

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**RODOLFO GABUAY, WILLIAM
LACAMBRA, REYNANTE LACAMBRA,
ROLANDO VICENTE and TOMACITO
TABULI,**

Petitioners,

-versus-

**G.R. No. 148837
August 13, 2004**

**OVERSEA PAPER SUPPLY, INC. and/or
TAN LIAN SENG,**

Respondents.

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DECISION

CALLEJO, SR., J.:

Before us is a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 62613.

The Antecedents

The undisputed facts as culled from the records are as follows:

The respondent Oversea Paper Supply, Inc. is a domestic corporation engaged in the business of selling paper products. On different dates,

the respondent corporation hired the petitioners for the following positions:

NAME	POSITION	DATE HIRED
William Lacambra	Machine Operator	November 1979 ^[2]
Reynante Lacambra	Machine Operator	November 1974 ^[3]
Rolando Vicente	Driver	May 22, 1979 ^[4]
Tomacito Tabuli	Helper	November 1990 ^[5]
Rodolfo Gabuay	Helper	September 16, 1979 ^[6]

On April 7, 1999, the respondent corporation's sales and operations manager, James C. Tan, required all employees to fill up and submit their bio-data not later than April 17, 1999 so that their 201 files could be updated. All the employees complied except for the petitioners.^[7] Petitioners William Lacambra and Rodolfo Gabuay even failed to report for work starting April 19 and 21, 1999, respectively.

Thereafter, the respondent corporation required petitioners William Lacambra and Rodolfo Gabuay to explain why they refused to submit their updated bio-data in separate letters dated April 22, 1999.^[8] The said petitioners received separate letters from the respondent on April 27, 1999,^[9] requiring each of them to (a) return to work, and (b) explain why they were absent since April 19 and 21, respectively.^[10]

Petitioners Reynante Lacambra, Rolando Vicente and Tomacito Tabuli also received letters requiring them to explain why they did not submit their updated bio-data.^[11] They also received separate letters on May 3, 1999 requiring them to (a) return to work, and (b) explain why they failed to report for work starting April 26, 1999.^[12] Reynante Lacambra and Rolando Vicente received their letters on May 5, 1999, while Tomacito Tabuli received his on May 6, 1999.^[13]

Despite the receipt of such notices, the petitioners, except for Reynante Lacambra, did not report back to work.^[14]

On April 21, 1999, petitioner Rodolfo Gabuay filed a complaint for illegal dismissal, payment of separation pay, accumulated vacation and sick leave, and reinstatement with full backwages before the arbitration branch of the National Labor Relations Commission (NLRC). The case was docketed as NLRC-NCR Case No. 00-04-

04836-99.^[15] On April 26, 1999, petitioners William Lacambra, Reynante Lacambra, Rolando Vicente and Tomacito Tabuli filed a similar complaint, docketed as NLRC-NCR Case No. 00-04-04948-99.^[16]

The petitioners alleged that they were barred from reporting for work after they refused to fill up their bio-data for the respondent corporation. They also claimed that they were not paid vacation and sick leave benefits; that their 13th month pay for 1996 to 1998 was underpaid; and, that the respondents violated their right to security of tenure and payment of separation pay.

On November 18, 1999, the Labor Arbiter rendered a Decision dismissing the complaint for lack of merit, and ruled that the petitioners were not illegally dismissed. He declared that, based on the evidence, the petitioners abandoned their jobs, following their intractable refusal to comply with the respondent corporation's directive to update their bio-data, to return to work, and to explain why they failed to report for work.^[17] However, the Labor Arbiter ruled that the respondent corporation was liable to pay the petitioners 13th month pay for the year 1999 on a pro-rated basis. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered ordering the DISMISSAL of the complaint for lack of merit.

Respondent Oversea Paper Supply Corporation (sic) is, however, ordered to pay complainants' pro-rata 13th month pay for 1999.^[18]

Aggrieved, the petitioners appealed to the NLRC,^[19] which affirmed the decision of the Labor Arbiter with modification on September 29, 2000. The respondents were ordered to grant to the petitioners financial assistance equivalent to separation pay at one-half (1/2) month per year of service. Thus:

WHEREFORE, the Decision dated 18 November 1999 is MODIFIED by directing respondents to grant complainants' financial assistance equivalent to separation pay at one-half month (1/2) per year (sic) service.^[20]

The NLRC stated that the award of financial assistance was based on humanitarian reasons and the length of service of the petitioners, which ranged from ten (10) to twenty (20) years.^[21]

Dissatisfied, the respondents filed a partial motion for reconsideration of the decision.^[22] The said motion was denied by the NLRC in a Resolution dated November 29, 2000.^[23]

The respondents filed a petition for certiorari before the CA, docketed as CA-G.R. SP No. 62613.^[24] They alleged that the NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered the award of financial assistance to the petitioners^[25] However, in its Decision dated June 29, 2001, the CA granted the petition and deleted the award of financial assistance:

WHEREFORE, the Petition is GRANTED. The assailed Decision dated September 29, 2000 and the Resolution dated November 29, 2000, of the National Labor Relations Commission are hereby SET ASIDE. The decision of the Labor Arbiter dated November 18, 1999 is REINSTATED.^[26]

The Present Petition

The petitioners filed the instant petition, alleging that the CA erred in ruling that they were not illegally dismissed. They argue that the filing of a complaint for illegal dismissal was inconsistent with the defense of abandonment. Considering that they had been in the respondent corporation's employ for the last twenty (20) years, they would not just abandon their jobs for no reason. The petitioners asseverate that the order of the NLRC awarding separation pay was not issued with grave abuse of discretion, and invoke the provisions of the Constitution regarding the protection of labor.

In their comment, the respondents counter that the petition should be dismissed for being a mere pro forma pleading. They emphasize that the Labor Arbiter, the NLRC and the CA, found that the petitioners were not illegally dismissed. They allege that the petitioners' refusal to return to work, after receiving notice requiring them to do so, and to explain in writing (a) their failure to submit a copy of their updated bio-data and (b) their unauthorized leave of

absence were equivalent to abandonment of work. The respondents insist that the deletion of the award for separation pay was proper, as the same was not based on law and jurisprudence.

The Court's Ruling

The issue presented for resolution is whether or not the NLRC's award of financial assistance in the form of separation pay equivalent to one-half (1/2) month per year of service has factual and legal basis.

As correctly ruled by the Labor Arbiter, the NLRC and the CA, the petitioners were not illegally dismissed. Even after the petitioners received notices from the respondent corporation requiring them to report for work and to explain their unauthorized absences and failure to submit their updated bio-data, they still failed to report for work. It can then be inferred that the petitioners had abandoned their work. Indeed, the factors considered for finding a valid abandonment are present in the case at bar: the petitioners' failure to report for work or absence was without valid or justifiable cause, and their refusal to report for work notwithstanding their receipt of letters requiring them to return to work, show their clear intention to sever the employer-employee relationship.^[27]

Consistent with the finding that the petitioners abandoned their work, the award of financial assistance in the form of separation pay should be deleted.

Separation pay is defined as the amount that an employee receives at the time of his severance and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.^[28] Under the Labor Code, the award of separation pay is sanctioned when termination was due to an authorized cause, i.e., (a) installation of labor saving device, redundancy, retrenchment to prevent losses, closure or cessation of business operations not due to serious business losses or financial reverses;^[29] and, (b) disease prejudicial to the health of the employee and his fellow employees.^[30]

Separation pay is, likewise, awarded in lieu of reinstatement if it can be shown that the reinstatement of the employee is no longer feasible, as when the relationship between employer and employee has

become strained.^[31] In some cases, it is awarded as a measure of social justice.^[32] As we ruled in *Philippine National Construction Corporation vs. NLRC*,^[33] reiterating *Philippine Long Distance Telephone Co. vs. NLRC*:^[34]

We hold that, henceforth, separation pay should be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.^[35]

In the present case, the petitioners were not dismissed, either legally or illegally; the petitioners abandoned their jobs. They failed to return to work despite the respondents' directive requiring them to do so. There is, thus, no room for the award of financial assistance in the form of separation pay. To sustain the claim for separation pay under the circumstances herein established would be to reward the petitioners for abandoning their work.^[36] As we emphasized in the case of *A' Prime Security Services, Inc. vs. NLRC*,^[37] social justice is extended only to those who deserve its compassion.

IN LIGHT OF ALL THE FOREGOING, the petition is **DENIED DUE COURSE**. The decision of the Court of Appeals in CA-G.R. SP No. 62613 is **AFFIRMED**.

SO ORDERED.

PUNO, J., (Chairman), AUSTRIA-MARTINEZ, TINGA, and CHICO-NAZARIO, JJ., concur.

[1] Penned by Associate Justice Candido V. Rivera, with Associate Justices Conchita Carpio Morales (now an Associate Justice of the Supreme Court) and Rebecca de Guia-Salvador, concurring.

[2] Records, p. 7.

- [3] Id. at 8.
- [4] Id.
- [5] Id.
- [6] Id. at 2.
- [7] William Lacambra, Rodolfo Gabuay, Reynante Lacambra, Rolando Vicente and Tomacito Tabuli.
- [8] Records, pp. 29-30.
- [9] Id. at 34-35.
- [10] Id.
- [11] Id. at 31-33.
- [12] Id. at 36-38.
- [13] Id.
- [14] Id. at 24.
- [15] Id. at 2.
- [16] Id. at 7. Later, the aforesaid cases were consolidated.
- [17] Id. at 171-173.
- [18] Id. at 173-174.
- [19] Id. at 182-183.
- [20] Id. at 203.
- [21] Id.
- [22] Id. at 209-213.
- [23] Id. at 226-227.
- [24] CA Rollo, pp. 2-14.
- [25] Id. at 7-8.
- [26] Rollo, p. 51.
- [27] *Columbus Philippines Bus Corporation vs. NLRC*, 364 SCRA 606 (2001).
- [28] *A' Prime Security Services, Inc. vs. NLRC*, [220 SCRA 142 (1993)],.
- [29] Article 283 of the Labor Code.
- [30] Article 284 of the Labor Code.
- [31] *Perpetual Help Credit Cooperative, Inc. vs. Faburada*, 366 SCRA 693 (2001).
- [32] *Aparente, Sr. vs. NLRC*, 331 SCRA 82 (2000).
- [33] 307 SCRA 218 (1999).
- [34] 164 SCRA 671 (1988).
- [35] Id. at 682.
- [36] *A' Prime Security Services, Inc. vs. NLRC*, supra.
- [37] Supra.