

## **SIXTH DIVISION**

**[ CA-G.R. SP NO. 126582, May 23, 2014 ]**

**EXECUTIVE CARRIER & SERVICES, INC., PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION AND VICTORIO R.  
SOLOMO, RESPONDENTS.**

### **D E C I S I O N**

**BARZA, J.:**

Through this petition for certiorari, Executive Carrier & Services, Inc. seeks to nullify the Decision<sup>[1]</sup> of the National Labor Relations Commission (NLRC) dated April 30, 2012 and the subsequent Resolution<sup>[2]</sup> dated June 25, 2012. The assailed decision declared private respondent Victorio Solomo to have been constructively dismissed consequently setting aside the decision of the labor arbiter. The Resolution denied petitioner's motion for reconsideration.

The factual antecedents:

Respondent was hired by petitioner as a bus driver on October 24, 1998. He was designated to ply the route Manila-Bicol and vice-versa. On April 11, 2011, the bus which respondent was driving got involved in an accident. Due to said accident, petitioner incurred expenses in the amount of P104,099.58, which was billed against respondent.

Respondent paid P27,500.00 out of the cash bond which was deducted from his salary and commission. Petitioner demanded payment of the balance of P76,509.58 but he was not able to pay because of lack of savings.

According to respondent, when he could not pay the balance of the accident expenses, he was harassed by petitioner. On June 13, 2011, while respondent was at petitioner's office, he was being forced to pay the aforesaid balance and when respondent said that he could not afford it, petitioner, through Eduardo Oliva and Lito Arias, told him that he will not be allowed to drive a bus unless he pays the accident expenses. Because of this, respondent asked for a termination letter but petitioner refused to give him.

On June 17, 2011, respondent filed a complaint before the NLRC for constructive dismissal with prayer for separation pay and illegal deduction.

Petitioner admitted having employed respondent as driver on commission basis. It also admitted that it deducted the expenses brought about by the April 11, 2011 accident from respondent's cash bond leaving a balance of P76,509.58. According to petitioner, this is not the first accident involving respondent. On November 17, 2009, respondent also figured in another accident when he recklessly maneuvered Bus No. 8280 inside its Cubao terminal which resulted to damage also to petitioner's Bus No. 8078. Petitioner also alleged that respondent committed other infractions

such as short remittances. On June 23, 2011,<sup>[3]</sup> petitioner sent a letter to respondent ordering the latter to pay the balance of the expenses of the accident but instead of complying, he filed a case for illegal dismissal before the labor arbiter.

In its decision dated November 14, 2011, the labor arbiter held that it was respondent who stopped reporting for work. Consequently, it dismissed respondent's complaint for illegal dismissal.

On appeal to the NLRC, it was found that petitioner was guilty of constructive dismissal and awarded respondent of his money claims and ordered that the amount of P76,509.58, representing the balance from the expenses incurred in the accident, be deducted from the total award due to respondent.

The *fallo* of the NLRC's decision dated April 30, 2012, states:

WHEREFORE, premises considered, the decision of the Labor Arbiter dated November 14, 2011 is hereby REVERSED AND SET ASIDE. Judgment is rendered FINDING complainant constructively dismissed and ORDERING respondent Executive Carrier & Services, Inc. to pay complainant the following subject to deduction as discussed above.

- (a) P108,941.21 as backwages
- (b) P115, 544.00 as separation pay
- (c) 10% of the total amount as attorney's fees.

The computation of the said awards is as follows:

1. Full Backwages

A. Basic Pay

06/13/11-04/3/12

404x22x10.57                      93,946.16

B. 13<sup>th</sup> Month Pay

93,946.16/12                      7,828.85

C. SILP

06/13/11-04/30/12

404X5/12X10.57                      1,779.28

D. ECOLA

5/26/11-04/30/12

P22X22X11.13                      5,386.92

P108,941.21

2. Separation Pay

10/24/1998-04/30/2012

404x22x13 years                      115,544.00

3. Attorney's Fees

22,448.52

**TOTAL AWARD    P246,933.73<sup>[4]</sup>**

Petitioner sought reconsideration of the NLRC's decision but was denied in the resolution dated June 25, 2012.<sup>[5]</sup>

Petitioner now comes to this Court assigning the following errors in support of its petition, to wit:

I

THE HONORABLE PUBLIC RESPONDENT NLRC (SIXTH DIVISION) GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSED THE FINDING OF THE HONORABLE LABOR ARBITER THAT THERE WAS NO ILLEGAL DISMISSAL;

II

THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FURTHER DECREED MONETARY AWARDS IN FAVOR OF PRIVATE RESPONDENT VICTORIO SOLOMO.<sup>[6]</sup>

In view of the variance in the findings of fact of the labor arbiter with those of the NLRC, as well as the allegation of grave abuse of discretion, this Court opts to review the facts of the case, as an exception to the rule that factual findings of quasi-judicial agencies, like the NLRC, are accorded respect and finality, if supported by substantial evidence.<sup>[7]</sup>

The labor arbiter's basis in declaring that respondent was not terminated from his employment was the lack of evidence of a written notice of dismissal, nor any proof that complainant was barred/prevented from entering the premises of petitioner.<sup>[8]</sup> That it was respondent who stopped reporting for work.<sup>[9]</sup> What makes this conclusion tenuous is the fact that respondent claimed not actual dismissal but constructive dismissal.

The decision of the NLRC that respondent was constructively dismissed and he did not abandon his job was more consonant with the evidence on record.

On constructive dismissal:

The gauge for constructive dismissal is whether a reasonable person in the employee's position would feel compelled to give up his employment under the prevailing circumstances. Constructive dismissal is defined as quitting when continued employment is rendered impossible, unreasonable or unlikely as the offer of employment involves a demotion in rank or diminution in pay. It exists when the resignation on the part of the employee was involuntary due to the harsh, hostile and unfavorable conditions set by the employer. An employee who is forced to surrender his position through the employer's unfair or unreasonable acts is deemed to have been illegally terminated and such termination is deemed to be involuntary.<sup>[10]</sup> Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable