608 Phil. 682

SECOND DIVISION

[G.R. No. 174141, June 26, 2009]

PENTAGON STEEL CORPORATION, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION AND PERFECTO BALOGO, RESPONDENTS.

D E C I S I O N

BRION, J.:

Before this Court is the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Pentagon Steel Corporation (the *petitioner*). It seeks to set aside:

> (a) the Decision of the Court of Appeals (*CA*) dated June 28, 2006[2] modifying the Decision of the National Labor Relations Commission (*NLRC*) dated January 31, 2005;[3] and
>
> (b) the Resolution of the CA dated August 15, 2006,[4] denying the motion for reconsideration that the petitioner subsequently filed.

THE FACTUAL ANTECEDENTS

The petitioner, a corporation engaged in the manufacture of G.I. wire and nails, employed respondent Perfecto Balogo (the *respondent*) since September 1, 1979 in its wire drawing department. The petitioner alleged that the respondent absented himself from work on August 7, 2002 without giving prior notice of his absence. As a result, the petitioner sent him a letter by registered mail dated August 12, 2002, written in Filipino, requiring an explanation for his absence. The petitioner sent another letter to the respondent on August 21, 2002, also by registered mail, informing him that he had been absent without official leave (AWOL) from August 7, 2002 to August 21, 2002. Other letters were sent to the respondent by registered mail, all pointing out his absences; however, the respondent failed to respond. Thus, the petitioner considered him on AWOL from August 7, 2002.[5]

On September 13, 2002, the respondent filed a complaint with the Arbitration Branch of the NLRC for underpayment/nonpayment of salaries and wages, overtime pay, holiday pay, service incentive leave, 13th month pay, separation pay, and ECOLA. The respondent alleged that on August 6, 2002, he contracted flu associated with diarrhea and suffered loose bowel movement due to the infection. The respondent maintained that his illness had prevented him from reporting for work for ten (10) days. When the respondent finally reported for work on August 17, 2002, the petitioner refused to take him back despite the medical certificate he submitted. On August 19, 2002, the respondent again reported for work, exhibiting a note from his doctor indicating that he was fit to work. The petitioner, however, did

not allow him to resume work on the same date. Subsequently, the respondent again reported for work on August 21 and 23, 2002 and October 10 and 18, 2002, to no avail. He was thus driven to file a complaint against the petitioner.[6]

During the conciliation proceedings on October 9, 2002, the respondent presented the medical certificate covering his period of absence. The petitioner required him, however, to submit himself to the company physician to determine whether he was fit to return to work in accordance with existing policies. On October 22, 2002, still during the conciliation proceedings, the respondent presented a medical certificate issued by the company physician; according to the petitioner, the respondent refused to return to work and insisted that he be paid his separation pay. The petitioner refused the respondent's demand for separation pay for lack of basis.

On January 20, 2003, the respondent formally amended his complaint to include his claim of illegal dismissal.[7]

The Labor Arbiter Ruling

On October 27, 2003, the labor arbiter rendered his decision dismissing the illegal dismissal charge, but directed the petitioner "to pay the complainant his SIL and 13th month pay in the amount of Five Thousand One Hundred Sixty-Six Pesos and 66/100 (P5,166.66)."[8]

In dismissing the respondent's claim of illegal dismissal, the labor arbiter found that no dismissal took place; thus, the petitioner never carried the burden of proving the legality of a dismissal. The labor arbiter noted that the respondent's allegation that he reported for work is not reliable for lack of corroborating evidence, as the respondent in fact failed to respond to the petitioner's memoranda. Thus, the decision was confined to the directive to pay service incentive leave and 13th month pay.

The NLRC Ruling

The respondent appealed the labor arbiter's decision to the NLRC on November 14, 2003, specifically questioning the ruling that no illegal dismissal took place. On January 31, 2005, the NLRC Third Division vacated and set aside the decision of the labor arbiter.[9] The decision directed the company to pay the respondent separation pay, backwages, 13th month pay, and service incentive leave.[10]

The NLRC ruled that the petitioner's defense of abandonment has no legal basis since there was no clear intent on the respondent's part to sever the employer-employee relationship. The NLRC found it difficult to accept the petitioner's allegation that the respondent absented himself for unknown reasons; this kind of action is inconsistent with the respondent's twenty-three (23) years of service and lack of derogatory record during these years. As a consequence, the NLRC held that the respondent was illegally dismissed. Together with this conclusion, however, the NLRC also considered the *strained relationship existing between the parties* and, for this reason, *awarded separation pay in lieu of reinstatement, in addition to backwages.* On March 31, 2005, the NLRC denied the petitioner's motion for reconsideration.

The CA Ruling

On May 6, 2006, the petitioner filed a special civil action for *certiorari*[11] with the CA, alleging grave abuse of discretion on the part of the NLRC in ruling that illegal dismissal took place, and in awarding the respondent separation pay and backwages.

In a Decision dated June 28, 2006, the CA affirmed the NLRC's finding that the dismissal was illegal, but modified the challenged decision by adding reinstatement and the payment of "full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."[12]

The CA held that the respondent was constructively dismissed when the petitioner repeatedly refused to accept the respondent back to work despite the valid medical reason that justified his absence from work. The CA concluded that the respondent complied with the petitioner's directive to submit a written explanation when the former presented the medical certificate to explain his absences.

The CA also disregarded the petitioner's charge of abandonment against the respondent. The appellate court ruled that the petitioner failed to prove a clear and deliberate intent on the respondent's part to discontinue working with no intention of returning. The CA took note of the respondent's eagerness to return to work when he obtained a note from his doctor about his fitness to return to work. The CA also ruled that the respondent's filing of a complaint for illegal dismissal with a prayer for reinstatement manifested his desire to return to his job, thus negating the petitioner's charge of abandonment.

The CA, however, disagreed with the NLRC's application of the doctrine of "strained relations," citing jurisprudence that the doctrine should be strictly applied in order not to deprive an illegally dismissed employee of his right to reinstatement. The CA also held that to deny the respondent the benefits due from his long service with the company would be very harsh since his long service would not be amply compensated by giving him only separation pay.

Petitioner moved for reconsideration of the decision, but the CA denied the motion for lack of merit in the Resolution dated August 15, 2006.[13]

In this present petition, the petitioner imputes grave abuse of discretion against the CA:

1) in basing its decision on the proceedings that transpired when the parties were negotiating for a compromise agreement during the preliminary conference of the case;

2) in declaring that respondent was illegally dismissed by the petitioner; and

3) in ordering that respondent be reinstated to his former position with backwages.

THE COURT'S RULING

We do not find the petition meritorious.

Before going into the substantive merits of the controversy, we shall first resolve the propriety of the CA's consideration of the proceedings that transpired during the mandatory preliminary conference of the case.

Statements and/or agreements made at conciliation proceedings are privileged and cannot be used as evidence

The petitioner contends that the CA cannot use the parties' actions and/or agreements during the negotiation for a compromise agreement as basis for the conclusion that the respondent was illegally dismissed because an offer of compromise is not admissible in evidence under Section 27, Rule 130 of the Rules of Court.[14]

We agree with the petitioner, but for a different reason. The correct reason for the CA's error in considering the actions and agreements during the conciliation proceedings before the labor arbiter is Article 233 of the Labor Code which states that *"[i]nformation and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them."* This was the provision we cited in *Nissan Motors Philippines, Inc. v. Secretary of Labor*[15] when we pointedly disallowed the award made by the public respondent Secretary; the award was based on the information NCMB Administrator Olalia secured from the confidential position given him by the company during conciliation.

In the present case, we find that the CA did indeed consider the statements the parties made during conciliation; thus, the CA erred by considering excluded materials in arriving at its conclusion. The reasons behind the exclusion are two-fold.

First, since the law favors the settlement of controversies out of court, a person is entitled to "buy his or her peace" without danger of being prejudiced in case his or her efforts fail; hence, any communication made toward that end will be regarded as privileged.[16] Indeed, if every offer to buy peace could be used as evidence against a person who presents it, many settlements would be prevented and unnecessary litigation would result, since no prudent person would dare offer or entertain a compromise if his or her compromise position could be exploited as a confession of weakness.[17]

Second, offers for compromise are irrelevant because they are not intended as admissions by the parties making them.[18] A true offer of compromise does not, in legal contemplation, involve an admission on the part of a defendant that he or she is legally liable, or on the part of a plaintiff, that his or her claim is groundless or even doubtful, since it is made with a view to avoid controversy and save the expense of litigation. It is the distinguishing mark of an offer of compromise that it is made tentatively, hypothetically, and in contemplation of mutual concessions.[19]

While we agree with the petitioner that the CA should not have considered the

agreements and/or statements made by the parties during the conciliation proceedings, the CA's conclusion on illegal dismissal, however, was not grounded solely on the parties' statements during conciliation, but was amply supported by other evidence on record, which we discuss below. Based on these other pieces of evidence, the respondent was illegally dismissed; hence, our ruling regarding the statement made during conciliation has no effect at all on our final conclusion.

Respondent did not abandon his job

The rule is that the burden of proof lies with the employer to show that the dismissal was for a just cause.[20] In the present case, the petitioner claims that there was no illegal dismissal since the respondent abandoned his job. The petitioner points out that it wrote the respondent various memoranda requiring him to explain why he incurred absences without leave, and requiring him as well to report for work; the respondent, however, never bothered to reply in writing.

In evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts.[21] To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, *manifested through overt acts*, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning.[22]

We agree with the CA that the petitioner failed to prove the charge of abandonment.

First, the respondent had a valid reason for absenting himself from work. The respondent presented a medical certificate from his doctor attesting to the fact that he was sick with flu associated with diarrhea or loose bowel movement which prevented him from reporting for work for 10 days. The petitioner never effectively refuted the respondent's reason for his absence. We thus concur with the CA's view that the respondent submitted a valid reason for his absence and thereby substantially complied with the petitioner's requirement of a written explanation. We quote with approval the following discussion in the CA's decision:

> In his case, Balogo should be judged as having fully complied with the petitioner's directive by his presenting of the medical certificate to justify or explain his absences because the medical certificate already constituted the required "written explanation." Another written explanation from him would be superfluous and even redundant if the facts already appearing in the medical certificate would inevitably be stated again in that other written explanation.
>
> Why the petitioner persistently refused to accept Balogo back despite his presentation of the medical certificate and the doctor's note about his fitness to work was not credibly explained by the petitioner. The refusal is indicative of the petitioner's ill motive towards him, using the lack of written explanation as a clever ruse to terminate Balogo's employment.

Second, there was no clear intention on the respondent's part to sever the employer-employee relationship. Considering that "intention" is a mental state, the