SUPREME COURT
SECOND DIVISION

ARC-MEN FOOD INDUSTRIES CORPORATION and ARCADIO P. MENDOZA,
Petitioners,

-versus-

G.R. No. 127086
August 22, 2002

NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), NICOLAS FAMOR, JR., JACQUELINE DOMEN, HELEN VERDIDA, MARIA TERESA VILLAFLORES, RODERICK MACANSANTOS, GEORGE DELA GENTE, JOSE GERRY VILLAFLORES, JEREMIAS TAYROS, OSCAR FAMOR, NOLI PAGLINAWAN, LUZ MINGLANA, MARY JANE ALMERO, MA. NESCIA OLOBAN, NARCISA VITUALLA, MARIVIC GERMAN, MARIQUITA SULLA, HILARIO CALAPIZ, ALICIA LICO, JOSE O. CIMAFRANCA, JR., DANILO PARUNGAO, ROSALINDA HUERBANA, EVELYN ELLAMIL, JUDITH MAHUSAY, PRECIOSISIMA U. BINGTAN, NORBERTO M. ENAD, and

VIVIAN VERDIDA,

Respondents.

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D E C I S I O N

QUISUMBING, *J.*:

This petition for certiorari seeks to nullify two resolutions by public respondent National Labor Relations Commission (NLRC) in NLRC Case No. M-001097, entitled *Nicolas Famor, Jr., et. al vs. Arc-Men Food Industries Corporation, et. al.* One was issued on June 29, 1994,[1] while the other was dated October 11, 1996.[2] Both modified the decision[3] of the Executive Labor Arbiter in RAB-11-01-00115-92.

The facts of the case are as follows:

Petitioner Arc-Men Food Industries Corporation (or AMFIC) is a Philippine corporation engaged in the production and processing of banana chips for export. Arcadio P. Mendoza, the co-petitioner, is its President.

AMFIC operated a processing plant located at Cagangohan, Panabo, Davao, Philippines, where private respondents were hired by petitioners on various dates and for different positions and wage rates.[4]

On January 15, 1992, a letter-complaint[5] for violation of the Labor Standards Law was originally filed before the Regional Office of the Department of Labor and Employment (DOLE) by forty-seven (47) employees of AMFIC. The twenty-six (26) private respondents herein were among the complainants below.

On January 27, 1992, a representative from the DOLE was sent to conduct an inspection on the premises of the company to ascertain whether the alleged violations were being committed. The employees alleged[6] that they were immediately ordered to stop working to avoid

being interviewed by the DOLE representative. Thereafter, none of the employees were allowed to enter the company premises unless they signed waivers and withdrew their complaint. Of the original 47 complainants, twenty-one (21) signed waivers and retractions. As a result, they were allowed to go back to work. The remaining twenty-six (26) employees, herein private respondents, were barred from entering company premises and doing their work. Thus, as of January 28, 1992, private respondents considered themselves constructively dismissed from their employment.[7]

Petitioner AMFIC had its own version of what took place. It contended that the employees were not dismissed since at the time they were allegedly not allowed to work, AMFIC's plant operation was temporarily shut down due to lack of raw materials. There was no supply of bananas from independent suppliers and whenever there was no supply, the processing plant temporarily ceased operations. Moreover, the plant equipment and machinery required repairs. Lastly, AMFIC claimed there was unfair competition in the industry, which made AMFIC's operations unprofitable.[8]

Further, AMFIC denied having threatened private respondents or barring them from performing their work. It explained that the only reason they were not allowed to enter the premises was that there was simply no work to be done at the time. AMFIC further alleged that when the plant was ready to resume operations in February 21, 1992, respondent-employees were given formal written notices directing them to report for work on the third shift of operations for said date.[9] But, said employees ignored these notices and did not report for duty as directed, leading the petitioner company to conclude that they had lost interest in their jobs and/or have abandoned their work in AMFIC.

On January 31, 1992, herein private respondents lodged a complaint[10] against petitioners before the Regional Arbitration Branch XI, Davao, City, for illegal constructive dismissal, underpayment of wages, non-payment of holiday pay and service incentive leave pay. On April 29, 1992,[11] the complaint was amended to include non-payment of overtime pay, premiums for holidays and rest days, 13th month pay, night shift differential, allowances and separation pay.

In her Decision[12] dated September 30, 1992, the Executive Labor Arbiter, Conchita J. Martinez, found no basis for the claim of illegal/ constructive dismissal. She agreed with AMFIC that since the company was engaged in a temporary shut down, allowed under the Labor Code,[13] the charge of illegal dismissal was premature.[14] She added that it was not AMFIC's fault that respondent-employees failed to report for work when they were asked to. She concluded that since there was no illegal termination and it was the employees themselves who lost interest in their jobs, they were not entitled to separation pay.

Her ruling reads as follows:[15]

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. Ordering respondents to pay the total amount of TWENTY ONE THOUSAND FIFTY AND 11/100 (P21,050.11) PESOS to the twenty-three (23) complainants representing their service incentive leave pay, holiday pay and 13th month pay;
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> 2. Ordering the provisional dismissal of the claims for underpayment of wages due to non-implementation of RTWPB-XI Wage Orders Nos. XI-01 and 02 pending the resolution of the appeal before the Hon. Supreme Court;
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> 3. Ordering the dismissal of the complaint of Evelyn Ellamil, Judith Mahusay and Preciosisima U. Bingtan for service incentive leave, holiday pay and 13th month pay for lack of merit; and
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> 4. Dismissing all other claims for lack of merit.
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> SO ORDERED.[16]

Private respondents interposed an appeal to the NLRC's Fifth Division, in Cagayan de Oro City. The NLRC found "some merit" in

the appeal. On the issue of constructive dismissal, the NLRC found that no constructive dismissal took place, as there was in fact a temporary shut down. However, the NLRC disagreed with the finding that respondent-employees have lost interest in their jobs. On the contrary, it said that the theory of abandonment is negated by the fact that a complaint was filed by these employees based on their erroneous impression that they were constructively dismissed.

Thus, NLRC Resolution dated June 29, 1994[17] concluded:

> WHEREFORE, the decision appealed from is Affirmed with modification in that respondents are hereby ordered to *reinstate complainants to their former positions without loss of seniority rights and privileges but without backwages*. Complainants are equally urged and accordingly ordered to report for work to the respondent company within the reasonable period of time but not beyond 15 days upon finality of this judgment, otherwise their failure to do so shall be interpreted as abandonment of work. Except for the above modification, the rest of the decision of the Labor Arbiter below shall stand.
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> SO ORDERED.[18]

AMFIC filed a motion for reconsideration, assailing the correctness of the order for reinstatement without backwages. In its motion, AMFIC asked the NLRC to affirm in *toto* the Executive Labor Arbiter's decision.

But the NLRC, in its Resolution dated October 11, 1996,[19] merely modified the first Resolution, as follows:

> WHEREFORE, the challenged Resolution is Modified. *In lieu of reinstatement without backwages*, respondent is directed to pay complainants their respective *separation benefits*. No costs.
>
> SO ORDERED.[20]

Hence, this instant petition by AMFIC and its President, alleging that:

a. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT RENDERED ITS RESOLUTIONS IN A MANNER CONTRARY TO LAW AND APPLICABLE JURISPRUDENCE ON THE MATTER;

b. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT MODIFIED THE APPEALED DECISION OF THE EXECUTIVE LABOR ARBITER DESPITE THE FACT THAT THE DECISION OF THE LATTER IS IN ACCORD WITH LAW AND JURISPRUDENCE, AND IS SUPPORTED BY THE EVIDENCE ADDUCED;

c. THE CONCLUSION ARRIVED AT BY PUBLIC RESPONDENT IS GROUNDED ON SPECULATION, SURMISES OR CONJECTURES; AND THE INFERENCE MADE IS MANIFESTLY ABSURD, MISTAKEN OR IMPOSSIBLE; and

d. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT ORDERED THE PAYMENT TO PRIVATE RESPONDENTS OF SEPARATION PAY IN LIEU OF REINSTATEMENT.

The Executive Labor Arbiter and the NLRC are one in finding that no constructive/illegal dismissal took place. Documentary evidence on record established the truth of the company's claim that the company was on a temporary shut down of operations due to lack of raw materials.[21] Further, the formal notices to return to work were received by said employees[22] but they refused to comply with those notices.

As consistently held,[23] factual findings of *quasi-judicial* agencies like the NLRC are generally accorded not only great respect but at times even finality when such findings are supported by substantial evidence. The truth or falsehood of an alleged fact is not for the Supreme Court to re-examine. This Court steps in and exercises its power of review only when on the basis of facts the inference or

conclusion arrived at is manifestly erroneous.[24]

The finding that there was no constructive dismissal is factual, and not subject to our review. Now, what remains in issue is whether or not the NLRC committed grave abuse of discretion in ordering the company to pay separation benefits, despite the finding that there was no constructive dismissal.

Petitioners maintain that public respondent NLRC has concurred with the ruling of the Labor Arbiter that private respondents were not illegally dismissed. Thus, there exists no legal basis to hold the company liable for the payment of separation pay and other benefits. They argue that separation pay shall be paid, although the employee was lawfully dismissed, only when the cause of termination was, without the employer's fault, due to: (a) the installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) cessation of the employer's business, or (e) when the employment is prejudicial to his health and to the health of his co-employees. According to petitioners, private respondents are not entitled to separation pay because they had already abandoned their work or lost interest to report for work. Willful disobedience by the employees of the lawful orders of the employer or his representative in connection with their work, as well as abandonment of their assigned jobs, is valid and justifiable ground for the forfeiture of their security of tenure, according to petitioners.[25]

In its memorandum for public respondent NLRC, the Office of the Solicitor General states that failure to report for work does not mean that private respondents abandoned their work. It argues that to constitute abandonment, there must be failure to report for work or absence without valid or justifiable reason and a clear intention to sever the employer-employee relationship. Moreover, the filing of a complaint for illegal dismissal by private respondents is inconsistent with the allegation of the petitioners that they had abandoned their work. Accordingly, not having abandoned their work, private respondents were entitled to reinstatement but without backwages. However, since private respondents' former positions were already filled up by petitioners and their reinstatement is no longer feasible, the NLRC contends they are entitled to separation pay.[26]

After a review of the records and weighing the contentions of the parties, we are unable to agree with public respondent's conclusion. We find in favor of petitioners and grant their prayer that the Executive Labor Arbiter's decision be reinstated.

Separation pay is given to an employee in cases under Articles 283[27] and 284[28] of the Labor Code. Specifically, these involve the installation of labor saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of establishment, or in case the employee suffers from a disease such that his continued employment is prohibited by law. None of these situations has been found to exist in the case at bar, hence, we are constrained to set aside the assailed order of the NLRC.

In *Peralta vs. Civil Service Commission*,[29] we said that the action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, or an abuse of power or a lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment.[30]

In *Lemery Savings and Loan Bank vs. NLRC,* [205 SCRA 492 (1992)], it was categorically stated that when there is no dismissal to speak of, an award of separation pay as a form of financial assistance is not in order.[31] In the present case, however, the NLRC Resolution awarded separation pay on the ground that, since there was the supervening event that the company had hired replacements, justice and equity called for the payment of separation pay[32] to the complaining employees. But that is where the NLRC overstepped its area of discretion to a point of grave abuse.

For as held in *Lemery Savings and Loan:*[33]

It would be an abuse of the avowed principle of "compassionate justice" in favor of the working man, were we to permit a grant of financial assistance to an employee who, from the bare facts and circumstances, was not at all dismissed.

It is true that the Constitution has placed a high regard for the welfare of the labor sector. However, social and compassionate justice does not contemplate a situation whereby the management stands to suffer

for certain misconceptions created in the mind of an employee. Where there is no dismissal, legal or illegal, no retribution nor compensation to the employee involved is due from the employer.

Having found that there was no constructive or illegal dismissal in this case, it was grave abuse of discretion on the part of the NLRC to order that herein petitioners pay private respondents their separation benefits. Said order has no sufficient basis under the law, and considering the circumstances in this case, neither is it justified by a mere invocation of equity.

WHEREFORE, this petition for certiorari is **GRANTED**. The assailed Resolutions of the NLRC dated June 29, 1994, and October 11, 1996, are declared **NULL** and **VOID,** and **SET ASIDE**. The decision of the Executive Labor Arbiter dated September 30, 1992 is hereby **REINSTATED**.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, *J.*, *(Acting Chief Justice), (Chairman)*, Mendoza, and Corona, *JJ.*, concur.

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[1] Rollo, pp. 30-36.
[2] Id. at 39-41.
[3] Id. at 44-57.
[4] Id. at 45-46
[5] Records, p. 397.
[6] Rollo, pp. 394-399.
[7] Id. at 395.
[8] Id. at 17, 31-32, 46-48.
[9] Id. at 188-201.
[10] Records, p. 1.
[11] Id. at 83.
[12] Rollo, pp. 44-57.
[13] Section 12, Rule 1, Book 6, Implementing Rules.
[14] Rollo, p. 49.
[15] Id. at 56-57.
[16] Ibid.

[17] Rollo, pp. 30-36.
[18] Id. at 35. Italics supplied.
[19] Id. at 39-41.
[20] Id. at 41. Italics supplied.
[21] Records, pp. 152-157.
[22] Rollo, pp. 188-201.
[23] Sunset View Condominium Corporation vs. NLRC, 228 SCRA 466, 470 (1993); Travelaire and Tours Corporation vs. NLRC 294 SCRA 505, 510 (1998).
[24] Id. at 470-471.
[25] Rollo, pp. 22-24.
[26] Id. at 408-410.
[27] ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment or prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.
[28] ART. 284. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.
[29] 212 SCRA 425, 432-433 (1992) citing Sagun vs. PHHC, 162 SCRA 411 (1988).
[30] Id. at 498 (1992).
[31] Rollo, p. 41.
[32] Sagun vs. PHHC, supra, note 29 at 499.