Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

TEGIMENTA CHEMICAL PHILS. and VIVIAN ROSE D. GARCIA, Petitioners,	**G.R. No. 175369**
	Present:
- versus -	SERENO, *CJ*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
MARY ANNE OCO, Respondent.	Promulgated: FEB 27 2013

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DECISION

SERENO, *CJ*:

Before this Court is a Rule 45 Petition, seeking a review of the 24 April 2006 Court of Appeals (CA) Resolution in CA-G.R. SP No. 87706.[1] The CA reversed its 3 January 2006 Decision and, in effect, affirmed the 30 July[2] and 24 September 2004[3] Resolutions of the National Labor Relations Commission (NLRC) in NLRC CA No. 036684-03 and the 30 May 2003 Decision[4] in NLRC NCR Case No. 06-03760-2002 of the labor arbiter (LA). The courts *a quo* similarly found that petitioner had illegally dismissed respondent Mary Anne Oco (Oco).

The antecedent facts are as follows:[5]

Starting 5 September 2001, respondent worked as a clerk, and later on as a material controller, for petitioner Tegimenta Chemical Philippines,

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[1] *Rollo*, pp. 45-50; CA Resolution, penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guariña III concurring.
[2] Id. at 152-157.
[3] Id. at 162-163.
[4] Id. at 98-101.
[5] Id. at 172-176.

Incorporated (Tegimenta), a company owned by petitioner Vivian Rose D. Garcia (Garcia).

By reason of her pregnancy, Oco incurred numerous instances of absence and tardiness from March to April 2002. Garcia subsequently advised her to take a vacation, which the latter did from 1 to 15 May 2002.

On her return, Oco immediately worked for the next four working days of May. However, on 21 May 2002, Garcia allegedly told her to no longer report to the office effective that day. Hence, respondent no longer went to work. She nevertheless called petitioner at the end of the month, but was informed that she had no more job to do.

Immediately thereafter, on 3 June 2002, respondent filed a Complaint for illegal dismissal and prayed for reinstatement and back wages before the LA. Later on, she amended her Complaint by asking for separation pay instead of reinstatement.

In her Position Paper,[6] Oco maintained that petitioner verbally dismissed her without any valid cause and without due process. To bolster her story, respondent adduced that Tegimenta hired new employees to replace her. In their defense, petitioners countered that she had abandoned her job by being continuously absent without official leave (AWOL). They further narrated that they could not possibly terminate her services, because she still had to settle her accountabilities.[7]

The LA disbelieved the narration of petitioners and thus ruled in favor of respondent. The arbiter deduced that the employer only wanted to "make it appear that the complainant was not dismissed from employment, as she could not prove it with any Memorandum issued to that effect and yet, they also maintain that complainant was AWOL."[8] The LA further observed that petitioners did not deny the main claim of respondent that she had simply been told not to report for work anymore.

Aggrieved, petitioners appealed to the NLRC. They assailed the ruling of the LA for having been issued based not on solid proof, but on mere allegations of the employee.[9] They advanced further that Oco had abandoned her employment, given that she claimed separation pay instead of reinstatement.

The NLRC reviewed the records of the case and found that the documentary evidence coincided with the allegations of Oco.[10]

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[6] Id. at 55-61.
[7] Id. at 99, LA Decision dated 30 May 2003.
[8] Id. at 100, LA Decision dated 30 May 2003.
[9] Id. at 105-106, Memorandum of Appeal with Entry of Appearance.
[10] Id. at 155, NLRC Resolution dated 30 July 2004.

Consequently, it affirmed her claim that Garcia, without advancing any reason and without giving any written notice, had categorically told her not to work for Tegimenta anymore. Accordingly, the NLRC sustained the illegality of respondent's dismissal.[11]

On Motion for Reconsideration, the NLRC still affirmed the LA's Decision *in toto*.[12] Thus, petitioners pursued their action before the CA via a Rule 65 Petition.

Alleging grave abuse of discretion amounting to lack or excess of jurisdiction, petitioners again assailed the factual determinations of the LA and the NLRC. In doing so, they attacked Oco's allegations for being inconsistent with the evidence on record.

Petitioners reiterated the following before the CA: (1) the payroll sheets from May to August 2002 belied the claim of Oco that Tegimenta had hired new employees to replace her; (2) the time cards showing respondent's attendance in the office on 21 May 2002 negated the story that Garcia had verbally instructed her not to report for work starting from the said date; and (3) the Complaint that Oco filed before the LA, stating that she was fired on 3 June 2002, contradicted her allegation in her Position Paper that she was ultimately terminated on 30 May 2002 – a discrepancy of three days.[13] The employer also highlighted the marginal notation on the 16 to 30 June 2002 payroll sheet, which indicated that the company considered respondent "on leave."

Appreciating these inconsistencies, together with the marginal notes in the payroll sheet, the CA overturned the courts *a quo* and pronounced that no actual dismissal transpired; rather, Oco was merely on AWOL.

Subsequently, respondent sought reconsideration. She insisted that petitioners actually terminated her services, and that they failed to discharge their burden to prove that it was she who had abandoned work by being on AWOL.

This time around, the CA reversed its earlier ruling.[14] Albeit belatedly, the CA realized that (1) the alleged hiring of new employees, (2) the presence of Oco in the office on the day of her termination, and (3) the three-day discrepancy between the date of her dismissal, stated in her Complaint before the LA and that in her Position Paper were all immaterial to the threshold question of whether she abandoned her work or was illegally dismissed.

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[11] Id.
[12] Id. at 162, NLRC Resolution dated 24 September 2004.
[13] Id. at 177-178, CA Decision dated 3 January 2006.
[14] Id. at 45-50, CA Resolution dated 24 April 2006.

Proceeding therefore with the main issue, the CA debunked petitioners' insistence that Oco abandoned her employment by being on AWOL. Firstly, it noted that she reported for work right after her vacation, an act that indicated her intention to resume her employment. In this light, petitioners failed to prove that she had intended to abandon her work. The appellate court held:[15]

> A deeper study of the records show that Tegimenta failed to adduce proof of any **overt act of Oco that clearly and unequivocably** showed her intention to abandoned her work when she allegedly absented herself without leave. The absences incurred by Oco do not indicate that she already abandoned her work, **especially considering that Oco reported for work after the agreed dates of her vacation leave**, and she subsequently filed an illegal dismissal case against Tegimenta. (Emphasis supplied).

Secondly, the CA rejected the payroll sheets as proof that Oco was on AWOL. It held that the company's marginal notes reflecting that she was "on leave" had no supporting attachments. It even construed the notations as incompetent evidence because, despite her absence, the payroll sheets for July 2002 onwards had no notations at all that she was "on leave."[16]

Thirdly, the CA dismissed petitioners' argument that Oco had effectively abandoned her work and waived her claim for back wages when she changed her prayer from reinstatement to separation pay. The appellate court simply explained that opting for separation pay, in lieu of reinstatement, could not support the allegation that Oco abandoned her work; and that the relief for separation pay did not preclude the grant of back wages, as these two awards were twin remedies available to an illegally dismissed employee.

Completely dissatisfied with the reversal of their fortune, petitioners implore this Court (1) to discredit the allegation of Oco that she had in fact been dismissed by them and (2) to make a finding that she abandoned her work by being on AWOL.

RULING OF THE COURT

The Factual Determination of the Employee's Dismissal

Prefatorily, the inquiry into whether Garcia verbally fired Oco and whether the employee abandoned her job are factual determinations

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[15] Id. at 47, CA Resolution dated 24 April 2006.
[16] Id. at 46-47, CA Resolution dated 24 April 2006.

generally beyond the jurisdiction of this Court;[17] and in addition to the weakness of petitioners' case, all the courts below consistently affirmed the certainty of the employee's dismissal by the employer.[18]

An established doctrine in labor cases is that factual questions are for labor tribunals to resolve. Their consistent findings are binding and conclusive and will normally not be disturbed, since this Court is not a trier of facts.[19] Therefore, on the basis of these circumstances alone, the appeal before us already deserves scant consideration.

Nevertheless, petitioners adamantly try to persuade this Court to believe their narration that they did not dismiss Oco. To prove their version of the story, they poke holes in her narration by harping on her allegedly false claim that Tegimenta hired replacements and by faulting her for rendering work on the very day that her services were supposedly terminated. Unfortunately, these purported defects in her narration cannot carry the day for petitioners.

According to the CA, the hiring of new employees and the presence of Oco on the day of her termination were all immaterial to resolving the issue of whether she was on AWOL or was illegally dismissed. We find this appreciation to be correct. Courts consider the evidence as material if it refers to the be-all and end-all of a petitioner's cause.[20] Here, none of the loopholes can resolve the case, since it is expected that dismissals may occur even if no prior replacements were hired, and an employer can indeed attempt to terminate employees on any day that they come in for work.

Petitioners also make a big fuss about the differing termination dates that Oco stated in her Complaint (3 June 2002) and her Position Paper (30 May 2002). But in *Prieto v. NLRC*,[21] we held that employees who are not assisted by lawyers when they file a complaint with the LA may commit a slight error that is forgivable if rectified later on.

Here, Oco only had one inadvertence when she filled out the Complaint in template form. She also stated in all her subsequent pleadings before the LA, the NLRC, the CA and this Court that she was dismissed on 30 May 2002. On this point, we similarly rule by regarding the inaccuracy as an error that is insufficient to destroy her case.

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[17] *Rambuyon v. Fiesta Brands, Inc*, 514 Phil. 325 (2005); *Premiere Development Bank v. NLRC*, 354 Phil. 851 (1998).
[18] *San Juan de Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan de Dios Educational Foundation Inc. (Hospital)*, G.R. No. 143341, 28 May 2004, 430 SCRA 193.
[19] Id. at 205-206.
[20] *VH Manufacturing, Inc. v. NLRC*, 379 Phil. 444, 450 (2000).
[21] G.R. No. 93699, 10 September 1993, 226 SCRA 232, 237.

Most notably, the LA observed that the employers "did not deny the claims of complainant [Oco] that she was simply told not to work."[22] As in *Solas v. Power & Telephone Supply Phils. Inc.*,[23] this silence constitutes an admission that fortifies the truth of the employee's narration. Section 32, Rule 130 of the Rules Court, provides:

> An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

Considering this rule of evidence, together with the immaterial discrepancies, this Court thus rules against wholly invalidating the findings of the courts *a quo*.

The Employer's Defense of Absence without Official Leave

After unsuccessfully assailing the narration of the employee, petitioners argue that Oco abandoned her job by being on AWOL. As bases for this affirmative defense, they highlight her previous instances of absence and tardiness. Then, they emphasize the marginal notes in the 16 to 30 June 2002 payroll, which showed that she was on leave. Finally, they equate the employee's act of asking for separation pay instead of reinstatement as an act of abandonment.

The bases cited by petitioners are bereft of merit.

First, the nonappearance of Oco at work was already accepted by the company as having resulted from complications in her pregnancy. In fact, Garcia herself offered respondent a vacation leave. Therefore, given that the absences of the latter were grounded on justifiable reasons, these absences cannot serve as the antecedent to the conclusion that she had already abandoned her job. [24]

For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without a valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[25]

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[22] *Rollo*, p. 100, LA Decision dated 30 May 2003.
[23] G.R. No. 162332, 28 August 2008, 563 SCRA 522, 530.
[24] *Del Monte v. Velasco*, G.R. No. 153477, 6 March 2007, 517 SCRA 510, 518.
[25] *Josan v. Aduna*, G.R. No. 190794, 22 February 2012, 666 SCRA 686.

The mere absence of an employee is not sufficient to constitute abandonment. [26] As an employer, Tegimenta has the burden of proof to show the deliberate and unjustified refusal of the employee to resume the latter's employment without any intention of returning.[27]

Here, Tegimenta failed to discharge its burden of proving that Oco desired to leave her job. The courts *a quo* uniformly found that she had continuously reported for work right after her vacation, and that her office attendance was simply cut off when she was categorically told not to report anymore. These courts even noted that she had also called up the office to follow up her status; and when informed of her definite termination, she lost no time in filing a case for illegal dismissal. Evidently, her actions did not constitute abandonment and instead implied her continued interest to stay employed.

Second, the marginal notes in the 16 to 30 June 2002 payroll showing that she was on leave are dubious. For one, the CA dutifully detected that none of the succeeding payroll sheets indicated that Oco was considered by the company as merely AWOL. Hence, it becomes questionable whether there is regularity in making simple notations as Tegimenta's reference in considering the status of an employee. Therefore, we hold that the marginal notations in a single payroll sheet are not competent proofs to back up petitioner's main defense.

This Court also rejects the invocation by petitioners of the best-evidence rule. According to them, the payroll sheet, and not the mere allegation of Oco, is the best evidence that they did not terminate her.

However, petitioners seem to miss the whole import of the best-evidence rule. This rule is used to compel the production of the original document, if the subject of the inquiry is the content of the document itself.[28] The rule provides that the court shall not receive any evidence that is merely substitutionary in nature, such as a photocopy, as long as the original evidence of that document can be had.[29]

Based on the explanation above, the best-evidence rule has no application to this case. The subject of the inquiry is not the payroll sheet of Tegimenta rather, the thrust of this case is the abundance of evidence present to prove the allegation that Oco abandoned her job by being on AWOL. Consequently, the employer cannot be logically stumped by a payroll sheet, but must be able to submit testimonial and other pieces of documentary

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[26] *Garden of Memories Park and Life Plan, Inc. v. NLRC*, G.R. No. 160278, 8 February 2012, 665 SCRA 293, 308-309.
[27] Id.
[28] RULES OF COURT, Rule 130, Sec. 3.
[29] *Philippine Banking Corporation v. Court of Appeals*, 464 Phil. 614, 643 (2004).

evidence – like leave forms, office memos, warning letters and notices – to be able to prove that the employee abandoned her work.

Finally, petitioners posit that Oco's act of replacing the prayer for reinstatement with that for separation pay implied that respondent abandoned her employment.

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts.[30] For abandonment to be appreciated, there must be a "clear, willful, deliberate, and unjustified refusal of the employee to resume employment."[31] Here, the mere fact that Oco asked for separation pay, after she was told to no longer report for work, does not reflect her intention to leave her job. She is merely exercising her option under Article 279 of the Labor Code, which entitles her to either reinstatement and back wages or payment of separation pay.

As an end note, petitioners advance a procedural lapse on the part of the CA. They argue that since no new facts, evidence or circumstances were introduced by respondent to the appellate court, it cannot issue a Resolution that reverses its earlier Decision.

In *Astraquillo v. Javier*,[32] we have similarly dealt with this contention and considered it as flawed. Our procedural laws allow motions for reconsideration and their concomitant resolutions, which give the same court an opportunity to reconsider and review its own ruling.

As stated in Section 5(g) of Rule 135, every court shall have the inherent power to amend and control its processes and orders, so as to make them conformable to law and justice. "This power includes the right to reverse itself, especially when in its honest opinion it has committed an error or mistake in judgment, and that to adhere to its decision will cause injustice to a party-litigant."[33] Thus, upon finding that petitioners had indeed illegally dismissed respondent, the CA merely exercised its prerogative to reverse an incorrect judgment.

IN VIEW THEREOF, the 24 April 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 87706 is **AFFIRMED**. The 12 May 2006 Petition for Review on Certiorari filed by Tegimenta Chemical Philippines, Incorporated and Vivian Rose D. Garcia is hereby **DENIED** for lack of merit.

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[30] *Camua, Jr., v, NLRC*, 541 Phil. 650, 657 (2007).
[31] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, 13 March 2009, 581 SCRA 340, 347.
[32] 121 Phil. 138 (1965).
[33] Id. at 144.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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