

SECOND DIVISION

[G.R. No. 185549, August 07, 2013]

**VICENTE ANG, PETITIONER, VS. CEFERINO SAN JOAQUIN, JR.,
AND DIOSDADO FERNANDEZ, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

The employer's act of tearing to pieces the employee's time card may be considered an outright – not only symbolic – termination of the parties' employment relationship.

This Petition for Review on *Certiorari*^[1] assails the August 29, 2008 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 75545 which dismissed the Petition for *Certiorari*^[3] in said case, as well as its December 4, 2008 Resolution^[4] denying reconsideration thereof.

Factual Antecedents

Petitioner Vicente Ang (Ang) is the proprietor of Virose Furniture and Glass Supply (Virose) in Tayug, Pangasinan, a wholesaler/retailer of glass supplies, жалousies, aluminum windows, table glass, and assorted furniture. Respondents Ceferino San Joаquin, Jr. (San Joаquin) and Diosdado Fernandez (Fernandez) were regular employees of Virose: San Joаquin was hired in 1974 as helper, while Fernandez was employed in 1982 as driver.^[5] Respondents have been continuously in Ang's employ without any derogatory record.^[6] Each received a daily salary of P166.00.^[7]

Through the years, San Joаquin – who is Ang's first cousin, their mothers being sisters – became a *pahinante* or delivery helper, and later on an all-around worker of Virose.^[8]

On August 24, 1999, respondents attended the court hearing relative to the 41 criminal cases filed by former Virose employee Daniel Abrera (Abrera) against Ang for the latter's non-remittance of Social Security System (SSS) contributions.^[9] During that hearing, respondents testified against Ang; it was the second time for San Joаquin to testify, while it was Fernandez's first.^[10] Previously, respondents joined Abrera in questioning Ang's procedure in remitting their SSS contributions.^[11] After the said hearing Ang began to treat respondents with hostility and antagonism.

On August 28, 1999, Ang's wife, Rosa, instructed a Virose salesclerk to find helpers who would transfer monobloc chairs from the Virose store to her restaurant, Leng-Leng's Foodshop, located just beside the store. The salesclerk instructed San Joаquin to help, but the latter refused, saying that he was not an employee of the

restaurant but a glass installer of Virose. A heated argument ensued between San Joaquin on the one hand and Rosa, her son Jonathan, and the salesclerk on the other. San Joaquin left the store, shouting invectives.^[12]

On August 30, 1999, San Joaquin returned to the store, only to find out that Ang had torn his DTR to pieces that day while the DTR of Fernandez was torn to pieces by Ang immediately after the August 24, 1999 hearing in which the respondents testified.^[13] On the same day, Fernandez reported for work and received a memorandum of even date issued by Ang informing him that he was placed on a one-week suspension for insubordination.^[14] The memorandum did not specify the act of insubordination.^[15]

On August 31, 1999, respondents filed against Ang Complaints for illegal constructive dismissal with claims for backwages and separation pay.^[16] The Complaints were docketed as NLRC Case No. SUB-RAB-1-07-8-0175-99 Pang.

On September 5, 1999, Fernandez confronted Ang, demanding that the latter sign certain documents which the former had with him. Ang refused, and Fernandez – who was then intoxicated – left uttering unsavory remarks and threatening to sue Ang.^[17]

On September 8, 1999, San Joaquin received a memorandum from Ang dated August 30, 1999, placing the former under preventive suspension and ordering him to explain in writing, within three days, why no disciplinary action should be imposed against him for his refusal to obey the August 28, 1999 instructions to transfer the monobloc chairs.^[18]

On September 13, 1999, Fernandez received another memorandum from Ang, ordering him to report for work after being absent for a week.^[19]

On September 21, 1999, Ang issued a memorandum terminating San Joaquin's employment.^[20]

Ruling of the Labor Arbiter

In their Position Paper,^[21] respondents claimed that they were constructively dismissed on August 30, 1999, when the situation in the workplace became extremely unbearable owing to their attendance at the August 24, 1999 hearing of the criminal cases against Ang, where they testified against the latter. They accused Ang of irregularities relative to the remittance of their SSS contributions; subjecting them to verbal abuse; unfair practices – specifically assigning them tasks which were not part of their work; and removing their DTRs and tearing them to pieces, soon after they testified against him in the criminal cases and after complaining of irregularities in the remittance of their SSS contributions. Respondents referred to Ang's act of tearing their DTRs to pieces as the "last straw that finally broke the camel's back."^[22]

Respondents further argued that Ang's memoranda which he later issued were intended to cover up his illegal acts, an afterthought whose purpose was to conceal

Ang's unlawful act of removing and tearing up their time cards.^[23]

For his part, Fernandez claimed that the August 30, 1999 memorandum suspending him for insubordination was illegal as it did not specify the act constituting insubordination, the date it was committed, and the particular company policy or rule that was violated. Fernandez further alleged that the September 13, 1999 memorandum which ordered him to report for work after being absent for a week was another prevarication, because he reported for work on three occasions following receipt of the said memorandum, but he could not find his time card. Finally, Fernandez claimed that he did not receive any notice of dismissal from Ang.^[24]

Respondents claimed that their relationship with Ang had become so strained that their reinstatement was no longer feasible, and ordering them back to work would only subject them to further harassment and embarrassment.^[25] They thus prayed for an award of backwages, separation pay, P100,000.00 each as moral and exemplary damages, and 10% attorney's fees.^[26]

In his Position Paper,^[27] Ang claimed that respondents were disrespectful, disobedient, and that they abandoned their employment, went on absence without leave (AWOL), and failed to respond to his memoranda. They were thus accordingly dismissed for cause, and were not entitled to backwages, separation pay, damages and attorney's fees. He prayed for the dismissal of the case.

On July 25, 2000, Labor Arbiter Gerardo A. Yulo issued a Decision^[28] decreeing as follows:

WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit.

SO ORDERED.^[29]

The Labor Arbiter held that respondents were unable to show how Ang discriminated against them. He pointed out that respondents cited only two instances of alleged discrimination/reprisal committed against them: the August 28, 1999 incident regarding the transfer of the monobloc chairs and Fernandez's failure to find his DTR when he reported for work following receipt of the September 13, 1999 memorandum; but these were not acts of discrimination/ reprisal. The Labor Arbiter found that the order to transfer the chairs to Rosa's restaurant was reasonable considering the exigencies of the moment, and the order was given by the Virose salesclerk; on the contrary, San Joaquin was guilty of insubordination in not carrying out a reasonable order of his employer. As for Fernandez, the Labor Arbiter held that the loss of his time card is not sufficient reason to suppose that his employment had been terminated. Fernandez should have approached the person charged with keeping his time cards so that a new one could be issued, but he did not do so.

The Labor Arbiter added that Ang's issuance of the memoranda does not constitute an afterthought, since it has not been shown that they were issued with knowledge that respondents previously filed Complaints on August 31, 1999. Moreover, the Labor Arbiter found that Ang correctly assumed that respondents were no longer interested in resuming their employment, when they failed to respond to his

memoranda and did not report for work.

Finally, the Labor Arbiter concluded that respondents were guilty of abandonment of work, and that their accusation of constructive dismissal was false. As such, respondents were not entitled to the awards as prayed for in their Complaints.

Ruling of the National Labor Relations Commission (NLRC)

Respondents filed an Appeal^[30] with the NLRC. In a September 30, 2002 Decision, ^[31] the NLRC decreed, thus:

WHEREFORE, the Decision of the Labor Arbiter is hereby AFFIRMED and complainants' appeal therefrom is DISMISSED for lack of merit.

SO ORDERED.^[32]

The NLRC declared that there was no constructive dismissal. It held that respondents failed to prove that they were constructively dismissed; nor do the facts of the case sufficiently show that they were constructively dismissed from employment.

Respondents moved for reconsideration,^[33] but in a November 22, 2002 Resolution, ^[34] the NLRC denied the same.

Ruling of the Court of Appeals

Respondents went up to the CA via an original Petition for *Certiorari*.^[35] On August 29, 2008, the CA issued the assailed Decision,^[36] decreeing as follows:

WHEREFORE, in view of the foregoing, finding that petitioners Ceferino San Joaquin and Diosdado A. Fernandez were illegally dismissed, the instant petition for *certiorari* is hereby **GRANTED**. The 30 September 2002 Decision of the National Labor Relations Commission, Third Division is hereby **REVERSED** and **SET ASIDE**.

Private respondent Vicente Ang is hereby ordered to pay petitioners:

1. Separation pay in lieu of reinstatement considering that resentment and enmity have transpired between the parties paving the way for strained relations;
2. Backwages computed from the time of illegal dismissal of San Joaquin and Fernandez from August 30, 1999, both up to the date of the finality of this decision, without qualification or deduction;
3. Attorney's fees in the amount of ten (10) percent of the total amount awarded to petitioners.

This case is hereby remanded to the National Labor Relations Commission for the proper computation of the awards hereinstated, **with DISPATCH**.

No pronouncement as to costs.

SO ORDERED.^[37]

The CA held that the Labor Arbiter and the NLRC misappreciated the facts which thus led to the erroneous conclusion that there was no constructive dismissal. It considered Ang's act of tearing the respondents' DTRs or time cards as a categorical indication of their dismissal from employment. The CA declared, thus:

San Joaquin and Fernandez were constructively dismissed when Ang tore their time cards to pieces thus preventing them from returning to work.

^[38]

The CA also found that respondents did not abandon their employment, as they both voluntarily reported for work: San Joaquin went to the store on August 30, 1999 after the unfortunate incident of August 28, 1999, only to find out that his time card had been torn to pieces by Ang, while Fernandez reported for work and even received a memorandum from Ang placing him under suspension, and this despite the fact that previously, Ang had torn his time card to pieces. It added that the immediate filing of illegal dismissal Complaints by the respondents goes against the very concept of abandonment of work.^[39]

The CA further declared that constructive dismissal does not only mean forthright dismissal or diminution in rank, compensation, benefits and privileges; it may be equated with acts of clear discrimination, insensibility or disdain by an employer as to be unbearable on the part of the employee that it forecloses any choice but to forego continued employment.^[40] Likewise, dismissal may be defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely.^[41] It added that constructive dismissal may occur when by the employer's conduct or behavior, an employee could not reasonably be expected to continue his employment on account of the employer's making his life very difficult, as by vindictive action, harassment, or humiliation, among others.^[42]

The CA found unreasonable San Joaquin's assignment to perform tasks related to Ang's other businesses, specifically Rosa's restaurant. It held that assigning San Joaquin to transfer Virose's monobloc chairs for use by Leng-Leng's Foodshop was improper as it was beyond San Joaquin's scope of work.

Petitioner moved for reconsideration,^[43] but in its December 4, 2008 Resolution,^[44] the CA stood firm in its stance. Hence, the present Petition.

Issues

Petitioner submits the following assignment of errors:

I

THE QUESTIONED DECISION AND RESOLUTION OF THE COURT OF APPEALS REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH AFFIRMED THE DECISION OF THE LABOR ARBITER IS NOT IN ACCORDANCE WITH LAW AND