

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**DIANA E. BELAUNZARAN,**  
*Petitioner,*

*-versus-*

**G.R. No. 120038  
December 23, 1996**

**NATIONAL LABOR RELATIONS  
COMMISSION, CASINO ESPANOL DE  
CEBU, GLENN IVAN LOOP and PABLO  
PIDO, JR.,**

*Respondents.*

X-----X

**DECISION**

**PADILLA, J.:**

Petitioner Diana E. Belaunzaran has filed this Petition for *Certiorari* under Rule 65, Rules of Court, seeking to set aside the Decision of public respondent National Labor Relations Commission (NLRC) Fourth Division in NLRC Case No. V-0439-03 (RAB VII-01-0129-92)

which affirmed in toto the decision of Labor Arbiter Nicasio Aniñon declaring private respondents not guilty of illegal dismissal.

Petitioner Belaunzaran was hired by private respondent Casino Espanol de Cebu, Inc. on 1 February 1984 as Food and Beverage Manager of its clubhouse and restaurant in Cebu City. She was subsequently promoted to the position of General Manager with a monthly salary of P8,000.00 plus a signing privilege of P1,000.00 (later increased to P2,000.00) and a 40% discount on restaurant chits.

Some time in August 1991, petitioner applied for vacation leave to take effect on 9 September 1991 and end on 15 October 1991. This was approved by private respondent Pablo Pido, Jr. on behalf of management. Petitioner then left for Spain to join her husband who is a Spanish national. On 14 October 1991, petitioner sent a wire from Spain to private respondent Glen Ivan Loop in Cebu City requesting for an extension of her vacation leave until 10 November 1991. This was disapproved by management as per reply received by petitioner on 4 November 1991. Consequently, petitioner took the flight back to the Philippines on 1 November 1991 and reported for work on 16 November 1991.

Two (2) days after she returned to work, petitioner was informed by private respondents Loop and Pido, Jr. that the Board of Directors had arrived at a consensus to ask petitioner to resign. It appears that several employees including the union president and storekeepers of Casino Espanol complained to management about petitioner's failure to conduct an investigation on the loss of stocks and supplies placed in their trust. Petitioner was told that if she resigned, the management would be willing to pay her separation pay equivalent to one (1) month pay for every year of service plus thirteenth (13th) month pay for 1991.

On 18 November 1991, petitioner appeared before the Board of Directors and during said meeting, she was informed of the numerous complaints of the employees against her. The Board agreed that a formal investigation of these complaints would only do more harm to petitioner and considering the strained relations between petitioner and her subordinate employees, the Board advised petitioner to

accept its proposal for her to resign. The Board was given the impression by petitioner that she was amenable to the proposal. After said meeting, petitioner never reported back to work. She went back to Casino Espanol on 14 December 1991 but only to file a sick leave notice effective 27 November 1991 until 31 December 1991. This was disapproved by private respondents in a letter dated 16 December 1991. In this letter, private respondents pointed out to petitioner that she had already incurred unauthorized absences and as manager, she had failed to set a good example to her subordinate employees. Private respondents at the same time asked petitioner to submit her resignation and if not, submit within ten (10) days from receipt of said letter her explanation to the numerous complaints lodged against her. Petitioner did not comply with such directive and instead filed a complaint for illegal dismissal.

Private respondents, in their defense, claimed that petitioner was not dismissed but that she abandoned her job. Private respondents also contended that even if petitioner was indeed dismissed, her dismissal would be for cause as she had incurred unauthorized absences beginning 15 October 1991 and private respondents had already lost their trust and confidence in her. Due to petitioner's prolonged absence, private respondents were allegedly constrained to hire the services of Eduardo Garcia, a consultant, to oversee the preparations then being made by Casino Espanol for its forthcoming major annual events, namely, Ciestas de Navidad, New Year's Ball and the Epiphany. Moreover, the numerous complaints against petitioner allegedly showed that she had become ineffective as general manager.

After the parties had submitted their position papers, the Labor Arbiter rendered judgment, the dispositive part of which states:

“WHEREFORE, judgment is hereby rendered declaring respondents not guilty of illegal dismissal and complainant not guilty of abandonment. However, respondent firm is directed to pay complainant the amount of SIXTY FOUR THOUSAND (P64,000.00) PESOS representing separation pay and another P8,000.00 representing complainant's 13<sup>th</sup> month pay for the year 1991.

All other claims are dismissed for lack of merit

SO ORDERED.”<sup>[1]</sup>

Thereafter, petitioner appealed to the National Labor Relations Commission (NLRC) which rendered a decision affirming in toto the decision of the Labor Arbiter.<sup>[2]</sup>

Petitioner now comes to this Court seeking to set aside the decision of the NLRC on the following grounds:

- “1. Respondent NLRC acted whimsically or capriciously in total disregard of the evidence on record and made conclusions on matters not supported by the evidence on record;
2. Respondent NLRC acted whimsically or capriciously amounting to grave abuse of discretion in totally disregarding evidence material to or even decisive to controversy.
3. Respondent NLRC totally disregarded clear and convincing evidence to support the claim of petitioner for damages.”<sup>[3]</sup>

The basic contention of petitioner is that, contrary to the findings of the Labor Arbiter and the NLRC, private respondents are guilty of illegal dismissal and as a consequence thereof, petitioner should be awarded backwages as well as moral and exemplary damages in addition to the separation pay and thirteenth (13<sup>th</sup>) month pay already awarded.

Both public and private respondents filed their comments on the petition. They refuted the assignment of errors made by petitioner. Specifically, they aver that the decision of the NLRC is supported by evidence and that the NLRC did not err in absolving private respondents of the charge of illegal dismissal. On 15 November 1995, the Court gave due course to the petition and required the parties to submit their respective memoranda.<sup>[4]</sup>

A perusal of all the pleadings filed by the parties leads the Court to dismiss the petition. The Court notes preliminarily that petitioner did

not file a motion for reconsideration of the assailed decision. Save for a perfunctory claim that since the assailed decision is a patent nullity, hence, the filing of a Motion for Reconsideration would be useless and unnecessary, petitioner has not endeavored to show any justifiable reason for the omission. The Court has consistently ruled that before *certiorari* may be availed of, petitioner must have filed a motion for the reconsideration of the order or act complained of to enable the tribunal, board, or office concerned to pass upon and correct its mistakes, if any, without the intervention of the higher court.<sup>[5]</sup>

In any case, it is well-settled in this jurisdiction that factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter, are accorded respect, even finality, and will not be disturbed for as long as such findings are supported by substantial evidence. 6 In this case, the Labor Arbiter, sustained by the NLRC, categorically made a finding that private respondents did not at all dismiss petitioner. Thus —

“The pivotal issue to be resolved is whether or not complainant was illegally dismissed. We do not find complainant’s contention that she was illegally dismissed meritorious. Contrary to the allegation of the complainant no constructive dismissal can be deduced from the proposal of the board to resign. When the board of directors requested her to submit her resignation, it was more out of concern rather than the intent to dismiss that complainant who might be subjected to embarrassment if the charges levelled against her by the union president, Vidal Miscala, and the two storekeepers Alexander Lomo and Benito Longakit were investigated. If it was really the intention of respondent to dismiss, it would have carried its plan by advising the complainant either orally or in writing that she was dismissed. The record is bereft of evidence to show that respondents notified or informed the complainant that she had been dismissed As correctly pointed out by the respondents, what could have led complainant to think that she was constructively dismissed was when she saw Mr. Garcia in her office on November 1, 1991. The presence of Mr. Garcia in her office cannot be construed that complainant was replaced by him. The hiring of Mr. Eduardo Garcia as a consultant was

justifiable because at the time that the Board made its decision on October 5, 1991, complainant had not reported back and respondent firm had to prepare for the forthcoming three big events namely Ciestas de Navidad (Christmas Day), New Year's Ball, and Three Kings which the club members customarily celebrate every year. At the time complainant's conclusion that she was constructively dismissed, was based only on presumption or conjecture. This is evident from her testimony taken down during the proceedings of June 1, 1992.

ATTY. MALILONG (on cross-examination):

Q — Now, when was the time you saw Mr. Garcia in your office? On what date for the first time?

WITNESS:

A — On November 19, 1991.

Q — And when you saw him on November 19, 1991, your feeling was that you immediately believed that you are replaced directly by Mr. Garcia?

A — Yes, sir. That was exactly my feeling.

Q — You considered yourself, when you saw Mr. Garcia as having been dismissed?

A — Yes.”

Complainant did not even ascertain why Mr. Garcia was occupying her office on that day.

HON. LABOR ARBITER

Q — When you saw Mr. Garcia occupying your office, did you have a talk with him?

WITNESS:

A — No sir. I just went outside.

HON. LABOR ARBITER:

Q — Did you not call him up through telephone or by any conversation (communication) why he was already occupying your office?

A — I did not feel that I should talk to him. I expected that it should be the board who will talk to me.

HON. LABOR ARBITER:

Q — Did you not inquire from the two individual respondents in this case why is it that Mr. Garcia was already occupying your office?

A — No more, sir.”<sup>[7]</sup>

What led the petitioner to believe that she had been dismissed was the hiring of Mr. Eduardo Garcia who petitioner mistakenly thought was her replacement. As found by both the Labor Arbiter and the NLRC, Mr. Garcia was hired merely as a consultant to oversee the preparations then being made by Casino Espanol for the activities during the Christmas season. Contrary to the claim of petitioner, the foregoing findings of the Labor Arbiter and the NLRC are supported by evidence on record and the Court finds no reason to disturb them.

With respect to private respondents’ countercharge that petitioner had abandoned her job, the Labor Arbiter ruled that petitioner is not guilty of abandonment.<sup>[8]</sup> The Court is not inclined to disturb this finding as well.

Nonetheless, petitioner’s actuation, e.g., going on a prolonged unauthorized leave, certainly gave credence to private respondents’ claim that they have already lost their trust and confidence in her. The Court notes that after her meeting with the Board of Directors on

18 November 1991, petitioner never reported back to work despite disapproval of her leave applications.<sup>[9]</sup>

And when private respondents asked her, some time in January 1992, to submit her resignation letter or if not, to submit her written explanation to the complaints against her, petitioner immediately filed a complaint for illegal dismissal thereby preempting all investigation by private respondents on the matter. It must be stated that private respondents did not violate any law when it gave petitioner the option to resign because there is nothing illegal with the practice of allowing an employee to resign instead of being separated for just cause, so as not to smear her employment record.<sup>[10]</sup>

There being no dismissal nor abandonment to speak of, the status quo between petitioner and private respondents should be maintained as a matter of course. But as found by the Labor Arbiter, the reinstatement of petitioner is no longer feasible due to a deep antagonism between her and private respondents.<sup>[11]</sup> Thus, in lieu of reinstatement, petitioner was correctly awarded separation pay equivalent to one (1) month pay for every year of service plus thirteenth (13<sup>th</sup>) month pay which is based on the original offer of private respondents.<sup>[12]</sup>

However, petitioner's claim that in addition to separation pay, she is likewise entitled to backwages as well as moral and exemplary damages is without basis. Backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to illegal dismissal.<sup>[13]</sup> Upon the other hand, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or constituted an act oppressive to labor or was done in a manner contrary to morals, good customs or public policy while exemplary damages may be awarded only if the dismissal was effected in a wanton, oppressive or malevolent manner.<sup>[14]</sup> None of these grounds are present in this case precisely because petitioner was not at all dismissed by private respondents.

**WHEREFORE**, in view of the foregoing, Petition is hereby **DISMISSED**. The Decision of respondent NLRC dated 8 December 1994 is **AFFIRMED**.

## **SO ORDERED.**

**Bellosillo, Kapunan and Hermosisima, Jr., JJ., concur.  
Vitug, J., on leave.**

---

- [1] Rollo, p. 36.
- [2] Id., p 26.
- [3] Id., pp. 10-15.
- [4] Id., p. 84.
- [5] Philippine National Construction Corp. PNC) vs. NLRC, 245 SCRA 668 (1995).
- [6] PCI Automation Center, Inc. vs. NLRC, G.R. No. 115920, 29 January 1996; Zanotte Shoes, Inc. vs. NLRC, 241 SCRA 261 (1995); Morales vs. NLRC, 241 SCRA 261 (1995); Morales vs. NLRC, 241 SCRA 103 (1995).
- [7] Rollo, pp. 32-34.
- [8] Id., p 35.
- [9] Id., p. 102.
- [10] Sicangco vs. NLRC, 235 SCRA 96 (1994); Samaniego vs. NLRC, 198 SCRA 111 (1991).
- [11] Rollo, p. 35.
- [12] Indophil Acrylic Mfg. Corp. vs. NLRC, 226 SCRA 723 (1993).
- [13] Industrial Timber Corporation-Stamply Operation vs. NLRC, G.R. No. 112069, 14 February 1996; Sigma Personnel Services vs. NLRC, 224 SCRA 181 (1993); St. Louis College of Tuguegarao vs. NLRC, 177 SCRA 151 (1989).
- [14] Garcia vs. NLRC, 234 SCRA 632 (1994); Spartan Security and Detective Agency, Inc. vs. NLRC, 213 SCRA 528 (1002); NASECO vs. NLRC, 168 SCRA 122 (1988).