

**HERMINIO FLORES AND HERMINIA FLORES, PETITIONERS, VS.
FUNERARIA NUESTRO AND/OR FORTUNATO NUESTRO AND THE
NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.***G.R. No. 66890. April 15, 1988*

Ponente: YAP, J.

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In this petition for certiorari, petitioners seek to annul and set aside the decision of the National Labor Relations Commission (NLRC), dated December 6, 1983, dismissing their complaint for illegal dismissal but ordering respondents to pay them their living allowances from October 1980 until October 1982 when their employment was terminated. Petitioners pray that judgment be rendered ordering the respondents (1) to reinstate them to their former or equivalent positions, with full backwages from the time of their illegal dismissal up to their actual reinstatement, or if reinstatement should become impossible because of the strained relations between petitioners and respondent, to pay them separation pay; and (b) to pay petitioners their unpaid benefits provided for under all the labor standard laws invoked by them.

It appears from the record that petitioner spouses Herminio and Herminia Flores had worked for respondent Fortunato Nuestro in his funeral parlor known as Funeraria Nuestro since June, 1976, respectively, as helper-utility man and as bookkeeper, embalmer and cashier. On October 7, 1980, respondent Fortunato Nuestro registered the petitioner spouses with the Social Security System, as his employees with a monthly salary of P200.00 each. Thereafter, Herminio Flores was paid P750.00 a month, plus P200.00 monthly allowance, while Herminia's salary was increased to P500.00 a month. The petitioners were given living quarters right inside the compound of the funeral parlor.

On October 30, 1982, Herminio Flores and respondent Fortunato Nuestro had an altercation, during which the former was physically assaulted by the latter and suffered a punctured wound on the lower lip and an abrasion in the scapular region (L). Herminio was treated at the Bataan Provincial Hospital and subsequently, he filed an action for slight physical injuries against the respondent, which was docketed as Criminal Case No. 2249 of the Municipal Court of Pilar, Bataan. Respondent, however, claimed that he merely shoved the arm of Herminio when the latter pointed a finger at him and uttered abusive remarks against him. As a result of the incident and fearing for his safety, petitioner Herminio Flores, together with his family, was compelled to vacate his living quarters at the funeral parlor and had to seek protection from the Integrated National Police of Pilar, Bataan.

On November 15, 1982, petitioners filed a complaint against respondent for illegal dismissal, underpayment of living allowances, non-payment of five (5) days incentive leave and non-payment of overtime compensation. The respondent denied the existence of employer-employee relation with the petitioners and further alleged that in any event the petitioners had abandoned their work on October 30, 1982.

On May 23, 1983, Labor Arbiter Federico Bernardo rendered a decision finding that no employer-employee relationship existed between the parties and dismissing the complaint. He held that Herminio Flores was merely a

contractual worker paid on a piece-work basis, while Herminia Flores was a domestic helper; and that on October 30, 1982, they abandoned their work.

On appeal, the National Labor Relations Commission, while holding that an employer-employee relationship existed between the parties, found that the petitioners had abandoned their work, thus precluding them from seeking reinstatement with back wages. However, the Commission ordered respondent to pay the petitioners their living allowances from October 1980 until October 1982 when the employment relations were severed.

In finding the existence of an employer-employee relationship between respondent and petitioners, the NLRC committed no grave abuse of discretion. That the respondent had registered the petitioners with the Social Security System is proof that they were indeed his employees. The coverage of Social Security Law is predicated on the existence of an employer-employee relationship.[1]

On the issue of abandonment, however, we find the ruling of the NLRC that petitioners had abandoned their employment to be contrary to the evidence. To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning back.[2] The record shows that petitioners were only compelled to leave the premises, which they regarded as their home, when the respondent inflicted physical injuries upon petitioner Herminio Flores. Apparently, what they had given up was only their place of residence but not their jobs. The immediate filing of a complaint for illegal dismissal against respondent with a prayer for reinstatement shows that petitioners were not abandoning their work.[3] As aptly observed by the Solicitor General, to uphold the ruling of the respondent Commission that the petitioners abandoned their job "is to put a premium on the commission of a crime by an employer against an employee to force the latter to leave his employment so as to preclude said employee from seeking reinstatement with backwages."

Where there is a finding of illegal dismissal, the general principle is that an employee is entitled to reinstatement and to receive backwages from the date of his dismissal up to the time of his reinstatement. However, the circumstances in this case make the reinstatement of petitioners no longer feasible; any possible confrontation between the parties in view of their already strained relationship should be avoided. An award of six (6) months backwages based on their latest salary is a reasonable alternative to reinstatement under the circumstances.[4] As found by the respondent Commission, respondent should also pay the petitioners their living allowances from October 1980 until October 1982 when their employment relations were severed. As to petitioners' other money claims, we find no reason to disturb the Commission's ruling disallowing them for insufficiency of evidence.

WHEREFORE, the decision appealed from is modified, and respondent is hereby ordered to pay each petitioner 1) backwages equivalent to six (6) months pay, and 2) cost of living allowances from October 1980 until October 1982.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] *Roman Catholic Archbishop of Manila vs. Social Security Commission*, 1 SCRA 10; *Insular Life Assurance Co. Ltd. vs. Social Security Commission*, 3 SCRA 739; *Insular Lumber Company vs. SSS*, 7 SCRA 121; *Investment Planning Corp. of the Phil. vs. SSS*, 12 SCRA 924, *SSS vs. CA*, 30 SCRA 210.

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

[3] *Judric Canning Corporation vs. Inciong*, 115 SCRA 887; *Flexo Manufacturing Corp. vs. NLRC*, 135 SCRA 145; *Remerco Garments Manufacturing vs. Minister of Labor and Employment*, 135 SCRA 169.

[4] Fernando vs. Angat Labor Union, 5 SCRA 248.

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