NINTH DIVISION

[CA-G.R. SP NO. 128073, November 03, 2014]

RAFAEL DE PADUA, JR., PETITIONER, VS. HON. NIEVES E. VIVAR-DE CASTRO, HON. JOSEPH GERARD E. MABILOG AND HON. ISABEL G. PANGANIBAN-ORTIGUERRA, IN THEIR CAPACITIES AS COMMISSIONERS OF THE NATIONAL LABOR RELATIONS COMMISSION AND VIRGILIO DELA CRUZ EUSEBIO, JR. AND JOHNSON TAÑON, RESPONDENTS.

D E C I S I O N

PERALTA, JR., E. B., J.:

Before Us is an invocation of the extraordinary Writ of Certiorari[1] *via* the Petition[2] to nullify the Decision[3] dated July 27, 2012 and Resolution[4] dated October 19, 2012 of public respondent National Labor Relations Commission.

On March 22, 2011, private respondents Virgilio Eusebio, Jr. and Johnson Tañon filed a Complaint[5] for illegal dismissal against herein petitioner Rafael de Padua, Jr., James L. Ching and Lazertek Development Corporation. James L. Ching was the Manager and Rafael de Padua, Jr. was the President of the company.

Per their Position Paper,[6] Virgilio Eusebio, Jr. declared that his date of employment was on April 19, 2010 but he was dismissed on March 14, 2011, while complainant Johnson Tañon averred that he was employed in March, 2010 and he was dismissed on March 8, 2010. They further asserted that they were employed by Lazertek as electricians and worked from Monday to Saturday from 7:00 in the morning to 4:30 in the afternoon with a salary of ₱350 a day. They alleged that they did not receive their 13th month pay, overtime pay and service incentive leave.

Petitioner submitted an Affidavit[7] and invoked a fall out between the partners. Hence, he was no longer connected with Lazertek since May 30, 2011. The company closed down in June, 2011 due to financial losses and debts. After the closure, no communication ensued among the partners.

On February 14, 2012, Labor Arbiter Gaudencio P. Demaisip, Jr. rendered a Decision[8] which directed petitioner to pay private respondents their differentials, proportionate 13th month pay and separation pay in the total amount of Sixty Eight Thousand Six hundred Forty Six Pesos and 93/100 (₱68,646.93).

Petitioner appealed[9] the Decision of the Labor Arbiter to the NLRC, later docketed as LAC No. 05-001523-12.

On July 27, 2012, the NLRC rendered a Decision[10] which ruled that the Labor

Arbiter erred when it only adjudged petitioner solely liable for the monetary award of private respondents. It was the NLRC's belief that Lazertek Development Corporation was formed as a partnership with three partners, two of whom were Ching and petitioner, and it arrived at the conclusion in this manner:

> "**WHEREFORE,** the Decision of the Labor Arbiter dated February 14, 2012 is hereby MODIFIED by holding the Respondents namely, Lazertek Development Co., James L. Ching and Rafael (Jon) de Padua solidarily liable to pay the Complainants' monetary award in the amount of P68,646.93.
>
> The rest of the Decision is AFFIRMED.
>
> **SO ORDERED**."[11]

Petitioner sought reconsideration[12] of the NLRC Decision but it was denied in the assailed Resolution[13] dated October 19, 2012.

Unfazed, petitioner filed a Petition for Certiorari[14] anchored on these ascriptions:[15]

> "THERE WAS ABSOLUTELY NO ILLEGAL DISMISSAL HEREIN AS PRIVATE RESPONDENTS ABANDONED THEIR EMPLOYMENT
>
> ASIDE FROM LAZERTEK, JAMES L. CHING IS THE ACTUAL EMPLOYER OF PRIVATE RESPONDENTS AS HE IS THE ONE WHO HAS ACTUAL CONTROL OVER THE LATTERS' EMPLOYMENT. "[16]

The thrust of petitioner's argument was that he had nothing to do with the separation of private respondents from Lazertek and therefore, he should not be made personally liable. Petitioner likewise argued that private respondents were not dismissed from their employment but instead voluntarily abandoned their jobs when they were not given their salaries.

We do not find petitioner's argument persuasive.

Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is one form of neglect of duty, hence, a just cause for termination of employment by the employer. Mere absence does not equate to abandonment. To constitute abandonment, there must be a concurrence of: (1) the failure to report for work or absence without valid or justifiable reason; (2) a deliberate intent of the employee to leave his work permanently; and (3) overt act/s from which it may be inferred that the employee had no more intention to resume his work. This burden of proving that there was a deliberate and unjustified refusal on the part of the employee to resume his employment without any intention of returning rests on the employer.[17]