

THIRD DIVISION

[G.R. No. 158095, November 23, 2007]

**JOEL CUSTODIO MACAHILIG, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION, ARACELI DE JESUS BOUTIQUE
AND/OR ARACELI S. DE JESUS, RESPONDENTS.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] dated February 27, 2003 and the Resolution^[2] dated April 22, 2003 of the Court of Appeals (CA) in CA G.R. SP No. 72762 which reversed and set aside the Resolution dated February 21, 2002 and the Order dated June 28, 2002 of the National Labor Relations Commission (NLRC).

Araceli de Jesus (private respondent) is the owner of a boutique shop bearing her name located in Unit Plaza, J. Bocobo cor. Arquiza Streets, Ermita, Manila which was registered with the Bureau of Domestic Trade on December 23, 1996. Joel Macahilig (petitioner) was one of private respondent's three sales clerks who started working in the boutique shop on January 7, 1997. His latest monthly salary was ₱3,200.00.

In 2000, private respondent's boutique shop suffered huge losses due to substantial reduction in sales; thus, she adopted as a cost-saving measure the rotation of her three sales clerks, by which each one of them would take a month's leave of absence without pay to start in 2001. The sales clerks agreed among themselves that petitioner's leave would be in January, Elsa Andrino (Andrino) in February, and Abella Amistad (Amistad) in March, with all of them reporting regularly for work in April as private respondent expected that business conditions would improve. However, due to the zero daily sales in the middle part of January 2001, private respondent temporarily closed the boutique shop on January 22, 2001 to cut down on electricity and the daily meal and transportation allowances of her sales clerks and reopened the boutique shop on February 8, 2001. According to petitioner, private respondent told him on February 8, 2001 that his services were no longer needed.

On February 12, 2001, petitioner filed with the Labor Arbiter (LA) a complaint for illegal dismissal with prayer for separation pay, backwages, and other monetary benefits and damages against private respondent. In his position paper, he alleged that during his vacation leave without pay, he would call private respondent to ask when he would resume his duties but would only get excuses not to return yet; that on February 8, 2001, private respondent told him that she no longer wished to continue his services without giving any reason and prior notice. Petitioner asked for separation pay as reinstatement would not be in the best interest of the parties due to the circumstances availing in their case.

Private respondent denied having dismissed petitioner, as he simply refused to return to work and claimed that he filed the case to exact money from her. She submitted the affidavits of petitioner's co-workers, Andrino^[3] and Amistad,^[4] in which they stated that it was petitioner who did not return to work anymore, and that they expressed satisfaction as to their salaries and benefits, including their annual 13th month pay; that Amistad stated that petitioner had been complaining incessantly about commuting daily to and from Ermita, Manila since he resides in Caloocan. Private respondent alleged that she received a phone call from a woman who identified herself as petitioner's mother who told her, "*Bigyan mo na lang ng puhunan sa negosyo si Joel,*" then hung up. She also denied underpayment or non-payment of petitioner's monetary claims and submitted the Department of Labor and Employment (DOLE) Inspection Report^[5] of Senior Labor Enforcement Officer Efren Miranda who inspected the working conditions of the boutique shop in 1999 and reported "no violation" committed by her.

In a Decision^[6] dated September 14, 2001, the LA ruled in favor of petitioner, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the complainant illegal. Respondents are ordered to pay complainant the following:

1. Separation pay	₱32,000.00
2. Backwages	11,093.33
3. 13 th Month pay	9,565.33
4. Service Incentive Leave Pay	<u>not entitled</u>
Total	₱52,658.66

All other claims are denied for lack of merit.^[7]

In finding that petitioner was illegally dismissed, the LA found unmeritorious private respondent's claim that after the lapse of petitioner's one month leave without pay, the latter failed or refused to return to work and thus was guilty of abandonment. The LA found that petitioner never intended to abandon his work since, during the time he was on vacation leave, he had asked private respondent when he would report for work but was finally told on February 8, 2001 that his service was no longer needed; and that the filing of the case negated petitioner's charge of abandonment.

The LA held that since petitioner was illegally dismissed, he should be reinstated to his former position, but that because petitioner opted for a separation pay, the payment of his backwages and separation pay of one month for every year of service was in order; and considering that the boutique shop was registered only on December 23, 1996, and therefore, petitioner officially started working in the boutique on January 7, 1997, his separation pay must start from the year 1997, and his backwages from the date of his dismissal, *i.e.*, February 8, 2001, both up to the promulgation of the decision.

Private respondent appealed to the NLRC.

On February 21, 2002, the NLRC rendered its Resolution^[8] affirming with modification the decision of the LA, the dispositive portion of which reads:

WHEREFORE, finding no cogent reason to modify, alter, much less reverse the decision appealed from, the same is AFFIRMED with the MODIFICATION that the award of separation pay should be reduced to ₱16,000.00 covering the period of almost 5 years of service, which is from January 7, 1997 to September 14, 2001 only.^[9]

Private respondent's Motion for Reconsideration was denied in an Order^[10] dated June 28, 2002.

Private respondent filed a Petition for *Certiorari* with prayer for the issuance of a temporary restraining order, with the CA alleging grave abuse of discretion committed by the NLRC.

On February 27, 2003, the CA rendered its assailed Decision granting the petition and reversing the NLRC.

The CA found no indication that petitioner was terminated from his employment, since private respondent had not shown any overt act that she had dismissed petitioner, nor was there any hint that she held a personal grudge against him; that as regards non-payment of compensation, the DOLE Inspection Report stated that "no violation" was committed by private respondent; that absent any showing of dubiety in the veracity of the contents of the affidavits and of the DOLE Inspection Report, the public respondents should have taken them into consideration.

The CA found that petitioner's actions manifested an intention to no longer work in the boutique shop, to wit: (1) he never returned to his work on February 1, 2001 when it was Andrino's turn to take a vacation leave; (2) he never denied that his mother called private respondent on February 8, 2001, asking the latter to just give petitioner capital; (3) instead of praying for his reinstatement, petitioner sought a separation pay; and (4) he did not deny private respondent's allegation that he is now working in another office. The CA held that the rule that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal is not applicable to this case, as such rule applies only when the complainant seeks reinstatement as a relief, and not when separation pay is prayed for as done by petitioner.

Petitioner's Motion for Reconsideration was denied in a Resolution dated April 22, 2003.

Petitioner filed the instant petition on the following grounds:

I

WHETHER OR NOT THE RESPONDENT HAD SUFFICIENTLY PROVED ABANDONMENT ON THE PART OF THE PETITIONER.

II

WHETHER OR NOT THE RESPONDENT WAS ABLE TO OVERCOME THE BURDEN OF PROOF THAT THE TERMINATION OF THE PETITIONER WAS

BASED ON LEGAL GROUNDS.

III

WHETHER OR NOT THE REQUIREMENTS OF LAW TO EFFECT A VALID
DISMISSAL WERE COMPLIED WITH BY THE RESPONDENT.^[11]

The main issue for resolution is factual, *i.e.*, whether or not petitioner abandoned his job.

As a general rule, we do not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction.^[12] We leave the evaluation of facts to the trial and appellate courts which are better equipped for this task.

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellee; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of facts are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.^[13]

Considering that the findings of facts and the conclusions of the LA and the NLRC are inconsistent with those of the CA, we find it necessary to evaluate such findings.

After a careful examination of the records, we find that the CA erred in granting the petition and reversing the decisions of the LA and the NLRC finding that petitioner was illegally dismissed.

We are well-aware that in labor cases, 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.^[14]

The CA gave credence to private respondent's allegation that petitioner was not dismissed, but that it was he who never came back after his one-month vacation leave without pay, thus abandoning his job.

We do not agree.

Jurisprudence holds that for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship as manifested by some overt acts.^[15] Deliberate and unjustified refusal on the part of the employee to go back to his work