

THIRD DIVISION

[G.R. No. 182499, October 02, 2009]

CONCEPCION FAELDONIA, PETITIONER, VS. TONG YAK GROCERIES, JAYME GO AND MERLITA GO, RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

This Petition for Review on Certiorari assails the Decision^[1] and Resolution^[2] of the Court of Appeals (CA) dated February 14, 2007 and March 18, 2008, respectively, in CA-G.R. SP No. 76651 which set aside the Decision^[3] of the National Labor Relations Commission (NLRC) dated September 19, 2002 and its Resolution^[4] dated January 27, 2003 finding that petitioner Concepcion Faeldonia was illegally dismissed.

Petitioner alleged that she worked at *Tong Yak Groceries* as sales/stock clerk from March 1978 until her dismissal on April 20, 2000; that on January 26, 2000, while on an errand for her employer, she stepped on a rusted half-inch nail which injured her foot and caused her to be absent from work; that respondent Jayme Go advised her to visit Dr. William Ty, who gave her antibiotics and pain killers as medications; ^[5] that after two weeks of medication, the wounds did not heal and even worsened; that she was brought to the Metropolitan Hospital in Sta. Cruz, Manila where she was also diagnosed to be diabetic; that her foot was operated on and she was confined at the hospital for 24 days; that the respondents paid the hospital bill amounting to P22,266.40; ^[6] that she was released from the hospital on March 1, 2000, but was advised to report daily for wound dressing for three weeks; and that respondents paid for all the expenses. ^[7]

Petitioner also alleged that on March 10, 2000, she was summoned by respondent Merlita Go who told her that, "*ayaw na namin sa iyo dahil may sakit ka, paengkadang-kundang kung lumakad at pagtatawanan ka lamang ng mga kasamahan mo dito;*" however, petitioner did not give much attention to said statement; ^[8] that she was able to secure from the SSS a Sickness Notification^[9] signed by Dr. William Ty certifying that she is fit to resume work by April 20, 2000; that petitioner reported back to work on April 20, 2000 but was told to resign and that she would be given a sum of money to start a business; that when petitioner asked how much financial assistance would be given her, respondent Merlita Go angrily stated, "*Marami na akong nagastos sa pagpapa-ospital sa iyo.*" ^[10]

Thereafter, respondents no longer allowed petitioner to go back to work. Hence, she filed a complaint for illegal dismissal with money claims before the NLRC, ^[11] claiming that her dismissal was not for cause and without due process.

Respondents denied that they dismissed petitioner. They alleged that after petitioner's accident, they had extended the necessary medical and hospital assistance to her amounting to almost P70,000.00; that they had been lenient in her attendance at work; that petitioner demanded for separation pay citing her health condition; that they required petitioner to submit a certification issued by a government physician stating her fitness to work,^[12] but petitioner no longer reported back for work; that although petitioner submitted a certification that she is fit to resume work, the same was not issued by a government physician; and that they were surprised to receive the Notice of Hearing by the labor tribunal.^[13]

On October 29, 2001, the Labor Arbiter rendered a decision finding that petitioner was not dismissed from employment, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding that complainant was not dismissed from work, legally or otherwise. Respondents are hereby ordered to pay as follows, to wit:

1. Separation pay
 $P223.50 \times 15 \text{ days} \times 22 \text{ years} =$
 $P73,755.00 - 52,266.45 = P21,488.55$
2. Wage differential
 $P3.50 \times 26 \times 5.5 \text{ months} = P 500.50$
3. Service incentive leave
 $P223.50 \times 15 = P 3,352.50$
4. 13th Month Pay
 $P223.50 \times 26 \times 2 = P11,622.00$

All other claims are hereby dismissed for lack of merit.

SO ORDERED.^[14]

The Labor Arbiter found that the assistance given by respondents to petitioner by way of medical and hospital expenses amounting to about P73,755.00, belies the allegation that respondents asked petitioner to resign without benefits. The arbiter also held that petitioner filed the complaint when her demand for separation pay was not granted for her failure to produce a certification from a public health physician. However, despite the finding that there was no dismissal, the labor arbiter awarded separation pay to petitioner considering her length of service and in accordance with Art. 284 of the Labor Code.

On appeal, the NLRC reversed the decision of the Labor Arbiter, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision under review is REVERSED and SET ASIDE. Judgment is hereby entered, declaring complainant Concepcion Faeldonia as illegally dismissed from her employment. Accordingly, respondents are ordered to REINSTATE the complainant to her former position without loss of seniority rights, and to

pay the said complainant, jointly and severally, FULL BACKWAGES computed from April 20, 2000 until actually reinstated.

Respondents are likewise ordered to pay complainant, her salary differentials in the amount of P500.50, Service Incentive Leave Pay of P3,352.50 and 13th month pay of P11,622.00.

All other claims of the complainant are dismissed for lack of merit.

SO ORDERED.^[15]

The NLRC found that respondents failed to prove that petitioner abandoned her job. It found that the submission of a certification that petitioner is fit to work is contrary to the claim that she is demanding for separation pay for health reasons. The NLRC thus stated:

Not only were the respondents unable to prove that the complainant abandoned her job. Evidence on hand corroborates the fact that there was no abandonment at all. Firstly, had there been truth to respondent's claim that the complainant opted to be separated from employment due to health reasons, and that she was not able to prove entitlement to separation benefits on account of her failure to produce a medical certification concerning her no longer fit to work as issued by a public health authority, she should not have, in the first place, requested the company physician to accomplish the SSS Sickness Notification form where the latter certified, in clear terms, that complainant was already fit to work on April 20, 2000. Secondly, respondents in fact admitted that the said Certification was submitted to them by the complainant. This again would not be the logical recourse of an employee seeking separation benefits on the representation that she is no longer physically fit to work, since the certification of respondents' physician actually pertains to complainant's being fit to resume her employment. In effect, the facts obtaining bolster complainant's assertion that she endeavored to present herself for resumption of her work, but was refused. This conclusion is far from being conjectural, as it is based on law, evidence on record, and the existing jurisprudential norm on the issue of abandonment. Hence, the finding that complainant was dismissed from employment, and that such dismissal is illegal.^[16]

Respondents filed a motion for reconsideration but it was denied; hence, they filed a petition for certiorari before the Court of Appeals which issued on February 14, 2007 the herein assailed Decision,^[17] the dispositive portion of which states—

WHEREFORE, the PETITION FOR CERTIORARI is GRANTED.

The decision promulgated on September 19, 2002 and the resolution dated January 27, 2003 of the National Labor Relations Commission are NULLIFIED AND SET ASIDE.

The decision dated October 29, 2001 of the Labor Arbiter is REINSTATED.

SO ORDERED.^[18]