

THIRD DIVISION

[G.R. No. 182320, September 11, 2009]

**TACLOBAN FAR EAST MARKETING CORPORATION AND
FRANCISCO Y. ROMUALDEZ, PETITIONERS, VS. THE COURT OF
APPEALS, NATIONAL LABOR RELATIONS COMMISSION AND
BENJAMIN Q. SABULAO, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the Decision^[1] of the Court of Appeals dated August 23, 2007 in CA-G.R. SP No. 01027 which affirmed the Decision^[2] of the National Labor Relations Commission (NLRC) dated June 25, 2004 and its Resolution^[3] dated June 30, 2005 declaring petitioners guilty of illegal dismissal. Also assailed is the Court of Appeals' Resolution^[4] denying the motion for reconsideration.

Sometime in 1989, petitioners hired private respondent Benjamin Sabulao as helper in its hardware business, then as a delivery truck driver from 1993 until May 12, 2001. During the first week of May 2001, Sabulao alleged that he asked permission to be absent for five days due to his grandfather's death; that petitioner Francisco Romualdez granted his request but when he reported for work on May 12, 2001, he was informed not to work anymore. Thereafter, he returned to his hometown and engaged in the copra business to support the needs of his family.

On August 10, 2001, Sabulao together with Mario Villanueva filed before the NLRC's Regional Arbitration Branch No. VIII, a complaint for illegal dismissal and money claims against petitioners. Eventually, Mario Villanueva executed a Statement of Quitclaim and Release hence, his complaint was dismissed.

Petitioners denied having illegally dismissed Sabulao and alleged that he abandoned his work. Allegedly, Sabulao had been a frequent absentee without notice since March and April of 2001 that petitioners would even send Edgar Enopia to fetch him to report for work. During the first week of May 2001, petitioners learned that Sabulao was already engaged in the "Ukay-Ukay" business.

On October 2, 2002, the Labor Arbiter rendered a Decision^[5] finding Sabulao to have abandoned his work. At the same time, petitioners were ordered to pay Sabulao his salary differentials and service incentive leave pay. The other money claims were denied for failure to substantiate the same. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered-

1. Finding no illegal dismissal of complainant;
2. Ordering respondent to pay complainant:

a. Salary differentials:

May 11, 1998 to Dec. 31, 1999

(P153 - P130 = P23.00 x 511 days) = P11,753.00

Jan. 2, 2000 - Oct. 31, 2000

(P163 - P160 = P3.00 x 259 days) = 777.00

Nov. 1, 2000 - Dec. 31, 2000

(P173 - P160 = P13.00 x 51 days) = 663.00

Jan. 2, 2001 - Apr. 30, 2001 = NIL

May 1, 2001 - May 11, 2001

(P177.00 - P173 = P4.00 x 10 days) = 40.00

P13,233.00

b. Service Incentive Leave Pay

1998 - P153 x 5 = 765.00
days

1999 - P153 x 5 = 765.00
days

2000 - P173 x 5 = 865.00
days

P 2,395.00

GRAND TOTAL **P15,628.00**

3. All other claims are denied for lack of merit.

SO ORDERED. ^[6]

On appeal, the NLRC reversed the decision of the Labor Arbiter, thus:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby **SET ASIDE and VACATED** and a new one entered finding

complainant to have been illegally dismissed. As such, respondent (Tacloban) Far East (M)arketing Corporation is hereby ORDERED to pay complainant his backwages and separation pay from the date of dismissal up to the date of this decision. In addition, respondent is ORDERED to pay salary differentials and service incentive leave pay in the amount of P15,628.00.

SO ORDERED.^[7]

The NLRC found that Sabulao's frequent absences could not by itself constitute abandonment and that no proof of overt acts was adduced showing that he intended to abandon his work; that the three-month delay in the filing of the case is not an indication of abandonment; and that the amounts mentioned in the mandatory conference before the labor arbiter should not be considered in determining the merits of the case.

Petitioners filed a motion for reconsideration but it was denied by the NLRC in its Resolution dated June 30, 2005. In addition, as prayed for by Sabulao, the NLRC made a detailed computation of the award due him as follows:

Backwages: May 2001 - June 2005	P209,332.99
13 th month pay	12,558.00
SILP	<u>640.00</u>
	<u>222,529.99</u>
Salary Differentials	<u>15,628.00</u>
TOTAL DIFFERENTIALS	P238,157.99^[8]

Thereafter, petitioners filed a Petition for Certiorari before the Court of Appeals which rendered the herein assailed Decision denying the petition and affirming the NLRC Decision finding respondent to have been illegally dismissed.

The Court of Appeals held that the act of filing a complaint for illegal dismissal negates any intention on the part of the employee to abandon his job; that Sabulao's filing of the complaint for illegal dismissal only after three months from the time he was dismissed would not negate the finding that he did not abandon his work; that his returning to his hometown and engaging in copra business could not be taken against him; that engaging in the "Ukay-Ukay" business neither demonstrated an intention to abandon his job; that mere absence is not enough to constitute abandonment, rather, it should be coupled with overt acts showing that the employee is no longer interested to work anymore; and that Sabulao's prayer for separation pay should not be taken against him.

Petitioners' motion for reconsideration was denied on January 24, 2008; hence, this petition raising the following issues:

A.