Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FORTUNATO R. BARON, MANOLO B. BERSABAL, and RECTO A. MELENDRES, Petitioners,	**G.R. No. 202645**
- versus -	Present: SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
EPE TRANSPORT, INC.* and/or ERNESTO P. ENRIQUEZ, Respondents.	Promulgated: AUG 0 5 2015

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 30, 2012 and the Resolution[3] dated July 11, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 115626, which annulled and set aside the Decision[4] dated March 9, 2010 and the Resolution[5] dated June 21, 2010 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 05-001320-09 and instead, reinstated the Decision[6] dated March 20, 2009 of the Labor Arbiter (LA) in NLRC Case No. NCR-10-13893-08 dismissing the complaint of petitioners Fortunato R. Baron (Baron), Manolo B. Bersabal (Bersabal), and Recto A. Melendres (Melendres; collectively petitioners) for lack of merit.

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* "EFE Transport, Inc." in some parts of the records.

1 *Rollo*, pp. 28-51.

2 Id. at 55-65. Penned by Associate Justice Angelita A. Gacutan with Associate Justices Magdangal M. De Leon and Francisco P. Acosta concurring.

3 Id. at 68-69.

4 Id. at 223-229. Penned by Presiding Commissioner Benedicto R. Palacol with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro concurring.

5 Id. at 252-254.

6 Id. at 188-192. Penned by Labor Arbiter Renaldo O. Hernandez.

The Facts

Respondent EPE Transport Corporation, Inc. (EPE) is a domestic corporation engaged in the operation of taxi units. Petitioners were employed[7] as EPE's taxi drivers and were paid on boundary system. They were members of the EPE Transport, Inc. Drivers' Union-Filipinong Samahang Manggagawa (FSM), the exclusive bargaining agent of the taxi drivers in EPE.[8]

Sometime in August 2008, Bersabal sought inquiry from the company regarding the boundary rates imposed, claiming that the same were not in accordance with the Collective Bargaining Agreement (CBA).[9] Instead of clarifying the matter, Bersabal was purportedly told that he was free to go if he did not want to follow company policy, and that anyway, he has no more use to the company.[10] As a result, Bersabal, together with the other EPE's taxi drivers, filed on August 8, 2008, a complaint[11] for violation of the CBA, unfair labor practice, refund of overcharged boundary, and money claims against EPE, and its President, Ernesto P. Enriquez (respondents), docketed as **NLRC Case No. NCR-08-11284-08** (CBA violation case).[12]

Later in September 2008, Baron and Melendres equally questioned the company about the overcharging of boundary, for which they supposedly got the same response. Thus, they filed a complaint[13] for unfair labor practice, refund of overcharged boundary, and attorney's fees against respondents, docketed as **NLRC Case No. NCR-09-13285-08** (unfair labor practice case)[14] Three (3) days after, or on September 26, 2008, Baron claimed that he was no longer allowed to use his taxi unit and prevented from entering EPE's premises. Melendres and Bersabal allegedly suffered a similar fate on September 28, 2008 and October 1, 2008, respectively.[15] Consequently, petitioners filed on October 6, 2008, another complaint,[16] this time for illegal dismissal, unfair labor practice, separation pay, and attorney's fees, against respondents, docketed as **NLRC Case No. NCR-10-13893-08** (illegal dismissal case).

Meanwhile, in an Order[17] dated October 15, 2008, the complaint in the unfair labor practice case was dismissed without prejudice, and the case was recommended to be resolved before the grievance machinery.

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7 Baron was hired on April 22, 2003, Melendres on February 18, 2003, and Bersabal on March 1, 2005. See id. at 9.
8 Id.
9 See CBA dated February 16, 2006. Id. at 158-165.
10 Id. at 32.
11 Id. at 171-174.
12 The case was raffled to Labor Arbiter Enrique L. Flores, Jr. Id. at 171. See also id. at 93 and 149.
13 Id. at 166-169.
14 Id. at 166-169.
15 Id. at 33.
16 Id. at 138-140.
17 Id. at 170. Penned by Labor Arbiter Melquiades Sol D. Del Rosario.

In response[18] to the complaint in the illegal dismissal case, respondents denied that petitioners were dismissed as the latter themselves failed to return to work. Respondents claimed that petitioners were often called to explain their "shortages" and "damage to vehicle," as reflected in their employment records,[19] with no intention of terminating their employment.[20] That after they filed separate complaints for violation of the CBA and unfair labor practice, petitioners suddenly went on absence without official leave (AWOL) and subsequently filed the instant suit.[21]

The LA Ruling

In a Decision[22] dated March 20, 2009, the LA dismissed petitioners' illegal dismissal case for lack of jurisdiction over the subject matter and lack of cause of action. The LA gave more credence to respondents' claim that it was petitioners who failed to return to work after they filed their respective complaints, noting that the latter had even invoked the use of the CBA's grievance machinery for the resolution of their dispute, hence, could not have been dismissed.[23] Moreover, the LA held that it had no jurisdiction over the ULP issue as the same was covered by the provisions of the CBA that specifically called for the operation of the grievance machinery in the resolution of such dispute.[24]

Aggrieved, petitioners appealed[25] to the NLRC, docketed as NLRC LAC Case No. 05-001320-09.

The NLRC Ruling

In a Decision[26] dated March 9, 2010, the NLRC reversed and set aside the LA's Decision and found petitioners to have been illegally dismissed. Accordingly, it directed respondents to present evidence of the average amount of petitioners' daily or monthly wages, after deducting the boundary rates, for the computation of backwages, and further awarded the payment of separation pay in lieu of reinstatement which it found to be no longer feasible. However, petitioners' claims for damages were denied for lack of factual basis.[27]

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18 See Joint Position Paper for the Respondents dated December 3, 2008; id. at 146-153.
19 Id. at 154-156.
20 Id. at 148.
21 Id. at 149.
22 Id. at 188-192.
23 Id. at 190-191.
24 Id. at 191-192.
25 Dated April 27, 2009. Id. at 193-211.
26 Id. at 223-229.
27 Id. at 228-229.

In so ruling, the NLRC rejected respondents' defense that petitioners went on AWOL or had abandoned their work, holding that no evidence was presented to show that the latter were directed to report back for work.[28] It added that the intent to abandon work was negated by the filing of petitioners' previous complaints[29] to correct what they perceived were errors in the administration of the CBA, rationalizing that an employee who takes steps to protest his lay off cannot be said to have abandoned his work.[30] It further ruled that the unfair labor practice issue should not have been resolved by the LA since the issue was deemed impliedly removed by the dismissal of the complaint in the unfair labor practice case, and that a reading of the petitioners' position paper[31] in the instant suit showed that it delved only on the issue of illegal dismissal.[32]

Respondents' motion for reconsideration[33] was denied in a Resolution[34] dated June 21, 2010; thus, they elevated the matter to the CA on *certiorari*.[35]

The CA Ruling

In a Decision[36] dated March 30, 2012, the CA set aside the NLRC's March 9, 2010 Decision and reinstated the LA's March 20, 2009 Decision.

The CA concurred with the LA that petitioners' complaint in the illegal dismissal case failed to sufficiently establish the fact of their dismissal.[37] It observed that petitioners failed to name the person/s who prevented them from reporting for work or from using their taxi units. Also, the statement that "they were free to go if they did not want to follow company policy" neither automatically amount to dismissal; nor can it be interpreted as a termination of their employment.[38] Hence, since their absence from work was not authorized, the CA concluded that it was petitioners who had unilaterally decided to cut their ties with respondents. Moreover, it pointed out that petitioners' agreement to seek redress before the company's grievance committee is inconsistent with their claim for illegal dismissal.[39]

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28 Id. at 227.
29 Referring to NLRC Case No. NCR-08-11284-08 and NLRC Case No. NCR-09-13285-08.
30 *Rollo*, p. 227.
31 See Position Paper for the Complainants (herein petitioners) dated December 4, 2008; id. at 141-145.
32 See id. at 150. See also id. at 226.
33 Dated March 29, 2010. Id. at 230-239.
34 Id. at 252-254.
35 Dated August 27, 2010. Id. at 123-136.
36 Id. at 55-65.
37 Id. at 61.
38 Id. at 62.
39 Id. at 63.

Dissatisfied, petitioners' moved for reconsideration[40] which was, however, denied in a Resolution[41] dated July 11, 2012; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in ruling that the NLRC gravely abused its discretion in finding petitioners to have been illegally dismissed.

The Court's Ruling

The petition is meritorious.

Preliminarily, it should be pointed out that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[42] The Court is not a trier of facts[43] and does not routinely re-examine the evidence presented by the contending parties.[44] Nevertheless, the divergence in the findings of fact by the LA and the NLRC, on the one hand, and that of the CA on the other – as in this case – is a recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that petitioners were illegally dismissed.[45]

To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[46] It has also been held that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[47] The existence of such patent violation evinces that the assailed judicial or quasi-judicial act is tainted with the quality of whim and caprice, amounting to lack or excess of jurisdiction.

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40 Motion for reconsideration not attached to the *rollo*.
41 *Rollo*, pp. 68-69.
42 See Section 1, Rule 45 of the Rules of Court.
43 *Dimagan v. Dacworks United, Incorporated*, 677 Phil. 472, 480 (2011).
44 *Samar-Med Distribution v. NLRC*, G.R. No. 162385, July 15, 2013, 701 SCRA 148, 158.
45 See *Dimagan v. Dacworks United Incorporated*, supra note 43, at 480.
46 See *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014.
47 *Tagolino v. House of Representatives Electoral Tribunal*, G.R. No. 202202, March 19, 2013, 693 SCRA 574, 599-600.

Tested against these considerations, the Court finds that the CA committed reversible error in granting respondents' *certiorari* petition since the NLRC did not gravely abuse its discretion in finding petitioners to have been illegally dismissed. The NLRC's ruling cannot be equated to a capricious and whimsical exercise of judgment since its pronouncement of illegal dismissal squares with existing legal principles.

In a catena of cases, the Court has held that the *onus* of proving that an employee was **not dismissed** or, if dismissed, his dismissal was not illegal fully rests on the employer; the failure to discharge such *onus* would mean that the dismissal was not justified and, therefore, illegal.[48]

The doctrine can be traced back to the 1999 case of *Barros v. NLRC*,[49] where the Court denied the employer's argument that the seafarer voluntarily terminated his employment (on the claim that he himself requested repatriation), finding that since the fact of repatriation was not disputed, "it is incumbent upon [the employer] to prove by the quantum of evidence required by law that [the seafarer] was **not dismissed**, or if dismissed, that the dismissal was not illegal; otherwise, the dismissal would be unjustified."[50]

In the 2001 case of *Sevillana v. I.T. (International) Corp.*,[51] the Court later elucidated that Article 277 (b) of the Labor Code – which places upon the employer the burden of proving that the dismissal of an employee was for a valid or authorized cause – does not distinguish whether the employer admits or does not admit the dismissal:

> *When the NLRC declared that the burden of proof in dismissal cases shifts to the employer only when the latter admits such dismissal, the NLRC* ***ruled erroneously*** *in disregard of the law and prevailing jurisprudence on the matter*. As **correctly articulated** by the Solicitor General in his Comment to this petition, thus –
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> > **Article 277 (b) of the Labor Code puts the burden of proving that the dismissal of an employee was for a valid or authorized cause on the employer. It should be noted that the said provision of law <u>does not distinguish</u> whether the employer admits or does not admit the dismissal**.
>
> It is a well-known maxim in statutory construction that where the law does not distinguish, the court should not distinguish (*Robles v. Zambales Chromite Mining Co.*, 104 Phil. 688, 690 [1958]).

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48 See *Samar-Med Distribution v. NLRC*, supra note 44; *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518 (2005); *Asia Pacific Chartering (Phils.), Inc. v. Farolan*, 441 Phil. 776 (2002); *National Bookstore, Inc. v. CA*, 428 Phil. 235 (2002); and *Sevillana v. I.T. (International) Corp.*, 408 Phil. 570 (2001).

49 373 Phil. 635 (1999).

50 Id. at 640.

51 See supra note 48.

Moreover, Article 4 of the Labor Code provides:

> **Art. 4. *Construction in favor of labor*. – All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor**.

In *Eastern Shipping Lines, Inc. v. POEA* (248 Phil. 762, 776 [1988]), this Honorable Court held:

> **When the conflicting interest of labor and capital are weighed on the scales of social justice, the heavier influence of the latter must be counterbalanced by the sympathy and compassion the law must accord the underprivileged worker**. This is only fair if he is to be given the opportunity – and the right – to assert and defend his cause not as a subordinate but as a peer of management, with which he can negotiate on even plane. Labor is not a mere employee of capital but its active and equal partner.

Thus, it is clear that petitioner was illegally dismissed by private respondent Samir Maddah.

> Time and again we have ruled that where there is no showing of a clear, valid[,] and legal cause for termination of employment, the law considers the case a matter of illegal dismissal. The burden is on the employer to prove that the termination of employment was for a valid and legal cause. For an employee's dismissal to be valid, (a) the dismissal must be for a valid cause and (b) the employee must be afforded due process.[52] (Emphases and underscoring supplied; citations omitted)

Thus, on this score, case law states that the employer must not rely on the weakness of the employees' evidence but must stand on the merits of their own defense. [53]

Here, petitioners asserted that they were unceremoniously dismissed after they charged respondents of violating the CBA before the NLRC. Notably, **respondents did not refute such absence from work** but averred that it was petitioners that went on AWOL and abandoned their jobs after they filed their unfair labor practice complaint.

Abandonment connotes a deliberate and unjustified refusal on the part of the employee to resume his employment.[54] Notably, "abandonment of work does not *per se* sever the employer-employee relationship. It is merely a form of neglect of duty, which is, in turn, a just cause for termination of employment. The operative act that will ultimately put an end to this

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52 Id. at 583-584.

53 *AFI International Trading Corporation v. Lorenzo*, 561 Phil. 451, 456 (2007); *Carlos v. CA*, 558 Phil. 209, 221 (2007); and *Great Southern Maritime Services Corporation v. Acuña*, supra note 48, at 531.

54 *Tan Brothers Corporation of Basilan City v. Escudero*, G.R. No. 188711, July 3, 2013, 700 SCRA 583, 591.

relationship is the dismissal of the employee after complying with the procedure prescribed by law."[55]

For a valid finding of abandonment, two (2) elements must concur, namely: (*a*) the failure to report for work or absence without valid or justifiable cause; and (*b*) clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[56]

In *Dimagan v. Dacworks United, Inc.*,[57] the Court elucidated that absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. **Mere absence or failure to report for work is not tantamount to abandonment of work**.

In *RBC Cable Master System and/or Cinense v. Baluyot*,[58] the Court has recently held that **the employer has the burden of proof** to show a **deliberate** and **unjustified refusal** of the employee to resume his employment without any intention of returning.[59]

In this case, no proof was adduced by respondents to prove their theory of abandonment. Nothing on record would show that petitioners' absence from work was deliberate and unjustified, with a clear intent to sever the employment relationship. On the contrary, such intention is belied by the fact that shortly after petitioners ceased from working, they immediately instituted the complaint for illegal dismissal. An employee who forthwith takes steps to protest his layoff cannot, as a general rule, be said to have abandoned his work, for it is well-settled that the filing by an employee of a complaint for illegal dismissal is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[60] Indeed, it would be illogical for petitioners to have left their job and thereafter seek redress by filing a complaint against their employer.

Moreover, petitioners, prior to the filing of the illegal dismissal case, filed cases against respondents to correct what they perceived as errors in the administration of the CBA, *i.e.*, the CBA violation case and the unfair labor practice complaint. This bolsters the supposition that they actually desired to continue with their employment as they were enforcing their rights under the CBA. In fact, it would not be amiss to state that if respondents truly believed that petitioners had abandoned their job, they could have sent notices or show-cause letters requiring them to report for work or explain their

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55 *De Paul/King Philip Customs Tailor v. NLRC*, 364 Phil. 91, 102 (1999).
56 *De Guzman v. NLRC*, 564 Phil. 600, 610 (2007).
57 Supra note 43, at 482, citing *Hodieng Concrete Products v. Emilia*, 491 Phil. 434, 439 (2005), further citing *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 516 (2003).
58 596 Phil. 729 (2009).
59 Id. at 739-740.
60 *MZR Industries v. Colambot*, G.R. No. 179001, August 28, 2013, 704 SCRA 150, 161.

absences with a warning that their failure to do so would be construed as abandonment. The records are, however, bereft of any indication that respondents did so.

Finally, it is apt to clarify that petitioners' submission to the company's grievance machinery does not disprove illegal dismissal. What was referred to the grievance machinery was the unfair labor practice case filed by the petitioners *before* they were terminated, which contains issues that are different and distinct from their cause of action for illegal dismissal. It bears to note that Article 223 (c)[61] of the Labor Code,[62] as amended, is explicit that the LA shall refer to the grievance machinery and voluntary arbitration, as provided in the CBA, those cases that involve the interpretation of said agreements. Further, Article 272[63] of the same Code provides that all unresolved grievances arising from the interpretation or implementation of the CBA, including violations of said agreement, are under the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. As such, petitioners cannot be faulted in invoking the grievance machinery even after they had been dismissed in compliance with the provisions of the CBA, to which they were bound.

All told, since petitioners' abandonment was not proven by respondents in this case, the NLRC correctly ruled that the former were illegally dismissed. Consequently, the CA committed reversible error when it held otherwise and granted respondents' *certiorari* petition. Thus, following Article 293[64] of the Labor Code, as amended, petitioners are entitled to reinstatement and backwages. However, since reinstatement is no longer feasible in view of the enmity between the parties, the award of separation pay in lieu of reinstatement is in order.[65]

WHEREFORE, the petition is **GRANTED**. The Decision dated March 30, 2012 and the Resolution dated July 11, 2012 of the Court of Appeals in CA-G.R. SP No. 115626 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated March 9, 2010 and the Resolution

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61 Formerly Article 217 (c). As renumbered pursuant to Section 5 of Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLE 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES" (approved on July 26, 2010).

62 Presidential Decree No. 442 entitled "A DECREE INSTITUTING A LABOR CODE THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND INSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (approved on May 1, 1974).

63 Formerly, Article 261.

64 Formerly Article 279.

ART. 293. *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.

65 See *Polyfoam-RGC International Corporation v. Concepcion*, G.R. No. 172349, June 13, 2012, 672 SCRA 148, 164.

dated June 21, 2010 of the National Labor Relations Commission in NLRC LAC Case No. 05-001320-09 are **REINSTATED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
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