CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

ARC-MEN FOOD INDUSTRIES, INC.,
***Petitioner*,**

-versus-

G.R. No. 113721
May 7, 1997

NATIONAL LABOR RELATIONS COMMISSION and FABIAN ALCOMENDRAS,
***Respondents*.**
x---x

D E C I S I O N

HERMOSISIMA, JR., *J*.:

The herein Petition for *Certiorari* assails the Resolution[1] of respondent National Labor Relations Commission (NLRC)[2] affirming the Decision[3] of Labor Arbiter Nicolas S. Sayon which favored private respondent Fabian Alcomendras under a Complaint for Illegal Dismissal with Money Claims[4] against petitioner Arc-Men Food Industries Corporation (AMFIC).

We gave due course to the instant petition in our Resolution dated December 7, 1994.[5]

The facts of this case, as culled from the decision of the Labor Arbiter, which appear consistent with the respective position papers of the parties, follow:

> "Private respondent alleges that he was a regular employee of the petitioner firm as a company driver from September 1985 until he was unlawfully terminated on January 23, 1990. That as a company driver he was required to render his services to both the petitioner's food and construction business; that since his employment, he has never enjoyed the minimum wage, ECOLA and service incentive leave pay.
>
> It was disclosed that petitioner acted arbitrarily, unjustifiably and without any reason at all, and he was terminated from his employment contrary to the provision of Article 283 of the Labor Code, as amended by B.P. 130. Private respondent has been in the employ for four years and four months of which he has been rendering faithful services and following the rules and regulations of the company and in fact should have been given more benefits that are necessary instead of terminating his employment.
>
> Rising to their defense, petitioner belied the allegations of the private respondent. They claimed that private respondent was not illegally dismissed from his employment but it was he who has abandoned his work.
>
> Petitioner alleged that the company is an export-oriented processing company engaged in the manufacture, production and exportation of banana chips and is not engaged in construction business contrary to the allegation of the private respondent. The company is a relatively newly opened corporation and is beset with recurring problems and imperfections in its plant equipments and machineries which requires sic modifications and alterations that in the process has sic resulted in frequent temporary shutdowns which necessarily affected its operations and profitability. One additional problem is its total dependence on independent suppliers for its raw materials of bananas.

It was posited that under these circumstances, it is therefore not surprising that most employees are seasonal workers and are paid on daily wage basis and likewise also evident that there are temporary lay-offs due to lack of work.

With respect to private respondent, he was employed on September 14, 1985 and first assigned as Process Operator and later on October 1, 1987, was transferred to the Engineering Department as driver and assigned to drive the company's one and only dump truck. The main and primary use of the dump truck was to haul banana peelings from the plant to the garbage site and it is quite obvious that without any plant operations there can be no banana peelings to be hauled to the garbage site.

Anent the issue of termination, petitioner disclosed that as per Summary of Plant Operations, the last time the plant operated in 1989 was December 1, 1989. From December 2, 1989 up to February 25, 1990, the plant was not in full operation and employees directly connected with the plant including herein complainant were advised of the shutdown and were told not to report for work. To prove that private respondent was not terminated on January 23, 1990 is the fact that on January 29, 1990, he secured and was given a cash advance of P700.00 as shown by the Temporary Cash Advance Slip. It is inconceivable for the company to give cash advance "against salary deductions" if he was already terminated on January 23, 1990 or six days before private respondent was given the said cash advance.

Another evidence that private respondent was not dismissed is the fact that petitioner formally advised him to report for work on February 25, 1990 which was hand-delivered by Noli Paglinawan. Despite being advised to report for work private respondent refused.

x x x

Records disclosed that private respondent is a regular employee of the petitioner company and assigned as a dump truck driver.

> As admitted by the petitioner, their plant operation beginning December 1, 1989 up to February 25, 1990 as shown in their Summary of Plant Operations will show that there were only two (2) days of operation, on December 1, 1989 and February 20, 1990. There was no operation for the whole month of January, 1990. As alleged, the private respondent was included in the temporary lay-off during this period (from December 2, 1990 up to February 20, 1990) considering that there was no plant operation. However, contrary to the allegation of the petitioner, they also presented the number of days worked by the private respondent wherein for the month of December 1 to 31, 1989, the latter had worked for twenty-one (21) days and for January 1 to 20, 1990, he worked 16.5 days. Assuming that there was sic only two days plant operation from December 1, 1989 to February 20, 1990, then it is presumed that private respondent was still reporting for duty during that period not for the hauling of banana peelings but for some other purpose for which the respondent is engaged. Thereafter, for unknown reason, private respondent was not anymore required to work effective January 23, 1990, hence, he filed his complaint on February 5, 1990."[6]

From the foregoing facts, the Labor Arbiter concluded that "the allegation that it was private respondent who had abandoned his job is belied by the fact that he immediately filed his complaint after he was terminated from his work on January 23, 1990"[7] and that the report-to-work letter dated February 25, 1990 and cash advance slip dated January 29, 1990 were dubious, the former being a mere after-thought and the latter bearing an alleged forged signature of private respondent.

Totally aghast over the decision of the Labor Arbiter which struck petitioner as grossly contrary to the evidence presented before him, petitioner appealed to the NLRC. But the NLRC did not oblige. Instead, the NLRC upheld the findings of the Labor Arbiter, "they being substantially supported by the facts and evidence on record,"[8] the NLRC echoing as it did that petitioner's "theory of abandonment is contrary to logic and sound reasoning in view of the immediate filing of the complaint for illegal dismissal"[9] and declaring that

petitioner had not validly discharged its burden of proving that the termination was for a valid or authorized cause.

Petitioner filed a Motion for Reconsideration of the decision of the NLRC. Said motion, however, was denied in a Resolution promulgated on December 14, 1993.[10] Hence, this petition seeking the nullification and setting aside of the decisions of the NLRC and the Labor Arbiter on the following grounds:

"I

> 5.a PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT RENDERED ITS DECISION IN A MANNER VIOLATIVE OF PROCEDURAL DUE PROCESS.

II

> 5.b PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE LABOR ARBITER DESPITE THE FACT THAT THE DECISION OF THE LATTER IS CONTRARY TO LAW AND JURISDICTION AND IS NOT SUPPORTED BY THE EVIDENCE ADDUCED;

III

> 5.c THE QUESTIONED DECISION IS BASED ON A MISAPPREHENSION OF FACTS AND OVERLOOKED FACTS OF SUBSTANCE AND VALUE THAT IF CONSIDERED WOULD AFFECT THE RESULT OF THE CASE;

IV

> 5.d THE CONCLUSION ARRIVED AT BY PUBLIC RESPONDENT IS GROUND ON SPECULATION, SURMISES OR CONJECTURES; AND THE INFERENCE MADE IS MANIFESTLY ABSURD, MISTAKEN OR IMPOSSIBLE;

V

> 5.e PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT ORDERED THE PAYMENT OF BACKWAGES AND SEPARATION PAY TO PRIVATE RESPONDENT."[11]

The petition is imbued with merit.

First. Undeniable is the over-reliance of both the Labor Arbiter and the NLRC on the notion that the filing of a complaint for illegal dismissal is inconsistent with the employer's defense of abandonment by the employee of his work. While the burden of refuting a complaint for illegal dismissal is upon the employer, fair play as well requires that, where the employer proffers substantial evidence of the fact that it had not, in the first place, terminated the employee but simply laid him off due to valid reasons, neither the Labor Arbiter nor the NLRC may simply ignore such evidence on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not indeed been dismissed. This is clearly a non sequitur reasoning that can never validly take the place of the evidence of both the employer and the employee.

Second. The Labor Arbiter and the NLRC, the records show, had taken note of (1) the Summary of Plant Operations[12] indubitably showing that petitioner's operations were shut down from December 2, 1989 to February 19, 1990; (2) the Temporary Cash Advance Slip[13] signed by private respondent showing that he requested and received on January 29, 1990 "cash advance against salary deduction" for the amount of P700.00; (3) the return-to-work letter dated February 25, 1990[14] addressed to and directing private respondent to report for work on February 26, 1990; (4) the Affidavit[15] executed by one Noli Paglinawan who thereby declared that he personally handed to private respondent the aforementioned return-to-work letter who however refused to receive or acknowledge the same; and (5) the letter request for cash advance of P700.00 dated January 23, 1990 16 signed by private respondent. All these documentary evidences sufficiently establish the veracity of petitioner's insistent claim that it did not terminate private respondent but rather, the latter refused to

return to work after his temporary lay-off due to petitioner's plant shutdown.

The Labor Arbiter and the NLRC, instead of at least reviewing whatever countervailing evidence private respondent had *vis-a-vis* petitioner's afore-described documentary proofs, simply swept under the rug the issues of lay-off and abandonment of work, relying as they did on the earlier mentioned notion of the inconsistency between the filing of a complaint for illegal dismissal and the interposing of the defense of abandonment by the employee of his work. The Labor Arbiter and the NLRC is thus guilty of misappreciating the facts and rendering judgment on dubious factual and legal basis. In other words, herein assailed decisions are illustrative of a patent case of grave abuse of discretion.

Third. The evidence on record indeed clearly shows that private respondent was not illegally dismissed. He was temporarily laid off in view of the temporary shut down of petitioner's operations. When he was asked to report back to work, he refused. The nagging question from the Labor Arbiter's perspective is this: If private respondent had refused to return to work upon notice to report back to petitioner's plant, why did he later on file a complaint for illegal dismissal?

The Labor Arbiter and the NLRC similarly answered the question with the alleged truism: private respondent filed the complaint for illegal dismissal because he was illegally dismissed. We, however, believe that private respondent's motivation in filing the complaint for illegal dismissal despite his refusal to return to work, is revealed by the following averment in his position paper before the Labor Arbiter:

> "Before delving into the issues of the above entitled case, complainant would like to request the Honorable Commissioner to take judicial notice of the fabricated and manufactured criminal case filed by the respondents in retaliation to the institution of this case and in fact the latter had confronted the former to drop this case in exchange of the dropping of the fabricated and manufactured criminal case."[17]

It is significant to note that it was private respondent who first raised the matter of petitioner's alleged offer to drop the criminal case for qualified theft against private respondent. Responding to this averment in private respondent's position paper, petitioner refuted the same in this wise:

> "Alcomendras clearly abandoned his work when he refused to report back to work. Of course, he will always claim that he did not abandon his work because he filed a complaint before this Honorable Commission. Certainly, one can see through his ploy and the mercenary motive for his action. He had nothing to lose but everything to gain. Firstly, if he succeeds in misleading this Honorable Commission into believing his claim he would stand to gain monetary advantage in the form of separation pay to which he is definitely not entitled. Secondly, it was clearly his intention to use this present complaint as a leverage hoping that respondents will enter into a settlement with him and thereby in the process he would gain the upper hand by demanding that the complaint which he knew or ought to know respondent is filing against him and a former employee with the Office of the Provincial Prosecutor of Davao del Norte will be dismissed as part of the settlement. In point of fact the complaint that respondent filed against him with the Office of the Provincial Prosecutor of Davao del Norte is not, as he claimed, "in retaliation to the institution of this case." Nothing can be farther from the truth. For one thing, it was a management decision arrived at even before management was aware of the complaint filed in this case by the complainant. The truth of the matter is that the decision to file a criminal complaint against Alcomendras and one other person was arrived at long before the company came to know of the complaint of Alcomendras with the NLRC. What delayed the filing of this complaint with the Office of the Provincial Fiscal is the mechanical preparation of the affidavits to support the complaint."[18]

Contrary to what private respondent had hoped, however, petitioners refused to withdraw its criminal complaint for qualified theft. Finding probable cause, the Office of the Provincial Prosecutor filed the corresponding information in July, 1990.

In the face of solid evidence of petitioner's temporary plant shutdown during the time that private respondent claims to have been illegally dismissed and of private respondent's receipt of notice to return to work and his refusal to do so, with full awareness on the part of the Labor Arbiter and the NLRC as to the related circumstance of the pendency of a criminal charge by petitioner against private respondent, and considering the utter lack of evidence in negation of petitioner's own documentary evidence formidably establishing the veracity of its defense, it was grave abuse of decision on the part of the Labor Arbiter and the NLRC to have found petitioners liable for having illegally terminated private respondent.

We quote, with approval, the following observations of the Solicitor General:

> "Article 286 of Labor Code of the Philippines, as amended, provides:
>
>> 'ART. 286. When employment not deemed terminated. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.'
>
> Likewise, Section 12, Rule 1 of Book VI of the Omnibus Rules Implementing the Labor Code reads:
>
>> 'Sec. 12. Suspension of relationship. — The employer-employee relationship shall be deemed suspended in case of suspension of operation of the business or undertaking of the employer for a period not exceeding six (6) months, unless the suspension is for the purpose of defeating the rights of the employees under the Code, and in case of mandatory fulfillment by the employee of a military or civic duty. The payment of wages of the employee as well

> as the grant of other benefits and privileges while he is on a military or civic duty shall be subject to special laws and decrees and to the applicable individual or collective bargaining agreement and voluntary employer practice or policy.'

From the foregoing provisions, it is clear that management can temporarily suspend business operations or undertakings for a period not exceeding six (6) months without having to pay separation pay to workers, but the suspension must be done bona fide and not for the purpose of defeating the rights of employees. Within this period, the employer-employee relationship shall be deemed suspended.

In the instant case, it is undisputed that at the time that private respondent was allegedly dismissed, i.e., January 23, 1990, petitioner was not in full operation and the employees affected by the temporary shutdown were advised of the situated and were told not to report for work in the meantime. Thus, the Summary of Plant Operations shows that from the period starting December 1, 1989 up to February 25, 1990, there were only two (2) days of operation, that is, December 1, 1989 and February 20, 1990. It was during this period of time that private respondent was temporarily laid off from work.

x x x

It is settled that findings of fact of quasi-judicial agencies like public respondent NLRC which have acquired expertise because their jurisdiction is confined to specific matters, are accorded not only respect but also finality by this Honorable Court. However, the rule is not without exception as when it is shown that it committed a grave abuse of discretion or otherwise acted without jurisdiction or in excess of its jurisdiction (Ilas vs. National Labor Relations Commission, 194 SCRA 224). This is the situation here.

That the services of private respondent Fabian Alcomendras were not terminated on January 23, 1990 is shown by the fact that on that same day, private respondent requested from

petitioner a cash advance in the amount of P700.00. The letter dated January 23, 1990 of private respondent to S.T. Gomez, Plant Superintendent, reads:

> 'January 23, 1990
>
> To: S.T. Gomez
> Plant Superintendent
> Arc-Men Food Inc., Corp.
>
> Dear Sir:
>
> Due to my indefinite lay-off schedule with no definite plant operation, I would like to request in your good office, the amount of (P700.00) seven hundred pesos, deductible from my salary, on the resumption of the operation. The said amount will be used for the needs of my family.
>
> Hoping for your kind consideration and approval.
>
> Respectfully yours,
>
> *(Signed)*
> FABIAN ALCOMENDRAS'

The above request was duly approved by petitioner per the Temporary Cash Advance Slip dated January 29, 1990, showing that private respondent received the amount of P700.00 as cash advance.

Labor Arbiter Nicolas S. Sayon doubts the authenticity of the date appearing on said Temporary Cash Advance Slip 'considering that complainant was already terminated at that time,' and so he held that it could not have been true that petitioner still allowed private respondent to receive a cash advance. This observation is premised on the unsubstantiated allegation of private respondent that he was already dismissed on January 23, 1990. However, respondent requested a cash advance which was favorably granted, as shown by the letter of

January 23, 1990 and the Temporary Cash Advance Slip dated January 29, 1990. In fact, private respondent does not deny that he received the said amount of P700.00.

It must be noted that in his letter dated January 23, 1990, private respondent clearly admitted that petitioner's plant operations were temporarily suspended ('no definite plant operation') and that he was on 'indefinite lay off.' Thus, the conclusion of the Labor Arbiter that private respondent 'was not anymore required to work effective January 23, 1990 for unknown reason' is totally without basis. The reason why private respondent was not required to report for work on January 23, 1990 is very clear, that is, the petitioner's plant operations was sic temporarily shut down. As mentioned earlier, the law allows petitioner to temporarily shutdown/suspend its operations if the situation warrants it (Article 286 of the Labor Code and Section 12, Rule 1 of Book VI of the Omnibus Rules Implementing the Labor Code).

Further, private respondent requested in his letter that the cash advance to be given him be deducted from his salary upon resumption of plant operations. How could petitioner have granted private respondents request for 'cash advance against salary deduction' if private respondent has already been dismissed on January 23, 1990 as alleged by him? It would be absurd for petitioner to favorably acted sic on the request for cash advance if it were true that private respondent had already been dismissed. The truth is that private respondent was not dismissed but merely temporarily laid off by petitioner due to temporary suspension of its operations.

Thus, when petitioner was to resume its operations on February 26, 1990, it sent a notice to private respondent on February 25, 1990. The full text of the letter dated February 25, 1990, reads:

> 'February 25, 1990
>
> To: Mr. Fabian Alcomendras

> > Please be reminded that you are advice sic to report on sic your duty on Monday, February 26, 1990 at 7:00 in the morning. Your presence is needed.
> >
> > For your attention and compliance, I remain.
> >
> > Respectfully yours,
> >
> > (illegible)'
>
> However, private respondent refused to receive said letter and did not report for work as required of him. Such being the case, petitioner can not compel private respondent to report for work. The decision to resume his work as dump truck driver rests solely on him.
>
> The finding of the Labor Arbiter and public respondent NLRC that the notice to private respondent to report back for work is purely an afterthought is again bereft of merit. Private respondent was never dismissed by petitioner that is why petitioner notified private respondent that he had to report back for work on February 26, 1990.
>
> Finally, that private respondent worked for twenty-one (21) days for the period December 1-31, 1989 and 16.5 days for the period January 1-20, 1990 does not negate the fact that petitioner's operations during this time was sic already temporarily suspended. As the Labor Arbiter himself has found and concluded, private respondent reported for duty on said dates not to haul banana peelings as was his job, but 'for same other purpose for which the respondent is engaged.' When these 'special assignments', as petitioner calls them were done, petitioner could rightfully ask private respondent not to report for work in the meantime that the operations were still suspended. This advice of petitioner to private respondent can not be construed as dismissal."[19]

Finally, we note that petitioner, in all its pleadings before us, has been silent as to the award to private respondent of P552.00 as Emergency Living Allowance (ECOLA), and P765.00 as Service Incentive Leave

Pay. We deem this silence as acceptance of such award as having been correctly computed and determined by the Labor Arbiter and properly affirmed by the NLRC.

WHEREFORE, the instant Petition for *Certiorari* is **GRANTED**. The Resolution of the NLRC dated September 30, 1993 and December 14, 1993, respectively, as well as the Decision of the Labor Arbiter dated August 22, 1990 are hereby set aside and declared null and void. A new decision in NLRC Case No. RAB-11-02-00098-90 is hereby rendered dismissing the complaint for illegal dismissal and awarding P552.00 as Emergency Living Allowance (ECOLA) and P765.80 as Service Incentive Leave Pay to private respondent Fabian Alcomendras.

No costs.

SO ORDERED.

Padilla, Bellosillo, Vitug and Kapunan, *JJ.*, concur.

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[1] Promulgated on September 30, 1993 in NLRC CA No. M 00009; Rollo, pp. 42-47.
[2] Fifth Division, Cagayan de Oro City.
[3] Dated August 22, 1990; Rollo, pp. 53-59.
[4] Docketed as Case No. RAB-11-02- 00098-90.
[5] Rollo, p. 192.
[6] Decision of the Labor Arbiter dated August 22, 1990, pp. 1-5; Rollo, pp. 53-57.
[7] Id., pp. 5-6; Rollo, pp. 57-58.
[8] Resolution of the NLRC dated September 30 1993 p 4; Rollo, p. 45.
[9] Ibid.
[10] Rollo, pp. 49-50.
[11] Memorandum of Petitioner dated January 18, 1995, p. 2; Rollo, p. 199.
[12] Dated May 19, 1990, Annex A of Petitioner's Position Paper; Rollo, pp. 85-88.
[13] Annex B of Petitioner's Position Paper; Rollo, p. 89.
[14] Annex C of Petitioner's Position Paper; Rollo, p. 89.
[15] Annex D of Petitioner's Position Paper; Rollo, p. 90.
[16] Annex 1 of Petitioner's Supplemental Appeal Memorandum; Rollo, p. 116.
[17] Rollo, p. 62.
[18] Petitioners Position Paper. pp. 10-11, Rollo, pp. 76-77

[19] Solicitor General's Comment dated Jul y 29, 1994, pp. 7-19; Rollo, pp. 172-184.

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