Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MARIA VILMA G. DOCTOR and JAIME LAO, JR., Petitioners,	**G.R. No. 194001**
	Present:
- *versus* -	SERENO, *CJ.*, Chairperson, LEONARDO-DE CASTRO, DEL CASTILLO, JARDELEZA, and TIJAM, *JJ.*
NII ENTERPRISES and/or MRS. NILDA C. IGNACIO, Respondents.	Promulgated: NOV 22 2017

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioners Maria Vilma G. Doctor (Doctor) and Jaime Lao, Jr. (Lao) assailing the (a) Decision[1] dated April 23, 2010 of the Court of Appeals in CA-G.R. SP No. 107497, which reversed and set aside the Decision[2] dated February 1, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 045354-05 and dismissed petitioners' complaint for illegal dismissal against respondents NII Enterprises and/or Mrs. Nilda C. Ignacio (Ignacio); and (b) Resolution[3] dated September 28, 2010 of the appellate court in the same case, which denied petitioners' Motion for Reconsideration. The NLRC had previously affirmed with modification the Labor Arbiter's Decision[4] dated March 5, 2005 in NLRC-NCR Case No. 00-02-02670-04, finding that petitioners were illegally dismissed and ordering respondents to pay petitioners backwages and separation pay.

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1 *Rollo*, pp. 139-148; penned by Associate Justice Rosmari D. Carandang with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring.

2 Id. at 77-86; penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay concurring.

3 Id. at 161-162.

4 Id. at 40-44; penned by Labor Arbiter Ramon Valentin C. Reyes.

The following events gave rise to the instant Petition:

Respondent NII Enterprises is a sole proprietorship engaged in the business of providing car air-conditioning (aircon) services, which is owned by respondent Ignacio. Petitioners had been employed by respondents, particularly, petitioner Doctor as a clerk since April 3, 1995 and petitioner Lao as an aircon technician since December 5, 1995.

On February 10, 2004, respondent Ignacio and petitioner Doctor had a serious argument, which prompted petitioner Doctor to file a complaint for slander and threat against respondent Ignacio at *Barangay* San Antonio, Makati City. Per the minutes of the *barangay* proceedings, petitioner Doctor complained of respondent Ignacio committing the following acts:

> "Dinuduro niya ako at minura nya ako ng leche at inambahan niya ako na ipupukpok sa akin ang telepono at dinerty finger nya ako. Inakusahan niya ako ng mga bagay na hindi ko ginawa at sinabi pa niya na kung ano ang gusto niya siya ang masusunod."
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> In her prayer, [petitioner] Vilma Doctor prayed:
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> "Ang gusto ko lang naman ay makapag-usap kami ng malaya. Sana ay maging maayos ang lahat at matapos na."[5]

Since efforts to amicably resolve the dispute between respondent Ignacio and petitioner Doctor failed, the *barangay* issued a Certification to File Action[6] dated February 20, 2004.

On February 24, 2004, petitioner Doctor filed a complaint for illegal dismissal against respondents before the NLRC, docketed as NLRC-NCR Case No. 00-02-02670-04.

Petitioner Lao, who accompanied petitioner Doctor at the *barangay* proceedings, also joined the complaint for illegal dismissal before the NLRC as a party-complainant.

In their Position Paper,[7] petitioners alleged that:

> [Petitioners] MA. VILMA G. DOCTOR and MR. JAIME S. LAO, JR. were arbitrarily and illegally dismissed on February 10, 2004 by the above-said company. They were barred from reporting to their former positions or employment respectively without any valid reason under the law despite their willingness to report and continue their works. Surprisingly, the company continued to refuse and give the two [petitioners] the opportunity to be heard and to explain their side. This arbitrary decision of summary termination of services is tantamount to denial of due process of

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5 Id. at 51.
6 Id. at 113.
7 Id. at 97-103.

> law and failure to respect their substantive rights under the Labor Code. Moreover, granting et arguendo that they have violated any policy of the company yet there was no formal accusation made against them nor were they informed beforehand of any valid reasons invoked by the company in support of their illegal dismissal. Hence, it is very clear and conclusive that as they belonged to the category of regular employees they cannot just be summarily and capriciously dismissed from their employment without any valid reasons under the law.[8]

Petitioners prayed that respondents be ordered to pay them backwages, holiday pay, bonus pay, $13^{th}/14^{th}$ month pay, moral and exemplary damages, and attorney's fees.

Respondents countered that after respondent Ignacio and petitioner Doctor had a heated altercation sometime in February 2004, petitioner Doctor no longer reported for work. Petitioner Lao similarly absented himself from work without prior leave. To respondent Ignacio's surprise, petitioner Doctor instituted a complaint for slander and threat against her before the *barangay*, but the parties did not reach an amicable settlement. Respondents intimated that petitioner Doctor, who was then engaged to be married to petitioner Lao, filed the complaint for illegal dismissal against respondents in an attempt to mulct them for money to finance petitioners' forthcoming wedding. Respondents denied that petitioners were ever told not to report for work and averred that it was petitioners who abandoned their jobs. Thus, respondents sought that petitioners' complaint for illegal dismissal against them be dismissed.[9]

The Labor Arbiter, in his Decision dated March 5, 2005, found that respondents failed to prove just and valid cause and observance of due process in petitioners' dismissal. As to respondents' allegation that petitioners abandoned their jobs, the Labor Arbiter held the same to be bereft of merit as respondents also failed to prove the requisites for a valid defense of abandonment. The Labor Arbiter, moreover, pointed out that the petitioners' timely filing of the complaint for illegal dismissal negated respondents' defense of abandonment. The Labor Arbiter reminded that extreme caution should be exercised in terminating the services of a worker for his/her job might be the only lifeline on which his/her family depended for survival in difficult times. Although petitioners were entitled to reinstatement as a consequence of their illegal dismissal, the Labor Arbiter ordered payment of separation pay in lieu of reinstatement due to the strained relationship between the parties. The Labor Arbiter did not grant petitioners' money claims given the lack of substantiation. The Labor Arbiter, ultimately, adjudged:

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8 Id. at 99.

9 Id. at 104-110.

WHEREFORE, premises all considered, judgment is hereby issued finding the dismissal illegal and ordering respondents to pay [petitioners] backwages and separation pay as follows:

VILMA DOCTOR:

Backwages - (₱7,500.00 x 12 mos = (₱80,000.00)	₱80,000.00
Separation Pay - (₱7,500.00 x 9 = ₱67,500.00)	₱67,500.00

JAIME LAO, JR.:

Backwages - (₱7,500.00 x 12 mos = (₱80,000.00)	₱80,000.00
Separation Pay - (₱7,500.00 x 9 = ₱67,500.00)	₱67,500.00

All other claims are dismissed for lack of merit.[10]

Respondents filed before the NLRC an appeal of the foregoing judgment of the Labor Arbiter, which was docketed as NLRC NCR CA No. 045354-05. Respondents asserted that there had been no illegal dismissal as petitioners were never issued notices of termination. Respondents reiterated that petitioner Doctor did not report for work after her altercation with respondent Ignacio, and instead filed a complaint for threat and slander against respondent Ignacio before the *barangay*. Only when no amicable settlement was reached before the *barangay* did petitioner Doctor proceed to file her complaint for illegal dismissal against respondents before the NLRC. Respondents further argued that they had no reason to terminate petitioner Lao's services and that the latter simply joined the complaint for illegal dismissal before the NLRC even though he was not involved in the dispute between respondent Ignacio and petitioner Doctor. Respondents contended that petitioners were not entitled to separation pay since they were not terminated from employment. Nevertheless, assuming that petitioners were illegally dismissed, respondents maintained that the Labor Arbiter's award of separation pay in petitioners' favor was excessive because such pay should be computed at only one-half (½)-month pay, not one (1)-month pay, for every year of service and petitioner Lao worked for respondents for eight (8) years, not nine (9) years.

In its Decision dated February 1, 2008, the NLRC ruled:

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[10] Id. at 44.

> **WHEREFORE**, premises considered, respondents' appeal is partially granted. Accordingly, the appealed Decision is hereby **MODIFIED** to the extent that the award of separation pay to Jaime Lao shall cover only a total of eight (8) years. All other dispositions are hereby **AFFIRMED**.[11]

Respondents filed a Motion for Reconsideration,[12] which the NLRC denied in a Resolution[13] dated November 27, 2008.

Respondents filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, which was docketed as CA-G.R. SP No. 107497, averring grave abuse of discretion, tantamount to lack or excess of jurisdiction, on the part of the NLRC in issuing its Decision dated February 1, 2008 and Resolution dated November 27, 2008.

The Court of Appeals rendered its Decision on April 23, 2010 finding respondents' Petition meritorious. The appellate court stressed that while the employer has the burden in illegal dismissal cases of proving that the termination was for valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service, and this, petitioners failed to do. Pertinent findings of the Court of Appeals are quoted below:

> It should be noted that [petitioner Doctor] brought a case for threat and slander against [respondent Ignacio] before the Barangay but amicable settlement failed as further bitter arguments between the parties ensued. Thus, a Certification to File Action was issued on February 20, 2004. On February 24, 2004, the complaint for illegal dismissal was filed by [petitioners] against [respondents].
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> In [petitioners'] position paper filed below, not even a passing mention was made of the previous heated argument between [petitioner Doctor] and [respondent Ignacio], but simply stating that both [petitioners] were barred from the work premises, despite their willingness to do so. [Petitioners] were not candid, not mentioning the incident in order not to highlight the fact that they absented themselves from work after the altercation. This is as much as [petitioners] admitted in their Comment to the petition that "*both [petitioners] went on absence right after the argument*", and arguing that their absence should not justify the employer in dismissing them. They even justified their absence by explaining in their comment, "*If Doctor truly failed to report for work on days following their argument, it was only because she felt that it was no longer conducive for her [to] continue her employment as the emotional strain created thereby entailed an unbearable and stressful work environment for her. The same holds true with respect to [petitioner] Lao. Being the significant other of Doctor, he was also aware of the possible retaliation that the [respondents] may have against him. As it became impossible for [petitioners] to return for work, it was, therefore, correct for them to claim for separation pay instead.*"

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11 Id. at 85.
12 Id. at 87-93.
13 Id. at 94-95.

> With that admission, coupled with the immediate filing of the complaint for illegal dismissal on February 24, 2004 after the barangay conciliation on February 20, 2004 failed, We are convinced that no actual dismissal ever happened. [Petitioners] simply stopped working and thereafter immediately filed the illegal dismissal case. There is no constructive dismissal either, which contemplates an unbearable situation created by the employer or any act done manifesting a case of discrimination, disdain, or resulting in employee's demotion in rank, diminution in pay, or subjecting him to unbearable working conditions, leaving no option to the employee but to forego his continued employment. None was shown in this case. The situation in the present case is clear that both the employer and employee were involved in the incident. The employer did not alone create the situation, which [petitioner Doctor] considers as an unpleasant and hostile working environment, her apprehension prompting her to quit from her work.
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> The immediate filing of the case for illegal dismissal did not give the employer the opportunity to even send show cause notices to [petitioners'] absences. Rather than undergo the normal process of disciplining [petitioners] for repeated absences, [respondent Ignacio] had no other option but to defend her case. Hence, there is no violation of due process to speak of.
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> As far as [petitioner Lao] is concerned, [respondent Ignacio] has no cause to terminate him. It is more likely that since his sweetheart [petitioner Doctor] opted to quit, he joined her, fearing the possible retaliation against him as admitted in his Comment. Further, it would be too foolhardy for [respondent Ignacio] to terminate him for no reason at all and be held liable for illegal dismissal without even a semblance of good defense.
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> All in all, the circumstances surrounding this case do not permit Us to apply the principle that filing an illegal dismissal case is not consistent with abandonment. This is not an ironclad rule. What we see here is [petitioners'] decision to quit from their employment because of the unnerving thought of working in a hostile environment, resulting from the heated argument between [petitioner Doctor] and [respondent Ignacio].[14]

The Court of Appeals explicitly declared that in finding that petitioners were illegally dismissed, the NLRC committed grave abuse of discretion and clearly misappreciated the facts of the case resulting in a wrong conclusion.

The dispositive portion of the Court of Appeals Decision reads:

> ***WHEREFORE***, the instant petition is **GRANTED**. The February 01, 2008 Decision of the National Labor Relations Commission which affirmed with slight modification the Decision dated March 5, 2005 of the Labor Arbiter declaring [petitioners] illegally dismissed and ordering [respondents] to pay [petitioners] their backwages and separation pay, and the NLRC Resolution dated November 27, 2008 denying the motion for

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14 Id. at 143-146.

> reconsideration, are **NULLIFIED** and **SET ASIDE**. The complaint for illegal dismissal is **DISMISSED** for lack of merit.[15]

Petitioners filed a Motion for Reconsideration but the appellate court denied the same in a Resolution dated September 28, 2010.

Hence, petitioners come before this Court via the instant Petition for Review on *Certiorari*, raising the sole issue of:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION FINDING THAT THE PETITIONERS WERE NOT ILLEGALLY DISMISSED.[16]

Petitioners question the scant consideration given by the Court of Appeals to their version of events just because of their failure to mention in their Position Paper before the NLRC the altercation between respondent Ignacio and petitioner Doctor. Petitioners explain that "their alleged failure to include in their pleadings filed before the NLRC the altercation incident cannot in anyway be construed as a strategy to deter this Honorable Court's attention from the main issue. For whether the incident was alleged or not is of no consequence."[17]

Petitioners also call attention to the fact that both the Labor Arbiter and the NLRC found that petitioners were actually dismissed when they were expressly told not to report for work on February 10, 2004 and prohibited from entering the premises of respondent NII Enterprises. It was respondents who first mentioned and argued in their Petition for *Certiorari* filed before the Court of Appeals that there was no constructive dismissal of petitioners, hence, petitioners were constrained to refute respondents' argument. Petitioners, without admitting that they were constructively dismissed, acknowledged that their case could also constitute constructive dismissal as petitioner Doctor filed the complaint for illegal dismissal before the NLRC because she felt that it was already difficult, if not impossible, to continue working for respondent Ignacio; and petitioner Lao joined Doctor in filing said complaint because he feared that respondent Ignacio might also vent her ire on him. The appellate court, unfortunately, took petitioners' statements on constructive dismissal out of context and dismissed their complaint for illegal dismissal based thereon.

Petitioners maintain that they did not abandon their work. According to petitioners, it is highly unbelievable that after working for respondents for a long time, they would simply stop working for no apparent reason. As proof that petitioner Doctor had no intention of severing her employment with respondents, petitioner Doctor even attempted to settle her dispute with respondent Ignacio at the *barangay*.

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15 Id. at 147.
16 Id. at 13.
17 Id. at 14.

Moreover, petitioners allege that from February 10, 2004 (when they were prevented from returning to work) to March 11, 2004 (when respondent Ignacio received the summons regarding the scheduled mandatory conference before the Labor Arbiter), respondents did not issue any notice nor impose any disciplinary measure against petitioners for their continued absences. Petitioners aver that respondents' aforedescribed apathy was an indication that the latter were bent on terminating petitioners' employment without due process of law.

Since they were illegally terminated from employment, petitioners claim that they are entitled to backwages and separation pay, in lieu of reinstatement, as awarded by the Labor Arbiter and the NLRC.

At the outset, the Court reiterates that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record. However, it is equally settled that one of the exceptions to this rule is when the factual findings of the quasi-judicial agencies concerned are conflicting or contrary with those of the Court of Appeals,[18] as in the present case. Thus, the Court proceeds with its own factual determination herein based on the evidence of the parties.

Article 294[19] of Presidential Decree No. 442, also known as the Labor Code of the Philippines, as amended and renumbered, protects the employee's security of tenure by mandating that "[i]n cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title." A lawful dismissal must meet both substantive and procedural requirements; in fine, the dismissal must be for a just or authorized cause and must comply with the rudimentary due process of notice and hearing.[20]

In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof required is substantial evidence, defined as "that amount of relevant evidence which a reasonable mind might accept

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18 *Marlow Navigation Philippines, Inc./Marlow Navigation Co., Ltd. v. Heirs of Ricardo S. Ganal*, G.R. No. 220168, June 7, 2017.

19 Formerly Article 279.

20 *Venzon v. ZAMECO II Electric Cooperative, Inc.*, G.R. No. 213934, November 9, 2016.

as adequate to justify a conclusion."[21] The burden of proof rests upon the party who asserts the affirmative of an issue.[22]

The Court recognizes the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[23]

In this case, petitioners, on one hand, allege that on February 10, 2004, they were suddenly prohibited from entering the premises of respondent NII Enterprises and expressly told not to report for work anymore; and their efforts to continue their employment with respondents remained unheeded. Respondents, on the other hand, deny that petitioners were dismissed at all and aver that petitioners simply stopped reporting for work after a heated altercation between respondent Ignacio and petitioner Doctor on February 10, 2004.

Petitioners' bare allegation that they were dismissed from employment by respondents, unsubstantiated by impartial and independent evidence, is insufficient to establish such fact of dismissal. Petitioners' general claims that they were barred by respondents from entering the work premises and that respondents did not heed petitioners' efforts to continue their employment lacked substantial details to be credible. The Court reiterates the basic rule of evidence that each party must prove his affirmative allegation, that mere allegation is not evidence.[24] The Court also stresses that the evidence to prove the fact of the employee's termination from employment must be clear, positive, and convincing.[25] Absent any showing of an overt or positive act proving that respondents had dismissed petitioners, the latter's claim of illegal dismissal cannot be sustained – as the same would be self-serving, conjectural, and of no probative value.[26]

Petitioners did not provide any explanation for completely failing to mention in their pleadings before the Labor Arbiter the heated argument between respondent Ignacio and petitioner Doctor on February 10, 2004, except only to say that whether they alleged said incident or not is of no consequence. It is readily apparent that said altercation between respondent Ignacio and petitioner Doctor sparked this entire controversy, so it escapes the Court how petitioners could view the same as inconsequential.

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21 Rules of Court, Rule 133, Section 5.

22 *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 229 (2014).

23 *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).

24 *Lopez v. Bodega City (Video-Disco Kitchen of the Philippines)*, 558 Phil. 666, 679 (2007).

25 *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209-210 (2006).

26 *MZR Industries v. Colambot*, supra note 23 at 624.

Consideration by the Court of the said incident will not deter the attention of the Court from the main issue of the case. In fact, said incident sheds light on the parties' actuations on and after February 10, 2004. The Court of Appeals very aptly observed that "[petitioners] were not candid, not mentioning the incident in order not to highlight the fact that they absented themselves from work after the altercation."[27] Petitioners initially made it appear that respondents just arbitrarily barred them from reporting for work. The fact that a serious argument took place between respondent Ignacio and petitioner Doctor on February 10, 2004 would have given more credence to respondents' averment that petitioners, after immediately filing a complaint for slander and threat against respondent Ignacio at the *barangay*, already willfully absented themselves from work.

Respondents' failure to take any disciplinary action against petitioners between February 10, 2004 (the day of the argument between respondent Ignacio and petitioner Doctor) and March 11, 2004 (the day respondents received the Labor Arbiter's summons as regards the illegal dismissal case filed against them by petitioners) does not constitute clear, positive, and convincing evidence that respondents had already dismissed petitioners from employment. Respondents have satisfactorily explained that they had no opportunity to commence any disciplinary proceedings against petitioners under the circumstances. It should be noted that during said one-month period, petitioners had instituted two successive complaints against respondents, one for slander and threat before the *barangay*, and one for illegal dismissal before the NLRC. During the several conferences held before the *barangay*, the parties were still trying to reach an amicable settlement of the dispute between them; and when the parties' efforts on amicable settlement failed, petitioners, shortly thereafter, already filed the illegal dismissal case against respondents before the NLRC. As the Court of Appeals opined, "[t]he immediate filing of the case for illegal dismissal did not give the employer the opportunity to even send show cause notices to [petitioners'] absences. Rather than undergo the normal process of disciplining [petitioners] for repeated absences, [respondent Ignacio] had no other option but to defend her case."[28]

Nevertheless, respondents' arguments on constructive dismissal are misplaced and superfluous given the circumstances in this case. Petitioners have always maintained that they were actually dismissed from employment when they were barred by respondents from entering the work premises and from reporting for work; and respondents have persistently denied that they dismissed petitioners from employment, claiming that petitioners simply stopped reporting for work after the altercation between respondent Ignacio and petitioner Doctor on February 10, 2004.

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27 *Rollo*, p. 143.

28 Id. at 145.

Constructive dismissal is defined as follows:

> Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear as if it were not." It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in pay may be attendant, constructive dismissal may still exist when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign. Under these two definitions, what is essentially lacking is the voluntariness in the employee's separation from employment.[29]

Without petitioners alleging their demotion in rank, diminution in pay, or involuntary resignation due to unbearable working conditions caused by the respondents as employers, there is no need to belabor the issue of constructive dismissal herein. Any discussion on constructive dismissal will be merely speculative and/or academic.

Also contrary to respondents' contention, petitioners cannot be deemed to have abandoned their work simply because they had been absent the days following February 10, 2004. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.[30]

For abandonment to exist, the following requisites must be present: (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer. Respondents herein failed to present any proof of petitioners' overt acts which manifest the latter's clear intention to terminate their employment. In addition, petitioners' filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for employees who take steps to protest their dismissal cannot, by logic, be said to have abandoned their work.[31]

In sum, petitioners failed to discharge the burden of proving with substantial evidence that they were actually dismissed from work by respondents. Since the fact of dismissal had not been satisfactorily established by petitioners, then the burden of proving that the dismissal was legal, *i.e.*, that it was for just and authorized cause/s and in accordance with due process, did not shift to the respondents. Also, petitioners could not be

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29 *Galang v. Boie Takeda Chemicals, Inc.*, G.R. No. 183934, July 20, 2016, 797 SCRA 501.

30 *Samarca v. Arc-Men Industries Inc.*, 459 Phil. 506, 516 (2003).

31 Id. at 515.

deemed to have abandoned their work by merely being absent and without clear intention of severing the employer-employee relationship.

There being no dismissal and no abandonment, the appropriate course of action is to reinstate the employee/s but without the payment of backwages.[32] Yet, in *Dee Jay's Inn and Café v. Rañeses*,[33] the Court ordered therein employers to pay the employee separation pay instead when reinstatement was no longer possible and reasonable. The Court pronounced in *Dee Jay's Inn* that:

> 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. 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. (Citation omitted.)

In the instant case, petitioners' reinstatement is similarly rendered impossible and unreasonable given the length of time that had passed since the controversy started on February 10, 2004, as well as respondents' own allegations that they already reduced their workforce and that petitioners "[have] no more place in the business" of respondents.[34] Therefore, respondents are ordered to pay petitioners separation pay, equivalent to one (1) month salary for every year of service, in lieu of reinstatement.

Accordingly, petitioners Doctor and Lao are entitled to the following amounts of separation pay:

Petitioner	One (1) Month Salary	No. of Years Employed	Total Separation Pay
Doctor	₱7,500.00	Nine (9) Years	₱67,500.00
Lao	₱7,500.00	Eight (8) Years	₱60,000.00

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **PARTIALLY GRANTED**. The Decision dated April 23, 2010 and Resolution dated September 28, 2010 of the Court of Appeals in CA-G.R. SP No. 107497 is **AFFIRMED with MODIFICATION**. The complaint for illegal dismissal of petitioners Maria Vilma G. Doctor and

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32 *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142, 159 (2011).

33 G.R. No. 191823, October 5, 2016, citing *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 409 (2015).

34 *Rollo*, p. 107.

Jaime Lao, Jr. against respondents NII Enterprises and/or Mrs. Nilda C. Ignacio is **DISMISSED** for lack of merit. Although petitioners are entitled to reinstatement to their former positions without payment of backwages, petitioners' reinstatement is already impossible and unreasonable under the particular circumstances of this case. Respondents are, therefore, **ORDERED** to pay petitioners Doctor and Lao separation pay in lieu of reinstatement in the amounts of ₱67,500.00 and ₱60,000.00, respectively.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice