565 Phil. 407

THIRD DIVISION

[G.R. No. 158458, December 19, 2007]

ASIAN TERMINALS, INC. AND ATTY. RODOLFO G. CORVITE, JR., PETITIONERS, VS. NATIONAL LABOR RELATIONS AND COMMISSION, DOMINADOR SALUDARES, AND ROMEO L. LABRAGUE, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court from the January 23, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 53869, affirming with modification the April 30, 1999 Decision[2] of the National Labor Relations Commission (NLRC); and the May 23, 2003 CA Resolution, [3] denying the motion for reconsideration.

The facts not in dispute are as follows:

Romeo Labrague (respondent) was a stevedore *antigo* employed with Asian Terminals, Inc. since the 1980's. Beginning September 9, 1993, respondent failed to report for work allegedly because he was arrested and placed in detention for reasons not related to his work.[4]

After respondent had been absent for more than one year, Asian Terminals, Inc., through Atty. Rodolfo G. Corvite, Jr., (petitioners) sent him (respondent) a letter, dated December 27, 1994, at his last known address at Area H, Parola, Tondo, Manila, requiring him to explain within 72 hours why he should not suffer disciplinary penalty for his prolonged absence.[5] The following month, petitioner sent respondent another notice of similar tenor.[6]

Finally, on February 8, 1995, petitioner issued a memorandum stating:

> For having incurred absence without official leave (AWOL) from 03 September 1993 up to the present after you were put behind bars due to your involvement in a killing incident, your employment is hereby terminated for cause effective IMMEDIATELY.[7]

Though addressed to respondent, the foregoing memorandum does not indicate whether it was sent to the latter at his last known address.

Following his acquittal and release from detention, respondent reported for work on July 3, 1996 but was advised by petitioners to file a new application so that he may be rehired.[8] Thus, respondent filed with the NLRC a complaint for illegal dismissal, separation pay, non-payment of labor standard benefits, damages and attorney's

fees.[9]

In a Decision dated September 29, 1998, the Labor Arbiter (LA) held:

> WHEREFORE, premises considered, judgment is hereby entered ordering respondents, jointly and severally, to pay the total sum of P152,700.00 as separation pay, 13th month and service incentive leave pay of complainant. Other issues or claims are hereby ordered DISMISSED for want of substantial evidence.
>
> SO ORDERED.[10]

Petitioners appealed but the NLRC issued the April 30, 1999 Decision which merely modified the LA decision, viz.:

> WHEREFORE, premises considered, the Decision appealed from is MODIFIED. Respondents are ordered to pay complainant his separation pay in the sum of P124,800.00. The awards representing 13th month pay and service incentive leave pay are DELETED.
>
> SO ORDERED.[11]

Petitioners' motion for reconsideration was denied by the NLRC in its Resolution[12] on June 15, 1999.

It should be noted that respondent did not appeal from the NLRC decision deleting from the LA decision the award of 13th month pay and service incentive leave pay.

Petitioners went on to file a petition for *certiorari*[13]with the CA which, however, the latter denied in the January 23, 2003 Decision now assailed before us, to wit:

> WHEREFORE, the assailed decision of the NLRC is AFFIRMED with MODIFICATION in that:
>
> (a) Labrague's separation pay should be computed on the basis of the aforequoted Section 2 of the collective bargaining agreement (CBA); and
>
> (b) the petitioners are further ordered to pay Labrague his backwages from the time of his illegal dismissal in July 1996 up to the date of finality of this decision, computed also in accordance with Section 2 of the same CBA.
>
> SO ORDERED.[14]

Respondent did not question the recomputation of his separation pay. Only petitioners filed a motion for reconsideration but the CA denied the same.

Hence, the present petition on the sole ground that:

> The Honorable Court of Appeals erred in declaring the dismissal of respondent Romeo L. Labrague from employment illegal notwithstanding

> his long and unauthorized absences from work which is contrary to law and existing jurisprudence.[15]

The petition lacks merit.

In declaring the dismissal of respondent illegal, the concurrent view of the CA, NLRC and LA is that the latter's prolonged absence was excusable, for it was brought about by his detention for almost three years for a criminal charge that was later declared baseless. They held that his prolonged absence was not coupled with an intention to relinquish his employment, and therefore did not constitute abandonment. The CA elaborated:

> Verily, the Supreme Court ruled in the *Magtoto* case, involving detention for seven (7) months by military authorities, pursuant to an Arrest, Search and Seizure Order (ASSO), relied upon by the Arbiter, viz.:
>
> > "Equitable considerations favor the petitioner. While the respondent employer may have shed no tears over the arrest of one of its employees, there is likewise no showing that it had any role in the arrest and detention of Mr. Magtoto. But neither was the petitioner at fault. The charges which led to his detention was later found without basis. x x x."[16]

Petitioners argue that they were justified in dismissing respondent after the latter incurred a three-year absence without leave, and refused to report for work despite several notices.[17] Petitioners argue that respondent's prolonged absence was not justified or excused by his so-called detention, which remained a mere allegation that was never quite substantiated by any form of official documentation.[18] It being uncertain whether respondent was ever placed in detention, petitioners doubt whether the CA correctly applied the ruling in *Magtoto v. National Labor Relations Commission*.[19]

The foregoing arguments of petitioners are specious.

It cannot be gainsaid that respondent was in detention during the entire period of his absence from work and, more importantly, that his situation was known to petitioners. It is of record that in the February 8, 1995 termination notice it issued, petitioners expressly acknowledged that respondent began incurring absences without leave "after [he was] put behind bars due to [his] involvement in a killing incident."[20] It clearly indicates that petitioners knew early on of the situation of respondent. It also explains why in its reply[21] before the LA, appeal[22] before the NLRC and petition for *certiorari*[23] before CA, petitioners never questioned the truth about respondent's detention. Petitioners' skepticism about respondent's detention is a mere afterthought not proper for consideration in a petition for review under Rule 45, which bars reappraisal of facts not disputed before the lower courts or already settled in their proceedings, and unanimously at that.[24]

It is beyond dispute then that the underlying reason for respondent's absences was his detention. The question is whether the CA erred in holding that such absences did not amount to abandonment as to furnish petitioners cause to dismiss respondent.

To justify the dismissal of respondent for abandonment, petitioners should have established by concrete evidence the concurrence of two elements: first, that respondent had the intention to deliberately and without justification abandon his employment or refuse to resume his work; and second, that respondent performed overt acts from which it may be deduced that he no longer intended to work. [25]

Petitioners failed to discharge such burden of proof. Respondent's absences, even after notice to return to work, cannot be equated with abandonment,[26]especially when we take into account that the latter incurred said absences unwillingly and without fault.[27]

Absences incurred by an employee who is prevented from reporting for work due to his detention to answer some criminal charge is excusable if his detention is baseless, in that the criminal charge against him is not at all supported by sufficient evidence. In *Magtoto v. National Labor Relations Commission* as well as *Pedroso v. Castro*,[28] we declared such absences as not constitutive of abandonment, and held the dismissal of the employee-detainee invalid. We recently reiterated this ruling in *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*,[29] *viz*.:

> "The facts in *Pedroso v. Castro* are similar to the set of facts in the present case. The petitioners therein were arrested and detained by the military authorities by virtue of a Presidential Commitment Order allegedly for the commission of Conspiracy to Commit Rebellion under Article 136 of the RPC. As a result, their employer hired substitute workers to avoid disruption of work and business operations. They were released when the charges against them were not proven. After incarceration, they reported back to work, but were refused admission by their employer. The Labor Arbiter and the NLRC sustained the validity of their dismissal. Nevertheless, this Court again held that the dismissed employees should be reinstated to their former positions, since their separation from employment was founded on a *false* or *non-existent* cause; hence, illegal.
>
> Respondent Javier's absence from August 9, 1995 cannot be deemed as an abandonment of his work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. To constitute as such, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts, with the second element being the more determinative factor. Abandonment as a just ground for dismissal requires clear, willful, deliberate, and unjustified refusal of the employee to resume his employment. Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.
>
> Moreover, respondent Javier's acquittal for rape makes it more compelling to view the illegality of his dismissal. The trial court dismissed the case for "insufficiency of evidence," and such ruling is tantamount to