SUPREME COURT
FIRST DIVISION

HAGONOY RURAL BANK, INC.,
***Petitioner*,**

-versus-

G.R. No. 122075
January 28, 1998

NATIONAL LABOR RELATIONS COMMISSION, BASILIO G. DEL ROSARIO, REYNALDO C. CRUZ, CESAR C. DEL ROSARIO, VICTOR JOVENES, ANTONIA P. RAMIREZ, ARACELI C. CUZON, LIWAYWAY G. BALTAZAR, DAISY D. REYES, FEDERICO OWERA, and RODOLFO MANALO,
***Respondents*.**
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D E C I S I O N

DAVIDE, JR., *J.*:

This is a Special Civil Action for *Certiorari* seeking the reversal of the Decision of 20 June 1995[1] and the resolution of 25 August 1995[2] of public respondent National Labor Relations Commission (NLRC), Third Division, in NLRC CA No. 007692-94. The former modified the Decision of 28 July 1994[3] of Labor Arbiter Dominador A. Saludares

in the consolidated NLRC Cases Nos. RAB-III-09-5257-93 and RAB-III-02-5488-94 finding petitioner Hagonoy Rural Bank, Inc., guilty of illegally dismissing the private respondents, and directing it to immediately reinstate them and pay their back wages, 13th month pay, damages, and attorney's fees. The latter denied the motion to reconsider the decision of 20 June 1995.

The antecedent facts which gave rise to private respondents' complaints are summarized in the decision of the Labor Arbiter as follows:

1. Complainants [herein private respondents] are all regular employees of respondents [herein petitioner and its Executive Vice-President, Emilio Suntay III] having been employed for different positions on different dates and salaries, to wit:

NAME	DATE HIRED	POSITION	SALARY
Basilio Del Rosario	01/31/59	Head Loans/Credit	P4,100.00/mo.
Araceli Cuzon	09/02/62	Bookkeeper	3,670.00/mo.
Daisy Reyes	10/23/66	Asst. Cashier	3,650.00/mo.
Reynaldo Cruz	01/16/78	Technician	3,300.00/mo.
Federico Owera	05/01/78	Security Guard	3,200.00/mo.
Victor Jovenes	09/29/78	Security Guard	3,200.00/mo.
Antonia Ramirez	10/30/78	Savings Bookkeeper	3,320.00/mo.
Liwayway Baltazar	10/01/85	Solicitor	3,210.00/mo.
Rodolfo Manalo	05/21/86	Security Guard	3,200.00/mo.
Cesar del Rosario	06/01/90	Security Guard	3,090,00/mo.

2. Respondent Rural Bank of Hagonoy, Inc., is a banking institution with principal business and office address at Hagonoy, Bulacan, while co-respondent Emilio A.M. Suntay III is the Executive Vice-President.

3. Sometime in 1992, realizing that there was something wrong with the operations of the bank, its Executive Vice-President engaged the services of an external auditor, the Laya, Manabat, Salgado & Co., to conduct an audit of the financial affairs of the bank in order to find out what was wrong. The audit started in August 1992 and in the course of the audit, it became evident that to be conducted effectively and to avoid possible tampering with, concealment or loss of records and

interference, as initial findings of auditors disclosed that some of the bank employees were guilty of irregularities, it was necessary for all the bank employees to be preventively suspended during the audit but as an act of leniency, all of them, except the employees in the Money Shop, were given the choice of either voluntarily going on leave or being preventively suspended. All of them chose to go on leave including the herein complainants, except Rodolfo Manalo, assigned at the Money Shop, who was preventively suspended on October 23, 1992, hence, they were directed and furnished with pre-typed applications for leave without pay for 30 days from October 16, 1992, which they signed.

4. After the expiration of their 30 days leave without pay on November 15, 1992, and the 30 days preventive suspension of Manalo, the complainants reported back to the bank but they were told by respondent Suntay III that the audit was not yet over and so there [was a] need for them to extend their leave for another 30 days and they were told that their extended leave was with pay.

5. On 28 December 1992, complainant Basilio del Rosario wrote the President of the bank requesting that he be allowed to retire on 4 January 1993 but in a letter dated 20 January 1993, the Executive Vice-President of said bank informed Mr. del Rosario that approval of his retirement was to be held in abeyance until after receipt by the bank of the final report of the external auditor which conducted an audit of the financial affairs of the bank from August to December 1992.

6. On September 20, 1993 and February 10, 1994, respectively, complainants filed the instant complaints.

7. On 29 September 1993, the final audit report was released by the external auditor, and on October 23, 1993, respondents thru their counsel offered complainants to report back to work.[4]

Since the private respondents refused to accept petitioner's offer made during the mandatory conference on 23 October 1993 to take them back to work effective 2 November 1993,[5] the parties were required to submit their position papers.

In his Decision dated 28 July 1994,[6] Labor Arbiter Dominador B. Saludares made the following findings of facts and conclusions:

> After a meticulous evaluation of the facts and evidence on record, we find that respondents have miserably failed to adequately and convincingly establish their defense of abandonment, serious misconduct and irregularities, violation of regulations and gross neglect of duties as far as Basilio del Rosario and Daisy Reyes are concerned, and alleged abstraction thru manipulation of bank records in the case of Rodolfo Manalo. Except for their vague, generalized, hearsay, self-serving and gratuitous statements that herein complainants abandoned their work as no one prohibited much less prevented them from reporting to their work after their extended leave expired, or that Basilio del Rosario and Daisy Reyes committed serious misconduct and irregularities, or violation of regulations and gross neglect of duties, or that Manalo committed cash abstraction thru manipulation of bank records, no sufficient evidence has been adduced to prove them.
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> Admittedly, it was the respondents who initiated and gave the signal or option for herein complainants to either go on leave or be preventively suspended during the audit undertaken by respondents to find out what was wrong realizing that there was something wrong with the operation of the bank. In other words, whether preventively suspended or voluntarily going on leave, it surely or clearly was the idea conceived by respondents in order to avoid possible tampering with concealment or loss of record and interference during the conduct of the audit. This being the case, it was therefore incumbent upon said respondents to inform the herein complainants about the progress and result of the audit and to call them back to their work if the audit has been terminated, or to formally inform those who had participation, or those involved in the irregularities that their services were terminated as what they

have done in the case of Cristina Perez, Cristina Medina, Milagros Martin and Alberto Fabian. If there was any involvement or participation of herein complainants in the imputed serious misconduct or irregularities or violation of any regulations after the submission of the final report on September 29, 1993, why were they not terminated for cause? Why were they not informed of the degree or nature of their involvement or participation? If the complainants committed any of the imputed acts after the final audit report, why in heaven's name, did the respondents thru their counsel, still offer them to go back to work effective November 2, 1993 instead of formally terminating them?

The law provides that any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omissions constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address (Sec. 2, Rule XIV, Book V, Omnibus Rules Implementing the Labor Code, as amended by R.A. No. 6715). Has [sic] the respondents, even after the audit complied with this mandate of our law? No. Obviously, they neglected it. In the case of Rodolfo Manalo, the law also provides that the employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers, provided that no preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides after completion of the hearing to dismiss the worker (Secs. 3 & 4, Rule XIV, Book V, — ibid.) Has the respondents complied with these requirements of the law? Again the answer is No.

Abandonment of work is a matter of intention and cannot be lightly inferred much less legally presumed from certain

> equivocal acts (City of Manila vs. Subido, 17 SCRA 231; Jorge vs. Mayor, 10 SCRA 331; East Asiatic Co. Ltd. vs. CIR, 40 SCRA 521). For abandonment to arise, there must be concurrence of the intention to abandon and some overt acts from which it may be inferred that the employee concerned has no more interest to work (Shin I Industrial (Phils.) vs. NLRC, et al., G.R. No. 74489, August 3, 1988). Moreover, persistence in pursuing their claims before this Office negates allegation of abandonment (Augusto Evangelista vs. NLRC, et al., G.R. No. 93915, March 22, 1991). This must be so because an employee's right to security of tenure may not be jeopardized except by clear and convincing evidence of dishonesty; a doubtful accusation, as in the case of the accusation against herein complainants, should not be allowed to overshadow complainants' unblemished record of service for 33 years in the case of Basilio del Rosario, 30 years in the case of Araceli Cuzon, 26 years in the case of Daisy Reyes, 14 years in the case of Reynaldo Cruz, Federico Owera, Victor Jovenes and Antonia Ramirez, 7 years in the case of Liwayway Baltazar, 6 years in the case of Rodolfo Manalo and about 2 years of Cesar del Rosario (Rogelio Garcia vs. NLRC, et al., G.R. No. 88243, December 22, 1989).

In the case of Manalo, we also find that respondents have not clearly and convincingly established much less pinpointed his participation in the imputed abstraction thru manipulation of record. As a matter of fact, even the Memorandum (Annex "B", Position Paper of Respondents in NLRC Case No. RAB-III-02-5488-94) placing him under preventive suspension for 30 days does not show his participation. Complainant Manalo was only assigned as security guard in the Money Shop and has nothing to do with manipulation of bank records. Annex "C" relied upon by respondents is a clear promissory note evidencing his loan to be paid on monthly salary deduction. The accusation imputed against him like those of the other complainants for alleged serious misconduct and irregularities, violation of regulations and gross neglect of duties, are therefore, mere speculative, conjectural conclusion and the product of a moribund imagination. Clearly, the capricious and whimsical acts of respondents which acts were effected in bad faith, constitute constructive illegal dismissal. Hence, having been illegally dismissed, complainants are entitled to the twin remedies of reinstatement and

backwages up to the date they were offered to return to work. They cannot be considered as having abandoned their job after they were offered to report to work on November 2, 1993, because obviously, they were in a quandary as to whether to return or not in view of the fact that these cases were already pending when the offer was made. They are not, however, entitled to backwages after they were offered to return to work but failed, under the principle of no work, no pay.

Complainants are, therefore, entitled to their backwages from October 16, 1992 up to October 31, 1993, computed as follows:

1.	Basilio del Rosario	P51,250.00
2.	Araceli Cuzon	45,875.00
3.	Daisy Reyes	45,625.00
4.	Reynaldo Cruz	41,250.00
5.	Federico Owera	40,000.00
6.	Victor Jovenes	40,000.00
7.	Antonia Ramirez	41,500.00
8.	Liwayway Baltazar	40,125.00
9.	Rodolfo Manalo	40,000.00
10.	Cesar del Rosario	38,625.00

Complainants are also entitled to their 13th month pay for the year 1993, computed as follows:

1.	Basilio del Rosario	P4,100.00
2.	Araceli Cuzon	3,670.00
3.	Daisy Reyes	3,650.00
4.	Reynaldo Cruz	3,300.00
5.	Federico Owera	3,200.00
6.	Victor Jovenes	3,200.00
7.	Antonia Ramirez	3,320.00
8.	Liwayway Baltazar	3,210.00
9.	Rodolfo Manalo	3,200.00
10.	Cesar del Rosario	3,090.00

The Labor Arbiter then ordered the petitioner to pay the private respondents: (1) P424,250.00 representing their back wages, “less whatever amount that has already been paid and their legal and overdue obligations and liabilities to the bank, if any”; (2) P33,940.00

representing their 13th month pay; (3) P250,000.00 as moral and exemplary damages; and (4) P70,819.00 as attorney's fees which is equivalent to ten percent of the total award. He also directed the herein petitioner to immediately reinstate all the private respondents to their former or equivalent positions under the same terms and conditions prevailing prior to their dismissal, or, at the option of the employer, merely reinstate them in the payroll; or should reinstatement become impossible, to pay the private respondents separation pay equivalent to one-month salary for every year of service, a fraction of at least six months considered as one whole year, or to allow them to retire, if qualified in accordance with the retirement program or policy of the bank, if any, whichever is more beneficial.

As might be expected, the petitioner appealed from the decision to the NLRC raising the following grounds; (1) there was prima facie evidence of grave abuse of discretion on the part of the Labor Arbiter; (2) the latter committed serious errors in his findings of facts and legal conclusions which, if not corrected, would cause grave abuse and irreparable damage or injury to the petitioner; and (3) the decision was tainted with graft and corruption.[7]

On 19 September 1994, the private respondents filed a Manifestation[8] informing the Labor Arbiter that on 5 September 1994 they reported for work at petitioner's premises, but in view of the response of Mr. Emilio Suntay III, they arrived at the consensus that "in case they would be reinstated, they would only be at the losing end as [the petitioner] would find ways and means to dismiss them at the slightest excuse"; hence, they were opting to be paid their separation pay instead of reinstatement.

In a Counter Manifestation[9] filed on 21 September 1994, the petitioner alleged that the private respondents did not have the option to choose separation pay because they were never dismissed and that it was always willing to accept them back to work.

In its Decision of 20 June 1995,[10] the NLRC affirmed the Labor Arbiter's decision except the award of damages and attorney's fees, which it ordered deleted for lack of sufficient evidence to support them. As to petitioner's contention that the Labor Arbiter's decision

was tainted with graft and corruption, the same was brushed aside by respondent Commission after its Efficiency and Integrity Board had looked into the matter. The NLRC noted that the NBI has not instituted a criminal charge against the Labor Arbiter for the alleged extortion he perpetrated on 19 August 1994.

After the denial of its motion for reconsideration, the petitioner filed this special civil action wherein it claimed that the NLRC committed grave abuse of discretion in ruling that (1) the private respondents were unjustly and unlawfully dismissed; and (2) there was no basis for nullifying the decision of the Labor Arbiter.

In their Comment the private respondents contend that the issues raised by the petitioner are factual and do not involve questions of law.

The Office of the Solicitor General joined cause with the petitioner; hence, we required the NLRC to file its own comment.

In its Comment the NLRC sustained its decision.

With leave of court, the private respondents filed a Reply to the Solicitor General's Comment.

On 21 January 1997, private respondent Daisy D. Reyes filed a Manifestation informing the Court that she was "formally withdrawing as a party in this case and completely dissociating herself" from private respondents' Comment on the petition and Reply to the Solicitor General's Comment because she felt that her termination from employment did not really amount to an illegal dismissal; and that she was waiving all her claims and interests in the award made by the Labor Arbiter. We required the counsel for the private respondents to comment thereon, but until now nothing has been heard from the former.

With the exception of the private respondents, all the parties have manifested that they were adopting their respective initiatory pleadings as their memoranda. The former are hereby deemed to have waived the filing of their memorandum.

The sole issue to be resolved is whether or not public respondent NLRC committed grave abuse of discretion in its challenged decision and resolution.

It is plain that the essence of the petitioner's grievances is fundamentally factual. It is settled that the jurisdiction of this Court to review the decisions of the NLRC in a petition for certiorari under Rule 65 of the Rules of Court is confined to issues of jurisdiction or grave abuse of discretion.[11] The finding's of facts of quasi-judicial agencies, like the NLRC, which have acquired expertise in the specific matters entrusted to their jurisdiction are accorded by this Court not only respect but even finality if they are supported by substantial evidence.[12] Only substantial, not preponderance, of evidence is necessary.[13] Section 5, Rule 133 of the Rules of Court provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

After a meticulous review of the records, we find the decision of the Labor Arbiter to be supported by substantial evidence; hence, the NLRC committed no grave abuse of discretion in affirming it with modification and in holding that the private respondents did not abandon their employment.

For abandonment to exist, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention, as manifested by some overt acts, to sever the employer-employee relationship, with the second element as the more determinative factor. Mere absence is not sufficient; and it is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[14]

Petitioner's evidence of abandonment fails to persuade us. The first nine private respondents did not go on leave on their own accord, but at the behest of the petitioner through Mr. Suntay to which they acceded, albeit grudgingly, in deference to the ongoing audit. Then on 16 November 1992, at the end of their initial leave, the private respondents all reported back to work, but they were again asked to

"extend" their leave for another thirty days, with pay. At the end of their extended leave on 16 December 1992, they went to petitioner's main branch not only to report back to work but also to collect their salaries. However, except for Liwayway Baltazar and Victor Jovenes, the private respondents were not paid for their extended leave. Worse, all of them were prevented from returning to work and were told to wait until they would be called back.[15] The next month, they inquired from the bank manager as to when they would be admitted back to work, but they were told that there was no instruction yet from Mr. Suntay.[16] Having waited in vain, they then filed a complaint for illegal dismissal.

It is settled that the filing of a Complaint for illegal dismissal is inconsistent with a charge of abandonment, for an employee who takes steps to protest his lay-off cannot by any logic be said to have abandoned his work.[17] The filing of the complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[18]

We cannot accept the contention of the petitioner and the Solicitor General that the complaints filed by the private respondents several months after their alleged illegal dismissal are barred by laches. The private respondents averred that only after waiting for several months did they realize that they were constructively dismissed by the petitioner.

An action for reinstatement by reason of illegal dismissal is one based on an injury to the complainant's rights, which should be brought within four years from the time of the dismissal pursuant to Article 1146 of the Civil Code.[19] Thus, a complaint for illegal dismissal filed two years and five months after the alleged dismissal from employment was held to be still well within the prescriptive period.[20] We have also said that in labor cases laches may be applied only upon the most convincing evidence of deliberate inaction, for the rights of laborers are protected under the social justice provisions of the Constitution and under the Civil Code.[21]

If indeed the petitioner felt that the private respondents had relinquished their jobs, then it should have charged them with abandonment.[22] But it never did.

The next issue that needs be addressed is whether the first nine private respondents were illegally dismissed. We agree with the Labor Arbiter and the NLRC in holding the affirmative view. While it may be true that the private respondents had chosen to go on leave for one month effective 16 October 1992, the choice was not of their complete free will because the other alternative given by the petitioner was suspension. The threat of suspension thus became the proximate cause of the "leave." It was a coerced option imposed by the petitioner. That the petitioner had in fact in mind private respondents' suspension was finally made evident by its refusal to take them back after the expiration of the leave. The petitioner extended their leave for another month with a promise to pay them salaries. After the expiration of the "extended" leave, the petitioner still refused to accept them back. Ineluctably, the private respondents were constructively dismissed from 16 October 1992.

The case of private respondent Rodolfo Manalo must be treated separately. He was preventively suspended on 23 October 1992 because he was one of petitioner's employees at its Money Shop allegedly found by a Central Bank examiner to have made "cash abstractions." After the expiration of the suspension on 23 November 1992, Manalo reported to work, but petitioner prevented him from entering its premises.

As held by the Labor Arbiter and the NLRC, there is no sufficient evidence that Manalo made cash abstractions through manipulation of bank records. Moreover, he was not accorded due process. While it may be true that the notice of preventive suspension and of dismissal allowed him to explain, no hearing was actually conducted as required by law.[23] That Manalo did not answer the notice was not adequate to constitute a waiver of his rights to a hearing. Notice and hearing must be accorded by an employer, even though the employee does not affirmatively demand it.[24] The twin requirements of notice and hearing are indispensable for a dismissal to be validly effected.

Finally, we find no compelling reason to disagree with the NLRC in its disposition of petitioner's claim that the Labor Arbiter's decision was tainted with graft and corruption. After the matter had been looked into by its Efficiency and Integrity Board the NLRC found no basis for

such claim. The petitioner even admits in its petition dated 6 October 1995 that the NBI has not filed a criminal complaint against Saludares.

WHEREFORE, the petition is **DISMISSED** and the challenged Decision of the National Labor Relations Commission in NLRC CA No. 007692-94 is hereby **AFFIRMED** with the modification that the back wages of private respondents Liwayway Baltazar and Victor Jovenes should be from 16 October to 15 November 1992 and from 16 March 1993 to 31 October 1993, since it is undisputed that they received salaries from 16 November 1992 to 15 March 1993.

Costs against the petitioner.

SO ORDERED.

Bellosillo, Vitug and Kapunan, *JJ*., concur.

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[1] Annex "B" of Petition; Rollo, 47-65. Per Presiding Commissioner Lourdes C. Javier, with Commissioners Ireneo B. Bernardo and Joaquin A. Tanodra concurring.
[2] Annex "C" of Petition; Rollo, 67-68.
[3] Annex "A" of Petition; Rollo, 31-46.
[4] Labor Arbiter's Decision, 1-4; Rollo, 31-34.
[5] TSN, 23 February 1994, 3-5; Original Records (OR), NLRC Case No. RAB-III-09-5257-93, 179-181. Unless otherwise indicated, all references to the original records pertain to the folder of this case.
[6] Supra note 3.
[7] Rollo, 49.
[8] OR, 435-436.
[9] Id., 439-441.
[10] Supra note 1.
[11] Reno Foods, Inc. vs. NLRC, 249 SCRA 379, 385 [1995].
[12] Tiu vs. NLRC, 215 SCRA 540, 549-550 [1992].
[13] Metro Transit Organization, Inc. vs. NLRC, 263 SCRA 313, 319 [1996]; Employees' Compensation Commission vs. Court of Appeals, 264 SCRA 248 [1996].
[14] Labor vs. NLRC, 248 SCRA 183, 198-199 [1995]; Brew Master International, Inc. vs. NLRC, G.R. No. 119243, 17 April 1997, 6.
[15] TSN, 23 February 1994, 55-59.
[16] Pinagsamang Sinumpaang Salaysay, 2, Rollo, 83; Complainants' Position Paper, 3, OR, 48.

[17] Jones vs. NLRC, 250 SCRA 668, 672-673 [1996].
[18] Labor vs. NLRC, supra note 14 at 198-199.
[19] Reno Foods, Inc. vs. NLRC, supra note 11 at 387.
[20] Id.
[21] Id.
[22] Toogue vs. NLRC, 238 SCRA 241, 247 [1994]; Reno Food, Inc. vs. NLRC, supra note 11 at 386.
[23] Mañebo vs. NLRC, 229 SCRA 240, 251 [1994]. Article 277 (b) of the Labor Code.
[24] Segismundo vs. NLRC, 239 SCRA 167, 172-173 [1994].