

THIRD DIVISION

[G.R. NO. 158499, April 03, 2007]

NS TRANSPORT SERVICES, INC., PETITIONER, VS. JOSE ZALDY N. ZETA, RESPONDENT.

DECISION

AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the April 10, 2003 Decision^[1] and May 30, 2003 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 74729^[3] which reversed and set aside the June 11, 2001^[4] and September 24, 2002^[5] Resolutions of the National Labor Relations Commission (NLRC).

The facts are as stated by the CA.^[6]

Jose Zaldy N. Zeta (Zeta) was a bus conductor at NS Transport Services, Inc. (NSTSI). On June 2, 1999, he filed with the NLRC a Complaint^[7] against NSTSI for illegal dismissal, non-payment of labor standard benefits, damages, and attorney's fees. He claimed that beginning October 18, 1998, NSTSI barred him from entering the work premises and refused to give him a job assignment; that he later found out that NSTSI had terminated his employment effective November 26, 1998;^[8] and that he received no formal termination notice.

In its Position Paper,^[9] NSTSI explained that Zeta was dismissed for abandonment when he failed to report for work beginning October 13, 1998 for he had taken up a new employment with another bus company. To prove this claim, NSTSI cited the following evidence: first, it sent Zeta letters dated October 30, 1998^[10] and November 26, 1998,^[11] requiring him to explain his absences without leave but the latter did not reply; second, two of its employees namely, Joeny Romero and Felix Piala Taneza, executed affidavits^[12] stating that, sometime in October 1998, they spotted Zeta acting as bus conductor for Barbra Ann Bus Line; and third, Zeta waited until June 1999 to file a Complaint, which delay of nine months indicates ill-motive in pursuing a doubtful cause.^[13] NSTSI also cited Zeta's previous absences without leave which had accumulated to 44 days.^[14]

In a Decision dated May 17, 2000, the Labor Arbiter (LA), dismissed the Complaint based on the following findings:

In the instant case, respondents did not terminate the services of the complainant. On the contrary, complainant left his work without any justifiable reason. To prove that complainant was absent without leave (AWOL), testimonial and documentary evidence were abundantly

presented by the respondents showing that complainant Zeta indeed abandoned his job as bus conductor without notice to the company effective October 12, 1998 and simply did not report for work anymore. In fact, these supporting documents were never rebutted by the complainant.

Add to this [sic], complainant in the instant case waited for eight (8) months after his alleged termination before he instituted the complaint for alleged illegal dismissal. To our mind, complainant's inaction during that period is a suspect or to say the least, highly unbelievable and deserves scant consideration.^[15]

Zeta appealed^[16] but the NLRC, in its June 11, 2001 Resolution, affirmed the May 17, 2000 LA Decision. It also denied Zeta's Motion for Reconsideration^[17] in a Resolution^[18] dated September 24, 2002.

Zeta filed a Petition for *Certiorari*^[19] with the CA which, in its April 10, 2003 Decision reversed the NLRC and the LA, thus:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Resolutions of public respondent are hereby ANNULLED and SET ASIDE. Judgment is hereby entered declaring the petitioner to have been illegally dismissed from his employment and ordering private respondent NS Transportation [sic] Services, Inc. to immediately reinstate petitioner and to pay him full back wages and accrued benefits computed from October 18, 1998 until actual reinstatement.

No pronouncement as to costs.

SO ORDERED.^[20]

NSTSI filed a Motion for Reconsideration^[21] but the CA denied the same in its May 30, 2003 Resolution.

Petitioner NSTSI took the present recourse to have the CA Decision and Resolution annulled and the NLRC Resolutions reinstated.

The petition for review lacks merit.

Discarding the factual findings of the NLRC and the LA, the CA held that the evidence presented by NSTSI lack probative value, *viz.*:

In termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just and valid cause. Here, private respondent company cited as reasons the alleged gross neglect of duties and abandonment of work. However, the only evidence presented by it are the photocopies of two (2) letters supposedly sent by registered mail to petitioner (receipt of which had not been duly established): first, the letter dated October 30, 1998 requiring him to explain his alleged absences since October 13, 1998; and the follow-up letter dated November 26, 1998, ordering him to show cause why he should not be

charged with AWOL, warning that failure to submit his explanation within one (1) day from receipt thereof will mean his "voluntary severance" and for which the company has no alternative but to do the necessary action to protect its interest. The company attendance records, payroll sheets, and personnel file had not been submitted to substantiate the charges of absences without leave. The presentation of such letters, receipts of which had not been acknowledged at all by petitioner, does not by itself prove the alleged absences or gross neglect of duty nor that petitioner had abandoned his job. Not even the self-serving affidavits of two (2) employees of private respondent company who allegedly saw petitioner working for another bus company in the month of October 1998 sufficiently establish abandonment as to constitute ground for the termination of petitioner's employment. And even if such allegations were true, petitioner's predicament when he was refused entry into company premises without justifiable reason since October 18, 1998 would have explained his seeking of interim work elsewhere.^[22]

As to the delay Zeta incurred in filing the Complaint, the CA found the same understandable considering that Zeta did not receive any notice of termination.^[23]

NSTSI challenges the foregoing findings of the CA on the following grounds:

I. The Honorable CA seriously erred and/or committed grave abuse of discretion amounting to lack of jurisdiction in holding that herein petitioner had prevented herein respondent from reporting to work.

II. The Honorable CA seriously erred by its failure to take into account that the absence of herein respondent without leave for more than eight (8) months is patently unreasonable, disruptive to work discipline and, therefore, unjustified.

III. The Honorable CA overlooked the findings of fact of the NLRC regarding the circumstance of abandonment of his job by the respondent and compliance by the petitioner with the legal requirements of valid termination.

IV. The Honorable CA failed to take into account that the petitioner need not present the daily time records to prove absences of the respondent in view of the fact that such absences were already admitted by the latter.

V. The Honorable CA failed to consider the legal significance of the matters contained in the affidavits of witnesses to the effect that respondent's absences were due to his newfound job which provides better incentives.

VI. The Honorable CA seriously erred or committed grave abuse of discretion amounting to lack of jurisdiction in reversing the decision of the NLRC although it was based on solid and substantial evidence.^[24]

The core issue in the present Petition is therefore purely factual: whether the evidence presented by NSTSI established that Zeta abandoned his employment.

As a general rule, we do not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction.^[25] We leave the evaluation of facts to the trial and appellate courts which are better equipped for this task.

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case, and its findings are contrary to the admissions of both appellant and appellees; (7) the **findings of fact of the CA are contrary to those of the trial court**; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.^[26]

In the present case, we are prompted to evaluate the findings of the CA and the NLRC/LA which are diametrically opposed.

After a meticulous review of the arguments and evidence of the parties, we sustain the CA findings, the same being more in accord with the facts and law of the case.

It bears emphasis that for termination of employment on the ground of abandonment to be considered valid, the employer must prove,^[27] by substantial evidence,^[28] the concurrence of two essential requisites: first, the failure of the employee to report for work or his absence from work without valid or justifiable reason;^[29] and second, his clear and deliberate intention to discontinue his employment.^[30] The second requisite, considered to be the more crucial one, may be established by evidence of overt acts on the part of the employee from which may be inferred a lack of intention to resume his work.^[31]

The evidence of NSTSI does not make out a case of abandonment.

Its evidence of the first requisite consists merely of two letters^[32] it purportedly sent to Zeta requiring him to explain his absences since October 13, 1998. Zeta, however, denied having received said letters.^[33] The CA doubted whether the letters were actually received by Zeta.^[34]

We too are convinced that the letters were merely a subterfuge. It is noted that at the bottom of the letters are imprints of registry receipts but there are missing important details which could have linked the registry receipts to the letters sent by NSTSI to Zeta. It is doubtful whether the registry receipts actually refer to the letters; hence, they are not reliable evidence that NSTSI actually sent the letters and that Zeta received them.^[35] The CA did not err in holding that petitioner failed to prove that due notices were sent to and received by Zeta.

More importantly, the letters, even if real, do not by themselves, prove that Zeta had been absent since October 13, 1998 and that his absences were without valid or