

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**ATLAS CONSOLIDATED MINING AND
DEVELOPMENT CORPORATION,**
Petitioner,

-versus-

**G.R. No. 75751
October 17, 1990**

**NATIONAL LABOR RELATIONS
COMMISSION and RODOLFO S.
CABALLO,**
Respondents.

X-----X

DECISION

FERNAN, J.:

This Petition filed by Atlas Consolidated Mining and Development Corporation under Rule 45 of the Rules of Court is treated as a special civil action for *certiorari* under Rule 65 of the Rules of Court as it assails the resolution issued by the National Labor Relations

Commission on October 25, 1985 affirming the decision dated October 18, 1984 of Executive Labor Arbiter Fulleros which declared as illegal the dismissal of private respondent Rodolfo S. Caballo, and ordered petitioner Atlas Consolidated Mining and Development Corporation (Atlas for short) to reinstate Caballo without loss of seniority rights and other benefits, and to pay the discharged employee P10,000.00 in moral damages and P2,000.00 as attorney's fees.^[1]

The facts as found by the Labor Arbiter are as follows:

Rodolfo S. Caballo has been a junior engineer in the construction department of petitioner Atlas since October 4, 1978. To settle urgent family matters in Bohol, he took an approved leave of absence for ten (10) days from May 27, 1981 to June 10, 1981.

Upon the expiration of his leave, Caballo wired his department head that he was extending his leave because he was waiting for the release of his bank loan. Unfortunately, he was stricken ill and was later diagnosed to be suffering from acute pyelonephritis and hepatitis. He was advised by his physician to rest for several months.

On August 5, 1981, Caballo received a letter from petitioner Atlas dated July 22, 1981 giving him ten (10) days from receipt to come back to work and in the alternative, to explain why he should not be dismissed for his prolonged absence. Two (2) days later, on August 7, 1981, Caballo received another communication from Atlas, this time a copy of the application for written clearance to discharge him dated July 23, 1981 which petitioner Atlas filed with the then Ministry of Labor and Employment on August 8, 1981.

As he was gravely sick and secure in the thought that his sister had earlier on August 5, 1981 informed petitioner Company by telegram of his predicament, Caballo paid no attention to the clearance application filed by his employer.

On the other hand, finding that Caballo did not manifest any opposition to its application for clearance to dismiss him within the reglementary period of ten (10) days from notice, petitioner proceeded to effect his separation from the service.

On January 14, 1982 or six (6) months and twenty-four (24) days after his initial leave, Caballo reported for work, armed with medical certificates attesting to his recent illness. Petitioner Atlas refused to take him back because he had been dismissed. Caballo requested that he be given separation pay and other fringe benefits but petitioner Company was only willing to give him a proportionate amount of the 13th month pay and nothing more. Thus, his complaint for illegal dismissal which as above adverted to, was resolved by the Labor Arbiter on October 18, 1984 and the National Labor Relations Commission on October 25, 1985 in his favor. Commissioner Federico O. Borromeo of the NLRC dissented with respect to the award of P10,000.00 moral damages in favor of private respondent finding the same to be without legal basis.

On December 6, 1985, petitioner filed by registered mail a motion for reconsideration of the resolution dated October 25, 1985 but this was subsequently denied on May 29, 1986.

Hence the instant recourse by petitioner Atlas.

It is the principal contention of petitioner Atlas that the absence of private respondent without leave for over six (6) months was far too long to be justified, and that even if private respondent was indeed sick, as claimed by him, still, valid grounds exist to justify his dismissal, namely: first, after private respondent had sent a telegram on August 5, 1981 informing petitioner that he was sick in compliance with petitioner's letter dated July 22, 1981 giving him 10 days to report for work and explain why he should not be discharged for his prolonged absence, nothing was heard from him until only about five (5) months later, on January 4, 1981, when he surfaced with a medical certificate; and second, an application for clearance to terminate private respondent was filed with the Ministry of Labor which private respondent did not oppose within the 10-day period given him from receipt of the same on August 7, 1981.

The contentions are devoid of merit.

It was erroneous for petitioner Atlas to conclude that the prolonged absence of private respondent constitutes abandonment of his

employment.^[2] The prolonged absence of private respondent cannot be construed as abandonment of work when said absence was due to a justifiable reason, i.e., that he was suffering from acute pyelonephritis under the medical attention of Dr. Didi Yap Alba of Englewood Hospital from July 7 to 28, 1981 — a fact duly communicated to petitioner — which was found later on August 30, 1981 by Dr. Davis Endino, a resident physician of Bohol Provincial Hospital Regional Health Office No. VII, as a case of acute hepatitis which required a two (2)month rest.

As we said in *Flexo Manufacturing Corporation vs. NLRC*,^[3] mere absence is not sufficient to constitute a valid cause for termination of employment on the ground of abandonment for there must be a deliberate unjustified refusal of the employee to resume his employment. This refusal must be clearly shown. The absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.^[4]

In the instant case, the evidence on record conclusively shows that private respondent reported for work on January 4, 1982 but was not allowed to work notwithstanding the medical certificate presented attesting that he was sick with hepatitis, an illness requiring prolonged rest and isolation. Even before he reported for work on January 4, 1982, the fact of his illness was made known to petitioner Atlas on August 5, 1981 when his sister informed the former of the reason why he could not report for work after the expiration of his leave of absence and that he would return to work once fully recuperated. While private respondent recognized the importance of his job, it cannot be denied, however, that his health takes precedence over all other considerations. Considering the nature of his illness and condition while under medication, private respondent's failure to comply with the procedural requirements of opposing the clearance application to terminate him cannot justify petitioner's summary dismissal of private respondent on the presumption that he had abandoned his job.

Besides, private respondent immediately filed on February 26, 1982 a complaint for illegal dismissal, seeking his reinstatement with full backwages as well as moral damages after his request for separation pay and other fringe benefits was denied by petitioner. Petitioner was

only willing to give him a proportionate amount of his 13th month pay and nothing more, thus, prompting him to file the complaint. We said in *Judric Canning Corporation vs. Inciong*,^[5] that “it would be illogical for the private respondent to abandon his work and then immediately file an action seeking his reinstatement.” Indeed, we cannot believe private respondent, who had worked for petitioner for two (2) years and 10 months, would simply walk away from his job unmindful of the consequences of his act, i.e. the forfeiture of his accrued employment benefits. In opting finally to contest the legality of his dismissal instead of just claiming his separation pay and other benefits, which he actually did but which proved to be futile after all, ably supports his sincere intention to return to work, thus negating the stand of petitioner that he had abandoned his job.

Although petitioner Atlas may have had some reasons for summarily dismissing private respondent, these are not sufficient to detract from the necessity of basic fair play. The manner of dismissal of private respondent in the instant case is tainted with illegality, that is, a dismissal without due process.^[6] The due process requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man’s innate sense of justice.^[7]

It must be noted that petitioner’s application for clearance to terminate private respondent dated July 23, 1981 was prepared one (1) day after its letter dated July 22, 1981 requiring private respondent to report for work within 10 days from receipt and in the alternative to explain why he should not be dismissed for his prolonged absence. The letter dated July 22, 1981 was received by private respondent on August 5, 1981 while the application for clearance to terminate was received two (2) days thereafter or on August 7, 1981. In other words, without waiting for the lapse of the ten (10) day grace period within which to report for work, petitioner had already applied for clearance to terminate private respondent herein. Clearly, while there was a semblance of compliance with the clearance requirement before actual termination, the intention of petitioner to dismiss private respondent was already manifest when the clearance application was prepared one (1) day after the letter requiring him to report for work within 10 days from receipt was drafted. This circumstance shows that petitioner had long decided to

dismiss private respondent even before the expiration of the 10-day grace period given him to report for work. However, private respondent was not entirely without fault in not informing petitioner from time to time of the state of his health in that span of six (6) months. For this reason, the reduction of the award of moral damages to P5,000.00 is warranted.

Petitioner questions the jurisdiction of the Labor Arbiter over the complaint of illegal dismissal on the grounds that since the dismissal of private respondent was effected under Book V, Rule XIV of the Rules and Regulations Implementing the Labor Code prior to the effectivity of Batas Pambansa Blg. 130 on August 26, 1981, the failure of private respondent to oppose the application and his consequent dismissal operate to divest the Labor Arbiter of his jurisdiction because the matter of his dismissal had already been closed when petitioner proceeded to dismiss private respondent.

The contention is erroneous. It is a well-settled rule that even if the application for clearance to dismiss was granted by the Department of Labor and Employment, the grant thereof will not prejudice the right of the dismissed employee to contest the legality of his dismissal by filing a separate complaint for illegal dismissal.^[8]

WHEREFORE, in view of the foregoing, the Resolution of the National Labor Relations Commission dated October 25, 1985 is **MODIFIED**. Petitioner is hereby ordered to reinstate Rodolfo S. Caballo to his former position without loss of seniority rights and other benefits with three (3) years backwages, P5,000.00 as moral damages, and P2,000.00 as attorney's fees.

SO ORDERED.

Gutierrez, Jr., Bidin and Cortes, JJ., concur.
Feliciano, J., On leave.

[1] Rollo, pp. 24 and 28.

[2] p. 8, Petition, p. 10, Rollo.

[3] 135 SCRA 145 (1985).

- [4] Peñaflor vs. NLRC, 120 SCRA 68; Capital Garment Corporation vs. Ople, 117 SCRA 473; Judric Canning Corporation vs. Inciong, 115 SCRA 887.
- [5] Supra.
- [6] Primero vs. Intermediate Appellate Court, 156 SCRA 436 (1987).
- [7] Miguel vs. NLRC, G.R. No. 78993, June 22, 1988, 162 SCRA 441.
- [8] Nasipit Lumber Company, Inc. vs. NLRC, et al., G.R. No. 54424, August 31, 1989.

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