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Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

AIRBORNE MAINTENANCE AND ALLIED SERVICES, INC.,
Petitioner,

- versus -

ARNULFO M. EGOS,
Respondent.

G.R. No. 222748

Present:

CARPIO, *J., Chairperson,*
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,* and
LAZARO-JAVIER, *JJ.*

Promulgated:
03 APR 2019

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DECISION

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated August 28, 2015 and Resolution[3] dated January 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 130466. The CA affirmed the Decision[4] dated December 27, 2012 and Resolution dated April 10, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-002187-12 (NLRC NCR Case No. 00-08-11936-11), which found that respondent was constructively dismissed.

Facts

The facts, as narrated by the CA, are as follows:

> On April 9, 1992, petitioners Airborne Maintenance and Allied Services, Inc. and Francis T. Ching (Airborne), a company engaged in providing manpower services to various clients, hired the services of

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* On wellness leave.

1 *Rollo*, pp. 11-55, excluding Annexes.

2 Id. at 57-66. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Danton Q. Bueser and Eduardo B. Peralta, Jr.

3 Id. at 68-69.

4 Id. at 122-129. Penned by Commissioner Erlinda T. Agus, with Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora concurring.

private respondent as Janitor. He was assigned at the Balintawak Branch of Meralco, a client of Airborne.

Almost twenty years thereafter, or on June 30, 2011, the contract between Airborne and Meralco-Balintawak Branch expired and a new contract was awarded to Landbees Corporation, and the latter absorbed all employees of Airborne except private respondent, who allegedly had a heart ailment. Private respondent consulted another doctor and, based on the medical result, he was declared in good health and fit to work. He showed the duly issued medical certificate to Airborne but the same was disregarded.

Private respondent also reported for work but was just ignored by Airborne and was told that there was no work available for him. Feeling aggrieved, he filed a complaint for constructive/illegal dismissal on August 05, 2011.

Airborne, on the other hand, insisted that private respondent was never dismissed from service. It claimed: 1) that when [its] contract with Meralco-Balintawak Branch was terminated, it directed all its employees including private respondent to report to its office for reposting; 2) that when private respondent failed to do so, it sent a letter dated August 12, 2011 at private respondent's last known address directing him to report to his x x x new assignment at Meralco Commonwealth Business Center; 3) that said letter, however, was returned to sender with a notation "RTS unknown"; 4) that another letter dated September 21, 2011 was sent to private respondent at his last known address reiterating the previous directive; and 5) that the same was again returned with a notation "RTS unknown."

On June 04, 2012, the Labor Arbiter rendered a decision dismissing the complaint for illegal/constructive dismissal, the *fallo* of which reads:

> "**WHEREFORE**, premises considered, judgment is hereby rendered **DISMISSING** the instant complaint for lack of merit.
>
> **SO ORDERED**."

On appeal to the NLRC, private respondent reiterated that he was constructively/illegally dismissed by Airborne. He pointed out that he made several follow-ups since July 1, 2011, but Airborne merely ignored him, and since then, he was not given a new assignment. Private respondent further argued that the letters were mere afterthoughts since Airborne was already aware of the illegal dismissal complaint prior to the sending of the said letters; that the same could not possibly reach him because his address was incomplete and such mistake was intentionally done for him not to receive the letters; and that he left his cellphone number with one Christine Solis, Airborne's Administrative Officer, but he never received a call from Airborne.

Airborne countered that private respondent introduced for the first time on appeal not only new factual allegations but also spurious, fabricated and self-serving evidence which should not be given credence.

On December 27, 2012, public respondent NLRC rendered a decision reversing the findings of the Labor Arbiter and declaring private respondent to have been constructively/illegally dismissed. The dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision appealed from is **REVERSED and SET ASIDE**, and a new one issued declaring the respondents guilty of illegal dismissal.
>
> Accordingly, respondents are ordered to pay complainant the following:
>
> 1. Backwages
> 2. Separation pay
>
> **SO ORDERED**."[5]

Petitioner filed a petition for *certiorari* with the CA, which affirmed the Decision of the NLRC. The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the Decision dated December 27, 2012 and Resolution dated April 10, 2013 of the National Labor Relations Commission, Second Division in NLRC NCR LAC No. 07-002187-12 (NLRC NCR Case No. 08-11936-11) are hereby **AFFIRMED**.
>
> **SO ORDERED**.[6]

Petitioner moved for reconsideration, but this was denied.

Hence, this Petition. Respondent filed his Comment[7] and, in turn, petitioner filed its Reply.[8]

Issues

The issues raised in the Petition are as follows:

> I
>
> CONTRARY TO EXISTING JURISPRUDENCE, THE COURT OF APPEALS[,] WITH DUE RESPECT[,] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE NLRC DECLARING THAT PRIVATE RESPONDENT WAS CONSTRUCTIVELY DISMISSED AND WORSE BY MAKING AN ASSUMPTION THAT PETITIONER CLAIMED ABANDONMENT AS A DEFENSE[.]
>
> II
>
> THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT DISMISSED PETITIONER'S PETITION FOR [CERTIORARI] RELYING SOLELY ON THE ERRONEOUS CONCLUSIONS OF FACT AND LAW MADE BY THE NLRC DESPITE THE CLEAR AND UNEQUIVOCAL JURISPRUDENCE ON THE MATTER.[9]

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5 Id. at 58-59.
6 Id. at 65.
7 Id. at 306-317.
8 Id. at 349-355.
9 Id. at 28-29.

The Court's Ruling

The Petition is denied.

A review of the submissions of the parties shows that the CA was correct in affirming the NLRC's ruling that respondent was constructively dismissed. The CA ruled as follows:

> In cases of termination of employees, the well-entrenched policy is that no worker shall be dismissed except for just or authorized cause provided by law and after due process. Dismissals of employees have two facets: *first*, the legality of the act of dismissal, which constitutes substantive due process; and *second*, the legality in the manner of dismissal, which constitutes procedural due process.
>
> x x x x
>
> Clearly, the failure to observe the twin requisites of notice and hearing not only makes the dismissal of an employee illegal regardless of his alleged violation, but is also violative of the employee's right to due process.
>
> x x x x
>
> In this case, it is beyond cavil that none of the foregoing mandatory provisions of the labor law were complied with by Airborne.
>
> x x x x
>
> To buttress its contention that x x x respondent abandoned his work, Airborne alleged that it sent letters/notices to private respondent directing him to report for work. Nonetheless, no iota of evidence was presented by Airborne sufficiently showing that the letters/notices dated August 12, 2011 and dated September 21, 2011 were actually received by x x x respondent. In fact, said letters/notices were returned with a notation "RTS unknown" inasmuch as x x x respondent's address was incomplete and such was intentionally done for the latter not to receive said letters/notices.
>
> As correctly observed by public respondent NLRC, the letters/notices were mere afterthoughts since Airborne was already aware of the filing of the illegal dismissal complaint prior to the sending of the said letters/notices.
>
> Corollary thereto, it must be stressed that x x x respondent made several follow-ups since July 1, 2011, but Airborne did not give him a new assignment. Moreover, x x x respondent gave his cellphone number with Christine Solis, Airborne's Administrative Officer, but to no avail.[10]

On the other hand, the NLRC found that:

> After a careful review of the records of the case, We find the appeal impressed with merit.

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[10] Id. at 60-64.

> Complainant [respondent herein] claims that respondents [petitioner herein] told him that he had a heart ailment, thus, he could not be absorbed for continued employment. He consulted Dr. Rina Porciuncula of the Our Lady of the Angels Clinic in Sta. Maria, Bulacan. The doctor declared him fit to work (rollo, pp. 25-27).
>
> We find credence on his allegation that respondents denied him employment because he had a heart ailment. Nonetheless, despite the declaration that he was fit to work, the respondents still did not give him any assignment.
>
> The complainant is a mere janitor, and to earn a living, he had to undergo the medical examination. He exerted effort and spent money to prove to respondents that he was capable of working.
>
> To give semblance of legality to their act of not giving him an assignment, after the filing of the complaint for constructive dismissal, respondents sent him two (2) letters with incomplete address. The sending of the letters were a mere afterthoughts (sic).
>
> The Supreme Court, in Skippers United Pacific, Inc. vs. NLRC G.R. No. 148893, July 12, 2006 ruled that "Afterthought cannot be given weight or credibility."
>
> This Commission is not convinced that they had the sincerity to give him a new assignment. There is reason to believe that the incomplete address was intentionally done in order that complainant would not receive it, and respondents can put up as a defense their intention to have the complainant reposted by sending the two (2) letters.[11]

Petitioner, however, argues that there was no dismissal to speak of as it had placed respondent on floating status when the contract with Meralco was terminated.[12]

Although this was not discussed by both the CA and the NLRC, petitioner claims that it had valid grounds to suspend its business operation or undertaking for a period of six months and place its employees in a floating status during that period in accordance with Article 301, formerly Article 286, of the Labor Code. Article 301 states:

> ART. 301 [286]. *When Employment Not Deemed Terminated.* — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfilment (sic) by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

The Court finds that petitioner failed to prove that the termination of the contract with Meralco resulted in a bona fide suspension of its business operations so as to validly place respondent in a floating status.

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11 Id. at 125-126.

12 See id. at 15-16, 30.

The suspension of employment under Article 301 of the Labor Code is only temporary and should not exceed six months, as the Court explained in *PT & T Corp. v. National Labor Relations Commission*:[13]

> x x x Article 286 [now Article 301] may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status. Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.[14]

In implementing this measure, jurisprudence has set that the employer should notify the Department of Labor and Employment (DOLE) and the affected employee, at least one month prior to the intended date of suspension of business operations.[15] An employer must also prove the existence of a clear and compelling economic reason for the temporary shutdown of its business or undertaking and that there were no available posts to which the affected employee could be assigned. The Court explained in *Lopez v. Irvine Construction Corp.*[16] as follows:

> In this case, Irvine failed to prove compliance with the parameters of Article 286 of the Labor Code. As the records would show, it merely completed one of its numerous construction projects which does not, by and of itself, amount to a *bona fide* suspension of business operations or undertaking. In invoking Article 286 of the Labor Code, **the paramount consideration should be the dire exigency of the business of the employer that compels it to put some of its employees temporarily out of work**. This means that the employer should be able to prove that it is faced with a clear and compelling economic reason which reasonably forces it to temporarily shut down its business operations or a particular undertaking, incidentally resulting to the temporary lay-off of its employees.
>
> Due to the grim economic consequences to the employee, case law states that the **employer should also bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned.** Thus, in the case of *Mobile Protective & Detective Agency v. Ompad,* the Court found that the security guards therein were constructively dismissed considering that their employer was not able to show any dire exigency justifying the latter's failure to give said employees any further assignment x x x.[17] (Citations omitted; emphasis and underscoring in original)

Here, a review of the submissions of the parties shows that petitioner failed to show compliance with the notice requirement to the DOLE and respondent.

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13 496 Phil. 164 (2005).

14 Id. at 177.

15 See *Lopez v. Irvine Construction Corp.*, 741 Phil. 728, 741 (2014), citing *PT & T Corp. v. National Labor Relations Commission,* id. at 177-178.

16 Id.

17 Id. at 744-745.

Making matters worse for petitioner, it also failed to prove that after the termination of its contract with Meralco it was faced with a clear and compelling economic reason to temporarily shut down its operations or a particular undertaking. It also failed to show that there were no available posts to which respondent could be assigned.

Also, not only did petitioner fail to prove it had valid grounds to place respondent on a floating status, but the NLRC and the CA both correctly found that respondent even had to ask for a new assignment from petitioner, but this was unheeded. Further, when respondent filed the complaint on August 5, 2011, petitioner, as an afterthought, subsequently sent notices/letters to respondent directing him to report to work. These, however, were not received by respondent as the address was incomplete.

In *Morales v. Harbour Centre Port Terminal, Inc.,*[18] the Court defined constructive dismissal as a dismissal in disguise as it is an act amounting to dismissal but made to appear as if it were not, thus:

> Constructive dismissal exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay" and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. x x x[19] (Citations omitted)

Here, the totality of the foregoing circumstances shows that petitioner's acts of not informing respondent and the DOLE of the suspension of its operations, failing to prove the bona fide suspension of its business or undertaking, ignoring respondent's follow-ups on a new assignment, and belated sending of letters/notices which were returned to it, were done to make it appear as if respondent had not been dismissed. These acts, however, clearly amounted to a dismissal, for which petitioner is liable.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated August 28, 2015 and Resolution dated January 22, 2016 of the Court of Appeals in CA-G.R. SP No. 130466 are **AFFIRMED**.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[18] 680 Phil. 112 (2012).
[19] Id. at 120-121.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

(On wellness leave)
JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
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.

LUCAS P. BERSAMIN
Chief Justice