Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DEE JAY'S INN AND CAFÉ and/or MELINDA FERRARIS,
Petitioners,

- *versus* -

MA. LORINA RAÑESES,
Respondent.

G.R. No. 191825

Present:

SERENO,* *CJ.*,
LEONARDO-DE CASTRO,** *J.*,
Acting Chairperson,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

OCT 05 2016

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioners Dee Jay's Inn and Café (DJIC) and Melinda Ferraris (Ferraris) assailing the following: 1) Decision[1] dated April 29, 2009 of the Court of Appeals in CA-G.R. SP No. 01877-MIN, which set aside the Resolutions dated August 30, 2006[2] and November 30, 2006[3] of the National Labor Relations Commission (NLRC) in NLRC CA No. M-009173-06 and ordered the remand of the case to the Labor Arbiter for the computation of the monetary claims due respondent Ma. Lorina P. Rañeses who was declared to have been illegally dismissed by petitioners; and 2) Resolution[4] dated February 8, 2010 of the appellate court in the same case, which denied the Motion for Reconsideration of petitioners and the Motion for Partial Reconsideration of respondent.

The factual antecedents are as follows:

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* On official leave.

** Per Special Order No. 2383 dated September 27, 2016.

1 *Rollo*, pp. 45-58; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

2 Id. at 63-70; penned by Commissioner Jovito C. Cagaanan with Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen concurring.

3 Id. at 60-61.

4 Id. at 21-22.

Petitioner DJIC started its operation on December 8, 2002. It was registered under Republic Act No. 9178 or the Barangay Micro Business Enterprises Act. Petitioner Ferraris, the owner and manager of petitioner DJIC, engaged the services of respondent and a certain Moonyeen J. Bura-ay (Moonyeen) as cashier and cashier/receptionist, respectively, for a monthly salary of ₱3,000.00 each.[5]

Respondent filed before the Social Security System (SSS) Office a complaint against petitioner Ferraris for non-remittance of SSS contributions. Respondent also filed before the NLRC City Arbitration Unit (CAU) XII, Cotabato City, a complaint against petitioners for underpayment/nonpayment of wages, overtime pay, holiday pay, service incentive leave pay, 13th month pay, and moral and exemplary damages, docketed as NLRC CAU Case No. RAB 12-01-00026-05.[6]

After conciliation efforts by the Labor Arbiter failed, the parties in NLRC CAU Case No. RAB 12-01-00026-05 were ordered to submit their respective position papers. On September 8, 2005, respondent filed her position paper, which already included a claim for illegal dismissal.[7]

Respondent averred that sometime in January 2005, she asked from petitioner Ferraris the latter's share as employer in the SSS contributions and overtime pay for the 11 hours of work respondent rendered per day at petitioner DJIC. Petitioner Ferraris got infuriated and told respondent to seek another employment. This prompted respondent to file her complaints before the SSS Office and NLRC CAU XII. After learning of respondent's complaints, petitioner Ferraris terminated respondent's employment on February 5, 2005. Respondent submitted the Joint Affidavit of Mercy Joy Christine Bura-ay (Mercy) and Mea Tormo (Mea) to corroborate her allegations.[8]

Petitioners countered that respondent and Moonyeen were not terminated from employment. According to petitioners, petitioner DJIC incurred a shortage of ₱400.00 in its earnings for February 4, 2005. That same day, petitioner Ferraris called respondent and Moonyeen for a meeting but the two employees denied incurring any shortage. Petitioner Ferraris lost her temper and scolded respondent and Moonyeen, and required them to produce the missing ₱400.00. However, respondent and Moonyeen merely walked out and did not report back to work anymore. To support their version of events, petitioners submitted the affidavit of Ma. Eva Gorospe (Eva), another employee of petitioners.

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5 Id. at 64.
6 Id. at 46.
7 Id.
8 Id. at 46-47.

Petitioners further claimed that it was respondent herself who requested that the SSS contributions not be deducted from her salary because it would only diminish her take-home pay. Thus, respondent received from petitioners the amount of SSS contributions, with the undertaking that she would comply with the law by paying the SSS premiums herself as self-employed. Respondent recorded her weekly wages and payment of SSS premiums in a notebook, which had since been missing.[9]

Petitioners additionally averred that since January 2002, respondent had been living in petitioner Ferraris's ancestral home for free. Petitioner Ferraris even shouldered the cost of ₱2,500.00 to have electrical connections installed at the house for the use of respondent and her family. From 2002 to 2004, petitioner Ferraris admonished respondent several times for bringing her child to work, which prevented respondent from concentrating on her job at petitioner DJIC.[10]

On February 21, 2006, the Labor Arbiter rendered a Decision[11] in favor of petitioners, but granted respondent's claim for 13th month pay.

The Labor Arbiter did not give much credence to respondent's charge of illegal dismissal because there was no positive or unequivocal act on the part of petitioners to support the assertion that respondent was dismissed, thus:

> The resolution of this case hinges on our determination of whether or not [respondent] was *illegally dismissed for her* to be entitled to her money claims.
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> x x x x
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> In her position paper, the [petitioner Ferraris] categorically denied having terminated [respondent]. The [respondent] after being reprimanded for shortages, she ceased to report for work on February 5, 2005. This fact is attested to by [petitioners'] witness, a co-employee of the [respondent] Ma. Eva Gorospe to the effect that [respondent] and co-employee Moonyeen Bura-ay scolded them for shortages during a meeting on February 5, 2005. The witness attested that they were not terminated but they did not report for work anymore the following day up to the present. This gives weight to the fact that in her complaint no illegal dismissal was contemplated by [respondent].
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> The records, on the other hand, is (sic) bereft of any evidence linking to the allegation of dismissal. In fact, there is no positive or unequivocal act on the part of [petitioners] that would buttressed (sic) a fact that [respondent] was dismissed. Thus, the High Court said:
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> > *"While the general rule in dismissal cases is that the employer has the burden to prove the dismissal was for just or authorized causes and after due process, said*

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9 Id. at 76.
10 Id. at 75.
11 Id. at 72-79; penned by Labor Arbiter Ruben B. Garcia.

> *burden is necessarily shifted to the employee if the alleged dismissal is denied by the employer because a dismissal is supposedly a positive and unequivocal act by the employer. Accordingly, it is the employee that bears the burden of proving that in fact he was dismissed. An unsubstantiated allegation on the part of the employee cannot stand as the same offends due process."* (De Paul / King Philip Customs Tailor, et al vs. NLRC, G.R. No. 129824, March 10, 1999) Underscoring Ours.

The [respondent] did not controvert the [petitioners'] categorical denial and more, she failed to demonstrate the burden. As such, the allegations of the [respondent] to the effect that she was dismissed remains (sic) gratuitous. In fact the High Court in the same vein said:

> *"The burden of proof lies upon who asserts it, not upon who denies, since by the nature of things, he who denies a fact cannot produce any proof of it."* (Sevillana vs. I.T. International Corp., et al., POEA-NLRC Case No. L-88-12-1048, 26 March 1991; Aguilar vs. Maning International Corp., et al., POEA-NLRC Case No. L-88-08-728, October 8, 1990).

In the case at Bench, the positive act and/or the unequivocal act of termination is the *Factum Probandum* which the [respondent] miserably failed to demonstrate.[12]

The Labor Arbiter also pointed out a procedural defect in respondent's charge of illegal dismissal against petitioners:

> Besides, the [respondent] did not aver illegal dismissal as the same was not pleaded in her verified complaint. She cannot be allowed to prove the same. The rule is clear that the *"verified position papers shall cover only those claims and causes of action raised in the complaint x x x" (Rule V, Section 4, Par. 2, Rules of Procedure of the NLRC, as Amended).* Incidentally, there is no proof linking to the allegation of dismissal.[13]

The Labor Arbiter also noted that petitioner DJIC, as a registered Barangay Micro Business Enterprise (BMBE), was exempted from the coverage of the Minimum Wage Law.

The Labor Arbiter decreed in the end:

> WHEREFORE, premises laid, judgment is hereby rendered dismissing the complaint in the instant case for lack of cause of action and for not being impressed with merit.
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> However, [petitioners] are hereby ordered, jointly and severally, to pay [respondent] the amount of ***Five Hundred Pesos (Php500.00)*** representing 13th month pay differential.[14]

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12 Id. at 77-78.
13 Id. at 78.
14 Id. at 79.

At around the same time, Moonyeen lodged before the NLRC CAU XII a complaint against petitioners for unpaid overtime pay, docketed as RAB 12-01-00031-05. Later on, Moonyeen similarly contended that she was illegally dismissed by petitioners and demanded the payment of her salary differential, holiday premium pay, service incentive leave pay, 13th month pay, and moral damages.[15] The Labor Arbiter, in a Decision dated February 20, 2006, subsequently dismissed Moonyeen's complaint, also finding that Moonyeen miserably failed to demonstrate the positive or unequivocal act of termination of her employment; but petitioners were liable for underpayment of Moonyeen's 13th month pay in the amount of ₱500.00.

Respondent and Moonyeen timely filed their respective appeals before the NLRC, docketed as NLRC CA Nos. M-009173-06 and M-009174-06. Their appeals were eventually consolidated.

The NLRC issued a Resolution dated August 30, 2006, dismissing the appeals of respondent and Moonyeen for lack of merit and affirming *en toto* the Labor Arbiter's Decisions dated February 20, 2006 and February 21, 2006. The NLRC reasoned:

> We uphold the findings of the Labor Arbiter. The records do not reveal of any written document to show that [respondent and Moonyeen] were indeed dismissed. On the other hand, [petitioners] vehemently denied having dismissed them. Therefore, under these given facts, to the [respondent and Moonyeen] is shifted the burden to prove that their dismissal had, in fact, taken place. The rule as exemplified by the Supreme Court is: "Where the employee was not notified that he had been dismissed from employment neither was [he] prevented from returning to his work, there is no illegal dismissal ["] (Chong Guan Trading vs. NLRC, 172 SCRA 831). For, indeed, the records do not bare any positive or unequivocal act of [petitioners] notifying them of the termination of their services, as observed by the Labor [Arbiter] a quo. It is our view that [respondent and Moonyeen] miserably failed to establish by substantial evidence that they were dismissed. Their verbal claim supported by self-serving and biased statements of two (2) witnesses, namely, Mercy Bura-ay and Mea Tormon, who like them have an ax to grind being complainants themselves against the same [petitioners], did not substantially prove their case. [Respondent and Moonyeen] did not deny [petitioners'] allegation that they x x x were also the witnesses of Mercy Bura-ay and Mea Tormon in a separate case the latter filed against the same [petitioners]. Thus, we find more expressive of truth the verbal declaration of [petitioners], supported by a sworn statement x x x of one witness, Eva Gorospe, that after [respondent and Moonyeen] were reprimanded, made to explain and produce the Php400.00 shortage of their daily collection, they voluntarily ceased to report to work anymore. We emphasize, it is not shown in the records that Gorospe was motivated by ill-will or was coerced by the [petitioners] into executing her sworn statement. [Respondent and Moonyeen] did not dispute that they were investigated by [petitioner Ferraris] on February 4, 2005 regarding shortages of their collections. Such investigation cannot by any stretch of

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15 Id. at 64.

> imagination be considered dismissal of the [respondent and Moonyeen]. On the contrary, we can only surmise that the investigation generated a force compelling enough for [respondent and Moonyeen] to quit working [for petitioners]. Their failure to report for work is an act they alone must bear the consequences of. By their own act, they bargained away their security of tenure under the law.
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> [Respondent and Moonyeen's] money claims of overtime pay, holiday pay and service incentive leave pay must likewise fail. Overtime pay and holiday pay are some of the *extraordinary claims* the burden of proof of which is shifted to the worker who must prove he rendered overtime work or that he worked during holidays (Julio Cagampan, et al vs. NLRC, et al., 195 SCRA 533). No proof is placed on record by [respondent and Moonyeen] to prove their claimed overtime and holiday work. [Respondent and Moonyeen] cannot also avail of entitlement of service incentive pay under Article 95 of the Labor Code who regularly employs more than ten (10) workers. Section 1, Rule of Book III of the Implementing Rules of the Labor Code explicitly exempts establishments regularly employing less than ten (10) workers from the coverage of the said provision. Employing less than ten (10) workers, [petitioners are] thus exempted under the law.
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> However, we see no reason to disturb the award of 13th month pay. This is an admitted claim and the [respondent and Moonyeen] must be entitled to the same.[16]

Respondent filed a Motion for Reconsideration which was denied by the NLRC in a Resolution dated November 30, 2006.

Respondent sought recourse from the Court of Appeals by filing a Petition for *Certiorari*, imputing grave abuse of discretion on the part of the NLRC in its issuance of the Resolutions dated August 30, 2006 and November 30, 2006 in NLRC CA No. M-009173-06. The Petition was docketed as CA-G.R. SP No. 01877-MIN.

In its Decision dated April 29, 2009, the Court of Appeals granted respondent's Petition.

On the basis that any doubt should be resolved in favor of labor, the Court of Appeals held that respondent was illegally dismissed:

> We are constrained to review [NLRC's] exercise of its discretion in affirming the Labor Arbiter's findings on abandonment because such conclusion does not appear to have been substantially proved and the same is repugnant to both law and jurisprudence.
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> The Labor Arbiter, relying on the alleged ruling in *De Paul*, contended that the employee has the burden to prove the fact of dismissal when such dismissal was denied by the employer, as when the defense of the employee's abandonment was interposed. Thus, in refusing to consider [respondent's] cause of action for illegal dismissal, the Labor Arbiter found that [respondent] miserably failed to demonstrate any such

16 Id. at 68-69.

positive or unequivocal act on the part of Ferraris in terminating [respondent].

Reliance on *De Paul* seemed imprudent and misplaced, if not, devious because *De Paul* was indefensibly misquoted in the Labor Arbiter's Decision, in that the alleged ruling as quoted therein does not appear in the original printed text of the case in Volume 3[0]4 of the Supreme Court Reports Annotated (SCRA), pages 448-459.

Furthermore, the Labor Arbiter's contention on the shifting of the burden of proof is incongruous with prevailing jurisprudence which requires the concurrence of two (2) elements before an employee may be guilty of abandonment. The first is the failure to report for work or absence without valid or justifiable reason. The second is a clear intention to sever the employer-employee relationship. The second element is the more determinative factor and must be evinced by overt acts. Likewise, **the burden of proof is on the employer to show the employee's clear and deliberate intent to discontinue his employment without any intention of returning;** mere absence is not sufficient.

We agree with the observation that the joint testimony of Mercy Bura-ay and Mea Torno in favor of [respondent], apparently returning a favor to [respondent] who also testified for Bura-ay and Torno in a separate labor case against Ferraris, is tainted with bias and, thus, cannot credibly and substantially prove the fact of [respondent's] alleged dismissal. However, neither should the testimony of Eva Gorospe, Ferraris's lone witness, deserve much probative weight in proving that [respondent] abandoned her job because mere failure to report back to work on the part of [respondent], as Gorospe testified, falls short of the substantial evidence required in proving the existence of abandonment.

Therefore, the Labor Arbiter, as well as [the NLRC], failed to appreciate that doubts shroud the evidence presented by both parties, and both tribunals appeared oblivious of the dictates of jurisprudence that such doubts should be resolved in favor of the worker, as was pronounced in *Nicario v. NLRC, et al.*:

> "It is a well-settled doctrine, that if **doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter**. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed policy of the State to give maximum aid and protection of labor."

The foregoing doctrine should be applied in this case, especially since Ferraris did not prove by substantial evidence a clear and deliberate intent on the part of [respondent] to discontinue her employment without any intention of returning.

Furthermore, since there is an equipoise of evidence, as there is doubt as to where the evidence of the parties tilt, Ferraris, the employer

> who has the burden of proving not only abandonment but more importantly just cause for dismissal, is deemed to have failed in discharging such burden.
>
> Thus, We find no legal impediment in ruling that [respondent] was in fact terminated and such termination was done illegally or without any valid cause, and in patent violation of the procedural requirements of due process, anchored upon Ferraris's failure to discharge her burden of proving abandonment by [respondent], including, as a corollary, the burden of proving just cause for [respondent's] termination. In view of [respondent's] allegation that she was dismissed on February 5, 2005, We shall reckon [respondent's] dismissal on said date.[17] (Citations omitted.)

The Court of Appeals, citing Rule V, Section 7(b) of the 2005 Rules of Procedure of the NLRC and *Tegimenta Chemical Phils. v. Buensalida*,[18] also ruled that the filing of the position paper was the operative act which foreclosed the raising of other matters constitutive of the cause of action; and respondent, by averring facts constituting her alleged dismissal in her position paper, had properly pleaded a cause of action for illegal dismissal, which should have been given cognizance by the Labor Arbiter.

For being illegally dismissed, the Court of Appeals found respondent entitled to the following:

> Corollary to our finding that [respondent] was in fact illegally terminated, [petitioners] should be ordered to **reinstate [respondent]** without loss of seniority rights and other privileges, or, in case reinstatement would no longer be feasible, to pay [respondent] **separation pay** equivalent to one (1) month salary for every year of service, with payment in either cases of [respondent's] **full backwages**, inclusive of allowances, and her other benefits or their monetary equivalent, computed from February 5, 2005, the date [respondent] was illegally dismissed, up to the time of her actual reinstatement.
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> With respect [to] the other monetary claims, We find no cogent reason to disturb the ruling of the Labor Arbiter in awarding [respondent] only the amount of Php500.00 representing [respondent's] 13th month pay differential.[19]

The dispositive portion of the judgment of the Court of Appeals reads:

> WHEREFORE, premises considered, the petition is GRANTED. The Resolution promulgated on August 30, 2006 by [the NLRC], affirming *in toto* the February 21, 2006 Decision of the Labor Arbiter dismissing [respondent's] complaint, including the November 30, 2006 Resolution denying a motion for reconsideration thereof, are SET ASIDE. The case should be remanded to the Labor Arbiter for the proper computation of the monetary awards due to [respondent] as a result of her illegal dismissal. The Labor Arbiter's grant of an award in the amount of

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17 Id. at 53-56.
18 577 Phil. 534, 542 (2008).
19 *Rollo*, p. 57.

> Php500.00, representing [respondent's] 13th month pay differential, is maintained.[20]

Petitioners and respondent filed a Motion for Reconsideration and Motion for Partial Reconsideration, respectively, which were both denied by the Court of Appeals in a Resolution dated February 8, 2010.

Petitioners now come before this Court via the instant Petition for Review on *Certiorari* assigning a couple of errors on the part of the Court of Appeals, *viz.*:

> 1. THE COURT OF APPEALS ERRED IN CONCLUDING THAT A CAUSE OF ACTION BELATEDLY INCLUDED IN THE POSITION PAPER AND NOT ORIGINALLY PLEADED IN THE COMPLAINT CAN STILL BE GIVEN COGNIZANCE.
>
> 2. THE COURT OF APPEALS ERRED IN FINDING THAT THE NLRC ACTED WITH GRAVE ABUSE OF DISCRETION ON THE BASIS THAT THE DECISION LACKED FACTUAL PROOF AND ALSO IGNORED ESTABLISHED JURISPRUDENCE.[21]

Petitioners argue that the present case is governed by the 2005 NLRC Rules of Procedure, which had already supplanted the 2002 NLRC Rules of Procedure. Under the 2005 NLRC Rules of Procedure, only the causes of action that were pleaded in a complaint would be entertained. Petitioners, in addition, assert that respondent was not dismissed from employment; instead, respondent did not report for work anymore after petitioner Ferraris scolded respondent and Moonyeen on February 4, 2005 regarding the ₱400.00 shortage in the earnings of petitioner DJIC for the day. Petitioners insist that they never used "abandonment" as a defense in the termination of respondent's employment; and they merely alleged that respondent never returned to work anymore after the scolding incident.

The Court first addresses the procedural issue raised by petitioners.

The record shows that respondent filed her complaint sometime in January 2005 and position paper on September 8, 2005. During said period, the 2002 NLRC Rules of Procedure, as amended by NLRC Resolution No. 01-02, was still in effect. The 2005 Revised Rules of Procedure of the NLRC only took effect on January 7, 2006.[22]

Section 4, Rule V of the 2002 NLRC Rules of Procedure, as amended, provides:

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20 Id. at 57-58.

21 Id. at 9.

22 Fifteen (15) days from its publication in Philippine Daily Inquirer and Philippine Star on December 23, 2005.

> Section 4. *Submission of Position Papers/Memoranda.* – Without prejudice to the provisions of the last paragraph, Section 2, of this Rule, the Labor Arbiter shall direct both parties to submit simultaneously their position papers with supporting documents and affidavits within an inextendible period of ten (10) days from notice of termination of the mandatory conference.
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> These **verified position papers** to be submitted shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. **The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents.** (Emphases supplied.)

Stated differently, the parties could allege and present evidence to prove any cause or causes of action included, not only in the complaint, but in the **position papers** as well. As the Court explained in *Tegimenta Chemical Phils. v. Buensalida*[23]:

> [T]he complaint is not the only document from which the complainant's cause of action is determined in a labor case. Any cause of action that may not have been included in the complaint or position paper, can no longer be alleged after the position paper is submitted by the parties. In other words, **the filing of the position paper is the operative act which forecloses the raising of other matters constitutive of the cause of action. This necessarily implies that the cause of action is finally ascertained only after both the complaint and position paper are properly evaluated.**
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> A cause of action is the delict or wrongful act or omission committed by the defendant in violation of the primary right of the plaintiff. A complaint before the NLRC does not contain specific allegations of these wrongful acts or omissions which constitute the cause of action. All that it contains is the term by which such acts or omissions complained of are generally known. It cannot therefore be considered as the final determinant of the cause of action. (Citation omitted.)

In the more recent *Our Haus Realty Development Corporation v. Parian*,[24] which cited *Samar-Med Distribution v. National Labor Relations Commission*,[25] the Court further expounded:

> *A claim not raised in the pro forma complaint may still be raised in the position paper.*
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> Our Haus questions the respondents' entitlement to SIL pay by pointing out that this claim was not included in the *pro forma* complaint filed with the NLRC. However, we agree with the CA that such omission

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23 Supra note 18 at 542.

24 G.R. No. 204651, August 6, 2014, 732 SCRA 351, 374-375.

25 714 Phil. 16, 27-28 (2013).

does not bar the labor tribunals from touching upon this cause of action since this was raised and discussed in the respondents' position paper. In *Samar-Med Distribution v. National Labor Relations Commission*, we held:

> Firstly, petitioner's contention that the validity of Gutang's dismissal should not be determined because it had not been included in his complaint before the NLRC is bereft of merit. The complaint of Gutang was a mere checklist of possible causes of action that he might have against Roleda. Such manner of preparing the complaint was obviously designed to facilitate the filing of complaints by employees and laborers who are thereby enabled to expediently set forth their grievances in a general manner. **But the non-inclusion in the complaint of the issue on the dismissal did not necessarily mean that the validity of the dismissal could not be an issue.** The rules of the NLRC require the submission of verified position papers by the parties should they fail to agree upon an amicable settlement, and bar the inclusion of any cause of action not mentioned in the complaint or position paper from the time of their submission by the parties. In view of this, Gutang's **cause of action should be ascertained not from a reading of his complaint alone but also from a consideration and evaluation of both his complaint and position paper**. (Citations omitted.)

The Court observes herein that respondent could not have included the charge of illegal dismissal in her complaint because she filed said complaint (which were for various money claims against petitioners) in **January 2005**, and petitioners purportedly dismissed her from employment only on **February 5, 2005**. However, since respondent subsequently alleged and argued the matter of her illegal dismissal in her position paper filed on September 8, 2005, then the Labor Arbiter could still take cognizance of the same.

Nevertheless, on the substantive issue of whether or not respondent was illegally dismissed, the Court answers in the negative.

The Court of Appeals was correct in its observation that the Labor Arbiter's quote on the shifting of the burden of proof in dismissal cases, supposedly from *De Paul*, could not actually be found in said case. Yet, it does not necessarily mean that the Labor Arbiter's ruling on the matter was fallacious or entirely baseless.

In *Exodus International Construction Corporation v. Biscocho*,[26] the Court pronounced that "[i]n illegal dismissal cases, it is incumbent upon the employees to first establish the fact of their dismissal before the burden is shifted to the employer to prove that the dismissal was legal." The Court then explained that:

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[26] 659 Phil. 142, 146 (2011).

> "[T]his Court is not unmindful of the rule that in cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause." But "[b]efore the [petitioners] must bear the burden of proving that the dismissal was legal, [the respondents] must first establish by substantial evidence" that indeed they were dismissed. "[I]f there is no dismissal, then there can be no question as to the legality or illegality thereof."[27] (Citations omitted.)

The Court, in *Cañedo v. Kampilan Security and Detective Agency, Inc.*,[28] expressly recognized the rule that:

> In illegal dismissal cases, "[w]hile the employer bears the burden x x x to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service." The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive and convincing. Thus, in this case, it is incumbent upon petitioner to prove his claim of dismissal. (Citations omitted.)

The Court reiterated in *Brown Madonna Press, Inc. v. Casas*[29] that "[i]n illegal dismissal cases, the employer has the burden of proving that the employee's dismissal was legal. However, to discharge this burden, the employee must first prove, by substantial evidence, that he had been dismissed from employment."

It bears to point out that in the case at bar, the Labor Arbiter, the NLRC, and even the Court of Appeals, all consistently found that respondent was not able to present substantial evidence of her dismissal. They all rejected the joint affidavit of Mercy and Mea, submitted by respondent, for being partial and biased. It appears that Mercy and Mea executed said affidavits to return a favor as respondent testified for them in their own cases against petitioners. The Court of Appeals only deviated from the findings of the Labor Arbiter and the NLRC by also disregarding Eva's affidavit, submitted by petitioners to corroborate their allegations, for being insufficient to prove abandonment. The appellate court then applied the equipoise doctrine: with all things considered equal, all doubts must be resolved in favor of labor, that is, respondent.

Given the jurisprudence cited in the preceding paragraphs, the application by the Court of Appeals of the equipoise doctrine and the rule that all doubts should be resolved in favor of labor was misplaced. Without the joint affidavit of Mercy and Mea, there only remained the bare allegation of respondent that she was dismissed by petitioners on February 5, 2005, which hardly constitute substantial evidence of her dismissal. As both the Labor Arbiter and the NLRC held, since respondent was unable to establish with substantial evidence her dismissal from employment, the burden of

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27 Id. at 154.
28 715 Phil. 625, 635 (2013).
29 G.R. No. 200898, June 15, 2015.

proof did not shift to petitioners to prove that her dismissal was for just or authorized cause.

As pointed out by petitioners, they never raised abandonment as a defense as there was no dismissal in the first place. Petitioners did not argue that respondent abandoned her work which justified her dismissal from employment. Petitioners merely alleged the fact that respondent, after being scolded on February 4, 2005, no longer returned to work beginning February 5, 2005, which was corroborated by one of petitioners' employees, Eva, in her affidavit.

Similar to this case is the factual background in *Nightowl Watchman & Security Agency, Inc. v. Lumahan*,[30] in which Lumahan, the employee, asserted, but failed to prove, that he was constructively dismissed; while Nightowl, the employer, alleged that Lumahan did not report for work anymore by a certain date but did not raise abandonment as a defense. Quoted extensively below are the relevant portions from the ruling of the Court in *Nightowl*:

> ***The CA erred in finding grave abuse of discretion in the NLRC's factual conclusion that Lumahan was not dismissed from work.***
>
> **In every employee dismissal case, the employer bears the burden of proving the validity of the employee's dismissal, *i.e.*, the existence of just or authorized cause for the dismissal and the observance of the due process requirements. The employer's burden of proof, however, presupposes that the employee had in fact been dismissed, with the burden to prove the fact of dismissal resting on the employee. Without any dismissal action on the part of the employer, valid or otherwise, no burden to prove just or authorized cause arises.**
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> We find that the CA erred in disregarding the NLRC's conclusion that there had been no dismissal, and in immediately proceeding to tackle Nightowl's defense that Lumahan abandoned his work.
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> **The CA should have first considered whether there had been a dismissal in the first place. To our mind, the CA missed this crucial point as it presumed that Lumahan had actually been dismissed. The CA's failure to properly appreciate this point – which led to its erroneous conclusion – constitutes reversible error that justifies the Court's exercise of its factual review power.**
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> We support the NLRC's approach of first evaluating whether the employee had been dismissed, and find that it committed no grave abuse of discretion in factually concluding that Lumahan had not been dismissed from work.
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> **It should be remembered that in cases before administrative and quasi-judicial agencies like the NLRC, the degree of evidence**

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30 G.R. No. 212096, October 14, 2015.

required to be met is substantial evidence, or such amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. In a situation where the word of another party is taken against the other, as in this case, we must rely on substantial evidence because a party alleging a critical fact must duly substantiate and support its allegation.

We agree with the NLRC that Lumahan stopped reporting for work on April 22, 1999, and never returned, as Nightowl sufficiently supported this position with documentary evidence.

In contrast, Lumahan failed to refute, with supporting evidence, Nightowl's contention that he did not report for work on April 22, 1999, and failed as well to prove that he continued working from such date to May 15, 1999. What we can only gather from his claim was that he did not work from May 16, 1999 to June 8, 1999; but this was after the substantially proven fact that he had already stopped working on April 22, 1999.

In addition, we find that Lumahan failed to substantiate his claim that he was constructively dismissed when Nightowl allegedly refused to accept him back when he allegedly reported for work from April 22, 1999 to June 9, 1999. In short, Lumahan did not present any evidence to prove that he had, in fact, reported back to work.

x x x x

In the case before us, the CA clearly ignored certain compelling facts and misread the evidence on record by relying on LA Demaisip's erroneous appreciation of facts. Under the circumstances, the NLRC acted well within its jurisdiction in finding that Lumahan had not been dismissed. Otherwise stated, by reversing the ruling that there was no dismissal to speak of, the CA committed a reversible error in finding grave abuse of discretion on the part of the NLRC.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, or the exercise of power in an arbitrary or despotic manner by reason of passion or personal hostility; or in a manner so patent and gross as to amount to an evasion of positive duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, or a quasi-judicial agency of the government, in the exercise of its power, abused its discretion; such abuse must be grave.

All told, we cannot agree with the CA in finding that the NLRC committed grave abuse of discretion in evaluating the facts based on the records and in concluding therefrom that Lumahan had not been dismissed.

The CA erred when it considered "abandonment of work" generally understood in employee dismissal situations despite the fact that Nightowl never raised it as a defense.

As no dismissal was carried out in this case, any consideration of abandonment – as a defense raised by an employer in dismissal

situations – was clearly misplaced. To our mind, the CA again committed a reversible error in considering that Nightowl raised abandonment as a defense.

Abandonment, as understood under our labor laws, refers to the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty that constitutes just cause for the employer to dismiss the employee.

Under this construct, abandonment is a defense available against the employee who alleges a dismissal. Thus, for the employer "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." This burden, of course, proceeds from the general rule that places the burden on the employer to prove the validity of the dismissal.

The CA, agreeing with LA Demaisip, concluded that Lumahan was illegally dismissed because Nightowl failed to prove the existence of an overt act showing Lumahan's intention to sever his employment. To the CA, the fact that Nightowl failed to send Lumahan notices for him to report back to work all the more showed no abandonment took place.

The critical point the CA missed, however, was the fact that Nightowl never raised abandonment as a defense. What Nightowl persistently argued was that Lumahan stopped reporting for work beginning April 22, 1999; and that it had been waiting for Lumahan to show up so that it could impose on him the necessary disciplinary action for abandoning his post at Steelwork, only to learn that Lumahan had filed an illegal dismissal complaint. **Nightowl did not at all argue that Lumahan had abandoned his work, thereby warranting the termination of his employment.**

Significantly, **the CA construed these arguments as abandonment of work under the labor law construct. We find it clear, however, that Nightowl did not dismiss Lumahan; hence, it never raised the defense of abandonment.**

Besides, Nightowl did not say that Lumahan "abandoned his work"; rather, Nightowl stated that Lumahan "abandoned his post" at Steelwork. When read together with its arguments, what this phrase simply means is that Lumahan abandoned his assignment at Steelwork; nonetheless, Nightowl still considered him as its employee whose return they had been waiting for.

Finally, failure to send notices to Lumahan to report back to work should not be taken against Nightowl despite the fact that it would have been prudent, given the circumstance, had it done so. Report-to-work notices are required, as an aspect of procedural due process, only in situations involving the dismissal, or the possibility of dismissal, of the employee. Verily, report-to-work notices could not be required when dismissal, or the possibility of dismissal, of the employee does not exist. (Emphases supplied, citations omitted.)

In a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee.[31] However, the Court recognized in *Nightowl* that when a considerable length of time had already passed rendering it impossible for the employee to return to work, the award of separation pay is proper. Considering that more than ten (10) years had passed since respondent stopped reporting for work on February 5, 2005, up to the date of this judgment, it is no longer possible and reasonable for the Court to direct respondent to return to work and order petitioners to accept her. Under the circumstances, it is just and equitable for the Court instead to award respondent separation pay in an amount equivalent to one (1) month salary for every year of service, computed up to the time she stopped working, or until February 4, 2005.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated April 29, 2009 and Resolution dated February 8, 2010 of the Court of Appeals in CA-G.R. SP No. 01877-MIN is **REVERSED** and **SET ASIDE**. The Resolution dated August 30, 2006 of the National Labor Relations Commission in NLRC CA No. M-009173-06, affirming *en toto* the Decision dated February 21, 2006 of the Labor Arbiter in RAB 12-01-00026-05, is **REINSTATED** with **MODIFICATION** that petitioners Dee Jay's Inn and Café and Melinda Ferraris, for just and equitable reasons extant in this case, are additionally **ORDERED** to jointly and severally pay respondent Ma. Lorina P. Rañeses separation pay equivalent to one (1) month salary for every year of service, computed up to the time she stopped working, or until February 4, 2005.

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice

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31 *See Tatel v. JLFP Investigation and Security Agency, Inc.*, G.R. No. 206942, December 9, 2015.

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice