676 Phil. 472

THIRD DIVISION

[G.R. No. 168317, November 21, 2011]

DUP SOUND PHILS. AND/OR MANUEL TAN, PETITIONERS, VS. COURT OF APPEALS AND CIRILO A. PIAL, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated November 24, 2004 and Resolution[2] dated May 16, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 81251. The CA nullified and set aside the June 30, 2003 Decision of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 033103-02, while the CA Resolution denied petitioners' Motion for Reconsideration.

The instant petition arose from a complaint for illegal dismissal filed by herein private respondent Cirilo A. Pial (Pial) on November 5, 2001 with the NLRC, Quezon City. In his Position Paper, Pial alleged that he was an employee of herein petitioner DUP Sound Phils. (DUP), which is an entity engaged in the business of recording cassette tapes for various recording companies; petitioner Manuel Tan (Tan) is the owner and manager of DUP; Pial was first employed in May 1988 until December 1988; on October 11, 1991, he was re-employed by DUP and was given the job of "mastering tape"; his main function was to adjust the sound level and intensity of the music to be recorded as well as arrange the sequence of the songs to be recorded in the cassette tapes; on August 21, 2001, Pial got absent from work because he got sick; when he got well the following day and was ready for work, he called up their office in accordance with his employer's policy that any employee who gets absent shall first call their office before reporting back to work; to his surprise, he was informed by the office secretary that the latter was instructed by Tan to tell him not to report for work until such time that they will advise him to do so; after three weeks, without receiving any notice, Pial again called up their office; this time the office secretary advised him to look for another job because, per instruction of Tan, he is no longer allowed to work at DUP; Pial asked the office secretary regarding the reason why he was not allowed to return to his job and pleaded with her to accept him back, but the secretary simply reiterated Tan's order not to allow him to go back to work. Pial prayed for the payment of his unpaid service incentive leave pay, full backwages, separation pay, moral and exemplary damages as well as attorney's fees.[3]

In their Position Paper, herein petitioners DUP and Tan denied the material allegations of Pial contending that on or about January 1996 they hired Pial as a laborer; on August 21, 2001, the latter failed to report for work following an altercation with his supervisor the previous day; on September 12, 2001, Pial called up their office and informed the office secretary that he will be going back to work on September 17, 2001; however, he failed to report for work on the said date;

petitioners were subsequently surprised when they learned that Pial filed a complaint for illegal dismissal against them; Pial was never dismissed, instead, it was his unilateral decision not to work at DUP anymore; Tan even offered him his old post during one of the hearings before the NLRC hearing officer, but Pial refused such offer or any other offer of amicable settlement.[4]

On July 25, 2002, the Labor Arbiter (LA) handling the case rendered a Decision5 declaring Pial to have been illegally dismissed and ordering DUP and Tan to reinstate him to his former position and pay him backwages, cost of living allowance, service incentive leave pay and attorney's fees.

On appeal, the NLRC, in its Decision promulgated on June 30, 2003, modified the Decision6 of the LA by deleting the award of backwages and attorney's fees. The NLRC ruled that there was no illegal dismissal on the part of DUP and Tan, but neither was there abandonment on the part of Pial.

Pial filed a Motion for Reconsideration,[7] but the NLRC denied it in its Resolution[8] dated October 7, 2003.

Pial then filed a special civil action for certiorari with the CA.[9]

On November 24, 2004, the CA issued its presently assailed Decision setting aside the June 30, 2003 Decision of the NLRC and reinstating the July 25, 2002 Decision of the LA.

DUP and Tan filed a Motion for Reconsideration, but the same was denied by the CA in its Resolution dated May 16, 2005.

Hence, the instant petition for review on *certiorari* based on the following grounds:

> THE ASSAILED DECISION OF THE HONORABLE COURT OF APPEALS IS CONTRARY TO LAW AND SETTLED JURISPRUDENCE.
>
> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF [THE] NLRC AND, THUS, REINSTATING THE LABOR ARBITER'S DECISION.
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> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT TAKING INTO CONSIDERATION PRIVATE RESPONDENT PIAL'S ADAMANT REFUSAL TO RETURN TO HIS WORK WITHOUT VALID REASON DURING AND AFTER THE PENDENCY OF THE INSTANT CASE.[10]

Petitioners' basic contention in the instant petition is that the CA erred in finding that they terminated private respondent's employment, much less illegally, and that private respondent failed to prove that he was terminated from his employment.

The petition lacks merit.

At the outset, the Court finds it proper to reiterate the well-established rule that the jurisdiction of this Court in cases brought before it via Rule 45 of the Rules of Court is limited to reviewing errors of law.[11] However, one of the admitted exceptions to this rule is where the findings of the NLRC contradict those of the Labor Arbiter, the Court, in the exercise of its equity jurisdiction, may look into the records of the case and reexamine the questioned findings.[12]

In this case, while the LA, the NLRC, and the CA were unanimous in their finding that private respondent is not guilty of abandonment, the NLRC's finding that private respondent was not illegally dismissed is contradictory to the ruling of the Labor Arbiter and the CA that petitioners are guilty of illegal dismissal. Hence, the Court deems it proper to reexamine the above factual findings.

After a review of the records at hand, the Court finds no cogent reason to depart from the concurrent findings of the Labor Arbiter and the CA that private respondent was illegally dismissed. Like the Labor Arbiter, the NLRC and the CA, this Court cannot give credence to petitioners' claim that private respondent abandoned his job.

The settled rule in labor cases is that the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and, therefore, illegal.[13] In the instant case, what betrays petitioners' claim that private respondent was not dismissed from his employment but instead abandoned his job is their failure to prove that the latter indeed stopped reporting for work without any justifiable cause or a valid leave of absence. Petitioners merely presented the affidavits of their office secretary which narrated their version of the facts. These affidavits, however, are not only insufficient to prove their defense but also undeserving of credence because they are self-serving.[14]

Moreover, considering the hard times in which we are in, it is incongruous for private respondent to simply give up his work without any apparent reason at all. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking for a means of livelihood nowadays. Certainly, no man in his right mind would do such thing.[15]

Petitioners further claim that private respondent's absence caused interruption in the workflow which caused damages to the company. It is, thus, logical that petitioners would have wanted private respondent to return to work in order to prevent further loss on their part. In such a case, they could have immediately sent private respondent a notice or show-cause letter at his last known address requiring him to report for work, or to explain his absence with a warning that his failure to do so would be construed as abandonment of his work. However, petitioners failed to do so. Moreover, if private respondent indeed abandoned his job, petitioners should have afforded him due process by serving him written notices, as well as a chance to explain his side, as required by law. It is settled that, procedurally, if the dismissal is based on a just cause under Article 282[16] of the Labor Code, the employer must give the employee two written notices and a hearing or opportunity to be heard if requested by the employee before terminating the employment: a notice specifying the grounds for which dismissal is sought, a hearing or an opportunity to be heard and, after hearing or opportunity to be heard, a notice of

the decision to dismiss.[17] Again, petitioners failed to do these. Thus, the foregoing bolsters private respondent's claim that he did not abandon his work but was, in fact, dismissed.

The consistent rule is that the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[18] In addition, the employer must also observe the requirements of procedural due process. In the present case, petitioners failed to submit sufficient evidence to show that private respondent's dismissal was for a justifiable cause and in accordance with due process.

The Court also agrees with private respondent that petitioners' earnestness in offering re-employment to the former is suspect. It was only after two months following the filing of the complaint for illegal dismissal that it occurred to petitioners, in a belated gesture of goodwill during one of the hearings conducted before the NLRC, to invite private respondent back to work. If petitioners were indeed sincere, they should have made their offer much sooner. Under circumstances established in the instant case, the Court doubts that petitioners' offer would have been made if private respondent had not filed a complaint against them.

Neither may private respondent's refusal to report for work subsequent to the Labor Arbiter's issuance of an order for his reinstatement be considered as another abandonment of his job. It is a settled rule that failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment.[19] As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[20] It is a form of neglect of duty, hence, a just cause for termination of employment by the employer.[21] For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work.[22] The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[23] In the instant case, private respondent claimed that his subsequent refusal to report for work despite the Labor Arbiter's order for his reinstatement is due to the fact that he was subsequently made to perform the job of a "bodegero" of which he is unfamiliar and which is totally different from his previous task of "mastering tape." Moreover, he was assigned to a different workplace, which is a warehouse, where he was isolated from all other employees. The Court notes that petitioners failed to refute the foregoing claims of private respondent in their pleadings filed with the CA. It is only in their Reply filed with this Court that they simply denied and brushed off private respondent's assertion that he was made to work as a "bodegero." The Court is, thus, led to conclude that petitioners' failure to immediately refute the claims of private respondent is an implied admission thereof. In the same vein, the Court treats petitioners' belated denial of the same claims of private respondent as mere afterthought which is not worthy of credence.

Under the existing law, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights.[24] Article 279[25] of the