Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ANTHONEL M. MIÑANO, *Petitioner,*	**G.R. No. 226338**
	Present:
- versus -	PERALTA, *C.J., Chairperson,* CAGUIOA, REYES, J., JR., LAZARO-JAVIER, DELOS SANTOS,* *JJ.*
STO. TOMAS GENERAL HOSPITAL AND DR. NEMESIA ROXAS-PLATON, *Respondents.*	**Promulgated:** JUN 17 2020

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition[1] seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. SP No. 133582:

1. Decision[2] dated August 28, 2015 finding that petitioner was validly dismissed for abandoning his job; and

*Additional member in lieu of Justice Mario V. Lopez who took part in the CA Decision.

[1] Petition dated August 30, 2016; *rollo*, pp. 3-24.

[2] Penned by Associate Justice (now Supreme Court Associate Justice) Rosmari D. Carandang and concurred in by Associate Justices Mario V. Lopez (also now Supreme Court Associate Justice) and Myra V. Garcia-Fernandez; *rollo*, pp. 29-37.

2. Resolution[3] dated July 22, 2016 denying petitioner's motion for reconsideration.

The Facts

On May 30, 2011, petitioner Anthonel M. Miñano sued respondents for illegal suspension, illegal dismissal, non-payment of holiday pay, separation pay, damages, and attorney's fees.[4]

Petitioner essentially alleged that on April 18, 2008, he was hired as a nurse at Sto. Tomas General Hospital owned by respondent Dr. Nemesia Roxas-Platon. After being a trainee for six (6) months, he was regularized and had since worked for respondents for over three (3) years already.[5]

During the holy week of 2011, he went on a three-day leave to attend to some urgent family matters. When he returned to work, however, he received an unwelcome treatment from respondent Dr. Roxas-Platon and was told by a co-employee that Dr. Roxas-Platon wanted him to resign since the hospital did not need him anymore.[6]

On May 4, 2011, a regular meeting with the hospital nurses was held but he failed to attend because he was off-duty. He was expected to return to work on May 7, 2011 based on his work schedule. But when he reported for work on said date, he found out he was not listed in the work schedule of duty nurses. Chief Nurse Vilma Dela Cueva told him Dr. Roxas-Platon did not like him anymore. She informed him he could not work until the hospital administration told him so.[7]

On May 9, 2011, a hospital staff informed him he was placed under suspension from May 5, 2011 to May 18, 2011. He was neither given any prior written notice, nor a reason for his suspension.[8]

On May 19, 2011, after his supposed suspension, he reported for work. But his name was still not on the list of duty nurses. He asked for an explanation and the nursing department told him that Dr. Roxas-Platon did not like him anymore and he was already dismissed from work.[9]

On May 25, 2011, Pharmacy Aide Mariz Villanueva belatedly handed him a Memorandum of Suspension dated May 4, 2011 stating his suspension from work on May 5-18, 2011, *viz*:

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[3] *Rollo*, pp. 39-40.
[4] *Id.* at 30 and 42.
[5] *Id.* at 43.
[6] *Id.*
[7] *Id.* at 43-44.
[8] *Id.* at 44.
[9] *Id.* at 31.

> You are hereby suspended for two weeks effective May 5 to 18, 2011 for being habitually late in coming to work, for not attending the meeting and sleeping while on duty.[10]

Despite the foregoing, he continued to report to the hospital to inquire about his duty schedule. But he was not given any. After several follow-ups, Chief Nurse Dela Cueva finally informed him he was already dismissed from work "*Ayaw na ni doktora sa 'yo, ayaw ka na nyang magtrabaho, tanggal ka na sa trabaho*."[11] Thus, he filed the present case.

For their part, respondents countered that petitioner was validly suspended from May 5 to 18, 2011 for being habitually late, not attending the staff nurses' meeting, and sleeping while on duty. After his suspension though, petitioner did not report for work anymore. Chief Nurse Dela Cueva gave him work assignments but since he was not present, another nurse got assigned instead.

On June 6, 2011, the hospital sent him a letter requiring him to explain within five (5) days why no disciplinary action should be taken against him. Petitioner, however, failed to comply. A letter dated July 7, 2011 was then sent to petitioner informing him to appear before the hospital's disciplinary committee on July 12, 2011 at 2 o'clock in the afternoon. But petitioner did not show up.

Thus, on July 28, 2011, the hospital terminated petitioner's employment on ground of abandonment.

The Ruling of the Labor Arbiter

By Decision[12] dated September 27, 2012, the labor arbiter ruled in favor of petitioner, thus:

> WHEREFORE, premises considered, respondents are hereby adjudged to have illegally suspended and illegally dismissed complainant, and are hereby ordered to pay complainant's backwages in the amount of ₱161,827.40. As reinstatement is already impracticable, they are likewise ordered to pay him his separation pay in the amount of ₱35,048.00; and his holiday pay for May 1, 2011 in the amount of ₱337.00. Also, his attorney's fees, equivalent to 10% of the judgment amount which is ₱19,721.24.
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> SO ORDERED.[13]

According to the labor arbiter, petitioner's suspension and dismissal were both illegal. Petitioner was not afforded an opportunity to explain his side prior to his suspension. Too, he was illegally dismissed sans any

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[10] *Id.* at 65.
[11] *Id.* at 66.
[12] *Id.* at 49.
[13] At page 1 of the CA Decision dated August 28, 2015.

authorized or just cause when the hospital's Chief Nurse told him he was terminated just because the hospital owner Dr. Roxas-Platon did not like him anymore.

The Ruling of the NLRC

On appeal, the NLRC affirmed under Decision[14] dated July 31, 2013. It sustained the labor arbiter's finding that petitioner was illegally suspended. For respondents already adjudged him guilty, albeit he was not yet informed of his infractions and before the conduct of an investigation. Thus, the NLRC added that petitioner should also be paid his salary from May 5-18, 2011 in the amount of ₱4,718.00.

As regards petitioner's dismissal, the NLRC found that respondents failed to prove abandonment as a valid ground. On the contrary, petitioner's immediate filing of the illegal dismissal complaint below negated respondents' claim that he abandoned his work. Too, the supposed administrative investigation conducted by respondents was a mere afterthought because petitioner's dismissal was already a "foregone conclusion".[15]

Respondents' motion for reconsideration was denied under Resolution[16] dated November 29, 2013.

Respondents then elevated the case to the Court of Appeals via a petition for *certiorari*. Although they did not dispute the finding that petitioner was illegally suspended, they argued that the NLRC gravely abused its discretion when it found petitioner to have been illegally dismissed.

The Ruling of the Court of Appeals

By Decision[17] dated August 28, 2015, the Court of Appeals reversed, *viz*:

> **WHEREFORE, premises considered,** the instant petition is **GRANTED**. Finding grave abuse of discretion on the part of the public respondent, the Decision dated July 31, 2013 and the Resolution dated November 29, 2013 are hereby **SET ASIDE**. Respondent's complaint for illegal dismissal is **DISMISSED**. However, the award of P4,718.00 during the period of his suspension is hereby maintained.
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> **SO ORDERED**.[18]

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[14] Penned by Commissioner Mercedes R. Posada-Lacap with the concurrence of Commissioner Dolores M. Peralta-Beley; *rollo*, pp. 60 & 68.
[15] As stated in the NLRC Decision dated July 31, 2013; *rollo*, p. 59
[16] *Rollo*, pp. 63-69.
[17] Penned by Associate Justice (now Supreme Court Associate Justice) Rosmari D. Carandang and concurred in by Associate Justices Mario V. Lopez (also now Supreme Court Associate Justice) and Myra V. Garcia-Fernandez; *rollo*, pp. 29-37.
[18] *Rollo*, p. 37.

According to the Court of Appeals, petitioner's complaint dated May 30, 2011 was premature. He failed to prove he was dismissed from employment on May 19, 2011 when Chief Nurse Dela Cueva told him "*Ayaw na ni doktora sa 'yo, ayaw ka na nyang magtrabaho, tanggal ka na sa trabaho.*"[19] On the contrary, it was petitioner who abandoned his job when he failed to report back to work after his suspension. Too, respondents' letter dated June 6, 2011 requiring petitioner to explain why he failed to return to work after his suspension showed that no dismissal happened on May 19, 2011. As such, the Court of Appeals ruled that petitioner was validly dismissed on July 28, 2011 on ground of abandonment.

Petitioner moved for reconsideration but it was denied under Resolution[20] dated July 22, 2016

The Present Petition

Petitioner now faults the Court of Appeals for brushing aside the factual findings and legal conclusion of the NLRC which sustained the labor arbiter's ruling that he was illegally dismissed by herein respondents. In support hereof, petitioner reiterates: (1) he never abandoned his job and continued to report for work even after his illegal suspension; (2) respondents, however, no longer gave him a duty schedule after illegally suspending him; (3) the hospital's Chief Nurse herself told him he was dismissed from employment and respondent Dr. Roxas-Platon did not like him anymore.

In their Comment,[21] respondents replead their submissions below against petitioner's plea for affirmative relief.

Issue

Was petitioner illegally dismissed?

Ruling

The Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. For factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case.[22]

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[19] *Id.* at 66.
[20] *Id.* at 39-40.
[21] *Id.* at 83-88.
[22] *The Peninsula Manila v. Jar*a, G.R. No. 225586, July 29, 2019. Citations omitted.

After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

Petitioner was illegally dismissed

In reversing the findings of the labor tribunals, the Court of Appeals held that at the time petitioner filed his complaint on May 30, 2011, there was no illegal dismissal to speak of yet. It accepted respondents' assertion that an administrative investigation was still to be conducted as shown in its letter dated June 6, 2011 requiring petitioner to explain his failure to report for work after his suspension. Thus, it was petitioner who wrongly presumed he was dismissed and prematurely filed the complaint.

We do not agree.

Petitioner had all the reason to believe that he had been dismissed from employment due to the events that transpired prior to and after his illegal suspension, *viz*: (1) when he reported for work after the holy week of 2011, respondent Dr. Roxas-Platon and the hospital staff already treated him indifferently; (2) he was excluded from the meeting of hospital nurses held on May 4, 2011 - the same day he was off-duty; (3) when he reported for work on May 7, 2011 based on his schedule, he found out he was no longer included in the work schedule of duty nurses; (4) Chief Nurse Dela Cueva then told him Dr. Roxas-Platon did not like him anymore and he could not work until the hospital administration told him so; (5) on May 9, 2011, he was informed that he was suspended from May 5, 2011 to May 18, 2011 without any prior investigation or notice; (6) when he reported back to work on May 19, 2011, his name was still not on the list of duty nurses; (7) the nursing department told him Dr. Roxas-Platon did not like him anymore and he was already dismissed from work; (8) he continued to report to the hospital but he was not given any duty schedule; (9) after several follow-ups, Chief Nurse Dela Cueva finally informed him he was already dismissed from work saying "*Ayaw na ni doktora sa 'yo, ayaw ka na nyang magtrabaho, tanggal ka na sa trabaho.*"[23]

Surely, the foregoing circumstances would lead petitioner to believe that his employment had been terminated. Anyone with a reasonable mind would. The callous treatment he received from respondents, his superior, and co-workers left petitioner with no choice but to cry foul. Hence, his recourse of filing an illegal dismissal case against respondents could not have been premature. For the truth was, he had already been dismissed by respondents.

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[23] *Rollo*, p. 66.

Abandonment was not proven

Respondents though maintain that petitioner was not illegally dismissed. They claim that when petitioner filed the complaint below, the hospital's disciplinary committee had yet to conduct an investigation on his alleged failure to report for work after his suspension. But since petitioner no longer reported for work and ignored the notices sent him, he was validly dismissed on July 28, 2011 on ground of abandonment.

Respondents are mistaken.

First. Respondents' supposed administrative investigation is clearly an afterthought. The letters dated June 6, 2011 and July 7, 2011 were only made after petitioner sued them for illegal dismissal. By then, respondents may have already realized that petitioner's termination was illegal. As the NLRC keenly observed:

> It is rather surprising why, despite [respondents'] claim that [petitioner] failed to report since May 19, 2011 no memorandum was given to the latter for his long absence until the memorandum dated June 6, 2011 requiring [petitioner] to explain. It did not escape notice that [petitioner] filed his complaint on May 30, 2011 and summons was received by [respondents] on June 06, 2011.
>
> We do not consider these a coincidence.
>
> On the contrary, this shows that the notice to explain, the investigation on July 12, 2011 per notice dated July 7, 2011 [were] mere afterthoughts to remedy the earlier act of dismissal. At the time these documents were prepared, [respondents] already knew that [petitioner] had filed a complaint with the arbitration branch of NLRC.[24]

Obviously, the purported investigation conducted by the hospital's disciplinary committee was only meant to give a semblance of validity to petitioner's dismissal from service. For its outcome was already predetermined as respondents were already resolute in their decision to terminate petitioner, albeit for the second time. As the NLRC aptly noted, petitioner's dismissal was already a "foregone conclusion".

Second. If indeed petitioner had not yet been terminated and respondents still considered him an employee, they could have sent him a return-to-work order. But they never did. Instead, they stuck to their narrative that it was petitioner who erroneously assumed he was terminated.

In ***Daguinod v. Southgate Foods, Inc.,***[25] the Court elucidated that the employer's failure to issue a return-to-work order to the employee negates its claim that the latter was not yet terminated. The employer's excuse that it was the employee who wrongly presumed he was dismissed from employment

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[24] At pp. 5-6 of the NLRC Resolution dated November 29, 2013; *rollo*, pp. 67.
[25] G.R. No. 227795, February 20, 2019.

was rejected. The employee was thus declared to have been illegally dismissed.

Third. Respondents failed to prove its defense of abandonment so as to make petitioner's termination a valid one.

To constitute abandonment, two elements must concur, to wit: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts.[26]Abandonment as a just ground for dismissal requires the deliberate, unjustified refusal of the employee to perform his employment responsibilities. Mere absence or failure to work, even after notice to return, is not tantamount to abandonment.[27]

The second element of abandonment is lacking here. Aside from petitioner's alleged failure to report for work, respondents failed to prove that petitioner had the intention of abandoning his job. They failed to establish that petitioner exhibited a deliberate and unjustified refusal to resume his employment. His mere absence was not accompanied by any overt act unerringly pointing to the fact that he simply does not want to work anymore.[28]

In ***Demex Rattancraft, Inc. v. Leron***,[29] the Court decreed that an employee's absences and non-compliance with return-to-work notices do not convincingly show a clear and unequivocal intention to sever one's employment. For 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.

Too, petitioner's immediate filing of the complaint below after his superior Chief Nurse Dela Cueva told him he was already terminated is a clear indication that he had the desire to continue with his employment.[30] As we held in ***Fernandez v. Newfield Staff Solutions, Inc.***[31]:

> Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.

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[26] *Concrete Solutions, Inc. v. Cabusas*, 711 Phil. 477, 287-288 (2013).
[27] *Manarpiis v. Texan Philippines, Inc.*, 752 Phil. 305, 321 (2015).
[28] *Geraldo v. The Bill Sender Corp.*, G.R. No. 222219, October 3, 2018.
[29] G.R. No. 204288, November 8, 2017.
[30] *Tamblot Security & General Services, Inc. v. Item*, 774 Phil. 312, 317-318 (2015).
[31] 713 Phil. 707, 718 (2013).

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[31] 713 Phil. 707, 718 (2013).

Indeed, it would be illogical for petitioner to abandon his work and then immediately file an action for illegal dismissal. Petitioner's act of contesting the legality of his dismissal ably supports his sincere intention to return to work, thus negating respondents' claim that he had abandoned his job.[32]

All told, abandonment here was a just trumped-up charge to make it appear that petitioner was not yet terminated when he filed the illegal dismissal complaint and to give a semblance of truth to the belated investigation against him. But the truth is, petitioner did not abandon his work. He was repeatedly told that respondents did not want him anymore and he was dismissed from his employment. The NLRC, therefore, did not gravely abuse its discretion in upholding the labor arbiter's finding that petitioner was illegally dismissed. Verily, the Court of Appeals' erred in ruling that petitioner was validly dismissed.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated August 28, 2015 and the Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 133582 are **REVERSED** and **SET ASIDE**. The Decision dated July 31, 2013 NLRC RAB-IV-05-00822-11-B and NLRC LAC No. 01-000065-13 is **REINSTATED**.

The Court **DIRECTS** the labor arbiter to facilitate the re-computation of the total monetary awards due to the petitioner in accordance with this Decision.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

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[32] Supra note 26.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

EDGARDO L. DELOS SANTOS
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.

DIOSDADO M. PERALTA
Chief Justice