

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**CHONG GUAN TRADING,
*Petitioner,***

-versus-

**G.R. No. 81471
April 26, 1989**

**NATIONAL LABOR RELATIONS
COMMISSION and JOSE M. CHUA,
*Respondents.***

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DECISION

CORTES, J.:

Assailed in this Petition is the Decision of the National Labor Relations Commission (NLRC) in NLRC Case No. 11-4406-83, entitled "Jose M. CHUA vs. Chong Guan Trading," whereby the NLRC held that private respondent Jose M. CHUA was illegally dismissed by petitioner Chong Guan Trading. The Court after a careful examination of the pleadings filed in this case, i.e., the Petition and its Annexes, the Comment of public respondent, the Reply and Supplemental Reply of petitioner, the Manifestation/Opposition of private respondent, and the Rejoinder of public respondent, considered the Comment as answer, the issues joined, and the case submitted for decision.

Jose M. CHUA was employed as sales manager of Chong Guan Trading, a dealer of paper and paper products owned by Mariano, Pepito and Efren Lim. Private respondent started working with the petitioner way back in 1960 but it was only in 1972 that his name was registered by petitioner with the Social Security System [Decision of SSC in SSS Case No. 8728, p. 1; Rollo, p. 49].

In November 1983, private respondent filed a complaint with the Office of the Labor Arbiter of the National Capital Region charging petitioner with illegal dismissal and non-payment overtime pay and other benefits provided for by law. In his complaint, private respondent alleged that he was fired by Mariano Lim because of the incident that occurred on October 28, 1983.

It appears from the record that on the morning of October 28, 1983, a customer, who borrowed the store's telephone directory, accidentally dropped it on the top-glass of the store's showcase causing it to break. When Pepito Lim saw the already taped broken top-glass he asked for an explanation from private respondent. In order to cover up for the customer, private respondent admitted that he himself accidentally broke it. Pepito then got angry and hurled "unprintable words and invectives" at private respondent [Decision of NLRC, p. 2; Rollo, p. 140]. What transpired thereafter was disputed by both parties. Private respondent claimed that he was dismissed by Mariano Lim when the later ordered him to leave petitioner's premises. Petitioner, on the other hand, denied having dismissed private respondent and claimed that it was private respondent who went home after the incident and failed to report for work for many days thereafter. Petitioner alleged that, far from being dismissed, it was private respondent himself who abandoned his job.

The parties filed their respective position papers and agreed to submit the case for resolution on the basis of the pleadings.

On April 18, 1984, the Labor Arbiter rendered a decision finding that there was no illegal dismissal since private respondent was never dismissed by petitioner. The Labor Arbiter held that the altercation that occurred between private respondent and the Lim brothers because of the broken top-glass cannot be construed as the dismissal of the private respondent because it was only a minor incident. No

pronouncement on the issue of the alleged abandonment by private respondent was made but the Labor Arbiter ordered the reinstatement of private respondent but without backwages. The dispositive portion decision reads:

WHEREFORE, respondents are hereby ordered to reinstate complainant to his former position without backwages, to pay him his proportionate 13th-month pay for the year 1983 and the money equivalent of fifteen (15) days service incentive leave pay. All his other claims including the claim for damages are hereby, DISMISSED.

SO ORDERED. [Decision of Labor Arbiter, p. 7; Rollo, p. 31.]

Private respondent elevated the decision of the Labor Arbiter to the NLRC. In a resolution promulgated on June 30, 1987, NLRC dismissed the appeal for being filed out of time.

Upon motion of private respondent, the NLRC reconsidered its Resolution and gave due course to the appeal. On December 29, 1987 respondent Commission decided in favor of private respondent and held that:

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We are by and large convinced that the appellant was indeed dismissed without the attendant formalities required by law. On account of which, he should therefore, be reinstated to his former position with three (3) years backwages without qualification or deduction.

Should reinstatement, however, be not feasible due to circumstances or developments not attributable to the appellees, the appellant should, in addition to the three years backwages, be paid a separation pay equivalent to one half month pay for every year of service, a fraction of at least six (6) months being considered as one whole year.

The rest of the award for other benefits stays.

WHEREFORE, modified as above-indicated, the decision appealed from is hereby, AFFIRMED.

SO ORDERED. [NLRC Decision, p. 18; Rollo, p. 18.]

From the NLRC decision, petitioner interposed the present petition. The Court will first address the procedural issue raised by the petitioner.

Petitioner maintains that respondent NLRC has no jurisdiction to entertain the appeal filed by private respondent, much less modify the decision appealed from, the same having become final and executory after the lapse of ten (10) days from respondent's receipt thereof.

Article 223 of the Labor Code [Pres. Decree 442, as amended] provides for a reglementary period of ten (10) days within which to appeal a decision of the labor arbiter to the NLRC. The ten-day period has been interpreted by this Court in the case of *Vir-Jen and Marine Services Inc., vs. National Labor Relations Commission* [G.R. Nos. 58011-12, July 20, 1987, 115 SCRA 347] as ten (10) "calendar" days and not ten (10) "working" days.

In the instant case, while the appeal was filed within ten (10) working days from receipt of the decision, it was filed beyond the (10) calendar days prescribed by law. Private respondent received a copy of the decision of Labor Arbiter Martinez on May 3, 1984 while the appeal was filed only on May 15, 1984 or twelve (12) days from notice of the decision [Resolution NLRC, p. 1; Rollo, p. 32.]

It is true that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional, and failure to perfect an appeal has the effect of rendering the judgment final and executory [*Narag vs. National Labor Relations Commission*, G.R. No. 69628, October 28, 1987, 155 SCRA 199.] However, as correctly pointed out by the Solicitor General, the NLRC may disregard the procedural lapse where there is an acceptable reason to excuse tardiness in the taking of an appeal [Comment of the Office of Solicitor General, p. 6; Rollo, p. 46; See also *Firestone Tire and Rubber Company of the Philippines vs. Lariosa*, G.R. No. 70479, February 27, 1987, 148 SCRA 187; *MAI Philippines, Inc. vs. National*

Labor Relations Commission, G.R. No. 73662, June 18, 1987, 151 SCRA 196.]

In this case, the appeal was filed out of time because the counsel of private respondent relied on the footnote of the notice of the decision of the Labor Arbiter which stated that “the aggrieved party may appeal within ten (10) working days, as per NLRC Resolution No. 1, series of 1977.” [Decision of NLRC, p. 1; Rollo, p. 13; Italics supplied.] In the case of Firestone Tire and Rubber Co. of the Phil vs. Lariosa, [supra], which has substantially the same set of facts as this case, the Court accepted the party’s reliance on the erroneous notice in the labor arbiter’s decision as a reasonable ground for excusing non-compliance with the ten (10) calendar day period for appeal. Explaining the reason for this ruling, the Court said:

X x x

Mindful of the fact that Lariosa’s counsel must have been misled by the implementing rules of the labor commission and considering that the shortened period for an appeal is principally intended more for the employee’s benefit, rather than that of the employer, We are inclined to overlook this particular procedural lapse and to proceed with the resolution of the instant case. [at p. 191.]

X x x

Thus, private respondent’s late filing of the appeal notwithstanding, the Court finds that public respondent did not commit grave abuse of discretion in giving due course to the appeal.

Having disposed of the procedural issue, the Court will now deal with the main issue in this case, which is whether or not NLRC committed grave abuse of discretion in ordering petitioner to pay private respondent three years backwages and separation pay (if reinstatement is no longer possible) for the alleged illegal dismissal of private respondent.

While petitioner concedes that private respondent must be reinstated since there was no intentional abandonment on the part of private

respondent, it challenges the order for the payment of backwages and separation pay. Petitioner contends that there was no illegal dismissal to speak of since private respondent was never dismissed in the first place, and that justice dictates that private respondent must simply be reinstated [Reply pp. 1-2; Rollo, pp. 51-52.]

Both the labor arbiter and the NLRC agree that the accidental breaking of the showcase's top-glass was so minor an incident as to provoke an employer to dismiss a managerial employee who has worked with him for more than twenty (20) years [Decision of NLRC, p. Rollo, p. 16.] However, in holding that private respondent was illegally dismissed by petitioner, the NLRC held that:

We agree that the accidental breaking of the showcase's top-glass was a minor incident. Ordinarily it could not provoke an employer (who knew what its repercussions could be) to dismiss an employee for that matter. But the appellees [petitioner Chong Guan Trading and its owners] who, we perceive, were indeed bent on ousting the appellant [private respondent CHUA] magnified it to such a serious proportion, as shown by the unprintable words and invectives that they hurled to appellant, to ostensibly justify their heretofore desire to terminate him.

In short, they seized the incident as the most opportune time implement their obvious decision to lay-off the appellant. [Decision of NLRC, p. 4; Rollo, p. 16; Italics supplied.]

The import of the above findings of the NLRC is that the breaking of the top-glass was used by petitioner as an excuse to terminate respondent CHUA in accordance with its scheme or plan to oust him.

The Court cannot sustain the findings of respondent NLRC.

As found by the labor arbiter, no evidence was presented to establish the existence of the so-called scheme to oust private respondent [Decision of Labor Arbiter, p. 5; Rollo, p. 29.] It was based only on private respondent's unsupported claim that there was an "orchestrated scheme or plan" to oust him and that this plan had been carefully laid out for a long time. Private respondent's claim is not

borne out by the record which shows that petitioner has been granting substantial cash advances to private respondent. In fact barely a month before his alleged illegal dismissal, petitioner allowed private respondent, to make a cash advance of P4,718.00 [Decision of Labor Arbiter, p. 5; Rollo, p. 29.] If indeed there was a scheme to oust private respondent, petitioner should have denied him further cash advances knowing that his services will soon be terminated and as a result thereof, there may be no way to recover the cash advances.

Furthermore, the NLRC admitted in its decision that its finding that the petitioner was “indeed bent on ousting” private respondent was based only on its “perception” and not on any evidence on record [Decision of NLRC, p. 4; Rollo, p. 16.] This Court however, cannot rely on NLRC’s perception or speculations in the absence of any credible evidence to support it [San Miguel] Corporation vs. National Labor Relations Commission, G.R. No. 50321, March 13, 1984, 128 SCRA 180.] For while it is well-established that the findings of facts of the NLRC are entitled to great respect and are generally binding on this Court [Antipolo Highway Lines, Inc. vs. Inciong, G.R. No. L-38532, June 27, 1975, 64 SCRA 441; Philippine Labor Alliance Council (PLAC) vs. Bureau of Labor Relations, G.R. No. L-41288, January 31, 1977, 75 SCRA 162; Genconsu Free Workers Union vs. Inciong, G.R. No. L-48687, July 2, 1979, 91 SCRA 311, Pan-Philippine Life Insurance Corporation vs. NLRC, G.R. No. 53721 June 29, 1982, 114 SCRA 866; Pepsi-Cola Labor Union-BLFU-TUPAS Local Chapter No. 896 vs. National Labor Relations Commission, G.R. No. 58341, June 29, 1982, 114 SCRA 930; Mamerto vs. Inciong, G.R. No. 53068, November 15, 1982, 118 SCRA 265; San Miguel Corporation vs. National Labor Relations Commission, G.R. No. 50321, March 13, 1984, 128 SCRA 180] it is equally well-settled that the Court will not uphold erroneous conclusions of the NLRC when the Court finds that the latter committed grave abuse of discretion in reversing the decision of the labor arbiter or when the findings of facts from which the conclusions were based were not supported by substantial evidence [Insular Life Assurance Co., Ltd. Employees Association NATU vs. Insular Life Assurance Co., Ltd., G.R. No. L-25291, March 10, 1977, 76 SCRA 50; Kapisanan ng Manggagawa sa Camara Shoes vs. Camara Shoes, G.R. No. 50985, January 30, 1982, 111 SCRA 477.]

The question that must now be addressed by the Court is whether, absent the alleged scheme or plan to oust private respondent, it can be inferred from the events that transpired on the morning of October 28, 1983 that private respondent was illegally dismissed by petitioner.

Private respondent claims that Mariano Lim dismissed him when the latter said: "Lumayas ka rito." This is disputed by the petitioner who claims that it was private respondent who voluntarily left petitioner's premises.

After a careful examination of the events that gave rise to the present controversy as shown by the record, 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.

Moreover, petitioner has consistently manifested its willingness to reinstate private respondent to his former position. This negates any intention on petitioner's part to dismiss private respondent. Petitioner first expressed its willingness to reinstate private respondent during the initial hearing of the case before the Labor Arbiter [Decision of Labor Arbiter, p. 6; Rollo, p. 30.] In its position paper the petitioner also stated that:

X x x

IN PASSING, we gladly reiterate that the management is still waiting and more than willing to accept him [private respondent] and return to his former position, notwithstanding his long unauthorized absences and the intentional abandonment from his job.

X x x

[“Annex B” to the Petition, p. 5; Rollo, p. 24.]

This was again reiterated by the petitioner in its Reply to the Comment of public respondent filed in connection with the instant petition [Reply, pp. 1-2; Rollo, pp. 51-52.]

Therefore, considering the Court’s finding that private respondent was never dismissed by the petitioner, the award of three years backwages was not proper. Backwages, in general are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal from work [New Manila Candy Workers Union (NACONWA-PAFLU) vs. Court of Industrial Relations, G.R. No. L-29728, October 30, 1978, 86 SCRA 37; Durabuilt Recapping Plant and Co. vs. National Labor Relations Commission, G.R. No. 76746, July 27, 1987, 152 SCRA 328.] Where the employee was not dismissed and his failure to work was not due to the employer’s fault, the burden of economic loss suffered by the employee should not be shifted to the employer [SSS vs. SSS Supervisors’ Union-CUGCO, G.R. No. L-31832, October 23, 1982, 117 SCRA 746; Durabuilt Recapping Plant and Co. vs. National Labor Relations Commission, supra.] 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 [Decision of Labor Arbiter, p. 6; Rollo, p. 30.] On the other hand, petitioner interpreted private respondent’s failure to report for work as an intentional abandonment [“Annex B” to the Petition, p. 5; Rollo, p. 24.] 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 [Judric Canning Corporation vs. Inciong, G.R. No. 51494, August 19, 1982, 115 SCRA 887; Flexo Manufacturing Corporation vs. National Labor Relations Commission, G.R. No. 55971, February 28, 1985, 135 SCRA 145; Remerco Garments Manufacturing vs. Ministry of Labor and

Employment, G.R. Nos. 56176-77, February 28, 1985, 135 SCRA 167.] Under these circumstances, it is but fair that each party must bear his own loss, thus placing the parties on equal footing [Pan American World Airways, Inc. vs. Court of Industrial Relations, et al., G.R. No. L-20434, July 30, 1966, 17 SCRA 813; SSS vs. SSS Supervisors' Union-CUGCO, supra.]

As to the separation pay, considering that petitioner has expressed its willingness to reinstate private respondent to his former position, the order for the payment of separation pay is no longer necessary.

WHEREFORE, premises considered, the decision of respondent NLRC is **REVERSED** and **SET ASIDE**. The decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciono and Bidin, JJ., concur.