

NEW IMUS LUMBER AND/OR FERNANDO AMBIO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ZOSIMO SUNGA, CARLITO SAMBAT, RESPONDENTS.*G.R. No. 83631. April 30, 1993*

Ponente: ROMERO, J.

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This petition for certiorari with a prayer for preliminary injunction seeks to annul and set aside the April 29, 1988 decision of the Second Division of the National Labor Relations Commission (NLRC) finding that Carlito S. Sambat had been illegally dismissed by the New Imus Lumber and therefore he should be reinstated with backwages, and that Zosimo Sunga, who had abandoned his job, should be paid separation pay (NLRC Case No. RB-IV-11-4979-86).

New Imus Lumber, managed by Fernando Ambio, is a retail store dealing in lumber in Bantayan, Imus, Cavite. It employed Sambat on January 15, 1980 and Sunga on June 14, 1980. For the work they rendered in the store for six and a half days a week, Sambat and Sunga were provided with board and lodging for which reasonable amounts were deducted from their salaries. Sambat was paid fifty pesos (P50.00) a day while Sunga received forty-eight pesos (P48.00) a day, inclusive of allowances.[1]

Alleging that both employees had abandoned their jobs, Fernando Ambio, on September 4, 1984, reported to the Director of the Bureau of Working Conditions of the then Ministry of Labor and Employment (MOLE) that Zosimo Sunga had not reported for work (AWOL) since August 15, 1984. On June 13, 1986, Ambio made the same report stating that Sambat had also been absent without leave starting May 13, 1986.[2]

However, on June 26, 1986, Sambat and Sunga filed with the Arbitration Branch of the NLRC in Manila a complaint for illegal dismissal, underpayment of wages and nonpayment of the emergency cost of living allowance and the 13th month pay (NLRC–NCR Case No. 6-2499-86).[3] In due course, Executive Labor Arbiter Pastor I. Alvarez rendered a decision finding that the New Imus Lumber had illegally dismissed Sunga and Sambat and ordering said employer to reinstate Sunga and Sambat with backwages "corresponding to six (6) months without deduction and qualifications" and to pay their wage differential for the years 1980, 1981 and 1982, and dismissing for lack of merit the rest of the money claims raised by Sunga and Sambat.[4]

The New Imus Lumber appealed to the NLRC. In its decision of April 29, 1988, the Second Division of the NLRC, taking note of the fact that it took Sunga two years from his dismissal to file the complaint, found that Sunga had abandoned his job. It also held that the said two-year period indicated Sunga's lack of intention to resume his employment with the New Imus Lumber. However, the NLRC ruled that Sunga should be given separation pay due to New Imus Lumber's non-compliance with the provision of Batas Pambansa Blg. 130 prescribing a 30-day written notice to the employee stating therein the grounds for his dismissal.

With regard to Sambat, the NLRC held that since he questioned his dismissal about two months after he was reported by his employer as being AWOL, and there being no evidence of a clear intent to relinquish his

employment, the presumption of illegal dismissal should prevail. Finding that the award of wage differentials for 1980, 1981 and 1982 had been extinguished by prescription, the NLRC disposed of the case thus:

"WHEREFORE, the decision appealed from is hereby MODIFIED, ordering respondent to reinstate complainant Carlito Sambat to his former position without loss of seniority rights and privileges and with full backwages from the date of dismissal up to his actual reinstatement. Respondent is further ordered to pay complainant Zosimo Sunga separation pay at the rate of one (1) month salary for every year of service.

All other claims are dismissed for lack of merit.

SO ORDERED."[5]

Hence, New Imus Lumber instituted the instant petition for certiorari contending in the main that the NLRC gravely abused its discretion in reinstating Sambat with backwages and in granting separation pay to Sunga. Asserting that both Sambat and Sunga had abandoned their jobs to its prejudice, petitioner insists that it "showed good faith when it reported the abandonment of private respondents of their work to the Department of Labor and Employment." [6] Petitioner also questions the award of full backwages to Sambat when the Labor Arbiter merely gave him six months' backwages.

At the outset, it should be emphasized that the issue of whether private respondents abandoned their jobs, being a factual one, this Court may not exercise jurisdiction. Findings of fact of quasi-judicial agencies like the NLRC which have acquired expertise in the specific matters entrusted to their jurisdiction are accorded by this Court, not only respect but finality, if they are supported by substantial evidence. [7] Worth quoting is the common rationale of the decisions of ironically both the Labor Arbiter and the NLRC which states:

"On the issue of illegal dismissal the defense is that complainants herein abandoned their job. From our appreciation of the facts on record, we find it difficult to believe that complainants abandoned their job. It appears that at the time they allegedly abandoned their job they were already well-paid and do have sleeping quarters and meals. After working for some five (5) years with the company, complainants have accordingly received a higher pay than their early employment with respondents. They have gained tenure in employment and it would be unreasonable for them to give up their employment. Moreover, in several decisions of this forum and the High Tribunal, the ruling is that when there is an intention to return of the workers to their employment, as in this case which is manifested by the filing of a case praying for reinstatement, then abandonment must necessarily (sic) fail. Otherwise stated, the intention to return to his former employment negates the allegation that the employee abandoned his job." [8]

While the Labor Arbiter appears to have based his "factual findings" on inferences or what may be akin to circumstantial evidence and since he apparently is referring to Sunga alone who had been with the petitioner for almost five years, the Court finds no reason to charge him and, to a certain extent, the NLRC, with grave abuse of discretion in arriving at their assailed decisions. In the first place, petitioner itself admits in the instant petition that it has indeed dismissed private respondents. Its assertion that the dismissal was in good faith because it reported the alleged "abandonment" with the MOLE [9] cannot change the fact that private respondents had been involuntarily relieved of their jobs. It is interesting to note that the two reports to the MOLE similarly state that Sunga and Sambat had not been reporting for work. Such an ambiguous statement does not necessarily mean that private respondents had in fact abandoned their employment.

Secondly, petitioner's insistence that private respondents abandoned their jobs is totally unsubstantiated by evidence. Its allegations before this Court and even in the quasi-judicial bodies below that one of the private respondents had left his job because he "got married to a woman with means and operated a tricycle" while the other was "able to find another job" [10] was hardly proved. It is to be borne in mind that in termination cases, the burden of proving just and valid cause for dismissing an employee rests on the employer and his failure to do so

would result in a finding that the dismissal is unjustified.[11]

In this case, petitioner not only abdicated its duty to prove abandonment but, through the acts of its counsel, manifested that it was taking for granted the proceedings below. Thus, the Labor Arbiter states in his decision that the presentation of the private respondents' witnesses was made ex?parte in view of the nonappearance of counsel for petitioner. Even after he had been ordered to cross-examine private respondents' witnesses by the Labor Arbiter, still, counsel for petitioner manifested that he wanted to "forego" the same; thus, petitioner submitted only a memorandum.[12] That evidence to support an allegation of abandonment is imperative need not be belabored. For abandonment to constitute a valid cause for termination of employment, there should be proof of a deliberate unjustified refusal of the employee to resume his employment.[13] Proof of intention to abandon must concur with evidence of some overt acts from which it may be inferred that the employee has no more interest in working.[14] Moreover, in this case, instead of a mere report to the MOLE of private respondents' failure to report to work, petitioner could have directly charged private respondents with abandonment of work.[15]

The fact that private respondents filed a complaint for illegal dismissal is proof enough of their desire to return to work, thus negating the petitioner's charge of abandonment.[16]

We, therefore, agree with the Labor Arbiter that private respondents had been illegally dismissed by the petitioner. Accordingly, there is ample justification in awarding them the twin remedies of reinstatement and backwages. The latter remedy should, however, be limited to only three years from the time of the illegal dismissal.[17]

We cannot write *finis* to this decision without a word about the separation pay awarded by the NLRC to Sunga. The separation pay was predicated on two grounds: (1) the two-year period which Sunga allowed to lapse before he filed the complaint for illegal dismissal which indicated his lack of intention to resume employment, and (2) petitioner's non-compliance with the mandate of Batas Pambansa Blg. 130 prescribing a 30-day notice of termination of employment.

For lack of any other proof that private respondent Sunga did not intend to return to work, the two-year period cannot be a gauge of such intention, much less is it indicative of laches.[18] To recall, a complaint founded on illegal dismissal is not an ordinary money claim but one for reinstatement. Being in derogation of a worker's rights, the action may be brought within four (4) years from dismissal pursuant to Art. 1146 of the Civil Code.[19]

We are inclined to agree with the NLRC that the so-called "separation pay" was awarded in view of the petitioner's nonobservance of the provision of B.P. Blg. 130 requiring notice of dismissal. Petitioner's assertion that it could not possibly have sent the required notice to private respondents because their last known address was its own address where Sambat and Sunga lodged falls flat in the face of its own admission that it was "well aware of the activities" of Sunga and Sambat[20] even after they had ceased working with it.

As this Court has held in *Wenphil Corporation v. NLRC*,[21] for the employer's failure to observe the procedural requirements of due process provided under Rule XIV, Sections 2, 5, 6 and 7 of the rules implementing B.P. Blg. 130; a sanction may be imposed which may be in the form of a monetary award. Such sanction or indemnity, however, is not equivalent to separation pay which is the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the "wherewithal during the period that he is looking for another employment." [22]

However, we cannot affirm the award of separation pay, or more appropriately termed, indemnity pay despite our agreement with the finding of the NLRC regarding petitioner's non?observance of BP 130 requiring notice of dismissal. Indemnity pay has been consistently given in cases where the employer has a just cause for dismissing

the employee but, in the process, failed to observe the requirements of due process.[23] The case at bar is different. Here, we find that no just cause exists for the dismissal of private respondents; hence the remedies available to them are reinstatement and backwages for three years. The reason for limiting the award of indemnity in cases where the employment was terminated without due process although the employer proves the existence of just cause is explained in the case of *Pepsi-Cola Sales and Advertising Union v. Hon. Secretary of Labor*: [24]

"In its Decision in G.R. No. 80587 (*Wenphil Corporation v. NLRC*), promulgated on February 8, 1989, this Court laid down the doctrine governing an illegal dismissal case where the employee satisfactorily establishes that his employment was terminated without due process -- i.e., without written notice to him of the charges against him and without according him opportunity to defend himself personally or through a representative -- but the employer nevertheless proves the existence of just cause for the employee's dismissal. The controlling principle in such a case is that since the employee's dismissal was for just cause, he is entitled neither to reinstatement or back wages nor separation pay or salaries for the unexpired portion of his contract, being entitled only to the salaries earned up to the last day of employment; at the same time, however, as a general proposition, the employer is obliged, on account of its failure to comply with the requirements of due process in terminating the services of the employee, to pay damages to the latter fixed at P1,000.00, a sum deemed adequate for the purpose."

WHEREFORE, the Petition is hereby DENIED. The decision of the NLRC is AFFIRMED only insofar as it orders the reinstatement of Carlito Sambat and the dismissal for lack of merit of all other monetary claims of private respondents. The same decision is hereby MODIFIED thus: a) the award of separation pay/indemnity pay is DELETED and b) petitioner shall REINSTATE Zosimo Sunga to his former or equivalent position and PAY both Sunga and Sambat backwages for three years from the time of their dismissal.

SO ORDERED.

Bidin, Davide, Jr., and Melo, JJ., concur.

Feliciano, (Acting Chairman), J., did not take part in the deliberation.

[1] NLRC Decision, p. 2; Rollo, p. 20.

[2] Rollo, pp. 25-26.

[3] *Ibid.*, p. 10.

[4] *Ibid.*, p. 14.

[5] *Ibid.*, p. 23.

[6] Petition, pp. 3-4; Rollo, pp. 6-7.

[7] *Rabago v. NLRC*, G.R. No. 82868, August 15, 1991, 200 SCRA 158.

[8] Rollo, p. 13.

[9] See footnote No. 6.

[10] Petition, p. 3, Rollo, p. 6; Appeal, p. 2, Rollo, p. 16.

[11] *Chua-Qua v. Clave*, G.R. No. 49549, August 30, 1990, 189 SCRA 117.

[12] Labor Arbiter's Decision, p. 1, Rollo, p. 11.

[13] *Nueva Ecija I Electric Cooperative, Inc. v. Minister of Labor*, G.R. No. 61965, April 3, 1990, 184 SCRA 25.

- [14] Dagupan Bus Company, Inc. v. NLRC, G.R. No. 94291, November 9, 1990, 191 SCRA 328.
- [15] Hua Bee Shirt Factory v. NLRC, G.R. No. 80389, June 18, 1990, 186 SCRA 586.
- [16] Santos v. NLRC, G.R. No. L-76991, October 28, 1988, 166 SCRA 759.
- [17] Under Sec. 34 of Republic Act No. 6715 which was approved on March 2, 1989, an illegally dismissed employee shall be entitled to "reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." This provision, however, can not be applied to the case at bar as the dismissal of herein private respondents occurred long before Art. 279 of the Labor Code was amended by Rep. Act No. 6715.
- [18] See: Imperial Victory Shipping Agency v. NLRC, G.R. No. 84672, August 5, 1991, 200 SCRA 178.
- [19] Magno v. Philippine National Construction Corporation, G.R. No. 87320, June 6, 1991, 198 SCRA 230.
- [20] Appeal, p. 2; Rollo, p. 16.
- [21] G.R. No. 80587, February 8, 1989, 170 SCRA 69.
- [22] Torillo v. Leogardo, Jr., G.R. No. 77205, May 27, 1991, 197 SCRA 471; Globe-Mackay Cable and Radio Corporation v. NLRC and Salazar, G.R. No. 82511, March 3, 1992, 206 SCRA 701.
- [23] Pangasinan III Electric Cooperative, Inc. (PARELCO III) v. NLRC, G.R. No. 89876, November 13, 1992; Pepsi-Cola Sales and Advertising Union v. Hon. Secretary of Labor, G.R. No. 97029, July 27, 1992; Inter-Capital Marketing Corp. v. NLRC, G.R. No. 90745, October 10, 1991, 202 SCRA 584; Pacific Mills, Inc. v. Alonzo, G.R. No. 78090, July 26, 1991, 199 SCRA 617; Kwikway Engineering works v. NLRC, G.R. No. 85014, March 22, 1991, 195 SCRA 256; Great Pacific Life Assurance Corporation v. NLRC, G.R. No. 80750-51, July 23, 1990, 187 SCRA 694; Rubberworld (Phils.), Inc. v. NLRC, G.R. No. 72779, March 21, 1990, 183 SCRA 421; Shoemart, Inc. v. NLRC, G.R. No. 74229, August 11, 1989, 176 SCRA 385; Seahorse Maritime Corporation v. NLRC, G.R. No. 84712, May 15, 1989, 173 SCRA 390; and Wenphil Corporation v. NLRC, G.R. No. 80587, February 8, 1989, 170 SCRA 69.
- [24] Supra.

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