EIGHTH DIVISION

[CA-G.R. SP NO. 131204, October 28, 2014]

TWINPACK CONTAINER CORPORATION / DANNY FLORES, CARL VALENTIN AND ALLAN ANGKAY, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (NLRC), (SECOND DIVISION), AND LORAINE H. ARRABE, RESPONDENTS.

DECISION

GARCIA-FERNANDEZ, J.:

This is a petition for certiorari[1] under Rule 65 of the Rules of Court, as amended with prayer for temporary restraining order (TRO) and/ or preliminary injunction, seeking to annul and set aside the following issuances of respondent National Labor Relations Commission, Second Division (NLRC), in NLRC LAC No. 03-001064-12: 1) Resolution[2] dated October 31, 2012, which affirmed the Labor Arbiter's decision; and 2) Resolution[3] dated May 15, 2013 denying petitioners' motion for reconsideration.

The facts of the case are as follows:

On March 12, 2009, petitioners Twinpack Container Corporation/ Danny Flores, Carl Valentin and Allan Angkay hired private respondent Loraine H. Arrabe as checker with salary of P382.00 per day.

On June 7, 2011, the Twinpack Workers Union (TWU) of which private respondent is a member, filed a petition for cancellation of union registration of the Samahan Manggagawa sa Twinpack (SMT) and the registration of the Collective Bargaining Agreement (CBA) between SMT and petitioners.

In her position paper,[4] private respondent averred that she and other members of the TWU were summoned by the personnel office of the company and were confronted by Clarissa Partolan, the Human Resources Department (HRD) Head and Myra Lanusa, owner of RDMCL Agency; that they were told that in order for them to continue employment with petitioners, they must transfer and sign a new contract with the RDMCL Agency to which she said she would think it over; that they were promised separation pay and SSS coverage by the agency; and that on June 30, 2011, she, together with her co-workers were barred from entering the company premises. Private respondent also said that on the same day, her counsel wrote a letter to petitioners asking for her reinstatement within 24 hours; that on July 1, 2011, she and another co-employee who is also a member of TWU resumed their work; that at around 10:00 in the morning, they were directed to go to the conference room and were told to sign the agency contract; that when she refused, she was told that she is already terminated; that the HRD Head said to them, *"ang tigas ng mga ulo n'yo. Bahala nga kayo. Kung ayaw ninyo lumipat sa Agency, wala na kayong trabaho dito. Umalis ka na, wag mo na tapusin yung trabaho mo;"* that

on July 5, 2011, she received a notice from petitioners stating that she was absent from June 30, 2011 to July 4, 2011; that petitioners ignored her demand for reinstatement; and that on July 5, 2011, she filed a complaint for illegal dismissal, unfair labor practice, illegal lock-out with claims for reinstatement, full backwages, moral and exemplary damages and attorney's fees.

For their part, petitioners averred in their position paper[5] that on February 23, 2005, the company filed voluntary recognition of the SMT union as the sole bargaining agent of its rank and file employees; that they and the SMT entered into a CBA; that during the pendency of the petition for cancellation of union registration of SMT by the TWU, several employees who are members of the latter, including the private respondent, assembled outside the company premises at around 6:35 in the morning; that the incident caused temporary stoppage of work in the company; that the incident was reported to the barangay authorities; that upon arrival of the barangay authorities, the protesting employees dispersed at around 7:30 in the morning; that private respondent no longer reported for work; that they sent a letter to private respondent regarding her unauthorized absences and directed her to report for work; that private respondent was not illegally dismissed because the latter abandoned her work after she and other members of the TWU assembled outside the premises of the company; that private respondent refused to report back to work despite their order; and that they did not commit an unfair labor practice because private respondent and her group were not prevented from exercising their union activities.

On February 14, 2012, the Labor Arbiter rendered a decision[6], the pertinent portion of which reads:

> "Finding that complainant did not abandon her employment, she is therefore entitled to backwages from July 1, 2011 to February 14, 2012 and reinstatement under Article 279 of the Labor Code, as amended. Considering however, the apparent animosity between the respondent company and the complainant, a more equitable disposition is to order the payment of separation pay of complainant. Thusly, complainant's backwages shall be computed from March 12, 2009 to February 14, 2012.
>
> While this Arbitration Office finds complainant illegally dismissed, this Office is not however, convinced that respondent committed unfair labor practice. Though it might be true that respondent company intended to transfer the employment of complainant to an agency, such alleged act of the company does not ipso facto constitute unfair labor practice. For an act to constitute unfair labor practice, the act complained of must have a proximate and causal connection with the exercise of the employees' right to self-organization. The burden of proof to establish the existence of unfair labor practice rests on the employee for basic is the rule in evidence that he who alleges a critical fact has the burden of proving it by substantial evidence. (Central Azucarera De Bais Employees Union-NFL (CABEU-NFL) vs. Central Azucarera De Bais (CAB), G.R. 186605, November 17, 2010). Inasmuch as complainant failed to explain and support the causal connection of her alleged transfer with her right to self-organization, the alleged unfair act of respondent company does not

fall within the meaning of unfair labor practice under Article 248 (1) of the Labor Code, as amended.

CONFORMABLY FROM ALL THE FOREGOING, respondent Twinpack Container Corporation is hereby ordered to pay complainant the amount of Php90,533.91 representing her backwages and separation pay computed at Php31,512.00.

SO ORDERED."

Petitioners and private respondent filed their separate appeal before the National Labor Relations Commission (NLRC). On October 31, 2012, the NLRC rendered a resolution[7], the dispositive portion of which reads:

"**WHEREFORE,** premises considered, the respective partial appeals of the complainant and the respondents are **DISMISSED** for lack of merit. The assailed Decision dated February 14, 2012 is hereby **AFFIRMED**.

SO ORDERED."

Petitioners filed a motion for reconsideration.[8] In a resolution[9] dated May 15, 2013, the NLRC denied the said motion.

In the instant petition for certiorari, petitioners raised the following grounds:

"I

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RENDERING THE ASSAILED RESOLUTIONS AS IT WAS ARRIVED AT CONTRARY TO ESTABLISHED JURISPRUDENCE RELYING SOLELY ON THE FALSE, BASELESS AND SELF-SERVING ALLEGATIONS OF PRIVATE RESPONDENT."

II

RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT BASED ITS RESOLUTIONS ON SURMISES, SUPPOSITIONS, CONJECTURES AND FALSE CONCLUSIONS WHICH HAVE NO BASIS IN FACT AND IN LAW."[10]

Petitioners contend that private respondent was not illegally dismissed; that the latter displayed her lack of interest in returning to work and she voluntarily terminated her employment with them; and thus, private respondent is not entitled to an award of separation pay and backwages.

The petition is impressed with merit.

Abandonment is the deliberate and unjustified refusal of an employee to resume his