

SOLID ENGINEERING & MACHINE WORKS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND LUIS LOPEZ, RESPONDENTS.

G.R. No. 79496. November 19, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

In its decision dated April 3, 1987, the National Labor Relations Commission affirmed with modification the decision of Labor Arbiter Apolonio Lomabao, Jr. dated February 12, 1986, and commanded petitioner Solid Engineering & Machine Works to reinstate an employee it had dismissed, Luis Lopez, to his former position without loss of seniority rights and pay him back wages equivalent to one year as well as moral and exemplary damages. In so ruling, however, both the Commission and the Arbiter unaccountably ignored and disregarded facts established by the employer and never rebutted by Lopez and consequently, so gravely abused their discretion as to call for the issuance by this Court of the corrective writ of certiorari.

Since November, 1973, Luis Lopez had been employed in Solid Engineering & Machine Works (hereafter, simply SOLID) as field representative and salesman, supervising the firm's clients' and customers' job orders. He went on approved leave of absence from August 1 to 31, 1984. In his application for leave, Lopez stated as reason therefor: "medical check-up & complete rest." [1]

SOLID shortly discovered that during his leave, Lopez sought employment in and was actually hired on August 16, 1984 by a competitor company, Asian Engine Rebuilders, Inc.; that the latter duly reported Lopez to the Social Security System for coverage as its employee on August 27, 1984; [2] that Lopez obtained printed calling cards of his new employer, wrote his name thereon to show his connection with Asian Engine Rebuilders, Inc. and distributed them to different persons; [3] and that Lopez thereafter "pirated" customers or clients of SOLID, inducing and causing them to transfer their business to Asian Engine Rebuilders, Inc., his new employer. [4]

It was on account of the foregoing, as well as Lopez's failure to report for work despite expiration of his leave on August 31, 1984, [5] that on September 5, 1984, SOLID filed with the Ministry of Labor and Employment an application for clearance to terminate Lopez's employment effective on September 4, 1984 by reason of abandonment. On the same day, SOLID also sent some of its clients a letter informing them that Lopez had ceased to be connected with it since "August 1, 1984" and that SOLID would not thereafter accept or honor any transactions entered into by Lopez in his behalf. [6]

The fact is that no word was received by SOLID from Lopez from August 31, 1984, when his leave expired, until sometime in the latter part of October, 1984, at which time SOLID received a registered letter from Lopez's counsel, Atty. Macario C. Ofilada, Jr., dated October 22, 1984. It seems that Lopez was somehow able to get hold of one of the letters sent out by SOLID to its customers advising them of the termination of Lopez's employment, supra, that sent to and received by "CRUZZETTE MOTOR WORKS;" and that Lopez referred this letter and other documents to Atty. Ofilada with the request that the latter take action in respect of what Lopez evidently

considered his illegal dismissal from work. In that letter of October 22, 1984, Ofilada adverted to SOLID's communication of September 5, 1984 to "CRUZZETTE MOTOR WORKS" in which the latter was advised "that subject employee is no longer connected with ** (SOLID) since August 1, 1984 (albeit) without any clearance from the Ministry of Labor which ** (was) only made on September 5, 1984, and warned that unless there were some satisfactory settlement, he would "initiate the remedies afforded by law to protect the interest of ** (his) client." [7]

To this letter SOLID's counsel, Atty. Pedro M. Caringal, replied by letter dated November 7, 1984. [8] He pointed out that

1) the reference to August 1, 1984 as the date of Lopez' cessation of connection with SOLID was a "typographical error" and should correctly read, September 1, 1984;

2) Lopez "had not been or terminated from employment" but "had abandoned his job;"

3) "before the expiration of ** his leave of absence, Mr. Lopez sought employment at Asian Engine Rebuilders, Inc., and ** was employed thereat since 16 August 1984 ** (and) even showed and gave his new calling card to one of ** (SOLID's) employees;

4) to "make the matters worst, he even convinced other customers/clients of Solid Engineering to transfer their job orders to Asian Engine Rebuilders, Inc.;

5) these notwithstanding, SOLID "still waited for ** (Lopez) to report for work after his leave of absence ** (but when the latter) failed to report for work, the Ministry of Labor was informed that he had abandoned his job."

In April, 1985 Lopez filed with the Labor Arbiters' Office a complaint for illegal dismissal against SOLID. After due proceedings, the Labor Arbiter rendered judgment on October 4, 1985 ordering SOLID and its general manager, Joaquin G. Bonifacio, "to reinstate complainant with full backwages without loss of seniority rights and benefits and to pay him P20,000.00 moral damages and P5,000.00 exemplary damages." This judgment was affirmed by the National Labor Relations Commission in its Decision of April 3, 1987, modifying it by reducing the back wages to one year and the moral damages to P10,000.00. [9]

As intimated in this opinion's opening paragraph, SOLID presented evidence tending to establish the facts relied upon by it to demonstrate its claim that Lopez had abandoned his work. These facts were detailed in its position paper, verified by its General Manager, Joaquin Bonifacio, [10] and were substantiated by the documents appended to said position paper, to wit: (1) copy of SOLID's application filed on September 5, 1984 with the Ministry of Labor for clearance to terminate Lopez's services (Annex 1 [the same as Lopez's Annex B]); (2) copy of Lopez's approved application for vacation leave (Annex 2 [the same as Lopez's Annex A]); (3) copy of the report filed on August 27, 1984 with the Social Security System by Asian Engine Rebuilders, Inc. for coverage of its new employees under the Social Security Act, including "Luis R. Lopez," therein listed as "salesman" with a salary of "P1,800.00 per mo." (Annex 3); (4) a copy of one of SOLID's letters to its customers dated September 5, 1984, advising of the termination of Lopez's connection, that sent to "HANDOG Marketing" (Annex 4); (5) the affidavit of Joaquin G. Bonifacio specifying Lopez's acts of abandonment of his work at SOLID (Annex 5); (6) a copy of one of the printed calling cards of Asian Engine Rebuilders, Inc. on which is written the name, "Luis R. Lopez" (Annex 3-A); and (7) photocopies of the "blank and unfilled" time card and pay envelop of Lopez corresponding to September, 1984 (Annexes 6 and 7). Said facts were also alleged in the letter of SOLID's counsel, dated November 7, 1984, in reply to the letter of Lopez's attorney dated October 22, 1984 (a copy of which was attached by Lopez to his position paper, marked as Annex D), supra.

As regards these facts, the record discloses no categorical denial or countervailing proof presented by Lopez. As

already pointed out, Lopez never bothered to deny the allegation that he had abandoned his job contained in the letter dated November 7, 1984 addressed to his lawyer by SOLID's own attorney (Annex D). His position paper does not deal with the matter of abandonment at all; all that he says about it is that he "was surprised why respondent terminated his services, as in fact he filed his vacation leave." After receiving a copy of the respondent's position paper and its annexes -- where the matter of his abandonment of his job with SOLID -- was reiterated with more detailed substantiation, he made no attempt to reply thereto or present contrary evidence at any time thereafter. In fine, no direct allegation was ever made and no proof of any kind whatsoever ever adduced by Lopez, to contradict the evidence that he had applied with and been hired by Asian Engine Rebuilders, Inc. as a salesman; that Asian Engine Rebuilders, Inc., is a competitor of SOLID, and had reported him as one of its new employees to the Social Security System; that he had tried to divert business from SOLID to his new employer, Asian Engine Rebuilders, Inc., and had used the printed calling cards of his new employer; and that he had never reported back for work to SOLID after the expiration of his vacation leave on August 31, 1984. Lopez simply closed his eyes to these proofs on record. He completely ignored the facts thereby established, as if they were non-existent. He merely insisted that there was no reason for SOLID to consider him to have abandoned his work since "in fact he filed his vacation leave."

The trouble is, this was also what the Arbiter and the respondent Commission did: close their eyes to the evidence and to the facts thereby demonstrated. Arbiter Apolinario N. Lomabao's Decision dated February 12, 1986 completely disregarded the evidence presented by SOLID without indicating in any manner whatsoever why the evidence should be so discarded. Indeed, Arbiter Lomabao concedes that Lopez did obtain "subsequent employment," the reference being unmistakably to his job in Asian Engine Rebuilders, Inc. This he however glosses over, and opted to base his ultimate conclusions solely on the typographical error in SOLID's letters to its customers dated September 5, 1984, viz.:

"* * we find complainant to have been dismissed as of August 1, 1984 vis-a-vis the approval of his vacation leave which was to start August 1, 1984 up to August 31, 1984. The approval is admitted by respondent firm in its letter to complainant dated November 7, 1984. In respondent firms' notice to Cruzette Motor Works dated September 5, 1984, respondent informed the latter that complainant was no longer connected with the respondent firm effective August 1, 1984. Also in another letter dated September 5, 1984, addressed to Handog Marketing (Annex 'A' respondent's position paper) respondent firm categorically stated:

'We would like to inform you that MR. LUIS LOPEZ is no longer connected with us since August 1, 1984 (underscoring ours)'

Complainant with these pieces of evidence unmistakably and clearly show the intention of respondents to terminate complainant's services at the start of his vacation leave. Respondents cannot claim the indication of the date, August 1, 1984 was a typographical error considering that respondents stated the same date in two separate letters addressed to its clients. . * *. Even granting that the effectivity of complainant's termination was September 4, 1985, after his leave expired, this we cannot give credence, complainant having asserted vehemently that he returned to work immediately upon the expiration of his leave but was not accepted anymore."

The foregoing postulation, it would appear, made but scant impression on the NLRC; for even as it upheld the Arbiter's finding of illegal dismissal, the Commission did not so much as allude to the notices in question, even in passing, much less attribute any evidentiary significance to their dating of Lopez' severance on August 1, 1984 which, as was never denied, merely marked the start of the latter's approved 30-day leave of absence. Doubtless it saw what seemed to have been lost on the Arbiter -- that if it had been petitioner's intention to dismiss Lopez without cause, it would not have been so inept as to commit the gaffe of approving his leave of absence and then charging him with abandoning his job at the very start of his approved leave during which he had every excuse for

not reporting for work.

But for its part, the NLRC does no better than the Arbiter in sustaining the finding that Lopez was illegally dismissed on nothing more concrete or factual than that it would be "surprising" and "unnatural" for him to abandon his job of more than ten (10) years unless he had been dismissed by his employer. Surprising or unnatural it might be; the fact is that all the evidence there is unerringly points to the conclusion that Lopez did voluntarily give up his employment with petitioner in order to accept another that he must have considered more suitable or better-paying. As already observed, such evidence: that his name was submitted for social security coverage as an employee of Asian Engine Rebuilders, Inc. on August 27, 1984 when to all intents and purposes he was still on vacation leave from his job with petitioner; his use and distribution of calling cards indicating his connection with Asian Engine Rebuilders; his successful attempts to wean clients and customers away from his old employer and to his new one, being uncontroverted, proves petitioner's claim of abandonment by default. Additionally, it shows breach of trust on the part of Lopez, which is also just cause for his separation.

It was indubitably a grave abuse of discretion on the part of the NLRC to ignore and disregard the cumulative effect and implications of evidence thus allowed to go without denial or refutation and, in the face of such evidence, to conclude that private respondent was illegally dismissed upon the tenuous assumption that it would have been unusual for him to give up of his own accord a job of ten years' standing. Certiorari thus clearly lies to correct such abuse, the respect and affirmance that findings of fact of said Commission ordinarily merit notwithstanding.

WHEREFORE, the assailed Decision of the National Labor Relations Commission is REVERSED and SET ASIDE. Private respondent Luis Lopez having given just cause therefor, petitioner could, as it did, terminate his employment, legally and without incurring any liability whatsoever therefor. No pronouncement as to costs.

SO ORDERED.

Cruz, Feliciano, Griño-Aquino, and Medialdea, JJ., concur.

[1] Original Record: Annex A, Complainant's Position Paper dated May 18, 1985; Annex 2, Respondent's Position Paper dated Dec. 30, 1985

[2] Id., Respondent's verified Position Paper of Dec. 30, 1985, Annex 3

[3] Id., id., p. 3 and Annex 3-A thereof

[4] Id., id., Annex 5: Affidavit of Joaquin G. Bonifacio, SOLID'S General Manager

[5] Id., id., p. 4 and Annexes 6 and 7

[6] Id., id., Annex 4

[7] Id., Complainant's Position Paper: Annex C

[8] Id., id., Annex D

[9] Rollo, pp. 28-32

[10] Original record, pp. 27-32

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