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SECOND DIVISION

[G.R. No. 221096, June 28, 2017]

CLAUDIA'S KITCHEN, INC. AND ENZO SQUILLANTINI, PETITIONERS, VS. MA. REALIZA S. TANGUIN, RESPONDENT.

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to modify the April 15, 2015 Decision[1] and October 13, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 130332, which modified the November 29, 2012 Decision[3] and April 4, 2013 Resolution[4] of the National Labor Relations Commission (*NLRC*) in NLRC NCR CN. 01-01520-11/NLRC LAC No. 02-000693-12, a case for illegal dismissal.

The Antecedents

Respondent Ma. Realiza S. Tanguin (*Tanguin*) was employed by petitioner Claudia's Kitchen, Inc. (*Claudia's Kitchen*) on June 20, 2001. She performed her functions as a billing supervisor in Manila Jockey Club's Turf Club Building in San Lazaro Leisure and Business Park (*SLLBP*), Carmona, Cavite. Her duties and responsibilities involved 1) Sorting and preparing suppliers' billing statements; 2) Releasing check payments to the suppliers after being approved and signed by the management; 3) Giving job assignment to employees; 4) Training and conducting orientation of new employees and monitoring their progress; 5) Encoding daily and monthly menu production; 6) Preparing and submitting weekly and monthly inventory and sales reports to the head office; 7) Handling petty cash funds and depositing daily and weekly collections; and 8) Programming cash register.

Tanguin averred that on October 26, 2010, she was placed on preventive suspension by Marivic Lucasan (*Lucasan*), Human Resources Manager, for allegedly forcing her co-employees to buy silver jewelry from her during office hours and inside the company premises. On the same date, she was directed by Lucasan to submit her written explanation on the matter. Tanguin admitted that she was selling silver jewelry, but she denied that she did so during office hours. On October 30, 2010, she was barred by a security guard from entering the company premises. She was informed by her co-employees, namely Khena Nama, Jordan Lopez and Rose Marie Esquejo that they were forced to write letters against her, or else they would be terminated from their work.

For their part, Claudia's Kitchen and Enzo Squillantini, its President, (*petitioners*) countered that in October 2010, they received reports from some employees that Tanguin was allegedly forcing some of them to buy silver jewelry from her during office hours and inside the company premises, which the latter admitted. In order to conduct a thorough investigation, she was placed under preventive suspension on October 26, 2010. On October 27, 2010, the petitioners sent Tanguin a letter

requiring her to submit a written explanation as to why she should not be charged for conducting business within the company premises and during office hours. During her suspension, the petitioners discovered her habitual tardiness and gross negligence in the computation of the total number of hours worked by her co-employees. Subsequently, they sent letters to her, to wit:

1. First Notice - sent on November 17, 2010 requiring Tanguin to report to the Head Office on November 19, 2010 at 10:00 o'clock in the morning to explain her alleged infractions;[5]

2. Second Notice - sent on November 24, 2010 requiring Tanguin to explain the charges against her;[6]

3. Third Notice - sent on November 25, 2010 requiring Tanguin to report to the Head Office and to explain the charges against her;[7]

4. Letter - sent on December 1, 2010 **reminding Tanguin that she was still an employee** of Claudia's Kitchen and directing her to report back to work;[8] and

5. Final Letter - sent on December 2, 2010 requiring Tanguin to report for work on December 3, 2010 at 10:00 a.m.[9]

Tanguin, however, failed to act on these notices.

The LA Ruling

In a Decision,[10] dated December 22, 2011, the LA ruled that Tanguin's preventive suspension was justified because, as supervisor, she was in possession of the company's cash fund and collections. It stressed that she was not illegally dismissed. Nevertheless, the LA ordered the petitioners to pay Tanguin her unpaid salary. The *fallo* reads:

> WHEREFORE, a Decision is hereby rendered declaring that Complainant was not illegally DISMISSED. Respondents are hereby ordered to pay Complainant her salary from October 10 to 25, 2010 as follows:
>
> UNPAID SALARY
>
> 10/10-25/10-15 days
>
> P13,600/26 X 15 = P7,846.15
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[11]

Unsatisfied, Tanguin elevated an appeal before the NLRC.

The NLRC Ruling

In its November 29, 2012 Decision, the NLRC partly granted Tanguin's appeal. It

opined that there was no scintilla of proof that she was dismissed from service. It pointed out that it was she who chose not to report for work despite receipt of notices requiring her to report to the head office.

It stated that the nature of her position as billing supervisor, whereby she held company funds and gave job assignments to the employees, was sufficient basis for the preventive suspension.

The NLRC, however, found that Tanguin did not abandon her work when she failed to report for work despite notice. It stated that the filing of the complaint for illegal dismissal negated the claim of abandonment. The NLRC concluded that there was neither dismissal nor abandonment. Thus, she should be reinstated to her former position, but without backwages. The dispositive portion reads:

> **WHEREFORE**, premises considered, the instant appeal is **PARTLY GRANTED**. The decision dated December 22, 2011 insofar as the money award is concerned is affirmed in toto. However, appellees are directed to reinstate appellant to her former position or to a similar equivalent position without loss of seniority rights and other privileges sans backwages.
>
> SO ORDERED.[12]

Unconvinced, the petitioners filed a partial motion for reconsideration thereto. In its April 4, 2013 Resolution, the NLRC denied the same.

Aggrieved, the petitioners filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed decision, dated April 15, 2015, the CA modified the NLRC ruling. It wrote that reinstatement was not proper because such remedy was applicable only to illegally dismissed employees. It added that the petitioners did not dismiss her from employment as evidenced by several notices sent to her requiring her to report back to work and to explain the charges against her.

The CA, however, applied the doctrine of strained relations and ordered the payment of separation pay to Tanguin instead of compelling the petitioners to accept her in their employ. It opined that she was employed as a billing supervisor and such a sensitive position required no less than the trust and confidence of her employer as she was routinely charged with the care and custody of the funds and property of her employer; and that as a necessary consequence of the judicial controversy, an atmosphere of antipathy and antagonism may be generated as to adversely affect her efficiency and productivity if she would be reinstated. Hence, the CA disposed the case in this wise:

> **WHEREFORE**, in view of the foregoing premises, the petition is **PARTLY GRANTED**. The Decision of the NLRC dated November 29, 2012 and the April 4, 2013 Resolution of the National Labor Relations Commission (NLRC) NLRC NCR CN. 01-01520-11/NLRC LAC No. 02-000693-12 are hereby **MODIFIED** as follows:

1. Private respondent Ma. Realiza S. Tanguin is not entitled to reinstatement in view of the strained relationship between her and the petitioners;

2. In view of the petitioners' assertion of the doctrine of strained relations, they are in effect dismissing private respondent Tanguin on the ground of loss of confidence; and

3. AB a measure of social justice, We award separation pay in favor of private respondent Ma. Realiza S. Tanguin.

Accordingly, let this case be remanded to the Labor Arbiter for the computation of the proper separation pay of private respondent Tanguin within fifteen (15) days from notice hereof.

SO ORDERED.[13]

The petitioners moved for reconsideration, but their motion was denied by the CA in the assailed October 13, 2015 Resolution.

ISSUE

WHETHER SEPARATION PAY IN LIEU OF REINSTATEMENT MAY BE AWARDED TO AN EMPLOYEE WHO WAS NOT DISMISSED FROM EMPLOYMENT.

The petitioners argued that the CA erred in awarding separation pay in the absence of any authorized cause for termination of employment; and that its conclusion that it sought to terminate respondent due to loss of confidence was refuted by the evidence on record.

In her Comment,[14] dated April 25, 2016, Tanguin averred that the petitioners sent her notices to return to work only after she had filed an illegal dismissal complaint against them before the Labor Arbiter; that on October 27, 2010, she was barred from entering her workplace by Martin Martinez, the Cost Comptroller; and that the charges of negligence in computing the number of hours worked by her co-employees and habitual tardiness were merely concocted.

In their Reply,[15] dated January 4, 2017, the petitioners contended that separation pay could not be awarded on the ground of social justice when the dismissal was based on the just causes under Article 282 of the Labor Code; and that to grant separation pay in her favor would unjustly reward her for her infractions.

The Court's Ruling

Respondent was not dismissed from employment

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause.[16] But before the employer must bear the burden of proving that the dismissal was legal, 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.[17] In *Machica v. Roosevelt Services Center, Inc.*,[18] the Court enunciated:

> The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.[19]

Tanguin miserably failed to discharge this burden. She simply alleged that a security guard barred her from entering her workplace. Yet, she offered no evidence to prove the same. Absent any evidence that she was prevented from entering her workplace, what remained was her bare allegation, which could not certainly be considered substantial evidence. At any rate, granting that she was barred, there was a lawful basis therefor as she had been placed under preventive suspension pending investigation.

On the other hand, the petitioners were able to prove that they did not dismiss Tanguin from employment because she was still under investigation as evidenced by several notices[20] requiring her to report to work and submit an explanation as to the charges hurled against her. In fact, in its December 1, 2010 letter, they reminded her that she was still an employee of Claudia's Kitchen. Instead of answering the allegations against her, she opted to file an illegal dismissal complaint with the Labor Arbiter. Clearly, her complaint for illegal dismissal was premature, if not pre-emptive.

There was no abandonment on the part of respondent

The Court further agrees with the findings of the LA, the NLRC and the CA that Tanguin was not guilty of abandonment. *Tan Brothers Corporation of Basilan City v. Escudero*[21] extensively discussed abandonment in labor cases:

> As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 296] of the Labor Code. **To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.** Otherwise stated,' absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[22] [Emphasis supplied]