



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 6, 2022, which reads as follows:

“G.R. No. 243608 (*River Valley Distribution, Inc. and/or Andrew P. Ng v. Rosauo Guanio*). – This is a Petition for Review on *Certiorari*¹ filed by petitioners River Valley Distribution, Inc., (RVDI) and Andrew P. Ng (Ng) (collectively, petitioners) assailing the Decision² dated 15 May 2018 and Resolution³ dated 09 November 2018 promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 09831.

The CA affirmed with modification the Decision⁴ dated 28 August 2015 and the Resolution⁵ dated 28 October 2015 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-08-000464-2015. It ordered petitioners to reinstate Rosauo Guanio (respondent) and to refund him the illegal deductions. The NLRC reversed the Decision⁶ dated 20 July 2015 of the Labor Arbiter (LA) in NLRC RAB Case No. VIII-03-00073-15. The LA decreed that petitioners are liable to respondent for illegal deductions, 13th month pay, and attorney’s fees.

Antecedents

The following are the facts, as summarized by the CA:

¹ *Rollo*, pp. 10-29.

² *Id.* at 59-76; penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Gabriel T. Ingles and Marilyn Lagura-Yap.

³ *Id.* at 31-32; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Edward B. Contreras.

⁴ *Id.* at 44-52; penned by Presiding Commissioner Violeta Ortiz-Bantug and Commissioners Julie C. Rendoque and Jose G. Gutierrez.

⁵ *Id.* at 54-57; penned by Presiding Commissioner Violeta Ortiz-Bantug and Commissioners Julie C. Rendoque and Jose G. Gutierrez.

⁶ *Id.* at 34-42; penned by Executive Labor Arbiter Amelia B. Docena.

x x x [RVDI] is a corporation engaged in the wholesale and distribution of rice, sugar, oil, canned goods, and other basic commodities. In November 2010, it employed [respondent] as Panel Truck Salesman, and as Booking Salesman for Leyte and Samar beginning January 2011.

As events unfolded, [respondent] filed a *Complaint* against [petitioners] for unfair labor practice, illegal dismissal, illegal suspension, illegal deduction, and non-payment of salaries for January 2015, 13th month pay and leave benefits, docketed as NLRC RAB Case No. VIII-03-00073-15. [Respondent] alleged, among others, that he travelled to different cities and municipalities in Northern Samar and Leyte to book orders from customers and store owners for x x x RVDI's goods. He was compensated with a fixed monthly salary plus commissions from the sale he generates and payments he is able to collect.

According to [respondent], in December 2010, RVDI made unauthorized deductions from his salary, representing the uncollected payments of stores from which he solicited sales. The first deduction from [respondent's] salary was for the unpaid account of customer Elias Gulane of Barangay Sampaguita, Tacloban City in the amount of Php10,896.00. Although [respondent] exerted earnest effort[s] to collect the said account for which he even resorted to barangay conciliation, he failed. [Respondent's] protest against the unauthorized deduction was not taken well by x x x RVDI. As a consequence, [respondent] was constrained to hold his peace in order not to lose his source of livelihood.

[Respondent] did not receive any commission from October 2011 up to the time he was terminated without cause on January 28, 2015. The uncollected debts of x x x RVDI's customers, which ought to have been considered as bad debts, and for which legal remedies should have been instituted against the defaulting customers, were instead set-off against [respondent's] commissions. Thus, from 2011 to 2015, [respondent] received an average take home pay of only Php5,800.00 out of his monthly basic salary of Php8,500.00 as charges, like a 3% interest on uncollected payments, were deducted from his basic salary and commissions. Additionally, [respondent] was not paid his 13th month pay from 2012 to 2015, as these were similarly applied to the uncollected accounts.

Worse, [respondent] was eventually dismissed from employment without being afforded substantive and procedural due process. [Respondent] just took an emergency leave, but when he reported back to work sometime in the first week of February 2015, he was no longer allowed by x x x RVDI to continue with his employment. His salary for the month of January 2015 was not even released.

For their part, [petitioners] admitted the engagement of [respondent] as its salesman on commission basis. According to [petitioners], from January 26 to 30, 2015, [respondent] incurred unauthorized absences for which a notice to explain was served upon him. [Respondent], through a letter-explanation, adverted to some family matters that he had to attend to, but assured [petitioners] that he will report back to work at the soonest possible time. He, however, did not.

Subsequently, [petitioners] discovered that [respondent] had been collecting and receiving payments from customers without remitting his

collections in accordance with the company's procedure. As a consequence, on February 5, 2015, x x x RVDI served upon him a *Notice to Explain and Preventive Suspension*. Instead of answering the charge, [respondent] filed the *Complaint* with the RAB VIII for, among others, illegal dismissal, against [petitioners].⁷

Ruling of the LA

On 20 July 2015, the LA issued a Decision⁸ which declared that respondent was not illegally dismissed. Petitioners, however, are liable for illegal deductions, 13th month pay, and attorney's fees.⁹ Thus:

WHEREFORE, judgment is hereby rendered, declaring that [respondent] was not dismissed, much less illegally dismissed. x x x x [RVDI], however, is declared to have illegally deducted from [respondent's] commissions the bad debts of customers in the total amount of P188,456.76. As such, the total amount so deducted should be returned to [respondent]. In addition, [RVDI] is directed to pay [respondent's] 13th month pay for three (3) years as computed above, plus ten percent attorney's fees based on the monetary judgment. In sum, total amount to be paid by [petitioners] to [respondent] are as follows:

a. Refund of the amounts illegally deducted from complainant's commission	P188,456.76
b. 13 th month pay (3 years)	<u>25,500.00</u>
Total	P213,956.76
Add: 10% attorney's fees	<u>21,395.68</u>
Grand Total	<u>P235,352.44</u>

or the total amount of Two Hundred Thirty-Five Thousand Three Hundred Fifty-Two Pesos and 44/100 (P235,352.44).

Other claims are dismissed for lack of merit.

SO ORDERED.¹⁰

The LA denied respondent's claim of illegal dismissal as it relied on petitioners' presentation of its Notice to Explain dated 30 January 2015 and Notice to Explain and Preventive Suspension dated 05 February 2015 which were both addressed to respondent. These two notices bolstered petitioners' claim that respondent was merely placed under preventive suspension and was not dismissed.¹¹

The deductions that petitioners made from respondent's wages were

⁷ Id. at 34-40.

⁸ Id. at 34-42.

⁹ Id. at 40-41.

¹⁰ Id. at 41-42.

¹¹ Id. at 38.

ruled as contrary to Article 113 of the Labor Code.¹² There are no laws or regulations which allow petitioners to pass on to respondent the bad debts of its customers. Further, petitioners also failed to provide evidence that they paid respondent his 13th month pay for three years. The LA denied respondent's claim for service incentive leave because field personnel, who perform their regular duties away from the principal place of business, are not entitled to such. Finally, attorney's fees of 10% of the total monetary claims were awarded to respondent because he was forced to hire a lawyer to protect his rights and enforce his claims.¹³

Ruling of the NLRC

Petitioners filed an appeal from the LA's decision. They questioned the finding of unauthorized deductions as well as the awards of 13th month pay and attorney's fees.¹⁴

In a Decision¹⁵ promulgated on 28 August 2015, the NLRC granted petitioners' appeal, thus:

WHEREFORE, premises considered, x x x [RVDI's] appeal is GRANTED. The decision appealed from is hereby REVERSED as We declare that x x x RVDI is not liable for illegal deduction from [respondent's] wages, thereby deleting the award of refund of the amount deducted for bad debts.

The grant of 13th month pay is retained.

The award of attorney's fees is likewise deleted for lack of basis.

Thus, x x x [RVDI] is hereby ordered to pay [respondent] the total amount of Twenty-Five Thousand Five Hundred Pesos (Php25,500.00).

SO ORDERED.¹⁶

The NLRC agreed with petitioners that they should not be liable for illegal wage deduction based merely on the payslips presented by respondent. The payslips presented were mere photocopies and were not signed by an authorized employee who prepared the same. The refund of the amount

¹² **Art. 113. Wage deduction.** No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

¹³ *Rollo*, p. 41.

¹⁴ *Id.* at 48.

¹⁵ *Id.* at 44-52.

¹⁶ *Id.* at 51-52.

deducted for bad debts was deleted by the NLRC. The award of 13th month pay was retained because RVDI failed to prove its payment. The award of attorney's fees was also deleted because there was no showing that respondent was illegally dismissed in bad faith and was compelled to litigate to protect his rights.¹⁷

Both parties filed separate Motions for Reconsideration. In a Resolution¹⁸ dated 28 October 2015, the NLRC denied respondent's Motion for Reconsideration and partially granted that of RVDI. RVDI made a belated submission of the payroll for the years 2011 to 2014. The NLRC found that respondent was paid his 13th month pay for the years 2012 and 2014. The grant of 13th month pay for 2013 in the amount of ₱8,500.00 was retained.¹⁹

Ruling of the CA

Respondent filed a Petition for *Certiorari* under Rule 65 with the CA assailing the NLRC's Decision and Resolution. The CA granted the petition in part when it held that there was no dismissal, much less illegal, effected by petitioners, and there was also no abandonment of the job to speak of on respondent's part and reinstated the LA's award for the reimbursement of illegal deductions. The CA ruled thus:

WHEREFORE, the *Petition* is **PARTLY GRANTED**. The assailed *Decision* dated August 28, 2015 and *Resolution* dated October 28, 2015 of the National Labor Relations Commission, Seventh (7th) Division, Cebu City in NLRC Case No. VAC-08-000464-2015, are hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) x x x [RVDI] is ordered to **REINSTATE** x x x Rosaura Guanio to his former position, without loss of seniority rights;

(2) The [LA's] award for the **REFUND** of the amount illegal deducted from [respondent's] wages and commissions in the sum of **Ph188,456.76** is reinstated; and

(3) x x x [RVDI] is ordered to pay an interest of 6% *per annum* of the total monetary awards computed from the date of finality of this *Decision* until its full satisfaction.

SO ORDERED.²⁰

The CA agreed with the LA and the NLRC in their finding that there is no dismissal involved in the present case. There was also no abandonment by respondent. Petitioners merely asked respondent to explain the finding against him while he was in preventive suspension. Respondent should return to work and answer the charges against him while petitioners should

¹⁷ Id. at 52.

¹⁸ Id. at 54-57.

¹⁹ Id. at 52.

²⁰ Id. at 75.

reinstate respondent without prejudice to the results of the investigation against him.²¹

On the matter of illegal deductions against respondent's salaries and commissions, the CA reversed the NLRC's findings and affirmed that of the LA's. Petitioners failed to present the original copies of respondent's payslips and rebut respondent's claim. The CA did not accept petitioners' justification that respondent should prove that there were actual sales that entitled him to commissions.²²

Petitioners filed a Motion for Reconsideration which respondent opposed. The CA, in its Resolution²³ dated 09 November 2018, denied petitioners' motion for reconsideration for want of merit.

Issues

The following errors are presented for the resolution of this Court:

I. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN ORDERING THE REINSTATEMENT OF THE RESPONDENT;

a. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN HOLDING THAT THERE WAS NO ABANDONMENT OF JOB ON THE PART OF THE RESPONDENT, MAKING SUCH PREMISE THE BASIS OF HIS REINSTATEMENT;

II. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN HOLDING PETITIONER LIABLE FOR ILLEGAL WAGE DEDUCTIONS; AND IN ORDERING THE REFUND OF THE AMOUNT ALLEGEDLY ILLEGALLY DEDUCTED FROM THE RESPONDENT'S WAGES;

a. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN GIVING CREDENCE TO THE PHOTOCOPIES OF THE ALLEGED PAYSLIPS PRESENTED BY THE RESPONDENT AND IN HOLDING THAT THE SAME CONSTITUTED SUBSTANTIAL EVIDENCE.²⁴

Ruling of the Court

We find no merit in the petition. At the outset, We deem it necessary to state that this Court's duty to review the present case is limited by determination of questions of law.

²¹ Id.

²² Id. at 37.

²³ Id. at 31-32.

²⁴ Id. at 17.

Reinstatement

The propriety of the remedy of reinstatement may be established by resolving whether petitioners illegally dismissed respondent and whether respondent abandoned his work.

The established facts state that respondent was absent from 26 to 30 January 2015.²⁵ Petitioners first sent him a Notice to Explain on 30 January 2015. Respondent was able to reply and alleged that he had to attend to family matters and he would report for work at the soonest possible time.²⁶ Petitioners then discovered that respondent failed to remit payments from clients, so they sent to him through registered mail a Notice to Explain and Preventive Suspension on 05 February 2015.²⁷ There was no showing that respondent received the second notice, yet petitioners alleged that respondent did not show up for work. Respondent, on the other hand, claimed that petitioners no longer allowed him to continue with his employment when he reported for work sometime in the first week of February 2015.²⁸ After a few weeks, respondent filed the Complaint before the LA on 10 March 2015.²⁹

The LA stated that the 30 January 2015 Notice to Explain and the 05 February 2015 Notice to Explain and Preventive Suspension sent by petitioners support their claim that respondent was merely preventively suspended. The CA took the NLRC's silence on the matter as assent. We agree with the lower courts.

In illegal dismissal cases, the employee must first establish by substantial evidence the fact of dismissal before the employer is charged with the burden of proving its legality.³⁰ Apart from his allegations, respondent failed to demonstrate that petitioners actually dismissed him from employment. There was no notice of termination served upon him. Respondent also failed to demonstrate that petitioners dismissed him constructively. In *Galang v. Boie Takeda Chemicals*,³¹ We identified two definitions of constructive dismissal:

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

²⁵ Id. at 37.

²⁶ Id.

²⁷ Id. at 38.

²⁸ Id. at 46.

²⁹ Id. at 47.

³⁰ *Gososo v. Leyte Lumber Yard and Hardware, Inc.*, G.R. 205257, 13 January 2021. See also *Exodus International Construction Corporation v. Biscocho*, 659 Phil. 142 (2011).

³¹ 790 Phil. 582 (2016).

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.³²

In the present case, respondent neither received a diminution in pay and benefits nor was demoted. Respondent also failed to convince that employment was rendered impossible, unreasonable, or unlikely. As there was no dismissal, whether actual or constructive, there is no question that can be entertained regarding its legality or illegality.

Similarly, petitioners failed to show that respondent was guilty of abandonment. *Northwest Tourism Corp. v. Former Special Third Division of the Honorable Court of Appeals*.³³ is instructive on this matter.

To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. The employer has the burden of proof to show the employee's deliberate and unjustified refusal to resume his employment without any intention of returning. Mere absence is not sufficient. There must be an unequivocal intent on the part of the employee to discontinue his employment.³⁴

Indeed, respondent's act of filing a complaint for illegal dismissal militates against any finding of abandonment.

Since there is no finding of illegal dismissal nor of abandonment, the CA is thus correct in ruling that respondent should be reinstated by petitioners. Neither of the parties have shown circumstances that would lead this Court to rule that reinstatement is no longer feasible. Reinstatement is no longer feasible when: (a) the former position of the illegally dismissed employee no longer exists; or (b) the employer's business has closed down; or (c) the employer-employee relationship has already been strained as to render the reinstatement impossible; or (d) considerable time has lapsed between the dismissal and resolution of the case.³⁵

"Considerable time" in jurisprudence refers to the lapse of eight years or more.³⁶ In several other cases, separation pay *in lieu* of reinstatement was awarded upon the lapse of these periods: 10 years,³⁷ 11 years,³⁸ 13 years,³⁹

³² Id. at 595-596.

³³ 500 Phil. 85 (2005). Citations omitted.

³⁴ Id. at 95.

³⁵ See *JS Unitrade Merchandise, Inc. v. Samson*, G.R. No. 200405, 26 February 2020. Citations omitted.

³⁶ *Sta. Ana v. Manila Jockey Club*, 805 Phil. 887, 905 (2017); *Association of Independent Unions in the Philippines v. National Labor Relations Commission*, 364 Phil. 697 (1999).

³⁷ *Lambo v. National Labor Relations Commission*, 375 Phil. 855 (1999).

³⁸ *Dee Jay's Inn and Café v. Raneses*, 796 Phil. 574, 596 (2016).

³⁹ *Gososo v. Leyte Lumber Yard and Hardware, Inc.*, G.R. No. 205257, 13 January 2021; *JS Unitrade Merchandise, Inc. v. Samson*, supra; *Doctor v. NII Enterprises*, 821 Phil. 251 (2017).

15 years,⁴⁰ 16 years,⁴¹ 17 years,⁴² and 23 years.⁴³ Respondent filed his complaint on 05 February 2015. Reinstatement is thus still feasible as the period that elapsed from the time of filing of the complaint until the resolution of the case is less than eight years.

In justifying the probative value of the copy of the payslips, We cited the CA with approval as We declared:

x x x the payslips are *original duplicates of computerized payslips* issued by the employer, Salim Al Yami Est., to its workers which contain entries such as pay date, employee's I.D. number, employee name, category, basic rate, overtime hours and other relevant information, including an itemization of earnings (basic pay, overtime pay, meal allowance for the period covered) and deductions. The fact that the payslips are not authenticated will not militate against complainant's claim, considering that in presenting the payslips, complainant has established the fact of underpayment, and the burden has shifted to the respondent to prove that complainant was totally compensated for actual services rendered.⁴⁴

This Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. In the exercise of its power of review, the factual findings of the CA are conclusive and binding on this Court and it is not Our function to analyze or weigh evidence all over again.⁴⁵ Aside from affirming the ruling that petitioners made illegal deductions, We also affirm the LA and the CA's finding that ₱188,456.76 is the amount that petitioners ought to refund to respondent.

Like the CA, We also impose on the monetary awards legal interest at six percent (6%) per *annum* from the date of finality of this Resolution until full payment pursuant to *Nacar v. Gallery Frames*.⁴⁶

WHEREFORE, the petition is **DENIED**. The Decision dated 15 May 2018 and Resolution dated 09 November 2018 promulgated by the Court of Appeals in CA-G.R. SP No. 09831 are **AFFIRMED**.

The filing of the petitioners' reply to the comment/opposition to the petition for review on *certiorari* required in the Resolution dated 26 February 2020 is **DISPENSED WITH**.

⁴⁰ *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 409 (2015); *Manila Jockey Club v. Trajano*, 712 Phil. 254 (2013); *Abaria v. National Labor Relations Commission*, 678 Phil 64 (2011).

⁴¹ *Ergonomic Systems Philippines, Inc. v. Enaje*, 822 Phil. 669, 687 (2017).

⁴² *G & S Transport Corporation v. Infante*, 559 Phil. 701, 716 (2007).

⁴³ *Bigg's, Inc. v. Boncacas*, G.R. No. 200487, 06 March 2019.


⁴⁴ *Rollo*, p. 71.

⁴⁵ *Chan v. Magsaysay Maritime Corp*, G.R. No. 239055, 11 March 2020.

⁴⁶ 716 Phil. 267, 283 (2013). See also *Chan v. Magsaysay Maritime Corp*, supra.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *7/9/22*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
154-I
OCT 04 2022

TDCT & PARTNERS
Counsel for Petitioners
M.B. Yu Building, Real Street
Tacloban City, 6500 Leyte

Court of Appeals
6000 Cebu City
(CA-G.R. SP No. 09831)

SOLIBAGA LAW OFFICE
Counsel for Respondent
Pro DeoEt Patria Building
Navarro Street, Ormoc City
6541 Leyte

NATIONAL LABOR RELATIONS
COMMISSION
Seventh Division
6000 Cebu City
(NLRC Case No. VAC-08-000464-2015)
(NLRC RAB Case No. VIII-03-00073-2015)

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