SUPREME COURT
THIRD DIVISION

DELFIN GARCIA, doing business under the name NAPCO-LUZMART, Inc.,
***Petitioners*,**

-versus-

G.R. No. 116568
September 3, 1999

NATIONAL LABOR RELATIONS COMMISSION and CARLITO LACSON,
***Respondents*.**
x----------x

D E C I S I O N

GONZAGA-REYES, *J.*:

Before us is a Petition for *Certiorari* under Rule 65 of the Rules of Court to annul and set aside the decision of the National Labor Relations Commission[1] in NLRC CA No. L-001268 dated April 12, 1994 which affirmed the decision of the Sub-Regional Arbitration Branch No. I in Dagupan City finding that the private respondent Carlito Lacson was constructively dismissed by the petitioner Delfin Garcia doing business under the name NAPCO-LUZMART, Inc. and awarding respondent backwages and separation pay.

The following facts as adopted by the National Labor Relations Commission (NLRC) are uncontroverted:

> "Complainant Carlito Lacson was employed on March 5, 1987 as boiler operator technician by Northwest Agro-Marine Products Corporation (NAPCO). On December 12, 1990 respondent Luzmart, Inc., acquired NAPCO in a foreclosure sale. Both companies were managed by respondent Delfin Garcia.
>
> On January 28, 1993, there was a mauling incident which involved the complainant and Julius Z. Viray, his immediate supervisor and allegedly a friend and compadre of respondent Garcia. As complainant suffered injuries as a result thereof he reported the matter to police authorities and he sought treatment at the Teofilo Sison Memorial Provincial Hospital. Both the complainant and Viray were asked to explain their sides. After the submission of the written explanations, Delfin Garcia suspended both of them from work for a period of one month effective April 15, 1993. In the same suspension order, complainant was further directed to explain in writing why he should not be dealt with disciplinary action or terminated for his continued absences from February 15, 1993 up to the date of the memorandum order. Complainant filed a complaint for illegal dismissal and other monetary claims but the same was dismissed without prejudice. On September 1, 1993, the complainant refiled this case."[2]

The Labor Arbiter[3] ruled in favor of the respondent Carlito Lacson (LACSON). Petitioner NAPCO-Luzmart (LUZMART) appealed to the NLRC which affirmed the decision of the Labor Arbiter after finding that the Labor Arbiter did not commit any reversible error. The NLRC however deleted the award of attorney's fees in favor of LACSON. Its decision, which adopted the conclusions of the Labor Arbiter, reads:

> "In finding for the complainant, the Labor Arbiter ruled:
>
> 'The issues to be resolved in this case are: (1) whether or not the complainant was dismissed from his employment; (2) whether or not he is entitled to his claim for overtime services, separation pay, 13th month pay, premium pay for working on holidays and rest days, separation pay, 13th month pay and

service incentive leave pay; and, (3) whether or not the complainant is considered an employee of the respondents since March 1987.

The first issue: Respondent Delfin Garcia insists that he did not dismiss the complainant and that he can return to his work after his one month suspension, (affidavit of respondent Garcia, marked as Annex "H" of his position paper). On the other hand, complainant Lacson maintains that he reported for work several times but respondent Garcia refused to take him back and that the former told him to look for another job.

Let us scrutinize the evidence. The incident involving the complainant and Julius Viray, also an employee of the respondents, wherein Viray allegedly mauled the complainant, happened on January 28, 1993. On February 1993, the complainant submitted his handwritten explanation blaming Viray as the aggressor. According to the complainant, Viray was drunk at the time of the incident and although he avoided Viray, the latter armed with a lead pipe, followed him and wanted to kill him (Annex "C" – complainant). Viray also submitted his handwritten explanation on February 2, 1993 (see Annex "E-1" of respondent's position paper). Viray only stated that a "heated argument transpired". On March 31, 1993, respondent Garcia issued a Memorandum suspending both the complainant and Viray for one (1) month effective April 15, 1993 and at the same time required the complainant to explain why he should not be terminated for being absent from Feb. 15, 1993, (Annex "F", respondents). The question is, why did it take respondent Delfin Garcia one (1) month or more to decide and issue an order suspending the complainant and Viray? Why did he not suspend the two immediately after the incident? This leads credence to the complainant's allegation that he reported for work after submitting his explanation but respondent Garcia refused to admit him back and told him to take a vacation or to look for another work, hence he decided to file a complaint against him on Feb, 4, 1993, which was later dismissed without prejudice, the reason for the dismissal of which was not explained to us by the complainant. Moreover, it is true that the complainant failed to report for work since Feb. 15, 1993, why

did respondent Garcia not issue an order or memorandum after the complainant failed to report for a number of days and directing the complainant to report immediately otherwise his employment will be terminated? We also agree with the complainant's argument that the respondents should not have asked him to explain his alleged failure to report for work since Feb. 15, 1993, because he has already filed a complaint against Garcia earlier.

The second issue; Annexes "G", "G-1" to "G-14" of the respondents, which are samples of respondents payroll, show that whenever the complainant rendered overtime services, he was paid accordingly. Is he entitled to his claim for 13th month pay, service incentive leave pay, vacation in sick leave pay and separation pay? Respondents maintain that since the complainant was employed by them only on February 1, 1991, he has no right to claim benefits that arose before his employment with them. That since he was not dismissed from his employment, he is not also entitled to his claim for separation pay. (The resolution of this issue will also resolve the second issue)

Respondents argue that the services of the complainant with NAPCO since March 1987, cannot be credited or counted to his length of service with LUZMART because his subsequent employment with LUZMART is a new employment as shown in his employment contract (Annex "D" respondents) with LUZMART.

In the case of MDII Supervisors and Confidential Employees Association (FFW) vs. Presidential Assistant on Legal Affairs, 79 SCRA 40 (1977), the Supreme Court ruled that:

'And there is no law which requires the purchaser to absorb the employees of the selling corporation.

As there is no such law, the most that the purchasing company may do, for purposes of public policy and social justice, is to give preference to the qualified separated employees of the selling company, who in their judgment are necessary in the

continued operation of the business establishment. This RCAM did. It required private respondents to reapply as new employees as a condition for rehiring subject to the usual probationary status, the latter's past services with the petitioners, transferors not recognized (San Felipe Neri School of Mandaluyong, Inc., et. Al. Vs. NLRC, Roman Catholic Archbishop of Manila (RCAM), et. al., G.R. No. 78350, Sept. 11, 1991.).'

Except for his bare allegation that LUZMART was only organized by the controlling stockholders of NAPCO to acquire or gain control of the latter, the complainant did not present sufficient evidence to prove his allegation, LUZMART is an entirely new corporation or entity with a distinct personality from NAPCO, and is not an alter ego of NAPCO. Therefore, LUZMART is not under obligation to absorb the workers of NAPCO or to absorb the length of service earned by its employees.

The respondents are therefore correct in their assertion that they should not be answerable for the complainant's claim for benefits that may be due him before January 1, 1991.

As we have discussed earlier, the complainant herein was constructively dismissed from his employment by respondent Delfin Garcia because of the latter's refusal to admit him back to work inspite of the complainant's insistence to resume his work after he has given his explanation.'

On appeal, respondent contends that the Labor Arbiter erred in awarding backwages to the complainant from February 1, 1993 up to the date of the promulgation of the decision, and in awarding separation pay of one month pay for every year of service.

We are in full accord with the Labor Arbiter's conclusion that the complainant was constructively dismissed by the respondent Delfin Garcia when he refused to admit the complainant despite his insistence to go back to work.

> However, we delete the award of attorney's fees as this is not a case of unlawful withholding of wages.
>
> WHEREFORE, premises considered, the appealed decision is modified by deleting the award of attorney's fees. In all other respect, the same is affirmed.
>
> SO ORDERED."[4]

LUZMART's Motion for Reconsideration[5] was denied hence, this petition wherein LUZMART claims that the NLRC committed grave abuse of discretion in holding that LACSON was illegally dismissed.

In support of its petition, LUZMART claims that LACSON was not dismissed but was merely suspended as shown by the March 31, 1993 memorandum.[6] His suspension was a consequence of the imposition of disciplinary measures on him as fighting within the company premises constitutes serious misconduct and disorderly behavior. The fact that LUZMART did not immediately suspend him after the fighting incident does not establish that he was dismissed from his employment as there is no law which requires an employer to immediately rule on any infraction under investigation after the filing of the explanation of the person under investigation. Neither is LACSON entitled to backwages nor separation pay as these are only granted to employees who have been illegally dismissed from work and not to employees like LACSON who abandoned his employment as he failed to report to work from February 15, 1993 to March 31, 1993.[7]

We resolve to affirm the judgment of the NLRC.

LUZMART's claim that LACSON was merely suspended and was still employed by LUZMART does not convince us that LACSON was not dismissed from his employment. Said claim was a mere afterthought to preempt or thwart the impending illegal dismissal case filed by LACSON against LUZMART. As found by the labor arbiter, LACSON's failure to report to work was due to LUZMART's refusal to admit him back. In fact, LUZMART told him to go on vacation or to look for other work.[8]

LACSON's dismissal is clearly established by the following chronology of events: The mauling incident occurred on January 28, 1993. LACSON submitted his written explanation of the event on February 1, 1993. On February 4, 1993, LACSON attempted to report for work but LUZMART refused to admit him. On February 11, 1993, LACSON filed an action for illegal dismissal with the NLRC.[9] On April 13, 1993, LUZMART sent LACSON the memorandum ordering LACSON's suspension dated on March 31, 1993. By this time, LUZMART already knew of the pending illegal dismissal case against it as it was already directed by the NLRC to submit its position paper on April 5, 1993. LUZMART's reliance on the March 31, 1993 memorandum[10] and the February 1-15, 1993 payroll[11] to prove that LACSON was merely suspended is therefore unavailing. The March 31, 1993 memorandum is at most self-serving; a ploy to cover up the dismissal of LACSON since this was issued after LUZMART had knowledge of the illegal dismissal case filed against it by LACSON on February 11, 1993. Likewise, the veracity of the February 1-15, 1993 payroll that purportedly shows that LACSON was included in LUZMART's payroll is of doubtful probative value. First of all, it does not contain a certification by Charito Fernandez at its back page, unlike the other payrolls[12] attached as annexes to LUZMART's petition. Secondly, said payroll does not contain the signatures of the other employees as proof that they received their salaries for the said period. Given these circumstances, both documents appear to have been prepared in contemplation of the pending illegal dismissal case filed against LUZMART.

The contention that LACSON abandoned his employment is also without merit. Mere absence or failure to report for work, after notice to return, is not enough to amount to such abandonment.[13] For a valid finding of abandonment, two factors must be present, viz.; (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship,[14] with the second element as the more determinative factor being manifested by some overt acts.[15] There must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work.[16] Such intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.[17]

LACSON's absence from work was not without a valid reason. It was petitioner who did not allow him to work and in fact told him to go on vacation or to look for other work. This is tantamount to a constructive dismissal which is defined as a "quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay."[18] Since LACSON was denied entry into his workplace, it was impossible for him to return to work. It would be unjust to allow herein petitioners to claim as a ground for abandonment a situation which they themselves had brought about.[19] Moreover, LACSON's filing of the complaint for illegal dismissal on February 11, 1993, or seven days after his alleged abandonment, negates said charge. It is highly illogical for an employee to "abandon" his employment and thereafter file a complaint for illegal dismissal.[20]

We also do not agree with LUZMART that LACSON gave just cause for the imposition of disciplinary measures upon him. Although fighting within company premises may constitute serious misconduct under Article 282[21] of the Labor Code and may be a just cause to terminate one's employment,[22] every fight within company premises in which an employee is involved would not warrant his dismissal. This is especially true when the employee concerned did not instigate the fight and was in fact the victim who was constrained to defend himself. In the present case, it appears that LACSON was assaulted by Julius Viray (VIRAY), a co-employee, after they were questioned about missing diesel fuel. LACSON attempted to avoid the conflict since VIRAY was intoxicated but VIRAY followed him and after an exchange of words, VIRAY punched him while saying "Papatayin Kita" (I will kill you). After being punched a second time, LACSON punched back. He thereafter ran towards the dressing plant after his companion, a certain DANNY, told him to run. VIRAY was persistent and followed LACSON and continued delivering punches at him. LACSON ran away for a second time but VIRAY still pursued him and even armed himself with a lead pipe. LACSON sustained wounds on his head and forehead due to VIRAY's use of the lead pipe. The Medico-Legal Certificate[23] issued by the Gov. Teofilo Sison Memorial Hospital corroborates LACSON's injuries. Given the above circumstances, it is not difficult to understand why LACSON had to defend himself.

Even assuming that there was just cause to dismiss LACSON, strict compliance by the employer with the demands of both procedural and substantive due process is a condition sine qua non for the termination to be declared valid. The law requires that the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected:

1. notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and

2. the subsequent notice which informs the employee of the employer's decision to dismiss him.[24]

It is unclear whether LUZMART complied with the first required written notice; apparently, LACSON was able to give his account of the fight. However, even assuming that LUZMART complied with the first written notice i.e. the charge against LACSON with fighting within company premises, the evidence fails to show compliance with the second notice requirement; to inform LACSON of the decision to dismiss him. Such failure to comply with said requirements taints LACSON's dismissal with illegality.

An illegally dismissed employee is entitled to 1) either reinstatement or separation pay if reinstatement is no longer viable, and 2) backwages.[25] In the present case, LACSON is entitled to be reinstated, as there is no evidence to show that reinstatement is no longer possible considering LUZMART's position in this appeal is that LACSON was never dismissed but merely suspended. He is also entitled to backwages computed from the time of illegal dismissal, in this case on February 4, 1993[26] (not February 1, 1993 as found by the NLRC) up to the time of actual reinstatement, without qualification or deduction.[27]

WHEREFORE, the assailed Decision of the NLRC is **AFFIRMED** and the instant Petition is hereby **DISMISSED** with the **MODIFICATION** that LUZMART reinstate LACSON to his former position and pay him backwages computed from the date of illegal dismissal on February 4, 1993 up to the time of actual reinstatement.

No pronouncement as to costs.

SO ORDERED.

Melo, Vitug, Panganiban and Purisima, *JJ.*, concur.

---

[1] Third Division, composed of the ponente, Joaquin A. Tanodra, Commissioner and concurred with by Lourdes C. Javier, Presiding Commissioner and Ireneo B. Bernardo, Commissioner.
[2] Decision, pp. 2-3.
[3] Labor Arbiter Rolando D. Gambito
[4] Decision, pp. 3-9; Rollo, pp. 23-29.
[5] Rollo, p. 153.
[6] M E M O R A N D U M
TO : CARLITO LACSON
JULIUS Z. VIRAY
FROM : MANAGEMENT
SUBJECT: FIGHTING INCIDENT
ON JANUARY 28, 1993
DATE : MARCH 31, 1993
The management, after considering your written explanation on the matter, has determined that you are both equally at fault for fighting inside working premises and hereby orders your SUSPENSION without pay for a period of One (1) month effective April 15, 1993. Mr. Carlito P. Lacson is further ordered to explain in writing why he should not be dealt with further disciplinary action and/or terminated from service for his continuos absences from February 15, 1993 up to the present, within five (5) days from receipt hereof.
DELFIN E. GARCIA
Acting General Manager
[7] Memorandum of Petitioners, pp. 3-9.
[8] Decision, p. 5.
[9] This first case was dismissed without prejudice for failure of the complainant to prosecute but was refiled by LACSON on September 1, 1993.
[10] See note 4, Supra.
[11] Rollo, p. 130.
[12] Rollo, pp. 95-105.
[13] Samahan ng mga Manggagawa sa Bandolino-LMLC vs. NLRC, 275 SCRA 633 at 643 [1997]; Tan vs. NLRC, 271 SCRA 216 at 221 [1997].
[14] Isabelo vs. NLRC, 276 SCRA 141 at 148 [1997].
[15] Trendline Employees Association-Southern Philippines Federation of Labor vs. NLRC, 272 SCRA 172 at 177 [1997].
[16] C. Alcantara & Sons, Inc. vs. NLRC, 229 SCRA 109 at 113 [1994].
[17] Cañete vs. NLRC, 250 SCRA 259 at 267 [1995].
[18] Ala Mode Garments, Inc. vs. NLRC, 268 SCRA 497 at 504 [1997].

[19] Toogue vs. NLRC, 238 SCRA 241 at 247 [1994].
[20] See Note 14, Supra.
[21] "Art. 282. Termination by employer — An employer may terminate an employment for any of the following causes:
a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;"
[22] Sanyo vs. NLRC, 280 SCRA 129 at 138 [1997].
[23] Rollo, p. 42.
[24] Nath vs. NLRC, 274 SCRA 379 at 384 [1997]; Tingson, Jr. vs. NLRC, 185 SCRA 498 at 502 [1990].
[25] Aurora Land Projects Corporation vs. NLRC, 266 SCRA 48 at 66 [1997].
[26] Comment, p. 3.
[27] De Guzman vs. NLRC, G.R. No. 130617, August 11, 1999 at pp. 9-10.