

HUA BEE SHIRT FACTORY AND/OR CHAN MAN LIN, PETITIONERS, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) (FIRST DIVISION) AND CELIA OCAMPO, RESPONDENTS.

G.R. No. 80389, June 18, 1990

Ponente: PARAS, J.

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PARAS, J.:

This petition seeks to set aside the decision[1] of the National Labor Relations Commission (NLRC) dated October 16, 1987 which is alleged to have been issued with grave abuse of discretion. The decision of the NLRC reversed the decision[2] of the Labor Arbiter dated May 30, 1985 which dismissed private respondent's complaint for illegal dismissal.

The records disclose that private respondent Celia Ocampo was employed as high speed sewer of petitioners on a piece work basis in 1978 up to her alleged illegal dismissal on October 15, 1984. In her position paper submitted before the Labor Arbiter, she alleged that petitioner suspected her of leading in the formation of a union in the company which caused her outright dismissal. Petitioner, however, contends that respondent was not dismissed from work but following their disagreement in the charge of piece rate scale, she refused to report for work.

The Labor Arbiter, in his decision, stated that during the March 4, 1985 hearing, the company, thru Atty. Vitug, categorically informed complainant Ocampo that she was never dismissed from her work, and she was informed that the company needs her services and she can report for work anytime. Complainant Ocampo, however, categorically turned down the offer. Further, complainant was allegedly guilty of abandonment. The complaint was therefore dismissed.

On appeal by respondent Ocampo to respondent NLRC, the latter reversed the labor arbiter's decision, ruling in part:

"After a careful consideration of allegations and arguments advanced by the parties, we disagree with the assailed decision. Complainant's alleged refusal to report back for work while being offered reinstatement by respondent can not be equated as abandonment. It is believed that the offer was not strongly enforced or could it be an offer without manifest good faith on the part of respondent that reinstatement did not materialize. It is a settled rule that abandonment requires deliberate unjustified refusal to resume employment or a clear showing that the worker does not clearly intend to report for work. The immediate and vigorous objection to her dismissal as shown by the filing of the complaint two (2) days after her alleged dismissal negates any color of abandonment. (*Flexo Mfg. Corp. vs. NLRC*, 135 SCRA 145) At any rate, considering respondent is willing to re-employ complainants, it is believed to be the most reasonable and equitable solution to the issue at bar, with payment of six (6) months backwages computed at the prevailing statutory rate there being no record of her average daily wage." (p. 2, NLRC Dec.; p. 8, Rollo)

Hence, this petition. The sole issue is whether the award of six months backwages is proper. The answer is in the affirmative.

Had private respondent really abandoned her work, petitioners should have charged her with abandonment. Further, it appearing that the case for illegal dismissal was filed on October 17, 1984 or two days after her dismissal, this fact negates petitioner's allegation that she did not report for work due to the new piece rates. Besides abandonment by the private respondent was never proved by petitioners.

The alleged refusal of private respondent to report for work at the hearing on March 4, 1985, is not substantiated by the records of the case. No hearing was held on that day. Although the parties were there, the resetting of the hearing was the only action made. The labor arbiter's conclusion was merely based on the position papers submitted.

Likewise for failure of petitioners to serve notice of dismissal on private respondent, We consider the same as constituting illegal dismissal, a ground for an employee to be entitled to receive his backwages.

PREMISES CONSIDERED, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

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

[1] Penned by Commissioner Rosario G. Encarnacion and concurred in by Presiding Commissioner Edna Bonto-Perez and Commissioner Conrado B. Maglaya.

[2] Penned by Labor Arbiter Conrado O. Lasquite.

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