

## SECOND DIVISION

[ G.R. NO. 160213, January 30, 2007 ]

**ZENAIDA ANGELES, PETITIONER, VS. LORDY FERNANDEZ,  
RESPONDENT.**

**QUISUMBING, J.**

Petitioner Zenaida Angeles seeks to annul the Decision<sup>[1]</sup> dated August 4, 2003 of the Court of Appeals in CA-G.R. SP No. 67064 which reversed the Resolutions<sup>[2]</sup> of the National Labor Relations Commission (NLRC). The Court of Appeals reinstated the Decision of the Labor Arbiter who had ruled that respondent Lordy Fernandez was illegally dismissed. Also assailed is the Court of Appeals' Resolution dated September 30, 2003, denying the motion for reconsideration.

The facts culled from the records are as follows:

Respondent Lordy Fernandez worked as secretary and "all-around worker" from July 1992 to May 1998 in *Bon Chic*, a tailoring and dress shop which was located in Baguio City, and owned by petitioner Zenaida Angeles.<sup>[3]</sup>

On January 19, 2000, Fernandez filed a complaint for illegal dismissal and non-payment of premium pay for holidays and rest days, night shift differential, 13<sup>th</sup> month pay and service incentive leave pay against Angeles before the NLRC, Regional Arbitration Branch, Cordillera Administrative Region, Baguio City. Complainant prayed to be reinstated to her former position with full backwages and be paid her monetary claims.<sup>[4]</sup> The case was docketed as NLRC Case No. RAB-CAR-01-0051-00.<sup>[5]</sup>

In her position paper before the Labor Arbiter, Fernandez alleged that in May 1998, Angeles dismissed her without cause and in violation of due process. Fernandez claimed that during the entire period of her employment, she had not committed any offense to merit her dismissal. In addition, she averred she was neither notified of any reason nor administratively investigated prior to her dismissal. Fernandez also alleged that at the time she was dismissed, she was receiving a monthly salary of P6,000.<sup>[6]</sup>

Angeles, in her position paper, stated that she hired Fernandez sometime in 1992 upon the recommendation of Fernandez's uncle. She denied that she illegally dismissed Fernandez and claimed that Fernandez abandoned her job in May 1998 despite being treated like a member of the family; given free board and lodging, and salary higher than the minimum wage. Angeles alleged also that she discovered that *Bon Chic's* money and records were missing after Fernandez left her job. As a consequence of Fernandez's departure, Angeles said she had to close *Bon Chic* in 1998.<sup>[7]</sup>

On July 26, 2000, the Labor Arbiter ruled that Fernandez did not abandon her job but was illegally dismissed; that Fernandez was neither informed that Angeles had considered she had abandoned her job nor that she was being accused of taking the records and money of *Bon Chic*. The Labor Arbiter also noted that Angeles did not charge Fernandez with any offense.

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, all premises duly considered, having found complainant [herein respondent] to have been illegally dismissed, the respondent [herein petitioner] is hereby ordered to pay to the complainant the following:

a) her backwages at the rate of P6,000 a month from 08 May 1998 to the finality of this decision, currently computed at One Hundred Twenty Seven Thousand Four Hundred Thirty Four Pesos and Ninety Three Centavos (P127,434.93);

b) her separation pay in the amount equivalent to one-half month salary for every year of services, currently computed at Twenty Seven Thousand Pesos (P27,000.00).

All other claims are dismissed for lack of merit.

SO ORDERED.<sup>[8]</sup>

Petitioner appealed.

The NLRC, in a resolution dated May 31, 2001,<sup>[9]</sup> reversed the Labor Arbiter. The NLRC found credible petitioner's claim that respondent abandoned her job to elope with a much younger man, a certain Bong, after petitioner objected to respondent's relationship with him. The NLRC also found that respondent was instigated by one Ferdinand Bucad, an employee of petitioner's Las Marias Restaurant, who prodded other employees to file money claims against petitioner, especially since respondent had a child to support. The NLRC noted that while the filing of the complaint was within the prescriptive period, respondent only filed it 20 months after the alleged dismissal, consistent with petitioner's claim that respondent had abandoned her job. The NLRC also said that respondent's employment with another company, despite petitioner's offer to rehire her, showed she indeed abandoned her job. The NLRC concluded there was neither express nor implied dismissal.

Upon elevation of the case, the Court of Appeals reinstated the Labor Arbiter's decision. The appellate court ruled that the NLRC committed grave abuse of discretion in considering, on appeal, the belated affidavits stating new allegations of petitioner without giving respondent the right to rebut the same. It held that these affidavits were self-serving. The appellate court also held that petitioner failed to establish clear evidence of respondent's intention to abandon her employment. Neither did petitioner inform respondent of the charge of abandonment, nor did she give respondent the opportunity to explain her side.

The Court of Appeals disposed of the case, to wit:

**WHEREFORE**, finding the instant petition impressed with merit, the same is **GIVEN DUE COURSE**. The assailed Resolutions dated May 31, 2001 and July 16, 2001, respectively, are **REVERSED** and **SET ASIDE** and the Decision dated July 26, 2000, is hereby **REINSTATED**. Costs against private respondent.

**SO ORDERED.**<sup>[10]</sup>

After her motion for reconsideration was denied, Angeles filed this petition raising the following issues:

- A. WHETHER O[R] NOT PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT CONSIDERED [PETITIONER'S] EVIDENCE FOR THE FIRST TIME ON APPEAL.
- B. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT PRIVATE RESPONDENT IS NOT GUILTY OF ABANDONMENT.<sup>[11]</sup>

Stated simply, the issues for our resolution are: (1) Did the NLRC err in accepting petitioner's new evidence/affidavits in her appeal before the NLRC? And (2) Did respondent Fernandez abandon her job?

Petitioner argues that the Court of Appeals erred in overturning the NLRC's resolution for the reason that the affidavits presented for the first time before the NLRC were self-serving and were not subjected to comment below by petitioner (now herein respondent). Petitioner adds that the presentation of evidence for the first time on appeal is allowed in labor proceedings, and due process in labor proceedings requires merely an opportunity to be heard. Respondent was given that opportunity as she was allowed to file an answer to the memorandum of appeal and submit counter-affidavits.

Respondent counters that petitioner's submission of affidavits on appeal was a mere afterthought and was not even explained. Respondent claims that the NLRC deprived her of due process when it considered these affidavits without giving her the opportunity to contest or rebut them.

We note that respondent filed a motion for reconsideration of the first NLRC resolution where she had ventilated her side. This, in our view, was an occasion for her to be heard. In labor cases, such an opportunity to seek a reconsideration of the action or ruling complained of amounts to due process.<sup>[12]</sup>

In *Tanjuan v. Philippine Postal Savings Bank, Inc.*, we held that:

It is well-settled that **the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases**. This rule applies equally to both the employee and the employer. In the interest of due process, the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to

technicalities or formalities. **However, delay in the submission of evidence should be clearly explained and should adequately prove the employer's allegation of the cause for termination.**<sup>[13]</sup>  
(Emphasis supplied.)

In this case, however, petitioner did not explain her belated submission of the affidavits of Anita Claveria,<sup>[14]</sup> Rolando C. Villanueva,<sup>[15]</sup> Bartolome Angeles<sup>[16]</sup> and Merline Jumawan.<sup>[17]</sup> In our view, her plea that the affidavits be admitted in the interest of truth, justice and fair play<sup>[18]</sup> lacks merit.

Now, did respondent Fernandez abandon her job?

Petitioner contends that respondent abandoned her job when she voluntarily left. She insists that respondent ignored her earnest efforts for respondent to return to work. She says that respondent was so indispensable to her business so much so that when respondent left, she had to close shop. Moreover, petitioner stresses, respondent filed the complaint 20 months after she left and only upon Mr. Bucad's instigation and the prospect of a monetary award. Petitioner, relying on our ruling in *Arc-Men Food Industries, Inc. v. NLRC*,<sup>[19]</sup> claims that such belated filing implied abandonment.

Respondent, for her part, insists that she did not abandon her job, and she had in fact religiously pursued her case up to this Court. She also claims that petitioner never notified her to return to work, nor warned her that her failure to return would be considered abandonment. She further states that the filing of her complaint was well within the prescriptive period.

We note that petitioner reiterates the allegations she added in her memorandum of appeal before the NLRC which are based on the belatedly submitted affidavits. In our view, even if duly considered, these affidavits cannot prove that respondent abandoned her job. In their affidavits, Anita Claveria, Rolando C. Villanueva, Bartolome Angeles and Merline Jumawan did not state that respondent abandoned her job. The same holds true of the unsworn statements of Bhonnie Roaquin,<sup>[20]</sup> Melba Pacher<sup>[21]</sup> and Jimmy Garce.<sup>[22]</sup> The alleged clandestine, nighttime visits of a certain Bong to respondent's room are not pertinent to the issue of abandonment. Whether respondent has been induced to complain because she has a child to support is likewise of no pertinence. That respondent already secured another job soon after she eloped with Bong was alleged but not proven. Moreover, petitioner's claim that she made earnest efforts to convince respondent to return contradicts her allegation in her position paper that she failed to locate respondent.<sup>[23]</sup> On the contrary, respondent's prayer for reinstatement in her position paper manifested her intention to return. It must be stressed also, as a reminder to petitioner, that a claim of illegal dismissal coupled with non-payment of monetary benefits is a valid cause of action by an employee.

To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employee-employer relationship. Of the two, the second element is the more determinative factor and should be manifested by some overt acts.<sup>[24]</sup>