge Gerino Tolentino on 4 March 1977, although he claims he was sick (tsn. p. 20, p. 22, 18 October 1977) [and]; that he also attended the pre-trial of Civil Case No. 20108, Florence Velasco Co. vs. Ely Chan Velasco, Branch IV, CFI of Rizal, on 7 March 1977." [16] In petitioner's view, these findings justified its (petitioner's) filing of a case of abandonment against respondent Mendoza and should not have been "ignored" [17] by public respondent Inciong in applying the law to the facts of the case.

Contrary to petitioner's arguments, the aforementioned facts were not ignored by public respondent Inciong. What militates against the petitioner's cause is its failure to refute the material facts, as found by the NLRC, that:

"x x x. On 7 March, [Respondent Mendoza also tried to report] for work to a certain Apolinar Martin, who appears to be the respondent's shop manager, but the latter, evidently due to superior instructions, refused to give him work, saying that he should see the receiver first, one Carlos Velasco x x x.

"Carlos Velasco was not around at the time, he did not visit the shop regularly, leaving the management thereof to Martin. The complainant was not able to see his (sic) for that reason. Martin, however, approached Mrs. Florence Velasco Co, who appears to wield real authority in the establishment, regarding the complainant's situa-tion, but she merely shook her head to indicate her negative reaction.

"The complainant returned the next day but, again, no work was given him; his presence was ignored. Again, he was not able to see Carlos Velasco, who was not around.

"Finally, in exasperation the complainant on [23][18] March 1977, addressed a letter to receiver Velasco, inquiring about his employment status. This letter was received by Martin. It was never answered."[19]

The Company's act of giving respondent Mendoza a "run-around", or denying him work in the course of his attempts to resume the same, after being absent for a reasonable period of time, constitutes illegal dismissal.

The treatment extended to respondent Mendoza by the petitioner, as found by the NLRC, negates the latter's claim that when it filed with the Department of Labor the report of abandonment against the former, it acted in good faith and on the belief that the former was no longer interested in his job.

Likewise, the law does not permit an employer to file a charge of abandonment against an employee who, without absenting himself for unjustifiable reasons, still desires to preserve the employer-employee relationship. To consti-tute abandonment, there must be absence from work and "deli-berate intent to discontinue one's employment without any intention of returning back." [20] Mere absence is not suffi-cient to give ground for abandonment. It must be accompanied by overt acts unerringly pointing to the fact that the emplo-yeer simply does not want to work anymore.[21]

In the case at bar, private respondent's immediate filing of a complaint for illegal dismissal, which essentially challenged the legality of petitioner's unilateral act of severing the employer-employee relationship or implied relief by way of reinstatement, or severance pay if the latter was no longer possible, controverts the Company's claim of abandonment. As this Court has consistently held in similar cases, "it would be illogical for the private respondent to abandon his work and then immediately file an action seeking his reinstatement." [22]

Neither can the finding of the Labor Arbiter that Mendoza attended the hearing in the City Court presided by Judge Gerino Tolentino on 4 March 1977, although Mendoza claims he was sick then, justify the illegal acts of the petitioner. Although, upon proof of malingering on the part of the employee, the situation would warrant reasonable adverse or disciplinary action against the absenting emplo-yeer, it did not provide a legal basis upon which the Company could file a case of abandonment against the offending employee. Unauthorized absence does not amount to gross neglect of duty or abandonment.[23] In the case at bar, malingering is even absent in view of the uncontradicted explanation of Mendoza that "he forced himself to make an appearance (in court) on that date, although he had not fully recovered from his sickness, because he (sic) case he was prosecuting would otherwise be dismissed." [24]

On the whole, the filing of the charge of abandonment only conspicuously showed the employer's attempt to give a color of validity to a unilateral act of severing the employer-employee relationship which the employee sought, on the other hand, to preserve.

Petitioner also contends that respondent Mendoza's acceptance of the task to stay in the premises of the Company during office hours for the purpose of watching or overseeing the management and/or operation thereof by the duly appointed receiver, constituted an acceptance of an "incompatible office or position" which ipso facto terminated his employment.[25] On this basis, petitioner submits that private respondent had really no intention to work and that in fact he had abandoned his former position.[26]

The Court finds this contention to be also without merit. It should be noted, in the first place, that respondent Mendoza accepted the task to act as "watcher" in the shop for Ely Chan Velasco, only after he was illegally dismissed by the petitioner. Secondly, there was also no incompatible office or position, to speak of, when respondent Mendoza accepted the function of a "watcher" in the shop.

Finally, petitioner challenges the jurisdiction of the respondent Deputy Minister of Labor in deciding appeals from the decision of the National Labor Relations Commission. It contends that, under the law, only the Minister of Labor can determine appeals from the National Labor Relations Commission.[27]

The contention is without merit.

The authority of Undersecretaries includes the performance of quasi-judicial duties delegated to them by law or the department heads. The Administrative Code provides:

"When a Department Secretary is unable to perform his duties owing to illness, absence, or other cause, or in a vacancy in the office, the respective Undersecretary, or the Undersecretary designated, as the case may be, shall temporarily perform the functions of said office."[28]

Construing a similar provision of law, the United States Supreme Court held that:

"Section 439 (Comp. St. sec. 667) provides that the Assistant Secretary of the Interior shall perform such duties in the Department of the Interior as shall be prescribed by the Secretary or may be required by law. The relator insists that the duties which may be assigned to the Assistant Secretary under that provision are administrative, not judicial, duties, and that consequently his approval of the disbarment order was extra official and void. We cannot agree with that construction, inasmuch as it reads into the statute language which Congress did not use to make manifest its legislative intention. The section says that the Assistant Secretary shall perform such duties, not such administrative duties, as the Secretary shall prescribe, and, having said that, it does not lie with the courts to legislate into the law a word which Congress carefully omitted. The clear intention of the section was to permit the Secretary to relieve himself of those duties of which in his judgment he could not give proper personal attention, and that purpose might well be defeated, in part at least, by the introduction of what would be nothing less than a judicial, if not an injudicious, amendment. Such legislation is in the interest of governmental efficiency, and its value should not be lightly impaired or its scope narrowed because of a mere conjecture that the lawmaker might not have meant what he said."[29]

WHEREFORE, the petition is DISMISSED. The temporary restraining order issued by the Court on 29 June 1979, restraining the enforcement of implementation of the Order dated 7 May 1979 issued by herein Deputy Minister of Labor in NLRC Case No. RB-IV-12772-77 is LIFTED. With Costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Sarmiento, JJ., concur.

[1] Rollo at 101

[2] Id.

[3] Id at 102

[4] Id at 104

[5] Id at 109

[6] Id at 115

[7] Under Art. 223, P.D. 442 as amended

[8] Rollo at 129

[9] Id at 164

[10] Id. at 165

[11] Sec. 3, Rule XIV, Rules & Regulations Implementing the Labor Code, promulgated on 16 February 1976

[12] Id., Sec. 4

[13] Id., Sec. 8

[14] Art. 283. Termination by employer. - An employer may terminate an employment without a definite period for any of the following just causes:

(a)

The closing or cessation of operation of the establishment or enterprise, or where the employer has to reduce his workforce by more than one-half (1/2) due to serious business reverses, unless the closing is for the purpose of circumventing the provision of this Chapter;

(b)

Serious misconduct or willful disobedience by the employee of the orders of his employer or representative in connection with his work;

(c)

Gross and habitual neglect by the employee of his duties;

(d)

Fraud or willful breach by the employee of the trust reposed in him by his employer or representative;

(e)

Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or representative; and

(f)

Other causes analogous to the foregoing.

[15] Sec. 11. When reports required. - Every employer shall submit a report to the Regional Office in accordance with the form prescribed by the Department on the following instances of termination of employment, suspension, layoff or shutdown which may be effected by the employer without prior clearance, within five (5) days thereafter:

(a)

All terminations of employment with a definite period if the separation of the employee is effected at the end of the stipulated period;

(b)

All dismissals, suspensions or layoffs of the employees with less than one (1) year of service;

(c)

All shutdowns or cessations of work or operations falling under the exceptional circumstances specified in Section 10 hereof;

(d)

All suspensions or layoffs which have been effected by the employer as a disciplinary measure and which will not ultimately lead to the dismissals or termination of employment of the employees affected thereby;

(e)

All resignations and retirements; and

(f)

All other terminations of employment, suspensions, layoffs, or shutdowns not otherwise specified in this and in the immediately preceding sections.

[16] Rollo at 112

[17] Id. at 167

[18] Id. at 112

[19] Id. at 116

[20] Capital Garment Corporation vs. Ople, 117 SCRA 473

[21] Flexo Manufacturing Corporation vs. National Labor Relations Commission, 135 SCRA 145; Penaflor vs. National Labor Relations Commission, 120 SCRA 68; Capital Garment Corporation vs. Ople, supra; Judric Canning Corporation vs. Inciong, 115 SCRA 887

[22] Flexo Manufacturing Corporation vs. National Labor Relations Commission, supra, Judric Canning Corporation vs. Inciong, supra

[23] Valladolid vs. Inciong, 121 SCRA 205

[24] Rollo at 117

[25] Id. at 165

[26] Id. at 167

[27] Id. at 10

[28] Administrative Code, Sec. 79, Par. 2

[29] Robertson v. Baff, 285 F. 911, p. 915

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