

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**HODIENG CONCRETE PRODUCTS
and/or HENRY GO and ERIC B. GO,
*Petitioners,***

-versus-

**G.R. No. 149180
February 14, 2005**

**DANTE EMILIA,
*Respondent.***

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DECISION

SANDOVAL-GUTIERREZ, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated October 31, 2000 and Resolution^[2] dated July 17, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 53102, entitled “Hodieng Concrete Products and/or Henry Go and Eric Go vs. National Labor Relations Commission and Dante Emilia.”

The instant controversy stemmed from a complaint for illegal dismissal and non-payment of benefits filed with the Labor Arbiter by Dante Emilia, respondent, against Hodieng Concrete Products, Henry Go and Eric Go, petitioners, docketed as NLRC NCR Case No. 00-01-00273-97.

Respondent, in his complaint, alleged that sometime in January 1985, he was employed as a truck helper by petitioner with a daily salary of P40.00. Eventually, he became a regular truck driver with a salary of P76.00 per trip. Feeling that he was underpaid, he asked petitioners' secretary if he is entitled to 13th month pay and other benefits. Upon receiving a negative response, he reported the matter to the Department of Labor and Employment. This prompted petitioners to terminate his services effective January 2, 1997.

Petitioners denied respondent's allegations in his complaint. They claimed that sometime in 1987, respondent was employed as a truck helper with a salary of P40.00 per trip. Later, in 1991, he recklessly drove and damaged petitioner's truck. As a consequence, he failed to report for work. But, in 1995, he was re-hired as a truck driver with a salary of P76.00 per trip. In 1997, he abandoned his work. Petitioners then came to know that he was employed by Vortex, another company.

On March 30, 1998, the Labor Arbiter rendered a Decision holding that respondent was illegally dismissed from employment and ordering petitioners, jointly and severally, to pay his backwages and other benefits, separation pay, and attorney's fee equivalent to 10% of the monetary awards, thus:

“WHEREFORE, responsive to the foregoing, judgment is hereby rendered finding respondents guilty of illegal dismissal and are therefore, jointly and severally ordered:

1. To pay complainant the amount of P87,191.78 representing his backwages up to the promulgation of this decision;
2. To pay complainant the amount hereunder stated, representing complainants unpaid service incentive leave pay and holiday pay for:
 - a. P2,275.00 – S.I.L.P.
 - b. P4,856.00 – Holiday Pay

3. To pay the amount of P67,353.00 representing complainant's separation pay;
4. To pay attorney's fees equivalent to 10% of the judgment award of P16,167.60.
5. All other claims are hereby dismissed for lack of merit.

SO ORDERED.”

Upon appeal, the National Labor Relations Commission (NLRC) promulgated its Decision dated January 21, 1999 affirming the Arbiter's assailed Decision.

Petitioners then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated March 4, 1999. Hence, they filed with the Court of Appeals a petition for certiorari and prohibition with prayer for issuance of a temporary restraining order and a writ of preliminary injunction.

On October 31, 2000, the Appellate Court rendered a Decision affirming with modification the NLRC's Decision in the sense that the award of attorney's fees is deleted.

The Court of Appeals held:

“On the alleged abandonment of employment by private respondent, the contention is not meritorious. The burden of proof is on the employer to show unequivocal intent on the part of the employee to discontinue employment. Other than the self-serving declarations in the affidavits of their two witnesses (pp. 59-61, *ibid*), petitioners failed to adduce other evidence on any overt act of private respondent showing an actual intent to abandon his employment. Moreover, private respondent filed an illegal dismissal case against petitioners, an act which negates any intention on the part of the employee to forsake his work.”

Considering our finding that private respondent is a regular employee of petitioners, and considering that there was no legal cause for

private respondent's termination from employment, We so hold that petitioners violated the constitutional right of private respondent to security of tenure and due process. As a consequence of the illegal dismissal of the private respondent, he is entitled under Articles 279 of the Labor Code, to his full backwages, without deduction of earnings derived elsewhere from the time his compensation was withheld from him up to the time of his actual reinstatement. By virtue however of private respondent's refusal to be reinstated, the harmonious relationship between him and petitioners had been severed such that reinstatement would no longer be beneficial to either party in which case, a separation pay equivalent to one (1) month pay for every year of service be paid. For failure of petitioners to submit the corresponding employment records such as the payroll to controvert the private respondent's claim for service incentive leave pay and holiday pay, We find the award for the said claim proper:

WHEREFORE, finding no grave abuse of discretion on the part of public respondent NLRC, the instant petition is DISMISSED for lack of merit. The questioned Decision of respondent NLRC affirming that of the Labor Arbiter finding petitioners to have illegally dismissed private respondent Dante Emilia and ordering the former to pay the latter backwages in the amount of P87,191.78, separation pay of P67,353.00, service incentive leave pay of P2,275.00, holiday pay of P4,856.00, or a total of P161,675.78, and its Resolution dated March 4, 1999 denying reconsideration, are hereby AFFIRMED, with the sole modification that the award of attorney's fees be deleted since private respondent is represented by the Public Attorney's Office.

SO ORDERED.”

On December 4, 2000, petitioners filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated July 17, 2001.

Hence, this petition for review on certiorari.

In this petition, the issue posed is whether the Court of Appeals erred in holding that respondent was illegally dismissed and that petitioners failed to prove by substantial evidence that he abandoned his work.

The rule is that before abandonment can be considered a valid cause for dismissal, 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.

In *Samarca vs. Arc-Men Industries, Inc.*,^[3] we held:

“Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee’s ultimate act of putting an end to his employment.

Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.”

In this case, no such intent to abandon his work can be discerned from respondent’s actuations. Neither are there overt acts which could be considered manifestation of his desire to abandon his work. On the contrary, respondent’s actions demonstrate a desire on his part to continue his employment with petitioners rather than to abandon it.

As observed by the Appellate Court, if respondent had truly forsaken his job, he would not have bothered to file a complaint for illegal dismissal against petitioners. Indeed, the filing of the complaint for illegal dismissal negates the allegation of abandonment.

Thus, we find that respondent did not abandon his job but was illegally dismissed by petitioners.

Since respondent was illegally dismissed from work, he is entitled to reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[4]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Antagonism caused a severe strain in the parties' employer-employee relationship. Thus, a more equitable disposition would be an award of separation pay equivalent to at least one month pay, or one month pay for every year of service, whichever is higher, (with a fraction of at least six (6) months being considered as one (1) whole year),^[5] in addition to his full backwages, allowances and other benefits.^[6]

Records show that respondent was employed from 1985 to January 2, 1997, or for twelve (12) years, with a daily salary of P180.00. Hence, he is entitled to a separation pay of P56,520.00.^[7]

WHEREFORE, the assailed Decision dated October 31, 2000 and Resolution dated July 17, 2001 of the Court of Appeals in CA-G.R. SP No. 53102 are hereby **AFFIRMED** with **MODIFICATION** in the sense that respondent is awarded separation pay equivalent to P56,520.00, plus his full backwages, and other privileges and benefits, or their monetary equivalent, during the period of his dismissal up to his supposed actual reinstatement.

Costs against petitioners.

SO ORDERED.

PANGANIBAN, J., (Chairman), CORONA, CARPIO MORALES, and GARCIA, JJ., concur.

[1] Penned by Justice Fermin A. Martin, Jr., and concurred in by Justices Oswaldo D. Agcaoili and Eriberto U. Rosario, Jr., (all retired), Annex "L" of the Petition, Rollo at 72-79.

- [2] Annex “N”, id. at 85-86.
- [3] G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168-169, citing MSMG-UWP vs. Ramos, 326 SCRA 428 (2000) and Philippine Industrial Security Agency Corp. vs. Virgilio Dapitan, 320 SCRA 124 (1999).
- [4] Philtread Tire & Rubber Corporation, G.R. No. 142759, November 10, 2004 at 8-9, see Article 27 of the Labor Code, as amended by Section 34, R.A. 6715 and citing Bolinao Security and Investigation Service, Inc. vs. Toston, G.R. No. 139135, January 29, 2004 at 11, Cebu Marine Beach Resort vs. NLRC, 414 SCRA 173 (2003) and Damasco vs. NLRC, 346 SCRA 714 (2000).
- [5] Ibid., citing Bolinao Security and Investigation Service, Inc. vs. Toston, *ibid.*, Jardine Davies, Inc. vs. NLRC, 311 SCRA 289 (1999) and Lopez vs. NLRC, 297 SCRA 508 (1998).
- [6] Ibid., citing Cebu Marine Beach Resort vs. NLRC, *supra.*, Samarca vs. Arc-Men Industries, Inc., *supra* and Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC, et al., 300 SCRA 37 (1998).
- [7] 1985 – January 2, 1997 = 12 yrs.
Rate under Wage Order - P180.00
 $P180.00 \times 314 \text{ days} = P56,520.00 / 12 = P4,710.00 \text{ per month}$
 $P4,710.00 \times 12 \text{ yrs.} = P56,520.00$