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EN BANC

[G.R. No. 158693, November 17, 2004]

JENNY M. AGABON AND VIRGILIO C. AGABON, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), RIVIERA HOME IMPROVEMENTS, INC. AND VICENTE ANGELES, RESPONDENTS.

DECISION

YNARES-SATIAGO, J.:

This petition for review seeks to reverse the decision[1] of the Court of Appeals dated January 23, 2003, in CA-G.R. SP No. 63017, modifying the decision of National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 023442-00.

Private respondent Riviera Home Improvements, Inc. is engaged in the business of selling and installing ornamental and construction materials. It employed petitioners Virgilio Agabon and Jenny Agabon as gypsum board and cornice installers on January 2, 1992[2] until February 23, 1999 when they were dismissed for abandonment of work.

Petitioners then filed a complaint for illegal dismissal and payment of money claims[3] and on December 28, 1999, the Labor Arbiter rendered a decision declaring the dismissals illegal and ordered private respondent to pay the monetary claims. The dispositive portion of the decision states:

> WHEREFORE, premises considered, We find the termination of the complainants illegal. Accordingly, respondent is hereby ordered to pay them their backwages up to November 29, 1999 in the sum of:
>
> 1. Jenny M. Agabon - P56, 231.93
> 2. Virgilio C. Agabon - 56, 231.93
>
> and, in lieu of reinstatement to pay them their separation pay of one (1) month for every year of service from date of hiring up to November 29, 1999.
>
> Respondent is further ordered to pay the complainants their holiday pay and service incentive leave pay for the years 1996, 1997 and 1998 as well as their premium pay for holidays and rest days and Virgilio Agabon's 13th month pay differential amounting to TWO THOUSAND ONE HUNDRED FIFTY (P2,150.00) Pesos, or the aggregate amount of ONE HUNDRED TWENTY ONE THOUSAND SIX HUNDRED SEVENTY EIGHT & 93/100 (P121,678.93) Pesos for Jenny Agabon, and ONE HUNDRED TWENTY THREE THOUSAND EIGHT HUNDRED TWENTY EIGHT & 93/100

(P123,828.93) Pesos for Virgilio Agabon, as per attached computation of Julieta C. Nicolas, OIC, Research and Computation Unit, NCR.

SO ORDERED.[4]

On appeal, the NLRC reversed the Labor Arbiter because it found that the petitioners had abandoned their work, and were not entitled to backwages and separation pay. The other money claims awarded by the Labor Arbiter were also denied for lack of evidence.[5]

Upon denial of their motion for reconsideration, petitioners filed a petition for certiorari with the Court of Appeals.

The Court of Appeals in turn ruled that the dismissal of the petitioners was not illegal because they had abandoned their employment but ordered the payment of money claims. The dispositive portion of the decision reads:

WHEREFORE, the decision of the National Labor Relations Commission is REVERSED only insofar as it dismissed petitioner's money claims. Private respondents are ordered to pay petitioners holiday pay for four (4) regular holidays in 1996, 1997, and 1998, as well as their service incentive leave pay for said years, and to pay the balance of petitioner Virgilio Agabon's 13th month pay for 1998 in the amount of P2,150.00.

SO ORDERED.[6]

Hence, this petition for review on the sole issue of whether petitioners were illegally dismissed.[7]

Petitioners assert that they were dismissed because the private respondent refused to give them assignments unless they agreed to work on a "*pakyaw*" basis when they reported for duty on February 23, 1999. They did not agree on this arrangement because it would mean losing benefits as Social Security System (SSS) members. Petitioners also claim that private respondent did not comply with the twin requirements of notice and hearing.[8]

Private respondent, on the other hand, maintained that petitioners were not dismissed but had abandoned their work.[9] In fact, private respondent sent two letters to the last known addresses of the petitioners advising them to report for work. Private respondent's manager even talked to petitioner Virgilio Agabon by telephone sometime in June 1999 to tell him about the new assignment at Pacific Plaza Towers involving 40,000 square meters of cornice installation work. However, petitioners did not report for work because they had subcontracted to perform installation work for another company. Petitioners also demanded for an increase in their wage to P280.00 per day. When this was not granted, petitioners stopped reporting for work and filed the illegal dismissal case.[10]

It is well-settled that findings of fact of quasi-judicial agencies like the NLRC are accorded not only respect but even finality if the findings are supported by substantial evidence. This is especially so when such findings were affirmed by the Court of Appeals.[11] However, if the factual findings of the NLRC and the Labor

Arbiter are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.[12]

Accordingly, the Court of Appeals, after a careful review of the facts, ruled that petitioners' dismissal was for a just cause. They had abandoned their employment and were already working for another employer.

To dismiss an employee, the law requires not only the existence of a just and valid cause but also enjoins the employer to give the employee the opportunity to be heard and to defend himself.[13] Article 282 of the Labor Code enumerates the just causes for termination by the employer: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or the latter's representative in connection with the employee's work; (b) gross and habitual neglect by the employee of his duties; (c) fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative; (d) commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and (e) other causes analogous to the foregoing.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment.[14] It is a form of neglect of duty, hence, a just cause for termination of employment by the employer.[15] 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 employees has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[16]

In February 1999, petitioners were frequently absent having subcontracted for an installation work for another company. Subcontracting for another company clearly showed the intention to sever the employer-employee relationship with private respondent. This was not the first time they did this. In January 1996, they did not report for work because they were working for another company. Private respondent at that time warned petitioners that they would be dismissed if this happened again. Petitioners disregarded the warning and exhibited a clear intention to sever their employer-employee relationship. The record of an employee is a relevant consideration in determining the penalty that should be meted out to him.[17]

In *Sandoval Shipyard v. Clave*,[18] we held that an employee who deliberately absented from work without leave or permission from his employer, for the purpose of looking for a job elsewhere, is considered to have abandoned his job. We should apply that rule with more reason here where petitioners were absent because they were already working in another company.

The law imposes many obligations on the employer such as providing just compensation to workers, observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes the right of the employer to expect from its workers not only good

performance, adequate work and diligence, but also good conduct[19] and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests.[20]

After establishing that the terminations were for a just and valid cause, we now determine if the procedures for dismissal were observed.

The procedure for terminating an employee is found in Book VI, Rule I, Section 2(d) of the *Omnibus Rules Implementing the Labor Code*:

> *Standards of due process: requirements of notice*. – In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
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> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.
>
> In case of termination, the foregoing notices shall be served on the employee's last known address.

Dismissals based on just causes contemplate acts or omissions attributable to the employee while dismissals based on authorized causes involve grounds under the Labor Code which allow the employer to terminate employees. A termination for an authorized cause requires payment of separation pay. When the termination of employment is declared illegal, reinstatement and full backwages are mandated under Article 279. If reinstatement is no longer possible where the dismissal was unjust, separation pay may be granted.

Procedurally, (1) if the dismissal is based on a just cause under Article 282, 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; and (2) if the dismissal is based on authorized causes under Articles 283 and 284, the employer must give the employee and the Department of Labor and Employment written notices 30 days prior to the effectivity of his separation.

From the foregoing rules four possible situations may be derived: (1) the dismissal

is for a just cause under Article 282 of the Labor Code, for an authorized cause under Article 283, or for health reasons under Article 284, and due process was observed; (2) the dismissal is without just or authorized cause but due process was observed; (3) the dismissal is without just or authorized cause and there was no due process; and (4) the dismissal is for just or authorized cause but due process was not observed.

In the first situation, the dismissal is undoubtedly valid and the employer will not suffer any liability.

In the second and third situations where the dismissals are illegal, Article 279 mandates that the employee is entitled to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement.

In the fourth situation, the dismissal should be upheld. While the procedural infirmity cannot be cured, it should not invalidate the dismissal. However, the employer should be held *liable for non-compliance with the procedural requirements of due process*.

The present case squarely falls under the fourth situation. The dismissal should be upheld because it was established that the petitioners abandoned their jobs to work for another company. Private respondent, however, did not follow the notice requirements and instead argued that sending notices to the last known addresses would have been useless because they did not reside there anymore. Unfortunately for the private respondent, this is not a valid excuse because the law mandates the twin notice requirements to the employee's last known address.[21] Thus, it should be held *liable for non-compliance with the procedural requirements of due process*.

A review and re-examination of the relevant legal principles is appropriate and timely to clarify the various rulings on employment termination in the light of *Serrano v. National Labor Relations Commission*.[22]

Prior to 1989, the rule was that a dismissal or termination is illegal if the employee was not given any notice. In the 1989 case of *Wenphil Corp. v. National Labor Relations Commission*,[23] we reversed this long-standing rule and held that the dismissed employee, although not given any notice and hearing, was not entitled to reinstatement and backwages because the dismissal was for grave misconduct and insubordination, a just ground for termination under Article 282. The employee had a violent temper and caused trouble during office hours, defying superiors who tried to pacify him. We concluded that reinstating the employee and awarding backwages "may encourage him to do even worse and will render a mockery of the rules of discipline that employees are required to observe."[24] We further held that:

> Under the circumstances, the dismissal of the private respondent for just cause should be maintained. He has no right to return to his former employment.
>
> However, the petitioner must nevertheless be held to account for failure to extend to private respondent his right to an investigation before