

SHIN I INDUSTRIAL (PHIL.), PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND DANILO MARTINEZ, BIENVENIDO GAN, EDEN MARTINEZ, RUBY MANALIGOD AND JOEY LICUDINE, RESPONDE...*G.R. No. 74489. August 03, 1988*

Ponente: GANCAYCO, J.

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In the herein petition for certiorari assailing a decision of public respondent National Labor Relations Commission (NLRC) in Case No. NLRC-NCR 10-3587-84 dated January 17, 1986, the facts are as follows:

Private respondents were employees of the Kwong Wah Metal (Philippines), Inc. Sometime in May, 1984, a strike was staged by the employees of said corporation at its factory at Novaliches, Quezon City. Private respondents did not participate in the said strike. The operation of the corporation was completely paralyzed. On August 20, 1984, the corporation entered into a lease-purchase agreement with the petitioner Shin I Industrial (Phil.). The said agreement provided that the operation of said corporation, its factory, industries, its building and plant premises were to be taken over by petitioner starting September, 1984. The agreement also provided that petitioner had two (2) years, or from September 1, 1984 to September 1, 1986, within which to pay to the lessor-vendor-corporation the whole amount of the purchase price of the entire enterprise. Prior to the execution of said agreement, said corporation and petitioner entered into a compromise as regards Labor Case NS (Strike) 3-063-84 entitled *Magkakaisang Lakas Ng Manggagawa (UIF) Katipunan vs. Kwong Wah Metal* that was pending conciliation at the then Ministry of Labor.

Private respondents applied for work with the petitioner and as they were not among those who participated in the strike, petitioner readily accepted their services. They began working on September 29, 1984. After receiving their salaries at the end of the month, private respondents made representations for the increase of their wages but petitioner turned down their demands and instead dismissed them from service. Private respondents no longer reported back for duty. On October 9, 1984, they filed their complaint (Labor Case No. NLRC-NCR 10-3587-84) against petitioner and said corporation.

After the parties submitted their respective position papers and after the trial thereof, a decision was rendered by labor arbiter Julio F. Andres, Jr. on 26 July 1985, the dispositive part of which is as follows:

"WHEREFORE, respondents are hereby ordered to pay complainants jointly and severally, the following amounts for their basic pay, living allowance and incentive pay from the date they were dismissed up to the date of this award:

DANILO MARTINEZ P49,248.91

EDEN MARTINEZ P41,196.91

BIENVENIDO GAN.....P39,062.91

JOEY LICUDINE.....P37,237.75

RUBY MANALIGOD.....P37,237.75

plus actual damages of P5,000.00 each; moral damages in the amount of P50,000.00 to each of them, another P50,000 for exemplary damages to each of them and attorney's fees equivalent to 10% of the totality of this award." (P. 6, Rollo)

Petitioner appealed therefrom to public respondent NLRC which in due course rendered a decision on January 17, 1986 modifying the appealed decision by deleting the award of moral and exemplary damages. Hence, the herein petition where the primordial issue is whether or not petitioner can be held liable for the dismissal of private respondents.

Petitioner contends that the questioned decision of public respondent is contrary to law and the facts. It assails the findings that both companies were owned by the spouses Chang Lu Sheu-o and Chang Cheng Chin. Petitioner alleges that granting they were officers of the two corporations, this did not necessarily make them owners of both companies. To this effect, petitioner maintains that the names of said couple do not appear in the list of incorporators of Kwong Wah Corporation although it appears that Chang Lu Sheu-O is the treasurer of petitioner corporation. Considering that the two corporations have separate and distinct personalities, it is averred that public respondent NLRC committed a serious error in holding petitioner liable when it should be free of any liability.

The petition is devoid of merit. The public respondent found that private respondents were illegally dismissed by petitioner when they were verbally notified of their dismissal without prior notice after they inquired about their respective daily wages. Said findings of facts made by public respondent NLRC, which is supported by substantial evidence, cannot be disturbed in this proceeding.

Moreover, the alleged issue of whether petitioner corporation or Kwong Wah Corporation is owned by the same persons is of no material consequence. Since it has been found that petitioner re-employed private respondents and dismissed them illegally, then petitioner should be liable for the consequences thereof.

Neither is there any cogent basis for the theory of petitioner that private respondents simply abandoned their work and were not dismissed. Abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed from certain equivocal acts.[1] For abandonment to arise, there must be concurrence of the intention to abandon and some overt acts from which it may be inferred that the employee concerned has no more interest to work. These indications do not exist in the present case. On the contrary, what appears is that private respondents continued to work even during the strike, applied for re-employment by petitioner and filed the complaint for illegal dismissal when they were dismissed without previous notice.

The award to the private respondents in the resolution of January 17, 1986 of public respondent NLRC is correct except as to the actual damages of P3,000.00 for each of them which should be deleted.

WHEREFORE, with the above modification deleting the award of actual damages, the said resolution subject of this petition is hereby **AFFIRMED** in all other respects. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Grino-Aquino, and Medialdea, JJ., concur.

[1] *City of Manila v. Subido*, 17 SCRA 231; *Jorge v. Mayor*, 10 SCRA 331; and *East Asiatic Co. Ltd. v. CIR*, 40 SCRA 521.

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