

ASPHALT AND CEMENT PAVERS, INC., PETITIONER, VS. VICENTE LEOGARDO, JR., IN HIS OFFICIAL CAPACITY AS DEPUTY MINISTER OF LABOR, LORETO SAN JUAN AND IGNACIO VILLAFUERTE, RESPONDENTS.

G.R. No. 74563. June 20, 1988

Ponente: CORTES, J.

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CORTES, J.:

The instant petition seeks to reverse the order of the respondent Deputy Minister of Labor and Employment ruling as illegal the dismissal by the petitioner of two (2) of its employees.

The undisputed facts are as follows:

Private respondent Ignacio Villafuerte was employed by petitioner, a corporation engaged in the construction business, as a heavy equipment mechanic. On August 17, 1978, he filed an application for a leave of absence from August 16 to 31, 1978. His application was approved. During his leave he was contracted to overhaul a bulldozer for Super Structures, Inc., another construction company, on a "pakiao" basis. As he was not able to finish the overhaul of the bulldozer, he applied for and was granted on September 1, 1978 an extension of his leave of absence up to September 7, 1978. He failed to report for work on September 8, 1978. Thus, on September 12, 1978, petitioner wrote him a letter advising him that he had incurred absence without leave and giving him three (3) days to reply. He did not reply. On September 25, 1978, petitioner filed with the Ministry of Labor and Employment an application to terminate Villafuerte for abandonment of work.

On the other hand, private respondent Loreto San Juan was employed by petitioner as a heavy equipment operator. On April 14, 1978, he was allowed by petitioner to temporarily work for Super Structures, Inc. On August 29, 1978, he was advised by petitioner to report back to work on September 1, 1978 as his services were already needed. San Juan returned to work on September 1, 1978. However, he was absent without leave from September 12 to 18, 1978. On September 19, 1978, he went to petitioner to ask its president, Antonio B. Cruz, for permission to go on leave from September 20 to October 5, 1978. Although he was unable to see Cruz, he was advised by Florida Aguilar petitioner's office manager and accountant, that he could go on leave and assured that his application for leave would be approved. He was also advised to return on another day to claim his unpaid vacation leave pay. When he returned on September 25, 1978, Cruz informed him that he had been absent without leave since September 14, 1978. He explained that he could not be considered absent without leave because he had filed an application for a leave of absence on September 19, 1978. Cruz told him to return on October 2, 1978 to get the amount he was claiming. On September 29, 1978, petitioner filed an application to terminate San Juan for abandonment of work. Thus, when San Juan returned on October 2, 1978, he was informed by petitioner that he had been dismissed from his job because he had been absent without leave since September 14, 1978.

On October 3, 1978, private respondents Ignacio Villafuerte and Loreto San Juan filed with the Ministry of Labor and Employment a joint complaint against petitioner for illegal dismissal, unpaid wages, underpayment,

non-payment of overtime pay, holiday pay, premium pay and violation of P.D. No. 525.

Subsequently, petitioner discovered that Villafuerte had been employed by Super Structures, Inc. as a heavy equipment mechanic since September 16, 1978. A certification was issued by the Vice-President of Super Structures, Inc. to this effect upon request of petitioner.

The complaint against petitioner and the application to terminate private respondents were jointly heard by Director Francisco I. Estrella of the National Capital Region. After the filing of position papers and the submission of documentary evidence, Director Estrella issued an order, dated May 23, 1979, reinstating private respondents with full backwages and without the loss of seniority rights and benefits but dismissing the claims for unpaid wages and benefits.

Petitioner appealed to the Minister of Labor. On November 12, 1985, Deputy Minister Vicente Leogardo, Jr., "by authority of the Minister," issued the assailed order, dismissing the appeal and affirming the order of Director Estrella, but with the modification that the backwages shall be fixed for a period of three (3) years without qualification or deduction. Petitioner's motion for reconsideration was denied by Deputy Minister Leogardo in an order dated April 29, 1986.

On May 23, 1986, petitioner filed the instant petition for certiorari, praying for the reversal of the aforementioned orders of public respondent Leogardo.

The Court required the respondents to comment on the petition. The Solicitor General, in his comment, recommended the modification of the November 12, 1985 order of Deputy Minister Leogardo by ordering the reinstatement of private respondent San Juan to his previous position without loss of seniority rights with backwages for a period of three (3) years without qualification or deduction, but upholding the dismissal of private respondent Villafuerte as he had abandoned his work.

Private respondent San Juan filed his comment reiterating the Solicitor General's arguments favorable to him.

In its reply, petitioner, while concurring with the Solicitor General's view upholding the dismissal of private respondent Villafuerte, nevertheless argued that private respondent San Juan's dismissal was legal as the latter had also abandoned his work.

After the parties had submitted their respective memoranda, the case was submitted for decision. No comment or memorandum was filed by private respondent Villafuerte.

The Court agrees with petitioner and the Solicitor General that, indeed, Ignacio Villafuerte had abandoned his job when he went on absence without leave and was employed by Super Structures, Inc. on September 16, 1978. Thus, petitioner was justified in terminating his employment.

However, as correctly contended by the Solicitor General, the case of Loreto San Juan should be distinguished and treated differently from that of Ignacio Villafuerte, who had clearly manifested his intention to abandon his job in favor of employment with Super Structures, Inc. for a higher salary.

First of all, no evidence was presented to controvert San Juan's claim that he was verbally authorized by petitioner's office manager to go on leave from September 20 to October 5, 1978. He was not given written notice that he had incurred absence without leave, unlike Villafuerte who was given written notice to that effect and required to explain his absence.

More importantly, while petitioner presented evidence to prove that Villafuerte had been employed by Super Structures, Inc. since September 16, 1978, it failed to present any evidence to show that San Juan was working for another employer, although it alleged that San Juan was also working with Super Structures, Inc.

Finally, the fact that San Juan filed his complaint the day after he was informed that he was dismissed negates the claim that he had abandoned his work. It is a recognized principle that abandonment of work by an employee is inconsistent with the immediate filing of a complaint for illegal dismissal for it is illogical for an employee to abandon his work and then immediately seek reinstatement [Judric Canning Corp. v. Inciong, G.R. No. L-51494, August 19, 1982, 115 SCRA 887; Flexo Manufacturing Corp. v. NLRC, G.R. No. L-55971, February 28, 1985, 135 SCRA 145; Remerco Garments Manufacturing v. Minister of Labor and Employment, G.R. Nos. L-56176-77, February 28, 1985, 135 SCRA 167].

The burden of proving that an employee had abandoned his job rests upon the employer seeking to terminate the employee's services. It is a basic principle in termination cases that the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would mean that the dismissal is not justified (Polymedic General Hospital v. NLRC, G.R. No. 64190, January 31, 1985, 134 SCRA 420). This is consonant with the guarantee of security of tenure in the Constitution [Art. XIII, Sec. 3], as elaborated in the Labor Code:

Art. 280. Security of tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his backwages computed from the time his compensation was withheld up to the time of his reinstatement.

In the case of San Juan, petitioner failed to prove just cause for his dismissal. In fact, it failed to present any evidence that would support a finding of abandonment of work. Thus, the Court would have no basis for a judgment sustaining San Juan's dismissal. The Court cannot render judgment on the basis of speculation.

The Court has carefully gone over what petitioner calls "the undisputed facts of the case" and it is unconvinced that said facts "point to an abandonment of work on the part of respondent San Juan."

For abandonment to constitute a valid cause for termination of employment, there must be a deliberate unjustified refusal of the employee to resume his employment. This refusal must be clearly shown. Mere absence is not sufficient; it must be accompanied by overt acts pointing to the fact that the employee simply does not want to work anymore. [Flexo Manufacturing Corp. v. NLRC, G.R. No. 56971, February 28, 1985, 135 SCRA 145, citing Penaflor v. NLRC, G.R. No. 61247, January 17, 1983, 120 SCRA 68; Capital Garment Corp. v. Ople, G.R. No. 53627, September 30, 1982, 117 SCRA 473; Judric Canning Corp. v. Inciong, supra].

WHEREFORE, in view of the foregoing, the assailed order of public respondent Deputy Minister Vicente Leogardo, Jr., dated November 12, 1985, is hereby SET ASIDE, and judgment is rendered as follows:

(1) Petitioner Asphalt and Cement Pavers, Inc. is ordered to reinstate private respondent Loreto San Juan to his previous position without loss of seniority rights with backwages for a period of three (3) years without qualification or deduction. Should reinstatement no longer be feasible, petitioner is ordered to pay, in addition to backwages, separation pay as provided by law.

(2) The dismissal of private respondent Ignacio Villafuerte by petitioner is upheld.

This decision is immediately executory.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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