

THIRD DIVISION

[G.R. No. 146118, October 08, 2003]

**SAMUEL SAMARCA, PETITIONER, VS. ARC-MEN INDUSTRIES,
INC., RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to nullify and set aside the Decision^[1] dated May 22, 2000 and Resolution^[2] dated November 8, 2000 of the Court of Appeals in CA-G.R. SP No. 54028, entitled "Arc-Men Industries, Inc. vs. National Labor Relations Commission (Fifth Division) and Samuel Samarca."

The undisputed facts of this case are as follows:

On March 8, 1981, Samuel Samarca (herein petitioner) was employed as a laborer by Arc-Men Industries, Inc. (herein respondent). Eventually, petitioner was assigned as a machine operator at respondent's white plastic plant where he received P130.00 a day or in its loose bonding plant with a daily salary of P138.00.

On September 26, 1993, petitioner filed an application for an emergency leave of absence on account of his son's hospitalization for acute gastroenteritis. Upon his return for work on September 29, 1993, petitioner was immediately served with a notice of respondent's order suspending him for thirty (30) days effective September 30 to October 30, 1993 for alleged violation of company Rules and Regulations, particularly Rule No. 17^[3] and Rule No. 25.^[4]

Feeling aggrieved, petitioner filed with the Regional Arbitration Branch No. XI at Davao City a complaint for illegal suspension against respondent and its owner, Arcadio P. Mendoza, docketed as NLRC Case No. RAB-11-10-00828-93. During the pendency of this complaint or on October 30, 1993, petitioner's 30-day suspension ended. Consequently, respondent, in a letter dated November 5, 1993, directed petitioner to report for work immediately. However, he refused, prompting respondent, on November 11, 1993, to send him a Notice to Terminate, directing him to submit, within five (5) days, a written explanation why he should not be dismissed from the service for abandonment of work.

For his part, petitioner submitted to respondent a letter-reply explaining that because of the pendency of his complaint for illegal suspension with the Labor Arbiter, he could not report for work.

Respondent, finding that the petitioner failed to submit a sufficient written explanation, decided to terminate his services effective October 31, 1993 *via* a notice of termination dated November 23, 1993.

On November 24, 1993, petitioner filed an amended complaint for illegal dismissal.

On March 29, 1994, the Labor Arbiter rendered a Decision^[5] declaring the dismissal of petitioner for cause and upholding its validity, thus:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered DISMISSING the above-entitled case for lack of merit and declaring the dismissal of complainant as valid and for cause.

"Complainant is, however, entitled to his proportionate 13th month pay for 1993, subject to computation by respondent AMII.

"SO ORDERED."

On appeal, the National Labor Relations Commission (NLRC), in a Resolution^[6] dated August 21, 1995, reversed and set aside the Labor Arbiter's Decision, ordering respondent to reinstate petitioner to his former position without loss of seniority rights and to pay his backwages from the date of dismissal up to his actual reinstatement **but limited to a maximum period of three (3) years**. The NLRC held:

"Now brought to focus is the instant complaint for illegal dismissal where respondents bear the burden of proving that it was for just cause. For in labor law determinations, the employer shoulders the burden of proof to show that the dismissal is valid and legal. (*Manggagawa ng Komunikasyon ng Pilipinas vs. NLRC*, 194 SCRA 573).

"We note that respondents, in their notice to terminate dated November 11, 1993, gave complainant five (5) days to show cause why he should not be terminated from employment on the ground of abandonment of work. (Records, Vol. 1, p. 39). In a reply thereto, complainant informed respondents he had filed a case of illegal suspension against them with the NLRC. Consequently, respondents served complainant a notice of termination dated November 23, 1994 notifying the latter that effective October 31, 1993 he was deemed to have abandoned his work and as of that date was considered terminated. Accordingly, on November 24, 1994, complainant amended his complaint from illegal suspension to illegal dismissal.

"Respondents' defense of abandonment must fail. It is belied by the fact that complainant had instituted the complaint for illegal dismissal the day after he was dismissed. It would be illogical for him to leave his job and later on file said complaint.

"Clearly, there is no showing that complainant deliberately refused to continue his employment without a justifiable reason. Complainant initially instituted a complaint for illegal suspension wherein he prayed for backwages as he thought he was illegally suspended from work. We can not readily infer abandonment even if sometime during the pendency of the previous case he refused to heed the warning given by respondent while believing that he was suspended through no fault of his.

"Considering the circumstances of this case, We hold that complainant is entitled to reinstatement with backwages as it is clearly established that he did not abandon his work, in the absence of clear and deliberate intent to discontinue his employment without returning back. He was only compelled to leave the premises when he was ordered suspended and which suspension he had promptly questioned."

Respondent filed a motion for reconsideration but was denied with finality by the NLRC in a Resolution^[7] dated April 19, 1996.

On May 13, 1996, respondent filed with this Court a petition for certiorari. In a Resolution dated June 23, 1999, this Court referred the petition for disposition to the Court of Appeals.

On May 22, 2000, the Court of Appeals rendered a Decision reversing the Resolutions of the NLRC and reinstating the Decision of the Labor Arbiter. In sustaining the validity and legality of petitioner's termination from employment, the Appellate Court made the following pronouncements:

"We agree with the petitioner and the OSG that the public respondent gravely abused its discretion when it ordered the reinstatement of the private respondent and the payment of backwages, for the following reasons:

"Firstly, there was just cause for terminating the employment of the private respondent under Article 282 of the Labor Code, which states that an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with this work, as well as for causes analogous thereto.

"In the instant case, the private respondent failed to report to work after the expiration of his 30-day suspension. Even after the petitioner formally advised him to resume working five (5) days later, the private respondent still refused to go back to work. After the petitioner sent a Notice to Terminate to the private respondent on November 11, 1993, the latter wrote on the said notice that he has already questioned his alleged illegal suspension before the labor arbiter, and that the petitioner should report immediately to its company attorney about the second hearing.

x x x

"Secondly, the contention of the respondents that the private respondent cannot be deemed to have abandoned his work in light of his immediate filing of a case for illegal dismissal cannot be sustained. We are aware of such ruling of the Supreme Court that the filing of the complaint for illegal dismissal negates the charge of abandonment. However, we are of the view that such doctrine must be taken into consideration with the other factors present in each case.