

CHANROBLES PUBLISHING COMPANY

SUPREME COURT FIRST DIVISION

LABOR CONGRESS OF THE PHILIPPINES (LCP) for and in behalf of its members, ANA MARIE OCAMPO, MARY INTAL, ANNABEL CARESO, MARLENE MELQIADES, IRENE JACINTO, NANCY GARCIA, IMELDA SARMIENTO, LENITA VIRAY, GINA JACINTO, ROSEMARIE DEL ROSARIO, CATHERINE ASPURNA, WINNIE PENA, VIVIAN BAA, EMILY LAGMAN, LILIAN MARFIL, NANCY DERACO, JANET DERACO, MELODY JACINTO, CAROLYN DIZON, IMELDA MANALOTO, NORY VIRAY, ELIZA SALAZAR, GIGI MANALOTO, JOSEFINA BASILIO, MARY ANN MAYATI, ZENAIDA GARCIA, MERLY CANLAS, ERLINDA MANALANG, ANGELINA QUIAMBAO, LANIE GARCIA, ELVIRA PIEDRA, LOURDES PANLILIO, LUISA PANLILIO, LERIZA PANLILIO, ALMA CASTRO, ALDA DAVID, MYRA T. OLALIA, MARIFE PINLAC, NENITA DE GUZMAN, JULIE GACAD, EVELYN MANALO, NORA PATIO, JANETH CARREON, ROWENA MENDOZA, ROWENA MANALO, LENY GARCIA, FELISISIMA PATIO, SUSANA SALOMON, JOYDEE LANSANGAN, REMEDIOS AGUAS, JEANIE

**LANSANGAN, ELIZABETH MERCADO,
JOSELYN MANALESE, BERNADETH
RALAR, LOLITA ESPIRITU, AGNES
SALAS, VIRGINIA MENDIOLA,
GLENDA SALITA, JANETH RALAR,
ERLINDA BASILIO, CORA PATIO,
ANTONIA CALMA, AGNES CARESO,
GEMMA BONUS, MARITNESS OCAMPO,
LIBERTY GELISANGA, JANETH
MANARANG, AMALIA DELA CRUZ,
EVA CUEVAS, TERESA MANIAGO,
ARCELY PEREZ, LOIDA BIE, ROSITA
CANLAS, ANALIZA ESGUERRA, LAILA
MANIAGO, JOSIE MANABAT,
ROSARIO DIMATULAC, NYMPA
TUAZON, DAIZY TUASON, ERLINDA
NAVARRO, EMILY MANARANG,
EMELITA CAYANAN, MERCY
CAYANAN, LUZVIMINDA CAYANAN,
ANABEL MANALO, SONIA DIZON,
ERNA CANLAS, MARIAN BENEDICTA,
DOLORES DOLETIN, JULIE DAVID,
GRACE VILLANUEVA, VIRGINIA
MAGBAG, CORAZON RILLION, PRECY
MANALILI, ELENA RONOZ, IMELDA
MENDOZA, EDNA CANLAS and
ANGELA CANLAS,**

Petitioners,

-versus-

**G.R. No. 123938
May 21, 1998**

**NATIONAL LABOR RELATIONS
COMMISSION, EMPIRE FOOD
PRODUCTS, its Proprietor/President &**

**Manager, MR. GONZALO KEHYENG
and MRS. EVELYN KEHYENG,
*Respondents.***

X-----X

DECISION

DAVIDE, JR., J.:

In this Special Civil Action for *Certiorari* under Rule 65, petitioners seek to reverse the 29 March 1995 Resolution^[1] of the National Labor Relations Commission (NLRC) in NLRC RAB III Case No. 01-1964-91 which affirmed the Decision^[2] of Labor Arbiter Ariel C. Santos dismissing their complaint for utter lack of merit.

The antecedents of this case, as summarized by the Office of the Solicitor General in its Manifestation and Motion in Lieu of Comment,^[3] are as follows:

The 99 persons named as petitioners in this proceeding were rank-and-file employees of respondent Empire Food Products, which hired them on various dates (Paragraph 1, Annex "A" of Petition, Annex "B;" Page 2, Annex "F" of Petition).

Petitioners filed against private respondents a complaint for payment of money claim[s] and for violation of labor standard[s] laws (NLRC Case No. RAB-111-10-1817-90). They also filed a petition for direct certification of petitioner Labor Congress of the Philippines as their bargaining representative (Case No. R0300-9010-RU-005).

On October 23, 1990, petitioners represented by LCP President Benigno B. Navarro, Sr. and private respondents Gonzalo Kehyeng and Evelyn Kehyeng in behalf of Empire Food Products, Inc. entered into a Memorandum of Agreement which provided, among others, the following:

1. That in connection with the pending Petition for Direct Certification filed by the Labor Congress with the DOLE, Management of the Empire Food Products has no objection [to] the direct certification of the LCP Labor Congress and is now recognizing the Labor Congress of the Philippines (LCP) and its Local Chapter as the SOLE and EXCLUSIVE Bargaining Agent and Representative for all rank and file employees of the Empire Food Products regarding 'WAGES, HOURS OF WORK, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT;'
2. That with regards [sic] to NLRC CASE NO. RAB-III-10-1817-90 pending with the NLRC parties jointly and mutually agreed that the issues thereof, shall be discussed by the parties and resolve[d] during the negotiation of the Collective Bargaining Agreement;
3. That Management of the Empire Food Products shall make the proper adjustment of the Employees Wages within fifteen (15) days from the signing of this Agreement and further agreed to register all the employees with the SSS;
4. That Employer, Empire Food Products thru its Management agreed to deduct thru payroll deduction UNION DUES and other Assessment[s] upon submission by the LCP Labor Congress individual Check-Off Authorization[s] signed by the Union Members indicating the amount to be deducted and further agreed all deduction[s] made representing Union Dues and Assessment[s] shall be remitted immediately to the LCP Labor Congress Treasurer or authorized representative within three (3) or five (5) days upon deductions [sic], Union dues not deducted during the period due, shall be refunded or reimbursed by the Employer/Management. Employer/Management further agreed to deduct Union dues from non-union members the same amount deducted from union members without need of individual Check-Off Authorizations [for] Agency Fee;
5. That in consideration [of] the foregoing covenant, parties jointly and mutually agreed that NLRC CASE NO. RAB-III-

10-1817-90 shall be considered provisionally withdrawn from the Calendar of the National Labor Relations Commission (NLRC), while the Petition for direct certification of the LCP Labor Congress parties jointly move for the direct certification of the LCP Labor Congress;

6. That parties jointly and mutually agreed that upon signing of this Agreement, no Harassments [sic], Threats, Interferences [sic] of their respective rights under the law, no Vengeance or Revenge by each partner nor any act of ULP which might disrupt the operations of the business;
7. Parties jointly and mutually agreed that pending negotiations or formalization of the propose[d] CBA, this Memorandum of Agreement shall govern the parties in the exercise of their respective rights involving the Management of the business and the terms and condition[s] of employment, and whatever problems and grievances may arise by and between the parties shall be resolved by them, thru the most cordial and good harmonious relationship by communicating the other party in writing indicating said grievances before taking any action to another forum or government agencies; and
8. That parties [to] this Memorandum of Agreement jointly and mutually agreed to respect, abide and comply with all the terms and conditions hereof. Further agreed that violation by the parties of any provision herein shall constitute an act of ULP. (Annex "A" of Petition).

In an Order dated October 24, 1990, Mediator Arbiter Antonio Cortez approved the memorandum of agreement and certified LCP "as the sole and exclusive bargaining agent among the rank-and-file employees of Empire Food Products for purposes of collective bargaining with respect to wages, hours of work and other terms and conditions of employment" (Annex "B" of Petition).

On November 9, 1990, petitioners through LCP President Navarro submitted to private respondents a proposal for collective bargaining (Annex "C" of Petition).

On January 23, 1991, petitioners filed a complaint docketed as NLRC Case No. RAB-III-01-1964-91 against private respondents for:

- a. Unfair Labor Practice by way of Illegal Lockout and/or Dismissal;
- b. Union busting thru Harassments [sic], threats, and interfering with the rights of employees to self-organization;
- c. Violation of the Memorandum of Agreement dated October 23, 1990;
- d. Underpayment of Wages in violation of R.A. No. 6640 and R.A. No. 6727, such as Wages promulgated by the Regional Wage Board; and
- e. Actual, Moral and Exemplary Damages.” (Annex “D” of Petition)

After the submission by the parties of their respective position papers and presentation of testimonial evidence, Labor Arbiter Ariel C. Santos absolved private respondents of the charges of unfair labor practice, union busting, violation of the memorandum of agreement, underpayment of wages and denied petitioners’ prayer for actual, moral and exemplary damages. Labor Arbiter Santos, however, directed the reinstatement of the individual complainants:

The undersigned Labor Arbiter is not oblivious to the fact that respondents have violated a cardinal rule in every establishment that a payroll and other papers evidencing hours of work, payments, etc. shall always be maintained and subjected to inspection and visitation by personnel of the Department of Labor and Employment. As such penalty, respondents should not escape liability for this technicality, hence, it is proper that all individual complainants except those who resigned and executed quitclaim[s] and releases prior to the filing of this complaint should be reinstated to their former position[s] with the admonition to respondents that any harassment, intimidation, coercion or any form of threat as a

result of this immediately executory reinstatement shall be dealt with accordingly.

SO ORDERED. (Annex "G" of Petition)

On appeal, the National Labor Relations Commission vacated the Decision dated April 14, 1972 [sic] and remanded the case to the Labor Arbiter for further proceedings for the following reasons:

The Labor Arbiter, through his decision, noted that "complainant did not present any single witness while respondent presented four (4) witnesses in the persons of Gonzalo Kehyeng, Orlando Cairo, Evelyn Kehyeng and Elvira Bulagan." (p. 183, Records), that "complainant before the National Labor Relations Commission must prove with definiteness and clarity the offense charged." (Record, p. 183); that "complainant failed to specify under what provision of the Labor Code particularly Art. 248 did respondents violate so as to constitute unfair labor practice." (Record, p. 183); that 'complainants failed to present any witness who may describe in what manner respondents have committed unfair labor practice.' (Record, p. 185); that 'complainant LCP failed to present anyone of the so-called 99 complainants in order to testify who committed the threats and intimidation.' (Record, p. 185).

Upon review of the minutes of the proceedings on record, however, it appears that complainant presented witnesses, namely, BENIGNO NAVARRO, JR. (28 February 1991, RECORD, p. 91; 8 March 1991, RECORD, p. 92, who adopted its POSITION PAPER AND CONSOLIDATED AFFIDAVIT, as Exhibit "A" and the annexes thereto as Exhibit "B", "B-1" to "B-9", inclusive. Minutes of the proceedings on record show that complainant further presented other witnesses, namely: ERLINDA BASILIO (13 March 1991, RECORD, p. 93; LOURDES PANTILLO, MARIFE PINLAC, LENIE GARCIA (16 April 1991, Record, p. 96, see back portion thereof ; 2 May 1991, Record, p. 102; 16 May 1991, Record, p. 103; 11 June 1991, Record, p. 105). Formal offer of Documentary and Testimonial Evidence was made by complainant on June 24, 1991. (Record, p. 106-109)

The Labor Arbiter must have overlooked the testimonies of some of the individual complainants which are now on record. Other individual complainants should have been summoned with the end in view of receiving their testimonies. The complainants should be afforded the time and opportunity to fully substantiate their claims against the respondents. Judgment should be rendered only based on the conflicting positions of the parties. The Labor Arbiter is called upon to consider and pass upon the issues of fact and law raised by the parties.

Toward this end, therefore, it is Our considered view [that] the case should be remanded to the Labor Arbiter of origin for further proceedings. (Annex "H" of Petition)

In a Decision dated July 27, 1994, Labor Arbiter Santos made the following determination:

Complainants failed to present with definiteness and clarity the particular act or acts constitutive of unfair labor practice.

It is to be borne in mind that a declaration of unfair labor practice connotes a finding of prima facie evidence of probability that a criminal offense may have been committed so as to warrant the filing of a criminal information before the regular court. Hence, evidence which is more than a scintilla is required in order to declare respondents/employers guilty of unfair labor practice. Failing in this regard is fatal to the cause of complainants. Besides, even the charge of illegal lockout has no leg to stand on because of the testimony of respondents through their guard Orlando Cairo (TSN, July 31, 1991 hearing; p. 5-35) that on January 21, 1991, complainants refused and failed to report for work, hence guilty of abandoning their post without permission from respondents. As a result of complainants['] failure to report for work, the cheese curls ready for repacking were all spoiled to the prejudice of respondents. Under cross-examination, complainants failed to rebut the authenticity of respondents' witness testimony.

As regards the issue of harassments [sic], threats and interference with the rights of employees to self-organization which is actually an ingredient of unfair labor practice, complainants failed to specify

what type of threats or intimidation was committed and who committed the same. What are the acts or utterances constitutive of harassments [sic] being complained of? These are the specifics which should have been proven with definiteness and clarity by complainants who chose to rely heavily on its position paper through generalizations to prove their case.

Insofar as violation of [the] Memorandum of Agreement dated October 23, 1990 is concerned, both parties agreed that:

2. That with regards [sic] to the NLRC Case No. RAB III-10-1817-90 pending with the NLRC, parties jointly and mutually agreed that the issues thereof shall be discussed by the parties and resolve[d] during the negotiation of the CBA.

The aforequoted provision does not speak of [an] obligation on the part of respondents but on a resolatory condition that may occur or may not happen. This cannot be made the basis of an imposition of an obligation over which the National Labor Relations Commission has exclusive jurisdiction thereof.

Anent the charge that there was underpayment of wages, the evidence points to the contrary. The enumeration of complainants' wages in their consolidated Affidavits of merit and position paper which implies underpayment has no leg to stand on in the light of the fact that complainants' admission that they are piece workers or paid on a pakiao [basis] i.e. a certain amount for every thousand pieces of cheese curls or other products repacked. The only limitation for piece workers or pakiao workers is that they should receive compensation no less than the minimum wage for an eight (8) hour work [sic]. And compliance therewith was satisfactorily explained by respondent Gonzalo Kehyeng in his testimony (TSN, p. 12-30) during the July 31, 1991 hearing. On cross-examination, complainants failed to rebut or deny Gonzalo Kehyeng's testimony that complainants have been even receiving more than the minimum wage for an average workers [sic]. Certainly, a lazy worker earns less than the minimum wage but the same cannot be attributable to respondents but to the lazy workers.

Finally, the claim for moral and exemplary damages has no leg to stand on when no malice, bad faith or fraud was ever proven to have been perpetuated by respondents.

WHEREFORE, premises considered, the complaint is hereby DISMISSED for utter lack of merit. (Annex "I" of Petition).^[4]

On appeal, the NLRC, in its Resolution dated 29 March 1995,^[5] affirmed in toto the decision of Labor Arbiter Santos. In so doing, the NLRC sustained the Labor Arbiter's findings that: (a) there was a dearth of evidence to prove the existence of unfair labor practice and union busting on the part of private respondents; (b) the agreement of 23 October 1990 could not be made the basis of an obligation within the ambit of the NLRC's jurisdiction, as the provisions thereof, particularly Section 2, spoke of a resolutory condition which could or could not happen; (c) the claims for underpayment of wages were without basis as complainants were admittedly "pakiao" workers and paid on the basis of their output subject to the lone limitation that the payment conformed to the minimum wage rate for an eight-hour workday; and (d) petitioners were not underpaid.

Their motion for reconsideration having been denied by the NLRC in its Resolution of 31 October 1995,^[6] petitioners filed the instant special civil action for *certiorari* raising the following issues:

I

WHETHER OR NOT THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION WHEN IT DISREGARDED OR IGNORED NOT ONLY THE EVIDENCE FAVORABLE TO HEREIN PETITIONERS, APPLICABLE JURISPRUDENCE BUT ALSO ITS OWN DECISIONS AND THAT OF THIS HONORABLE HIGHEST TRIBUNAL WHICH [WAS] TANTAMOUNT NOT ONLY TO THE DEPRIVATION OF PETITIONERS' RIGHT TO DUE PROCESS BUT WOULD RESULT [IN] MANIFEST INJUSTICE.

II

WHETHER OR NOT THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT DEPRIVED THE PETITIONERS OF THEIR CONSTITUTIONAL RIGHT TO SELF-ORGANIZATION, SECURITY OF TENURE, PROTECTION TO LABOR, JUST AND HUMANE CONDITIONS OF WORK AND DUE PROCESS.

III

WHETHER OR NOT THE PETITIONERS WERE ILLEGALLY EASED OUT [OF] OR CONSTRUCTIVELY DISMISSED FROM THEIR ONLY MEANS OF LIVELIHOOD.

IV

WHETHER OR NOT PETITIONERS SHOULD BE REINSTATED FROM THE DATE OF THEIR DISMISSAL UP TO THE TIME OF THEIR REINSTATEMENT, WITH BACKWAGES, STATUTORY BENEFITS, DAMAGES AND ATTORNEY'S FEES.^[7]

We required respondents to file their respective Comments.

In their Manifestation and Comment, private respondents asserted that the petition was filed out of time. As petitioners admitted in their Notice to File Petition for Review on *Certiorari* that they received a copy of the resolution (denying their motion for reconsideration) on 13 December 1995, they had only until 29 December 1995 to file the petition. Having failed to do so, the NLRC thus already entered judgment in private respondents' favor.

In their Reply, petitioners averred that Mr. Navarro, a non-lawyer who filed the notice to file a petition for review on their behalf, mistook which reglementary period to apply. Instead of using the "reasonable time" criterion for *certiorari* under Rule 65, he used the 15-day period for petitions for review on *certiorari* under Rule 45. They hastened to add that such was a mere technicality which should not bar their petition from being decided on the merits in furtherance of substantial justice, especially considering that respondents neither denied nor contradicted the facts and issues raised in the petition.

In its Manifestation and Motion in Lieu of Comment, the Office of the Solicitor General (OSG) sided with petitioners. It pointed out that the Labor Arbiter, in finding that petitioners abandoned their jobs, relied solely on the testimony of Security Guard Rolando Cairo that petitioners refused to work on 21 January 1991, resulting in the spoilage of cheese curls ready for repacking. However, the OSG argued, this refusal to report for work for a single day did not constitute abandonment, which pertains to a clear, deliberate and unjustified refusal to resume employment, and not mere absence. In fact, the OSG stressed, two days after allegedly abandoning their work, petitioners filed a complaint for, inter alia, illegal lockout or illegal dismissal. Finally, the OSG questioned the lack of explanation on the part of Labor Arbiter Santos as to why he abandoned his original decision to reinstate petitioners.

In view of the stand of the OSG, we resolved to require the NLRC to file its own Comment.

In its Comment, the NLRC invokes the general rule that factual findings of an administrative agency bind a reviewing court and asserts that this case does not fall under the exceptions. The NLRC further argues that grave abuse of discretion may not be imputed to it, as it affirmed the factual findings and legal conclusions of the Labor Arbiter only after carefully reviewing, weighing and evaluating the evidence in support thereof, as well as the pertinent provisions of law and jurisprudence.

In their Reply, petitioners claim that the decisions of the NLRC and the Labor Arbiter were not supported by substantial evidence; that abandonment was not proved; and that much credit was given to self-serving statements of Gonzalo Kehyeng, owner of Empire Foods, as to payment of just wages.

On 7 July 1997, we gave due course to the petition and required the parties to file their respective memoranda. However, only petitioners and private respondents filed their memoranda, with the NLRC merely adopting its Comment as its Memorandum.

We find for petitioners.

Invocation of the general rule that factual findings of the NLRC bind this Court is unavailing under the circumstances. Initially, we are unable to discern any compelling reason justifying the Labor Arbiter's volte face from his 14 April 1992 decision reinstating petitioners to his diametrically opposed 27 July 1994 decision, when in both instances, he had before him substantially the same evidence. Neither do we find the 29 March 1995 NLRC resolution to have sufficiently discussed the facts so as to comply with the standard of substantial evidence. For one thing, the NLRC confessed its reluctance to inquire into the veracity of the Labor Arbiter's factual findings, staunchly declaring that it was "not about to substitute [its] judgment on matters that are within the province of the trier of facts." Yet, in the 21 July 1992 NLRC Resolution,^[8] it chastised the Labor Arbiter for his errors both in judgment and procedure, for which reason it remanded the records of the case to the Labor Arbiter for compliance with the pronouncements therein.

What cannot escape from our attention is that the Labor Arbiter did not heed the observations and pronouncements of the NLRC in its Resolution of 21 July 1992, neither did he understand the purpose of the remand of the records to him. In said Resolution, the NLRC summarized the grounds for the appeal to be:

1. that there is a prima facie evidence of abuse of discretion and acts of gross incompetence committed by the Labor Arbiter in rendering the decision.
2. that the Labor Arbiter in rendering the decision committed serious errors in the findings of facts.

After which, the NLRC observed and found:

Complainant alleged that the Labor Arbiter disregarded the testimonies of the 99 complainants who submitted their Consolidated Affidavit of Merit and Position Paper which was adopted as direct testimonies during the hearing and cross-examined by respondents' counsel.

The Labor Arbiter, through his Decision, noted that “complainant did not present any single witness while respondent presented four (4) witnesses in the persons of Gonzalo Kehyeng, Orlando Cairo, Evelyn Kehyeng and Elvira Bulagan.” (Records, p. 183), that “complainant before the National Labor Relations Commission must prove with definiteness and clarity the offense charged.” (Record, p. 183; that “complainant failed to specify under what provision of the Labor Code particularly Art. 248 did respondents violate so as to constitute unfair labor practice.” (Record, p. 183); that “complainants failed to present any witness who may describe in what manner respondents have committed unfair labor practice.” (Record, p. 185); that “complainant a [sic] LCP failed to present anyone of the so called 99 complainants in order to testify who committed the threats and intimidation.” (Record, p. 185).

Upon review of the minutes of the proceedings on record, however, it appears that complainant presented witnesses, namely BENIGNO NAVARRO, JR. (28 February 1991, RECORD, p. 91; 8 March 1991, RECORD, p. 92), who adopted its POSITION PAPER AND CONSOLIDATED AFFIDAVIT, as Exhibit A and the annexes thereto as Exhibit B, B-1 to B-9, inclusive. Minutes of the proceedings on record show that complainant further presented other witnesses, namely: ERLINDA BASILIO (13 March 1991, RECORD, p. 93; LOURDES PANTILLO, MARIFE PINLAC, LENI GARCIA (16 April 1991, Record, p. 96, see back portion thereof; 2 May 1991, Record, p. 102; 16 May 1991, Record, p. 103; 11 June 1991, Record, p. 105). Formal offer of Documentary and Testimonial Evidence was made by the complainant on June 24, 1991 (Record, p. 106-109).

The Labor Arbiter must have overlooked the testimonies of some of the individual complainants which are now on record. Other individual complainants should have been summoned with the end in view of receiving their testimonies. The complainants should [have been] afforded the time and opportunity to fully substantiate their claims against the respondents. Judgment should [have been] rendered only based on the conflicting positions of the parties. The Labor Arbiter is called upon to consider and pass upon the issues of fact and law raised by the parties.

Toward this end, therefore, it is Our considered view the case should be remanded to the Labor Arbiter of origin for further proceedings.

Further, We take note that the decision does not contain a dispositive portion or fallo. Such being the case, it may be well said that the decision does not resolve the issues at hand. On another plane, there is no portion of the decision which could be carried out by way of execution.

It may be argued that the last paragraph of the decision may be categorized as the dispositive portion thereof.

“X X X

The undersigned Labor Arbiter is not oblivious [to] the fact that respondents have violated a cardinal rule in every establishment that a payroll and other papers evidencing hour[s] of work, payment, etc. shall always be maintained and subjected to inspection and visitation by personnel of the Department of Labor and Employment. As such penalty, respondents should not escape liability for this technicality, hence, it is proper that all the individual complainants except those who resigned and executed quitclaim[s] and release[s] prior to the filing of this complaint should be reinstated to their former position with the admonition to respondents that any harassment, intimidation, coercion or any form of threat as a result of this immediately executory reinstatement shall be dealt with accordingly.

SO ORDERED.”

It is Our considered view that even assuming arguendo that the respondents failed to maintain their payroll and other papers evidencing hours of work, payment etc., such circumstance, standing alone, does not warrant the directive to reinstate complainants to their former positions. It is [a] well settled rule that there must be a finding of illegal dismissal before reinstatement be mandated.

In this regard, the LABOR ARBITER is hereby directed to include in his clarificatory decision, after receiving evidence, considering and resolving the same, the requisite dispositive portions.^[9]

Apparently, the Labor Arbiter perceived that if not for petitioners, he would not have fallen victim to this stinging rebuke at the hands of the NLRC. Thus does it appear to us that the Labor Arbiter, in concluding in his 27 July 1994 Decision that petitioners abandoned their work, was moved by, at worst, spite, or at best, lackadaisically glossed over petitioner's evidence. On this score, we find the following observations of the OSG most persuasive:

In finding that petitioner employees abandoned their work, the Labor Arbiter and the NLRC relied on the testimony of Security Guard Rolando Cairo that on January 21, 1991, petitioners refused to work. As a result of their failure to work, the cheese curls ready for repacking on said date were spoiled.

The failure to work for one day, which resulted in the spoilage of cheese curls does not amount to abandonment of work. In fact two (2) days after the reported abandonment of work or on January 23, 1991, petitioners filed a complaint for, among others, unfair labor practice, illegal lockout and/or illegal dismissal. In several cases, this Honorable Court held that "one could not possibly abandon his work and shortly thereafter vigorously pursue his complaint for illegal dismissal (De Ysasi III vs. NLRC, 231 SCRA 173; Ranara vs. NLRC, 212 SCRA 631; Dagupan Bus Co. vs. NLRC, 191 SCRA 328; Atlas Consolidated Mining and Development Corp. vs. NLRC, 190 SCRA 505; Hua Bee Shirt Factory vs. NLRC, 186 SCRA 586, Mabaylan vs. NLRC, 203 SCRA 570 and Flexo Manufacturing vs. NLRC, 135 SCRA 145). In Atlas Consolidated, supra, this Honorable Court explicitly stated:

"It would be illogical for Caballo, to abandon his work and then immediately file an action seeking for his reinstatement. We can not believe that Caballo, who had worked for Atlas for two years and ten months, would simply walk away from his job unmindful of the consequence of his act, i.e. the forfeiture of his accrued employment benefits. In opting to finally to [sic] contest the legality of his dismissal instead of just claiming his

separation pay and other benefits, which he actually did but which proved to be futile after all, ably supports his sincere intention to return to work, thus negating Atlas' stand that he had abandoned his job.

In *De Ysasi III vs. NLRC* (supra), this Honorable Court stressed that it is the clear, deliberate and unjustified refusal to resume employment and not mere absence that constitutes abandonment. The absence of petitioner employees for one day on January 21, 1991 as testified [to] by Security Guard Orlando Cairo did not constitute abandonment.

In his first decision, Labor Arbiter Santos expressly directed the reinstatement of the petitioner employees and admonished the private respondents that “any harassment, intimidation, coercion or any form of threat as a result of this immediately executory reinstatement shall be dealt with accordingly.”

In his second decision, Labor Arbiter Santos did not state why he was abandoning his previous decision directing the reinstatement of petitioner employees.

By directing in his first decision the reinstatement of petitioner employees, the Labor Arbiter impliedly held that they did not abandon their work but were not allowed to work without just cause.

That petitioner employees are “pakyao” or piece workers does not imply that they are not regular employees entitled to reinstatement. Private respondent Empire Food Products, Inc. is a food and fruit processing company. In *Tabas vs. California Manufacturing Co., Inc.* (169 SCRA 497), this Honorable Court held that the work of merchandisers of processed food, who coordinate with grocery stores and other outlets for the sale of the processed food is necessary in the day-to-day operation[s] of the company. With more reason, the work of processed food repackers is necessary in the day-to-day operation[s] of respondent Empire Food Products.^[10]

It may likewise be stressed that the burden of proving the existence of just cause for dismissing an employee, such as abandonment, rests on the employer,^[11] a burden private respondents failed to discharge.

Private respondents, moreover, in considering petitioners' employment to have been terminated by abandonment, violated their rights to security of tenure and constitutional right to due process in not even serving them with a written notice of such termination.^[12] Section 2, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code provides:

SEC. 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.

Petitioners are therefore entitled to reinstatement with full back wages pursuant to Article 279 of the Labor Code, as amended by R.A. No. 6715. Nevertheless, the records disclose that taking into account the number of employees involved, the length of time that has lapsed since their dismissal, and the perceptible resentment and enmity between petitioners and private respondents which necessarily strained their relationship, reinstatement would be impractical and hardly promotive of the best interests of the parties. In lieu of reinstatement then, separation pay at the rate of one month for every year of service, with a fraction of at least six (6) months of service considered as one (1) year, is in order.^[13]

That being said, the amount of back wages to which each petitioner is entitled, however, cannot be fully settled at this time. Petitioners, as piece-rate workers having been paid by the piece,^[14] there is need to determine the varying degrees of production and days worked by each worker. Clearly, this issue is best left to the National Labor Relations Commission.

As to the other benefits, namely, holiday pay, premium pay, 13th month pay and service incentive leave which the labor arbiter failed to rule on but which petitioners prayed for in their complaint,^[15] we hold that petitioners are so entitled to these benefits. Three (3) factors lead us to conclude that petitioners, although piece-rate workers, were regular employees of private respondents. First, as to the nature of petitioners' tasks, their job of repacking snack food was necessary

or desirable in the usual business of private respondents, who were engaged in the manufacture and selling of such food products; second, petitioners worked for private respondents throughout the year, their employment not having been dependent on a specific project or season; and third, the length of time^[16] that petitioners worked for private respondents. Thus, while petitioners' mode of compensation was on a "per piece basis," the status and nature of their employment was that of regular employees.

The Rules Implementing the Labor Code exclude certain employees from receiving benefits such as nighttime pay, holiday pay, service incentive leave^[17] and 13th month pay,^[18] inter alia, "field personnel and other employees whose time and performance is unsupervised by the employer, including those who are engaged on task or contract basis, purely commission basis, or those who are paid a fixed amount for performing work irrespective of the time consumed in the performance thereof." Plainly, petitioners as piece-rate workers do not fall within this group. As mentioned earlier, not only did petitioners labor under the control of private respondents as their employer, likewise did petitioners toil throughout the year with the fulfillment of their quota as supposed basis for compensation. Further, in Section 8(b), Rule IV, Book III which we quote hereunder, piece workers are specifically mentioned as being entitled to holiday pay.

SEC. 8. Holiday pay of certain employees. —

- (b) Where a covered employee is paid by results or output, such as payment on piece work, his holiday pay shall not be less than his average daily earnings for the last seven (7) actual working days preceding the regular holiday: Provided, however, that in no case shall the holiday pay be less than the applicable statutory minimum wage rate.

In addition, the Revised Guidelines on the Implementation of the 13th Month Pay Law, in view of the modifications to P.D. No. 851^[19] by Memorandum Order No. 28, clearly exclude the employer of piece rate workers from those exempted from paying 13th month pay, to wit:

2. EXEMPTED EMPLOYERS

The following employers are still not covered by P.D. No. 851:

- d. Employers of those who are paid on purely commission, boundary or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall grant the required 13th month pay to such workers. (Emphasis supplied)

The Revised Guidelines as well as the Rules and Regulations identify those workers who fall under the piece-rate category as those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.^[20]

As to overtime pay, the rules, however, are different. According to Sec 2(e), Rule I, Book III of the Implementing Rules, workers who are paid by results including those who are paid on piece-work, takay, pakiao, or task basis, if their output rates are in accordance with the standards prescribed under Sec. 8, Rule VII, Book III, of these regulations, or where such rates have been fixed by the Secretary of Labor in accordance with the aforesaid section, are not entitled to receive overtime pay. Here, private respondents did not allege adherence to the standards set forth in Sec. 8 nor with the rates prescribed by the Secretary of Labor. As such, petitioners are beyond the ambit of exempted persons and are therefore entitled to overtime pay. Once more, the National Labor Relations Commission would be in a better position to determine the exact amounts owed petitioners, if any.

As to the claim that private respondents violated petitioners' right to self-organization, the evidence on record does not support this claim. Petitioners relied almost entirely on documentary evidence which, per se, did not prove any wrongdoing on private respondents' part. For example, petitioners presented their complaint^[21] to prove the violation of labor laws committed by private respondents. The complaint, however, is merely "the pleading alleging the plaintiff's

cause or causes of action.”^[22] Its contents are merely allegations, the verity of which shall have to be proved during the trial. They likewise offered their Consolidated Affidavit of Merit and Position Paper^[23] which, like the offer of their Complaint, was a tautological exercise, and did not help nor prove their cause. In like manner, the petition for certification election^[24] and the subsequent order of certification^[25] merely proved that petitioners sought and acquired the status of bargaining agent for all rank-and-file employees. Finally, the existence of the memorandum of agreement^[26] offered to substantiate private respondents’ non-compliance therewith, did not prove either compliance or non-compliance, absent evidence of concrete, overt acts in contravention of the provisions of the memorandum.

IN VIEW WHEREOF, the instant Petition is hereby **GRANTED**. The Resolution of the National Labor Relations Commission of 29 March 1995 and the Decision of the Labor Arbiter of 27 July 1994 in NLRC Case No. RAB-III-01-1964-91 are hereby **SET ASIDE**, and another is hereby rendered:

1. **DECLARING** petitioners to have been illegally dismissed by private respondents, thus entitled to full back wages and other privileges, and separation pay in lieu of reinstatement at the rate of one month’s salary for every year of service with a fraction of six months of service considered as one year;
2. **REMANDING** the records of this case to the National Labor Relations Commission for its determination of the back wages and other benefits and separation pay, taking into account the foregoing observations; and
3. **DIRECTING** the National Labor Relations Commission to resolve the referred issues within sixty (60) days from its receipt of a copy of this decision and of the records of the case and to submit to this Court a report of its compliance hereof within ten (10) days from the rendition of its resolution.

Costs against private respondents.

SO ORDERED.

Bellosillo, Vitug, Panganiban and Quisumbing, JJ., concur.

- [1] Annex “J” of Petition, Per Commissioner Tanodra, J., with Presiding Commissioner Javier, L., and Commissioner Bernardo, I., concurring; Rollo, 98-108.
- [2] Annex “I” of Petition, Rollo, 91-97.
- [3] Rollo, 137 et seq.
- [4] Rollo, 138-148.
- [5] Supra note 1.
- [6] Rollo, 109-110.
- [7] Id., 21-22.
- [8] Annex “H” of Petition, Id., 85-90. Per Commissioner Rayala, R.I., with Commissioners Javier, L., and Bernardo, I., concurring.
- [9] Rollo, 86-90.
- [10] Rollo, 150-153.
- [11] *Lim vs. NLRC*, 259 SCRA 485, 497 [1996]; *Metro Transit Organization, Inc.*, 263 SCRA 313, 321 [1996]; *De la Cruz vs. NLRC*, 268 SCRA 458, 468 [1997].
- [12] See *Tiu vs. NLRC*, 215 SCRA 540, 550-552 [1992]; *Radio Communications of the Phils. vs. NLRC*, 223 SCRA 656, 667-668 [1993].
- [13] *Globe-Mackay Cable and Radio Corp. vs. NLRC*, 206 SCRA 701, 709-710 [1992]; *Kathy-O Enterprises vs. NLRC*, G.R. No. 117610, 2 March 1998.
- [14] See *Dy Keh Beng vs. International Labor*, 90 SCRA 161 [1979]; *“Brotherhood” Unity Movement of the Phils. vs. Zamora*, 147 SCRA 49 [1987].
- [15] Rollo, 51.
- [16] *RJL Mariner Fishing Corp. vs. NLRC*, 127 SCRA 454, 462 [1984].
- [17] Section 1(e), Rule II, Sec. 1(e) Rule IV and Sec. 1(d), Rule V of Book II.
- [18] P.D. No. 851, as modified by Memorandum No. 28.
- [19] Requiring All Employers To Pay Their Employees A [sic] 13TH-MONTH PAY.
- [20] This distinction was also used in Sec. 3(e) Rules and Regulations Implementing P.D. 851.
- [21] Exhibit “C”, OR, 42-43.
- [22] Section 3, Rule 6, Revised Rules of Court.
- [23] Exhibit “J”, OR, 56-78.
- [24] Exhibit “D”, Id., 44-45.
- [25] Exhibit “F”, Id., 50.
- [26] Exhibit “E”, Id., 46-49.