

THIRD DIVISION

[G.R. No. 211073, November 25, 2020]

**EFREN SANTOS, JR. AND JERAMIL SALMASAN, PETITIONERS, VS.
KING CHEF/MARITES ANG/JOEY DELOS SANTOS,
RESPONDENTS.**

D E C I S I O N

HERNANDO, J.:

This Petition for Review on *Certiorari*^[1] assails the October 22, 2013 Decision^[2] and January 21, 2014 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130662.

The assailed Decision affirmed the February 28, 2013 and April 18, 2013 Resolutions^[4] of the National Labor Relations Commission (NLRC) finding unmeritorious petitioners Efren Santos, Jr. (Santos) and Jeramil Salmasan's (Salmasan; collectively petitioners) claim of illegal dismissal against respondents King Chef, Marites Ang (Ang), and Joey Delos Santos (Delos Santos, collectively, respondents).^[5] In its assailed Resolution,^[6] the appellate court subsequently denied petitioners' Motion for Reconsideration.^[7]

King Chef is a Chinese restaurant owned by Ang, with Delos Santos as its General Manager.^[8] It employed Santos on February 19, 2011 and Salmasan on July 29, 2010, both as cooks.^[9]

On December 25, 2011, Santos rendered only a half day work without prior authorization.^[10] Salmasan, on the other hand, did not report at all.^[11] Petitioners claimed that in view thereof, they were dismissed from employment.^[12] They averred that when they tried to report for work, their chief cook told them that they were already terminated.^[13]

Accordingly, petitioners filed their complaint for illegal dismissal, underpayment of salaries, non-payment of salaries and thirteenth month pay, damages, and attorney's fees.^[14]

Respondents denied that petitioners were dismissed from work. They argued that petitioners violated the December 22, 2011 memorandum informing the employees of King Chef that no absences would be allowed on December 25, 26, 31 and January 1 unless justified.^[15] After petitioners failed to report for work on December 25, 2011, and returned the following day merely to get their share in the accrued tips, they allegedly went on absence without leave (AWOL) for the rest of the Christmas season.^[16]

Respondents believed petitioners went on AWOL after they got wind of respondents' decision to impose disciplinary action against them for their unauthorized absence on December 25, 2011.^[17] Respondents claimed that even before they could impose disciplinary action on petitioners, the latter already filed a complaint for illegal dismissal against them on January 2, 2012.^[18]

Ruling of the Labor Arbiter (LA):

In its October 29, 2012 Decision,^[19] the LA found petitioners to have been illegally dismissed.^[20] The Arbiter held that the respondents failed to prove that petitioners indeed went on AWOL.^[21] Likewise, there was no proof that petitioners received a copy of the December 22, 2011 memorandum.^[22] And since there was no directive to work on December 25, 2011, petitioners "had all the reason not to report for work" as it was Christmas day.^[23] In any case, the LA held that petitioners' absence should not have warranted their dismissal.^[24]

The dispositive portion of the Decision reads:

WHEREFORE, the complaint for illegal dismissal is GRANTED. Respondent RMB Royal Master Bee, Inc., doing business under the name and style King Chef Restaurant, is hereby ordered to pay complainants the sum of Php359,210.77, to wit:

1. Efren Santos, Jr.– Php 163,291.26
2. Jeramil [Salmasan] – Php163,291.26

representing:

1. Full [b]ackwages computed from the time of their dismissal up to finality of this decision;
2. Separation pay equivalent to one month['s] wage for every year of service it being understood that six months shall be considered one full year;
3. Wage differentials; and
4. Attorney's fees equivalent to ten (10%) percent of the total, or in the sum of Php32,628.25 monetary award.

All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part of this decision.

SO ORDERED.^[25]

Ruling of the National Labor Relations Commission:

In its February 28, 2013 Resolution,^[26] the NLRC modified the October 29, 2012 Decision of the LA after finding that petitioners were unable to show that they were dismissed in the first place.^[27] The labor tribunal found that aside from petitioners' bare allegations, they did not present any proof to support their claim of termination.^[28] On the contrary, respondents were able to prove that after petitioners failed to report for work on December 25, 2011, and after they received

their share on tips the following they, they continued to be absent for the rest of the Christmas season.^[29] The NLRC held that since petitioners were unable to prove that they were indeed terminated, the complaint for illegal dismissal cannot be sustained pursuant to the principle that if there is no dismissal, there can be no question as to the legality or illegality thereof.^[30]

The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the instant appeal is hereby declared partly with merit. The Decision of the Labor Arbiter is hereby **MODIFIED** deleting the awards for separation pay and full backwages, and correspondingly reducing the award of 10% attorney's fees.

SO ORDERED.^[31]

Ruling of the Court of Appeals:

The CA affirmed the February 28, 2013 Resolution of the NLRC^[32] and upheld its finding that there was no dismissal in the first place.^[33] It gave credence to the evidence presented by respondents, as opposed to petitioners' bare allegations.^[34] It stressed that before the respondents must bear the burden of proving that the dismissal was legal, petitioners must first establish by substantial evidence that indeed they were dismissed.^[35] Since petitioners were unable to do this, the NLRC was correct in ruling that there was no illegal dismissal.^[36]

The dispositive portion of the assailed Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant petition for lack of merit. The Resolutions rendered by the Second Division of the National Labor Relations Commission dated February 28, 2013 and April 18, 2013, respectively, in NLRC NCR Case No. 01-01193-12 (LAC No. 01 -000205-13) are hereby **AFFIRMED**.

SO ORDERED.^[37]

Petitioners sought reconsideration but it was denied by the CA in its assailed January 21, 2014 Resolution.^[38]

Hence, this Petition.

The Petition:

Petitioners argue that the CA erred in sustaining the NLRC's finding that there was no dismissal as to their case.^[39] They reiterate that when they tried to return and report for work after their absence on December 25, 2011, they were banned from entering the work premises and were informed that they were already terminated, without compliance with the requirements for valid dismissal.^[40] Thus, their dismissal was illegal.^[41]

In their Comment,^[42] respondents maintain that petitioners were never dismissed in the first place, as they in fact abandoned their work.^[43]

Issue

Whether or not petitioners were illegally dismissed.

Our Ruling

The Petition is devoid of merit.

Procedural matter:

The resolution of this case calls for a factual determination of whether petitioners were dismissed by respondents, which factual determination is generally not allowed in a Rule 45 petition.^[44] One of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary.^[45] Here, considering that the findings of the NLRC and the LA are conflicting, We shall proceed to review their factual and legal conclusions.

Substantive matter:

In cases of illegal dismissal, the employer bears the burden to prove that the termination was for a valid or authorized cause. **But before the employer must bear the burden of proving that the dismissal was legal, it is well-settled that the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof. x x x**^[46] (Emphasis supplied)

Here, after a meticulous study of the records, We find that there is no substantial evidence to establish that petitioners were in fact dismissed from employment. Petitioners merely alleged that they were terminated by their chief cook and were barred from entering the restaurant, without offering any evidence to prove the same. They failed to provide any document, notice of termination or even any letter or correspondence regarding their termination. Aside from their bare allegations, they did not present any proof which would at least indicate that they were in fact dismissed.

On the contrary, the evidence on record points to the fact that after petitioners failed to report on December 25, 2011, and after they went back to their workplace merely to get their share in the tips the following day, they refused to return to work and continued to be on AWOL thereafter.

First, it is undisputed that petitioners went on AWOL on December 25, 2011 (half day for Salmasan).^[47] *Second*, they in fact returned the following day to claim and receive their share in the tips as shown from the uncontroverted sign up sheet they signed,^[48] which belies their assertion that they were banned from entering the premises after being absent on December 25, 2011. *Third*, petitioners themselves admitted that they continued to be on AWOL during "the Christmas season of 2011".^[49] This was likewise reflected on their time cards.^[50]

As correctly found by the NLRC:

In their Position Paper, complainants describe the manner by which they were allegedly dismissed, as follows: