

DAGUPAN BUS COMPANY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND LEONITO T. MARASIGAN, RESPONDENTS.

G.R. No. 94291. November 09, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The employment of many of its workers is usually only a minor statistic with management, to be given commensurate attention along with such other business items as inventories, credit lines, receivables, taxes, interests, and depreciation. The worker himself gives it more importance, it being the source of his livelihood and that of his family, his assurance of present security if not well-being, and even his hope for a better future.

Leonito T. Marasigan, herein private respondent, had been employed as a driver with petitioner Dagupan Bus Co., Inc. since 1981 when in September 1986 he had to stop working because the bus assigned to him was being repaired. When he reported back two days later, he was told the repairs had not yet been completed. Not yet worried, he returned the following day, only to be informed that his bus was being used by the Saulog Transit in connection with a strike in that company. He was advised to come back after the strike. The strike ended in late September, but when he returned for work the following month, he was told to come back after a week. Now apprehensive, he approached the general manager of the petitioner company who referred him to another officer. He was instructed to go on vacation. Grown more anxious, he reported back a number of times thereafter but was put off with inconclusive answers that finally made him realize he had actually been dismissed. It was then he decided, after more than a year, to file his complaint for illegal dismissal, payment of salary differentials, 13th month, sick leave and other benefits against the petitioner.

The defense of the petitioner was that Marasigan had not been illegally dismissed but had actually abandoned his position for fourteen months from September 1986 until he demanded his job back. Its notices advising him to report for work having been ignored, he was dropped from the company roll of employees for unauthorized absences. He was duly informed of the termination of his services for his refusal to return as directed. The petitioner stressed that even before his abandonment, Marasigan had been habitually absent and had been called down several times for these shortcomings.

After considering the evidence of the parties, Labor Arbiter Dominador Saldares held in favor of the complainant but awarded him separation pay instead of ordering his reinstatement. The reason was the strained relations between the parties. The other claims were disallowed except for the attorney's fees. On appeal, the decision was affirmed in toto by the respondent NLRC, which is now faulted by the petitioner for grave abuse of discretion.

The petition has no merit.

The issues raised are mainly factual. There is no showing that the findings thereon are tainted with arbitrariness or lacking in basis to justify their reversal. This Court is not a trier of facts. We defer to the superior opportunity of

the lower courts or administrative bodies to test the credibility of the witnesses and examine the authenticity of the documentary evidence directly before them. Their conclusions on these matters are binding on us in the absence of any of the established exceptions calling for our review.[1]

We are satisfied, as the public respondent has found, that Marasigan had not abandoned his employment. He had sought to return after completion of the repairs on the bus assigned to him but without success. His attempts were ward off with temporizing and vague promises. In the idiom of the day, he was "given the run-around."

His proven requests to resume work are inconsistent with his alleged abandonment. Not even his occasional absences, assuming they had really been incurred, would constitute abandonment. It has not been shown that he was giving up his employment for good, with the intention of not returning. As the Labor Arbiter correctly observed:

x x x Moreover, even granting without admitting that complainant made absences, the same are insufficient to constitute abandonment, because abandonment of work cannot just be shown by mere absence. It requires a deliberate refusal to resume employment or a clear showing in terms of specific circumstances that the worker does not intend to report for work. Furthermore, even prolonged absence does not necessarily mean abandonment. For abandonment to arise, there must be a concurrence of the intention to abandon and some overt act from which it may be inferred that the employee has no more interest to work. For one could not possibly abandon his work and shortly thereafter, vigorously pursue his complaint for unjust dismissal with prayer for reinstatement. (*Policarpio v. Vicente Dysun, Jr.*, NLRC Case No. R04-903074, July 12, 1976; *Mario Franco, et al. v. E & M Security Agency*, NLRC Case No. 1036, 2nd Div., December 27, 1978.)

The petitioner claims it had required Marasigan to report back for work and ultimately, upon his refusal, informed him of his separation. The evidence shows, however, that the notices were sent to his old address although he had given the company his new address. It is also argued that it would not have taken him more than one year to file his complaint if it was true that he had not really abandoned his employment. The reason for that delay is obvious. Marasigan was repeatedly reporting back for work during that period in the hope, eventually turned forlorn, that he could still return.

The suggestion is made that Marasigan had left his employment with the petitioner to work in Saudi Arabia, but there is nothing in the record to prove this assertion. It is added that he is still working there now, but that does not prove he was not illegally dismissed by the petitioner in 1986.

As we see it, the petitioner was, at the very least, lacking in candor toward the private respondent. Whatever its reasons for dismissing him, it should have informed him as soon as possible that his services had been terminated. It should not have left him dangling, so to speak, expecting he could still resume the work that in fact had already been denied him. Frankness, if not fairness, would have enabled the private respondent to act more decisively on the action of the petitioner.

The constitutional mandate for the protection of labor is as explicit as it is demanding. The purpose is to place the workingman on an equal plane with management - with all its power and influence - in negotiating for the advancement of his interests and the defense of his rights. The ordinary laborer usually speaks through his union and so speaks with the force and assertiveness of its membership. In the case at bar, the workingman speaks alone to plead a lonely cause. Nevertheless, he speaks with strength, for the Constitution is behind him.

WHEREFORE, the petition is DISMISSED, with costs against the petitioner. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., 97 SCRA 734; International Hardwood and Veneer Co. of the Philippines vs. Leogardo, 117 SCRA 967; Republic vs. Court of Appeals, 132 SCRA 514; Ateneo de Manila University vs. Court of Appeals, 145 SCRA 100; Alcuaz vs. PSBA, QC Branch, 161 SCRA 7; Mapa vs. Arroyo, 175 SCRA 76.

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