

FIRST DIVISION

[G.R. NO. 171392, October 30, 2006]

**RUPERTO SULDAO, PETITIONER, VS. CIMECH SYSTEM
CONSTRUCTION, INC. AND ENGR. RODOLFO S. LABUCAY,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review on certiorari assails the Decision^[1] dated June 23, 2005 of the Court of Appeals in CA-G.R. SP No. 83963, which reversed and set aside the February 27, 2004 Resolution^[2] of the National Labor Relations Commission (NLRC) in NLRC CA No. 036963-03 and the August 5, 2003 Decision of the Labor Arbiter finding petitioner to have been constructively dismissed. Also assailed is the January 10, 2006 Resolution^[3] denying petitioner's motion for reconsideration.

The facts are as follows:

Respondent Cimech Systems Construction, Inc. employed the services of petitioner Ruperto Suldao on August 31, 2001 as a machinist with a daily wage of P300.00 on a contractual status for a period of five months. After January 31, 2002, respondent continued to engage the services of petitioner as a machinist until he became a permanent employee.

Petitioner alleged that owing to a dearth in projects being handled by the respondent, he was ordered by Ms. Elsa Labocay to take a leave of absence from November 1 to 6, 2002. He reported for work on November 7, 2002 but was again ordered to take a leave of absence from November 7 to 14, 2002. On November 15, 2002, he was purportedly ordered to make a letter-request for field work transfer which he complied. The following day, he failed to report back for work because he was sick. On November 17, 2002, he reported for work but was allegedly barred from entering by the security guard on duty. On November 21, 2002, he was again barred from entering the premises, hence he filed the instant complaint^[4] for constructive dismissal.^[5]

Respondent alleged that due to lack of available work in the machine shop, petitioner was temporarily transferred to its fabrication department sometime in November 2002. Petitioner refused to accept the transfer and insisted to work as a machinist. Because of petitioner's arrogant and unruly behavior, he was led away by a guard. When petitioner returned for work, he purportedly demanded a salary increase and wages for the days that he did not work. Respondent considered the actuations of petitioner tantamount to insubordination, hence, it suspended^[6] the petitioner for six days.

After his suspension on November 28, 2002, petitioner accepted his transfer to the fabrication department but worked for only one day. During the company's Christmas party on December 21, 2002, petitioner came and asked for his 13th month pay. On January 13, 2003, petitioner demanded to get his one day salary deposit but was told to secure a clearance which he failed to comply. Thereafter, petitioner filed the instant complaint for illegal dismissal.

On August 5, 2003, Labor Arbiter Melquiades Sol D. Del Rosario rendered a decision, the dispositive portion of which reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered finding complainant to have been illegally dismissed constructively. Consequently, he should be reinstated to his former position and paid his backwages which has accumulated as of July 17, 2003 in the sum of P62,400.00 plus his one month separation pay of P7,800.00.

SO ORDERED.^[7]

The NLRC concurred with the findings of the Labor Arbiter that petitioner was constructively dismissed.

Hence, respondent filed a petition for certiorari^[8] which was granted by the Court of Appeals. In its assailed June 23, 2005 decision, the Court of Appeals reversed the NLRC by declaring:

WHEREFORE, premises considered, the Petition is hereby given DUE COURSE, and the February 27, 2004 Decision of the NLRC is hereby REVERSED and SET ASIDE. The December 20, 2002 Complaint is hereby DISMISSED.

SO ORDERED.^[9]

Hence, this petition raising the sole issue of:

WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE DECISION OF THE LABOR ARBITER AND THE NLRC THAT THE PETITIONER WAS CONSTRUCTIVELY DISMISSED.

As a general rule, a petition for review on certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions,^[10] such as in this case where the findings of the Labor Arbiter and the NLRC vary from the findings of the Court of Appeals.

The petition is impressed with merit.

After a painstaking review of the records, we uphold the findings of the Labor Arbiter and of the NLRC that petitioner was constructively dismissed. Constructive dismissal or a constructive discharge has been defined as quitting because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.^[11] In the instant case, there is constructive dismissal because the continued employment of petitioner is

rendered impossible so as to foreclose any choice on his part except to resign from such employment.^[12]

In cases of constructive dismissal, the burden of proof is on the employer to show that the employee was dismissed for a valid and a just cause.^[13] In the instant case, respondent failed to discharge this burden. As aptly observed by the NLRC:

In essence, respondents would have it that they have not dismissed complainant, rather it was he who did not return to his job after 13 January 2003.

To begin with, the issues raised undoubtedly was factual, the determination of which lies within the competence of the Labor Arbiter's jurisdiction, over which this Commission will interfere only when grave abuse or serious errors were committed by him in the interpretation of the evidence on records.

In this case however, respondents failed to show by substantial proof the veracity of their assertion. For one, while claiming that complainant was placed on a six (6) days suspension for an alleged infraction, they failed nonetheless to adduce evidence showing that indeed complainant committed the offense and was placed as such as disciplinary measure.

Relevant on this score is the observation and findings of the Labor Arbiter, to wit:

Respondents' averment that complainant was arrogant, and did not want to be transferred to another position or department is belied by complainant's letter dated November 28, 2002.

Excerpts from complainant's letter reads:

"Na tinatanggap ko na utos ng kumpanyang ito na umako ng ibang gawain para sa kabutihan ng lahat. Na ang pagtanggap ko ng ibang trabaho ay pansamantala lang habang walang gawain sa dati ko puwesto or gawain trabaho sa kompanya.

Nang ang sulat salaysay kong ito ay aking isinagawa bilang pagtalima sa kautusan ng atin kumpanya.

x x x x

Complainant's claim that he was required to go on a leave of absence due to a dearth of work is consistent with respondent's claim that there was scarcity of work because of the economic crisis.

By all appearances, complainant does not have a high educational attainment and his skill is limited to being a machinist. As such, all he can do is to obey the biddings of his superior. So when required to go on leave, he meekly obeys.