SUPREME COURT
SECOND DIVISION

DANILO LEONARDO,
***Petitioner*,**

-versus-

G.R. No. 125303
June 16, 2000

NATIONAL LABOR RELATIONS COMMISSION and REYNALDO'S MARKETING CORPORATION, ET. AL.,
***Respondents*.**

x----------x

AURELIO FUERTE and DANILO LEONARDO,
***Petitioners*,**

-versus-

G.R. No. 126937
June 16, 2000

RAUL T. AQUINO, VICTORIANO R. CALAYCAY and ROGELIO I. RALAYA, as Chairman and Members of the NATIONAL LABOR RELATIONS COMMISSION, SECOND DIVISION and REYNALDO'S MARKETING and/or REYNALDO PADUA,
***Respondents*.**
x----------x

D E C I S I O N

DE LEON, JR., *J.*:

Before us is a consolidation of G.R. Nos. 125303 and 126937, both petitions for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, seeking the annulment of a Decision[1] and Resolution[2] dated March 28, 1996 and May 29, 1996, respectively, of the public respondent in NLRC NCR 00-02-01024-92.

The facts are:

Petitioner AURELIO FUERTE was originally employed by private respondent REYNALDO'S MARKETING CORPORATION on August 11, 1981 as a muffler specialist, receiving P45.00 per day. When he was appointed supervisor in 1988, his compensation was increased to P122.00 a day, augmented by a weekly supervisor's allowance of P600.00. On the other hand, DANILO LEONARDO was hired by private respondent on March 4, 1988 as an auto-aircon mechanic at a salary rate of P35.00 per day. His pay was increased to P90.00 a day when he attained regular status six months later. From such time until he was allegedly terminated, he claims to have also received a monthly allowance equal to P2,500.00 as his share in the profits of the auto-aircon division.

FUERTE alleges that on January 3, 1992, he was instructed to report at private respondent's main office where he was informed by the company's personnel manager that he would be transferred to its Sucat plant due to his failure to meet his sales quota, and for that reason, his supervisor's allowance would be withdrawn. For a short time, FUERTE reported for work at the Sucat plant; however, he protested his transfer, subsequently filing a complaint for illegal termination.

On his part, LEONARDO alleges that on April 22, 1991, private respondent was approached by the same personnel manager who

informed him that his services were no longer needed. He, too, filed a complaint for illegal termination.

The case was heard by Labor Arbiter Jesus N. Rodriguez, Jr. On December 15, 1994, Labor Arbiter Emerson C. Tumanon, to whom the case was subsequently assigned, rendered judgment in favor of petitioners. The dispositive portion of the arbiter's Decision[3] states:

> WHEREFORE, premises considered, respondents are hereby ordered:
>
> 1. To reinstate complainant Aurelio Fuerte, to the position he was holding before the demotion, and to reinstate likewise complainant Danilo Leogardo to his former position or in lieu thereof, they be reinstated through payroll reinstatement without any of them losing their seniority rights and other privileges, inclusive of allowance and to their other benefits;
>
> 2. To pay AURELIO FUERTE, the sum of TWO HUNDRED EIGHTY THOUSAND EIGHT HUNDRED NINETY-SIX PESOS and 72/100 (280,896.72);
>
> 3. To pay DANILO LEOGARDO, the sum of TWO HUNDRED FORTY ONE THOUSAND NINE HUNDRED EIGHT PESOS and 67/100 (P241,908.67).
>
> SO ORDERED.

On appeal, the respondent Commission modified the aforesaid decision as follows:

> WHEREFORE, premises considered, the Decision of December 15, 1994 is hereby modified as follows:
>
> 1. Ordering the reinstatement of complainant Aurelio Fuerte to his former position without loss of his seniority rights but without backwages;

2. Dismissing the complaint of Danilo leonardo [sic] for lack of merit; and

3. Deleting the rests [sic] of the monetary award as well as the award of moral damages and attorney's fees in favor of the complainants also for lack of merit.

SO ORDERED.

Petitioners filed a motion for reconsideration[4] on April 30, 1996, which the Commission denied in its Resolution dated May 29, 1996.

On July 1, 1996, LEONARDO, represented by the Public Attorney's Office, filed G.R. No. 125303, a special civil action for certiorari assailing the Commission's decision and resolution. However, on November 15, 1996, FUERTE, again joined by LEONARDO, filed G.R. No. 126937, a similar action praying for the annulment of the same decision and resolution.

On October 7, 1997, private respondent filed its Comment[5] to the petition in G.R. No. 125303. On April 2, 1997, it filed its Comment[6] to the petition in G.R. No. 126937 with a motion to drop petitioner LEONARDO and consolidate G.R. No. 126937 with G.R. No. 125303. We granted private respondent's motion in our Resolution dated June 16, 1997.[7]

The petition in G. R. No. 126937[8] raises the following issues:

I. RESPONDENT COMMISSIONERS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN THEY GRANTED RESPONDENTS APPEAL.

II. RESPONDENT COMMISSIONERS GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY FOUND FOR RESPONDENT REYNALDO'S MARKETING PRONOUNCING THAT THERE WAS NO ILLEGAL DISMISSAL DESPITE CONTRARY FINDINGS MADE BY

THE LABOR ARBITER CONTRARY TO LAW AND EXISTING JURISPRUDENCE.

Private respondent contends that it never terminated petitioners' services. In FUERTE's case, private respondent claims that the latter was demoted pursuant to a company policy intended to foster competition among its employees. Under this scheme, private respondent's employees are required to comply with a monthly sales quota. Should a supervisor such as FUERTE fail to meet his quota for a certain number of consecutive months, he will be demoted, whereupon his supervisor's allowance will be withdrawn and be given to the individual who takes his place. When the employee concerned succeeds in meeting the quota again, he is re-appointed supervisor and his allowance is restored.[9]

With regard to LEONARDO, private respondent likewise insists that it never severed the former's employment. On the contrary, the company claims that it was LEONARDO who abandoned his post following an investigation wherein he was asked to explain an incident of alleged "sideline" work which occurred on April 22, 1991. It would appear that late in the evening of the day in question, the driver of a red Corolla arrived at the shop looking for LEONARDO. The driver said that, as prearranged, he was to pick up LEONARDO who would perform a private service on the vehicle. When reports of the "sideline" work reached management, it confronted LEONARDO and asked for an explanation. According to private respondent, LEONARDO gave contradictory excuses, eventually claiming that the unauthorized service was for an aunt. When pressed to present his aunt, it was then that LEONARDO stopped reporting for work, filing his complaint for illegal dismissal some ten months after his alleged termination.

Insofar as the action taken against FUERTE is concerned, private respondent's justification is well-illustrated in the record. He was unable to meet his quota for five months in 1991, from July to November of that year.[10] Yet he insists that it could not possibly be so. He argues that he must have met his quota considering that he received his supervisor's allowance for the period aforesaid. The Commission, however, negated this view, finding the alleged inconsistency to be adequately explained in the record. We quite

agree. As found by the Commission, placing special emphasis on the reasoning of the labor arbiter -

We find otherwise. Complainant Fuerte's failure to meet his sales quota which caused his demotion and the subsequent withdrawal of his allowance is fully supported by Exhibit "4" of respondents' position paper showing that his performance for the months of July 1991 to November 1991 is below par. While it is the policy of the respondent company that an employer who fails to meet his sales quota for three (3) consecutive months, he is stripped of his supervisor's designation and allowance. In the case of Fuerte, the respondents went beyond the three (3) months period before withdrawing his allowance. On this basis, the Labor Arbiter sweepingly concluded that the withdrawal of Fuerte's allowance is illegal since the respondents should have withdrawn the same after Fuerte failed to meet his sales quota for three consecutive months. However, the apparent flaw had been sufficiently reconciled by the respondents when they state that a supervisor like Fuerte, continues to receive his allowance until he is officially stripped of his supervisor's designation and assigned to another job as ordinary employee. This is precisely the reason why complainant Fuerte continued to receive his allowance even beyond the three (3) consecutive months period to meet his sales quota considering that it was only on the fifth consecutive months when the respondent company decided to strip him of his designation as supervisor. This is corroborated by the "Sinumpaang Salaysay" (Exh. "A" – respondents' position paper) of some employees of the respondent company who had been previously demoted for failure to meet their sales quota when they unformably stated:

> "5. Na alam naming kapagka hindi namin maabot and quotang nabanggit na may ilang buwan, kami'y maaring mademote at kapagka nagkaganoon ang supervisor allowance sampu ng, may mataas na parte sa profit sharing at winnings ay maalis sa amin at maibibigay sa hahalili sa amin.
>
> Surprisingly, the Labor Arbiter failed to take into consideration this material allegations of the respondents in his assailed decision except his sweeping statement that the "Sinumpaang Salaysay" was purposely done with malice to justify

> respondents' withdrawal of Fuerte's supervisor's allowance. [italics supplied]

FUERTE nonetheless decries his transfer as being violative of his security of tenure, the clear implication being that he was constructively dismissed. We have held that an employer acts well within its rights in transferring an employee as it sees fit provided that there is no demotion in rank or diminution in pay.[11] The two circumstances are deemed badges of bad faith, and thus constitutive of constructive dismissal. In this regard, constructive dismissal is defined in the following manner:

> an involuntary resignation resorted to when continued employment becomes impossible, unreasonable, or unlikely; when there is a demotion in rank or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee.[12]

Yet here, the transfer was undertaken beyond the parameters as aforesaid. The instinctive conclusion would be that his transfer is actually a constructive dismissal, but oddly, private respondent never denies that it was really demoting FUERTE for cause. It should be borne in mind, however, that the right to demote an employee also falls within the category of management prerogatives.[13]

This arrangement appears to us to be an allowable exercise of company rights. An employer is entitled to impose productivity standards for its workers, and in fact, non-compliance may be visited with a penalty even more severe than demotion. Thus:

> [t]he practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction. (Philippine American Embroideries vs. Embroidery and Garment Workers, 26 SCRA 634, 639). In the case at bar, the petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal, regardless of the permanent or probationary status of their employment. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such

> inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.[14]

Neither can we say that FUERTE's actions are indicative of abandonment. To constitute such a ground for dismissal, there must be (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention, as manifested by some overt acts, to sever the employer-employee relationship.[15] We have accordingly held that the filing of a complaint for illegal dismissal, as in this case, is inconsistent with a charge of abandonment.[16]

There remains a question regarding the manner of demotion. In Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission,[17] we ruled that:

> "Besides, even assuming arguendo that there was some basis for the demotion, as alleged by petitioner, the case records are bereft of any showing that private respondent was notified in advance of his impending transfer and demotion. Nor was he given an opportunity to refute the employer's grounds or reasons for said transfer and demotion. In Gaco v. National Labor Relations Commission, it was noted that:
>
> > "While due process required by law is applied on dismissals, the same is also applicable to demotions as demotions likewise affect the employment of a worker whose right to continued employment, under the same terms and conditions, is also protected by law. Moreover, considering that demotion is, like dismissal, also a punitive action, the employee being demoted should as in cases of dismissals, be given a chance to contest the same."

After reviewing the record, we are sufficiently persuaded that private respondent had offered substantial proof of compliance with this procedural requisite.[18]

Accordingly, given that FUERTE may not be deemed to have abandoned his job, and neither was he constructively dismissed by private respondent, the Commission did not err in ordering his reinstatement but without backwages. In a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[19]

Neither do we discern any grave abuse of discretion in the Commission's ruling dismissing LEONARDO's complaint. On this score, the public respondent found that:

> Coming now to the case of complainant Danilo Leonardo, the evidence on record indubitably shows that he abandoned his work with the respondents. As sufficiently established by respondents, complainant Leonardo, after being pressed by the respondent company to present the customer regarding his unauthorized solicitation of sideline work from the latter and whom he claims to be his aunt, he never reported back to work anymore. This finding is bolstered by the fact that after he left the respondent company, he got employed with Dennis Motors Corporation as Air-Con Mechanic from October 12, 1992 to April 3, 1995 (Certification attached to respondents' Manifestation filed June 5, 1996).

It must be stressed that while Leonardo alleges that he was illegally dismissed from his employment by the respondents, surprisingly, he never stated any reason why the respondents would want to ease him out from his job. Moreover, why did it take him ten (10) long months to file his case if indeed he was aggrieved by respondents. All the above facts clearly point that the filing of his case is a mere afterthought on the part of complainant Leonardo. In the case of Flexo Mfg. Corp. vs. NLRC, et. al., 135 SCRA 145, the Supreme Court held, thus:

> "For abandonment to constitute a valid cause for termination of employment, there must be a delibarate [sic] unjustified refusal of the employee to resume his employment. This refusal must be clearly shown, mere absence is not sufficient, it must be

> accompanied by overt acts unerringly pointing to the fatcs [sic] that the employee simply does not want to work anymore."

LEONARDO protests that he was never accorded due process. This begs the question, for he was never terminated;[20] he only became the subject of an investigation in which he was apparently loath to participate. As testified to by Merlin P. Orallo, the personnel manager, he was given a memorandum[21] asking him to explain the incident in question, but he refused to receive it.[22] In an analogous instance, we held that an employee's refusal to sign the minutes of an investigation cannot negate the fact that he was accorded due process.[23] So should it be here. We find no reason to disturb the Commission's ruling that LEONARDO had abandoned his position, the instant case being a petition for certiorari where questions of fact are not entertained.[24] Whether a worker has abandoned his employment is essentially a question of fact.[25] We reiterate that it is not for us "to re-examine conflicting evidence, re-evaluate the credibility of witnesses, nor substitute the findings of fact of an administrative tribunal which has gained expertise in its special field."[26]

In concluding, we feel that it will not be amiss to point out that a petition for certiorari under Rule 65 is intended to rectify errors of jurisdiction or grave abuse of discretion. As we held in Philippine Advertising Counselors, Inc. v. National Labor Relations Commission.[27]

The well-settled rule confines the original and exclusive jurisdiction of the Supreme Court in the review of decisions of the NLRC under Rule 65 of the Revised Rules of Court only to the issue of jurisdiction or grave abuse of discretion amounting to lack of jurisdiction. Grave abuse of discretion is committed when the judgment is rendered in a capricious, whimsical, arbitrary or despotic manner. An abuse of discretion does not necessarily follow just because there is a reversal by the NLRC of the decision of the Labor Arbiter. Neither does the mere variance in the evidentiary assessment of the NLRC and that of the Labor Arbiter would, as a matter of course, so warrant another full review of the facts. The NLRC's decision, so long as it is not bereft of support from the records, deserves respect from the Court.

WHEREFORE, the petitions for certiorari in G.R. Nos. 125303 and 126937 are hereby **DISMISSED** for lack of merit.

The Decision dated March 28, 1998 together with the Resolution dated May 29, 1996 of public respondent is **AFFIRMED** in toto. No pronouncement as to costs.

SO ORDERED.

Bellosillo, *J.*, *(Chairman)*, Mendoza, Quisumbing, and Buena, *JJ.*, concur.

---

[1] Record, pp. 707-729.
[2] Annex "B" of Petition in G.R. No. 126937, Rollo, p. 42.
[3] Record, pp. 531-545.
[4] Record, pp. 732-735.
[5] Rollo of G.R. No. 125303, pp. 73-77.
[6] Rollo of G.R. No. 126937, pp.166-168.
[7] Rollo of G.R. No. 126937, pp. 176-a to 176-b.
[8] Petition, Rollo, pp.8-9.
[9] Exhibit 6, Record, pp. 17-22. TSN, January 25, 1994, pp. 5-23.
[10] Exhibit 4, Record, p. 15.
[11] Asis v. National Labor Relations Commission, 252 SCRA 379, 384 (1996)
[12] Escobin v. National Labor Relations Commission, 289 SCRA 48, 72 (1998)
[13] See Rubberworld (Phil.), Inc. v. National Labor Relations Commission, 175 SCRA 450, 456 (1989)
[14] Buiser v. Leogardo, Jr., 131 SCRA 151, 158 (1984)
[15] Hagonoy Rural Bank, Inc. v. National Labor Relations Commission, 285 SCRA 297, 308 (1998); Pure Blue Industries, Inc. v. National Labor Relations Commission, 271 SCRA 259, 264 (1997)
[16] Trendline Employees Association-Southern Philippines Federation of Labor v. National Labor Relations Commission, 272 SCRA 172, 177 (1997); Bontia v. National Labor Relations Commission, 255 SCRA 167, 177 (1996); Jackson Building Condominium Corporation v. National Labor Relations Commission, 246 SCRA 329, 332 (1995)
[17] 266 SCRA 97, 109-110 (1997)
[18] TSN, July 15, 1993, p. 34; TSN, November 15, 1993, pp. 10-15.
[19] Chong Guan Trading v. National Labor Relations Commission, 172 SCRA 831, 843-844 (1989)
[20] TSN, July 15, 1993, p. 49.
[21] Exhibit 3, Record, p. 274.
[22] TSN, July 15, 1993, p. 52.

[23] Pizza Hut/Progressive Development Corporation v. National Labor Relations Commission, 252 SCRA 531, 536 (1996)
[24] Premiere Development Bank v. National Labor Relations Commission, 293 SCRA 49, 60 (1998); Suarez v. National Labor Relations Commission, 293 SCRA 496, 502 (1998)
[25] General Textile, Inc. v. National Labor Relations Commission, 243 SCRA 232, 235 (1995)
[26] Philtranco Service Enterprises, Inc. v. National Labor Relations Commission, 288 SCRA 585, (1998)
[27] 263 SCRA 395, 400-401 (1996)