Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GILDA C. FERNANDEZ AND BERNADETTE A. BELTRAN, Petitioners,	**G.R. No. 201979**
	Present:
	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
- versus -	
NEWFIELD STAFF SOLUTIONS, INC./ARNOLD "JAY" LOPEZ, JR., Respondents.	Promulgated: JUL 10 2013

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DECISION

VILLARAMA, JR., *J.*:

By this Rule 45 petition, petitioners Gilda C. Fernandez and Bernadette A. Beltran appeal the Decision[1] dated February 23, 2012 and Resolution[2] dated May 18, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 118766. The CA reversed the decision[3] of the National Labor Relations Commission (NLRC) and dismissed petitioners' complaint for illegal dismissal.

The antecedent facts follow:

Respondent Newfield Staff Solutions, Inc. (Newfield) hired Fernandez as Recruitment Manager starting September 30, 2008[4] with a salary of ₱50,000 and an allowance of ₱6,000 per month. It was provided in

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1 *Rollo*, pp. 21-37. Penned by Associate Justice Manuel M. Barrios with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr. concurring.
2 Id. at 39-40.
3 Id. at 78-86.
4 Id. at 123.

the employment agreement that Fernandez will receive a loyalty bonus of ₱60,000 and life insurance worth ₱500,000 upon reaching six months of employment with Newfield.[5] Newfield also hired Beltran as probationary Recruitment Specialist starting October 7, 2008[6] with a salary of ₱15,000 and an allowance of ₱2,000 per month. Her employment contract provided that Beltran will receive a 10% salary and allowance increase upon reaching 12 months of employment with Newfield.[7]

Petitioners guaranteed to perform their tasks for six months and breach of this guarantee would make them liable for liquidated damages of ₱45,000. It was further provided in their employment agreements that if they want to terminate their employment agreements[8] after the "guaranteed period of engagement," they should send a written notice 45 days before the effective date of termination. They should also surrender any equipment issued to them and secure a clearance. If they fail to comply, Newfield can refuse to issue a clearance and to release any amount due them.[9]

On October 17, 2008, respondent Arnold "Jay" Lopez, Jr., Newfield's General Manager, asked petitioners to come to his office and terminated their employment on the ground that they failed to perform satisfactorily. Lopez, Jr. ordered them to immediately turn over the records in their possession to their successors.[10]

A week later, petitioners received Lopez, Jr.'s return-to-work letters[11] dated October 22, 2008. The letters stated that they did not report since October 20, 2008 without resigning, in violation of their employment agreements. They were directed to report and explain their failure to file resignation letters.

Fernandez countered with a demand letter[12] dated November 11, 2008. She claimed that her salary of ₱36,400 from September 30 to October 17, 2008 and mobile phone expenses of ₱3,000 incurred in furtherance of Newfield's business were not paid. She also said that she was able to hire one team leader and 12 agents in three weeks, but Newfield still found her performance unsatisfactory and told her to file her resignation letter. Thus, she referred the matter to her lawyer. She threatened to sue unless Newfield responds favorably. Beltran for her part also sent a demand letter. Her demand letter[13] dated November 17, 2008 is similar to Fernandez's letter except for the amount of the claim for unpaid salary which is ₱7,206.80.

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5 Id. at 138.
6 Id. at 125.
7 Id. at 90-91.
8 Id. at 90-92, 137-139.
9 Id. at 91-92, 139.
10 Id. at 99.
11 Id. at 157-158.
12 Id. at 168-169.
13 Id. at 167.

When they failed to receive favourable action from respondents, petitioners filed on December 9, 2008, a complaint[14] for illegal dismissal, nonpayment of salary and overtime pay, reimbursement of cell phone billing, moral and exemplary damages and attorney's fees against respondents.

In their verified position paper,[15] petitioners stated that on October 17, 2008, Lopez, Jr. asked them to come to his office and terminated their employment on the ground that they failed to perform satisfactorily. Lopez, Jr. told them: "YOU['RE] FIRED, x x x this is your last day and turn over the records to your successors."[16]

In their verified joint position paper,[17] respondents stated that petitioners signed fixed-term employment agreements where they agreed to perform their tasks for six months. They also agreed to give a written notice 45 days in advance if they want to terminate their employment agreements. But they never complied with their undertakings. Three weeks after working for Newfield, Fernandez did not report for work. She never bothered to communicate with respondents despite the return-to-work letter. Hence, Newfield declared her absent without official leave (AWOL) and terminated her employment on the ground of breach of contract. Similarly, Newfield declared Beltran AWOL and terminated her employment on the ground of breach of contract. Beltran stopped reporting two weeks after she was hired and never bothered to communicate with respondents despite the return-to-work letter. Respondents claimed that no evidence shows or even hints that petitioners were forced not to report for work. Petitioners simply no longer showed up for work.

In reply to respondents' position paper,[18] petitioners insisted that Lopez, Jr. terminated their employment. In their own reply to petitioners' position paper,[19] respondents claimed that petitioners abandoned their jobs.[20]

In their rejoinder,[21] petitioners repeated that Lopez, Jr. terminated their employment and they attached Josette Pasman's affidavit[22] to prove that they were dismissed.

The Labor Arbiter ruled that petitioners' dismissal was illegal, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered finding complainants dismissal illegal. Concomitantly, respondents are ordered to pay them their salary from the time of their dismissal up to the promulgation of this decision plus their separation pay. Furthermore, respondents are ordered to pay complainants their unpaid salaries and

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14 Id. at 93-94.
15 Id. at 97-110.
16 Id. at 99.
17 Id. at 122-136.
18 Id. at 141-145.
19 Id. at 146-156.
20 Id. at 149.
21 Id. at 159-166.
22 Id. at 170.

> allowances for the period October 1 to October 17, 2008 plus ten percent (10%) of the total judgment award by way of and as attorney's fees.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[23]

The Labor Arbiter rejected respondents' claim of abandonment and held that petitioners cannot be said to have abandoned their work since they took steps to protest their layoff. Their complaint is proof of their desire to return to work and negates any suggestion of abandonment. The Labor Arbiter also believed petitioners that Lopez, Jr. dismissed them on October 17, 2008 and ordered them to immediately turn over the records to their successors.

The NLRC affirmed the Labor Arbiter's decision and said that it is supported by substantial evidence. But since petitioners signed fixed-term employment agreements, the NLRC limited the award of back wages to six months. The dispositive portion of the NLRC Decision dated July 20, 2010 in NLRC LAC No. 11-003163-09 (NLRC NCR-12-17096-08) reads:

> **WHEREFORE**, premises considered, the decision of the Labor Arbiter is **AFFIRMED** with **MODIFICATION**, that is, the backwages shall be limited to the periods provided in their respective contracts; Gilda Fernandez (from September 30, 2008 to March 30, 2009) and Bernadette Beltran (from October 7, 2008 to April 7, 2009).
>
> **SO ORDERED**.[24]

In its Resolution[25] dated January 25, 2011, the NLRC denied the motions for reconsideration filed by petitioners and respondents.

Thereafter, respondents filed a petition for certiorari under Rules 65 of the 1997 Rules of Civil Procedure, as amended, before the CA. Petitioners no longer assailed the NLRC decision and resolution.

As aforesaid, the CA reversed the NLRC and dismissed petitioners' complaint for illegal dismissal, to wit:

> **WHEREFORE**, premises considered, the petition is granted. The Decision dated 20 July 2010 and the Resolution dated 25 January 2011 of the National Labor Relations Commission are reversed and set aside. The complaint for illegal dismissal is **DISMISSED**.
>
> **SO ORDERED**.[26]

The CA ruled that petitioners abandoned their jobs and pre-terminated their six-month employment agreements. They walked out after their

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23 Id. at 177-178.
24 Id. at 85-86.
25 Id. at 71-77.
26 Id. at 36-37.

meeting with Lopez, Jr. on October 17, 2008 when they were advised of their unsatisfactory performance. The CA held that the meeting did not prove that they were dismissed. However, it seems that they cannot accept constructive criticism and opted to discontinue working. Instead of reporting for work and explaining their absence, they demanded payment of wages and mobile phone expenses for the two to three weeks that they worked in Newfield. Thus, it seems that they no longer wished to continue working for the remaining period of their six-month employment. For breach of their employment agreements, they also opened themselves to liability for liquidated damages, said the CA.

On May 18, 2012, the CA denied petitioners' motion for reconsideration.

Hence, the instant petition for review on certiorari under Rule 45 anchored on the following grounds:

> [I.] THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DISMISSED PETITIONERS' COMPLAINT FOR ILLEGAL DISMISSAL. THE DECISION DATED 23 FEBRUARY 2012 IS CONTRARY TO LAW AND SETTLED RULINGS OF THE SUPREME COURT.
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> [II.] THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN REVERSING THE FINDINGS OF THE NLRC AND LABOR ARBITER THAT PETITIONERS WERE ILLEGALLY DISMISSED FROM EMPLOYMENT.[27]

Petitioners argue that for dismissal to be valid there must be a just or authorized cause and due process must be observed. But respondents terminated their employment on October 17, 2008 when Lopez, Jr. asked them to come to his office, fired them and ordered them to turn over the records to their successors. They were dismissed without any written notice informing them of the cause for their termination.[28]

In their comment, respondents claim that "no such incident took place" on October 17, 2008. Lopez, Jr. "merely called [p]etitioners' attention and advised them of their unsatisfactory work performance." Respondents also point out that petitioners refused to comply with the return-to-work letters and demanded instead payment of their salaries and reimbursement of mobile phone expenses.[29]

As a rule, a petition for review on certiorari under Rule 45 must raise only questions of law. However, the rule has exceptions such as when the findings of the Labor Arbiter, NLRC and CA vary,[30] as in this case.

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27 Id. at 11.
28 Id. at 11-12.
29 Id. at 332-333.
30 *Maribago Bluewater Beach Resort, Inc. v. Dual*, G.R. No. 180660, July 20, 2010, 625 SCRA 147, 155-156.

After our own review of the case, we are constrained to reverse the CA. We agree with the NLRC and Labor Arbiter that petitioners were illegally dismissed.

The CA erred in ruling that the meeting on October 17, 2008 did not prove that petitioners were dismissed. We find that Lopez, Jr. terminated their employment on said date.

Petitioners stated in their verified position paper that Lopez, Jr. fired them on October 17, 2008, told them that it was their last day and ordered them to turn over the records to their successors. We reviewed respondents' verified position paper and reply to petitioners' position paper filed before the Labor Arbiter and found nothing there denying what happened as stated under oath by petitioners. Respondents merely said that no evidence shows or even hints that petitioners were forced not to report for work and that petitioners abandoned their jobs. Even respondents' appeal memorandum[31] filed before the NLRC is silent on petitioners' claim that Lopez, Jr. fired them. Respondents' silence constitutes an admission that fortifies the truth of petitioners' narration. As we held in *Tegimenta Chemical Phils. v. Oco*[32]:

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

We also note respondents' confirmation that Lopez, Jr. met petitioners on October 17, 2008. But we seriously doubt respondents' claim in their comment filed before this Court that Lopez, Jr. did not fire petitioners, that "no such incident took place." This denial was not raised in respondents' position paper, reply to petitioners' position paper, and appeal memorandum. Respondents were not forthcoming in said pleadings that indeed Lopez, Jr. met petitioners on October 17, 2008.

We further note that during the proceedings before the Labor Arbiter, petitioners submitted Josette Pasman's affidavit as additional evidence. Pasman stated under oath that on October 21, 2008 she called Newfield's Timog Office to inquire about her salary, that she looked for Fernandez or Beltran, and that she was surprised to find out they were no longer employed at Newfield.

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31 *Rollo*, pp. 180-216.

32 G.R. No. 175369, February 27, 2013, p. 6.

The CA also erred in ruling that petitioners abandoned their jobs.

We clarify first that petitioners' employment agreements are not fixed-term contracts for six months because Fernandez becomes entitled to a loyalty bonus of ₱60,000 and life insurance worth ₱500,000 upon reaching six months of employment with Newfield. Beltran will also receive a 10% salary and allowance increase upon reaching 12 months of employment with Newfield. Petitioners merely guaranteed to perform their tasks for six months and failure to comply with this guarantee makes them liable for liquidated damages. The employment agreements also provide that if petitioners would want to terminate the agreements after the "guaranteed period of engagement," they must notify respondents 45 days in advance. Thus, respondents, the NLRC and CA misread the guarantee as the fixed duration of petitioners' employment.

Petitioners are not fixed-term employees but probationary employees. Respondents even admitted that Beltran was hired as probationary Recruitment Specialist. A probationary employee may be terminated for a just or authorized cause or when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.[33]

Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee.[34] For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without 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.[35]

Since both factors are not present, petitioners are not guilty of abandonment. One, petitioners were absent because Lopez, Jr. had fired them. Thus, we cannot fault them for refusing to comply with the return-to-work letters and responding instead with their demand letters. Neither can they be accused of being AWOL or of breaching their employment agreements. Indeed, as stated above, respondents cannot claim that no evidence shows that petitioners were forced not to report for work. Two, petitioners' protest of their dismissal by sending demand letters and filing a complaint for illegal dismissal with prayer for reinstatement convinces us that petitioners have no intention to sever the employment relationship. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.[36]

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33 *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez*, G.R. No. 177937, January 19, 2011, 640 SCRA 135, 142.

34 *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 633.

35 *Josan, JPS, Santiago Cargo Movers v. Aduna,* G.R. No. 190794, February 22, 2012, 666 SCRA 679, 686.

36 Id. at 686-687.

Hence, we disagree with the statement of the CA that petitioners no longer wish to continue working for Newfield since they sought payment of their unpaid salaries. Petitioners did not limit their demand letters as claims for payment of salaries. They also stated that they were told to resign despite their accomplishments. Thus, they referred the matter to a lawyer and they threatened to sue if they receive no favorable response from respondents. When they received none, they immediately sued for illegal dismissal. Under the circumstances, we cannot infer petitioners' intention to abandon their jobs. As aptly observed also by the NLRC, Fernandez earns ₱56,000 and Beltran earns ₱17,000 per month. "[I]t defies reason that [they] would leave their job[s] and then fight odds to win them back. Human experience dictates that a worker will not just walk away from a good paying job and risk [unemployment] and damages as a result thereof UNLESS illegally dismissed."[37]

We therefore agree that petitioners were illegally dismissed since there is no just cause for their dismissal.

Under Article 279 of the Labor Code, as amended, an employee unjustly dismissed from work is entitled to reinstatement and full back wages from the time his compensation was withheld from him up to the time of his actual reinstatement. However, the NLRC's award of back wages for six months is binding on petitioners who no longer contested and are therefore presumed to have accepted the adjudication in the NLRC decision and resolution. This is in accord with the doctrine that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[38]

Similarly, the award of separation pay which was affirmed by the NLRC is binding on petitioners who even admitted that reinstatement is no longer possible.[39]

One last note. The dispositive portion of the Labor Arbiter's decision, as affirmed and modified by the NLRC, stated that "respondents are ordered to pay" petitioners. This gives the impression that Lopez, Jr. is solidarily liable with Newfield. In *Grandteq Industrial Steel Products, Inc. v. Estrella*,[40] we discussed how corporate agents incur solidary liability, as follows:

> There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*. In *MAM Realty Development Corporation v. NLRC*, the solidary liability of corporate officers in labor disputes was discussed in this wise:
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> > "A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations

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37 *Rollo*, p. 76.

38 *Filflex Industrial & Manufacturing Corp. v. NLRC*, G.R. No. 115395, February 12, 1998, 286 SCRA 245, 256.

39 *Rollo*, p. 14.

40 G.R. No. 192416, March 23, 2011, 646 SCRA 391, 404.

> incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. True, solidary liability may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:
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> 1. When directors and trustees or, in appropriate cases, the officers of a corporation –
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> (a) vote for or assent to *patently* unlawful acts of the corporation;
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> (b) act in *bad faith* or with *gross negligence* in directing the corporate affairs;
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> x x x x
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> In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**." (Italics, emphasis and underscoring in the original; citations omitted.)

Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.[41] To sustain such a finding, there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee.[42]

But here, the Labor Arbiter and NLRC have not found Lopez, Jr. guilty of malice or bad faith. Thus, there is no basis to hold Lopez, Jr. solidarily liable with Newfield. Payment of the judgment award is the direct accountability of Newfield.

WHEREFORE, the petition for review on certiorari is **GRANTED**. We **REVERSE** and **SET ASIDE** the Decision dated February 23, 2012 and Resolution dated May 18, 2012 of the Court of Appeals in CA-G.R. SP No. 118766. The Decision dated July 20, 2010 and Resolution dated January 25, 2011 of the NLRC in NLRC LAC No. 11-003163-09 (NLRC NCR-12-17096-08) are **REINSTATED** and **UPHELD** with clarification that respondent Arnold "Jay" Lopez, Jr. is not solidarily liable with respondent Newfield Staff Solutions, Inc.

No costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

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41 *Malayang Samahan Ng Mga Manggagawa v. Hon. Ramos*, 409 Phil. 61, 83 (2001).

42 See *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 611.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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