



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 1, 2023 which reads as follows:

“G.R. No. 249418 (*Devenia Boter Mariano v. Fast Alter Station/Alfredo Racho*). — Before Us is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking the reversal of the Resolutions dated 25 April 2019² and 16 August 2019³ of the Court of Appeals (CA) in CA-G.R. SP No. 160076-UDK. The assailed Resolutions dismissed the Petition for *Certiorari* with Motion to Litigate as Pauper⁴ *motu proprio* filed by Devenia B. Mariano (petitioner) for her failure to pay docket and other lawful fees and on purely technical grounds.

Antecedents

Petitioner alleged that she has been employed with Fast Alter Station, owned by Alfredo Racho⁵ (Racho), since 03 August 2004, as an “alterer” receiving minimum wage. On 23 May 2017, petitioner’s niece, who was under her custody, passed away. She immediately informed her supervisor of her situation and applied for a leave of absence to bring her niece’s remains to their province. Petitioner, however, was unaware that her application for leave was not granted. After the interment, petitioner’s child with special needs suffered various illnesses, further extending her absence from work. When she reported back to work, petitioner was allegedly informed by Racho that her employment has already been terminated. She was further informed that she can only be re-hired if she waived her seniority rights, which she refused.

¹ *Rollo*, pp. 23-46.

² *Id.* at 70-73; Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Victoria Isabel A. Paredes and Ruben Reynaldo G. Roxas.

³ *Id.* at 90-92.

⁴ *Id.* at 8-11.

⁵ Alfred Racho in some parts of the records.

Thus, petitioner filed the instant case for illegal dismissal and money claims with the Labor Arbiter (LA).⁶

In their defense, respondents claimed that petitioner was not dismissed from service, but she stopped reporting for work, which is tantamount to abandonment. They admitted that they contracted petitioner's services as an "alterer" of clothes. However, beginning 26 May 2017, petitioner stopped reporting for work. She likewise failed to file any application for leave. They directed petitioner to report back to work, but she informed them through a text message that she had decided to resign instead of returning to work. However, she never tendered any written resignation or explanation for her prolonged absence.⁷

Respondents further claimed to have sent two notices to petitioner. *First*, on 04 October 2017, respondents reminded petitioner that she had been absent without approved leave since 26 May 2017 and that the company does not allow leaves for more than 15 days. She was also required to submit her resignation letter as previously discussed. Petitioner was likewise notified that her failure to comply with the said letter will be considered as Absence Without Official Leave (AWOL) and/or abandonment of work. *Second*, on 12 October 2017, respondents sent a notice declaring petitioner as AWOL for failure to comply with their first notice to report back for work. Both letters were delivered to petitioner's residential address. According to respondents, petitioner's failure to heed their directives made them consider her to have abandoned her work effective 26 May 2017.⁸ Thus, petitioner is not entitled to separation pay, backwages, moral and exemplary damages, and attorney's fees.⁹

Ruling of the Labor Arbiter

In a Decision¹⁰ dated 18 September 2018, the LA dismissed petitioner's complaint for lack of merit. However, respondents were directed to pay petitioner the amount of ₱5,075.35 representing her proportionate 13th month pay for the year 2017. In finding the absence of illegal dismissal, the LA held that all the elements to establish abandonment were present, given that: (1) petitioner had been absent since 26 May 2017 and failed to report to work for almost five months; (2) she did not render any explanation for her prolonged absence; and (3) she admitted receiving respondents' letters, yet she failed to comply.¹¹

⁶ *Rollo*, p. 262.

⁷ *Id.* at 270-279.

⁸ *Id.* at 270-273.

⁹ *Id.* at 274-279.

¹⁰ *Id.* at 347 (LA's Decision not attached in the *rollo*).

¹¹ *Id.* at 349.

Aggrieved, petitioner filed her partial appeal before the National Labor Relations Commission (NLRC).¹²

Ruling of the NLRC

In a Decision¹³ dated 30 October 2018, the NLRC denied her appeal for lack of merit. The NLRC ruled that petitioner was not dismissed by respondents.¹⁴ Instead, the NLRC agreed with the LA that petitioner abandoned her job, noting that petitioner failed to proffer any proof that she advised respondents of her prolonged absence or that her absences were justified. Petitioner herself admitted that she knew that her application for leave was not granted. On the other hand, respondents were able to prove that they exerted considerable efforts to notify petitioner of her absence and asked her to report back to work. However, petitioner did not reply, forcing the respondents to declare her AWOL.¹⁵ Thus, the NLRC ruled that there was an intention on the part of the petitioner to sever her employment relationship with respondents since she failed to abide by the warning given by the company and continued to be absent without leave, or to even give any explanation for such absences.¹⁶

Petitioner moved for reconsideration,¹⁷ but the same was denied in a Resolution¹⁸ dated 28 December 2018. Thus, she filed her Petition for *Certiorari* with a Motion to Litigate as Pauper with the CA.

Ruling of the CA

In a Resolution¹⁹ dated 25 April 2019, the CA dismissed petitioner's petition for *certiorari* for failure to pay docket and other court fees. The CA held that petitioner cannot be declared as pauper litigant because she failed to comply with the requirements under Section 19, Rule 141 of the Rules of Court, as amended by A.M. No. 00-2-01-SC and A.M. No. 04-2-04-SC.²⁰ While petitioner was able to show that she does not own any real property, she failed to prove that she and her immediate family do not own an amount double the monthly minimum wage of an employee as to exempt her from

¹² Id. at 347.

¹³ Id. at 347-353; Penned by Commissioner Cecilio Alejandro C. Villanueva and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.

¹⁴ Id. at 351.

¹⁵ See id. at 351.

¹⁶ Id. at 352.

¹⁷ Id. at 322.

¹⁸ Id. at 322-323.

¹⁹ Id. at 70-73.

²⁰ Id. at 71.

paying the docket and other court fees.²¹ Since petitioner did not pay the necessary docket and other court fees within the reglementary period, the CA did not acquire jurisdiction over the subject matter of the case.²² In addition, the petition suffers from the following infirmities: (1) the parties' respective addresses were not alleged in violation of Sec.3(1), Rule 46 in relation to Rule 65 of the Rules of Court; and (2) the Affidavit of Service of Petition as well as the Verification and Certification of Non-Forum Shopping is defective as the Notary Public failed to indicate the date of issuance of his Integrated Bar of the Philippines (IBP) Lifetime Number and Mandatory Continuing Legal Education (MCLE) Compliance Number which is a violation of the Notarial Law.²³

Petitioner moved for reconsideration, but her motion was denied in a Resolution²⁴ dated 16 August 2019. Hence, this petition.

In a Resolution²⁵ dated 09 October 2019, this Court allowed petitioner to litigate as pauper litigant and exempted her from payment of docket and other lawful fees.

Issues

The issues for the Court's resolution are:

- (1) Whether the CA erroneously dismissed the petition based on petitioner's (a) failure to comply with the requirements under Sec. 19, Rule 141 of the Rules of Court, as amended, thus, she cannot be declared as pauper litigant; (b) failure to pay the docket and other legal fees; (c) failure to allege the actual addresses of the parties as required by Sec. 3, Rule 46 in relation to Rule 65 of the same Rules; and (d) defect in the Affidavit of Service of Petition and Verification and Certification of Non-Forum Shopping with regard to the Notary Public's failure to indicate the date of issuance of his IBP Lifetime Number and MCLE Compliance Number in violation of the Notarial Law;
- (2) Whether petitioner was illegally dismissed; and
- (3) Whether petitioner abandoned her post.

²¹ Id.

²² See id. at 71.

²³ Id. at 72.

²⁴ Id. at 90-92.

²⁵ Id. at 21.

Petitioner prays for the liberal application of the procedural rules in the interest of justice. She maintains that her motion to be declared a pauper litigant should be considered to have substantially complied with the Rules since she submitted the proper documentary evidence that will prove her indigency before the CA. In addition, she categorically stated that she has no immediate relative to support her and her children.²⁶ Petitioner also argues that the non-allegation of the names and their respective addresses have been substantially complied by the verification and the statement made in the copy sent via registered mail. As to the defect in her Verification and Certification of Non-Forum Shopping, she maintains that the failure of the Notary Public to indicate the date of issuance of his IBP Lifetime Number and MCLE Compliance Number was beyond her control. To rectify such defect, petitioner submits the notary public's Certificate of Compliance issued by the Mandatory Continuing Legal Education Office.²⁷

Likewise, petitioner insists that she obtained the proper sick leave during the period of her absences to attend to some personal matters and that she did not abandon her work.²⁸ However, when she reported back to work, Racho informed her that she was already terminated and she can only be re-hired by the company if she agrees to waive her seniority status.²⁹

Respondents, on the other hand, pray for the dismissal of the petition. They contend that the CA did not err in dismissing the petition on the ground of petitioners's failure to pay the docket and other lawful fees within the reglementary period to file an appeal.³⁰ Further, respondents point out that the petition is riddled with so many infirmities and defects that petitioner cannot plead for the relaxation of the rules.³¹

Ruling of the Court

The Petition is meritorious.

Procedural Issues

After a careful review of the records, the Court resolves to relax the procedural rules in the interest of substantial justice.

²⁶ Id. at 28.

²⁷ Id. at 27-31.

²⁸ Id. at 34.

²⁹ Id. at 37.

³⁰ Id. at 400-401.

³¹ Id. at 401-402.

In dismissing *motu proprio* the petitioner's petition for *certiorari*, the CA found the following: (1) failure of petitioner to comply with the requirements in Sec. 19, Rule 141 of the Rules of Court, as amended, as to her plea to be declared as pauper litigant; (2) failure to pay the docket fees and other lawful fees within the reglementary period; (3) failure to allege the names and addresses of the parties as required by Sec. 3, Rule 46 in relation to Rule 65 of the same Rules; and (4) defect in the Affidavit of Service of Petition and Verification and Certification of Non-Forum Shopping, specifically, the failure of the Notary Public to indicate the date of issuance of his IBP Lifetime Number and MCLE Compliance Number in violation of the Notarial Law.³²

We will no longer discuss whether petitioner has sufficiently complied with the requirements set forth in Sec. 19, Rule 141 of the Rules of Court, as amended, since We have already allowed her to litigate as pauper litigant. Consequently, she is exempt from payment of docket and other legal fees.

Sec. 3(1), Rule 46 of the Rules of Court, provides:

SECTION 3. *Contents and filing of petition; effect of non-compliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

X X X X

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

While Sec. 2, Rule VIII of the 2004 Rules on Notarial Practice reads:

SEC. 2. Contents of the Concluding Part of the Notarial Certificate. – The Notarial certificate shall include the following:

- (a) the name of the notary public exactly indicated in the commission;
- (b) the serial number of the commission of the notary public;
- (c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and
- (d) the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.

³² Id. at 70-71.



The CA should have relaxed the rules in the interest of substantial justice. Petitioner explained the infirmities in her petition and her subsequent compliance through her motion for reconsideration. Moreover, this Court has held that the failure of the notary public to indicate in the pleading the date of the issuance of his IBP Lifetime Number and MCLE Compliance Number will no longer result in the dismissal of the case.³³

Time and again, We have held that this jurisdiction has adopted in the field of labor protection a liberal stance towards the construction of the rules of procedure in order to serve the ends of substantial justice. This liberal construction in labor law emanates from the mandate that the worker's welfare should be the primordial and paramount consideration.³⁴

Substantive Issues

Settled is the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer. If there is no proof of termination by the employer, there is no point in even considering the cause for it. There can be no illegal termination when there was no termination.³⁵ The burden of proof is on the one who declares, not on one who denies. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process. And in illegal dismissal cases, jurisprudence had underscored that the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss before the burden is shifted to the employer that the dismissal was legal.³⁶

We agree with the findings of the LA and the NLRC that petitioner failed to establish with substantial evidence that she was illegally dismissed by respondents. Other than petitioner's bare allegation that she was verbally dismissed by the respondents, the records are bereft of any evidence that would corroborate her claim that she was dismissed or that she was prevented from returning to her work. Thus, absent any proof that the respondents have dismissed petitioner, the latter's claim of illegal dismissal has no probative value for being self-serving. The burden of proof lies upon who asserts it, not upon who denies, since by the nature of things, he who denies a fact cannot produce any proof.³⁷

³³ See *Malixi v. Baltazar*, 821 Phil. 423, 443 (2017).

³⁴ *Mirant (Philippines) Corporation v. Caro*, 734 Phil. 160, 187 (2014).

³⁵ *Remotizado v. Typical Construction Trading Corp.*, 830 Phil. 508, 515 (2018).

³⁶ *Mehitabel, Inc. v. Alcuizar*, 822 Phil. 863, 873 (2017).

³⁷ *Dee Jay's Inn and Café v. Rañeses*, 796 Phil. 574, 591 (2016).

Nonetheless, while the Court concurs with the findings of the LA and the NLRC that there was no dismissal, the Court does not agree with the finding that petitioner is guilty of abandonment.

The Court explained in *Agabon v. National Labor Relations Commission*,³⁸ that “[a]bandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty, hence, a just cause for termination of employment by the employer. For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the employee has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.”³⁹ In other words, the mere absence of an employee is not sufficient to constitute abandonment.⁴⁰

Under this construct, abandonment is a defense available against the employee who alleges a dismissal. Thus, for the employer “to successfully invoke abandonment, whether as a ground for dismissing an employee or as a defense, the employer bears the burden of proving the employee’s unjustified refusal to resume his employment.” The burden, of course, proceeds from the general rule that places the burden on the employer to prove the validity of the dismissal.⁴¹

In this case, there was no abandonment. Petitioner’s prolonged absence and her failure to comply with the notices were construed by the respondents as abandonment. For clarity, We reproduce the notices sent to petitioner:

To : Devenia B. Mariano

From : Management

Date : October 04, 2017

Re : Your notice of Resignation

This refers to your non-reportorial to work/absent without approval starting May 26, 2017. You did not file any formal letter or seek approval from management before you take a leave of absence. I only found out that you are not reporting to work last June 14, 2017. I called you and discuss to you that the company does not allow more that 15 days leave. You did agree, thru our exchange of text messages that you would submit a resignation

³⁸ 485 Phil. 233 (2004);

³⁹ Id. at 248; citations omitted.

⁴⁰ See *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, 681 Phil. 299, 314 (2012).

⁴¹ *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 403 (2015).

letter to Alter Station Office for claiming your remaining wages and 13th month pay.

We send you text messages on July 13, 2017 to follow up your resignation letter but we did not receive any response at all.

Failure to comply with the above will be subject for AWOL (Absent Without Leave) and/or Abandonment of Work.

Your utmost attention on this matter will be highly appreciate. Thank you very much.

x x x x⁴²

The second notice states:

To : Devenia B. Mariano

From : Management

Date : October 12, 2017

Re : Final Notice-AWOL

This refers to the notice we send to you last October 04, 2017 regarding non-submission of your notice of resignation as you agree thru our exchange of text messages.

You failed to comply despite of several remainders and notice we send as of October 12, 2017.

Due to the above, company Fast Alter Station considered your non-reportorial to work as AWOL (Absent without Leave).

Thank you very much.

x x x x⁴³

The foregoing is insufficient to establish that respondents dismissed petitioner from employment. In the first letter, respondent merely reminded petitioner that she had been absent for more than 15 days, the maximum number allowed by the company, and that she did not seek approval before taking her leave. In addition, respondents claimed that petitioner informed them of her intention to resign from the company, and asked for her resignation letter. Thus, in the second letter, respondents reiterated its request for petitioner's resignation letter, with the failure to submit the same resulting in her being declared as AWOL. However, respondents were unable to substantiate their claim that petitioner intended to resign from her employment. Instead of complying with the notices, petitioner filed a complaint for illegal dismissal against respondents.

⁴² *Rollo*, p. 271.

⁴³ *Id.* at 272.

As the Court has previously ruled, prolonged absence without approval does not fall within the definition of abandonment. There must be a concurrence of the intention to abandon and some overt acts from which an employee may be deduced as having no more intention to work.⁴⁴ Furthermore, it has been held that the act of filing the complaint is inconsistent with abandonment of employment.⁴⁵ This effectively negates respondents claim that petitioner had the intention to abandon their employment.

In *Claudia's Kitchen, Inc. v. Tanguin*,⁴⁶ the Court held that where the employee was neither found to have been dismissed nor to have abandoned [their] 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. In other cases, however, the Court awarded separation pay to the employee in lieu of reinstatement, after a finding that there was neither dismissal nor abandonment, due to strained relations or a considerable length of time has passed from the filing of the complaint and the decision of the case.

Applying the foregoing to the present case, no separation pay may be awarded to petitioner as there was no allegation or findings of strained relations. Thus, the proper remedy is to direct respondent to reinstate petitioner to her previous position, but without payment of backwages.

A final note.

It is a well-settled doctrine, that if doubts exist between the evidence presented by the employer and by the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule that in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, which is in consonance with the avowed police of the State to give maximum aid and protection of labor.⁴⁷

WHEREFORE, the petition is **GRANTED**. Petitioner Devenia B. Mariano is hereby ordered to **RETURN TO WORK** within **15 DAYS** from receipt of this Resolution. Respondents Fast Alter Station and Alfredo Racho are likewise ordered to **ACCEPT** petitioner Devenia B. Mariano back into her previous position.

⁴⁴ *MZR Industries v. Colambot*, 716 Phil. 617, 627 (2013).


⁴⁵ *Pu-od, et al. v. Ablaze Builders, Inc.*, 820 Phil. 1239, 1255 (2017).

⁴⁶ 811 Phil. 784, 799 (2017), citing *Dee Jay's and Café v. Rañeses*, 796 Phil. 574 (2016).

⁴⁷ *Dee Jay's and Café v. Rañeses*, 796 Phil. 574, 592 (2016).

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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