

SECOND DIVISION

[G.R. No. 168273, April 30, 2009]

HARBORVIEW RESTAURANT, PETITIONER, VS. REYNALDO LABRO, RESPONDENT.

D E C I S I O N

TINGA, J.:

This is a petition for review of the resolution of the Court of Appeals in CA-G.R. SP No. 72393 dated 16 May 2005 which denied petitioner's motion for reconsideration of the appellate court's decision of 19 November 2004.

The antecedent facts follow.

Respondent Reynaldo Labro (respondent) was a cook at Harborview Restaurant since August 1985. When he reported for work on 29 January 1999, he discovered that his co-employee, a certain Salvador Buenaobra, had taken over his work and that the take-over was effected upon the instructions of the General Manager, Demetrio Dizon. This was confirmed by the chief cook, who told respondent to go home as there was no more work for him to do, and by respondent's own brother, who was the restaurant's over-all supervisor. Respondent was further told by his brother that the reason for his dismissal was an incident which happened on 20 January 1999 wherein respondent allegedly took out a plastic bag of ground meat from the restaurant's kitchen, and gave the same to a supplier of the restaurant. The incident was supposedly witnessed by two of respondent's co-employees. Respondent denied the accusation and said that what he took out was a mere "throw away" bottle, and that this was witnessed by another co-employee. Respondent left the company premises.

The following week, or on 5 February 1999, respondent filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC), claiming to have been illegally dismissed by petitioner. Petitioner, on the other hand, maintained that they had not dismissed petitioner. It claimed that petitioner had refused to work, despite its General Manager's letter dated 8 February 1999 instructing him to report for work immediately, otherwise he would be deemed to have abandoned his work and would be terminated. In the 8 February 1999 letter, it was mentioned that there was a previous instruction for respondent to see the General Manager on 29 January 1999, but respondent did not follow the directive. Petitioner added that assuming *arguendo* that respondent was indeed terminated there was just cause for his dismissal. Respondent, however, denied having received the 8 February 1999 letter. There was also no indication whether respondent received the letter.

The labor arbiter ruled in favor of respondent with the pronouncement that he had been illegally dismissed. He stressed that there was no proof that respondent had stolen meat as alleged by petitioner and that neither was there proof that

respondent had been furnished copies of the affidavits of his co-employees implicating him. Moreover, even assuming that the dismissal was for cause, petitioner failed to afford respondent due process. The labor arbiter also disregarded the claim of abandonment.^[1]

On appeal, petitioner contended that respondent resorted to the filing of the illegal dismissal complaint in order to escape the charge of abandonment. It reiterated its position that there was no dismissal; instead, it was respondent who refused to report to work despite notice. Finding merit in the appeal, the NLRC reversed the ruling of the labor arbiter. It found that respondent was not terminated from employment, in fact there was no dismissal to speak of, and that he had capitalized on the circumstances under which the illegal dismissal complaint was filed merely to justify the abandonment of his work. The NLRC thus reversed and set aside the labor arbiter's decision and ordered the dismissal of respondent's complaint.^[2]

Petitioner filed a petition for certiorari before the Court of Appeals, submitting that the NLRC had erred in ruling that respondent was terminated and in finding that respondent had abandoned his work. The Court of Appeals granted the petition. The Court of Appeals, applying the case of *Ranara v. NLRC*,^[3] found that petitioner had intended to dismiss, and in fact did dismiss respondent, through the concerted acts of the chief cook and respondent's brother, who served verbal notices of termination on respondent. Moreover, the appellate court found no indication of respondent's alleged intention to abandon his work. Even his failure to respond to the General Manager's report does not indicate the intention to sever the relationship since the order came after the illegal dismissal complaint had been filed. Finally, the Court of Appeals ruled that petitioner did not observe due process in dismissing respondent.^[4]

Petitioner sought reconsideration of the decision but its motion for reconsideration was denied.^[5] Hence, this petition.

Before this Court, petitioner insists that the Court of Appeals erred when it reversed the decision of the NLRC. It argues that the *Ranara* case relied upon by the Court of Appeals, is not analogous to the case at bar. It maintains that respondent was not terminated, but rather, on the date when the alleged termination was made, he was merely informed that he was being investigated for theft and must report to the manager. The supposed replacement for respondent was only a temporary substitute during the period that respondent was being questioned. It reiterates its position that respondent abandoned his job and unjustifiably refused to return to work.

The Court resolves to disallow the petition.

Petitioner insists that there cannot be any illegal dismissal because in the first place, there was no dismissal to speak of, as it was respondent who abandoned his work, after finding out that he was being investigated for theft. The Court is not convinced. It is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.^[6]

Petitioner failed to discharge the burden of proof that complainant was guilty of