



Republic of the Philippines  
**Supreme Court**  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JUL 19 2016

THIRD DIVISION

INTEC CEBU INC., AKIHIKO  
KAMBAYASHI and WATARU  
SATO,

Petitioners,

-versus-

G.R. No. 189851

Present:

VELASCO, JR., J.,  
*Chairperson,*  
PERALTA,  
PEREZ,  
REYES, and  
JARDELEZA, JJ.

Promulgated:

June 22, 2016

*Wilfredo V. Lapitan*

HON. COURT OF APPEALS,  
ROWENA REYES, ROWENA  
ODIONG, HYDEE AYUDA,  
TERESITA BERIDO, CRISTINA  
LABAPIZ, GEMMA JUMAO-AS,  
SIGMARINGA BAROLO,  
LIGAYA B. ANADON,  
DONALINE DELA TORRE, JOY  
P. LOMOD, JACQUELINE A.  
FLORES, SUSAN T. ALIÑO,  
ANALYN P. ABALLE,  
CAROLINE A. LABATOS,  
LENITH F. ROMANO, LEONILA  
B. FLORES, CECILIA G.  
PAPELLERO, AGNES C. CASIO,  
VIOLETA O. MATCHETE,  
CANDIDA I. CRUJIDO,  
CLAUDIA B. CUTAMORA,  
ROSALIE R. POLICIOS,  
GENELYN C. MUÑEZ, ALOME  
MIGUE, ELSIE ALCOS,  
LYDIALYN B. GODINEZ AND  
MYRNA S. LOGAOS,

Respondents.

X-----X

DECISION

*18*

**PEREZ, J.:**

For our resolution is this Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Decision<sup>1</sup> dated 22 April 2009 and Resolution<sup>2</sup> dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 03471. The challenged decision reversed the judgment<sup>3</sup> of the National Labor Relations Commission (NLRC) and reinstatement of the Decision<sup>4</sup> of the Labor Arbiter. The Labor Arbiter ruled that respondent employees were constructively dismissed.

As culled from the records of the case, the following antecedent facts appear:

Petitioner Intec Cebu Inc. (Intec) is engaged in the manufacture and assembly of mechanical system and printed circuit board for cassette tape recorder, CD and CD ROM player while the following respondents were hired by Intec in 1997 and 1998, respectively, as production workers:

1. Rowena Reyes
2. Rowena R. Odiong
3. Hydee P. Ayuda
4. Teresita C. Berido
5. Cristina S. Labapiz
6. Gemma T. Jumao-as
7. Sigmaringa B. Barolo
8. Ligaya B. Anadon
9. Donaline dela Torre
10. Joy P. Lomod
11. Jacqueline A. Flores
12. Susan T. Alino
13. Analyn P. Aballe
14. Caroline A. Labatos
15. Lenith F. Romano
16. Leonila B. Flores
17. Cecilia G. Papellero
18. Agnes C. Casio
19. Violeta O. Matchete

<sup>1</sup> *Rollo*, pp. 35-45; Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Rodil V. Zalameda concurring.

<sup>2</sup> *Id.* at 76.

<sup>3</sup> *Id.* at 45-49; Penned by Commissioner Oscar S. Uy with Commissioners Violeta O. Bantug and Aurelio D. Menzon concurring.

<sup>4</sup> *Id.* at 50-63; Presided by Labor Arbiter Jermelina Passignajen-Ay-Ad.



20. Candida I. Crujido
21. Claudia B. Cutamora
22. Rosalie R. Policios
23. Genelyn C. Muñoz
24. Alome Migue,
25. Elsie Alcos
26. Lydialyn B. Godinez
27. Myrna S. Logaos
28. Jenife Espinosa
29. Maria Fe Tomo
30. Jocelyn Casiban
31. Ailyn Bagyao
32. Josephine Casino
33. Pilar Batajoy
34. Juliet Teofilo
35. Cheryl Sugarol
36. Rechel Daitol
37. Janette Quidong <sup>5</sup>

Respondents alleged that in 2005, their working days were reduced from 6 to 2-4 days. Intec apparently explained that reduction in working days was due to lack of job orders. However, respondents discovered that Intec hired around 188 contractual employees tasked to perform tasks which respondents were regularly doing. On 17 May 2006, private respondents claimed that they were effectively terminated from employment as shown in the Establishment Termination Report<sup>6</sup> submitted to the Department of Labor and Employment (DOLE). Two (2) days later, respondents filed a complaint for illegal dismissal.

Intec, for its part, claimed that the company was established to supply the required materials of Kenwood Precision Corporation (Kenwood). When Kenwood stopped its operations in the Philippines, Intec's business operations were severely affected, prompting Intec to set up a new product line exclusively for Pentax Cebu Phils. Corporation (Pentax). In December 2005, Intec's job orders from Pentax declined. On 4 January 2006, a memorandum was issued informing the employees that the working days would be reduced to 3-4 days from the normal 6 day-work week. The reduced work week policy was extended from April to June 2006. A corresponding memorandum was issued and a copy thereof was submitted to the DOLE.

---

<sup>5</sup> Id. at 64-65.

<sup>6</sup> Id. at 116-129.



On 17 May 2007, Labor Arbiter Jermelina Pasignajen Ay-ad declared that respondents were illegally dismissed and adjudged Intec and its officials liable for payment of separation pay and backwages. Labor Arbiter Ay-ad found that Intec hired casual employees to replace respondents. As regards the other monetary claims of respondents, Labor Arbiter Ay-ad ruled that Intec was able to prove, by presenting copies of the payroll, that private respondents were properly paid. The dispositive portion of the Labor Arbiter's Decision reads:

**WHEREFORE**, judgment is hereby rendered declaring complainants to have been illegally (constructively) dismissed from their employment. Consequently, the respondents **INTEC CEBU, INC., WATARU SATO AND AKIHIRO KAMBAYASHI**, are hereby directed to **PAY** jointly and severally the following complainants of the amounts indicated opposite their names as appearing in the attached Computation sheet consisting of two (2) pages, in concept of separation pay and backwages in the total amount of **SIX MILLION NINE HUNDRED SIXTY-SEVEN THOUSAND NINE HUNDRED TWENTY-FOUR PESOS (P6,967,924.00)**, in cash or in check payable to NLRC-RAB VII, Cebu City, through the Cashier of this Arbitration Branch within ten (10) days from receipt of this Decision.

All other claims are **DISMISSED** for insufficiency of evidence and for lack of jurisdiction. The claims and the case against respondents Feliciano Tero and Cheryl Inso are **DISMISSED** for lack of merit.<sup>7</sup>

On 14 December 2007, the NLRC set aside the Decision of the Labor Arbiter and held that Intec suffered tremendous financial losses which justified the reduction of working days. The dispositive portion of the decision reads:

**WHEREFORE**, the assailed decision is SET ASIDE and a new one entered declaring that complainants were not dismissed either actually or constructively. Considering, however, all attendant factors as discussed, respondent Intec Cebu, Inc. is hereby directed to give all thirty-seven (37) complainants their respective separation pay based on one-half month salary per year of service, or the grand total amount of **ONE MILLION ONE HUNDRED TWENTY-FIVE THOUSAND SEVEN HUNDRED THIRTY-FIVE PESOS (P1,125,735.00)** as earlier computed per assailed decision.

Complainants are NOT entitled to backwages.<sup>8</sup>



---

<sup>7</sup>

Id. at 62.

<sup>8</sup>

Id. at 48.

Intec elevated the matter to the Court of Appeals. In a Decision dated 22 April 2009, the Court of Appeals reversed the NLRC and reinstated the Decision of the Labor Arbiter with respect to respondents herein. As for Jenife Espinosa, Maria Fe Tomo, Jocelyn Casiban, Ailyn Bagyao, Josephine Casino, Pilar Batajoy, Juliet Teofilo, Cheryl Sugarol, Rechel Daitol and Janette Quidong, the case was dismissed for their failure to sign the verification of certification of non-forum shopping in their petition.

The instant petition is one for *certiorari* with Intec attributing grave abuse of discretion on the part of the Court of Appeals for the following acts:

**FIRST:** BY OVERTURNING ITS OWN RESOLUTION DISMISSING OUTRIGHT THE PRIVATE RESPONDENTS' PETITION FOR CERTIORARI, AND THEREBY GIVING DUE COURSE TO THEIR MOTION FOR RECONSIDERATION, WITH THE MANIFEST ADVANCE PRONOUNCEMENT THAT THE SAID MOTION WOULD EVENTUALLY BE GRANTED.

**SECOND:** BY DISREGARDING THE FACTUAL FINDINGS OF THE HONORABLE NATIONAL LABOR RELATINOS COMMISSION, 4<sup>TH</sup> DIVISION, CEBU CITY, THAT THE PRIVATE RESPONDENTS "WERE NOT DISMISSED EITHER ACTUALLY OR CONSTRUCTIVELY."

**THIRD:** BY CAPRICIOUSLY ASSERTING THAT THE FINANCIAL STATEMENTS OF THE PETITIONERS ARE SELF-SERVING AND OF DOUBTFUL VERACITY AS THEY WERE NOT PREPARED BY AN INDEPENDENT AUDITOR, WHICH ASSERTION IS IN EFFECT AN ASSAULT UPON THE INTEGRITY AND HONESTY OF THE AUDITOR.

**FOURTH:** BY CIRCUMVENTING THE DOCTRINE LAID DOWN BY THIS HONORABLE COURT IN THE CASE OF "JARDINE DAVIS, INC. vs. THE NLRC, ET AL.", G.R. 26272, JULY 28, 1999, THAT RESORT TO JUDICIAL REVIEW OF THE DECISION OF THE NLRC BY WAY OF SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS CONFINED ONLY TO ISSUES OF WANT OF JURISDICTION AND GRAVE ABUSE OF DISCRETION ON THE PART OF THE LABOR TRIBUNAL, **BARRING AN INQUIRY AS TO THE CORRECTNESS OF THE EVALUATION OF EVIDENCE WHICH HAS THE BASIS OF LABOR AGENCY IN REACHING A CONCLUSION;**

**FIFTH:** ASSUMING, WITHOUT HOWEVER ADMITTING, THAT THE PRIVATE RESPONDENTS ARE ENTITLED TO SEPARATION PAY AND BACKWAGES, AS DETERMINED BY THE LABOR ARBITER, THE COMPUTATION OF BENEFITS RECEIVABLE – WHICH CONTAINS GLARING SERIOUS ERROR, IF

REINSTATED, AS THE COURT OF APPEALS, 18<sup>TH</sup> DIVISION, WANTED IT TO BE.<sup>9</sup>

Intec claims that the reduction of the number of working days was undertaken to forestall business losses as proven by the audited financial statements of Intec for the years 2001-2006. Intec insists that the workers they employed from TESDA and Sisters of Mary were on-the-job trainees and they were already employed prior to the implementation of the reduced working days policy of the company. Moreover, Intec stresses that these workers were retained to enable the company to comply with the urgent off-and-on job orders of Pentax which could not be accomplished by the regular employees.

Intec reiterates that respondents voluntarily resigned or abandoned their work when they filed their application for leave following the issuance of the second memorandum extending the implementation of the reduced number of working days. According to Intec, respondents had categorically declared that they would no longer report for work.

Respondents urge this Court to affirm the findings of the Labor Arbiter and the Court of Appeals that they were constructively dismissed. Respondents refutes Intec's claim that it is suffering from business reverses when it just hired additional workers from TESDA and Sisters of Mary despite the fact that respondents were under reduced work days.

The charge of constructive dismissal is predicated on the claim that the implementation of the reduced work week is illegal.

The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.<sup>10</sup>

---

<sup>9</sup> Id. at 14-15.

<sup>10</sup> *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines. – Cebu Plant*, 709 Phil. 350, 364 (2013).



Thus, it was incumbent upon Intec to prove that the implementation of the reduced working days is valid and done in good faith. Intec claims that it implemented a reduction of work days scheme to forestall its losses.

Two memoranda were allegedly sent to the affected employees informing them of the reduction of work days. The first memorandum was dated 4 January 2006 and submitted to the DOLE only on 9 January 2006. In 2006, there was no specific rule or guideline covering the reduction of workdays. It was only in January 2009 where the DOLE issued Department Advisory No. 2, Series of 2009 which requires the employer to notify DOLE of the reduction of work days prior to its implementation. If the reportorial requirement in retrenchment under Article 283 is to be followed, the DOLE should be notified at least one month prior to the intended date of retrenchment. Be that as it may, Intec submitted its report after the reduction of workdays was implemented. Moreover, there is nothing on the records which show that a second notice was sent to the employees informing them of the extension of the reduced work days to June 2006.

Intec presented its financial statements from the years 2001-2006 to prove that the company was suffering from financial losses owing to the decline of its job orders. The summary of Intec's net income/loss for the years 2001-2006 is illustrated below:

**SUMMARY OF INTEC'S NET INCOME (LOSS) 31 APRIL 2001-2006**

|                | Net Income    | Net Loss        | Totals                       |
|----------------|---------------|-----------------|------------------------------|
| April 30, 2001 |               | (9,708,820.00)  | (9,708,820.00)               |
| April 30, 2002 |               | (5,928,636.00)  | (5,928,636.00)               |
| April 30, 2003 | 4,669,180.00  |                 | 4,669,180.00                 |
| April 30, 2004 | 4,726,326.00  |                 | 4,726,326.00                 |
| April 30, 2005 |               | (9,240,929.00)  | (9,240,929.00)               |
| April 30, 2006 | 9,568,674.00  |                 | 9,568,674.00                 |
| TOTAL          | 18,964,180.00 | (24,878,385.00) | (5,914,205.00) <sup>11</sup> |

An examination of Intec's financial statements for 2005-2006 shows that while Intec suffered a net loss of ₱9,240,929.00 in 2005, it earned a net income of ₱9,568,674.00 in 2006. The period covered in the financial statement of 2006 is from May 2005-April 2006. It was only on the 9<sup>th</sup> month of operation did Intec decide to carry out the reduced work day scheme. Note that the reduced work day scheme was implemented only in January 2006. Unless evidence is shown by the company that the income for

<sup>11</sup> Rollo, p. 77.

2006 was earned only between the months of January to April, it is safe to presume that at the time the reduced work day scheme was being implemented, the company was still benefiting from its gains as shown in the numbers for 2006.

Furthermore, the loss incurred in 2005 may be attributed to the acquisition of property and equipment amounting to ₱9,218,967.00<sup>12</sup> in 2005. There is also no indication in the financial statements, much less an observation made by the independent auditor, that a reduction in demand would necessitate a reduction in the employees' work days.

We cannot give weight to the evidence presented by Intec to prove the slump in demand. First, the two-page delivery data are lacking in specifics. The report did not indicate when it was prepared. Second, the report was prepared by Intec employees and approved by their President. Third, the report appeared to be mere projections because it was not supported by corresponding sales or delivery receipts. The actual sales may vary from the projected demand, thus, the report cannot be made as basis of a slump in demand or a slow-down.

In addition, the hiring of 188 workers, whether they be trainees or casual employees, necessarily incurred cost to the company. No proof was submitted that these newly-hired employees were performing work different from the regular workers.

In sum, there is no reason to implement a cost-cutting measure in the form of reducing the employees' working days.

Intec committed illegal reduction of work hours. Constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee.<sup>13</sup>

Intec's unilateral and arbitrary reduction of the work day scheme had significantly greatly reduced respondents' salaries thereby rendering it liable for constructive dismissal.

---

<sup>12</sup> Id. at 102.

<sup>13</sup> *Memer Corporation, Inc. v. National Labor Relations Commission*, G.R. No. 193421, 4 June 2014, 725 SCRA 1, 13.





There is no merit to Intec's charge of abandonment against respondents. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. Furthermore, it is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.<sup>14</sup>

We affirm the Court of Appeals' finding that there is no proof that respondents committed unauthorized absences or had otherwise refused to work. The complaint for constructive dismissal is the best evidence against abandonment because the filing of a complaint for illegal dismissal is incompatible to abandonment.

Lastly, we note that Intec availed of the wrong mode of appeal. For *certiorari* to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.<sup>15</sup>

Well-settled is the rule that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.<sup>16</sup>

---

<sup>14</sup> *MZR Industries v. Colambot*, 716 Phil. 617, 627-628 (2013).

<sup>15</sup> *Spouses Dacudao v. Secretary Gonzales*, 701 Phil. 96, 107 (2013).

<sup>16</sup> *Tan v. Spouse Antazo*, 659 Phil. 400, 404 (2011).

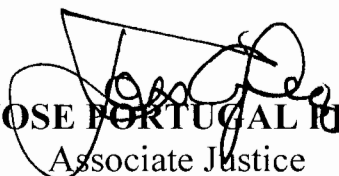


A writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party.<sup>17</sup> In this case, appeal under Rule 45 of the Rules of Court was clearly available to Intec.

Finding no grave abuse of discretion in this case, the *certiorari* petition should be dismissed.


**WHEREFORE**, the instant petition is **DISMISSED** and the Decision dated 22 April 2009 and Resolution dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 03471 are **AFFIRMED**.

**SO ORDERED.**

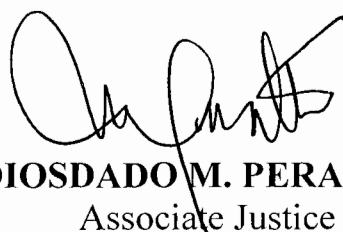


**JOSE PORTUGAL PEREZ**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson




**DIOSDADO M. PERALTA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

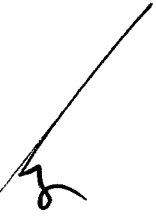
<sup>17</sup>

*Cathay Pacific Steel Corp. v. Court of Appeals*, 531 Phil. 620, 631 (2006).

  
**FRANCIS H. JARDELEZA**  
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.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division  
JUL 12 2016

