SUPREME COURT
THIRD DIVISION

HYATT TAXI SERVICES INC.,
***Petitioner*,**

-versus-

G.R. No. 143204
June 26, 2001

RUSTOM M. CATINOY,
***Respondent*.**
x----------x

D E C I S I O N

GONZAGA-REYES, *J.*:

Before us is a Petition for Review under Rule 45 of the Rules of Court of the Decision[1] of the Court of Appeals dated December 27, 1999 in the case entitled "RUSTOM M. CATINOY VS. HYATT TAXI SERVICES INC., HYATT TAXI EMPLOYEE ASSOCIATION AND/OR MR. JAIME DUBLIN" that ruled against herein petitioner Hyatt Taxi Services, Inc. (hereafter petitioner) and of the Resolution dated May 11, 2000 denying the Motion for Reconsideration of petitioner.

The assailed Decision held that the preventive suspension of respondent Rustom M. Catinoy (hereafter respondent) by petitioner was without cause and without due process of law, and that petitioner constructively dismissed respondent.

The facts/antecedents of this case as found by the Labor Arbiter, NLRC and Court of Appeals are as follows:

> "Complainant was hired on October 10, 1992 as a taxi driver by the Respondent Hyatt Taxi Services, Inc.
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> Complainant is also a member and officer (Secretary) of Respondent, Hyatt Taxi Employees Association, a legitimate labor organization registered with the Department of Labor and Employment and is the exclusive bargaining representative of all taxi drivers of Respondent Hyatt Taxi Service, Inc. Respondent Jaime Dublin is the President and Chairman of the Board of the Respondent association.
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> As a taxi driver, complainant works every other day for 15 days in a month earning P800.00 more or less a day after remitting to the respondent company his boundary (P650.00/day) during carbarn time 1:00 a.m. Being the Secretary of the Union/association, complainant keeps all the records and documents of the association in the drawer of his desk at the Union Office which is located inside the premises of Respondent company.
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> On August 21, 1995 at about past 10:00 a.m., complainant went inside the union office and to his surprise found his drawer to have been forcibly opened. Since he saw the acting President of the Union, Mr. Tomas Saturnino inside the office together with two rice suppliers namely Melencio Reyes and Ms. Rosalinda Balahan, complainant asked Saturnino who opened his drawer. Saturnino replied that he was the one who forcibly opened the drawer to retrieve some documents particularly the list of union members. An argument ensued and complainant even reminded Saturnino that he should respect the rights and functions of other officers of the association. Saturnino then approached the complainant and shoved him. Complainant retaliated with fist blow but it failed to hit Saturnino and the latter hit him twice in (sic) the face causing one of his tooth (sic) to fall. The aggression of Saturnino was only interrupted when the Operations Manager of the respondent company (sic) Mr. Caraig (sic) intervened and told him (Saturnino) to stop.

> Complainant was brought to the hospital by Ms. Balahan and Mr. Reyes due to the bleeding that occurred due to the loss of his tooth. After securing medical treatment, complainant on the same day filed a criminal complaint for physical injuries with the fiscal's Office and Saturnino was arrested by the police for investigation (Annex "A" of complainant's position paper).
>
> On August 24, 1995 about 25 union members requested the chairman of the Board of the Association to suspend the complainant and Saturnino for engaging in a fist fight (sic) since both are officers of the union which should be models of discipline for the rank and file (Annex "A" of Respondent Association's position paper) employees.

On August 25, Jaime Dublin, Chairman of the Board of the Association, acting on the letter of some members of the association, issued a memorandum (Annex "E" complainant position paper) to the Operation Manager of the Respondent company, Mr. H. Caraig (sic) stating the following:

> 'This is in connection with the fist fighting (sic) incident between Mr. Tomas Saturnino and Mr. Rustom Catinoy, President and Secretary respectively, Hyatt Taxi Driver's Association.
>
> As per initial investigation conducted by the committee itself, both officer (sic) have violated the Company's Rules and Regulations and likewise, the Union Policy constitution and By-Laws, Article 15 Section 1, e.i., Impeachment.
>
> The committee further decided the indefinite suspension of the two officers pending completion of the Committee's investigation. The decision was approved by the Executive Board.
>
> So, therefore, the committee is requesting your office to implement our recommendation/decision at the soonest possible time.'

> On August 26, 1995, the Asst. Vice-President of the Respondent company (sic) Melchor Acosta, Jr. (sic) issued a memorandum preventively suspending for 30 days the services of the complainant and Saturnino pending investigation in response to the recommendation of the Chairman of the Board of the Association.
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> x x x
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> Complainant aggrieved by the preventive suspension since he was not the aggressor, filed a complaint for illegal suspension, unpaid wages, and damages against both the association-union and management on August 28, 1995 before the National Labor Relations Commission.
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> After the lapse of his 30 days preventive suspension, complainant reported for work but he was not allowed to resume his duties as a taxi driver allegedly, since he is pursuing the criminal complainant for physical injuries against Saturnino, the associations' President and the complaint for the illegal suspension with the National Labor Relations Commission.

On October 12, 1995, since there was no response from Respondent company, complainant decided to amend his complaint to include constructive dismissal as an additional cause of action since he was not allowed to resume his employment after the lapse of his preventive suspension."[2]

On September 19, 1997, the Labor Arbiter rendered a Decision finding petitioner guilty of illegal preventive suspension, requiring it to pay the wage equivalent of the suspension, and further finding petitioner guilty of illegal constructive dismissal, ordering petitioner to reinstate respondent and to pay him backwages and attorney's fees.

Petitioner and the Union Association then filed a Joint Memorandum of Appeal before the National Labor Relations Commission (NLRC).

On June 26, 1998, the NLRC issued a Decision affirming the decision of the Arbitration Branch. The dispositive portion of the Decision reads:

> "WHEREFORE, premises considered judgment is hereby rendered:
>
> 1. Finding Respondent Hyatt Taxi Services, Inc., guilty of illegal constructive dismissal;
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> 2. Finding Respondents Hyatt Taxi Services, Inc., and Hyatt Taxi Employees Association and/or Jaime Dublin jointly and severally liable for illegal preventive suspension;
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> 3. Ordering Respondents Hyatt Taxi Services, Inc., and Hyatt Taxi Employees Association and/or Jaime Dublin jointly and severally liable to pay a month's wage due to complainants illegal preventive suspension in the amount of P12,000.00;
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> 4. Ordering Respondents Hyatt Taxi Services, Inc., to pay complainant's full backwages from the time of his dismissal till actual reinstatement in the amount of P276,000.00 (computed till promulgation only);
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> 5. Ordering Respondents Hyatt Taxi Services, Inc. to reinstate complainant to his former position as taxi driver without loss of seniority rights and privileges immediately upon acknowledgment of this resolution;
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> 6. Ordering Respondent Hyatt Taxi Services, Inc. to pay 10% attorney's fees based on the total judgment award on the illegal dismissal aspect;
>
> 7. Ordering the Dismissal of the complaint for damages for lack of merit.
>
> SO ORDERED."[3]

Aggrieved, petitioner filed a Motion for Reconsideration urging the NLRC to review the finding of facts of the Arbitration Branch.

On October 30, 1998, the NLRC acting on said Motion for Reconsideration, issued a Decision granting in part the motion. The Decision of the NLRC modified its earlier decision when it deleted the award of backwages on the ground that there was "no concrete showing that complainant was constructively dismissed". The dispositive portion of said Decision reads:

> "WHEREFORE, the Decision rendered on June 26, 1998 is hereby affirmed with modifications by deleting the award of backwages.
>
> Accordingly, respondent is ordered to reinstate complainant without loss of seniority rights. All other aspects are hereby AFFIRMED.
>
> SO ORDERED."[4]

Respondent filed a Partial Motion for Reconsideration of said Decision.

On January 14, 1999, the NLRC issued a Resolution denying respondent's Partial Motion for Reconsideration.

On March 30, 1999, respondent filed a Petition for Certiorari with the Court of Appeals that sought the annulment of the NLRC Decision, alleging grave abuse of discretion in the deletion of the award of backwages.

On December 27, 1999, the Court of Appeals issued the now assailed Decision that set aside and annulled the October 30, 1998 Decision of the NLRC and reinstated the earlier decision of the NLRC dated June 25, 1998. The dispositive portion of the Decision reads:

> "WHEREFORE, judgment is hereby rendered SETTING ASIDE and ANNULLING the Decision of the respondent National

> Labor Relations Commission dated October 30, 1998 and REINSTATING its Decision dated June 25, 1998."[5]

On January 25, 2000, petitioner filed a Motion for Reconsideration of the Decision of the Court of Appeals.

On May 11, 2000, the Court of Appeals issued the Resolution denying petitioner's motion.

Hence, this petition for review that raises these issues:

> I
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> THE COURT OF APPEALS ERRED GREVIOUSLY (sic) WHEN IT ANNULED (sic) AND SET ASIDE THE DECISION OF THE NLRC DISREGARDING THE WELL-ENTRENCHED MAXIM THAT THE FINDINGS OF FACTS OF THE NLRC ARE ACCORDED NOT ONLY WITH RESPECT BUT WITH FINALITY.
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> II
>
> THE COURT OF APPEALS GREVIOUSLY (sic) ERRED IN NOT CONSIDERING THAT THERE WAS NO ILLEGAL DISMISSAL DISREGARDING THE JURISPRUDENCE APPLICABLE ON SUCH ISSUE.
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> III
>
> THE COURT OF APPEALS GREVIOUSLY (sic) ERRED WHEN IT INSISTED THAT CATINOY WAS CONSTRUCTIVELY DISMISSED WHEN THE NLRC HAD ALREADY RULED THAT THERE WAS NO CONCRETE SHOWING OF ILLEGAL DISMISSAL."[6]

The main contention of petitioner is that the Court of Appeals should not have disregarded the factual findings of the NLRC to the effect that there was no concrete showing that petitioner had constructively dismissed respondent. Petitioner maintains that while the second decision of the NLRC modified its first decision, it cannot be

considered that the NLRC had contradicted itself because a second review is the essence of a motion for reconsideration. A court or quasi-judicial agency like the NLRC, according to petitioner, should be given leeway to correct its findings or decisions via motions for reconsideration. Petitioner then argues that since a second review is the final interpretation of the issues in the case, such decision should be respected and given finality. Petitioner also insists that there was no constructive dismissal in this case because as employer, it did not render impossible, unreasonable or unlikely the continuation of respondent's employment. Petitioner points out that even respondent had not alleged any overt act or conduct on the part of petitioner manifesting refusal to admit him back to its employ.

The petition is without merit.

We uphold the ruling of the Court of Appeals that there is no justification for the NLRC's modification of its earlier decision when it deleted the award of backwages that it had previously awarded to respondent. In abandoning its original stance that there was constructive dismissal that would entitle respondent to backwages, the NLRC reasoned that:

> "Upon second review of the case records and after due consideration of the instant motion, we still maintain the ruling rendered in the case but we are inclined to make certain modifications relative to the issue of constructive dismissal. We have to make clarifications on this aspect by following the jurisprudence on constructive dismissal whereby the Supreme Court held that constructive dismissal consists in the act of quitting because continued employment is rendered impossible, unreasonable or unlikely as in the case of an offer involving demotion in rank and a diminution in pay. Applying the same in the case at bar, complainant did not resign or quit. On the contrary, he pursued his employment when he returned to the respondent's officer after his 30 days suspension. Hence, we cannot sustain the respondent's claim that complainant abandoned his job. To constitute abandonment of work, it must be accompanied by overt acts unerringly pointing to the fact that the employee does not want to work anymore.

> We note that respondent expressed willingness to take back complainant manifesting that the latter was one of those desirable drivers and it has no reason to terminate him. Seemingly there was no meeting of the minds between management and complainant due to the conflict that arose regarding the latter's suspension. In view thereof, reinstatement is proper taking into consideration the positions of the management and complainant but we are deleting the award for payment of backwages as there was no concrete showing that complainant was constructively dismissed."[7]

The foregoing rationale of the NLRC is without basis. First, the evidence on record runs counter to the ruling of the NLRC that there was no concrete showing that respondent was constructively dismissed. The factual findings of the Labor Arbiter, which the NLRC initially adopted, show that respondent was not taken back by petitioner after the 30-day suspension period that petitioner imposed on respondent had lapsed. The Labor Arbiter appreciated the following events as badges of constructive dismissal:

> "Records show that complainant reported for work on September 25, 1995, after the lapse of his suspension but was not able to talk with the operation manager and this was confirmed by the Respondents in their position paper (sic). On the following day complainant reported again for work but was allegedly told by Mr. Caraig (Operation Manager) that if he will not drop the criminal complainant for physical injuries he filed against Tomas Saturnino and his complaint for illegal suspension with the National Labor Relations Commission he will not be able to resume his employment. In fact, complainant on September 28, 1995 wrote a letter addressed to Respondent's Vice-President, pleading that he be allowed to resume his work (see Annex "G" Complainant's position paper). There being no response or reaction complainant amended his complaint to include constructive dismissal."[8]

Clearly, constructive dismissal had already set in when the suspension went beyond the maximum period allowed by law. Section 4, Rule XIV, Book V of the Omnibus Rules provides that preventive suspension cannot be more than the maximum period of 30 days.

Hence, we have ruled that after the 30-day period of suspension, the employee must be reinstated to his former position because suspension beyond this maximum period amounts to constructive dismissal.[9]

Petitioner denies that it constructively dismissed respondent and alleges that it was respondent who went AWOL and who refused to resume his work because he could not account for union funds. Both the Labor Arbiter and the NLRC rejected petitioner's claims. We affirm the rejection. It bears stressing that in illegal dismissal cases, it is the employer who has the burden of proof.[10] Since petitioner claims that respondent abandoned his work, petitioner has to establish the concurrence of the following: (1) the employee's intention to abandon employment and (2) overt acts from which such intention may be inferred-as when the employee shows no desire to resume work.[11] Petitioner failed to make out its case of abandonment. Even the NLRC in its modified decision confirmed that there were no overt acts unerringly pointing to the fact that respondent had no intention of returning to work anymore. Also, the fact that respondent filed a complaint against his employer within a reasonable period of time belies abandonment.[12]

Petitioner implores this Court to respect the modified decision of the NLRC. While it is true that the essence of a motion for reconsideration is a second review of the facts, this theory does not apply in the case at bar. As correctly pointed out by the Court of Appeals, the motion for reconsideration of petitioner before the NLRC contained no factual basis that could support the NLRC's change of heart. The evidence as it stands shows that after the lapse of the 30-day suspension period, respondent reported for work but he was not allowed to resume his duties as a taxi driver. To reiterate, from the time that the 30-day suspension period had expired, respondent can be already deemed as constructively dismissed.

Second, the strict adherence by the NLRC to the definition of constructive dismissal is erroneous. Apparently, the NLRC ruled out constructive dismissal in this case mainly because according to it "constructive dismissal consists in the act of quitting because continued employment is rendered impossible, unreasonable or unlikely as in the case of an offer involving demotion in rank and a

diminution in pay".[13] Based on this definition, the NLRC concluded that since respondent neither resigned nor abandoned his job and the fact that respondent pursued his reinstatement negate constructive dismissal. What makes this conclusion tenuous is the fact that constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges.[14] There may be constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[15]

Here, what made it impossible or unacceptable for respondent to resume work was petitioner's insistence that respondent first desist from filing his criminal complaint against the acting president of the union and to withdraw his complaint for illegal suspension against petitioner before he could be allowed to return to work. Respondent refused and amended his complaint to include constructive dismissal. Respondent's refusal to yield to petitioner's conditioned offer to take him back is understandable for respondent has every right not to bargain away his right to prosecute his complaints in exchange for the employment to which he was in the first place rightfully entitled.

In acting on the motion for reconsideration of petitioner, the NLRC gave credence to petitioner's contention that petitioner's failure to reinstate respondent to his job was merely a result of a miscommunication between the two parties since petitioner was willing to take back respondent as its employee.

We disagree. Instead, we are in full accord with the Court of Appeals that the predicament respondent faced was not just a product of miscommunication, an argument that the NLRC had in fact branded in its earlier decision as a mere afterthought. Respondent had written the assistant vice president of petitioner to complain about his non-reinstatement after the lapse of his preventive suspension. Petitioner failed to reply, and it is actually from petitioner's inaction where the supposed miscommunication sprung.

Moreover, from the time that petitioner failed to recall respondent to work after the expiration of the suspension period, taken together with petitioner's precondition that respondent withdraw the

complaints against the acting president of the union and against petitioner itself, respondent's security of tenure was already undermined by petitioner. Petitioner's actions undoubtedly constitute constructive dismissal.

WHEREFORE, the Decision of the Court of Appeals dated December 27, 1999 is hereby **AFFIRMED**.

SO ORDERED.

Melo, Vitug, Panganiban and Sandoval-Gutierrez, *JJ.*, concur.

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[1] Penned by Associate Justice Hector L. Hofileña and concurred in by Associate Justices Remedios S. Fernando and Elvi John S. Asuncion, Special Former Fifteenth Division.
[2] Records, pp. 27-33; Decision, pp. 1-7.
[3] Records, pp. 45-46; Decision, pp. 19-20.
[4] Records, p. 66; Decision, p. 6.
[5] Rollo, p. 33; Decision, p. 10.
[6] Rollo, p. 12.
[7] Records, pp. 64-65; Decision, pp. 4-5.
[8] Records, p. 42; Decision, p. 16.
[9] Premiere Development Bank vs. NLRC, 293 SCRA 49 (1998), p. 59.
[10] Mendoza vs. National Labor Relations Commission, 310 SCRA 846 (1999), pp. 856-857.
[11] Ibid.
[12] Ibid., p. 857.
[13] Records, p. 64; Decision, p. 4.
[14] Masagana Concrete Products vs. NLRC, 313 SCRA 576 (1999), p. 593.; See also Blue Dairy Corporation vs. NLRC, 314 SCRA 401 (1999).
[15] Ibid.
