

SPECIAL THIRD DIVISION

[CA-G.R. SP NO. 127652, May 23, 2014]

TWINPACK CONTAINER CORPORATION, DANNY FLORES, CARL VALENTIN AND CLARISSA PARTOLAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (3RD DIVISION) AND ERIC JOHN DANDROY LAUNIO, RESPONDENTS.

DECISION

DE GUIA-SALVADOR, R., J.:

Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, the petition for *certiorari* at bench seeks to nullify and set aside the Decision^[1] dated July 26, 2012 of the National Labor Relations Commission in NLRC-LAC Case No. 03-001123-12, which reversed the Decision dated January 31, 2012 of the Labor Arbiter in NLRC-NCR 07-10550-11 which, in turn, dismissed private respondent Eric John Dandroy Launio's complaint for illegal dismissal. The dispositive portion of the NLRC Decision reads:

"WHEREFORE, premises considered, the appealed Decision is **REVERSED**. Accordingly, respondents are hereby **ORDERED** to reinstate the complainant to his former position without loss of seniority rights and other benefits, and to pay his full backwages from date of dismissal up to actual reinstatement.

All other claims are denied for lack of merit.

SO ORDERED."^[2]

The Facts

Petitioner Twinpack Container Corporation (**Twinpack**) is a domestic corporation engaged in the business of manufacturing, importing, buying and selling of cardboard, paper board, and corrugated carton containers. On February 21, 2005, Twinpack recognized the Samahang Manggagawa sa Twinpack (**SMT**) as the sole and exclusive bargaining agent of its rank-and-file employees. Consequently, a notice of voluntary recognition was thereafter filed with the Department of Labor and Employment (DOLE).

On January 5, 2010, Twinpack hired private respondent Eric John Dandroy Launio (**Launio**) as a Grablift Operator with a starting daily wage rate of P 300.00.

On July 20, 2010, Twinpack entered into a collective bargaining agreement (**CBA**) with SMT. The CBA was duly ratified and registered with the DOLE on August 3, 2010.

Sometime in April of 2011, Launio, together with 55 other co-employees, formed their own union which they named as Twinpack Workers Union (TWU). TWU was

registered with the DOLE Camanava Field Office under Certificate of Registration No. NCR-CFO-UR-04-2011-07.3 On June 7, 2011, TWU filed before the DOLE a petition to cancel the registration of SMT and the registration of the CBA between Twinpack and SMT on the ground of fraud and misrepresentation.

On July 5, 2011, Launio's counsel, Atty. Alfredo L. Bentulan, sent Twinpack a demand letter⁴ seeking the reinstatement of Launio and his 7 other co-employees to their respective positions/jobs, for the following reasons:

"Your acts of NOT anymore allowing Ranario, et. al., [including Launio] to report for work/duty since July 1, 2011 because they refused to be transferred to the Agency, and they do not wear Uniform and the I.D. Of your Agency, the **RDMCL Manpower Services Corporation**, are grossly ILLEGAL and INHUMAN, to say the least. Also, your acts of coercing and inducing Ranario, et. al, [including Launio] to disown and abandon their membership with the Twinpack Workers Union are doubly ILLEGAL."^[5]

In reply, Twinpack's counsel, Atty. Antonio Gerardo B. Collado, refuted as without factual basis the claim of Launio and his other co-employees that they had been prevented from reporting for work after they had refused to sever their membership with TWU and to sign contracts with RDMCL Manpower Services, thus:

"Our Client TWINPACK Container Corporation has referred to us your letter dated June 30, 2011 regarding allegations of your clients, Mr. Jeffrey Batican et. al., [including Launio], that they were prevented from reporting to work on that day if they refuse to affix their signature on a document as well as wear the uniform and I.D. of RDMCL Manpower Services Corporation. With due respect, these claims of your clients are without factual basis. According to our client, they were the ones who converged in front of the company's premises in an effort to slow down and paralyze its normal business operations and pursue their union activities. The said incident had been reported to the management prompting the latter to conduct an investigation. In fact, separate memoranda were sent to your clients directing them to report for work and explain their absence and the incident. Thus, it would be best for your clients not to fabricate stories and commit acts that would disrupt the normal operations of the company and hamper industrial peace.

Furthermore, the claim of your clients that they were being coerced and forced to sever their membership with their union is not true. Though, there is a pending case before the Department of Labor and Employment (DOLE) where issues between the union you are representing of which your clients are members, and the existing union are being heard, and which the company has been falsely accused of interfering with union affairs, We prefer that your clients in the exercise of their union activities refrain from accusing or doing acts that would put the company in a bad light."^[6]

On July 5, 2011, Twinpack also sent Launio a memo^[7] charging him with Absence Without Official Leave and Abandonment of Work. It stressed that failure on the part of Launio to coordinate with the Human Resources Department as to his intention regarding his employment will mean waiver of his right to be heard, and that necessary administrative action will be imposed on him.

On July 11, 2011, Launio filed before the Labor Arbiter a complaint^[8] for illegal dismissal with claims for reinstatement and backwages against Twinpack. In his position paper, Launio narrated the following events which led to his dismissal, *to wit*:

"5. From out of the blue, the misfortune of dismissal came as a lightning rod upon complainant when on July 1, 2011 at just a few minutes before 7:30 P.M. he and his co-worker, Lito Valenzuela, were not allowed by the guard to enter company premises and to use the biometric machine to log in. When they inquired about the matter, they were told to report to the conference room of the Company, where they faced and talked with respondent Carl Valentin, VP for Finance. When complainant and his co-worker, Valenzuela, asked why they were held/barred from entering and using the biometrics at the guard, Valentin told them if they want to continue working they should just sign up with the Agency and even added, **"total babayaran naman kayo sa mga taon ninyo sa Twinpack."** To this complainant merely answered that he would still have to think about it and he also implored upon Valentin not to dismiss him from his job. Valentin merely told him that he should sign up with the RDMCL Agency as soon as possible because **"yung ang utos ni Boss Danny"**. After that Valentin told them to just go home and think about signing with the Agency. So with very heavy hearts, complainant and Valenzuela were forced to leave that conference room with no hope in sight. But just as complainant was getting ready to leave the company premises, he was called back by Carl Valentin because apparently there was no other grablift operator on duty that night and complainant's services were indispensable. So, complainant, even when he had just been unlawfully dismissed by respondents, still rendered work/services that fateful night all in the hope that his dismissal would not push through since he was already a regular employee.

6. However the next night, on July 2, 2011, when complainant reported back to work, he was again held at the guard and being refused to use the biometric to log in. Again, he was approached and confronted by respondent, Carl Valentin, VP for Finance. When complainant asked why he was being held/barred, Valentin told him flatly that it was the order of respondent Danny Flores to hold and refuse him and all the other employees who refuse to sign with the Agency, entrance and work until they give in and sign the contract with the Agency, RDMCL."^[9]

Denying Launio's allegation of illegal dismissal, Twinpack raised the defense of abandonment of work. It averred that at around 6:35 in the morning of June 30, 2011, Launio together with several other employees, converged outside the company's premises in furtherance of their union activities, thereby causing temporary stoppage of work and interruption in its business operations. Since then, Launio no longer reported for work. During the series of hearings conducted before the Labor Arbiter, Twinpack allegedly offered Launio to return to work but he refused to do so.

On January 31, 2012, the Labor Arbiter rendered a Decision^[10] dismissing for lack of merit Launio's complaint for illegal dismissal. It found that Launio voluntarily severed his employment with Twinpack by choosing not to report for work and filing

said complaint, instead of answering the administrative charge against him for absences without leave.

On appeal, the National Labor Relations Commission (**NLRC**) reversed the Labor Arbiter's decision upon the following findings and conclusion:

"We find the allegations of the complainant more credible than those of the respondents. The principal defense of the respondents is that the complainant was never dismissed, and that he simply failed to report for work. This is contrary to human experience and the natural order of things. The complainant has a family to feed, and he has nowhere to go. He appears to have been caught in the cross fire between the company and the union.

During mediation, the complainant was allegedly offered back his work. We notice, however, that respondents never appeared during the mandatory preliminary conferences in this case. So the offer cannot be true. In fact, complainant moved that the alleged offer be scheduled for conference to determine its sincerity. The alleged offer cannot be trusted. First, the occasion on which it was made was doubtful. Second, the offer is categorically denied.

Finally, the defense of abandonment cannot be given credence. The immediate filing of the complaint for illegal dismissal, coupled with the motion to hear the offer of reinstatement and the complainant's manifestation of continuing desire for reinstatement (at the expense of monetary settlement), militate against the fact of abandonment. For abandonment to obtain, there must be an unjustifiable refusal to work and an overt act from which intent not to return to work can be deduced. These elements are simply absent in this case.

The complaint for unfair labor practice is dismissed for insufficiency of evidence."^[11]

In a Resolution^[12] dated August 31, 2012, the NLRC denied Twinpack's motion for reconsideration. Hence, this petition for *certiorari*.

The Issues

In urging the nullity of the assailed decision, petitioner faults public respondent NLRC as follows:

"PUBLIC RESPONDENT NLRC (3RD DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE LABOR ARBITER A QUO DISMISSING THE COMPLAINT FOR ILLEGAL DISMISSAL RELYING SOLELY ON THE CONFLICTING, FALSE, SWEEPING, MALICIOUS, BASELESS AND SELF-SERVING STATEMENTS MADE BY PRIVATE RESPONDENT THAT HE WAS ILLEGALLY DISMISSED WITHOUT GIVING DUE CONSIDERATION TO THE EVIDENCE ON RECORD AND PERTINENT FACTS AND LAW RELIED UPON BY THE SAID LABOR ARBITER. PUBLIC RESPONDENT NLRC (3RD DIVISION) LIKewise ERRED IN ITS APPRECIATION OF CERTAIN ESTABLISHED FACTUAL AND