



**Republic of the Philippines  
Supreme Court  
Manila**

**SECOND DIVISION**

**DIAMOND TAXI and/or BRYAN ONG,**  
Petitioners,

**G.R. No. 190724**

Present:

CARPIO, *J.*, Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
PERLAS-BERNABE, *JJ.*

-versus-

Promulgated:

**FELIPE LLAMAS, JR.,**  
Respondent.

MAR 12 2014 *HON. Cabalag*

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**DECISION**

**BRION, J.:**

In this petition for review on *certiorari*,<sup>1</sup> we resolve the challenge to the August 13, 2008 decision<sup>2</sup> and the November 27, 2009 resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CEB-S.P. No. 02623. This CA decision reversed and set aside the May 30, 2006 resolution<sup>4</sup> of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000294-06 (RAB VII-07-1574-05) that dismissed respondent Felipe Llamas, Jr.'s appeal for non-perfection.

**The Factual Antecedents**

Llamas worked as a taxi driver for petitioner Diamond Taxi, owned and operated by petitioner Bryan Ong. On July 18, 2005, Llamas filed before the Labor Arbiter (LA) a complaint for illegal dismissal against the petitioners.

In their position paper, the petitioners denied dismissing Llamas. They claimed that Llamas had been absent without official leave for several

<sup>1</sup> Rollo, pp. 9-29.

<sup>2</sup> Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Priscilla Baltazar-Padilla and Edgardo L. delos Santos; id. at 31-42.

<sup>3</sup> Id. at 44-45.

<sup>4</sup> Penned by Commissioner Aurelio D. Menzon, and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles; id. at 57-59.

*Am*

days, beginning July 14, 2005 until August 1, 2005. The petitioners submitted a copy of the attendance logbook to prove that Llamas had been absent on these cited dates. They also pointed out that Llamas committed several traffic violations in the years 2000-2005 and that they had issued him several memoranda for acts of insubordination and refusal to heed management instructions. They argued that these acts – traffic violations, insubordination and refusal to heed management instructions – constitute grounds for the termination of Llamas' employment.

Llamas failed to seasonably file his position paper.

On November 29, 2005, the LA rendered a decision<sup>5</sup> dismissing Llamas' complaint for lack of merit. The LA held that Llamas was not dismissed, legally or illegally. Rather, the LA declared that Llamas left his job and had been absent for several days without leave.

Llamas received a copy of this LA decision on January 5, 2006. Meanwhile, he filed his position paper<sup>6</sup> on December 20, 2005.

In his position paper, Llamas claimed that he failed to seasonably file his position paper because his previous counsel, despite his repeated pleas, had continuously deferred compliance with the LA's orders for its submission. Hence, he was forced to secure the services of another counsel on December 19, 2005 in order to comply with the LA's directive.

On the merits of his complaint, Llamas alleged that he had a misunderstanding with Aljuver Ong, Bryan's brother and operations manager of Diamond Taxi, on July 13, 2005 (*July 13, 2005 incident*). When he reported for work on July 14, 2005, Bryan refused to give him the key to his assigned taxi cab unless he would sign a prepared resignation letter. He did not sign the resignation letter. He reported for work again on July 15 and 16, 2005, but Bryan insisted that he sign the resignation letter prior to the release of the key to his assigned taxi cab. Thus, he filed the illegal dismissal complaint.

On January 16, 2006, Llamas filed before the LA a motion for reconsideration of its November 29, 2005 decision. The LA treated Llamas' motion as an appeal per Section 15, Rule V of the 2005 Revised Rules of Procedure of the NLRC (*2005 NLRC Rules*) (the governing NLRC Rules of Procedure at the time Llamas filed his complaint before the LA).

In its May 30, 2006 resolution,<sup>7</sup> the NLRC dismissed for non-perfection Llamas' motion for reconsideration treated as an appeal. The NLRC pointed out that Llamas failed to attach the required certification of non-forum shopping per Section 4, Rule VI of the 2005 NLRC Rules.

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<sup>5</sup> Penned by LA Jose Gutierrez; id. at 46-47.

<sup>6</sup> Id. at 48-51.

<sup>7</sup> *Supra* note 4.

Llamas moved to reconsider the May 30, 2006 NLRC resolution; he attached the required certification of non-forum shopping.

When the NLRC denied his motion for reconsideration<sup>8</sup> in its August 31, 2006 resolution,<sup>9</sup> Llamas filed before the CA a petition for *certiorari*.<sup>10</sup>

### ***The CA's ruling***

In its August 13, 2008 decision,<sup>11</sup> the CA reversed and set aside the assailed NLRC resolution. Citing jurisprudence, the CA pointed out that non-compliance with the requirement on the filing of a certificate of non-forum shopping, while mandatory, may nonetheless be excused upon showing of manifest equitable grounds proving substantial compliance. Additionally, in order to determine if cogent reasons exist to suspend the rules of procedure, the court must first examine the substantive aspect of the case.

The CA pointed out that the petitioners failed to prove overt acts showing Llamas' clear intention to abandon his job. On the contrary, the petitioners placed Llamas in a situation where he was forced to quit as his continued employment has been rendered impossible, unreasonable or unlikely, *i.e.*, making him sign a resignation letter as a precondition for giving him the key to his assigned taxi cab. To the CA, the petitioners' act amounted to constructive dismissal. The CA additionally noted that Llamas immediately filed the illegal dismissal case that proved his desire to return to work and negates the charge of abandonment.

Further, the CA brushed aside the petitioners' claim that Llamas committed several infractions that warranted his dismissal. The CA declared that the petitioners should have charged Llamas for these infractions to give the latter an opportunity to explain his side. As matters then stood, they did not charge him for these infractions; hence, the petitioners could not have successfully used these as supporting grounds to justify Llamas' dismissal on the ground of abandonment.

As the CA found equitable grounds to take exception from the rule on certificate of non-forum shopping, it declared that the NLRC had acted with grave abuse of discretion when it dismissed Llamas' appeal purely on a technicality. To the CA, the NLRC should have considered as substantially compliant with this rule Llamas' subsequent submission of the required certificate with his motion for reconsideration (of the NLRC's May 30, 2006 resolution).

Accordingly, the CA ordered the petitioners to pay Llamas separation pay, full backwages and other benefits due the latter from the time of the

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<sup>8</sup> *Rollo*, pp. 60-69.

<sup>9</sup> *Id.* at 71-72.

<sup>10</sup> *Id.* at 73-90.

<sup>11</sup> *Supra* note 2.

dismissal up to the finality of the decision. The CA awarded separation pay in lieu of reinstatement because of the resulting strained work relationship between Llamas and Bryan following the altercation between the former and the latter's brother.

The petitioners filed the present petition after the CA denied their motion for reconsideration<sup>12</sup> in the CA's November 27, 2009 resolution.<sup>13</sup>

### **The Petition**

The petitioners argue that the CA erred when it encroached on the NLRC's exclusive jurisdiction to review the merits of the LA's decision. To the petitioners, the CA should have limited its action in determining whether grave abuse of discretion attended the NLRC's dismissal of Llamas' appeal; finding that it did, the CA should have remanded the case to the NLRC for further proceedings.

Moreover, the petitioners point out that the NLRC did not gravely abuse its discretion when it rejected Llamas' appeal. They argue that the NLRC's action conformed with its rules and with this Court's decisions that upheld the dismissal of an appeal for failure to file a certificate of non-forum shopping.

Directly addressing the CA's findings on the dismissal issue, the petitioners argue that they did not constructively dismiss Llamas. They maintain that Llamas no longer reported for work because of the several liabilities he incurred that would certainly have, in any case, warranted his dismissal.

### **The Case for the Respondent**

Llamas argues in his comment<sup>14</sup> that the CA correctly found that the NLRC acted with grave abuse of discretion when it maintained its dismissal of his appeal despite his subsequent filing of the certificate of non-forum shopping. Quoting the CA's ruling, Llamas argues that the NLRC should have given due course to his appeal to avoid miscarriage of substantial justice.

On the issue of dismissal, Llamas argues that the CA correctly reversed the LA's ruling that found him not dismissed, legally or illegally. Relying on the CA's ruling, Llamas points out that the petitioners bore the burden of proving the abandonment charge. In this case, the petitioners failed to discharge their burden; hence, his dismissal was illegal.

### **The Court's Ruling**

We do not find the petition meritorious.

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<sup>12</sup> *Rollo*, pp. 103-124.

<sup>13</sup> *Supra* note 3.

<sup>14</sup> *Rollo*, pp. 129-134.

***Preliminary considerations: factual-issue-bar-rule***

In this Rule 45 petition for review on *certiorari*, we review the legal errors that the CA may have committed in the assailed decision, in contrast with the review for jurisdictional error undertaken in an original *certiorari* action. In reviewing the legal correctness of the CA decision in a labor case made under Rule 65 of the Rules of Court, we examine the CA decision in the context that it determined the presence or the absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision, on the merits of the case, was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the challenged NLRC decision. In question form, the question that we ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?<sup>15</sup>

In addition, the Court's jurisdiction in a Rule 45 petition for review on *certiorari* is limited to resolving only questions of law. A question of law arises when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts. In contrast, a question of fact exists when the doubt or controversy concerns the truth or falsehood of facts.<sup>16</sup>

As presented by the petitioners, the petition before us involves mixed questions of fact and law, with the core issue being one of fact. Whether the CA, in ruling on the labor case before it under an original *certiorari* action, can make its own factual determination requires the consideration and application of law and jurisprudence; it is essentially a question of law that a Rule 45 petition properly addresses.

In the context of this case, however, this legal issue is inextricably linked with and cannot be resolved without the definitive resolution of the core factual issue – whether Llamas abandoned his work or had been constructively dismissed. As a proscribed question of fact, we generally cannot address this issue, except to the extent necessary to determine *whether the CA correctly found that the NLRC acted with grave abuse of discretion in dismissing Llamas' appeal on purely technical grounds.*

For raising mixed questions of fact and law, we deny the petition outright. Even if this error were to be disregarded, however, we would still deny the petition as we find the CA legally correct in reversing the NLRC's resolution on the ground of grave abuse of discretion.

***The CA has ample authority to make its own factual determination***

We agree that remanding the case to the NLRC for factual determination and decision of the case on the merits would have been,

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<sup>15</sup> *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342-343.

<sup>16</sup> *Baguio Central University v. Ignacio Gallente*, G.R. No. 188267, December 2, 2013.

ordinarily, a prudent approach. Nevertheless, the CA's action on this case was not procedurally wrong and was not without legal and jurisprudential basis.

In this jurisdiction, courts generally accord great respect and finality to factual findings of administrative agencies, *i.e.*, labor tribunals, in the exercise of their quasi-judicial function.<sup>17</sup> These findings, however, are not infallible. This doctrine espousing comity to administrative findings of facts cannot preclude the courts from reviewing and, when proper, disregarding these findings of facts when shown that the administrative body committed grave abuse of discretion by capriciously, whimsically or arbitrarily disregarding evidence or circumstances of considerable importance that are crucial or decisive of the controversy.<sup>18</sup>

Hence, in labor cases elevated to it *via* petition for *certiorari*, the CA can grant this prerogative writ when it finds that the NLRC acted with grave abuse of discretion in arriving at its factual conclusions. To make this finding, the CA necessarily has to view the evidence if only to determine if the NLRC ruling had basis in evidence. It is in the sense and manner that the CA, in a Rule 65 *certiorari* petition before it, had to determine whether grave abuse of discretion on factual issues attended the NLRC's dismissal of Llamas' appeal. Accordingly, we do not find erroneous the course that the CA took in resolving Llamas' *certiorari* petition. The CA may resolve factual issues by express legal mandate and pursuant to its equity jurisdiction.

***The NLRC committed grave abuse of discretion in dismissing Llamas' appeal on mere technicality***

Article 223 (now Article 229)<sup>19</sup> of the Labor Code states that decisions (or awards or orders) of the LA shall become final and executory unless appealed to the NLRC within ten (10) calendar days from receipt of the decision. Consistent with Article 223, Section 1, Rule VI of the 2005 NLRC Rules also provides for a ten (10)-day period for appealing the LA's decision. Under Section 4(a), Rule VI<sup>20</sup> of the 2005 NLRC Rules, the appeal shall be in the form of a verified memorandum of appeal and

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<sup>17</sup> See *Cosmos Bottling Corp. v. Nagrama, Jr.*, 571 Phil. 281, 300 (2008).

<sup>18</sup> See *Norkis Trading Corporation v. Buenavista*, G.R. No. 182018, October 10, 2012, 683 SCRA 406, 422; citation omitted.

<sup>19</sup> As directed by Republic Act No. 10151, entitled "An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, as amended, Otherwise Known as the Labor Code of the Philippines," approved on June 21, 2011, the Labor Code articles beginning with Article 130 are renumbered.

<sup>20</sup> Section 4. Requisites for Perfection of Appeal. - a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

accompanied by proof of payment of the appeal fee, posting of cash or surety bond (when necessary), **certificate of non-forum shopping**, and proof of service upon the other parties. Failure of the appealing party to comply with any or all of these requisites within the reglementary period will render the LA's decision final and executory.

Indisputably, Llamas did not file a memorandum of appeal from the LA's decision. Instead, he filed, within the ten (10)-day appeal period, a motion for reconsideration. Under Section 15, Rule V of the 2005 NLRC Rules, motions for reconsideration from the LA's decision are not allowed; they may, however, be treated as an appeal provided they comply with the requirements for perfecting an appeal. The NLRC dismissed Llamas' motion for reconsideration treated as an appeal for failure to attach the required certificate of non-forum shopping per Section 4(a), Rule VI of the 2005 NLRC Rules.

The requirement for a sworn certification of non-forum shopping was prescribed by the Court under Revised Circular 28-91,<sup>21</sup> as amended by Administrative Circular No. 04-94,<sup>22</sup> to prohibit and penalize the evils of forum shopping. Revised Circular 28-91, as amended by Administrative Circular No. 04-94, requires a sworn certificate of non-forum shopping to be filed with every petition, complaint, application or other initiatory pleading filed before the Court, the CA, or the different divisions thereof, or any other court, tribunal or agency.

Ordinarily, the infirmity in Llamas' appeal would have been fatal and would have justified an end to the case. A careful consideration of the circumstances of the case, however, convinces us that the NLRC should, indeed, have given due course to Llamas' appeal despite the initial absence of the required certificate. We note that in his motion for reconsideration of the NLRC's May 30, 2006 resolution, Llamas attached the required certificate of non-forum shopping.

Moreover, Llamas adequately explained, in his motion for reconsideration, the inadvertence and presented a clear justifiable ground to warrant the relaxation of the rules. To recall, Llamas was able to file his position paper, through his new counsel, only on December 20, 2005. He hired the new counsel on December 19, 2005 after several repeated, albeit failed, pleas to his former counsel to submit, on or before October 25, 2005 per the LA's order, the required position paper. On November 29, 2005, however, the LA rendered a decision that Llamas and his new counsel learned and received a copy of only on January 5, 2006. Evidently, the LA's findings and conclusions were premised solely on the petitioners' pleadings and evidence. And, while not the fault of the LA, Llamas, nevertheless, did not have a meaningful opportunity to present his case, refute the contents and allegations in the petitioners' position paper and submit controverting evidence.

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<sup>21</sup> Issued on February 8, 1994 and made effective on April 1, 1994.

<sup>22</sup> Effective April 1, 1994.

Faced with these circumstances, *i.e.*, Llamas' subsequent compliance with the certification-against-forum-shopping requirement; the utter negligence and inattention of Llamas' former counsel to his pleas and cause, and his vigilance in immediately securing the services of a new counsel; Llamas' filing of his position paper before he learned and received a copy of the LA's decision; the absence of a meaningful opportunity for Llamas to present his case before the LA; and the clear merits of his case (that our subsequent discussion will show), the NLRC should have relaxed the application of procedural rules in the broader interests of substantial justice. Indeed, while the requirement as to the certificate of non-forum shopping is mandatory, this requirement should not, however, be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum-shopping.<sup>23</sup>

Under Article 221 (now Article 227)<sup>24</sup> of the Labor Code, "the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process."<sup>25</sup> Consistently, we have emphasized that "rules of procedure are mere tools designed to facilitate the attainment of justice. A strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice should not be allowed x x x. No procedural rule is sacrosanct if such shall result in subverting justice."<sup>26</sup> Ultimately, what should guide judicial action is that a party is given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, honor, or property on mere technicalities.<sup>27</sup>

Then, too, we should remember that "the dismissal of an employee's appeal on purely technical ground is inconsistent with the constitutional mandate on protection to labor."<sup>28</sup> Under the Constitution<sup>29</sup> and the Labor Code,<sup>30</sup> the State is bound to protect labor and assure the rights of workers to security of tenure – tenurial security being a preferred constitutional right that, under these fundamental guidelines, technical infirmities in labor pleadings cannot defeat.<sup>31</sup>

In this case, Llamas' action against the petitioners concerned his job, his security of tenure. This is a property right of which he could not and

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<sup>23</sup> *Caña v. Evangelical Free Church of the Phils.*, 568 Phil. 205, 213-214 (2008), citing *Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation*, G.R. No. 157195, April 22, 2005, 456 SCRA 588.

<sup>24</sup> *Supra* note 19.

<sup>25</sup> See also Section 10, Rule VI of the 2005 NLRC Rules.

<sup>26</sup> *Phil. Commercial Int'l Bank v. Cabrera*, 494 Phil. 735, 743 (2005); citations omitted.

<sup>27</sup> *Id.* at 743-744; and *Caña v. Evangelical Free Church of the Phils.*, *supra* note 23, at 215.

<sup>28</sup> *Polsoin, Jr. v. De Guia Enterprises, Inc.*, G.R. No. 172624, December 5, 2011, 661 SCRA 523, 529.

<sup>29</sup> See Article II, Section 18 and Article XIII, Section 3.

<sup>30</sup> Under Article 4 of the Labor Code, all doubts in the implementation and interpretation of [its] provisions x x x, including its implementing rules and regulations, shall be resolved in favor of labor."

<sup>31</sup> See *Spic N' Span Services Corporation v. Paje*, G.R. No. 174084, August 25, 2010, 629 SCRA 261, 270.



should not be deprived of without due process.<sup>32</sup> But, more importantly, it is a right that assumes a preferred position in our legal hierarchy.<sup>33</sup>

Under these considerations, we agree that the NLRC committed grave abuse of discretion when, in dismissing Llamas' appeal, it allowed purely technical infirmities to defeat Llamas' tenurial security without full opportunity to establish his case's merits.

***Llamas did not abandon his work; he was constructively dismissed***

"Abandonment is the deliberate and unjustified refusal of an employee to resume his employment."<sup>34</sup> It is a form of neglect of duty that constitutes just cause for the employer to dismiss the employee.<sup>35</sup>

To constitute abandonment of work, two elements must concur: "(1) x x x the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) x x x there must have been a clear intention [on the part of the employee] to sever the employer-employee relationship manifested by some overt act."<sup>36</sup> The employee's absence must be accompanied by overt acts that unerringly point to the employee's clear intention to sever the employment relationship.<sup>37</sup> And, to successfully invoke abandonment, whether as a ground for dismissing an employee or as a defense, the employer bears the burden of proving the employee's unjustified refusal to resume his employment.<sup>38</sup> Mere absence of the employee is not enough.<sup>39</sup>

Guided by these parameters, we agree that the petitioners unerringly failed to prove the alleged abandonment. They did not present proof of some overt act of Llamas that clearly and unequivocally shows his intention to abandon his job. We note that, aside from their bare allegation, the only evidence that the petitioners submitted to prove abandonment were the photocopy of their attendance logbook and the July 15, 2005 memorandum<sup>40</sup> that they served on Llamas regarding the July 13, 2005 incident. These pieces of evidence, even when considered collectively, indeed failed to prove the clear and unequivocal intention, on Llamas' part, that the law requires to deem as abandonment Llamas' absence from work. Quite the contrary, the petitioners' July 15, 2005 memorandum, in fact, supports, if

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<sup>32</sup> *Polsoin, Jr. v. De Guia Enterprises, Inc.*, *supra* note 28, at 530.

<sup>33</sup> See *Spic N' Span Services Corporation v. Paje*, *supra* note 31, at 269.

<sup>34</sup> *NEECO II v. NLRC*, 499 Phil. 777, 789 (2005).

<sup>35</sup> See Article 282 (now Article 296) of the Labor Code.

<sup>36</sup> *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003). See also *Harpoon Marine Services, Inc. v. Francisco*, G.R. No. 167751, March 2, 2011, 644 SCRA 394, 405-406; and *Aliten v. U-Need Lumber & Hardware*, 533 Phil. 213, 223 (2006).

<sup>37</sup> See *ACD Investigation Security Agency, Inc. v. Daquera*, G.R. No. 147473, March 30, 2004, 426 SCRA 494, 499.

<sup>38</sup> See *Samarca v. Arc-Men Industries, Inc.*, *supra* note 36, at 515; and *Harpoon Marine Services, Inc. v. Francisco*, *supra* note 36, at 406.

<sup>39</sup> See *Aliten v. U-Need Lumber & Hardware*, *supra* note 36 at 222; and *Functional, Inc. v. Granfil*, G.R. No. 176377, November 16, 2011, 660 SCRA 279, 286-287.

<sup>40</sup> *Rollo*, p. 112.

not strengthens, Llamas' version of the events that led to his filing of the complaint, *i.e.*, that as a result of the July 13, 2005 incident, the petitioners refused to give him the key to his assigned taxi cab unless he would sign the resignation letter.

Moreover, and as the CA pointed out, Llamas lost no time in filing the illegal dismissal case against them. To recall, he filed the complaint on July 18, 2005 or only two days from the third time he was refused access to his assigned taxi cab on July 16, 2005. Clearly, Llamas could not be deemed to have abandoned his work for, as we have previously held, the immediate filing by the employee of an illegal dismissal complaint is proof enough of his intention to return to work and negates the employer's charge of abandonment.<sup>41</sup> To reiterate and emphasize, abandonment is a matter of intention that cannot lightly be presumed from certain equivocal acts of the employee.<sup>42</sup>

The CA, therefore, correctly regarded Llamas as constructively dismissed for the petitioners' failure to prove the alleged just cause – abandonment – for his dismissal. Constructive dismissal exists when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely. Constructive dismissal is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not. In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action were for valid and legitimate grounds.<sup>43</sup> The petitioners' persistent refusal to give Llamas the key to his assigned taxi cab, on the condition that he should first sign the resignation letter, rendered, without doubt, his continued employment impossible, unreasonable and unlikely; it, thus, constituted constructive dismissal.

In sum, the CA correctly found equitable grounds to warrant relaxation of the rule on perfection of appeal (filing of the certificate of non-forum shopping) as there was patently absent sufficient proof for the charge of abandonment. Accordingly, we find the CA legally correct in reversing and setting aside the NLRC's resolution rendered in grave abuse of discretion.

**WHEREFORE**, in light of these considerations, we hereby **DENY** the petition. We **AFFIRM** the decision dated August 13, 2008 and the resolution dated November 27, 2009 of the Court of Appeals in CA-G.R. CEB-S.P. No. 02623.

**SO ORDERED.**

  
ARTURO D. BRION  
Associate Justice

<sup>41</sup> *Labor v. National Labor Relations Commission*, G.R. No. 110388, September 14, 1995, 248 SCRA 183, 198.

<sup>42</sup> *Josan, JPS, Santiago Cargo Movers v. Aduna*, G.R. No. 190794, February 22, 2012, 666 SCRA 679, 686; and *Aliten v. U-Need Lumber & Hardware*, *supra* note 36, at 223.

<sup>43</sup> *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 634-635.

**WE CONCUR:****ANTONIO T. CARPIO**

Associate Justice

Chairperson

**MARIANO C. DEL CASTILLO**

Associate Justice

**JOSE PORTUGAL PEREZ**

Associate Justice

**ESTELA M. PERLAS-BERNABE**

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.

**ANTONIO T. CARPIO**

Associate Justice

Chairperson, Second 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