



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOMAR S. VERDADERO,

Petitioner,

G.R. No. 195428

Present:

PERALTA, J., *Acting Chairperson*,*
ABAD,
VILLARAMA, JR.,**
PEREZ,*** and
MENDOZA, JJ.

- versus -

BARNEY AUTOLINES GROUP
OF COMPANIES TRANSPORT,
INC., and/or BARNEY D. CHITO,
ROSELA F. CHITO and
GERARDO GIMENEZ,

Promulgated:

Respondents.

29 August 2012

Alcopiano

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DECISION

MENDOZA, J.:

This Petition for Review on Certiorari under Rule 45 assails the October 19, 2010 Decision¹ and the January 13, 2011 Resolution² of the Court of Appeals (CA), in CA-G.R. SP No. 113270, which reversed and set

* Per Special Order No. 1290 dated August 28, 2012.

** Designated acting member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1291 dated August 28, 2012.

*** Designated additional member, per Special Order No. 1299 dated August 28, 2012.

¹ *Rollo*, pp. 70-84. Penned by Associate Justice Rosmari D. Carandang, with Associate Justice Ramon R. Garcia and Associate Justice Manuel M. Barrios, concurring.

² *Id.* at 86-87.

aside the December 8, 2009 Decision³ and the February 26, 2010 Resolution⁴ of the National Labor Relations Commission (*NLRC*).

The Facts

The present case stemmed from the Complaint for Illegal Dismissal filed by petitioner Jomar Verdadero (*Verdadero*). On September 10, 2004, respondent Barney Autolines Group of Companies Transport, Inc. (*BALGCO*) hired Verdadero as bus conductor and paid him a salary on commission basis at the rate of 12% of the gross ticket sales per day.⁵

On January 27, 2008, an altercation took place between Verdadero and respondent Atty. Gerardo Gimenez (*Gimenez*), *BALGCO*'s Disciplinary Officer. Gimenez was on board *BALGCO* Bus. No. 55455, together with his wife and four other companions, travelling from Mulanay to Macalelon, Quezon. Verdadero was then the assigned bus conductor. *BALGCO* has a company policy of granting free rides to company employees and their wives. The story started when Verdadero began issuing fare tickets to passengers, including the wife of Gimenez. The wife informed Verdadero who she was⁶ and the incidents thereafter took two versions as both parties told a different story.

On January 28, 2008, Gimenez filed an unverified complaint for serious misconduct against Verdadero before the *BALGCO* Management. He requested Barney D. Chito (*Barney*) and Rosela F. Chito (*Rosela*), owners of *BALGCO*, to preside over the conciliation proceedings. Verdadero, accompanied by his father, appeared at the *BALGCO* Office on

³ *CA rollo*, pp. 33-52.

⁴ *Id.* at 30-32.

⁵ *Rollo*, pp. 9-10.

⁶ *Id.* at 10.

February 8, 2008. Verdadero was said to have shown willingness to be penalized for his misconduct provided no record of the proceedings would be made. Gimenez, on the other hand, was willing to waive the imposition of any penalty if Verdadero would give a simple letter of apology, which the latter supposedly agreed with his father guaranteeing the same.⁷

On February 16, 2008, Verdadero, instead, submitted his counter-affidavit refuting all allegations in the written complaint against him. Rosela told Verdadero she was not expecting that piece of paper, to which the latter was said to have replied, “*Sabi mo papel, yan papel yan!*”⁸

Thereafter, Verdadero furtively reported for work for fear of having another confrontation with Gimenez. Rosela sent Verdadero a letter, dated February 25, 2008, requiring him to immediately report for work and finish the pending disciplinary proceedings against him. On March 28, 2008, Verdadero submitted his Letter-Reply, explaining that he had been receiving threats. He likewise believed he was already illegally dismissed as he was not given any work assignment since January 28, 2008. Rosela responded to Verdadero's letter and reminded him of the letter of apology which he was yet to submit as compliance. On April 15, 2008, however, Verdadero filed a complaint for illegal dismissal before the Labor Arbiter (LA), claiming, as well, non-payment of holiday pay, premium on holiday, 13th month pay, separation pay, retirement benefits, moral and exemplary damages, and reinstatement plus backwages.⁹

Respondents' Version

Gimenez's wife related that when Verdadero was about to issue her a bus ticket, she informed him that she was the wife of Gimenez, to which he

⁷ Id. at 11.

⁸ Id. at 11-12.

⁹ Id. at 13-14.

replied, “*Hindi ko kilala yon.*” Upon reaching General Luna, Quezon, for a brief meal stop, she told Gimenez that “*[h]indi ka pala kilala ng konduktor.*” Thereafter, her husband confronted Verdadero as to the truth of the matter, and Verdadero arrogantly replied, “*Marami namang Gerry at disciplinary officers.*” The arrogant comment and other loud words uttered by Verdadero, upon boarding the bus for the onward trip, were heard by Rey Formaran (*Formaran*), another BALGCO bus driver who was in Gimenez's group. As Gimenez and his group were getting off the bus in Macalelon, Quezon, Verdadero allegedly pulled out a baggage compartment opener and shouted, “*Putang ina mo attorney, papatayin kita.*” Gimenez was not able to react as the bus sped off.¹⁰

Petitioner's Version

Verdadero claimed that when he started to collect fares, he approached Gimenez's wife to issue her a bus ticket. She said, “*Asawa ako ng officer.*” Because of the surrounding noises, he did not clearly hear what the woman said, and so, he asked her again as to whom she was referring. The woman replied, “*Asawa ako ni Gerry na Disciplinary Officer.*” He then turned away and did not issue a ticket anymore. When the bus took a meal stop in General Luna, Verdadero was surprised when Gimenez shouted at him, “*Hoy! Verdadero parito ka!*” He approached Gimenez and the latter scolded him, saying “*Hindi mo ba ako kilala?*” Verdadero replied, “*Kilala ko nga po kayo, ang problema lang po ay hindi kayo katabi ng misis ninyo nang tinanong ko kaya pasensiya na po.*” He further claimed that he moved away to avoid Gimenez as the latter continued to berate and threaten him. Upon disembarking at Macalelon, Quezon, Gimenez shouted at him, “*Verdadero! Hindi mo ako ginagalang!*” and grabbed his feet in an attempt to pull him down from the bus. He struggled to hold tight until Gimenez lost grip of his foot. Formaran tried to return to the bus to confront him, but was intercepted

¹⁰ Id. at 10-11.

by the driver. Verdadero further denied having agreed to write Gimenez a letter of apology and be penalized for his alleged misconduct.¹¹

Labor Arbiter's Ruling

On November 6, 2008, the LA rendered a Decision dismissing Verdadero's complaint and declaring that no dismissal took place but merely an administrative investigation. The LA reasoned that Verdadero made it impossible for BALGCO to give him any trip assignment as he reported for work only when the respondents were not around.

Further, the LA dismissed Verdadero's monetary claims such as holiday pay and overtime pay, explaining that, being a bus conductor, Verdadero belonged to the category of field personnel who were excepted from the enjoyment of the benefits claimed. The claim for 13th month pay was likewise denied because he was a field personnel and was paid on a purely commission basis.¹²

NLRC's Ruling

Aggrieved, Verdadero filed an appeal before the NLRC. The sworn statement¹³ of BALGCO Electrician Marvin Mascarina (*Mascarina*), who witnessed the incident, was given weight by the NLRC. It apparently found Mascarina's sworn affidavit to be corroborative of Verdadero's testimonies. For said reason, the NLRC partially granted the appeal. It ruled that Verdadero was illegally dismissed, but affirmed the LA insofar as the holiday and overtime pays were concerned. On December 8, 2009, the NLRC rendered its decision as follows:

¹¹ Id. at 12-13.

¹² *CA rollo*, pp. 136-137.

¹³ Id. at 118-119.

WHEREFORE, the questioned Decision is hereby MODIFIED. Respondents Barney Autolines Group of Companies Transport Inc., Barney A. Chito, Rosela P. Chito and Atty. Gerardo Gimenez are hereby declared liable to pay complainant his full backwages from January 28, 2008 until to date and his separation pay equivalent to one month salary per year of service at the rate of ₱8,000.00 per month salary, computed as follows:

I. BACKWAGES

01/28/08 – 06/13/08 = 4.15 mos. or 4.50

NCR# 13 ₱362

₱362 x 26 days x 4.50 mos.

₱9,412.00 x 4.50 days = **₱42,354.00**

06/14/08 – 08/27/08 = 2.13 or 2.43 mos.

NCR# 14 ₱377

₱377 x 26days x 2.43 mos.

₱9,802.00 x 2.43 days = **₱23,818.86**

08/28/08 – 10/15/09 = 13.57 mos.

₱382 x 26 days x 13.57 mos.

₱9,932.00 x 13.57 days = **₱134,777.24**

₱ 200,950.10

II. ECOLA

NCR# 10 ₱5.00

06/14/08 – 10/15/09 = 16.03 mos.

₱5.00 x 26 days x 16.03 mos.

₱130 x 16.03 mos. = **₱ 2,083.90**

III. 13th MONTH PAY

₱200,950.10/12 = **₱ 16,745.84**

IV. SEPARATION PAY

09/10/2004 – 10/15/09 = 5 yrs and one month

₱8,000.00 x 5 yrs. = **₱ 40,000.00**

GRAND TOTAL ₱ 259,779.84

Other dispositions are Affirmed.¹⁴

BALGCO moved for reconsideration, but its motion was denied. BALGCO then filed a petition for certiorari before the CA.

¹⁴ Id. at 51.

The Ruling of the CA

The CA ruled that there was no constructive dismissal despite Mascarina's testimony. In so ruling, the CA reiterated the definition of constructive dismissal, citing *Peñaflor v. Outdoor Clothing Manufacturing Corporation*,¹⁵ as follows:

Constructive dismissal is an involuntary resignation by the employee due to the harsh, hostile, and unfavorable conditions set by the employer and which arises when a clear discrimination, insensibility, or disdain by an employer exists and has become unbearable to the employee.¹⁶

Neither was there abandonment on the part of Verdadero, reiterating the well-settled rule that the filing of a complaint for illegal dismissal is inconsistent with a charge of abandonment. The CA, thus, wrote:

xxx. The repulsive behavior of the disciplinary officer against another employee cannot be imputed upon BALGCO in the absence of any evidence that it promotes such ill-treatment of its lowly employees or has itself committed an overt act of illegality. In the present case, petitioner BALGCO may have failed to immediately resolve the pending disciplinary case after private respondent filed his counter-affidavit and unfairly insisted that private respondent apologize for a misconduct that the latter vehemently denies having committed. But the meeting that was attended by his father was not denied by private respondent and petitioners relied on Verdadero's commitment to submit the letter-apology. Under that circumstance, what petitioners BALGCO, Barney Chito and Rosela Chito may have shown was indecisiveness, in the handling of the disciplinary case but there was clearly no vicious and malicious intention on their part to force private respondent to resign from his employment, which would amount to constructive dismissal. If private respondent had felt that his continued employment with petitioner BALGCO had been rendered "*impossible, unreasonable or unlikely*," this could only have resulted from the hostile treatment by the disciplinary officer and not by any action attributable to petitioner BALGCO nor to its owners Barney Chito and Rosela Chito. Petitioners had not shown any manifest intention to terminate the employment of private respondent. Based on the records, instead of a notice of termination petitioners sent private respondent a letter-directive

¹⁵ G.R. No. 177114, April 13, 2010, 618 SCRA 208.

¹⁶ *Rollo*, pp. 19-20.

to report for work and to immediately attend to the disciplinary proceedings filed against him.

There is also no abandonment that can be inferred from the actuation of private respondent. Notwithstanding the dreadfully hostile conditions that faced him at work and the charge of serious misconduct filed against him, private respondent dutifully showed up at the BALGCO office, albeit in a furtive manner, in the hope that he would be given a work assignment while he awaited the resolution of his case. His persistence in reporting for work and, more so, in subsequently filing an illegal dismissal case belies any intention on the part of private respondent to abandon his employment. It is well-settled that the filing of a complaint for illegal dismissal is inconsistent with a charge of abandonment.¹⁷

The CA stated that because there was neither dismissal nor abandonment, the *status quo* between the parties should be maintained and their previous employment relations be restored.¹⁸ The CA, thus, disposed:

WHEREFORE, premises considered, the December 8, 2009 Decision and the February 26, 2010 Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Private respondent is hereby ordered **REINSTATED**. No payment of back salaries can be awarded, following the no work/no pay principle.

SO ORDERED.¹⁹

Not in conformity, Verdadero raised before this Court, the following

Issues

Verdadero raised the following errors in seeking the reversal of the assailed decision of the CA, to wit:

- a. The Honorable Court of Appeals erred when it ruled that Petitioner was not constructively terminated on January 27, 2008 as Bus Conductor;

¹⁷ Id. at 20-22.

¹⁸ Id. at 22.

¹⁹ Id. at 83.

b. The Honorable Court of Appeals erred when it ruled constructive dismissal could not be attributed to respondents except Gimenez when they proceeded to cure the illegal dismissal by conducting a bogus hearing;

c. The Honorable Court of Appeals failed to discern that the letter-directive to report for work and the order to participate in the disciplinary proceedings are indicative of further harassing petitioner; and

d. The Honorable Court of Appeals failed to recognize that reinstatement is impractical.²⁰

The Court's Ruling

The petition fails.

The only issue in this case is whether or not petitioner Verdadero was constructively dismissed.

On Constructive Dismissal

Verdadero alleges that he was employed as bus conductor of BALGCO from September 10, 2004 until January 28, 2008 when he was no longer allowed to report for work. He claims that he was not given any trip assignment since the January 27, 2008 incident. He argues that when Gimenez committed the verbal abuse against him in the presence of the bus passengers and threatened him with physical harm, there was termination by the employee of his employment under the doctrine of constructive dismissal.²¹

²⁰ Id. at 47-48.

²¹ Id. at 50.

BALGCO contends that Verdadero was not given any trip assignment because he was surreptitiously reporting for work and would come to the office only when Gimenez was not around. This was confirmed in the letter-reply²² by Rosela to Verdadero, dated April 18, 2008, stating that “*Bukod pa dito, napansin ko mula sa logbook ng ating tanggapan na ikaw ay may lagda doon at ang dahilan mo ay upang mag-report, subalit hindi ka naman nagpapakita sa akin at sinadya mo na pumunta sa araw na wala ang ating Disciplinary Officer.*”²³

In his Memorandum,²⁴ Verdadero admitted not reporting for work after the incident “because of his mortal fear of being harmed by the Disciplinary Officer and his friends.”²⁵

Constructive dismissal exists where there is cessation of work, because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.²⁶

In this case, Verdadero cannot be deemed constructively dismissed. Records do not show any demotion in rank or a diminution in pay made against him. Neither was there any act of clear discrimination, insensibility

²² CA rollo, p. 72.

²³ Id.

²⁴ Rollo, pp. 139-175.

²⁵ Id. at 152.

²⁶ *Morales v. Harbour Centre Port Terminal, Inc.*, G.R. No. 174208, January 25, 2012, citing *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 766 (2002), *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236, and *Hyatt Taxi Services, Inc. v. Catinoy*, 412 Phil. 295, 306 (2001).

or disdain committed by BALGCO against Verdadero which would justify or force him to terminate his employment from the company.

To support his contention of constructive dismissal, Verdadero considers the verbal abuse by Gimenez against him as an act which rendered his continued employment impossible, unreasonable or unlikely. The claimed abuse was corroborated by the sworn written statement executed by Mascariña, which was given credence by the NLRC and the CA. With the alleged threats of Gimenez, Verdadero believed that he could no longer stay and work for BALGCO.

It is to be emphasized that the abovementioned acts should have been committed by the employer against the employee. Unlawful acts committed by a co-employee will not bring the matter within the ambit of constructive dismissal.

Assuming *arguendo* that, Gimenez did commit the alleged unlawful acts, still, this fact will not suffice to conclude that constructive dismissal was proper. Contrary to the arguments of Verdadero, Gimenez is not the employer. He may be the “disciplinary officer,” but his functions as such, as can be gleaned from the BALGCO Rules and Regulations,²⁷ do not involve the power or authority to dismiss or even suspend an employee. Such power is exclusively lodged in the BALGCO management. Gimenez remains to be a mere employee of BALGCO and, thus, cannot cause the dismissal or even the constructive dismissal of Verdadero. The employers are BALGCO and its owners, Barney and Rosela. As correctly put by the CA:

Petitioner BALGCO, however, cannot be blamed for the existing hostile conditions that beset private respondent. The repulsive behavior of the disciplinary officer against another employee cannot be imputed upon petitioner BALGCO in the absence of any evidence that it promotes such ill-treatment of its

²⁷ CA rollo, pp. 80-89.

lowly employees or has itself committed an overt act of illegality. x x x If private respondent had felt that his continued employment with petitioner BALGCO had been rendered “*impossible, unreasonable or unlikely*” this could only have resulted from the hostile treatment by the disciplinary officer and not by any action attributable to petitioner BALGCO nor to its owners Barney Chito and Rosela Chito.²⁸ xxx.

Moreover, it was not established that BALGCO itself or its owners had been, in any way, forcing Verdadero to resign from his employment. In fact, records show that the management had been urging him to report back to work, not only to face the administrative charge against him, but also because of the scarcity and necessity of bus conductors in the company. Verdadero, however, failed to present himself before the management, more specifically, to Rosela. This situation provided no opportunity for BALGCO to give him any trip assignment. The abovementioned act of BALGCO was even misinterpreted by Verdadero as yet another means of harassment. The Court disagrees with the petitioner and finds his charges of harassment as nothing but empty imputation of a fact that could hardly be given any evidentiary weight.²⁹

Furthermore, records are bereft of any showing that Verdadero was no longer allowed to report for work starting January 28, 2008,³⁰ when Gimenez lodged a complaint for serious misconduct against him before the BALGCO management. Records, in fact, show that after the incident with Gimenez, Verdadero even signed in BALGCO’s logbook during the days he surreptitiously reported for work. There is no showing that BALGCO prohibited Verdadero from reporting for work or claimed that he was dismissed. In their Memorandum,³¹ the respondents even categorically stated that Verdadero’s employment was never terminated and he “is still

²⁸ *Rollo*, p. 81.

²⁹ *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236-237, citing *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 364.

³⁰ *Rollo*, p. 38.

³¹ *Id.* at 178-204.

part of its workforce notwithstanding this case and it is willing to accept him without any demotion should he report for work.”³²

It was Verdadero himself who terminated his employment. It was, in fact, his position that the January 27, 2008 bus incident gave rise to constructive dismissal. Verdadero, however, clearly made inconsistencies in struggling to find a justification for his own mistaken belief, and to prove constructive dismissal and, thus, be afforded the reliefs and other monetary awards resulting therefrom.

Well-settled is the rule in illegal dismissal case that while the employer bears the burden of proving that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of his dismissal from service.³³ In this case, however, the employer should not be belabored to prove a valid dismissal as BALGCO itself has not terminated the employment of Verdadero.

On Reinstatement and Backwages

Article 279 of the Labor Code, as amended, provides:

Art. 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Section 34, Republic Act No. 6715, March 21, 1989)

³² Id. at 199.


³³ *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256, citing *Ledesma, Jr. v. NLRC*, G.R. No. 174585, October 19, 2007, 537 SCRA 358.

Reinstatement and backwages are reliefs available to an illegally dismissed employee. Reinstatement restores the employee who was unjustly dismissed to the position from which he was removed, that is, to his *status quo ante* dismissal, while the grant of backwages allows the same employee to recover from the employer that which he had lost by way of wages as a result of his dismissal. These twin remedies — reinstatement and payment of backwages — make the dismissed employee whole who can then look forward to continued employment. Thus, do these two remedies give meaning and substance to the constitutional right of labor to security of tenure.³⁴

In the case at bench, considering that there has been no dismissal at all, there can be no reinstatement. One cannot be reinstated to a position he is still holding. As there is no reinstatement to speak of, Verdadero cannot invoke the doctrine of strained relations. It is only applied when there is an order for reinstatement that is no longer feasible. In the same vein, no separation pay can be awarded as it is given only in lieu of reinstatement. Consequently, there is likewise no justification for the award of backwages. The CA was correct in ruling against the payment of backwages following the “no work, no pay” principle.

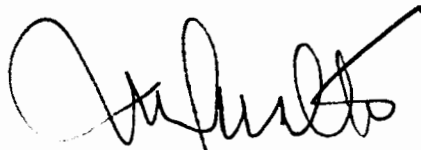
WHEREFORE, the petition is DENIED.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³⁴ *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 8, 2010, 627 SCRA 192, 206-207, citing *Nissan North Edsa Balintawak, Quezon City v. Serrano, Jr.*, G.R. No. 162538, June 4, 2009, 588 SCRA 238, 247-248.

WE CONCUR:



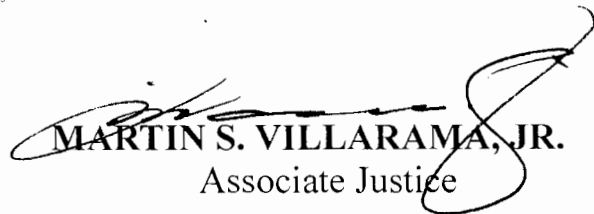
DIOSDADO M. PERALTA

Associate Justice
Acting Chairperson



ROBERTO A. ABAD

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice

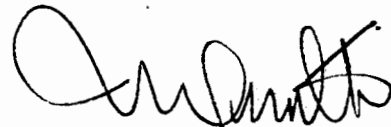


JOSE PORTUGAL PEREZ

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA

Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice