Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

EFREN SANTOS, JR. and JERAMIL SALMASAN,
Petitioners,

- *versus* -

KING CHEF/MARITES ANG/JOEY DELOS SANTOS,
Respondents.

G.R. No. 211073

Present:

LEONEN, *J.*,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS,* and
ROSARIO, JJ.

Promulgated:
November 25, 2020
MisDCBatt

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 22, 2013 Decision[2] and January 21, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130662.

The assailed Decision affirmed the February 28, 2013 and April 18, 2013 Resolutions[4] of the National Labor Relations Commission (NLRC) finding unmeritorious petitioners Efren Santos, Jr. (Santos) and Jeramil Salmasan's (Salmasan; collectively petitioners) claim of illegal dismissal against respondents King Chef, Marites Ang (Ang), and Joey Delos Santos (Delos

* On official leave.
1 *Rollo,* pp. 11-32.
2 Id. at 34-42; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela.
3 Id. at 44-45.
4 *Id.* at 143-154, 173-174; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus.

Santos, collectively, respondents).[5] In its assailed Resolution,[6] the appellate court subsequently denied petitioners' Motion for Reconsideration.[7]

King Chef is a Chinese restaurant owned by Ang, with Delos Santos as its General Manager.[8] It employed Santos on February 19, 2011 and Salmasan on July 29, 2010, both as cooks.[9]

On December 25, 2011, Santos rendered only a half day work without prior authorization.[10] Salmasan, on the other hand, did not report at all.[11] Petitioners claimed that in view thereof, they were dismissed from employment.[12] They averred that when they tried to report for work, their chief cook told them that they were already terminated.[13]

Accordingly, petitioners filed their complaint for illegal dismissal, underpayment of salaries, non-payment of salaries and thirteenth month pay, damages, and attorney's fees.[14]

Respondents denied that petitioners were dismissed from work. They argued that petitioners violated the December 22, 2011 memorandum informing the employees of King Chef that no absences would be allowed on December 25, 26, 31 and January 1 unless justified.[15] After petitioners failed to report for work on December 25, 2011, and returned the following day merely to get their share in the accrued tips, they allegedly went on absence without leave (AWOL) for the rest of the Christmas season.[16]

Respondents believed petitioners went on AWOL after they got wind of respondents' decision to impose disciplinary action against them for their unauthorized absence on December 25, 2011.[17] Respondents claimed that even before they could impose disciplinary action on petitioners, the latter already filed a complaint for illegal dismissal against them on January 2, 2012.[18]

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5 Id. at 41.
6 Id. at 44-45.
7 Id. at 45.
8 Id. at 35.
9 Id.
10 Id.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id. at 78, 90.
16 Id. at 80.
17 Id.
18 Id. at 227.

Ruling of the Labor Arbiter (LA):

In its October 29, 2012 Decision,[19] the LA found petitioners to have been illegally dismissed.[20] The Arbiter held that the respondents failed to prove that petitioners indeed went on AWOL.[21] Likewise, there was no proof that petitioners received a copy of the December 22, 2011 memorandum.[22] And since there was no directive to work on December 25, 2011, petitioners "had all the reason not to report for work" as it was Christmas day.[23] In any case, the LA held that petitioners' absence should not have warranted their dismissal.[24]

The dispositive portion of the Decision reads:

> **WHEREFORE,** the complaint for illegal dismissal is GRANTED. Respondent RMB Royal Master Bee, Inc., doing business under the name and style King Chef Restaurant, is hereby ordered to pay complainants the sum of Php359,210.77, to wit:
>
> 1. Efren Santos, Jr. – Php163,291.26
>
> 2. Jeramil [Salmasan] – Php163,291.26
>
> representing:
>
> 1. Full [b]ackwages computed from the time of their dismissal up to finality of this decision;
>
> 2. Separation pay equivalent to one month['s] wage for every year of service it being understood that six months shall be considered one full year;
>
> 3. Wage differentials; and
>
> 4. Attorney's fees equivalent to ten (10%) percent of the total, or in the sum of Php32,628.25 monetary award.
>
> All other claims are dismissed for lack of merit. The computation hereto attached is made an integral part of this decision.
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> **SO ORDERED.**[25]

Ruling of the National Labor Relations Commission:

In its February 28, 2013 Resolution,[26] the NLRC modified the October 29, 2012 Decision of the LA after finding that petitioners were unable to show

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[19] Id. at 116-126.
[20] Id. at 124-126.
[21] Id. at 120-123.
[22] Id. at 121-122.
[23] Id. at 122.
[24] Id.
[25] Id. at 124-126.
[26] Id. at 143-154.

that they were dismissed in the first place.[27] The labor tribunal found that aside from petitioners' bare allegations, they did not present any proof to support their claim of termination.[28] On the contrary, respondents were able to prove that after petitioners failed to report for work on December 25, 2011, and after they received their share on tips the following they, they continued to be absent for the rest of the Christmas season.[29] The NLRC held that since petitioners were unable to prove that they were indeed terminated, the complaint for illegal dismissal cannot be sustained pursuant to the principle that if there is no dismissal, there can be no question as to the legality or illegality thereof.[30]

The dispositive portion of the Resolution reads:

> **WHEREFORE,** premises considered, the instant appeal is hereby declared partly with merit. The Decision of the Labor Arbiter is hereby **MODIFIED** deleting the awards for separation pay and full backwages, and correspondingly reducing the award of 10% attorney's fees.
>
> **SO ORDERED.**[31]

Ruling of the Court of Appeals:

The CA affirmed the February 28, 2013 Resolution of the NLRC[32] and upheld its finding that there was no dismissal in the first place.[33] It gave credence to the evidence presented by respondents, as opposed to petitioners' bare allegations.[34] It stressed that before the respondents must bear the burden of proving that the dismissal was legal, petitioners must first establish by substantial evidence that indeed they were dismissed.[35] Since petitioners were unable to do this, the NLRC was correct in ruling that there was no illegal dismissal.[36]

The dispositive portion of the assailed Decision reads:

> **WHEREFORE,** in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant petition for lack of merit. The Resolutions rendered by the Second Division of the National Labor Relations Commission dated February 28, 2013 and April 18, 2013, respectively, in NLRC NCR Case No. 01-01193-12 (LAC No. 01-000205-13) are hereby **AFFIRMED**.
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> **SO ORDERED.**[37]

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27 Id.
28 Id. at 150.
29 Id. at 149-151.
30 Id. at 152, 148.
31 Id. at 153-154.
32 Id. at 41.
33 Id. at 40.
34 Id. at 148-153.
35 Id. at 38.
36 Id. at 40.
37 Id. at 41.

Petitioners sought reconsideration but it was denied by the CA in its assailed January 21, 2014 Resolution.[38]

Hence, this Petition.

The Petition:

Petitioners argue that the CA erred in sustaining the NLRC's finding that there was no dismissal as to their case.[39] They reiterate that when they tried to return and report for work after their absence on December 25, 2011, they were banned from entering the work premises and were informed that they were already terminated, without compliance with the requirements for valid dismissal.[40] Thus, their dismissal was illegal.[41]

In their Comment,[42] respondents maintain that petitioners were never dismissed in the first place, as they in fact abandoned their work.[43]

Issue

Whether or not petitioners were illegally dismissed.

Our Ruling

The Petition is devoid of merit.

Procedural matter:

The resolution of this case calls for a factual determination of whether petitioners were dismissed by respondents, which factual determination is generally not allowed in a Rule 45 petition.[44] One of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary.[45] Here, considering that the findings of the NLRC and the LA are conflicting, We shall proceed to review their factual and legal conclusions.

Substantive matter:

> In cases of illegal dismissal, the employer bears the burden to prove that the termination was for a valid or authorized cause. **But before the employer**

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[38] Id. at 44-45.
[39] Id. at 17.
[40] Id. at 20-24.
[41] Id. at 20.
[42] Id. at 222-240.
[43] Id. at 226-228.
[44] *Villola v. United Philippine Lines, Inc.*, G.R. No 230047, October 9, 2019.
[45] *Paredes v. Feed the Children Phils., Inc.*, 769 Phil. 418, 433 (2015), citing *Agabon v. National Labor Relations Commission*, 458 Phil. 248, 277 (2004).

> **must bear the burden of proving that the dismissal was legal, it is well-settled that the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof. x x x**[46] (Emphasis supplied)

Here, after a meticulous study of the records, We find that there is no substantial evidence to establish that petitioners were in fact dismissed from employment. Petitioners merely alleged that they were terminated by their chief cook and were barred from entering the restaurant, without offering any evidence to prove the same. They failed to provide any document, notice of termination or even any letter or correspondence regarding their termination. Aside from their bare allegations, they did not present any proof which would at least indicate that they were in fact dismissed.

On the contrary, the evidence on record points to the fact that after petitioners failed to report on December 25, 2011, and after they went back to their workplace merely to get their share in the tips the following day, they refused to return to work and continued to be on AWOL thereafter. *First*, it is undisputed that petitioners went on AWOL on December 25, 2011 (half day for Salmasan).[47] *Second,* they in fact returned the following day to claim and receive their share in the tips as shown from the uncontroverted sign up sheet they signed,[48] which belies their assertion that they were banned from entering the premises after being absent on December 25, 2011. *Third,* petitioners themselves admitted that they continued to be on AWOL during "the Christmas season of 2011".[49] This was likewise reflected on their time cards.[50]

As correctly found by the NLRC:

> In their Position Paper, complainants describe the manner by which they were allegedly dismissed, as follows:
>
> *"x x x Complainant Santos went to work only for half day only on December 25, 2011 so that they could celebrate Christmas with his family in Pampanga. When he reported to work on December 27, 2011, he was verbally informed by the supervisor and chief cook Joel Aroy not to report to work anymore because he was already terminated from his employment due to his one day absence.*

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[46] *Claudia's Kitchen, Inc. v. Tanguin,* 811 Phil. 784, 794 (2017), citing *Ledesma, Jr. v. National Labor Relations Commission,* 562 Phil. 939, 951 (2007), *Exodus International Construction Corporation v. Biscocho,* 659 Phil. 142, 154 (2011).

[47] *Rollo,* p. 48.

[48] Id. at 149.

[49] Id. at 69. As correctly observed by the NLRC:

> x x x On this, Complainants themselves called their absenting acts as infraction, thus:
>
> *"Per complainant's recollection, the only infraction that they could think of is when they absented themselves* ***during the Christmas season of 2011****"* (p. 10, Records)
>
> **This statement of Complainants, in fact reveal their absence as not only on December 25, 2011, but "during the Christmas season of 2011", which proves the claim of Respondents that Complainant's continued with their AWOL** x x x (Emphasis supplied)

[50] Id. at 227; 91-94.

> *Complainant Salmasan on his part absented himself on December 25, 2011 to likewise celebrate Christmas with his family. The following day, he immediately reported back to work and started doing his work assignment. However, when he was seen by their supervisor and chief cook Joel Aroy, he, same with complainant Santos was verbally terminated from his employment.*
>
> *No valid explanation was given to complainants why they were being terminated from employment. Despite the same, they still tried to report to work and even made follow-ups through telephone calls. They were banned from entering the premises of King Chef hence on January 20, 2012; they filed this labor complaint against respondents."* (p. 10, Records)

However, when Respondents declared that despite Complainants' absences on December 25, 2011 (half day for Complainant Efren Santos), **both Complainants reported on December 26, 2011 merely to collect their share of the tips for the period 11 to 25 December 2011, and exhibited proof to this claim by the document which Respondents describe as the December 26, 2011 "Sign Up Sheet", Complainants simply kept a silent stance.**

By these alone, three (3) facts are established: (1) that both Complainants absented themselves on December 25, 2011[,] a Christmas Day, without leave, hence, they were on Absence Without Leave or AWOL on that day; **(2) that nevertheless, both came on December 26, 2011 merely to get their share of the period's tips; (3) that it is not true that Complainant Santos reported for work on December 27, 2011, and Complainant Salmasan reported on December 26, 2011 to work; as Complainants have not presented any proof to this claim.**[51] (Emphasis supplied)

Even worse, petitioners made untruthful allegations in their pleadings. They claimed that they filed the complaint for illegal dismissal on January 20, 2012, but the NLRC found that it was filed earlier, thus:

> The correct date Complain[an]t filed their complaint is of interest to Us. Complainants claim that they filed this case on January 20, 2012 (p. 10, Records), while Respondents reckon the date as January 2, 2012 (p. 21, Records). Carefully examining the records, We find Complainants['] claim as at best evasive. The Minutes of the Single Entry Approach (SENA) is dated January 19, 2012 (p. 4, Records) with the parties already in attendance. **This can only lead to the conclusion that Complainants had actually gone to NLRC earlier as claimed by Respondents, that is on January 2, 201[2]**. So that by January 19, 2012, the Respondents had already been notified of Complainants' action, and had appeared in the conciliation hearing.
>
> **This gives credence to the claim of Respondents that then they had no time yet to discipline Complainants, when the latter filed this case. As noted above, "the Christmas season" during which complainants incurred their "only infraction" of having been "absented themselves"** x x x started from December 24, 2011 and ended on January 1, 2012.[52] (Emphasis supplied)

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[51] Id. at 148-150.
[52] Id. at 151-152.

Considering the above circumstances and taking them all together, We are inclined to agree with respondents that before they could even impose disciplinary action upon the petitioners, they already filed the complaint for illegal dismissal on January 2, 2012, just when the Christmas season was over.[53]

"Without substantial evidence that petitioners were indeed dismissed, it is futile to determine the legality or illegality of their supposed dismissal."[54] We are thus constrained to uphold the NLRC's ruling, as affirmed by the CA, that there was no illegal dismissal in this case.

Be that as it may, respondents are not correct in arguing that there was abandonment on the part of the petitioners.[55] "Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts."[56] The employer must prove that *first*, the employee "failed to report for work for an unjustifiable reason," and *second,* the "overt acts showing the employee's clear intention to sever their ties with their employer."[57]

There was no showing here that petitioners' absences were due to unjustifiable reason, or that petitioners clearly intended to terminate their employment. It does not suffice that petitioners pre-empted respondents by filing the complaint for illegal dismissal before respondents can impose disciplinary action. "The operative act is still the employees' ultimate act of putting an end to their employment."[58]

"In cases where there is both an absence of illegal dismissal on the part of the employer and an absence of abandonment on the part of the employees, the remedy is reinstatement but without backwages."[59] However, considering that petitioners do not pray for such relief, "each party must bear [their] own loss," placing them on equal footing.[60] Thus, the NLRC, as affirmed by the CA, is correct in deleting the award of separation pay to petitioners.

WHEREFORE, the Petition is hereby **DENIED**. The assailed Decision rendered by the Court of Appeals in CA-G.R. SP No. 130662 is **AFFIRMED**. No cost.

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[53] Id. at 227-228.
[54] *Villola v. United Philippine Lines, Inc.*, G.R. No. 230047, October 9, 2019.
[55] *Rollo*, p. 226.
[56] *Pu-od v. Ablaze Builders, Inc.*, 820 Phil. 1239, 1254 (2017), citing *JOSAN. v. Aduna,* 682 Phil. 641, 648 (2012).
[57] Id., citing *Protective Maximum Security Agency, Inc. v. Celso E. Fuentes*, 753 Phil. 482, 508 (2015).
[58] Id. at 1255.
[59] Id.
[60] Id., citing *MZR Industries. v. Colambot,* 716 Phil. 617, 697 (2013).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

HENRI JEAN PAUL B. INTING
Associate Justice

On official leave
EDGARDO L. DELOS SANTOS
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest that 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.

MARVIC M. V. F. LEONEN
Associate Justice
Chairperson

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.

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
FEB 19 2021