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THIRD DIVISION

[G.R. No. 206529, April 23, 2018]

RENANTE B. REMOTICADO, PETITIONER, VS. TYPICAL CONSTRUCTION TRADING CORP. AND ROMMEL M. ALIGNAY, RESPONDENTS.

DECISION

LEONEN, J.:

There can be no case for illegal termination of employment when there was no termination by the employer. While, in illegal termination cases, the burden is upon the employer to show just cause for termination of employment, such a burden arises only if the complaining employee has shown, by substantial evidence, the fact of termination by the employer.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed November 29, 2012 Decision[2] and March 26, 2013 Resolution[3] of the Court of Appeals in CA G.R. SP No. 124993 be reversed and set aside.

The assailed Court of Appeals November 29, 2012 Decision found no grave abuse of discretion on the part of National Labor Relations Commission in rendering its January 11, 2012 Decision,[4] which affirmed Labor Arbiter Renell Joseph R. Dela Cruz's (Labor Arbiter Dela Cruz) October 11, 2011 Decision.[5] Labor Arbiter Del a Cruz's Decision dismissed petitioner Renante B. Remoticado's (Remoticado) Complaint for illegal dismissal after a finding that he voluntarily resigned. The assailed Court of Appeals March 26, 2013 Resolution denied his Motion for Reconsideration.

Remoticado's services were engaged by Typical Construction Trading Corporation (Typical Construction) as a helper/laborer in its construction projects, the most recent being identified as the Jedic Project at First Industrial Park in Batangas.[6]

In separate sworn statements, Pedro Nielo (Nielo), Typical Construction's Field Human Resources Officer, and two (2) of Remoticado's co-workers, Salmero Pedros and Jovito Credo,[7] recalled that on December 6, 2010, Remoticado was absent without an official leave. He remained absent until December 20, 2010 when, upon showing up, he informed Nielo that he was resigning. Prodded by Nielo for his reason, Remoticado noted that they were "personal reasons considering that he got sick."[8] Nielo advised Remoticado to return the following day as he still had to report Remoticado's resignation to Typical Construction's main office, and as his final pay had yet to be computed.[9]

Remoticado returned the following day and was handed P5,082.53 as his final pay.

He protested, saying that he was entitled to "separation pay computed at two (2) months for his services for two (2) years."[10] In response, Nielo explained that Remoticado could not be entitled to separation pay considering that he voluntarily resigned. Nielo added that if Remoticado was not satisfied with P5,082.53, he was free to continue working for Typical Construction. However, Remoticado was resolute and proceeded to sign and affix his thumb marks on a *Kasulatan ng Pagbawi ng Karapatan at Kawalan ng Paghahabol*, a waiver and quitclaim.[11]

On January 10, 2011,[12] Remoticado filed a Complaint for illegal dismissal against Typical Construction and its owner and operator, Rommel M. Alignay (Alignay).[13] He claimed that on December 23, 2010, he was told to stop reporting for work due to a "debt at the canteen"[14] and thereafter was prevented from entering Typical Construction's premises.[15]

In a Decision[16] dated October 11, 2011, Labor Arbiter Dela Cruz dismissed Remoticado's Complaint for lack of merit. He explained that Remoticado's employment could not have been illegally terminated as he voluntarily resigned.[17]

In its January 11, 2012 Decision,[18] the National Labor Relations Commission denied Remoticado's appeal.

In its assailed November 29, 2012 Decision,[19] the Court of Appeals found no grave abuse of discretion on the part of the National Labor Relations Commission. In its assailed March 26, 2013 Resolution,[20] the Court of Appeals denied Remoticado's Motion for Reconsideration.

Undeterred by the consistent rulings of the Court of Appeals, the National Labor Relations Commission, and Labor Arbiter Dela Cruz, Remoticado filed the present Petition.[21]

For resolution is the issue of whether petitioner Renante B. Remoticado voluntarily resigned or his employment was illegally terminated in the manner, on the date, and for the reason he averred in his complaint.

The Petition lacks merit.

I

Determining which between two (2) alternative versions of events actually transpired and ascertaining the specifics of how, when, and why one of them occurred involve factual issues resting on the evidence presented by the parties.

It is basic that factual issues are improper in Rule 45 petitions. Under Rule 45 of the 1997 Rules of Civil Procedure,[22] only questions of law may be raised in a petition for review on *certiorari*. The rule, however, admits of exceptions. In *Pascual v. Burgos*:[23]

> The Rules of Court require that only questions of law should be raised in petitions tiled under Rule 45. This court is not a trier of facts. It will not

entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.[24] (Citations omitted)

No exception avails in this case.

Quite glaring is the sheer consistency of the factual findings of the Court of Appeals, the National Labor Relations Commission, and Labor Arbiter Dela Cruz.

Not only are these findings uniform, but they are also sustained by evidence. The Court of Appeals correctly ruled that there is no showing of grave abuse of discretion on the part of the National Labor Relations Commission.

II

It is petitioner's claim that the Court of Appeals, the National Labor Relations Commission, and Labor Arbiter Dela Cruz are all in error for failing to see that Typical Construction failed to discharge its supposed burden of proving the validity of his dismissal. He asserts that such failure leaves no other conclusion than that his employment was illegally terminated.[25]

It is petitioner who is in error.

It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer.[26] If there is no proof of termination by the employer,

there is no point in even considering the cause for it. There can be no illegal termination when there was no termination:

> Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[27]

Petitioner here insists on his version of events, that is, that on December 23, 2010, he was told to stop reporting for work on account of his supposed indebtedness at the canteen. This bare insistence, however, is all that petitioner has. He failed to present convincing evidence. Even his basic narrative is bereft of supporting details that could be taken as badges of veracity. As the Court of Appeals underscored, "[P]etitioner only made a general statement that he was illegally dismissed . . . He did not state how he was terminated [or] mentioned who prevented him from reporting for work."[28]

III

In contrast with petitioner's bare allegation are undisputed facts and pieces of evidence adduced by respondents, which cast serious doubt on the veracity of petitioner's recollection of events.

It is not disputed that the establishment identified as Bax Canteen, to which petitioner owed P2,115.00, is not owned by, or otherwise connected with any of the respondents, or with any of Typical Construction's owners, directors, or officers. There was also no showing that any of the two (2) respondents, or anyone connected with Typical Construction, was prejudiced or even just inconvenienced by petitioner's indebtedness. It appears that Bax Canteen was merely in the proximity of the site of Typical Construction's Jedic Project. Petitioner failed to show why Typical Construction would go out of its way to concern itself with the affairs of another company. What stands, therefore, is the sheer improbability that Typical Construction would take petitioner's indebtedness as an infraction, let alone as a ground for terminating his employment.[29]

The waiver and quitclaim bearing petitioner's signature and thumbmarks was d9Jed December 21, 2010,[30] predating petitioner's alleged illegal termination by two (2) days. If indeed petitioner was told to stop reporting for work on December 23, 2010, it does not make sense for Typical Construction to have petitioner execute a waiver and quitclaim two (2) full days ahead of the termination of his employment. It would have been a ludicrous move for an employer that is purportedly out to outwit someone into unemployment.

The waiver and quitclaim could very well have been antedated. But it is not for this Court to sustain a mere conjecture. It was for petitioner to allege and prove any possibility of antedating. He did not do so. In any case, even if this Court were to indulge a speculation, there does not appear to be any cogent reason for antedating. To the contrary, antedating the waiver and quitclaim was an unnecessary complication considering that any simulation of resignation would have already been served by petitioner's mere affixing of his signature. Antedating would just have been an inexplicably asinine move on the part of respondents.