

## SECOND DIVISION

[ G.R. No. 222748, April 03, 2019 ]

**AIRBORNE MAINTENANCE AND ALLIED SERVICES, INC.,  
PETITIONER, V. ARNULFO M. EGOS, RESPONDENT.**

### DECISION

**CAGUIOA, J:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> (Petition) under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated August 28, 2015 and Resolution<sup>[3]</sup> dated January 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 130466. The CA affirmed the Decision<sup>[4]</sup> dated December 27, 2012 and Resolution dated April 10, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-002187-12 (NLRC NCR Case No. 00-08-11936-11), which found that respondent was constructively dismissed.

#### Facts

The facts, as narrated by the CA, are as follows:

On April 9, 1992, petitioners Airborne Maintenance and Allied Services, Inc. and Francis T. Ching (Airborne), a company engaged in providing manpower services to various clients, hired the services of private respondent as Janitor. He was assigned at the Balintawak Branch of Meralco, a client of Airborne.

Almost twenty years thereafter, or on June 30, 2011, the contract between Airborne and Meralco-Balintawak Branch expired and a new contract was awarded to Landbees Corporation, and the latter absorbed all employees of Airborne except private respondent, who allegedly had a heart ailment. Private respondent consulted another doctor and, based on the medical result, he was declared in good health and fit to work. He showed the duly issued medical certificate to Airborne but the same was disregarded.

Private respondent also reported for work but was just ignored by Airborne and was told that there was no work available for him. Feeling aggrieved, he filed a complaint for constructive/illegal dismissal on August 05, 2011.

Airborne, on the other hand, insisted that private respondent was never dismissed from service. It claimed: 1) that when [its] contract with Meralco-Balintawak Branch was terminated, it directed all its employees including private respondent to report to its office for reposting; 2) that when private respondent failed to do so, it sent a letter dated August 12, 2011 at private respondent's last known address directing him to report

to his x x x new assignment at Meralco Commonwealth Business Center; 3) that said letter, however, was returned to sender with a notation "RTS unknown"; 4) that another letter dated September 21, 2011 was sent to private respondent at his last known address reiterating the previous directive; and 5) that the same was again returned with a notation "RTS unknown."

On June 04, 2012, the Labor Arbiter rendered a decision dismissing the complaint for illegal/constructive dismissal, the *fallo* of which reads:

**"WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the instant complaint for lack of merit.

**SO ORDERED."**

On appeal to the NLRC, private respondent reiterated that he was constructively/illegally dismissed by Airborne. He pointed out that he made several follow-ups since July 1, 2011, but Airborne merely ignored him, and since then, he was not given a new assignment. Private respondent further argued that the letters were mere afterthoughts since Airborne was already aware of the illegal dismissal complaint prior to the sending of the said letters; that the same could not possibly reach him because his address was incomplete and such mistake was intentionally done for him not to receive the letters; and that he left his cellphone number with one Christine Solis, Airborne's Administrative Officer, but he never received a call from Airborne.

Airborne countered that private respondent introduced for the first time on appeal not only new factual allegations but also spurious, fabricated and self-serving evidence which should not be given credence.

On December 27, 2012, public respondent NLRC rendered a decision reversing the findings of the Labor Arbiter and declaring private respondent to have been constructively/illegally dismissed. The dispositive portion of which reads:

**"WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision appealed from is **REVERSED and SET ASIDE**, and a new one issued declaring the respondents guilty of illegal dismissal.

Accordingly, respondents are ordered to pay complainant the following:

1. Backwages
2. Separation pay

**SO ORDERED."**<sup>[5]</sup>

Petitioner filed a petition for *certiorari* with the CA, which affirmed the Decision of the NLRC. The dispositive portion of the CA Decision states:

**WHEREFORE**, premises considered, the Decision dated December 27, 2012 and Resolution dated April 10, 2013 of the National Labor Relations

Commission, Second Division in NLRC NCR LAC No. 07-002187-12 (NLRC NCR Case No. 08-11936-11) are hereby **AFFIRMED**.

**SO ORDERED.**<sup>[6]</sup>

Petitioner moved for reconsideration, but this was denied.

Hence, this Petition. Respondent filed his Comment<sup>[7]</sup> and, in turn, petitioner filed its Reply.<sup>[8]</sup>

### **Issues**

The issues raised in the Petition are as follows:

#### **I**

CONTRARY TO EXISTING JURISPRUDENCE, THE COURT OF APPEALS[,], WITH DUE RESPECT[,], COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE NLRC DECLARING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED AND WORSE BY MAKING AN ASSUMPTION THAT PETITIONER CLAIMED ABANDONMENT AS A DEFENSE[.]

#### **II**

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT DISMISSED PETITIONER'S PETITION FOR [CERTIORARI] RELYING SOLELY ON THE ERRONEOUS CONCLUSIONS OF FACT AND LAW MADE BY THE NLRC DESPITE THE CLEAR AND UNEQUIVOCAL JURISPRUDENCE ON THE MATTER.<sup>[9]</sup>

### **The Court's Ruling**

The Petition is denied.

A review of the submissions of the parties shows that the CA was correct in affirming the NLRC's ruling that respondent was constructively dismissed. The CA ruled as follows:

In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process. Dismissals of employees have two facets: *first*, the legality of the act of dismissal, which constitutes substantive due process; and *second*, the legality in the manner of dismissal, which constitutes procedural due process.

x x x x

Clearly, the failure to observe the twin requisites of notice and hearing not only makes the dismissal of an employee illegal regardless of his alleged violation, but is also violative of the employee's right to due process.

x x x x

In this case, it is beyond cavil that none of the foregoing mandatory provisions of the labor law were complied with by Airborne.

x x x x

To buttress its contention that x x x respondent abandoned his work, Airborne alleged that it sent letters/notices to private respondent directing him to report for work. Nonetheless, no iota of evidence was presented by Airborne sufficiently showing that the letters/notices dated August 12, 2011 and dated September 21, 2011 were actually received by xxx respondent. In fact, said letters/notices were returned with a notation "RTS unknown" inasmuch as x x x respondent's address was incomplete and such was intentionally done for the latter not to receive said letters/notices.

As correctly observed by public respondent NLRC, the letters/notices were mere afterthoughts since Airborne was already aware of the filing of the illegal dismissal complaint prior to the sending of the said letters/notices.

Corollary thereto, it must be stressed that xxx respondent made several follow-ups since July 1, 2011, but Airborne did not give him a new assignment. Moreover, xxx respondent gave his cellphone number with Christine Solis, Airborne's Administrative Officer, but to no avail.<sup>[10]</sup>

On the other hand, the NLRC found that:

After a careful review of the records of the case, We find the appeal impressed with merit.

Complainant [respondent herein] claims that respondents [petitioner herein] told him that he had a heart ailment, thus, he could not be absorbed for continued employment. He consulted Dr. Rina Porciuncula of the Our Lady of the Angels Clinic in Sta. Maria, Bulacan. The doctor declared him fit to work (rollo, pp. 25-27).

We find credence on his allegation that respondents denied him employment because he had a heart ailment. Nonetheless, despite the declaration that he was fit to work, the respondents still did not give him any assignment.

The complainant is a mere janitor, and to earn a living, he had to undergo the medical examination. He exerted effort and spent money to prove to respondents that he was capable of working.

To give semblance of legality to their act of not giving him an assignment, after the filing of the complaint for constructive dismissal, respondents sent him two (2) letters with incomplete address. The sending of the letters were a mere afterthoughts (sic).

The Supreme Court, in *Skippers United Pacific, Inc. vs. NLRC* G.R. No. 148893, July 12, 2006 ruled that "Afterthought cannot be given weight or credibility."