

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
SECOND DIVISION**

**HANTEX TRADING CO., INC. and/or  
MARIANO CHUA,**

***Petitioners,***

***-versus-***

**G.R. No. 148241  
September 27, 2002**

**COURT OF APPEALS, Special Former  
Tenth Division, and BERNARDO  
SINGSON,**

***Respondents.***

X-----X

**DECISION**

**BELLOSILLO, J.:**

This Petition seeks to Review the Decision of the Court of Appeals<sup>[1]</sup> affirming in toto the decision of the National Labor Relations Commission (NLRC), which in turn sustained the Labor Arbiter's finding that respondent was illegally dismissed and therefore entitled to reinstatement, backwages and 13<sup>th</sup> month pay.

Private respondent Bernardo Singson was employed by petitioner Hantex Trading Co., Inc. (HANTEX) on 8 November 1994 as sales representative. HANTEX was engaged in selling laminating machines and ID supplies. He was paid a regular salary of P165.00/day in

addition to P500.00 traveling allowance and a 3%-5% commission from his sales. Sometime in February 1996 the management of HANTEX called the attention of Singson regarding his deteriorating sales performance. Despite thereof, Singson's performance showed no sign of improvement as it remained inadequate and unsatisfactory. Thus, HANTEX, through its president, petitioner Mariano Chua, held a "one-on-one" conference with him on 5 August 1996.

The parties presented conflicting versions of what actually transpired during the conference. Singson alleged that petitioner Mariano Chua asked for his resignation from the company, and required him to submit a resignation letter otherwise his separation pay, 13th month pay and other monetary benefits would not be paid. When he refused, petitioner Mariano Chua ejected him from the premises of HANTEX and left instructions to the guards on-duty to refuse him admittance.

On the other hand, petitioners denied that they dismissed Singson and maintained that the conference was merely intended to motivate him "to exert more effort in his job and mend his work attitude;" and that Singson apparently resented petitioner Chua for it that he never reported back for work after the conference.

On 8 August 1996 Singson filed a complaint with the Labor Arbiter for illegal dismissal with prayer for reinstatement asserting that he was dismissed from his employment without prior notice and hearing.<sup>[2]</sup> On the contrary, HANTEX averred that Singson was not dismissed but abandoned his job after he was reprimanded.

On 5 May 1998 the Labor Arbiter rendered a decision finding private respondent Singson to have been illegally dismissed and ordering HANTEX to reinstate him to his former or substantially equivalent position, as well as to pay him P234,848.38 as backwages and P8,992.60 as 13th month pay.<sup>[3]</sup>

HANTEX appealed to the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's finding of illegal dismissal but ordered the reduction of backwages, holding that the computation thereof should start not from the date complainant was hired in 1994 as held by the Labor Arbiter, but from the date he was illegally dismissed in 1996. The NLRC observed —

The respondents would want us to believe that on August 5, 1996, they merely “reprimanded” complainant for his poor performance (p. 10, Appeal, p. 109, Record). However, they have not submitted any proof thereon, unlike on November 21, 1995 when they sent him a memorandum, which he duly received, calling attention to his work deportment. Just because respondent asked him to assume duties during the hearing before the Labor Arbiter on September 30, 1996 (p. 7, Record) does not necessarily prove that they in fact did not dismiss him in the first place. On the contrary, that offer could be a tacit admission of respondents that they erred in dismissing him verbally and without observance of both substantive and procedural due process. On the matter of complainant’s alleged abandonment suffice it to say that his mere filing of a case for illegal dismissal already negates the theory of abandonment. However, we find merit in respondents’ argument regarding the award of backwages. Indeed, it was glaring error to base the computation thereof from the date complainant was hired in 1994. Rather, the computation should start from the date he was found to have been illegally dismissed.<sup>[4]</sup>

On 8 June 2000 HANTEX and/or Mariano Chua, undaunted by reverses, elevated the case to the Court of Appeals on a Petition for Certiorari<sup>[5]</sup> arguing that: (a) the complaint for illegal dismissal was a mere ploy of private respondent to get back at them; (b) there was no termination letter which is the best evidence of the alleged illegal dismissal, consequently, the NLRC should have adjudged that private respondent was not dismissed but had voluntarily abandoned his employment; and, (c) private respondent’s rejection of petitioners’ offer for him to resume his employment during the preliminary conference before the Labor Arbiter was an overt act of abandonment. The appellate court, however, likewise ruled against petitioners —

An ordinary member of the working class will not put at stake his primary source of income just to satisfy his egoistic feeling of revenge. The expense of a protracted legal battle against a well-equipped employer coupled with the uncertainty of

winning and the prospect of a prolonged unemployment are factors that negate petitioner's supposition. Furthermore, a letter of dismissal is not the only material evidence to establish the fact of termination. For in cases of constructive dismissal, as when the employee was compelled to resign because continued employment has become impossible, unreasonable and unlikely, his quitting his job amounts to constructive discharge or illegal dismissal. Likewise, we find petitioner's argument in support of their abandonment theory as misplaced that offer could be a tacit admission of petitioners that they erred in dismissing him verbally and without observance of both substantive and procedural due process.

Its motion for reconsideration having been denied by the Court of Appeals on 10 May 2001, petitioners now hope to secure relief from this Court. Relying once more on their defense of abandonment, petitioners insist that other than the bare allegations of private respondent that he was illegally dismissed, the records are bereft of any evidence to prove that petitioners indeed terminated his services; that moreover, no notice or letter of dismissal was ever issued by petitioners to private respondent, as there was no intent to dismiss him when he was called to a conference on 5 August 1996; and, that he was not prevented from returning to work as in fact he was asked repeatedly to return to work, but he defiantly refused to do so.

To avoid delay in the disposition of the case, it appearing from the records that the parties had already fully ventilated and exhaustively argued their respective positions before the Labor Arbiter, the NLRC and the Court of Appeals, and even before this Court, through their respective petition, comment and reply, we dispensed with the usual practice of requiring the parties to submit their memoranda and would now proceed to decide the case.

The pivotal issue in the present recourse is whether private respondent Bernardo Singson deliberately abandoned his employment, or was illegally dismissed by the management of petitioner HANTEX.

We deny the petition. Plainly, the petition raises a fundamentally factual issue, which we are not at liberty to review because our

jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The resolution of factual questions is the primary and often the final task of lower courts. This Court is not a trier of facts and it is not our function to examine and evaluate all over again the probative value of all evidence presented to the concerned tribunal which formed the basis of its impugned decision, resolution or order.<sup>[6]</sup>

We reiterate time and again the much-repeated but not so well-heeded rule that findings of fact of the Court of Appeals, particularly where it is in absolute agreement with that of the NLRC and the Labor Arbiter, as in this case, are accorded not only respect but even finality and are deemed binding upon this Court so long as they are supported by substantial evidence.<sup>[7]</sup>

In any event, we waded into the records of this case and found no compelling reason to disturb the unanimous findings and conclusions of the Court of Appeals, NLRC and the Labor Arbiter. Indeed, petitioners' persistent refrain, ad nauseam, that private respondent Singson was not dismissed but voluntarily abandoned his employment, fails to persuade.

Considering the hard times in which we are in, it is incongruous for respondent to simply give up his work after receiving a mere reprimand from his employer. No employee would recklessly abandon his job knowing fully well the acute unemployment problem and the difficulty of looking for a means of livelihood nowadays. With a family to support, we doubt very much that respondent would so easily sacrifice his only source of income and unduly expose his family to hunger and untold hardships. Certainly, no man in his right mind would do such thing.

What is more telling is that on 8 June 1996, or three (3) days after his employment was terminated, respondent immediately instituted the instant case for illegal dismissal with a prayer for reinstatement against his employer. An employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work, for it is already a well-settled doctrine that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus

negating the employer's charge of abandonment. Verily, it would be illogical for respondent Singson to have left his job and thereafter file the complaint against his employer. As we held in *Villar vs. National Labor Relations Commission*.<sup>[8]</sup> —

It is clear from the records that sometime in August 1994, immediately after petitioners supposedly 'refused to work' having lost earlier in the certification election, several complaints for illegal dismissal against HI-TECH were filed by petitioners. These are sufficient proofs that they were never guilty of leaving their jobs. The concept of abandonment of work is inconsistent with the immediate filing of complaints for illegal dismissal. An employee who took steps to protest his layoff could not by any logic be said to have abandoned his work.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. For abandonment to exist, it is essential (a) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, (b) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts — the second element is the more determinative factor. Mere absence of the employee is not sufficient. The burden of proof is on the employer to show a clear and deliberate intent on the part of the employee to discontinue employment without any intention of returning.

Petitioners dismally failed to discharge their burden. Their evidence, consisting entirely of cash vouchers of respondent SINGSON and his co-salesman Raul Hista, for the months of May, June and July 1996,<sup>[9]</sup> is grossly anemic — if not totally irrelevant — to establish that respondent Singson indeed deliberately and unjustifiably abandoned his job. At best, these cash vouchers merely show respondent's lackluster performance during those months, and that he paled in comparison with his co-salesman Raul Hista in terms of sales output. As astutely observed by the Court of Appeals —

Neither can we see any evidentiary relevance of the vouchers of Raul Hista in comparison with that of private respondent. They

do not in any way vouch petitioners' claim of abandonment nor do they refute the fact that private respondent was illegally dismissed because of petitioners' failure to observe the substantive as well as the procedural requirements of the law. If at all, they merely show the unsatisfactory performance of private respondent which does not in any way authorizes the abrupt dismissal of private respondent sans observance of due process.

At any rate, petitioners undoubtedly could have presented better evidence to buttress their claim of abandonment. After all, being the employers, they are in possession of documents relevant to this case. For instance, they could have at least presented in evidence copies of respondent's daily time records, which are on-file in its office, to prove the dates respondent was on AWOL (absence without leave); or any letter wherein they required respondent to report for work and explain his unauthorized absences. But, as it is, petitioners' defense of abandonment cannot be given credence for lack of evidentiary support.

Petitioners maintain that during the initial hearing before Labor Arbiter Bugarin on 30 September 1996 they made an offer to reinstate private respondent to his former position, but he "defiantly" refused the offer despite the fact that in his complaint he was asking for reinstatement. Again, petitioners extended the offer in their position paper filed with the Labor Arbiter but was likewise rejected by respondent. They assert that these circumstances are clear indications of respondent's lack of further interest to work and effectively negate respondent's claim of illegal dismissal.

We hold otherwise. As we see it, respondent's refusal to be reinstated is more of a symptom of strained relations between the parties, rather than an indicium of abandonment of work as obstinately insisted by petitioners. While respondent desires to have his job back, it must have later dawned on him that the filing of the complaint for illegal dismissal and the bitter incidents that followed have sundered the erstwhile harmonious relationship between the parties. Respondent must have surely realized that even if reinstated, he will find it uncomfortable to continue working under the hostile eyes of the employer who had been forced to reinstate him. He had every reason

to fear that if he accepted petitioners' offer, their watchful eyes would thereafter be focused on him, to detect every small shortcoming of his as a ground for vindictive disciplinary action.<sup>[10]</sup> In such instance, reinstatement would no longer be beneficial to him.

Neither does the fact that petitioners made offers to reinstate respondent legally disproves illegal dismissal. We agree with the observation of the Court of Appeals that the offer may very well be "a tacit admission of petitioners that they erred in dismissing him verbally and without observance of both substantive and procedural due process." Curiously, petitioners' offer of reinstatement was made only after more than one (1) month from the date of the filing of the illegal dismissal case. Their belated gesture of goodwill is highly suspect. If petitioners were indeed sincere in inviting respondent back to work in the company, they could have made the offer much sooner. In any case, their intentions in making the offer are immaterial, for the offer to re-employ respondent could not have the effect of validating an otherwise arbitrary dismissal.

In sum, we are convinced that respondent did not quit his job as insisted by petitioners, but was unceremoniously dismissed therefrom without observing the twin requirements of due process, i.e., due notice and hearing. While we recognize the right of the employer to terminate the services of an employee for a just or authorized cause, nevertheless, the dismissal of employees must be made within the parameters of law and pursuant to the tenets of equity and fair play. Truly, the employer's power to discipline its workers may not be exercised in an arbitrary manner as to erode the constitutional guarantee of security of tenure.

Whatever doubts, uncertainties or ambiguities remain in this case should ultimately be resolved in favor of the worker in line with the social justice policy of our labor laws and the Constitution. The consistent rule is that the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause, failing in which makes the termination illegal.

Upon the foregoing considerations, the normal consequences of respondent's illegal dismissal are reinstatement without loss of seniority rights, and payment of back wages computed from the time

his compensation was withheld from him, that is, 5 August 1996, up to the date of his actual reinstatement. These remedies give life to the workers' constitutional right to security of tenure. However, under the circumstances, reinstatement would be impractical and would hardly promote the best interest of the parties. As heretofore discussed, the resentment and enmity between HANTEX and Singson which culminated in and was compounded by the illegal dismissal suit necessarily strained the relationship between them or even provoked antipathy and antagonism. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. This has been our consistent ruling in the award of separation pay to illegally dismissed employees in lieu of reinstatement.<sup>[11]</sup>

**WHEREFORE**, the petition is **DENIED** and the assailed decision dated 23 October 2000 of the Court of Appeals is **AFFIRMED**. Petitioners Hantex Trading Co., Inc., and Mariano Chua are directed jointly and severally to pay respondent Bernardo Singson separation pay in lieu of reinstatement in the amount equivalent to one (1) month pay for every year of service, backwages computed from 5 August 2002, the time his compensation was withheld from him, up to the finality of this decision, plus the accrued 13<sup>th</sup> month pay.

**SO ORDERED.**

**Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.  
Mendoza, J., on official leave.**

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[1] Decision penned by Associate Justice Rodrigo V. Cosico, concurred in by Associate Justices Ramon A. Barcelona and Bienvenido L. Reyes, dated 23 October 2000.

[2] Docketed as NLRC-NCR Case No. 00-08-04823-96, "Singson vs. Hantex Trading Co., Inc. and/or Mariano Chua." The case was originally raffled to Labor Arbiter Renato Bugarin but was later re-raffled to Labor Arbiter Joel S. Lustria because of the untimely death of Bugarin.

[3] Decision penned by Labor Arbiter Joel S. Lustria. The amount of backwages was computed from 8 December 1994 to 5 May 1998.

[4] Decision, penned by Commissioner Vicente S.E. Veloso, concurred in by Commissioner Alberto R. Quimpo. Commissioner Rogelio I. Rayala was on leave.

- [5] Docketed as CA-G.R. SP No. 59134, “Hantex Trading Co., Inc. and/or Mariano Chua vs. National Labor Relations Commission and Bernardo Singson.”
- [6] Leonardo vs. National Labor Relations Commission, G.R. No. 125303, 16 June 2000, 333 SCRA 589.
- [7] Permex, Inc. vs. National Labor Relations Commission, G.R. No. 125031, 24 January 2000, 323 SCRA 121.
- [8] G.R. No. 130935, 11 May 2000, 331 SCRA 686, 693.
- [9] See Original Records, pp. 20-31. Annexes “A” - “A-5,” inclusive, and Annexes “B” - “B-5,” inclusive.
- [10] See Ranara vs. National Labor Relations Commission, et al., G.R. No. 100969, 14 August 1992, 212 SCRA 631.
- [11] Gaco vs. National Labor Relations Commission, et al., G.R. No. 104690, 23 February 1994, 230 SCRA 266; Iriga Telephone Co., Inc. vs. National Labor Relations Commission, G.R. No. 119420, 27 February 1998, 286 SCRA 600, 609.