533 Phil. 213

FIRST DIVISION

[G.R. NO. 168931, September 12, 2006]

PAULINO ALITEN, PETITIONER, VS. U-NEED LUMBER & HARDWARE, AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Amended Decision [1] of the Court of Appeals (CA) in CA-G.R. SP No. 50682, upholding the legality of Paulino Aliten's dismissal from his employment with U-Need Lumber and Hardware (U-Need). In the said decision, the appellate court deleted the award of backwages, while private respondent Marcelino Tan, as proprietor of U-Need, was ordered to pay petitioner P30,000.00 as nominal damages for non-compliance with the two-notice rule under the Labor Code of the Philippines, as amended.

The Case for Petitioner

Petitioner, a native of Calanasan, Kalinga-Apayao, was employed on January 3, 1988[2] as helper in U-Need, private respondent's business in Baguio City. On October 22, 1990, petitioner was promoted as regular driver. Petitioner was registered as a member of the Social Security System (SSS).

On April 30, 1992, petitioner asked permission from U-Need Manager Virginia Tan for a 15-day leave of absence. He planned to go to his hometown to visit his parents and vote for his uncle Elias Balot who was running for congressman in the May 11, 1992 national and local elections. He needed a 15-day leave because his hometown was a remote area; and considering the mountains and rivers he had to cross, travel could be very difficult and could take roughly 12 days.[3] Petitioner signed a typewritten application for a one-week vacation leave starting May 4, 1992,[4] a Monday, wherein he declared that should he fail to report back for work at the end of his vacation, it is understood that he would be automatically terminated by his employer. He signed the typewritten application without reading its contents because he was being scolded by Virginia Tan, who likewise forced him to sign.

Thereafter, he took some of his belongings from the lumber's bunkhouse and left with his brother using a government vehicle.[5] When he left U-Need on May 4, 1992, he had an outstanding account. However, it was not in the sum of P1,750.00 as alleged by private respondent because as far as he knew, amounts had been automatically deducted from his wages.[6]

It turned out that, as gleaned from the records of the Election Registrar, Baguio City, he was a registered voter of Middle Rock Quarry, Baguio City, not Calanasan. [7] He claimed that he only registered therein so that he could cast his vote in Baguio

should he fail to return to his domicile.[8] When he reported for work on May 14, 1992, he was told that he had already been dismissed from employment.

On May 27, 1992, petitioner filed a complaint for illegal dismissal against U-Need, docketed as RAB- CAR-05-0087-92.[9] He filed an Amended Complaint[10] claiming underpayment of wages, non-payment of holiday pay, overtime pay, 13th month pay, and incentive pay. He prayed for reinstatement without loss of seniority rights with payment of full backwages until actual reinstatement, and damages.

Petitioner averred in his complaint that his employment records had been tampered to reflect that he was first employed in October 1990. This was so because his employer reported him for SSS coverage only in 1990. The payroll was allegedly manipulated to make it appear that he was paid the mandated minimum wage, when in reality he was paid only P40.00 a day in 1988, P55.00 a day in 1989, P60.00 a day in 1990, P75.00 a day in 1991, and P90.00 a day in 1992 until his actual termination. He declared that rental payments for the use of the hardware's bunkhouse were also deducted from his wages.

The Case for Private Respondent

Virginia Tan denied petitioner's charges and maintained that he actually commenced working as a helper on October 19, 1990. On May 2, 1992, a Saturday, she berated him because she had caught him reading comics during working hours. Petitioner did not sleep at the bunkhouse later that night; neither did he report for work in the morning of the following Monday, May 4, 1992. He only returned to the lumberyard with his uncle in the late afternoon of even date, and requested to be allowed to go on leave for one week. She initially refused, but eventually granted his request. Co-employee Edwin Tan, a nephew of private respondent, typed a certification for a one-week vacation leave which petitioner signed. The certification states:

May 4, 1992

To whom it may concern:

This is to certify that I, Paulino Aliten, 24 years old, single, and a resident of U-Need Lumber Bunkhouse, do hereby depose and say:

1. That I've asked for [a] one week vacation from my employer.
2. That I still have a balance of P1,750.00.
3. That when I have extends [sic] my vacation its [sic] understood that I'll be terminated. (automatically)
4. That I don't have any complain [sic] against my employer whatsoever.

(Sgd.)
Paulino Aliten[11]

Virginia admitted that this letter was typed by his husband's nephew, but claimed it was petitioner who dictated its contents in English and Filipino.[12]

Virginia further claimed that after leaving the lumberyard on May 4, 1992, petitioner never returned. Meanwhile, she and her husband were scheduled to leave for the

United States of America on May 21, 1992. Since petitioner had stated in his certification that he should no longer be expected if he did not return after one week, she reported petitioner's failure to report to work to the Department of Labor and Employment (DOLE) on May 14, 1992.[13] She likewise informed the DOLE that petitioner's services had been terminated due to absence without leave.[14] She maintained that petitioner's prolonged absence amounted to abandonment of work, and this intention was evident from the fact that before he left, he informed her, verbally and in writing, that he should no longer be expected if he failed to return at the end of the period. She likewise averred that petitioner is a registered voter of Precint No. 200, *Barangay* Middle Rock Quarry, Baguio City, with Voter's Affidavit No. 0879882;[15] thus, he could not have spent his week-long vacation leave to vote in Calanasan as he claimed. Virginia further claimed that petitioner was paid standard labor benefits, and that his first day of employment corresponds to the date appearing on his SSS coverage, that is, October 22, 1990.

The Ruling of the Labor Arbiter

In its June 28, 1994 Decision,[16] the Labor Arbiter ruled as follows:

> VIEWED FROM THIS LIGHT, judgment is hereby rendered with the following dispositions:
>
> 1. That complainant was illegally dismissed. Consequently, the respondent is hereby ordered to reinstate him to his former position without loss of seniority rights with full backwages in the amount of P70,719.58.
>
> 2. That during the complainant's employment from May 27, 1989 up to September 30, 1990, he was underpaid in his wages, hence, respondent must pay his wage differentials, all of which amounting to P16,255.16, plus attorney's fees in the amount of P1,625.51; and
>
> 3. All other claims for damages are hereby denied.
>
> SO ORDERED**.**

According to the Labor Arbiter, private respondent failed to prove that petitioner abandoned his job. Petitioner was granted a one-week vacation leave on May 4, 1992 to expire on May 11, 1992; as such, there was no factual basis for Virginia Tan's statement to the DOLE that petitioner had

been absent without leave from May 12 to May 13, 1992 and that he thereby abandoned his job. Moreover, if petitioner had indeed abandoned his job, then he should have been charged with abandonment.

The Labor Arbiter further held that notice to the DOLE alone of the termination of petitioner's employment is insufficient because the law requires that the employee himself must be notified of such intended termination. Since no personal notice was given to petitioner, his dismissal was illegal and was done without due process of law. The Labor Arbiter also ruled that Virginia Tan tampered with complainant's bio-

data to make it appear that he was hired on October 19, 1990.

The Ruling of the NLRC

Aggrieved, private respondent appealed to the NLRC, which, on February 21, 1995, rendered a Decision[17] reversing the Labor Arbiter's ruling and dismissing the complaint for lack of merit. The NLRC ruled that the evidence submitted by Virginia Tan, particularly SSS Form E-1,[18] should be given more credence, as it is an official document which incidentally corresponds with her contention that complainant was employed only in October 1990, not in January 1988.

The NLRC also rejected petitioner's monetary claims because the evidence indicated that the complainant was not among the employees listed in the payrolls submitted by Tan from 1988 until 1992. It was further proven that petitioner received standard benefits under labor laws during the time of his employment. The NLRC also held that petitioner was validly dismissed, since he was considered to have abandoned his work.

Petitioner moved for the reconsideration of the NLRC decision, which the labor tribunal denied in a Resolution[19] dated April 28, 1995.

Petitioner thus filed a petition for review before this Court. Pursuant to the ruling *St. Martin Funeral Homes v. National Labor Relations Commission*,[20] the case was referred to the Court of Appeals.[21]

The Case Before the Court of Appeals

On November 12, 2004, the appellate court granted the petition and reversed the decision of the NLRC.[22] The CA upheld the legality of the petitioner's dismissal, claiming that his absences after the week-long leave were no longer reasonable since he did not give prior notice of his intention to extend his leave. According to the CA, the overt acts of the petitioner, coupled with his testimony that he reappeared at the bunkhouse after the May 11, 1992 election only to gather his remaining belongings, are factors which led it to conclude that petitioner intended and actually severed his relations with U-Need.

The CA further ruled that even if the termination was due to abandonment, notice of termination must be sent to the employee at his last known address. The failure of U-Need to give notice to respondent was unjustified and constituted a violation of the requirements of due process; as such, the termination of petitioner's employment was ineffectual. The dispositive portion of the CA decision reads:

> **WHEREFORE**, under the premises, the petition is **PARTLY GRANTED** and the assailed NLRC Decision is **MODIFIED**, in that while petitioner's dismissal due to abandonment is **UPHELD**, private respondent is **ORDERED** to pay petitioner backwages from the time of his dismissal up to the finality of this decision.
>
> **SO ORDERED**.[23]

Petitioner moved for the partial reconsideration of the CA's decision. Private respondent also filed a separate motion for reconsideration. On May 31, 2005, the CA issued the assailed amended decision, declaring that respondent was not entitled to backwages, but applying the ruling of this Court in *Agabon*, was entitled to nominal damages. The *fallo* of the decision reads:

> **WHEREFORE**, in view of the foregoing, the Motion for Partial Reconsideration filed by petitioner is **DENIED** for want of merit, but partly granting private respondent's Motion for Reconsideration, the award of backwages to petitioner is **DELETED** and in lieu thereof, and conformable to the Agabon ruling (supra), private respondent is **ORDERED** to pay petitioner the amount of P30,000.00 as nominal damages for non- compliance with the notice requirement.
>
> **SO ORDERED.**[24]

Hence, the petition before this Court, which raises the following issues: (a) whether or not petitioner abandoned his job when he failed to report back for work on May 12, 1992; and (b) assuming that he abandoned his job, whether or not the Agabon ruling may be applied retroactively against petitioner.

The Ruling of the Court

The petition is meritorious.

On the first issue, we agree with petitioner's contention that the appellate court committed a serious error and misapprehended the facts when it ruled that he abandoned his work instead of being illegally terminated by his employer. Abandonment, as a just and valid ground for dismissal, requires the deliberate, unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work is not enough to amount to such abandonment. There must be a *concurrence of the intention to abandon and some overt acts* from which an employee may be deduced as having no more intention to work. The contemplation to discontinue the employment must be shown by clear proof that it was deliberate and unjustified, a fact that herein private respondent failed to evince.[25]

To reiterate, abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. There must be clear proof of deliberate and unjustified intent to sever the employment relationship. Certainly, the operative act is still the employee's decisive act of putting an end to his employment.[26] Additionally, it must be stressed that the burden of proving the existence of just cause for dismissing an employee, such as abandonment, rests on the employer, a burden private respondent failed to discharge.[27]

Jurisprudence is replete with rulings that for abandonment of work to exist, it is essential that (1) the employee must have failed to report for work or must have been absent without valid and justifiable reason; and (2) there must have been an indisputable intention to sever the employer-employee relationship manifested by some overt acts, with the second element as the more determinative factor.[28]

We hold that the above twin-requirements are not present in the case at bar.