

SECOND DIVISION

[G.R. No. 198465, April 22, 2015]

LITEX GLASS AND ALUMINUM SUPPLY AND/OR RONALD ONG-SITCO, PETITIONERS, VS. DOMINADOR B. SANCHEZ, RESPONDENT.

DECISION

DEL CASTILLO, J.:

Before us is a Petition for Review on *Certiorari*^[1] seeking to set aside the May 11, 2011 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 113840, which dismissed the petition for *certiorari* filed therewith and affirmed the October 30, 2009^[3] and February 18, 2010^[4] Resolutions of the National Labor Relations Commission (NLRC), which in turn, affirmed *in toto* the June 18, 2009 Decision^[5] of the Labor Arbiter declaring respondent Dominador B. Sanchez (Sanchez) to have been illegally dismissed from employment by petitioners Litex Glass and Aluminum Supply (Litex) and Ronald Ong-Sitco (Ong-Sitco). Likewise assailed is the August 31, 2011, Resolution^[6] of the CA denying petitioners' Motion for Reconsideration.^[7]

Antecedent Facts

This case arose from a Complaint^[8] for illegal dismissal and non-payment of holiday pay, premium for holiday pay, service incentive leave pay and attorney's fees filed by Sanchez against petitioners on February 18, 2009 before the Labor Arbiter, docketed as NLRC NCR Case No. 02-02975-09.

Sanchez alleged that since 1994, he was employed as driver and aluminum installer in several companies owned and managed by Ong-Sitco, the last of which was with Litex. Since February 1996, Ong-Sitco had been remitting his Social Security System (SSS) monthly contributions.^[9] Sanchez averred that he has no record of any work related offense for which he has been reprimanded, suspended or warned and that for the past 15 years, he has been diligently serving his employer. He was thus surprised when on December 23, 2008, Ong-Sitco and his wife scolded and threw insulting words and invectives upon him and then ordered him to go on indefinite leave. Due to the incident, he decided to just leave the work premises with the hope that the animosity between him and his employer would eventually subside. On December 28, 2008, he went back to the office to talk to Ong-Sitco, but the latter just ignored him. He again returned on January 2, 2009 to purportedly discuss his employment status, but Ong-Sitco was again unwilling to talk to him. The same thing happened after he went back a week later. These, thus, led Sanchez to file a case for illegal dismissal and non-payment of benefits against petitioners.

Subsequent to the filing of the said complaint, Sanchez received two memorandum-letters from petitioners. The first one was dated January 7, 2009^[10] but mailed on

February 23, 2009,^[11] and received by Sanchez on February 26, 2009. It contained a directive for Sanchez to report for work and to explain his continued absence from December 22, 2008 to January 7, 2009, after he was allegedly given verbal warning for committing the following infractions: 1) going home early without justification on December 3, 2008; 2) exhibiting erratic behavior and threatening to file a case against petitioners after being summoned to explain his unjustified leave from work on December 9, 2008; and, 3) unauthorized use of company vehicle for personal benefit on December 20, 2008. The second memorandum-letter^[12] dated January 22, 2009 which was sent on March 10, 2009,^[13] and received by Sanchez on March 22, 2009, contained a warning that his refusal to follow the earlier directive to report and explain his continued absence within 24 hours would constitute abandonment of work on his part.

Sanchez's legal counsel, Atty. Osias M. Merioles, Jr., on the other hand, wrote petitioners a letter^[14] dated March 20, 2009 informing them that his client would not report for work as the first memorandum-letter was a mere afterthought to cover up their act of illegal termination.

Petitioners, on the other hand, negated all of Sanchez's claims. They denied having employed him in 1994 since, according to them, Litex was only registered on April 5, 2002.^[15] Petitioners also denied having dismissed Sanchez. They averred that it was Sanchez who abandoned his job by not reporting for work.

Petitioners then presented their own version of the facts. They averred that based on company records, the January 7, 2009 memorandum-letter was sent on January 8, 2009 and not on February 23, 2009 to Sanchez's last known address. The same, however, was returned to sender. On the other hand, the January 22, 2009 memorandum-letter was sent to Sanchez on January 23, 2009 and not on March 10, 2009. These memorandum-letters are not termination letters as claimed by Sanchez, but notices for him to report for work and to explain several infractions that he committed on December 3, 9 and 20, 2009. But instead of complying, Sanchez refused to go to work as evidenced by his counsel's letter. To petitioners, this intimated Sanchez's lack of interest to work. Petitioners further averred that they have no reason to terminate Sanchez especially since the latter has pending obligations with the company consisting of P39,449.20 worth of materials and money amounting to P6,500.00.

Ruling of the Labor Arbiter

In a Decision^[16] dated June 18, 2009, the Labor Arbiter declared Sanchez to have been illegally dismissed by petitioners. This was after he found Sanchez's version of facts more credible. He observed that the original copies of the registry receipts which were attached to the envelopes of the January 7 and January 22, 2009 memorandum-letters show that they were mailed only on February 23, 2009 and March 10, 2009, respectively, or after the filing of the complaint for illegal dismissal on February 18, 2009. Thus, said memorandum-letters were made and sent by petitioners "to evade the consequences of illegal termination by showing seeming compliance with the notice requirement and likewise to demonstrate the absence of dismissal."^[17] Moreover, the Labor Arbiter pointed out that the alleged infractions imputed against Sanchez are not sufficient grounds to warrant his dismissal.

For having been illegally dismissed, Sanchez was awarded separation pay computed from the date of hiring in 1994 up to the finality of the Decision, and foil backwages computed from the date of dismissal also up to the finality of the Decision.^[18] He was also granted his claims for holiday pay, service incentive leave pay and attorney's fees. Thus:

WHEREFORE, premises considered, judgment is hereby rendered finding Complainant to have been illegally dismissed and, in conformity therewith, holding Respondents jointly and severally liable to pay Complainant his separation pay and full backwages counted from date of dismissal until finality of this Decision, including the awards [for] holiday pay and service incentive leave pay, as currently contained in Computation and Examination Unit's schedule of computation herein adopted and marked as Annex "A", plus attorney's fee equivalent to 10% of the judgment award.

All other claims are dismissed for lack of merit.

SO ORDERED.^[19]

Ruling of the National Labor Relations Commission

On appeal with the NLRC, petitioners averred that the Labor Arbiter erred in: (1) not ruling that Sanchez abandoned his work; (2) awarding separation pay even if not sought in the complaint and despite the absence of strained relations; (3) computing separation pay based on Sanchez's length of service of 15 years despite the fact that he was only hired in 2002; (4) not ruling on Sanchez' indebtedness to petitioners in the total sum of P45,494.20; and, (5) awarding attorney's fees despite the absence of bad faith on their part.

In a Resolution^[20] dated October 30, 2009, the NLRC dismissed the appeal and affirmed the Labor Arbiter's judgment. It: (1) ruled that Sanchez cannot be said to have abandoned his job as there is no showing of an intention to resign or forego with his employment; (2) upheld the grant of separation pay and other monetary awards; and, (3) sustained the Labor Arbiter in not deducting from Sanchez's monetary awards his alleged obligations to petitioners on the ground that the said liabilities were not fully substantiated and that they arose from a different contractual relation.

Petitioners filed a motion for reconsideration reiterating their previous arguments and adding that the award of backwages should be computed only until March 20, 2009 when Sanchez manifested his refusal to report for work. This motion was, however, denied in the NLRC Resolution^[21] of February 18, 2010.

Petitioners' next recourse was a Petition for *Certiorari*^[22] with the CA.

Ruling of the Court of Appeals

In a Decision^[23] dated May 11, 2011, the CA dismissed the Petition for Certiorari and affirmed the afore-mentioned NLRC Resolutions. It agreed with the findings of the labor tribunals that: (1) Sanchez was dismissed without valid grounds; (2) he is not guilty of abandonment of work as he immediately filed a case after his efforts to return to work proved futile; (3) the memorandum-letters were mere afterthought as to give semblance of validity to the dismissal, they having been sent after the complaint was filed; (4) there was already antagonism between the parties that warranted the award of separation pay; (5) Sanchez was under the employ of Ong-Sitco's several companies for the past 15 years; (6) the alleged accountabilities of Sanchez were not fully substantiated and cannot be offset against his monetary awards since they sprung from a different contractual relation; (7) Sanchez is entitled to attorney's fees since he was constrained to litigate and incur expenses to protect his interests; and, (8) the award of backwages should be computed from the date of dismissal on December 23, 2008 until finality of the judgment and not only until March 20, 2009 because Sanchez's refusal to return to work was justified, it being predicated on the reasonable belief that compliance with petitioners' memorandum-letters would only serve the latter's apparent purpose of evading their responsibility in illegally terminating him.

Petitioners filed a Motion for Reconsideration which was likewise denied in the CA Resolution^[24] of August 31, 2011.

Hence, this Petition.

Issues

WHETHER X X X IT IS MISLEADING ON THE PART OF THE PRIVATE RESPONDENT TO PRAY FOR REINSTATEMENT WHEN IN FACT IT IS HIS POSITION THAT HE WILL NOT REPORT FOR WORK ANYMORE.

WHETHER XXX THE AWARD OF SEPARATION PAY MAY BE SUSTAINED DESPITE THE FACT THAT THE SAME IS NEITHER PRAYED FOR BY THE PRIVATE RESPONDENT [NOR] SUPPORTED BY ALLEGATIONS OF STRAINED RELATIONSHIP IN THE PLEADINGS SUBMITTED BY THE PARTIES NOR WAS THERE ANY ALLEGATION THERETO IN THE QUESTIONED DECISION ITSELF.

WHETHER XXX MERE SELF-SERVING ALLEGATIONS OF THE PRIVATE RESPONDENT [ARE] SUFFICIENT TO PROVE THE ALLEGED DISMISSAL.

WHETHER XXX PRIVATE RESPONDENT IS ENTITLED TO THE PAYMENT OF HIS MONEY CLAIMS.^[25]

Petitioners maintain that Sanchez is not entitled to the monetary awards as no dismissal, in fact, took place. In particular, they question the award of separation pay since it was not prayed for in the complaint, never discussed or raised in the proceedings before the Labor Arbiter, and no strained relations exists between them and Sanchez. Besides, even assuming that Sanchez is entitled to separation pay, petitioners contend that the computation thereof should only be from 2002 when Sanchez commenced working for them and not in 1994. Moreover, the award of

attorney's fees is improper since there is no bad faith on their part.

Our Ruling

The Petition is partly meritorious.

*Sanchez did not abandon his work
but was illegally dismissed.*

Seeking to absolve themselves from the charge of illegal dismissal by denying the fact of dismissal, petitioners contend that Sanchez abandoned his job. To support this, they highlighted the fact that they sent him "show-cause" letters which were made in good faith, in order to give him an opportunity to answer the infractions imputed against him and to likewise give notice for him to return to work. They insist that the two memorandum-letters were mailed on January 8 and 23, 2009, respectively, or before the filing of the complaint, and that said letters were presumed to have been received by Sanchez in the regular course of mail absent any proof to the contrary.

Suffice it to say, however, that the issue of whether Sanchez was dismissed from employment is essentially a question of fact^[26] which cannot be raised in this petition for review on *certiorari*. Besides, we see no compelling reason to deviate from the finding of fact of the CA, which is in absolute agreement with those of the NLRC and the Labor Arbiter, that Sanchez was dismissed from employment. "[F]actual findings of agencies exercising quasi-judicial functions are accorded not only respect but even finality"^[27] by this Court when supported by substantial evidence and especially when affirmed by the CA.^[28] Here, the Labor Arbiter, the NLRC and the CA were unanimous in finding Sanchez's narration of the circumstances surrounding his illegal dismissal credible.

Moreover, this Court is not inclined to disturb findings which conform to evidentiary facts. Aside from the fact that Ong-Sitco did not dispute Sanchez's claim that the two of them had an altercation on December 23, 2008, the former also admitted that the latter subsequently went back to his office to clear his employment status but was ignored by him. After two similar attempts from Sanchez, Ong-Sitco still refused to entertain Sanchez's requests and queries regarding his employment status. It was only in the two memorandum-letters dated January 7 and January 22, 2009, which were likewise unanimously found by the labor tribunals and the CA to have been sent to Sanchez after the filing of the complaint, that petitioners warned Sanchez of his continued absence and directed him to report for work to explain said absences and answer the infractions he allegedly committed.

From the above factual scenario, the Court is not convinced that Sanchez abandoned his work. To constitute abandonment, it is essential that an employee failed to report for work without any valid and justifiable reason and that he had a clear intention to sever the employment relationship by some overt act.^[29] Mere failure to report for work after notice to return does not constitute abandonment.^[30] As mentioned, Sanchez reported back to Ong-Sitco several times to ask about his employment status but was not entertained. Oddly, while Ong-Sitco did not deny this, he never bothered to explain why during these instances, he did not warn Sanchez about his continued absence or ask him to return to work, if only to bolster