

## THIRD DIVISION

[ G.R. NO. 167953, April 04, 2007 ]

**DANNY MAME, PETITIONER, VS. COURT OF APPEALS, NATIONAL  
LABOR RELATIONS COMMISSION, VIRGILIO CUERPO AND  
NORILYN CUERPO, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a Petition for Review on *Certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 81797 and its Resolution<sup>[2]</sup> denying the motion for reconsideration thereof.

The antecedent facts are as follows:

The spouses Virgilio and Norilyn Cuerpo were engaged in the construction business under the business name "V.C. Building Trade and Woodworks." They employed carpenters and workers, including petitioner Danny Mame, who was tasked to supervise their workers at the Bonifacio Firing Range project. In January 1988, the couple promoted Mame to foreman carpenter for the following projects:

| PROJECT                | LOCATION                                  |
|------------------------|---|
| Aureliade Residence    | Las Pinas-Alabang                         |
| Gruit Residence        | San Juan, M.M.                            |
| Caraan Residence       | Valle Verde, Pasig                        |
| Alexandra Condo.       | Ortigas Ave., Pasig                       |
| Center Point Building  | Meralco Avenue                            |
| Gotesco Mall           | Commonwealth Ave.                         |
| Rustan's               | Makati City                               |
| Royal Duty Free        | Clark Air Base, Angeles<br>City, Pampanga |
| Ram Sy Residence       | Ayala, Alabang                            |
| I-Bank                 | Sucat, Parañaque                          |
| Cuerpo Residence       |   |
| Bobby Cuerpo Residence |   |
| Olivares Residence     |   |
| Bayot Residence        | Baguio City <sup>[3]</sup>                |

Mame received a daily wage of P440.00.

In May 2001, respondents were contracted to construct the Bayot residence in Baguio City. On September 18, 2001, respondent Norilyn Cuerpo called Mame's attention regarding the wrong installation of expensive narra planks on the stairs of the Bayot residence. The architect in charge of the project had earlier complained of the wrong installation. Consequently, the couple had to rectify the error and pay for the costs.

According to Mame, the couple told him "*Umalis ka na, ayaw na kitang makita dito. Tanggal ka na sa trabaho,*" followed by scathing insults. Thus, he had no choice but to leave his employment.

For their part, the couple averred that Norilyn merely called petitioner's attention to the complaint of the architect and reprimanded him. He resented the incident and opted to stay in the crew barracks.

On September 28, 2001, petitioner filed a Complaint for Illegal Dismissal against the spouses Cuerpo before the National Labor Relations Commission (NLRC). He prayed that judgment be rendered in his favor, as follows:

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Office render a decision declaring the respondents to be liable for illegal dismissal and ordering them to:

1. Immediately reinstate and give full backwages to the complainant;
2. Pay complainant the following:
  - a) holiday pay
  - b) holiday premium pay
  - c) service incentive leave pay
  - d) 13th month pay
3. Pay complainant moral and exemplary damages in a sum as the Honorable Office may deem just and equitable under the premises;
4. Pay complainant attorney's fees.

Other reliefs just and equitable under the premises are, likewise, prayed for.<sup>[4]</sup>

In their Position Paper, respondents averred that petitioner walked out from his employment and abandoned his work. They had the right to call his attention since his work was deficient. Instead of being remorseful, complainant even threatened to convince his co-workers to walk out from their jobs. In her reply, respondent Norilyn denied that she terminated the employment of complainant and insulted him on September 21, 2001. Petitioner was a troublemaker and had difficulty with authority figures.

On September 30, 2002, the Labor Arbiter rendered a Decision dismissing the complaint for lack of merit. The Labor Arbiter found that it was complainant who walked out on respondents when his attention was called due to his poor installation of the narra planks in the Bayot residence. He had no one to blame but himself for losing his job.<sup>[5]</sup> The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered dismissing the complaint for illegal dismissal for lack of merit. However, respondents are ordered to pay complainant his 13th month pay, service incentive leave, and holiday pay computed at:

| Start | Begin | Mos. | Min. | 13 <sup>th</sup> | SIL | Holiday | TOTAL |
|-------|-------|------|------|------------------|-----|---------|-------|
|-------|-------|------|------|------------------|-----|---------|-------|

|          |          |        | Wage   | Month<br>Pay | Pay      |                           |
|----------|----------|--------|--------|--------------|----------|---------------------------|
| 9/29/98  | 12/31/98 | 3.1    | 198.00 | 1,329.90     |          |                           |
| 1/1/99   | 10/30/99 | 10.067 | 198.00 | 4,318.60     | 990.00   | 1,980.00                  |
| 10/31/99 | 12/31/99 | 2.0333 | 223.50 | 984.64       |          |                           |
| 1/1/00   | 10/31/00 | 10.133 | 223.50 | 4,907.07     | 1,117.50 | 2,235.00                  |
| 11/1/00  | 12/31/00 | 2      | 250.00 | 1,083.33     |          |                           |
| 1/1/01   | 9/18/01  | 8.6667 | 250.00 | 4,694.44     | 1,500.00 |                           |
|          |          | 36     |        | 17,317.99    | 2,107.50 | 5,715.00 <b>25,140.49</b> |

All other claims are dismissed for lack of merit.<sup>[6]</sup>

All other claims are dismissed for lack of merit.<sup>[6]</sup>

Aggrieved, Mame appealed the decision to the NLRC on the following grounds:

I. THE HONORABLE ARBITER COMMITTED SERIOUS ERROR IN COMPUTING COMPLAINANT-APPELLEE'S MONETARY AWARD ON THE BASIS OF THE MINIMUM WAGE LAW, WHEN HIS LATEST WAGE AS OF SEPT. 2001 IS P440.00 A DAY, MONEY-CLAIMS: HOLIDAY PAY, HOLIDAY PREMIUM PAY, SERVICE INCENTIVE LEAVE PAY;

II. THE HONORABLE ARBITER COMMITTED GRAVE ABUSE OF DISCRETION BY DECLARING THAT COMPLAINANT-APPELLANT WAS NOT ILLEGALLY DISMISSED.<sup>[7]</sup>

He averred that respondents failed to prove that he abandoned his job. He insisted that walking out of respondent Norilyn Cuerpo after being reprimanded does not constitute abandonment. His filing of the complaint for illegal dismissal and respondents' failure to serve him with the requisite two notices are evidence that he did not abandon his job.

In reply, respondents countered that Mame abandoned his job because he no longer reported for work and remained in the workers' barracks in Baguio City while his co-workers continued with the construction. They could not have served him with the requisite two notices because they did not know that he had decided not to report back to work. It was only when complainant filed his complaint that respondents learned of his decision.

On August 26, 2003, the NLRC rendered judgment granting the appeal.<sup>[8]</sup> The NLRC set aside and reversed the decision of the Labor Arbiter. According to the NLRC:

Appellees failed to establish any overt act from which we can infer the clear intention of appellant to desist from employment. Appellees admitted that after the walk-out and alleged abandonment of work on 18 September 2001, appellant still stayed for several days at the construction crew barracks of the Bayot residence project in Baguio City and refused to work for no reason other than his attention being called because of the wrong installation of the *narra* planks. Appellant was within easy reach of appellees. Yet, during this period, appellees never took any step to compel appellant to return to work, did not question his alleged continued refusal to work and did not institute any investigation or proceedings to cause his

termination from work due to abandonment. Appellees did not give appellant written notice of his termination on the ground of abandonment. Failure to do so makes the termination illegal. (Appellees' Position Paper, p. 19).

It is true that appellees have every right to call appellant's attention for any work that he has made poorly. It is also true that appellant should not have walked-out on appellee Cuerpo. However, installing the *narra* planks erroneously and walking-out on appellee Cuerpo, while being reprimanded or told of his wrong installation, are insufficient to warrant appellant's dismissal. Appellees agree that dismissal, under these circumstances, was unwarranted as they, in fact, admitted that they did not terminate appellant's services.

Neither can the alleged dissension and unrest among respondents' workers caused by appellant justify his separation from employment. This allegation was uncorroborated with any evidence of statement from anyone of appellant's co-workers. Notwithstanding, even granting that appellant caused any such dissension and unrest, appellees did not observe due process in terminating his services. They never informed appellant of the reasons why he should be terminated and never gave him the opportunity to explain. He was simply dismissed from work.<sup>[9]</sup>

The NLRC declared that petitioner did not seek reinstatement. The dispositive portion of the decision reads:

WHEREFORE, the appeal is hereby GRANTED and the Decision of the Labor Arbiter dated 30 September 2002 is REVERSED and SET ASIDE. In lieu thereof, a new order is hereby issued declaring appellant to have been illegally dismissed from his employment by appellees.

Consequently, appellees are hereby directed to pay appellant, jointly and severally, the amount of P475,995.66, representing his claims for unpaid 13th month pay, SILP and holiday pay for the period of three (3) years, 19 September 1998 to 18 September 2001, separation pay equivalent to fifteen (15) month's salary, and backwages, 13th month pay and SILP from the date the same was withheld from appellant on 18 September 2001 up to the promulgation of this Decision, and such additional backwages, 13th month pay and SILP from this date and up to actual payment thereof.

SO DECIDED.<sup>[10]</sup>

Not satisfied, respondents filed a petition for *certiorari* with the CA against petitioner on the following grounds:

1. With all due respect, the Honorable Public Respondent committed grave abuse of discretion in reversing the factual findings and conclusions of the Labor Arbiter and disregarding the admission of private respondent that he walked out.
2. The Honorable Public Respondent committed grave, patent and palpable error in finding that there was illegal dismissal.