Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DEMEX RATTANCRAFT, INC. AND NARCISO T. DELA MERCED, Petitioners,	**G.R. No. 204288** Present:
-versus-	VELASCO, JR., *J., Chairperson,* BERSAMIN, LEONEN, MARTIRES, and GESMUNDO, *JJ.*
ROSALIO A. LERON, Respondent.	**Promulgated:** November 8, 2017

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DECISION

LEONEN, *J.*:

To justify the dismissal of an employee based on abandonment of work, there must be a showing of overt acts clearly evidencing the employee's intention to sever the employer-employee relationship.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the February 9, 2012 Decision[2] and October 25, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 109077. The

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1 *Rollo*, pp. 7–29.

2 Id. at 30–40. The Decision was penned by then Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Edwin D. Sorongon of the Ninth Division, Court of Appeals, Manila.

3 Id. at 41–42. The Resolution was penned by then Associate Justice Noel G. Tijam and concurred in by Associate Justices Romeo F. Barza and Edwin D. Sorongon of the Former Ninth Division, Court of

assailed judgments reversed the Resolutions of the National Labor Relations Commission, which found that respondent Rosalio A. Leron's (Leron) dismissal was for a just cause.

In 1980, Leron was hired as a weaver by Demex Rattancraft, Inc. (Demex), a domestic corporation engaged in manufacturing handcrafted rattan products for local sale and export.[4] Narciso T. Dela Merced was Demex's president.[5]

Leron was paid on a piece-rate basis[6] and his services were contracted through job orders.[7] He worked from Monday to Saturday. However, there were times when he was required to work on Sundays.[8] Leron received his wages at the end of every week but he never received standard benefits such as 13th month pay, service incentive leave, rest day pay, holiday pay, and overtime pay.[9]

Sometime in June 2006, Leron was dismissed by Demex's foreman, Marcelo Viray (Viray), and Demex's personnel manager, Nora Francisco (Francisco). Both accused him of instigating a campaign to remove Viray as the company's foreman.[10] Before Leron was dismissed from service, he was given a memorandum stating that the dining chair he had previously weaved[11] for export to Japan was rejected. For this reason, Demex expressed that it would no longer avail of his services.[12]

On June 28, 2006, Leron did not report for work.[13] The next day, he filed a complaint against Demex for illegal dismissal before the Labor Arbiter of Quezon City. This case was docketed as NLRC NCR Case No. 00-06-05490-06.[14]

Meanwhile, Demex construed Leron's failure to report to work as an absence without leave. On July 3, 2006, Demex sent Leron a notice requiring him to return to work on July 5, 2006. This was personally served to Leron by one (1) of his co-employees. On July 7, 2006, Demex sent another notice to Leron requiring him to report to work.[15] Despite having received these two (2) notices, Leron did not resume his post. On July 12,

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Appeals, Manila.
4 Id. at 31.
5 Id. at 10.
6 Id. at 31.
7 Id. at 12.
8 Id. at 31.
9 Id.
10 Id.
11 Id.
12 Id. at 263.
13 Id. at 13.
14 Id. at 101–101-A.
15 Id. at 13–14.

2006, Leron received a third notice from Demex informing him of its decision to terminate his services on the ground of abandonment.[16]

On August 3, 2006, the Labor Arbiter dismissed the illegal dismissal case without prejudice on the ground of improper venue.[17] Leron refiled his complaint before the Labor Arbiter of San Fernando City, Pampanga. This case was docketed as NLRC Case No. RAB III 09-10461-06.[18]

In his Decision[19] dated July 30, 2007, Labor Arbiter Leandro M. Jose (Labor Arbiter Jose) dismissed the complaint holding that Leron's termination from employment was valid. However, Demex was ordered to pay 13th month pay amounting to ₱5,833.00.[20]

Leron appealed Labor Arbiter Jose's July 30, 2007 Decision before the National Labor Relations Commission. This was docketed as LAC No. 06-002057-08.[21]

On January 30, 2009, the National Labor Relations Commission rendered a Resolution[22] affirming the Decision of Labor Arbiter Jose but awarded Leron ₱5,000.00 as nominal damages for Demex's non-compliance with procedural due process.[23] The National Labor Relations Commission declared that Leron's absence was a valid ground to terminate him from employment.[24] Leron moved for reconsideration but his motion was denied in the Resolution dated March 16, 2009.[25]

Leron filed a Petition for Certiorari under Rule 65 of the Rules of Court[26] before the Court of Appeals assailing the Resolutions of the National Labor Relations Commission.[27]

In its Decision[28] dated February 9, 2012, the Court of Appeals found grave abuse of discretion on the part of the National Labor Relations Commission when it declared that Leron abandoned his work. According to

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16 Id. at 14.
17 Id. at 32.
18 Id. at 102–102-A.
19 Id. at 89–95.
20 Id. at 94–95.
21 Id. at 84.
22 Id. at 84–87. The attached Resolution is incomplete. The Resolution dated January 30, 2009 was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Gregorio O. Bilog III of the Third Division, National Labor Relations Commission.
23 Id. at 86.
24 Id. at 85–86.
25 Id. at 96–97. The Resolution was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Commissioner Gregorio O. Bilog III.
26 Id. at 30.
27 Id. at 15.
28 Id. at 30–40.

the Court of Appeals, Demex failed to establish the elements constituting abandonment. There was no clear intention on the part of Leron to sever the employer-employee relationship because he filed an illegal dismissal case immediately after he was dismissed by Viray and Francisco. Aside from this, the Court of Appeals ascribed bad faith on Demex and held that its act of sending return-to-work notices was merely an afterthought.[29]

Accordingly, the assailed Resolutions of the National Labor Relations Commission were reversed and set aside. Demex was ordered to pay Leron accrued backwages and separation pay in lieu of reinstatement due to the strained relations between the parties.[30] The Court of Appeals also deleted the award of nominal damages. The dispositive portion of its Decision stated:

> ***WHEREFORE***, the petition is **Granted**. The assailed Resolutions, dated January 30, 2009 and March 16, 2009, of the Public Respondent National Labor Relations Commission, in NLRC LAC NO. 06-002057-08 are hereby **REVERSED and SET ASIDE** and a new one is entered declaring Petitioner's dismissal illegal, thus:
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> 1. Private Respondent Demex is ordered to pay Petitioner backwages, separation pay and P5,833.00 as proportionate 13th month pay for the year 2006.
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> 2. The awarded nominal damages in the amount of P5,000.00 is deleted.
>
> This case is remanded to the Labor Arbiter for the computation of Petitioner's accrued backwages and separation pay.
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> **SO ORDERED.**[31] (Emphasis in the original)

Demex moved for reconsideration but its motion was denied in the Resolution[32] dated October 25, 2012.

On December 21, 2012, Demex filed a Petition for Review on Certiorari before this Court assailing the February 9, 2012 Decision and October 25, 2012 Resolution of the Court of Appeals.[33] Respondent filed his Comment[34] on April 16, 2013 to which petitioners filed their Reply on May 21, 2013.[35]

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29 Id. at 35–38.
30 Id. at 38–39.
31 Id. at 39.
32 Id. at 41–42.
33 Id. at 7–29.
34 Id. at 209–213.
35 Id. at 215–221.

In the Resolution[36] dated June 17, 2013, this Court gave due course to the petition and required the parties to submit their respective memoranda.

Petitioners filed their Memorandum[37] on August 23, 2013 while respondent filed his Memorandum[38] on January 8, 2014.

Petitioners justify respondent's dismissal from employment on the ground of abandonment. They point out that respondent's unauthorized absences, non-compliance with the return-to-work notices, and alleged act of crumpling the first return-to-work notice are indicators of his intention to sever his employment.[39] Petitioners add that the return-to-work notices were not sent to respondent as an afterthought because they only discovered the existence of the first illegal dismissal case after they sent the first notice.[40]

On the other hand, respondent argues that his act of filing an illegal dismissal case negates the charge of abandonment. He points out that he had already filed the illegal dismissal complaint against petitioners before he was given a return-to-work notice. Petitioners "were very much aware"[41] of the case and had actively participated in the proceedings. Respondent also argues that he cannot be faulted for his refusal to return to work. The filing of case for illegal dismissal caused a strained relationship between him and petitioners.[42]

The sole issue for this Court's resolution is whether or not respondent Rosalio A. Leron was validly dismissed from employment by petitioners Demex Rattancraft, Inc. and Narciso T. Dela Merced on the ground of abandonment of work.

Only questions of law may be raised in a petition for review brought under Rule 45 of the Rules of Court.[43] This Court, not being a trier of facts, would no longer disturb the lower court's factual findings when supported by substantial evidence.[44]

The determination of whether or not an employee is guilty of abandonment is a factual matter. It involves a review on the probative value of the evidence presented by each party and the correctness of the lower

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36 Id. at 222–222-A.
37 Id. at 224–241.
38 Id. at 246–262.
39 Id. at 227–236.
40 Id. at 232–235.
41 Id. at 256.
42 Id. at 253–257.
43 RULES OF COURT, Rule 45, sec. 1.
44 *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189, 204 [Per J. Leonen, Second Division].

courts' assessments.[45] The Court of Appeals' finding that respondent did not abandon his work would generally be binding upon the parties and this Court.[46] However, an exception should be made in this case considering that there is a variance in the findings of the Court of Appeals and the National Labor Relations Commission.[47]

Article 297 of the Labor Code enumerates the just causes for the dismissal of an employee:

> Article 297. *Termination by Employer.* — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

Although abandonment of work is not expressly enumerated as a just cause under Article 297 of the Labor Code, jurisprudence has recognized it as a form of or akin to neglect of duty.[48]

Abandonment of work has been construed as "a clear and deliberate intent to discontinue one's employment without any intention of returning back."[49] To justify the dismissal of an employee on this ground, two (2) elements must concur, namely: "(a) the failure to report for work or absence without valid or justifiable reason; and, (b) a clear intention to sever the employer-employee relationship."[50]

Mere failure to report to work is insufficient to support a charge of abandonment. The employer must adduce clear evidence of the employee's "deliberate, unjustified refusal . . . to resume his [or her] employment,"

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45 Id. at 206.
46 Id. at 204–205.
47 Id. at 205–206 *citing Medina v. Asistio, Jr.*, 269 Phil. 225 (1990) [Per J. Bidin, Third Division].
48 *Stanley Fine Furniture v. Gallano*, 748 Phil. 624, 638 (2014) [Per J. Leonen, Second Division].
49 *Flores v. Nuestro*, 243 Phil. 712, 715 (1988) [Per J. Yap, Second Division] *citing Capital Garment Corporation v. Ople*, 202 Phil. 797 (1982) [Per J. De Castro, Second Division].
50 *Pare v. National Labor Relations Commission*, 376 Phil. 288, 292 (1999) [Per J. Bellosillo, Second Division].

which is manifested through the employee's overt acts.[51]

Set against these parameters, this Court finds that the Court of Appeals did not err in holding that the National Labor Relations Commission gravely abused its discretion in upholding respondent's dismissal from service.

In affirming the findings of the Labor Arbiter and in declaring that the petitioners discharged the burden of proof,[52] the National Labor Relations Commission relied on petitioners' evidence. Petitioners presented (1) the *Sinumpaang Salaysay* of the employee who served the first return-to-work notice; (2) the second return-to-work notice dated July 7, 2006; and (3) the termination notice addressed to respondent.[53] The National Labor Relations Commission declared:

> In the instant case, we agree with the finding of the Labor Arbiter that the respondents were able to discharge their burden of proving the validity of the dismissal of the complainant. As borne by the records, the complainant stopped reporting for work beginning June 28, 200[6]. Although he claims that he was not allowed to work on that day, he admitted having received the notices sent by the respondents for him to go back to work. He also failed to justify or offer good reason for ignoring such return[-]to[-]work notices. Thus, the respondents promptly acted in considering him [Absent Without Leave], which is a just ground for his dismissal.[54]

The National Labor Relations Commission committed grave abuse of discretion in holding that respondent's absence from work is a valid ground for his dismissal.

Petitioners' evidence does not clearly establish a case of abandonment. Petitioners failed to prove the second element of abandonment, which is regarded by this Court as the more decisive factor.[55]

Intent to sever the employer-employee relationship can be proven through the overt acts of an employee. However, this intent "cannot be lightly inferred or legally presumed from certain ambivalent acts."[56] The overt acts, after being considered as a whole, must clearly show the

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51 Id.

52 *Rollo*, pp. 85–86.

53 Id. at 93–94. The Labor Arbiter Decision mentioned "July 7, 2008" but meant "July 7, 2006."

54 Id. at 85–86.

55 *Pare v. National Labor Relations Commission*, 376 Phil. 288, 292 (1999) [Per J. Bellosillo, Second Division].

56 *Kams International, Inc. v. National Labor Relations Commission*, 373 Phil. 950, 958 (1999) [Per J. Bellosillo, Second Division] *citing De Paul/King Philip Customs Tailor, and/or Milagros Chuakay and William Go v. National Labor Relations Commission*, 364 Phil. 91 (1999) [Per J. Puno, Second Division].

employee's objective of discontinuing his or her employment.[57]

Petitioners point to respondent's absences, non-compliance with the return-to-work notices, and his alleged act of crumpling the first return-to-work notice as indicators of abandonment.[58] These acts still fail to convincingly show respondent's clear and unequivocal intention to sever his employment.

Respondent filed an illegal dismissal case against petitioners on June 29, 2006, the day after he was unceremoniously dismissed by his superiors on June 28, 2006.[59] Petitioners deny respondent's arbitrary dismissal[60] and claim that respondent abandoned his work starting June 28, 2006.[61]

Petitioners' narrative would mean that respondent instituted an illegal dismissal complaint right after his first day of absence. This is illogical. There was no unequivocal intent to abandon. Respondent even pursued the illegal dismissal case after it was dismissed without prejudice on the ground of improper venue.[62]

Respondent's non-compliance with the return-to-work notices and his alleged act of crumpling the first return-to-work notice are equivocal acts that fail to show a clear intention to sever his employment. Strained relations caused by being legitimately disappointed after being unfairly treated could explain the employee's hesitation to report back immediately. If any, his actuations only explain that he has a grievance, not that he wanted to abandon his work entirely.

Petitioners also failed to comply with procedural due process, particularly the twin-notice rule. They admitted that after sending two (2) return-to-work notices, they sent a notice to respondent informing him of his dismissal.[63]

Valid termination requires the employer to send an initial notice to the employee, stating the specific grounds or causes for dismissal and directing the submission of a written explanation answering the charges. After considering the employee's answer, the employer must give another notice informing the employee of the employer's findings and reason for termination.[64] These are the operative acts that terminate an employer-

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57 Id.
58 *Rollo*, pp. 227–236.
59 Id. at 13 and 31.
60 Id. at 17.
61 Id. at 13.
62 Id. at 32.
63 Id. at 226–228.
64 *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115–117 (2007) [Per J. Velasco, Second Division].

employee relationship. In *Kams International, Inc. v. National Labor Relations Commission*,[65] this Court explained:

> Furthermore, it must be stressed that *abandonment of work does not per se sever the employer-employee relationship.* It is merely a form of neglect of duty, which is in turn a just cause for termination of employment. *The operative act that will ultimately put an end to this relationship is the dismissal of the employee after complying with the procedure prescribed by law.*[66] (Emphasis supplied)

The employer has the burden of proving that an employee's dismissal from service was for a just or authorized cause.[67] Having failed to clearly establish that respondent abandoned his work, this Court denies the petition and affirms the Court of Appeals' finding that respondent was illegally dismissed from employment.

WHEREFORE, the Petition is DENIED. The February 9, 2012 Decision and October 25, 2012 Resolution of the Court of Appeals in CA G.R. SP NO. 109077 are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

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65 373 Phil. 950 (1999) [Per J. Bellosillo, Second Division].

66 Id. at 959.

67 *See Polymedic General Hospital v. National Labor Relations Commission*, 219 Phil. 385 (1985) [Per J. Relova, First Division]; *Austria v. National Labor Relations Commission*, 369 Phil. 557, 565 (1999) [Per J. Bellosillo, Second Division].

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

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

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WILFREDO V. LAPITAN
Division Clerk of Court
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