

## FIRST DIVISION

[ G.R. No. 214940, June 06, 2018 ]

**MARIA DE LEON TRANSPORTATION, INC., REPRESENTED BY MA. VICTORIA D. RONQUILLO, PETITIONER, VS. DANIEL M. MACURAY, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> seeks to set aside the March 17, 2014 Decision<sup>[2]</sup> and September 17, 2014 Resolution<sup>[3]</sup> of the Court of Appeals (CA) granting the Petition for *Certiorari*<sup>[4]</sup> in CA-G.R. SP No. 130387 and denying herein petitioner's Motion for Reconsideration,<sup>[5]</sup> respectively.

#### ***Factual Antecedent***

On November 21, 2011, respondent Daniel M. Macuray filed a Complaint<sup>[6]</sup> for illegal dismissal against petitioner Maria De Leon Transportation, Inc. before the Regional Arbitration Branch No. 1 of San Fernando City, La Union, docketed as NLRC Case No. RAB-I-11-1119-11 (LC).

In his Position Paper,<sup>[7]</sup> respondent claimed that, in April, 1991, he was employed as a bus driver of petitioner, a company engaged in paid public transportation; that he plied the Laoag-Manila-Laoag route; that he received a monthly pay/commission of P20,000.00; that, in November 2009, petitioner's dispatcher did not assign a bus to him, for no apparent reason; that for a period of one month, he continually returned to follow up if a bus had already been assigned to him; that finally, when he returned to the company premises, the bus dispatcher informed him that he was already considered AWOL (absent without leave), without giving any reason therefor; that he went back to follow up his status for about six months in 2010, but nobody attended to him; that he was not given any notice or explanation regarding his employment status; that he felt betrayed by the petitioner, after having served the latter for 18 years; that he considered himself illegally dismissed; that during this time, he was already 62 years old, but he received no benefits for his service; that he was being charged for the cost of gasoline for the bus he would drive; and that petitioner owed him three months' salary for the year 2009. Thus, he prayed that he be awarded backwages, separation pay, retirement pay, 13<sup>th</sup> month pay, damages, attorney's fees, and costs of suit.

In its Position Paper and other pleadings,<sup>[8]</sup> petitioner claimed that respondent was hired on commission basis, on a "no work, no pay" and "per travel, per trip" basis; that respondent was paid an average of P10,000.00 commission per month without salary; that, contrary to his claim of illegal dismissal, respondent permanently abandoned his employment effective March 31, 2009, after he failed to report for

work; that it received information later on that respondent was already engaged in driving his family truck and was seen doing so at public roads and highways; that respondent's claim of illegal dismissal was not true, as there was no dismissal or termination of his services, and no instructions to do so were given; that the bus dispatcher from whom respondent inquired about his status had no power to terminate or declare him AWOL; that respondent had not actually approached management to inquire about his employment status, even though he and all the other employees knew that the Assistant Manager, Corporate Secretary, and Director of the bus company, Elias Dimaya, resided with his family within the bus company's station and compound in San Nicolas, Ilocos Norte; that respondent's witnesses had an axe to grind against petitioner, which accounts for their false testimonies; that based on respondent's Complaint, he claimed to have been illegally dismissed in January, 2009, which was contrary to the documentary evidence which showed that he continued to work until March, 2009, after which he completely abandoned his employment; that per Joint Affidavit<sup>[9]</sup> of petitioner's bus dispatchers, it is not true that respondent ever made inquiries and follow-ups about his employment until mid-2010; that there was no illegal dismissal, and thus respondent was not entitled to his monetary claims; that respondent never refuted the claim that he abandoned his employment with petitioner because he took on a new job as driver for his family's trucking business and was seen doing so in public roads and highways; that it was common practice for bus drivers of the petitioner to simply stop reporting for work for short periods of time, or even years, after which they would return and ask to be allowed to drive petitioner's buses once more, which management allowed after the absentee drivers gave satisfactory and reasonable explanations for their absences; that this practice was impliedly sanctioned in order to give the drivers the opportunity to take time off from the stress and boredom of driving on long trips; that respondent's allegations were not true, particularly his claim that he was told by a bus dispatcher that he was considered AWOL, since he refused to divulge the identity of the bus dispatcher who gave such information to him; and that there was no truth to respondent's allegations that the cost of gasoline for every bus trip was charged to him, as it was shouldered by the petitioner. Petitioner prayed for the dismissal of the case.

### ***Ruling of the Labor Arbiter***

On August 24, 2012, Labor Arbiter Irenarco R. Rimando rendered a Decision<sup>[10]</sup> dismissing the case for lack of merit, declaring that —

x x x [Complainant] cannot state with certainty the date and time of his dismissal if it was January 2009, middle of 2009 or November 2009 x x x.

[I]n his pro forma complaint sheet, he mentioned that he was already 61 at the time that he filed his complaint on 23 November 2011. Yet in his position paper he mentioned that he was already 62 years old after he rendered service for 18 years x x x.

On the issue of constructive dismissal, seemingly Rudy Compañero and Loreto Casil presented a story that [showed] they were aware that Daniel Macuray was poorly treated by respondent when he was still employed between 2007 and 2009. But the records [did] not show that the

complainant had shown any sign of whimper or protest. Therefore, x x x the claim is unfounded.

The [alleged] unpaid fuel expenses that were incurred by unidentified drivers for respondent's bus with Body No. 1 [was] not supported by substantial evidence which a reasonable mind might accept to justify a conclusion. He did not present a single accounting of his purchases for diesel fuel and how much. The complainant did not even claim that the unpaid gasoline expenses were charged to him.

The complainant failed to present evidence that the treatment he received from respondent was unreasonable or oppressive and unbearable that would amount to a constructive dismissal x x x.

x x x x

The complainant never returned back to work after 31 March 2009. An informal voluntary termination is recognized under the law as an authorized ground for dismissal x x x. In such case compliance with the two (2) notice requirement of due process is not necessary. When this happens the employee is not entitled to separation pay and backwages. The dismissal is not illegal. Hence the claims for separation pay, backwages and damages are denied.

x x x x

IN VIEW THEREOF, this case is dismissed for lack of merit.

SO ORDERED.<sup>[11]</sup> (Citations omitted)

### ***Ruling of the National Labor Relations Commission***

Respondent filed a Memorandum of Appeal<sup>[12]</sup> before the National Labor Relations Commission (NLRC). On December 28, 2012, a Resolution<sup>[13]</sup> was issued modifying the Labor Arbiter's judgment by awarding in favor of respondent the amount of P50,000.00 as financial assistance. The NLRC held:

x x x A close evaluation of the records however [showed] that complainant-appellant was unsure of the date of his dismissal. In his complaint, he entered the date January, 2009, in his pleadings the year 2009 and [in] his position paper be stated the month of November, 2009. Moreover, he failed to identify the dispatcher who did not assign a bus to him. Complainant-appellant therefore failed to establish the fact of his alleged dismissal with substantial evidence.

On the other hand, respondents-appellees stress that complainant-appellant did not report for work anymore from March 31, 2009 and in support thereof submitted folders showing the particulars of the trips where complainant-appellant served as assistant driver for the period 3

January to 30 March 2009; that neither did complainant-appellant file any leave of absence. Thus, respondents-appellees concluded that by his failure to report for work beginning 31 March 2009, complainant-appellant permanently abandoned and severed his employment effective 31 March 2009.

Although absence without valid or justifiable reason is an element of abandonment, settled is the rule, however, that mere absence or failure to report for work is not tantamount to abandonment of work. x x x

x x x Respondents-appellees' conclusion that complainant-appellant abandoned his work lacks factual basis.

In the consolidated cases of Leonardo vs. NLRC x x x the Supreme Court also ordered the reinstatement sans backwages of the employee x x x who was declared neither to have abandoned his job nor was he constructively dismissed. As pointed out by the Court, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer. Each party must bear his own loss.

In this case, we note that complainant-appellant is already sixty two years old and he may not be apt for the job as bus driver considering the long hours of travel from Laoag City to Manila. Hence, his reinstatement may no longer be possible. Separation pay however[,] cannot also be awarded to complainant-appellant because he was not dismissed by respondent appellee. In cases where there was no dismissal at all, separation pay should not be awarded. x x x

Under this circumstance, financial assistance may be allowed as a measure of social justice and as an equitable concession. x x x

x x x Respondents-appellees are therefore ordered to award financial assistance to complainant appellant in the amount of FIFTY THOUSAND PESOS (P50,000.00).

WHEREFORE, premises considered, the DECISION dated 24 August 2012 is hereby MODIFIED ordering respondents-appellees to award financial assistance by (sic) complainant-appellant in the amount of FIFTY THOUSAND (P50,000.00) PESOS.

SO ORDERED.<sup>[14]</sup> (Citations omitted)

Respondent filed a Motion for Reconsideration,<sup>[15]</sup> which the NLRC denied in a March 18, 2013 Resolution.<sup>[16]</sup>

### ***Ruling of the Court of Appeals***

Respondent filed a Petition for *Certiorari*<sup>[17]</sup> before the CA, questioning the NLRC

dispositions and praying for the relief he originally sought in his labor complaint.

On March 17, 2014, the CA rendered the assailed Decision, decreeing thus:

We find the petition to be meritorious.

x x x x

In an illegal dismissal case, the *onus probandi* rests on the employer company to prove that its dismissal of an employee was for a valid cause. There is no such proof of a valid cause in the instant case. On the contrary, the facts bear the marks of constructive dismissal.

x x x x

The Labor Arbiter's findings that there was an informal voluntary termination has no basis. Based on the age of petitioner as appearing in the records of this case, he was 58 years of age in November of 2009 when he was no longer assigned any bus. Nearing his retirement, it [was] irrational that he would suddenly opt for an informal voluntary termination. Thus, the NLRC's appreciation of facts is more in keeping with logic as it held that there was no abandonment. Surely, petitioner kept going back to the respondent company to check whether or not there would already be a bus assigned to him. There being no bad records or previous transgressions committed by the petitioner against respondent company, or any third party in relation to his job during his eighteen (18) years of working for respondent company, there was no rhyme nor reason why he would suddenly not be assigned a bus to drive and no reason why he would suddenly voluntarily stop working while nearing his retirement.

x x x x

Reinstatement of petitioner, however, may not be in the best interest of respondent company and or petitioner himself. As correctly declared by the NLRC, petitioner is 'already sixty-two years old and he may not be apt for the job as a bus driver considering the long hours of travel from Laoag City to Manila. Hence, his reinstatement may no longer be possible.'

x x x x

Undoubtedly, herein petitioner Daniel Macuray was performing a job that has an intimate connection to the business of respondent company as he worked as a driver of respondent Maria de Leon Transportation, a public transportation business company, for eighteen (18) years. As a regular employee who has been constructively dismissed, petitioner is entitled to separation pay equivalent to one (1) month salary for every year of service.

Under the above-mentioned twin remedies, there is likewise basis for the