

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**INDOPHIL ACRYLIC MFG.
CORPORATION,**
Petitioner,

-versus-

**G.R. No. 96488
September 27, 1993**

**NATIONAL LABOR RELATIONS
COMMISSION AND ONOFRE T. DE
JESUS,**
Respondents.

X-----X

DECISION

NOCON, J.:

Refused entry into the premises by the company guard, private respondent Onofre T. de Jesus charges petitioner Indophil Acrylic Mfg. Corporation and its president, Mr. Hem C. Sacheti, with illegal dismissal. Undaunted by the charge, petitioner lays the blame on private respondent for the cessation of his employment. Discrediting the evidence submitted by private respondent in support of his charge, the Labor Arbiter upheld the stand of petitioner. Yet, petitioner's triumph was short-lived because the Labor Arbiter's finding of legal dismissal was overturned by public respondent National Labor Relations Commission.

By way of this petition for certiorari, petitioner seeks reversal of the ruling of the National Labor Relations Commission.

In private respondent's position paper, he alleged that he was employed as Cadet Engineer by petitioner, a supervisory position, on February 14, 1989. His monthly salary was P2,050.00. On September 26, 1989, he was prevented by the company guard from entering the premises, on the ground that he has resigned. Thus, on October 4, 1989, he filed a complaint for illegal dismissal against petitioner and also for non-payment of salary from September 10, 1989 up to September 25, 1989, underpayment of salary from September 1, 1989 up to September 15, 1989, and award of moral and exemplary damages.

Petitioner, however, contradicts the allegations of private respondent with respect to the circumstances which led to the severance of his employment. According to petitioner, private respondent submitted his letter of resignation on September 14, 1989, which it accepted. On September 15, 1989, private respondent, by means of false pretenses, retrieved his letter of resignation from the office secretary and from then on, no longer reported for work. In view of said failure by private respondent to report for work, the personnel manager of petitioner sent him a letter dated October 2, 1989, requiring him to report and explain his unauthorized absences within three (3) days upon receipt thereof. Instead of submitting a reply thereto, private respondent filed the present complaint.

On February 28, 1990, the Labor Arbiter rendered judgment finding the dismissal of private respondent lawful but granted his claims for unpaid and underpaid wages. The dispositive portion of the decision reads:

“WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered as follows:

1. Declaring the dismissal of Complainant ONOFRE DE JESUS by respondents INDO-PHILS. ACRYLIC MFG. CORPORATION & MR. HEM C. SACHETI as legally justified;

2. Ordering the respondents to pay complainant the following money claims, as computed above, to wit:

a) Unpaid wages	P 473.10
b) Underpayment of Salaries	288.00
c) 13 th month pay	<u>1,487.50</u>
Total	P2,248.60
	=====

3. In addition, the respondents are further (sic) ordered to pay complainant the amount of ONE THOUSAND (P1,000.00) PESOS, for and as financial assistance; and

4. Finally, all other claims are hereby Dismissed for lack of merit and evidentiary basis to grant the same.

SO ORDERED.”^[1]

The Labor Arbiter sustained the contentions of petitioner because:

“After a judicious calibration of the pleadings, documents and evidences of the contending parties herein, we are convinced that Complainant although considered a regular employee, had resigned from his position. And this fact remained unrebutted by complainant, particularly the sworn statement of respondents’ witness ROSARIO VILLANUEVA, who claimed that on 16 (sic) September 1989, complainant borrowed/returned his approved letter of resignation, but failed to return the same to her. It is very evident from the pleadings of complainant that this matter of borrowing/retrieval of his resignation letter was skirted off nor was answered by the former. To our mind, the non-controversion of said fact, is tantamount to acquiescence, if not, an implied admission that the complainant had actually resigned.

On second count, the complainant is charged by respondents with abandonment of his job. Such a fact again, could not escape our notice, for reason that there is nothing in evidence,

that the former ever replied to the letter dated 02 October 1989 to report for work, otherwise, he shall be deemed to have resigned for abandonment of job.

Again, like the earlier issue raised on complainant's alleged retrieval of his resignation letter, we too, find from a scrutiny of the pleadings and other evidences of complainant, that on the matter of abandonment, the same issue was skirted-off and/or acquiesced by the latter."^[2]

On appeal before public respondent National Labor Relations Commission, the decision of the Labor Arbiter was modified in its resolution dated July 31, 1990. The dispositive portion of the resolution reads:

“WHEREFORE, the decision appealed from is hereby modified, directing respondents to reinstate the complainant to his former position without loss of seniority rights and with full backwages which, however, shall not exceed the three-year limit policy imposed by the Supreme Court. With the order of reinstatement, the order of financial assistance is likewise vacated. The decision as to the money claims is affirmed.

SO ORDERED.”^[3]

It advanced the opposite view that:

“It was the respondents who have failed to establish their case against the complainant. Records show that they have not overcome the averment of the complainant that he reported for work on 26 September 1989 but was barred from entering the premises by a security guard. Not an iota of evidence was proffered by the respondents to refute such claim.”^[4]

The motion for reconsideration was denied in its resolution dated October 30, 1990.^[5]

The issue to be resolved herein is whether or not public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction: (1) in reversing the Labor Arbiter's decision and (2) in

ordering the reinstatement of private respondent with backwages.

Petitioner and private respondent reiterate their respective arguments before the Labor Arbiter and the public respondent.

The Office of the Solicitor General supports the questioned decision and resolution of public respondent. It maintains that petitioner had not yet accepted the resignation of private respondent, citing the October 2, 1989 letter requiring private respondent to report for work and to explain his unauthorized absences. Another is the failure of petitioner to present in evidence anything that will prove its allegation that the resignation of private respondent had already been accepted (e.g., a reply acceptance letter). Thus, private respondent could validly withdraw the same from petitioner even without the latter's consent. The pertinent entry in the log book of the security guard is proof that private respondent was actually barred from entering the premises on September 26, 1989.

Neither the Labor Arbiter's decision declaring the dismissal of private respondent legal, on the basis of his resignation and abandonment, nor public respondent's resolution declaring the dismissal illegal, on the allegation that private respondent was barred from entering the premises by the company guard, is correct.

We have turned a heedful eye on all the pleadings and evidence submitted by the parties and have concluded that there was NO DISMISSAL. Setting aside the other arguments of the parties which we find irrelevant, attention is called to the letter dated October 2, 1989 of petitioner's Personnel Manager, Mr. Nicasio B. Gaviola, to private respondent which the latter does not dispute, the full text of which reads:

“Records show that you have not been reporting to (sic) work since September 16, 1989 up to this writing. For what reason, we are not aware.

With this letter, you are required to report to this office and explain your unauthorized absences within three (3) days upon receipt hereof.

Failure to report as required shall mean that we will consider you having resigned for abandonment of job.” (sic)^[6]

Clearly, therefore, petitioner had disregarded private respondent’s previous resignation and still considers him its employee. It follows, that at the time private respondent filed his complaint for illegal dismissal before the Labor Arbiter, on October 4, 1989, petitioner has not dismissed him.

What about the allegation of private respondent that on September 26, 1989, he was prevented by the company guard from entering the premises on the ground that he has resigned? He cites, in support thereof, the entry in the log book of the company guard that:

“Mr. Gaviola give (sic) instruction hereat my post that effective today (September 26, 1989) Mr. Onofre de Jesus are (sic) not allowed to get inside the mill – 3 because this person is (sic) already resigned.”^[7]

The present case, which has lasted for almost four (4) years, could have been avoided had private respondent made previous inquiry regarding the veracity of Mr. Gaviola’s instruction, and not simply relied on the bare statement of the company guard. Private respondent should have been more vigilant of his rights as an employee because at stake was not only his position but also his means of livelihood. Surely, he realizes the importance of his employment, as evidenced by the allegation in his position paper that he “was constrained to secure employment because he had no other property of his own and that he is the only bread winner of the family.”^[8] At any rate, the aforementioned entry is belied by the October 2, 1989 letter.

There being no dismissal of private respondent by petitioner to speak of, the status quo between them should be maintained as a matter of course. But there is no denying that their relationship must have been ruptured. Taking into account the misconception of private respondent that he was dismissed and the October 2, 1989 letter of petitioner, the parties could have easily settled their controversy at the inception of the proceedings before the Labor Arbiter. This they failed to do.^[9] Thus, in lieu of reinstatement, petitioner is ordered to

grant separation pay to private respondent.^[10] The award of backwages is deleted because private respondent is not entitled thereto. Backwages in general are granted on grounds of equity for earnings which a worker or employee has lost due to his illegal dismissal.^[11]

WHEREFORE, the Decision and Resolution of public respondent National Labor Relations Commission dated July 31, 1990 and October 30, 1990, respectively, are hereby **MODIFIED**. Petitioner is directed to grant separation pay of one (1) month salary to private respondent in lieu of reinstatement. The award of backwages and financial assistance is deleted but the award of money claims is affirmed.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado and Puno, JJ., concur.

[1] Records, p. 4.

[2] Records, pp. 71-72.

[3] Rollo, pp. 17-18.

[4] Rollo, p. 16.

[5] Rollo, pp. 20-21.

[6] Records, p. 68.

[7] Records, p. 46.

[8] Records, p. 33.

[9] Records, p. 63.

[10] *Globe-Mackay Cable and Radio Corporation vs. NLRC*, G.R. No. 82511, 206 SCRA 701 (1992).

[11] *Torillo vs. Leogardo, et al.*, G.R. No. 77205, 197 SCRA 471 (1991).