SUPREME COURT
SECOND DIVISION

KINGSIZE MANUFACTURING CORP., and CHARLIE CO,
***Petitioners*,**

-versus-

G.R. Nos. 110452-54
November 24, 1994

NATIONAL LABOR RELATIONS COMMISSION, ANACORITA VALDE, CELSA DIZON, TERESITA ORIBIANA, ET. AL.,
***Respondents*.**
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D E C I S I O N

MENDOZA, *J.*:

This is a Petition for *Certiorari* to Annul the Decision and two Resolutions of the National Labor Relations Commission (First Division) in NLRC NCR Case Nos. 00-09-03984-88, 06-11-04716-88, and 00-09-04030-88, reversing the Labor Arbiter's Decision and Ordering petitioners to reinstate private respondents and pay them backwages equivalent to their salaries for three years.

The facts are as follows:

Petitioner is a garment factory. Private respondents were its employees. Most of private respondents were hired as early as 1978, the rest in 1987, as sewers on piece work basis, with the exception of respondent Juancho Bognot who was an assistant cutter and later supervisor.

At various times between June 1987 and January 1988, private respondents were dismissed by petitioners for abandonment of work allegedly because private respondents had not reported for work. When private respondents presented themselves, they were prevented from entering the work place by petitioners' agent, Charlie Co.

Within a few days of their dismissal, private respondents were able to secure employment at another garment factory, the First General Marketing Corporation (FGMC). Two of the respondents, Anacorita Valde and Celsa Dizon, were in fact employed at the FGMC on the same day they were dismissed by petitioners.

On September 21 and 26, 1988 and November 17, 1988, private respondents filed complaints against petitioners for illegal dismissal, underpayment of minimum wage, Emergency Cost of Living Allowance (ECOLA) and overtime pay, and for non-payment of legal holiday pay and service incentive leave pay, as well as 13th Month pay and attorney's fees. Their complaints were filed with the Department of Labor where they were later consolidated.

Petitioners submitted a paper in which they denied the charges against them and claimed that respondents had abandoned their jobs by "not reporting for work for quite sometime." With respect to respondent Juancho Bognot, it was alleged that he had been dismissed for "irresponsibility on the job during the latter part of his employment" and for absenting himself from work without leave from petitioners.[1]

The Labor Arbiter[2] found that, with the exception of respondent Juancho Bognot, the complainants had quit their jobs in order to work for the FGMC. Hence, in his decision rendered on May 31, 1989, the Labor Arbiter dismissed their claim for reinstatement. With respect to Juancho Bognot, the Labor Arbiter found that he had been

illegally dismissed and so ordered him paid backwages for six months.

On the other hand, the Labor Arbiter granted the claims of Teresita Oribiana, Petra Calim, and Yolanda Parungo for Emergency Cost of Living Allowance (ECOLA), legal holiday pay, 13th month pay and service incentive leave with pay and the claims of Teresita Olajo and Agnes Enano for COLA, legal holiday pay and 13th month pay. No service incentive leave with pay was granted to Enano and Olajo for the reason that they had less than one year of service in the factory.

The dispositive portion of the Labor Arbiter's decision reads:

> ACCORDINGLY, respondents Kingsize Mfg. Corporation and/or Charlie Co are hereby ordered to reinstate within ten (10) days from receipt hereof, herein complainant Juancho Bognot to his former or any substantially equivalent position without loss of seniority right and privileges with six (6) months backwages including his money award herein in the amounts of One Thousand Nine Hundred One Pesos (P1,901.00) in the concept of differentials in emergency cost of living allowance; One Thousand Two Hundred Twenty-Nine and Twenty-Five Centavos (P1,229.25), as salary differentials; Ninety-Seven Pesos and Seventy-Seven Centavos (P99.77) and Fourty-Two Pesos (P42.00), as differentials in 13th month pay and legal holiday pay, respectively.
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> Further, the same respondents are also ordered within the same period to pay complainants Parungo, Calim, Enano, Olajo, and Oribiano, their respective underpayment of emergency cost of living allowance in the amount of 7.00 daily, legal holiday pay, 13th month pay differentials, and service incentive leave with pay except Enano and Olajo who had rendered less than one year service with respondents, to be based on their respective length of service.
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> For this purpose, the Office of the Information and Research Unit of this Region is hereby directed to make the remaining computation in accordance with the discussion herein within a reasonable period of time after the finality of this decision.

> All other claims are hereby denied for lack of merit.
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> SO ORDERED.[3]

On June 30, 1989, five of the complainants, Anacorita Valde, Judy Dreu, Lydia Llobit, Marlene Bognot, and Celsa Dizon, appealed the Labor Arbiter's decision finding them guilty of abandoning their jobs. These complainants, who were granted no monetary awards, prayed that they be granted separation pay. The other complainants, Teresita Oribiana, Teresita Olajo, Agnes Enano, Petra Calim and Yolanda Parungo, whose money claims had been granted, did not appeal, although as will presently be discussed, a claim is now made in their behalf that they should be deemed to have appealed insofar as they were found to have abandoned their jobs.

On the other hand, petitioners appealed with respect to the Labor Arbiter's Decision ordering them to reinstate Juancho Bognot and pay backwages to him.

On October 30, 1992 the NLRC rendered a decision, reversing the Labor Arbiter and finding petitioners guilty of illegally dismissing the "herein complainants," meaning all the herein respondents. The NLRC ordered the reinstatement of these employees to their former positions without loss of seniority rights but without backwages. The decision with respect to Juancho Bognot was affirmed. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the appealed decision is hereby REVERSED insofar as the Order dismissing the complaint for dismissal is concerned. Respondents are ordered to REINSTATE the herein complainants to their former position[s] without loss of seniority rights. Except for complainant Juancho Bognot to whom the award of backwages and other monetary benefits is being AFFIRMED, reinstatement of the rest of complainants shall be without backwages. Respondents' appeal, on the other hand, is hereby DISMISSED for lack of merit.
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> SO ORDERED.

On November 27, 1992, the five complainants, namely, Anacorita Valde, Judy Dreu, Lydia Llobit, Marlene Bognot, and Celsa Dizon, moved for a reconsideration of the decision insofar as their reinstatement was ordered to be without backpay.

In its Resolution of February 17, 1993, the NLRC granted their Motion and ordered them paid backwages equal to three years of their salaries at the time of their dismissal. In other respects, the decision of October 30, 1992 was affirmed.

Petitioners filed a "Motion for Leave to Reconsider Resolution dated February 17, 1993" in which they sought to set aside the order to reinstate the complainants, but their motion was denied by the NLRC in its resolution dated April 22, 1993.[4] Hence, this petition.

Petitioners allege that the NLRC gravely abused its discretion in:

1. Holding that abandonment of employment can only be proven by a written notice to the employees to return to work with warning of dismissal in case of his failure to report for work.

2. In giving credence to the claim of private respondents that they could not have abandoned their jobs because they were receiving more benefits from petitioners than from their new employer.

3. In disregarding the fact that respondents did not file a complaint immediately upon their dismissal because they did not allegedly know their rights.

4. In ordering the reinstatement of all the respondents despite the fact that in their bill of particulars, position paper and notice of partial appeal, the respondents merely asked for separation pay and only five of them appealed from the decision of the Labor Arbiter, finding them guilty of abandonment.

The first question here is whether the NLRC gravely abused its discretion in finding that petitioners were guilty of illegal dismissal of their employees. Findings of facts of the NLRC are entitled to great respect and will not be disturbed in the absence of any showing that they are not supported by substantial evidence.[5]

Petitioners' defense below was that private respondents had abandoned their jobs. Petitioners thus had the burden of proving "a clear and deliberate intent" on the part of the private respondents to discontinue employment without any intention of returning.[6] They had to prove a deliberate and unjustified refusal on the part of the employee to resume his employment and such refusal must be clearly shown. Mere absence is not sufficient. It must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore.[7]

Petitioners contend that complainants abandoned their jobs as shown by the fact that shortly after they had been dismissed by petitioners they were able to find employment at the FGMC. Indeed the following appears:

1. Anacorita Valde, who was dismissed on June 15, 1987, was employed by First General Marketing Corporation on the same day, June 15, 1987.

2. Celsa Dizon, who was dismissed on June 15, 1987, was also employed at First General Marketing Corporation on June 15, 1987, on the same day.

3. Yolanda Parungo, who was dismissed on January 6, 1988, started work at First General Marketing Corporation on January 7, 1988.

4. Petra Calim, who was dismissed on January 7, 1988, was employed at First General Marketing Corporation on January 8, 1988.

5. Agnes Enano, who was dismissed on December 14, 1987, was employed by First General Marketing Corporation on January 7, 1988.

6. Erlinda Aguirre, who was dismissed on December 14, 1987, was employed by First General Marketing Corporation on December 17, 1987.

7. Teresita Oribiana, who was dismissed on December 14, 1987, was hired by First General Marketing Corporation on December 28, 1987.

8. Marlene Bognot, who was allegedly dismissed on December 15, 1987, started work at First General Marketing Corporation on December 22, 1987.

9. Judy Dreu, who was also allegedly dismissed on December 15, 1987, was employed by First General Marketing Corporation on December 28, 1987.

10. Lydia Llobit, who was dismissed on December 15, 1987, was employed by First General Marketing Corporation on December 27, 1987.[8]

We do not think, however, that this circumstance alone is proof of a "clear and deliberate intent" on the part of the private respondents not to continue work with petitioners. As the NLRC held, this was due to the fact that in the work place the demand for experienced, high-speed sewers was quite great. On the other hand, the countervailing evidence found by the NLRC tend to negate any inference of abandonment. These are: (1) the unrebutted allegation that petitioners' representative, Edward Co, barred private respondents from entering the premises of the company when they reported for work; (2) the equally uncontested claim of private respondents that they were earning more from petitioners' factory and (3) the fact that private respondents had already attained security of tenure in petitioners' company compared to their probationary status at the FGMC.

Indeed, it is noteworthy that aside from these circumstances negating petitioners' allegation, private respondents' employment at the FGMC took place after, not before, their dismissal by petitioners. It would have been a different matter if it was shown that, at the time of their

dismissals, private respondents had been employed at the FGMC.

That it took private respondents nine months before filing their complaints for illegal dismissal could be due in part to the fact that, having found ready employment, they did not feel the urgent need to file their complaints earlier and partly to the fact that, as found by the NLRC, private respondents only became aware of their rights under the law after they were employed at the FGMC where there is a union.

In addition, petitioners' failure to give notice with warning to the private respondents before their services were terminated puts in grave doubt petitioners' claim that the dismissal was for a just cause. Sec. 2, Rule XIV of the Rules Implementing the Labor Code provides:

> Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for dismissal. In case of abandonment of work, the notice shall be served at the worker's last known address.
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> The notice required, as elaborated upon in our decision in Pepsi-Cola Bottling Co., vs. NLRC,[9] actually consists of two parts to be separately served on the employee, to wit: (1) notice to apprise the employee of the particular acts or omissions for which his dismissal is sought; and (2) subsequent notice to inform him of the employer's decision to dismiss him.

This requirement is not a mere technicality but a requirement of due process to which every employee is entitled to insure that the employer's prerogative to dismiss or lay-off is not abused or exercised in an arbitrary manner.[10] This rule is clear and unequivocal and in applying it to this case the NLRC, far from acting in excess of its jurisdiction, acted according to law.

Having determined that private respondents were illegally dismissed, the next question is whether the NLRC gravely abused its discretion in ordering their reinstatement considering that, in appealing the Labor Arbiter's decision, they only asked for separation pay. In general, the remedy for illegal dismissal is the reinstatement of the employee to his former position without loss of seniority rights and

the payment to him of backwages.[11] But there may be instances where reinstatement is not a viable remedy as where in the meantime the business of the employer has closed[12] or where the relations between the employer and employee have been so severely strained that it is not advisable to order reinstatement,[13] or where the employee decides not to be reinstated.[14] In such events the employer will instead be ordered to pay separation pay.

Considering the fact that private respondents, in appealing the decision of the Labor Arbiter, reduced their original demand for reinstatement to a prayer for separation pay, there is merit in petitioners' contention that the NLRC exceeded its jurisdiction in ordering their reinstatement. The Solicitor General agrees with this contention. Indeed, it could be that after staying in the new jobs these complainants had a change of mind about reinstatement.

Moreover, as the Solicitor General points out, the NLRC should have limited its decision to five of the complainants since they were the only ones who had appealed from the decision of the Labor Arbiter. These complainants were Marlene Bognot, Lydia Llobit, Anacorita Valde, Celsa Dizon and Judy Dreu.

As to the other six (6) respondents who did not appeal, namely Teresita Oribiana, Teresita Olajo, Agnes Enano, Petra Calim, Yolanda Parungo and Erlinda Aguirre, the Labor Arbiter's decision became final and executory[15] upon the expiration of the reglementary period of 10 days as prescribed in Art. 223 of the Labor Code. The NLRC acted in excess of its jurisdiction in including these complainants in its decision.

The case of Juancho Bognot should be considered separately. The Labor Arbiter found that he had been illegally dismissed and ordered him to be reinstated with backwages. The order of reinstatement is affirmed because this respondent was not one of those who appealed to the NLRC and asked for separation pay.

WHEREFORE, the Decision of the NLRC is **AFFIRMED**, with the modification that instead of ordering petitioners to reinstate respondents Anacorita Valde, Judy Dreu, Lydia Llobit, Marlene

Bognot, and Celsa Dizon, they should only be granted separation pay at the rate of one month for every year of service.

SO ORDERED.

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

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[1] Rollo, p. 80.
[2] Hon. Felipe T. Garduque II.
[3] Rollo, pp. 97-98.
[4] Rollo, p. 54.
[5] Manila Mandarin Employees Union vs. NLRC, 154 SCRA 368 (1987).
[6] Century Textile Mills, Inc. vs. NLRC, 167 SCRA 528 (1988); Mangagawa ng Komunikasyon sa Pilipinas vs. NLRC, 194 SCRA 573 (1991).
[7] Flexo Manufacturing Corp. vs. NLRC, 135 SCRA 145 (1985).
[8] Solicitor General's Comment in behalf of Public Respondent, pp. 3-4.
[9] 210 SCRA 277 (1992).
[10] Cebu Royal Plant (SMC) vs. Deputy Minister of Labor, August 12, 1987, 153 SCRA 38 (1987); NLU vs. NLRC, 153 SCRA 228 (1987); Piedad vs. Lanao del Norte Electric Cooperative, Inc., 153 SCRA 500 (1987).
[11] Santos vs. NLRC, 154 SCRA 166 (1987).
[12] Callanta vs. Carnation Philippines, 145 SCRA 268 (1986); Pizza Inn vs. NLRC, 162 SCRA 773 (1988).
[13] Asiaworld Publishing House, Inc. vs. Ople, 152 SCRA 219 (1987).
[14] Starlite Plastic Industrial Corp. vs. NLRC, 171 SCRA 315, 326 (1989).
[15] Encilla vs. Magsaysay, 17 SCRA 725 (1966).
