REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **June 22, 2022** *which reads as follows*:

"G.R. No. 252220 (RAMIL DINAQUE ANCIANO, *petitioner v.* WILL DECENA & ASSOCIATES, INC., *respondent*). — Central to the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court before this Court is the determination of whether petitioner Ramil Dinaque Anciano (Anciano) abandoned his employment or was constructively dismissed. The assailed Decision[2] dated October 2, 2019 and Resolution[3] dated March 9, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 158626 found Anciano to have abandoned his employment, negating his claim of constructive dismissal.

Anciano was hired on September 20, 2002 as a construction equipment operator in one of Will Decena & Associates Inc.'s (WDAI) projects. He was, thereafter, assigned at one WDAI project to another until March 31, 2014, when he was allegedly placed on floating status for no reason. Claiming that he remained off-detailed for more than six months, Anciano filed a complaint for constructive dismissal.[4]

WDAI denied Anciano's allegations, and offered a different version. WDAI averred that Anciano was on an approved leave from March 17 to 27, 2014.[5] After the lapse of his leave, Anciano never reported back to work. This prompted WDAI to issue a Memorandum[6] dated April 12, 2014, directing Anciano to report for work and to explain his absences. The Memorandum was

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1 *Rollo*, pp. 12–37.
2 Id. at 45–54. Penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) with the concurrence of Associate Justices Stephen C. Cruz and Tita Marilyn B. Payoyo-Villordon.
3 Id. at 57–59.
4 Id. at 412–413.
5 Id. at 565.
6 Id. at 288.

sent to Anciano's last known address — the address in his employee profile with the human resource department, but Anciano did not comply. Hence, WDAI issued another Memorandum[7] on May 2, 2014, reiterating its directive for Anciano to submit a written explanation, and to attend an administrative investigation regarding his continuous absence without leave. A certain relative, named Jeremy Anciano, received the Memorandum at the same address, but nothing was heard from Anciano.[8] Thus, in a Memorandum[9] dated June 11, 2014 sent to the same address, WDAI gave Anciano five (5) days to explain his absences, but the Memorandum was returned to WDAI with the notation "RTS NO SUCH NUMBER."[10]

To refute WDAI's allegations, Anciano presented his daily time records (DTR) and payslips for January 2014. He insisted that he was not at work from March 31, 2014 because he was already off-detailed at that time. He further denied having received any of the memoranda that WDAI allegedly sent because they were sent to his previous residential address.[11]

In a Decision[12] dated October 11, 2017, the Labor Arbiter (LA) dismissed Anciano's complaint for lack of merit. The LA found no evidence that Anciano was placed on floating status or constructively dismissed. Instead, the LA gave weight to WDAI's evidence, showing that Anciano incurred unauthorized absences and failed to comply with the memoranda ordering him to return to work after his approved leave. The LA noted that the January 2014 DTRs, which Anciano presented, are irrelevant to explain his absences from the lapse of his approved leave in March. As to Anciano's claim that he never received any of the memoranda as they were sent to his former address, the LA found him to be at fault for relocating without updating his profile with WDAI. The LA disposed:

> **WHEREFORE**, evidence and law considered, judgment is rendered **DISMISSING** the complaint for lack of merit.
>
> **SO ORDERED.**[13] (Emphases in the original)

Unsatisfied, Anciano appealed to the National Labor Relations Commission (NLRC), and presented his files from the Social Security System (SSS), PhilHealth, and National Bureau of Investigation (NBI), showing his current address.[14]

In response, WDAI also offered Anciano's SSS file,[15] showing that he was already employed with another company — Asiapro Cooperative — as early as June 2014, or barely three months from the time he was allegedly placed on floating status. WDAI also submitted copies of the company's attendance record

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7 Id. at 289.
8 Id. at 566.
9 Id. at 290.
10 Id. at 46.
11 Id. at 46–47.
12 Id. at 412–416.
13 Id. at 416.
14 Id. at 47–48.
15 Id. at 473.

to prove that the DTRs, which Anciano previously presented, were spurious.[16]

In a Decision[17] dated April 27, 2018, the NLRC reversed the LA's ruling. The NLRC found that WDAI was made aware of Anciano's new address as early as 2013 when Anciano amended his residential address in a document (Certificate of Update of Exemption and of Employer's and Employee's Information), which updated his beneficiary and tax exemption details. The document was filed with WDAI's accounting and finance department so there was no reason to send the memoranda to the address appearing in Anciano's profile in the company's human resource department. The NLRC ruled that WDAI failed to prove its claim that Anciano incurred unauthorized absences, thus:

> The foregoing circumstance clearly show that [Anciano] was not given any work assignment for more than six (6) months, hence, constructively dismissed. It follows, therefore, that he is entitled to reinstatement and backwages in accordance with Article 279 of the Labor Code.
>
> However, considering [Anciano's] refusal to be re-admitted to work, [w]e grant the payment of separation pay in lieu of reinstatement [.]
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> x x x x
>
> **WHEREFORE**, the Appeal is **PARTIALLY GRANTED**. The *Decision* of [the LA] dated 11 October 2017 is **REVERSED AND SET ASIDE**. [Anciano] is declared to have been **ILLEGALLY DISMISSED**.
>
> Respondents Will Decena and Associates and [WDAI] are ordered to pay [Anciano] the following:
>
> 1. Separation Pay in lieu of reinstatement equivalent to one (1) month for every year of service, computed from the time he was engaged in September 2002, until the finality of this Decision;
>
> 2. Backwages computed from the time of his illegal dismissal until the finality of this Decision;
>
> 3. Attorney's fees equivalent to 10% of the total claims.
>
> All other claims are dismissed for lack of substantial basis.
>
> x x x x
>
> **SO ORDERED.**[18] (Emphasis in the original)

WDAI's motion for reconsideration (MR) was denied in the NLRC Resolution[19] dated September 10, 2018.

On *certiorari* before the CA, the NLRC ruling was set aside and the LA decision was reinstated. The CA found no evidence to prove that Anciano was

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16 Id. at 48.
17 Id. at 112–124. Penned by Presiding Commissioner Grace M. Venus with the concurrence of Commissioners Mary Ann P. Daytia and Leonard Vinz O. Ignacio.
18 Id. at 118–123.
19 Id. at 126–131.

dismissed from employment apart from bare allegations of being off-detailed for more than six months. WDAI proved that Anciano failed to report for work despite notices. The CA rejected Anciano's claim that he did not receive the directives to return to work because WDAI sent it to the wrong address. WDAI cannot be faulted for sending the memoranda to Anciano's address as appearing in his employee profile. Moreover, the CA found that Anciano already gained regular employment elsewhere on June 2014, and as such, has abandoned his work with WDAI and was not constructively dismissed. The CA gave weight to the SSS file although presented only before the NLRC since technical rules on evidence are not strictly applied in labor cases. The CA noted that Anciano had the opportunity to examine and refute the SSS document at that stage of the proceedings, but he never did. In its assailed Decision[20] dated October 2, 2019, the CA ruled:

> All told, considering the totality of circumstances in this case, the [c]ourt finds the evidence presented by [WDAI], as opposed to the bare allegation of [Anciano], sufficient to constitute substantial evidence to prove that there was no dismissal to speak of, let alone one that is illegal. Withal, the other issues raised by the parties need not be discussed further.
>
> **WHEREFORE**, this [c]ourt **GRANTS** the petition for *certiorari*; **REVERSES** and **SETS ASIDE** the Decision dated April 27, 2018 and Resolution dated September 10, 2018 of the [NLRC] in NLRC LAC 03-000903-18 (NLRC NCR Case No. 07-10221-17); and **REINSTATES** the decision of the [LA] dismissing the complaint for illegal dismissal.
>
> **SO ORDERED.**[21] (Emphases in the original)

Anciano's MR was denied in the assailed CA Resolution[22] dated March 9, 2020.

In the present recourse, Anciano maintains that he was constructively dismissed because WDAI placed him on floating status on March 31, 2014, and for more than six months, he was never recalled. Anciano claims that the CA committed a reversible error in considering the SSS document as proof that he abandoned his work. He points out that WDAI was barred to present such document for the first time on appeal without any justification as to such delay.[23]

We deny the petition.

In illegal termination cases, whether actual or constructive, it is indispensable for the employee to prove the fact of dismissal with substantial evidence before the burden shifts to the employer to prove that the dismissal was for a just or authorized cause. The logic is simple: if there is no dismissal, there can be no question as to its legality or illegality. The fact of dismissal must be established by the positive and overt acts of the employer indicating the intention

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20 Id. at 45–54. Penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) with the concurrence of Associate Justices Stephen C. Cruz and Tita Marilyn B. Payoyo-Villordon.

21 Id. at 53–54.

22 Id. at 57–59. Penned by Associate Justice Jhosep Y. Lopez (now a member of the Court) with the concurrence of Associate Justices Stephen C. Cruz and Tita Marilyn B. Payoyo-Villordon.

23 Id. at 23–27.

to dismiss an employee.[24] Here, the CA correctly held that Anciano's claim of constructive dismissal fails because, apart from his bare allegation, he failed to adduce evidence that he was dismissed by being placed on floating status for more than six months.[25] It was grave abuse of discretion on the part of the NLRC to require WDAI to prove that it sent return-to-work directives to Anciano when it was not established that Anciano was placed on floating status in the first place.

On the contrary, the memoranda that WDAI issued from April to June 2014, directing Anciano to return to work after his continuous unauthorized absences after the lapse of his approved leave period, prove that Anciano was not dismissed. Anciano's claim that he did not receive any of the memoranda since they were sent to his former address does not convince. We agree with the CA in ruling that the company cannot be faulted for relying upon Anciano's employee profile in the company's human resource department. Indeed, "[s]hould there be changes in any of the details affecting an employee's personal information, it is the employee's obligation to inform the human resource department of any such change in order for the latter to amend or update the employee's data on file."[26] Besides, records show that Anciano's relative, a certain Jeremy Anciano,[27] was able to receive one of the memoranda.

In any case, the uncontroverted fact that Anciano already obtained regular employment elsewhere on June 2014 or barely three months after he was allegedly placed on floating status belies his claim that he was off-detailed for more than six months and constructively dismissed. The consistent ruling in our jurisdiction is that temporary off-detailing, if at all, is not equivalent to dismissal so long as such status does not continue beyond a reasonable time.[28] Applying by analogy the rules under Article 301[29] (then Article 286) of the Labor Code, which governs the similar situation of temporary retrenchment or lay-off, it is only when the floating status lasts for more than six months that an employee may be considered to have been constructively dismissed.[30] Verily, we quote with approval the CA's finding that Anciano abandoned his work and was not constructively dismissed, *viz.*:

> [I]nstead of reporting back to [WDAI], [Anciano] was able to gain regular employment elsewhere during the time that he was allegedly placed on "floating status" and prior to the lapse of the six-month legal period for placing an employee on "floating status".
>
> The new employment was indicated in his SSS employment history, thusly:

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24 *Italkarat 18, Inc. v. Gerasmio*, G.R. No. 221411, September 28, 2020.
25 *Rollo*, p. 51.
26 Id. at 52.
27 Id. at 224.
28 *Nippon Housing Phil., Inc. v. Leynes*, 670 Phil. 495, 507 (2011).
29 ART. 301. [286] **When Employment not Deemed Terminated.** The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.
30 *Nippon Housing Phil., Inc. v. Leynes*, supra note 28 at 506.

Member Name: ANCIANO, RAMIL DINAQUE		
Employee History		
Name	Reporting Date	Employment Date
ASIAPRO COOPERATIVE	11-2014	07-2014
ASIARPO COOPERATIVE	09-2014	06-2014

x x x x

Indeed, [Anciano's] deliberate act of not reporting back for duty coupled with his gainful employment is tantamount to abandonment of his employment with [WDAI]. Abandonment requires the concurrence of two elements, namely: *one*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, *two*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. Although mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment, the law requires that there be clear proof of deliberate and unjustified intent on the part of the employee to sever the employer-employee relationship. Abandonment is a matter of intention and cannot be lightly presumed from certain equivocal acts. In other words, the operative act is still the employee's ultimate act of putting an end to his employment.

Contrary to the findings of the NLRC, [Anciano] intended to sever his employer-employee relationship with [WDAI] the moment he applied for and obtained employment with another company. His having done so constituted a clear and unequivocal intent to abandon and sever his employment with [WDAI]. Granting that [Anciano] started reporting to another company x x x in June 2014, x x x [and he] filed his illegal dismissal complaint only on July 12, 2017. x x x [I]t took [Anciano] three years (3) and three (3) months to remedy his alleged dismissal. To [o]ur mind, [Anciano's] belated filing of the illegal dismissal case against [WDAI] was a mere afterthought, designed to harass his former employer.[31] (Emphasis supplied and citations omitted)

At this point, we emphasize that the CA committed no reversible error in considering the SSS document, which WDAI presented for the first time on appeal before the NLRC. The submission of additional evidence before the NLRC is not prohibited considering that the rudimentary rules of evidence prevailing in courts of law or equity are not controlling in labor cases. In resolving labor disputes, "every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law and procedure [must be considered] in the interest of substantial justice."[32] When cogent grounds exists, parties in a labor case may present evidence even on appeal so long as such evidence sufficiently proves the allegation sought to be proven.[33] Here, contrary to Anciano's allegation, WDAI adequately justified in its Manifestation with Motion to Admit Additional Evidence[34] that the submission of the *newly-discovered evidence* before the NLRC was aimed to help the labor tribunal to have a full grasp of what actually transpired during the period when Anciano alleged that he was on floating status. The presentation of SSS document was material in the resolution of the case as it brought light to the fact that Anciano was not placed

31 *Rollo*, pp. 52–53.
32 *Unicol Management Services, Inc. v. Malipot*, 751 Phil. 463, 474 (2015).
33 See *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 457 Phil. 993 (2003).
34 *Rollo*, pp. 144–153.

on floating status for more than six months. Besides, the submission of this additional evidence on appeal did not prejudice Anciano as he could have submitted a countervailing argument or evidence to deny it,[35] but he never did.

In all, the CA committed no reversible error in reinstating the LA ruling, which dismissed Anciano's complaint for constructive dismissal for lack of merit.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated October 2, 2019 and Resolution dated March 9, 2020 of the Court of Appeals in CA-G.R. SP No. 158626 are **AFFIRMED**.

The Court **NOTES** petitioner's reply dated June 4, 2021 to respondent's comment on the petition for review on *certiorari*.

SO ORDERED." (R.V. Zalameda, *J.* designated additional member in lieu of J.Y. Lopez, *J.* who penned the assailed CA Decision and Resolution, *per* April 12, 2022 Raffle)

By authority of the Court:

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35 See *Sasan, Sr. v. National Labor Relations Commission 4th Division*, 590 Phil. 685 (2008).