

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**NUEVA ECIJA I ELECTRIC
COOPERATIVE, INC. (NEECO-I),
*Petitioner,***

-versus-

**G.R. No. 61965
April 3, 1990**

**MINISTER OF LABOR and OSCAR S.
ANGELES,
*Respondents.***

X-----X

DECISION

PADILLA, J.:

Petition for Review on *Certiorari* (which we treat as a Petition for *Certiorari*) of the Order dated 2 September 1980^[1] of the Minister of Labor and Employment affirming the Order dated 14 February 1980^[2] of the Regional Director, Mr. David P. San Pedro, which denied the petitioner's application for clearance to terminate the services of private respondent Oscar S. Angeles.

Private respondent Oscar S. Angeles (hereinafter, Angeles), started working with petitioner, Nueva Ecija I Electric Cooperative, Inc. (NEECO, for brevity) sometime in 1973, rising from the ranks and holding the position of Project Engineer in petitioner's main office in

San Isidro, Nueva Ecija, at the time petitioner filed in the Regional Office of the Ministry of Labor an application for clearance to terminate his employment. The grounds of the application were: (a) Direct insubordination; (b) Abandonment of work; (c) Conduct unbecoming of an official of the cooperative; (d) Refusal to report for work; and (e) Habitual tardiness. Upon receipt of a copy of the application, private respondent filed an opposition thereto, alleging that the grounds adduced by petitioner were “absolutely false, sham and untrue and entirely devoid of any factual basis and was inspired by ulterior motives.”^[3]

To expedite the disposition of the case, the parties were directed to file their respective position papers together with supporting documents, after which the case was deemed submitted for decision.

Based on the position papers submitted by the parties, the Regional Director denied petitioner’s application for clearance and ordered petitioner “to immediately reinstate the oppositor to his former position without loss of seniority rights and with full backwages from the time he was illegally dismissed up to the date of his reinstatement.”^[4] As already stated, petitioner’s appeal from the said decision to the Minister of Labor and Employment was dismissed for lack of merit. Hence, this recourse.

Petitioner imputes two (2) errors to respondent Minister, namely:

- I. That the public respondent erred in finding that private respondent did not abandon his work, and refused to report for duty.
- II. That the public respondent gravely and seriously erred in ordering petitioner to reinstate private respondent to his former position with full backwages when private respondent was not dismissed or suspended from the service.^[5]

It is petitioner’s contention that, as borne by the evidence, Angeles abandoned his work. Petitioner claims that Angeles was assigned as project engineer for the construction of a new sub-station in Malapit, San Isidro, Nueva Ecija, to coordinate with Engr. Raul Mangahas

regarding the plans and specifications of the new sub-station. Petitioner adds that this assignment, effective 26 February 1979, was contained in the Memorandum dated 24 February 1979 of Dr. Cesar G. Lamson, General Manager, addressed to Oscar S. Angeles. Petitioner further contends that while private respondent reported for work at the construction site on 26 and 27 February 1979, yet, according to the records submitted by the Security Guard stationed at the site's guardhouse, he (Angeles) was absent from 28 February to 4 March 1979, and that from 5 March to 16 March 1979, he did not report for work. Moreover, petitioner states that he (Angeles) did not file any application for leave to justify these absences.

Petitioner assails the finding of public respondent that Angeles did not abandon his work as "abandonment, to be a valid theory of defense and just cause for termination, there must be a credible showing that the employee has not (sic) the intention to resume his former occupation." Petitioner argues that intention is a mental process and activity of the mind and the employer cannot be subjected to the mercy of the employee's imagination and undefined mental attitude.^[6]

Moreover, petitioner finds it incredible that Angeles was verbally permitted by the General Manager, Cesar G. Lamson, to go on an indefinite leave of absence without requiring him (Angeles) to file a written application for leave properly approved by the General Manager, which is a standard operating procedure in any office. Besides, according to petitioner, Mr. Cesar G. Lamson died on 21 June 1979 and he could no longer refute private respondent's statement regarding the alleged verbal permission given by the deceased manager to private respondent.

Pursuing the second issue raised, petitioner maintains that public respondent erred in ordering the reinstatement of Angeles with backwages because he was not dismissed or suspended by NEECO. It further asserts that it merely filed an application to terminate the services of Angeles and it was awaiting the final order of public respondent on its application for clearance. Alleging that it was private respondent who stopped reporting for duty without an approved leave of absence, in gross violation of the rules of the

cooperative, petitioner alleges that public respondent erred in ruling that private respondent is entitled to backwages.

On the other hand, Angeles insists that he did not abandon his employment or that he (Angeles) refused to work at the construction site in Malapit, San Isidro, Nueva Ecija. In support of this contention, he presented the affidavit of Engineer Raul Mangahas, dated 12 October 1979, attesting to the fact that he (Angeles) coordinated with said Engr. Raul Mangahas in the construction of the new sub-station from 26 February 1979 to 3 April 1979. As for his failure to report for work, he asserts that he went on leave to attend to family matters, with the full knowledge of the General Manager, Dr. Cesar Lamson. To prove that he did not intend to abandon his work and that he did not refuse to work, he submitted copies of his letters (Exhs. "6", "7", "8", "9") dated 4 September 1979, 5 September 1979, 12 October 1979 and 7 November 1979 wherein he indicated that he was reporting for work.^[7]

Moreover, Angeles claims that soon after filing his opposition to the clearance application filed by NEECO, he went to see the General Manager to show his willingness to work at his assignment. Unfortunately, the General Manager refused to accept him and advised him to wait for the result of the petitioner's application for clearance to terminate his employment, which was then pending in the Ministry of Labor and Employment.

The point that Angeles would like to impress upon the Court is that, considering the dedicated service he has rendered petitioner, and having been promoted to various positions of responsibility in the short period he has been employed by NEECO, he would not just abandon his work which he loves and values. In the short period of his employment with NEECO, he adds, he has held the following positions:

- "1. Line Superintendent From date of employment to February, 1977;
2. District Manager Sta. Rosa District Office, Sta. Rosa, Nueva Ecija, February 1977-February 1978;

3. Project Manager, Nueva Ecija Furniture industries, Inc. (NEFUR) This is a 'Power Use Project' of the NEECO Peñaranda, Nueva Ecija February, 1978 — January, 1979; and
4. Project Engineer, NEECO Main Office San Isidro, Nueva Ecija January, 1979 to date.”^[8]

Angeles concludes that it can readily be seen from the positions above enumerated that he has ably demonstrated his capability, dedication and loyalty to petitioner and that his dismissal by petitioner is unfounded and without merit.

After a careful examination of the questioned decision of public respondent, we find that no grave abuse of discretion was committed which calls for a reversal of the said decision. Hence, we affirmed the same.

Petitioner's only evidence to show that Angeles did not report for work at the sub-station in Malapit, San Isidro, Nueva Ecija, were the reports submitted by the officer-in-charge of the security guards assigned in the NEECO compound where the construction of the new sub-station was being undertaken. The reports are purportedly the daily time records of attendance of Angeles as observed and recorded by the security guards stationed in the guardhouse. Petitioner cannot rely absolutely on these reports as they are not the official daily time records prepared and signed by the employee concerned. At best, they are self-serving documents prepared by the security guards to support petitioner's cause for abandonment against Angeles.

We agree with public respondent that Angeles did not belong to the rank and file of petitioner's employees. His position comes within the "managerial" category and therefore he was not really required to fill up a daily time record. Moreover, the charge of abandonment ascribed to Angeles was belied by petitioner's act of paying his salary from 26 February 1979 to 15 March 1979 during which period, he was supposed to have abandoned his work. A more convincing proof is the affidavit of Engr. Raul M. Mangahas which states that Angeles coordinated with him (Mangahas) from 26 February 1979 to 3 April

1979. This sworn statement cannot be overturned by mere reports of security guards which are not even under oath.

For abandonment to constitute a valid cause for termination of employment, there must be a deliberate, 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 fact that the employee simply does not want to work anymore.^[9] The letters of Angeles addressed to the General Manager wherein he indicated his intention to report for duty, disproves petitioner's claim that he refused to work.

Petitioner complains that the public respondent should not have ordered it to reinstate private respondent to his former position with full backwages because it has not dismissed private respondent; that it only filed an application for clearance to terminate his services and was awaiting the final action on its application by the Minister of Labor and Employment. This argument pales in the light of the finding that petitioner refused to accept back private respondent when he reported to the General Manager, under the pretext that it was waiting for the final order of the Regional Director of the Ministry of Labor and Employment on its clearance application. The refusal of petitioner to accept back Angeles had the actual effect of terminating his employment.

The law at the time Angeles' employment was terminated required prior clearance from the Minister of Labor and Employment before he could be dismissed. Since no clearance was as yet granted when petitioner refused to accept back private respondent, which amounted to his dismissal, the Court sees no grave abuse of discretion or even error in the order of public respondent to reinstate Angeles to his former position and the payment of his backwages which the law also then provided for.^[10]

WHEREFORE, the Petition is **DISMISSED** and the Decision of public respondent dated 2 September 1980 is **AFFIRMED** with the modification that backwages shall be limited to three (3) years only. Costs against petitioner.

SO ORDERED.

**Melencio-Herrera, Paras, Sarmiento and Regalado, JJ.,
concur.**

- [1] Annex B, pp. 19-20, Rollo.
- [2] Annex A, pp. 11-18, *ibid.*
- [3] Annex A, *supra*.
- [4] P. 18, *ibid.*
- [5] P. 4, *ibid.*
- [6] Petitioner's Memorandum, p. 77, *ibid.*
- [7] Comment of private respondent, p. 32, *ibid.*
- [8] P. 29. *ibid.*
- [9] *Flexo Manufacturing vs. NLRC*, No. 55971, Feb. 28, 1985, 135 SCRA 145;
Penaflor vs. NLRC, No. 61247, January 17, 1983, 120 SCRA 68.
- [10] Sec. 2, Rule XIV, Labor Code of the Philippines (1974).