SUPREME COURT
FIRST DIVISION

MARIANO N. TAN, DOING BUSINESS UNDER THE NAME CARTER'S GENERAL SALES,
***Petitioner*,**

-versus-

G.R. No. 116807
April 14, 1997

NATIONAL LABOR RELATIONS COMMISSION, ROMEO GARRIDO and ANTONIO IBUTNANDI,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

Petitioner assails the Decision of the National Labor Relations Commission (NLRC) declaring that Romeo Garrido and Antonio Ibutnandi were illegally dismissed[1] as well as its resolution denying his Motion for Reconsideration.[2]

Mariano Tan doing business under the name Carter's General Sales is engaged in selling hardware and construction materials. Antonio Ibutnandi was his driver and Romeo Garrido his delivery helper since 1 August 1976 and 2 March 1983, respectively. They were paid on a

daily basis. On 16 January 1989 Ibutnandi and Garrido filed a complaint with the Department of Labor and Employment, National Capital Region, charging their employer with various violations of labor standards specifically underpayment of wages and overtime pay as well as non-payment of legal holiday pay, service incentive leave pay and 13th month pay.[3]

On 5 April 1989 the complaint was amended to include the charge of illegal dismissal. Garrido alleged that on 28 January 1989 his right hand (little finger) was injured while he was lifting heavy boxes of concrete nails in the store of petitioner. As a consequence, he had to stop working. Despite his injury however Emma Tan, General Manager and wife of petitioner, ordered him to continue lifting the heavy boxes. When he refused because his injured finger made the task extremely difficult and painful, besides being risky, Emma Tan promptly called up her lawyer. Atty. Roberto B. Arca arrived and demonstrated how Garrido could continue lifting the heavy boxes by using only his four (4) other fingers. When Garrido persistently refused as he wanted to have his injured finger treated first, Atty. Arca then and there served him with a letter[4] directing him to explain why no disciplinary action should be taken against him for failing to obey a valid order of his employer. Upon his return three (3) working days later, after his finger was already treated, Emma Tan told him to "go to hell." The remark notwithstanding, he loitered around the store premises for the next four (4) days but was treated like a leper.[5] He was eventually dismissed for alleged abandonment of work ten (10) days later.

Antonio Ibutnandi, on the other hand, was dismissed because he failed to present a medical certificate from a government doctor certifying that he was already cured of pulmonary tuberculosis (PTB), hence, already fit to work.

On 31 July 1989, Labor Arbiter Eduardo G. Magno dismissed for lack of merit the claims for legal holiday and service incentive leave pays on the ground that petitioner was a retail establishment regularly employing less than ten (10) employees, hence, exempt under Arts. 94 and 95 of the Labor Code. As to the underpaid wages and overtime pay, Labor Arbiter Magno concluded that the vouchers presented by petitioner sufficiently established payment by him of the correct

minimum wage and overtime pay. On the issue of illegal dismissal, Garrido was declared validly dismissed for abandonment of work while Ibutnandi was directed to present a medical certificate issued by a government physician certifying that he was fit to work within thirty (30) days from receipt of the decision; otherwise, he would be considered to have abandoned his job.[6]

Garrido and Ibutnandi appealed to the NLRC which reversed the Labor Arbiter by declaring that complainants were indeed dismissed illegally, the ultimate cause of which was their act of filing on 16 January 1989 their complaint for various violations of labor standards against their employer. However, the case was ordered remanded to the Labor Arbiter for further presentation of evidence on the issue of complainants' (private respondents) money claims as those on hand were considered insufficient to resolve the issue. On 29 July 1994,[7] however, the foregoing directive was set aside in view of the Joint Manifestation[8] filed by Garrido and Ibutnandi waiving their money claims in favor of the bigger issue of illegal dismissal. At the same time, NLRC denied the Motion for Reconsideration and/or For Recall of the Decision filed by Mariano Tan. Hence, this petition by Tan.

Petitioner contends that respondent NLRC committed grave abuse of discretion in ruling that private respondents were dismissed for having filed the labor standards complaint against him on 16 January 1989. He insists that abandonment of work exists as a valid ground for Romeo Garrido's termination while Antonio Ibutnandi was validly dismissed under Art. 284 of the Labor Code and for his failure to submit a medical certificate from a government physician certifying that he was already cured of pulmonary tuberculosis (PTB).

We deny the petition. First, petitioner's allegations are not supported even by his own evidence. He alleges that despite two (2) notices demanding that Garrido return to work, the latter did not heed the demands and instead absented himself from 30 January to 5 April 1989 when he suddenly charged petitioner with illegal dismissal. Hence, for his prolonged absence for sixty-six (66) days, respondent Garrido was deemed to have abandoned his job and consequently terminated.[9]

The records disclose that respondent Romeo Garrido did not absent himself from work without leave for sixty-six (66) days. On the contrary, he was not able to report for work anymore because as early as nine (9) days after his job-related injury on 28 January 1989, his services were already terminated by Emma Tan, wife of petitioner, in her capacity as Manager of Carter's General Sales through a letter dated 7 February 1989.[10] In fact, when Garrido first returned on 2 February 1989 after his injury he was made to feel by Emma Tan that his services were no longer desirable nor needed when he was told to "go to hell." And when respondent persistently hang around the store premises for the next four (4) days hoping to be given some work, he was treated like a leper. Petitioner now attempts to convince us that respondent is guilty of job abandonment. Given the foregoing scenario, we are hardly convinced.

Besides, jurisprudence dictates that for abandonment to constitute a valid ground for dismissal there must be a clear, deliberate and unjustified refusal to resume employment and a clear intention to sever the employer-employee relationship on the part of the employee.[11] It is emphatically stated that mere absence or failure to report for work is not enough to amount to such abandonment.[12] Hence, Garrido's absences which were at first due to his job-related injury and, subsequently, the hostile treatment given him by petitioner's wife ever since the labor standards complaint was filed could hardly amount to abandonment of his work. It would be the height of injustice to allow an employer to claim as a ground for abandonment a situation which he himself had brought about.[13]

In the case of respondent Antonio Ibutnandi, it cannot be denied that he became afflicted with pulmonary tuberculosis (PTB) and that under Art. 284 of the Labor Code, an employer may terminate the services of his employee found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to that of his co-employees. However, the fact that an employee is suffering from such a disease does not ipso facto make him a sure candidate for dismissal as what petitioner did with respondent Ibutnandi. Consistent with the Labor Code policy of affording protection to labor and of liberal construction of labor laws in favor of the working class, Sec. 8, Rule I, Book VI, of the Omnibus Rules Implementing the Labor Code provides —

> Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate the employee to his former position immediately upon the restoration of his normal health. (Emphasis ours)

Clearly, it is only where there is a prior certification from a competent public authority that the disease afflicting the employee sought to be dismissed is of such nature or at such stage that it cannot be cured within six (6) months even with proper medical treatment that the latter could be validly terminated from his job.

There is absolutely nothing on record to show that such a certification was ever obtained by petitioner, much less that one was issued by a competent public authority, before respondent Antonio Ibutnandi was dismissed. On the contrary, what appears on record is a Medical Certificate dated 5 May 1989[14] issued by Dr. Lenita C. de Castro certifying to the contrary, i. e., that respondent was in fact already fit to return to work. However, petitioner did not accept the certificate and insisted that Ibutnandi present one issued by a government physician. For his failure to present such a certificate, respondent was penalized with dismissal.

Obviously, the condition imposed by petitioner finds no basis under the law. To reiterate, contrary to his insistence that respondent first obtain a medical certificate attesting that he was already cured of pulmonary tuberculosis, the above-quoted Sec. 8, Rule I, Book VI, of the Omnibus Rules is clear that the burden is upon petitioner, not respondent, to justify the dismissal with a certificate from a competent public authority that respondent's disease is at such stage or of such nature that it cannot be cured within six (6) months even with proper medical treatment. For petitioner's blatant failure to

present one, we can only rule that respondent Ibutnandi's dismissal, like that of Garrido, is illegal, invalid and unjustified.

One final note. As the NLRC itself has concluded, circumstances do indicate that petitioner, through his wife who is his General Manager, discriminated against respondents for no other reason than the filing of the labor standards complaint on 16 January 1989. We cannot conclude otherwise because the subject dismissals evolved from minor incidents that were blown out of proportion by petitioner's wife apparently for their own intention of eventually getting rid of respondents. Respondents, at the time of their termination from employment, have been in petitioner's employ for several years (since 1983 and 1976, respectively) whose performance was previously unmarred by misbehavior or misconduct of any sort, i. e., until they made the mistake (from petitioner's point of view) of filing a labor standards complaint against him.

Regarding the contention that respondent NLRC abused its discretion in awarding back wages to respondent Antonio Ibutnandi considering that the latter enjoyed paid sick leaves during the period of his illness, suffice it to say that such awards are elementary legal remedies granted to employees upon a finding of illegal dismissal and indubitably sanctioned under Art. 279 of the Labor Code. However, we modify the decision of the NLRC insofar as it awarded to both respondents Antonio Ibutnandi and Romeo Garrido back wages for a period of only three (3) years.

Jurisprudence distinguishes between employees dismissed before the effectivity of R. A. No. 6715 on 21 March 1989 and those dismissed after. While those illegally dismissed before 21 March 1989 shall be awarded back wages limited to three (3) years without deduction or qualification,[15] those dismissed after shall be entitled to full back wages and other benefits for the entire period that they were out of work and until actual reinstatement.[16]

Hence, while back wages limited to three (3) years were properly awarded to respondent Romeo Garrido since he was dismissed on 7 February 1989 or before the effectivity of R. A. No. 6715, a similar award to Antonio Ibutnandi is incorrect since he was dismissed after or upon the expiration of his sick leave on 31 March 1989.

WHEREFORE, premises considered, the Petition is **DENIED** and the questioned Decision and Resolution of respondent National Labor Relations Commission declaring that respondents Romeo Garrido and Antonio Ibutnandi were illegally dismissed are **AFFIRMED**. Hence, respondents are entitled to **REINSTATEMENT** with back wages or, in lieu of reinstatement, payment of separation pay equivalent to one (1) month pay for every year of service.[17] However, while respondent Romeo Garrido is entitled to back wages limited to three (3) years only without qualification or deduction from 7 February 1989, respondent Antonio Ibutnandi is entitled to full back wages from the time of his illegal dismissal on 31 March 1989 until actual reinstatement. Costs against petitioner.

SO ORDERED.

Padilla and Kapunan, *JJ*., concur.
Vitug, *J*., concurs except for the modification of award for backwages to private respondent Ibutnandi who did not appeal the NLRC Decision.
Hermosisima, Jr., *J*., is on leave.

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[1] Rollo, pp. 104-115.
[2] Id., pp. 127-131.
[3] Docketed as NLRC case No. 00-9-00324-89 entitled "Antonio Ibutnandi, et al. vs. Carter's General Sales."
[4] Annex "1", Rollo, p. 55.
[5] Comment, p. 6; Id., p. 146.
[6] Id., pp. 74-78.
[7] Id., pp. 127-131.
[8] Original Records, p. 244.
[9] Petition, p. 13; Rollo, p. 14.
[10] Exh. "3," Id., p. 57.
[11] Cañete vs. National Labor Relations Commission, G.R. No. 114161, 23 November 1995, 250 SCRA 259, 267; Reno Foods, Inc. vs. National Labor Relations Commission, G.R. No. 116462, 18 October 1995, 249 SCRA 379, 386; Labor vs. National Labor Relations Commission, G.R. No. 110388, 14 September 1995, 248 SCRA 183, 198; International School of Speech vs. National Labor Relations Commission, G.R. No. 112658, 16 March 1995, 242 SCRA 382, 389; Santos vs. National Labor Relations Commission, G.R. No.

76991, 28 October 1988, 166 SCRA 759, 764; Velasco vs. Inciong, G.R. No. 50871, 4 August 1988, 164 SCRA 67, 74.

[12] De Ysasi III vs. National Labor Relations Commission, G.R. No. 105499, 11 March 1994, 231 SCRA 173, 187; Velasco vs. Inciong, G.R. No. 50871, 4 August 1988, 164 SCRA 67, 74.

[13] Toogue vs. National Labor Relations Commission, G.R. No. 112334, 18 November 1994, 238 SCRA 241, 246-247.

[14] Annex "Q" of Respondents' Memorandum of Appeal filed before NLRC; Original Records, p. 166.

[15] See Mercury Drug Co. vs. Court of Industrial Relations, No. L-23357, 30 April 1974, 56 SCRA 694, known as the Mercury Drug Rule.

[16] Rasonable vs. National Labor Relations Commission, G.R. No. 117195, 20 February 1996, 253 SCRA 815, 821.

[17] Zenaida Gaco vs. National Labor Relations Commission, G.R. No. 104690, 23 February 1994, 230 SCRA 260, 268.