SUPREME COURT
FIRST DIVISION

CALS POULTRY SUPPLY CORPORATION and DANILO YAP,
Petitioners,

-versus-

G.R. No. 150660
July 30, 2002

ALFREDO ROCO and CANDELARIA ROCO,
Respondents.
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R E S O L U T I O N

KAPUNAN, *J.*:

For our Resolution is the Motion for Reconsideration of the Court's minute Resolution dated April 1, 2002, denying the petition for review filed by CALS Poultry Supply Corporation (hereinafter referred to as CALS) of the Court of Appeal's decision in favor of herein private respondents Alfredo Roco and Candelaria Roco. The Court of Appeals reversed the decision of the National Labor Relations Commission affirming the Labor Arbiter's decision which dismissed private respondents' complaint for illegal dismissal against CALS. Private respondents filed a comment on the motion for reconsideration as required by the Court.

CALS Poultry Supply Corporation is engaged in the business of selling dressed chicken and other related products and managed by Danilo Yap.[1]

On March 15, 1984, CALS hired Alfredo Roco as its driver. On the same date, CALS hired Edna Roco, Alfredo's sister, as a helper in the dressing room of CALS.[2] On May 16, 1995, it hired Candelaria Roco, another sister, as helper,[3] also at its chicken dressing plant on a probationary basis.

On March 5, 1996, Alfredo Roco and Candelaria Roco filed a complaint for illegal dismissal against CALS and Danilo Yap alleging that Alfredo and Candelaria were illegally dismissed on January 20, 1996 and November 5, 1996, respectively.[4] Both also claimed that they were underpaid of their wages.[5] Edna Roco, likewise, filed a complaint for illegal dismissal, alleging that on June 26, 1996, she was reassigned to the task of washing dirty sacks and for this reason, in addition to her being transferred from night shift to day time duties, which she considered as management act of harassment, she did not report for work.[6]

According to Alfredo Roco, he was dismissed on January 20, 1996 when he refused to accept P30,000.00 being offered to him by CALS' lawyer, Atty. Myra Cristela A. Yngcong, in exchange for his executing a letter of voluntary resignation. On the part of Candelaria Roco, she averred that she was terminated without cause from her job as helper after serving more than six (6) months as probationary employee.

The Labor Arbiter on April 16, 1998, issued a decision dismissing the complaints for illegal dismissal for lack of merit. The Labor Arbiter found that Alfredo Roco applied for and was granted a leave of absence for the period from January 4 to 18, 1996. He did not report back for work after the expiration of his leave of absence, prompting CALS, through its Chief Maintenance Officer to send him a letter on March 12, 1996 inquiring if he still had intentions of resuming his work. Alfredo Roco did not respond to the letter despite receipt thereof, thus, Alfredo was not dismissed; it was he who unilaterally severed his relation with his employer.[7]

In the case of Candelaria Roco, the Labor Arbiter upheld CALS'

decision not to continue with her probationary employment having been found her unsuited for the work for which her services were engaged.

She was hired on May 16, 1995 and her services were terminated on November 15, 1995.

Edna Roco, according to the Labor Arbiter, began absenting herself on June 25, 1996. She was sent a memo on July 1, 1996 requiring her to report for work immediately, but she did not respond.[8]

In their position papers, the complainants claimed that they were not given their overtime pay, premium pay for holidays, premium pay for rest days, 13th month pay, allowances. They were also not given their separation pay after their dismissal. The Labor Arbiter, however, denied their claims, stating that they had not substantiated the same; on the other hand, CALS presented evidence showing that complainants received the correct salaries and related benefits.

The National Labor Relations Commission (NLRC), in a decision promulgated on January 17, 2000, affirmed the judgment of the Labor Arbiter.

On appeal by Alfredo, Candelaria and Edna Roco to the Court of Appeals, the appellate court set aside the NLRC's decision and ordered reinstatement of Alfredo and Candelaria Roco to their former positions without loss of seniority of rights and benefits, with full payment of backwages. However, in the case of Edna Roco, the Court of Appeals found that her appeal cannot be favorably considered as she actually abandoned her work without justification.

In holding that Alfredo Roco did not abandon his employment, but was illegally dismissed, the Court of Appeals ratiocinated:

> "(P)etitioner Alfredo can not be said to have abandoned his employment. The failure of Alfredo to report for work was justified under the circumstances. The positive assertion of petitioner that when he reported for work on January 20, 1996, he was told that his services were already terminated is more convincing than the mere denial of respondent Danilo Yap.

> Petitioner Alfredo's failure to inquire from private respondent as to the cause of his dismissal should not be taken against him. It should be noted that when the secretary of respondent Danilo Yap conveyed the order of dismissal, Alfredo took steps to verify the same from the company's Chief Maintenance Officer Rolando Sibugan who confirmed said order. The filing of the illegal dismissal case against CALS by petitioner Alfredo negates the charge of abandonment. Private respondent failed to show that Alfredo clearly and unequivocably performed overt acts to sever the employer-employee relationship."

In termination cases, the burden of proving just and valid cause for dismissing an employee from his employment rests upon the employer, and the latter's failure to do so would result in a finding that the dismissal is unjustified. Abandonment as a just and valid ground for termination means the deliberate, unjustified refusal of the employee to resume his employment, and the burden of proof is on the employer to show a clear, deliberate and unequivocal intent on the part of the employee to discontinue employment without any intention of returning. Other than its self-serving claim that petitioner Alfredo did not report for work, private respondent failed to adduce other evidence of any overt act of Alfredo showing an intent to abandon his work. In short, private respondent failed to discharge the burden.

Moreover, not only was there a lack of a valid cause for the dismissal of petitioner Alfredo; the record of the case is devoid of any evidence that Alfredo was afforded his right to due process. If Alfredo was dismissed because of his abandonment of work, CALS should have given him a written notice of termination in accordance with Section 2, Rule XVI, Book V of the Omnibus Rules Implementing the Labor Code which provides:

> Section 2. Notice of Dismissal. Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

In the instant case, private respondent failed to present as evidence

such notice despite every company's standard policy to record and file every transaction including notices of termination.

CALS' contention that the letter of Rolando Sibugan inquiring from Alfredo whether he still had intention of resuming work is a manifestation of its willingness to reinstate the latter to his former position, thereby negating any intention on its part to dismiss Alfredo, is not well-taken. The fact that the employer later made an offer to re-employ Alfredo did not cure the vice of his earlier arbitrary dismissal. The wrong had been committed and the harm done. Notably, it was only after the complaint had been filed that CALS, in a belated gesture of good will, sought to invite Alfredo back to work. CALS' sincerity is suspect. Its offer of reinstatement is doubtful since the same could not have been made if Alfredo had not complained against it. Whether the offer was sincere or not, the same could not correct the earlier illegal dismissal of Alfredo. It must be borne in mind that CALS' offer to reinstate Alfredo was obviously an attempt to escape liability from having illegally terminated the latter's services. Hence, CALS incurred liability under the Labor Code from the moment Alfredo was illegally dismissed, and the liability was not abated as a result of CALS' offer to reinstate.[9]

In ruling in favor of Candelaria Roco, the appellate court held that when her employment was terminated on November 15, 1995 (she was hired on May 16, 1995), it was four (4) days after she ceased to be a probationary employee and became a regular employee within the ambit of Article 281 of the Labor Code, which provides:

> ART. 281. *Probationary employment*. - Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

Not satisfied with the decision of the Court of Appeals, CALS and Danilo Yap brought before us the petition for review on *certiorari* claiming that said court erred in ruling that respondents Alfredo Roco and Candelaria Roco were illegally dismissed and that they are entitled to any money claims.

In considering that Alfredo Roco was illegally dismissed, the Court of Appeals relied on his allegation that on January 20, 1996 when he reported for work, following his leave of absence from January 10 to 18, 1996, he learned from Elvie Acantelado, a secretary of Danilo Yap that he was already separated from his employment.

Yet, as observed in the decision of the NLRC, he did not even attempt to verify from Danilo Yap, the owner and general manager of CALS, if his employment was being terminated and the cause of the termination. Elvie Acantelado denied vehemently having told Alfredo that he was being dismissed.

Private respondents also stated in their position paper that Alfredo was told by CALS' lawyer to sign a resignation letter in consideration of P30,000.00. Strangely, apart from this bare allegation, which finds no corroboration, there is no explanation when, where and how was the offer made. Alfredo did not advance any theory why CALS wanted him to resign. Atty. Myra Cristela Yngcong, counsel for CALS' categorically denied having offered Alfredo Roco P30,000.00 in exchange for his resignation. She explained that, in fact, she met Alfredo for the first time when he appeared before the Labor Arbiter on April 23, 1996.

On Alfredo's assertion that CALS' letter dated March 12, 1996 asking him to report for duty was just an afterthought because it was sent after Alfredo filed his complaint for illegal dismissal on March 5, 1996. CALS maintains that it came to know of the complaint filed by the Rocos with the Labor Arbiter only on April 4, 1996 when it received the Notification and Summons dated March 25, 1996 from the Labor Arbiter.

On the other hand, CALS imputed an ulterior motive for the complaint filed by the Rocos against it. It said it was manipulated by their relatives Domingo Roco against whom CALS filed several

criminal cases for violation of B.P. Blg. 22 on account of Domingo Roco's failure to fund the checks he issued as payment for CALS products he had purchase.

From the facts established, we are of the view that Alfredo Roco has not established convincingly that he was dismissed. No notice of termination was given to him by CALS. There is no proof at all, except his self-serving assertion, that he was prevented from working after the end of his leave of absence on January 18, 1996. In fact, CALS notified him in a letter dated March 12, 1996 to resume his work. Both the Labor Arbiter and the NLRC found that Alfredo, as well as Candelaria Roco, was not dismissed. Their findings of fact are entitled to great weight.

In *Chong Guan Trading v. NLRC, et al.*, [172 SCRA 831 (1989)], we held:

> After a careful examination of the events that gave rise to the present controversy as shown by the records, the Court is convinced that private respondent was never dismissed by the petitioner. Even if it were true that Mariano Lim ordered private respondent to go and that at that time he intended to dismiss private respondent, the record is bereft of evidence to show that he carried out this intention. Private respondent was not even notified that he had been dismissed. Nor was he prevented from returning to his work after the October 28 incident. The only thing that is established from the record, and which is not disputed by the parties, is that private respondent Chua did not return to his work after his heated argument with the Lim brothers.
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> x x x
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> In this case, private respondent's failure to work was due to the misunderstanding between the petitioner's management and private respondent. As correctly observed by the Labor Arbiter, private respondent must have construed the October 28 incident as his dismissal so that he opted not to work for many days thereafter and instead filed a complaint for illegal dismissal. On the other hand, petitioner interpreted private

> respondent's failure to report for work as an intentional abandonment. However, there was no intent to dismiss private respondent since the petitioner is willing to reinstate him. Nor was there an intent to abandon on the part of private respondent since he immediately filed a complaint for illegal dismissal soon after the October 28 incident. It would be illogical for private respondent to abandon his work and then immediately file an action seeking his reinstatement xxx. Under these circumstances, it is but fair that each party must bear his own loss, thus placing the parties on equal footing.
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> x x x

With respect to Candelaria Roco, there is no dispute that she was employed on probationary basis. She was hired on May 16, 1995 and her services were terminated on November 15, 1995 due to poor work performance. She did not measure up to the work standards on the dressing of chicken. The Labor Arbiter sustained CALS in terminating her employment. The NLRC affirmed the Labor Arbiter's ruling.

The Court of Appeals did not disagree with the NLRC's finding that Candelaria was dismissed because she did not qualify as a regular employee in accordance with the reasonable standards made known by the company to her at the time of her employment.[10]

The standards required by the National Meat Inspection Commission for dressing plants with Double "AA" Rating to which CALS' employee were brief and with regard to which Candelaria failed to comply are stated in part in the affidavit dated March 7, 1997 of Rolly Villaeba, Cold Storage Supervisor of CALS' Dressing Plant:

> x x x
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> 2. As Cold Storage Supervisor of Cals; Dressing Plant, I am responsible among others, for briefing the new employee on the workflow in the dressing plant, the nature of their respective jobs pursuant to the said workflow, and the work standards required of them by Cals, as well as seeing to it that Cals work standards are complied with/followed by the

employees.

x x x

4. It is the NMIC standard that the dressing of chickens and its parts must strictly (sic) observe the chronological order of the following workflow, to wit:

    1. Depinning
    2. Detoing
    3. Removals of entrails/cecum/liver/Gizzard/heart/ Bile
    4. Removal of Lungs
    5. First Wash
    6. Second Wash
    7. Third Wash
    8. Carcass Quality Control

        a. Selection of Carcass
        b. Leg Bonding
        c. Weighing
        d. First Chilling
        e. Final Chilling

x x x

9. For the duration of Candelaria Roco's probationary employment, she failed to comply with Cals standards in the work assigned to her. First, she frequently failed to observe the allowable inches to be cut, which must only be 1.5 inches, in performing the surgical incision of the chicken butt, either she cuts it too long, thereby distorting the appearance of the chickens or she cuts it too short, thereby making it difficult to remove the chicken parts without damaging these parts; Second, she frequently mishandles the pull-out of chicken parts, such that, she damaged said parts; Third, she frequently completes her assigned tasks in twenty (20) to even twenty-five (25) seconds, over and above the required time limit, which is only eight (8) to ten (10) seconds. Resultantly, the chickens/parts which passed through her hands frequently suffer from premature

decomposition/bacterial or salmonella contamination;

10. By reason of the foregoing, Cals' management deemed it best to terminate her probationary employment.

x x x[11]

However, the Court of Appeals set aside the NLRC ruling on the ground that at the time Candelaria's services were terminated, she had attained the status of a regular employee as the termination on November 15, 1995 was effected four (4) days after the 6-month probationary period had expired, hence, she is entitled to security of tenure in accordance with Article 281 of the Labor Code.

CALS argues that the Court of Appeals' computation of the 6-month probationary period is erroneous as the termination of Candelaria's services on November 15, 1995 was exactly on the last day of the 6-month period.

We agree with CALS' contention as upheld by both the Labor Arbiter and the NLRC that Candelaria's services was terminated within and not beyond the 6-month probationary period. In *Cebu Royal v. Deputy Minister of Labor*, [153 SCRA 38 (1987)] our computation of the 6-month probationary period is reckoned from the date of appointment up to the same calendar date of the 6th month following. Thus, we held:

> The original findings were contained in a one-page order reciting simply that 'complainant was employed on a probationary period of employment for six (6) months. After said period, he underwent medical examination for qualification as regular employee but the results showed that he is suffering from PTB minimal. Consequently, he was informed of the termination of his employment by respondent.' The order then concluded that the termination was 'justified.' That was all.

As there is no mention of the basis of the above order, we may assume it was the temporary payroll authority submitted by the petitioner showing that the private respondent was employed on probation on February 16, 1978. Even supposing that it is not self-serving, we find

nevertheless that it is self-defeating. The six-month period of probation started from the said date of appointment and so ended on August 17, 1978, but it is not shown that the private respondent's employment also ended then; on the contrary, he continued working as usual. Under Article 282 of the Labor Code, 'an employee who is allowed to work after a probationary period shall be considered a regular employee." Hence, Pilones was already on permanent status when he was dismissed on August 21, 1978, or four days after he ceased to be a probationer.

WHEREFORE, our Resolution of April 1, 2002 denying the petition is hereby **SET ASIDE** and another one entered **REVERSING** the decision of the Court of Appeals insofar as it ruled in favor of herein respondents and the decisions of the Labor Arbiter and the National Labor Relations Commission **REINSTATED**.

SO ORDERED.

Davide, Jr., *C.J., (Chairman)*, Vitug, Ynares-Santiago, and Austria-Martinez, *JJ.*, concur.

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[1] CA's decision, Rollo, p. 42.
[2] Id.
[3] Id.
[4] Rollo, p. 55.
[5] Id.
[6] Rollo, pp. 42-43.
[7] Labor Arbiter's decision, Rollo, pp. 81-84.
[8] Id.
[9] Rollo, pp. 44-46.
[10] NLRC's decision, Rollo, p. 90.
[11] Rollo, pp. 14-16.