

SECOND DIVISION

[G.R. No. 122368, June 19, 1997]

**BERNARDO NAZAL AND C.B. NAZAL TRADING, PETITIONERS, VS.
NATIONAL LABOR RELATIONS COMMISSION AND ERNESTO
CASTRO, RESPONDENTS.**

D E C I S I O N

REGALADO, J.:

This petition for *certiorari* assails the decision^[1] of the National Labor Relations Commission (NLRC), dated July 17, 1995, which reversed and set aside the appealed decision of the labor arbiter dismissing for lack of merit the complaint for illegal dismissal of private respondent.

Respondent Ernesto Castro was hired by petitioner as a special service employee and, four years thereafter, as a security guard, until his services were terminated on May 15, 1985. He subsequently filed a complaint for illegal dismissal with prayer for reinstatement and back wages against herein petitioners, which case was assigned to and heard by Labor Arbiter Emerson C. Tumanon. Herein petitioners contended therein that respondent Castro was not dismissed but that he failed to report for work for almost eight months, and that abandonment of work is a ground for dismissal.

On the bases of the complaint and the position papers submitted by the parties, Arbiter Tumanon rendered a decision on December 11, 1986 dismissing the complaint for illegal dismissal on the ground that respondent Castro was not dismissed from employment but that he actually abandoned his place of work, and that such conduct constitutes a gross neglect of duty which is a valid cause for dismissal under Article 283 of the Labor Code.^[2]

On appeal, the NLRC rendered a decision,^[3] dated August 31, 1987, remanding the case to the labor arbiter for further appropriate proceedings, on its finding that herein petitioners failed to present concrete evidence that respondent Castro had really intended to abandon his job or had actually abandoned it. It held that petitioners' claim of abandonment was premised merely upon unsupported and bare allegations. It pointed out that for abandonment to constitute a valid cause for termination of employment, there must be a deliberate and unjustified refusal of the employee to resume employment.

Petitioners filed a motion for reconsideration from this decision of the NLRC, but the same was denied. Thus, the case was remanded to the labor arbiter for reception of additional evidence.

On March 7, 1989, Labor Arbiter Tumanon rendered his second decision^[4] reiterating the dismissal of the complaint for failure of respondent Castro to

substantiate his claim of illegal dismissal. From said decision, private respondent appealed to the NLRC which, this time, set aside the decision of the labor arbiter and ordered herein petitioners to pay private respondent back wages in the amount of P41,580.00, separation pay of P9,240.00, and attorney's fees equivalent to 10% of the total monetary awards.

Petitioners submit that respondent NLRC committed grave abuse of discretion amounting to lack of jurisdiction in rendering the questioned decision. They allege that the decision of the labor arbiter was based on substantial evidence; that in both his first and second decisions, Arbiter Tumanon consistently found that herein private respondent was not dismissed from employment but had abandoned his work; that private respondent failed to explain why it took him eight months before filing the complaint for illegal dismissal; and that the decision of the NLRC has no legal and factual basis.

We find no merit in this petition which, for that matter, appears to be dilatory.

Right in their aforesaid initiatory pleading, herein petitioners admit that no formal termination of private respondent's services had been effected by them.^[5] In fact, no evidence was ever adduced to show that respondent Castro was accorded due process prior to his dismissal. In her testimony before the labor arbiter, petitioners' lone witness, Mrs. Grisela N. Nazal, admitted that they did not even write respondent Castro a letter regarding his work which she claims had been abandoned by him.^[6] Incredibly, this witness, who is the General Manager of petitioner C.B. Nazal Trading, further averred that she likewise did not know why Castro was no longer working with them, nor the reason for his dismissal.^[7]

Such testimony borders on the absurd considering that by reason of her general management and stewardship over the business and administrative affairs of the company, it was incumbent upon Mrs. Nazal to know everything about their employees. If indeed respondent Castro had abandoned his work, it is surprising that Mrs. Nazal could not give a categorical answer or even hazard a reasonable opinion as to the cause of the former's dismissal.

According to petitioners, respondent Castro failed to report for work after learning of the investigation being conducted by them relative to the pilferage or loss of diesel oil stored in the vessel being guarded by Castro. Curiously, petitioner would nevertheless want it to appear that they were not imputing any crime against Castro, and that it was the latter who simply disappeared. Their stance on this score thereby raises a seeming cloud of mystery on a matter easily susceptible of verification.

In the Memorandum^[8] filed by herein respondent as complainant before the NLRC, he argued as follows:

"Complainant testified that he was dismissed by respondents without any justifiable cause and that when he confronted Bernardo Nazal as to the reason (for) the dismissal he was merely told that his services (were) no longer needed. Thus -