

THIRD DIVISION

[G.R. No. 205257, January 13, 2021]

**FERNANDO C. GOSOSO, PETITIONER, VS. LEYTE LUMBER YARD
AND HARDWARE, INC., AND RUBEN L. YU, RESPONDENTS.****

D E C I S I O N

HERNANDO, J.:

This Petition for Review on *Certiorari*^[1] assails the February 29, 2012 Decision^[2] and December 19, 2012 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 05183.

The CA reversed the rulings of the National Labor Relations Commission (NLRC) against Leyte Lumber Yard, Inc. (Leyte Lumber) and Ruben L. Yu (Yu; collectively, respondents) and reinstated the findings of the Labor Arbiter dismissing petitioner Fernando C. Gososo (Gososo)'s illegal dismissal complaint.

The Facts:

Leyte Lumber, a construction supply and hardware store, hired Gososo as a sales representative. Yu was Leyte Lumber's general manager. Gososo worked from Mondays to Saturdays from 7:00 A.M. to 5:00 P.M., and received a daily salary of P220.00.^[4]

As a company policy, Leyte Lumber's sales representatives were prohibited from getting items or stocks from the storage area by themselves. They were to course the orders through authorized checkers before the items are released. They were also prohibited from leaving their designated work areas without their superior's consent. Moreover, they were required to submit their applications for leave days before the intended dates to allow the management ample time to approve the application and to adjust the workforce and their workload.

Gososo allegedly overstepped the boundaries of Leyte Lumber's company policies. On October 6, 2008, he was on his way to the stock room to follow up on a customer's urgent order when Yu stopped him. The next day, Yu saw Gososo step out of the store to check the availability of a ball caster having a customer's specifications in the storage area.^[5]

Yu required Gososo to produce a letter of apology for the two incidents under pain of dismissal. Admitting fault, Gososo submitted a letter of apology to Yu on October 8, 2008.^[6] He reasoned that he was just doing his job for the company's clients and that he never intended to neglect his duties or disobey the company policy. Yu allegedly refused to accept the letter of apology and instructed Gososo to write further in his letter the words "I am not supposed to approach the checker" and "I

promise again to ask permission from manager before I can go out."^[7] On October 9, 2008, Gososo submitted the revised letter of apology to Yu,^[8] who told him to come back the next day.

When he returned to work on October 11, 2008, Yu allegedly told Gososo to sign a prepared document. Gososo declined since the document contained admissions of offenses that he did not commit. Irked by Gososo's refusal, Yu informed him of his termination from work. Yu allegedly even threw a pair of scissors at Gososo but missed.

Aggrieved, Gososo filed on October 13, 2008 a Complaint for illegal constructive dismissal against respondents,^[9] non-payment of salary, overtime pay, premium pay for holiday and rest day allowance, vacation and sick leave pay, separation pay, moral damages, and attorney's fees.

In their *Position Paper*, respondents posited that Gososo failed to ensure the integrity of transactions and secure company stocks. A security guard of the company attested that on October 7, 2008, she saw Gososo leave his designated work area.^[10] On October 10, 2008, Gososo submitted a letter admitting to his transgressions. On the same day, respondents issued him a Memorandum^[11] reminding him of the company policies he violated, with a warning that further violations shall merit dismissal from work. The Memorandum dated October 10, 2008 stated in full:

Mr. Gososo:

This pertains to your behavior on October 06, 2008 towards your work without considering the policy of the company.

As a sales representative, you must follow the guidelines set by your superior in assisting customers or clients. Previously you were instructed not to get the items by yourself, the receipt must be forwarded to authorize checker [*sic*] for the release of said goods because they already knew by whom they will give for getting the items but instances like yours it did not happened [*sic*] because you did not follow this rule.

In addition to this, there are also situations that you did not ask permission from the authorized persons if you will be coming out of the store in assisting your clients. You must always have the consent of your superior for compliance of the policy.

This served [*sic*] as your last and final warning. Any misdeed action in the future will cause dismissal from work.^[12]

Gososo refused to acknowledge receipt of the above Memorandum.^[13] Respondents confirmed that Gososo was reprimanded on October 10, 2008 for violating standard operating procedures and established company policies. On even date, respondents claimed that Gososo filed a leave of absence for October 11, 2008^[14] purportedly to attend his son's graduation, in disregard of the rule that leaves of absence must be filed and approved days before the actual date of leave.

According to respondents, Gososo did go on an unapproved leave on October 11, 2008 and even allegedly extended his absence. These prompted respondents to issue Gososo another Memorandum on October 13, 2008 wherein they requested him to report back to work, otherwise he will be considered to have abandoned his work. The October 13, 2008 Memorandum reads:

Mr. Gososo:

This pertains to your leave on October 11, 2008 wherein you proceed to absent until this day without any clarifications of your leave form. You did not follow the required number of days before submitting the said leave form in order to meet the pre-requisite for approval.

In connection also to your memo dated October 10, 2008, you refused to admit that you violate some policy of the company that in the first place you have a letter apologizing [for] what you have done. Stated therein was only a final warning in order for you not to do it again not to terminate but still insisted to bring it outside [*sic*]. The company did not allow that kind of act because we already give that memo to you and we see to it that you have read and understood.

In regard to this, you are hereby requested to report to the office regarding this matter upon receipt of this letter or else we will consider that you abandoned already your work.^[13]

Gososo, however, did not report back to work.^[14]

Ruling of the Executive Labor Arbiter (Arbiter):

In ruling in favor of the respondents, the Arbiter opined that from the very start, Gososo had no intention of keeping his position and had overtly planned to leave his employment since he can no longer endure the "tyrannical management" by Yu. Gososo could not have been dismissed by respondents or become a target of a pair of scissors thrown by Yu on October 11, 2008 simply because he was not around, having continued on his unapproved leave to attend his son's graduation. In his April 7, 2009 Decision,^[15] the Arbiter disposed of Gososo's complaint in this manner:

WHEREFORE, this case is hereby **DISMISSED** for lack of merit.

SO ORDERED.^[16]

Gososo went up to the NLRC on appeal.

Ruling of the NLRC:

Interpreting all the prevailing circumstances in Gososo's favor, the NLRC reversed the ruling of the Arbiter and found him to have been illegally dismissed by respondents. It pointed out that Yu terminated Gososo from employment and that the latter took immediate steps to protest his lay-off, facts which negate any claim of abandonment against Gososo. The labor tribunal also granted Gososo's monetary claims. The NLRC so ruled in its August 28, 2009 Decision:^[17]

WHEREFORE, premises considered, the decision of Executive Labor Arbiter Jesselito B. Latoja is hereby REVERSED and SET ASIDE. A NEW Decision is entered declaring the illegal dismissal of complainant.

Respondents Leyte Lumber Yard, Inc. and Ruben Yu are hereby ordered to pay complainant, jointly and severally the following:

1. Backwages----	P 61,013.33

2. Separation Pay-----	P102,960.00

3. Moral Damages-----	P 20,000.00

4. Exemplary Damages-----	<u>P 20,000.00</u>

	P203,973.33
5. Attorney's Fee-----	<u>P 20,397.33</u>

Total-----	P224,370.66

SO ORDERED.^[18]

As the NLRC denied^[19] respondents' Motion for Reconsideration, they filed a Petition for *Certiorari*^[20] under Rule 65 with the CA questioning the NLRC's dispositions.

Ruling of the CA:

The appellate court overturned the ruling of the labor tribunal and reinstated the Decision of the Labor Arbiter dismissing the labor complaint. It held that Gososo's claim of illegal dismissal was supported only by his bare and self-serving allegations. There was likewise no evidence that Gososo was dismissed in the first place. Adopting a substantial portion of the Arbiter's Decision, the CA ruled in this wise:

WHEREFORE, the petition for *certiorari* is **GRANTED**. The Decision dated August 28, 2009 and the Resolution dated February 26, 2010 of the National Labor Relations Commission (NLRC), Fourth Division, Cebu City, in NLRC VAC-05-000707-09, are **ANNULLED** and **SET ASIDE**. The Decision dated April 7, 2009 of Labor Arbiter Jesselito B. Latoja in NLRC Case No. RAB VIII 10-00316-08, dismissing the case for lack of merit, is **REINSTATED**.

SO ORDERED.^[21]

The CA did not reconsider its Decision.^[22] Gososo now appeals to this Court.

Petitioner's Arguments:^[23]

Gososo disputes the CA's reliance on the Arbiter's conclusion that he abandoned his work on October 11, 2008. According to petitioner, it was incorrect to assume that he persisted in not reporting for work on that date even if his leave application was not approved. He maintains that in the morning of October 11, 2008, respondent Yu insisted that he sign a Memorandum setting out acts that he did not commit, and when he refused to do so, respondent Yu fired him from his post. From that point on, there was no need to follow up the approval or non-approval of his application for leave. He knew he had no job to return to. He did attend his son's graduation in the late afternoon of the same day of October 11, 2008, and filed the complaint for illegal dismissal on the next working day or on October 13, 2008.

Petitioner also insists that the appellate court should have considered his immediate filing of the illegal dismissal complaint to have negated the charge of abandonment. Respondents had the burden of proof to show a deliberate and unjustified refusal on petitioner's part to resume his employment without any intention of returning. This, according to petitioner, respondents failed to discharge. His going on an unauthorized leave is not tantamount to abandonment of work. Besides, he reported for work on October 11, 2008 but was bullied to sign an incriminating document, and when he refused to sign the same, he was dismissed from work outright.

Respondents' Claims:^[24]

Respondents counter that the Arbiter and the appellate court correctly found that petitioner really abandoned his work. They stress that (1) petitioner could not conform to the "tyrannical management of men" by Yu; (2) he pushed through with his unauthorized leave of absence by not reporting for work beginning October 11, 2008; and (3) he never returned for work thereafter. He was not illegally dismissed.

Issues

1. Whether the CA correctly determined that petitioner Gososo abandoned his work and was legally dismissed by respondents Leyte Lumber and Yu; and
2. Whether petitioner is entitled to separation pay and his other money claims.

Our Ruling

The Court grants the Petition in part.

The burden of proving a claim falls on the party alleging its affirmative.^[25] In labor cases, substantial evidence is the basic minimum of required proof – or that amount of evidence a reasonable mind might accept as adequate to support a conclusion.^[26]