338 Phil. 870

FIRST DIVISION

[G.R. No. 113721, May 07, 1997]

ARC-MEN FOOD INDUSTRIES, INC., PETITIONER, VS.NATIONAL LABOR RELATIONS COMMISSION AND FABIAN ALCOMENDRAS, RESPONDENTS.
D E C I S I O N

HERMOSISIMA, JR., J.:

The herein petition for *certiorari* assails the Resolution[1] of respondent National Labor Relations Commission (NLRC)[2] affirming the decision[3] of Labor Arbiter Nicolas S. Sayon which favored private respondent Fabian Alcomendras under a Complaint for Illegal Dismissal with Money Claims[4] against petitioner Arc-Men Food Industries Corporation (AMFIC).

We gave due course to the instant petition in our Resolution dated December 7, 1994[5]

The facts of this case, as culled from the decision of the Labor Arbiter, which appear consistent with the respective position papers of the parties, follow:

> "xxx [Private respondent] alleges that he was a regular employee of the xxx [petitioner] firm as a company driver from September 1985 until he was unlawfully terminated on January 23, 1990. That as a company driver he was required to render his services to both the xxx [petitioner's] food and construction business; that since his employment, he has never enjoyed the minimum wage, ECOLA and service incentive leave pay.
>
> It was disclosed that xxx [petitioner] acted arbitrarily, unjustifiably and without any reason at all, [and] he was terminated from his employment contrary to the provision of Article 283 of the Labor Code, as amended by B.P. 130. xxx [Private respondent] has been in the employ for four years and four months of which he has been rendering faithful services and following the rules and regulations of the company and in fact should have been given more benefits that xxx [are] necessary instead of terminating his employment.
>
> Rising to their defense, xxx [petitioner] belied the allegations of the xxx [private respondent]. They claimed that xxx [private respondent] was not illegally dismissed from his employment but it was he xx who has abandoned his work.
>
> xxx [Petitioner] allege[d] that the company is an export-oriented processing company engaged in the manufacture, production and

exportation of banana chips xxx [and] is not engaged in construction business contrary to the allegation of the xxx [private respondent]. The company is a relatively newly opened corporation and is beset with recurring problems and imperfections in its plant equipments and machineries which requires [sic] modifications and alterations that in the process has [sic] resulted in frequent temporary shutdowns which necessarily affected its operations and profitability. One additional problem is its total dependence on independent suppliers for its raw materials of bananas.

It was posited that under these circumstances, it is therefore not surprising that most employees are seasonal workers and are paid on daily wage basis and likewise also evident that there are temporary lay-offs due to lack of work.

With respect to xxx [private respondent], he was employed on September 14, 1985 and first assigned as Process Operator and later on October 1, 1987, was transferred to the Engineering Department as driver and assigned to drive the company's one and only dump truck. xxx [T]he main and primary use of the dump truck was to haul banana peelings from the plant to the garbage site and it is quite obvious that without any plant operations there can be no banana peelings to be hauled to the garbage site.

Anent the issue of termination, xxx [petitioner] disclosed that as per Summary of Plant Operations xxx, the last time the plant operated in 1989 was December 1, 1989. From December 2, 1989 up to February 25, 1990, the plant was not in full operation and employees directly connected with the plant including herein complainant were advised of the shutdown and were told not to report for work. To prove that xxx. [private respondent] was not terminated on January 23, 1990 is the fact that on January 29, 1990, he secured and was given a cash advance of P700.00 as shown by the Temporary Cash Advance Slip xxx. [I]t is inconceivable for the company to give cash advance "against salary deductions" if he was already terminated on January 23, 1990 or six days before x x x [private respondent] was given the said cash advance.

Another evidence that xxx [private respondent] was not dismissed is the fact that xxx [petitioner] formally advised him to report for work on February 25, 1990 xxx which was hand-delivered by Noli Paglinawan xxx. xxx [D]espite being advised to report for work xxx [private respondent] refused.

xxx
xxx xxx

Records disclosed that xxx [private respondent] is a regular employee of the xxx [petitioner] company and assigned as a dump truck driver. As admitted by the xxx [petitioner], their plant operation beginning December 1, 1989 up to February 25, 1990 as shown in their Summary of Plant Operations xxx. will show that there were only two (2) days of operation, on December 1, 1989 and February 20, 1990. There was no

> operation for the whole month of January, 1990. As alleged, the xxx [private respondent] was included in the temporary lay-off during this period (from December 2, 1990 up to February 20, 1990) considering that there was no plant operation. However, contrary to the allegation of the xxx [petitioner], they also presented the number of days worked by the xxx [private respondent] xxx wherein for the month of December 1 to 31, 1989, the latter had worked for twenty-one (21) days and for January 1 to 20, 1990, he worked 16.5 days. Assuming that there was [sic] only two days plant operation from December 1, 1989 to February 20, 1990, then it is presumed that xxx [private respondent] was still reporting for duty during that period not for the hauling of banana peelings but for some other purpose for which the respondent is engaged. Thereafter, for unknown reason, x x x [private respondent] was not anymore required to work effective January 23, 1990, hence, he filed his complaint on February 5, 1990."[6]

From the foregoing facts, the Labor Arbiter concluded that "the allegation that it was xxx [private respondent] who had abandoned his job is belied by the fact that xxx [he] immediately filed his complaint after he was terminated from his work on January 23, 1990"[7] and that the report-to-work letter dated February 25, 1990 and cash advance slip dated January 29, 1990 were dubious, the former being a mere after-thought and the latter bearing an alleged forged signature of private respondent.

Totally aghast over the decision of the Labor Arbiter which struck petitioner as grossly contrary to the evidence presented before him, petitioner appealed to the NLRC. But the NLRC did not oblige. Instead, the NLRC upheld the findings of the Labor Arbiter, "they being substantially supported by the facts and evidence on record,"[8] the NLRC echoing as it did that petitioner's "theory of abandonment is contrary to logic and sound reasoning in view of the immediate filing of the complaint for illegal dismissal"[9] and declaring that petitioner had not validly discharged its burden of proving that the termination was for a valid or authorized cause.

Petitioner filed a Motion for Reconsideration of the decision of the NLRC. Said motion, however, was denied in a Resolution promulgated on December 14, 1993. [10] Hence, this petition seeking the nullification and setting aside of the decisions of the NLRC and the Labor Arbiter on the following grounds:

"I

5.a PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT RENDERED ITS DECISION IN A MANNER VIOLATIVE OF PROCEDURAL DUE PROCESS.

II

5.b PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OF OR LACK OF JURISDICTION WHEN IT AFFIRMED THE

DECISION OF THE LABOR ARBITER DESPITE THE FACT THAT THE DECISION OF THE LATTER IS CONTRARY TO LAW AND JURISDICTION AND IS NOT SUPPORTED BY THE EVIDENCE ADDUCED;

III

5.c THE QUESTIONED DECISION IS BASED ON A MISAPPREHENSION OF FACTS AND OVERLOOKED FACTS OF SUBSTANCE AND VALUE THAT IF CONSIDERED WOULD AFFECT THE RESULT OF THE CASE;

IV.

5.d THE CONCLUSION ARRIVED AT BY PUBLIC RESPONDENT IS GROUND ON SPECULATION, SURMISES OR CONJECTURES; AND THE INFERENCE MADE IS MANIFESTLY ABSURD, MISTAKEN OR IMPOSSIBLE;

V.

5.e PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT ORDERED THE PAYMENT OF BACKWAGES AND SEPARATION PAY TO PRIVATE RESPONDENT."[11]

The petition is imbued with merit.

First. Undeniable is the over-reliance of both the Labor Arbiter and the NLRC on the notion that the filing of a complaint for illegal dismissal is inconsistent with the employer's defense of abandonment by the employee of his work. While the burden of refuting a complaint for illegal dismissal is upon the employer, fair play as well requires that, where the employer proffers substantial evidence of the fact that it had not, in the first place, terminated the employee but simply laid him off due to valid reasons, neither the Labor Arbiter nor the NLRC may simply ignore such evidence on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not indeed been dismissed. This is clearly a non sequitur reasoning that can never validly take the place of the evidence of both the employer and the employee.

Second. The Labor Arbiter and the NLRC, the records show, had taken note of (1) the Summary of Plant Operations[12] indubitably showing that petitioner's operations were shut down from December 2, 1989 to February 19, 1990; (2) the Temporary Cash Advance Slip[13] signed by private respondent showing that he requested and received on January 29, 1990 "cash advance against salary deduction" for the amount of P700.00; (3) the return-to-work letter dated February 25, 1990[14] addressed to and directing private respondent to report for work on February 26, 1990; (4) the Affidavit[15] executed by one Noli Paglinawan who thereby declared that he personally handed to private respondent the aforementioned return-to-work letter who however refused to receive or acknowledge the same; and (5) the letter request for cash advance of P700.00 dated January 23, 1990[16] signed by private respondent. All these documentary evidences sufficiently establish the veracity of petitioner's insistent claim that it did not terminate private respondent but rather, the latter refused to return to work after his temporary lay-off due to petitioner's plant shutdown.

The Labor Arbiter and the NLRC, instead of at least reviewing whatever countervailing evidence private respondent had vis-a-vis petitioner's aforedescribed documentary proofs, simply swept under the rug the issues of lay-off and abandonment of work, relying as they did on the earlier mentioned notion of the inconsistency between the filing of a complaint for illegal dismissal and the interposing of the defense of abandonment by the employee of his work. The Labor Arbiter and the NLRC is thus guilty of misappreciating the facts and rendering judgment on dubious factual and legal basis. In other words, herein assailed decisions are illustrative of a patent case of grave abuse of discretion.

Third. The evidence on record indeed clearly shows that private respondent was not illegally dismissed. He was temporarily laid off in view of the temporary shut down of petitioner's operations. When he was asked to report back to work, he refused. The nagging question from the Labor Arbiter's perspective is this: If private respondent had refused to return to work upon notice to report back to petitioner's plant, why did he later on file a complaint for illegal dismissal?

The Labor Arbiter and the NLRC similarly answered the question with the alleged truism: private respondent filed the complaint for illegal dismissal because he was illegally dismissed. We, however, believe that private respondent's motivation in filing the complaint for illegal dismissal despite his refusal to return to work, is revealed by the following averment in his position paper before the Labor Arbiter:

> "Before delving into the issues of the above entitled case, complainant would like to request the Honorable Commissioner to take judicial notice of the fabricated and manufactured criminal case filed by the respondents in retaliation to the institution of this case and in fact the latter had confronted the former to drop this case in exchange of the dropping of the fabricated and manufactured criminal case."[17]

It is significant to note that it was private respondent who first raised the matter of petitioner's alleged offer to drop the criminal case for qualified theft against private respondent. Responding to this averment in private respondent's position paper, petitioner refuted the same in this wise:

> "Alcomendras clearly abandoned his work when he refused to report back to work. Of course, he will always claim that he did not abandon his work because he filed a complaint before this Honorable Commission. Certainly, one can see through his ploy and the mercenary motive for his action. He had nothing to lose but everything to gain. Firstly, if he succeeds in misleading this Honorable Commission into believing his claim he would stand to gain monetary advantage in the form of separation pay to which he is definitely not entitled. Secondly, it was clearly his intention to use this present complaint as a leverage hoping that respondents will enter into a settlement with him and thereby in the process he would gain the upper hand by demanding that the complaint which he knew or ought to know respondent is filing against him and a former employee with [the] Office of the Provincial Prosecutor of Davao