SUPREME COURT
FIRST DIVISION

RAMON TOOGUE AND FILIPINA YABILLO, IN LIEU OF HER LATE HUSBAND SAUL YABILLO,
***Petitioners*,**

-versus-

G.R. No. 112334
November 18, 1994

NATIONAL LABOR RELATIONS COMMISSION (First Division) and GENERAL RUBBER & FOOTWEAR CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

DAVIDE, JR., *J.*:

In this Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, the petitioners urge us to set aside, for having been issued with grave abuse of discretion, the Resolutions of 30 April 1993 and 22 July 1993 of public respondent National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 00-05-02922-90.[1] The first Resolution affirmed the Decision of 23 November 1990 of Labor Arbiter Felipe T. Garduque II which dismissed the petitioners' complaint for retirement benefits or separation pay, moral and

exemplary damages, and attorney's fees, while the second resolution denied the motion to reconsider the first resolution.

We required the respondents to comment on the petition.

In its comment, the private respondent contends that the NLRC committed no grave abuse of discretion and that a reversal of the challenged resolutions "would have no practical effect" since the private respondent "already ceased operations last November 1993 due to bankruptcy [and] had no more assets to pay even its 100 workers their 13th month pay for 1993 and separation pay."[2]

After obtaining five extensions of time to submit the comment for the NLRC, the Office of the Solicitor General filed on 14 April 1994 a Manifestation in Lieu of Comment.[3] It states therein that Ramon Toogue and Saul Yabillo did not abandon their employment and are entitled to separation pay, and prays that this petition be granted. We required the NLRC to file its own comment if it so desires,[4] and in its Comment filed on 27 September 1994, it prays that this case be dismissed because it raises factual issues and it is settled that the factual findings of the NLRC are generally accorded not only respect but even finality when they are supported by substantial evidence as in this case.

After deliberating on the allegations, issues, and arguments raised by the parties in their aforementioned pleadings, we resolved to give due course to this petition and to decide it on the basis of the pleadings.

This case originates from NLRC-NCR Case No. 00-05-02922-90, which is a complaint for retirement benefits or separation pay, moral and exemplary damages, and attorney's fees commenced by petitioner Ramon Toogue and the widow of Saul Yabillo.

The antecedent facts as summarized by the NLRC in its resolution of 30 April 1993 are as follows:

> "Complainant Ramon Toogue started working with respondent company in September, 1960 while complainant Filipina Yabillo's husband, Saul Yabillo, started working with the same company in February 1966; that both eventually became

supervisor and assistant supervisor, respectively, of said respondent company; that from 7 May 1984 to February 9, 1987, the Samahang Manggagawa ng General Rubber & Footwear Corporation — ANGLO, declared four (4) separate strikes lasting from two (2) months to eighteen (18) months in duration. These strikes caused serious economic dislocations for the company, forcing it to institute a system of rotation of employees. And finally on 12 February 1987, it advised its employees to temporarily find work elsewhere so as not to suffer economic hardship.

The wording of the Memo to complainants to this effect dated 12 February 1987 from respondent is as follows:

> 'In view of the circumstances which the company is presently undergoing, effective February 16, 1987 wages/salaries will be suspended. We would therefore, advise you to look for some temporary means of income until we are back to normal operations wherein you will be properly notified.'

The complainants found employment with a foreign company in Yemen and left the Philippines in November 1987; they gave notice to respondent that they were applying for an indefinite leave of absence;

That on 15 September 1988, a settlement agreement was reached between the company and the union whereby among other things, the management agreed to resume operations in twenty-five (25) days.

That on 2 December 1988, respondent sent a letter to all its employees informing them that the company had resumed its operations since the strike was settled. Employees were given seven (7) days to report for work, with the threat of dismissal if they failed to report within the said period; that on receipt of such letter, complainants wives wrote respondent on 19 January 1989 requesting the latter to hold the positions i.e. Supervisor and Assistant Supervisor, occupied by their husbands until they come home since their non-availability to report for work in

answer to their call was in conformity with the respondent's letter of 12 February 1987.

That respondent company made no response to their letter of 19 January 1989, requesting that the positions occupied by their husbands be held in abeyance.

That the late Saul Yabillo returned to the country on 19 December 1989 but died of heart problems on the same date. Complainant Toogue returned on the last week of January, 1990.

That when complainant Toogue reported for work at respondent's company, he was told that he was already considered as being on absence without leave (AWOL) and therefore terminated.

Complainants therefore claim that both Ramon Toogue and Saul Yabillo were dismissed without justifiable cause and due process, contrary to Book V, Rule XIV, Sections 1 and 5 of the implementing rules of the Labor Code which we quote as follows:

'Termination of Employment.

Sec. 1. Security of tenure and due process. — No worker shall be dismissed except for a just and authorized cause provided by law and after due process.

Sec. 5. Answer and hearing. — The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.'

Respondent claims on the other hand that complainant were able to secure employment elsewhere i.e., Yemen, and did not report for work when required to do so, hence, are considered

> resigned or have abandoned their work. As such, both are not entitled to separation pay.
>
> Respondent further argues that the law does not provide for separation pay to employees who are considered resigned or have abandoned their work for failure to report as required since they were both abroad."[5]

In the Decision of 23 November 1990,[6] Labor Arbiter Felipe Garduque II ruled for the private respondent and dismissed the complaint for lack of merit on the basis of his findings that Ramon Toogue and Saul Yabillo abandoned their employment when they "failed to report to work after they were required to do so." He reasoned thus:

> "In the letter of the respondent dated February 12, 1987 to individual complainants, it is explicit that the advice refers only to look for temporary means of income until the operation of the company becomes normal, and complainants after ten (10) months had passed or on Nov. 1987, they entered into a two (2) year foreign employment contract despite knowledge that strike may be settled any time and the same is temporary in nature."[7]

The petitioners appealed the decision to the NLRC which, however, affirmed it in its resolution of 30 April 1993.[8] The NLRC held that "when the complainants failed to report for work when required to do so after the settlement of the labor dispute, the complainants are considered to have resigned or abandoned their work. Hence, they are not entitled to payment of separation pay."

We rule that the petitioners are entitled to separation pay.

Material to the resolution of this case are Articles 283 and 286 of the Labor Code. They provide thus:

> "Art. 283. Closure of the establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving

> written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.
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> x x x
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> Art. 286. When employment not deemed terminated. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer.

The suspension of the business operations of the private respondent having exceeded six months, the employment of Toogue and Yabillo was thus deemed terminated. In other words, they were constructively dismissed from employment.[9] They are therefore entitled to separation pay.

The private respondent's contention that Toogue and Yabillo had abandoned their employment is untenable. Since Toogue and Yabillo had earlier been constructively dismissed when the suspension of the private respondent's business operations exceeded six months, there was no employment to speak of that Toogue and Yabillo could be said to have abandoned. The 2 December 1988 letter of the private respondent giving Toogue and Yabillo seven days to report for work, with the threat of "dismissal" should they fail to do so, was in effect a mere offer of re-employment which cannot be held to prejudice Toogue and Yabillo's claim for separation pay.

Even assuming arguendo that there was no constructive dismissal, the private respondent's claim of abandonment must still fail. Toogue and Yabillo were forced to seek overseas employment as a result of

their company's inability to provide them with gainful work. Certainly, they cannot be expected to sit idly by and watch their families starve. Furthermore, the private respondent's 2 December 1988 letter was mailed not to Toogue and Yabillo's place of work abroad, which was known to the private respondent, but to their wives and gave them an unreasonable period of seven days within which to report back for work. It would thus be unjust to allow the private respondent to claim as a ground for abandonment a situation which it itself had brought about. And if indeed the private respondent felt that Toogue and Yabillo had relinquished their jobs, then it should have charged them with abandonment.[10]

WHEREFORE, the Resolutions of the National Labor Relations Commission of 30 April 1993 and 22 July 1993, and the Decision of the Labor Arbiter of 23 November 1990 in NLRC-NCR Case No. 00-05-02922-90 are hereby **REVERSED** and **SET ASIDE** and a new decision is hereby rendered ordering private respondent General Rubber and Footwear Corporation to award separation pay to RAMON TOOGUE and SAUL YABILLO each in the amount of one-half (½) month pay for every year of service, with a fraction of at least six months being considered one whole year. The amount due to Saul Yabillo shall be paid to his estate through his wife, petitioner FILIPINA YABILLO.

SO ORDERED.

Padilla, Bellosillo, Quiason and Kapunan, *JJ.*, concur.

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[1] Entitled "Ramon Toogue, et al. vs. General Rubber & Footwear Corporation and/or Henry Chongson, President."
[2] Rollo, 46.
[3] Id., 59-66.
[4] Id., 69.
[5] Rollo, 23-27.
[6] Id., 17-21.
[7] Rollo, 20.
[8] Id., 22-28.
[9] Agro Commercial Security Services Agency, Inc. vs. NLRC, 175 SCRA 790 [1989]; International Hardware, Inc. vs. NLRC, 176 SCRA 256 [1989]; People's Security, Inc. vs. NLRC, 226 SCRA 146 [1993].

[10] Hua Bee Shirt Factory vs. NLRC, 186 SCRA 586 [1990].