



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 6, 2023 which reads as follows:

“G.R. No. 252648 (RM Mangubat Construction and Richard Mangubat, Petitioners v. Agapito Moral De Mesa, Albert Bahian Bonocan, Dino Nakin Moncada, Edmar Ramos Halili, and Larry Abijuro Ador, Respondents). – Before this Court is a Petition for Review on Certiorari¹ under Rule 45, Rules of Court assailing the October 4, 2019 Decision² in CA- G.R. SP No. 155535 of the Court of Appeals. The instant petition arose from a Complaint for illegal dismissal filed by respondents Agapito Moral De Mesa, Albert Bahian Bonocan, Dino Nakin Moncada, Edmar Ramos Halili, and Larry Abijuro Ador (De Mesa et al.) against petitioner RM Mangubat Construction (RMC).

Petitioner Richard Mangubat is the owner and sole proprietor of RMC, the winning bidder for the construction of a 5-storey building at the Cavite State University. To expedite the project’s completion, RMC hired additional workers from December 2015 to December 2016 through its project supervisors or foremen. Among those hired were De Mesa *et al.*³

RMC claimed that its project supervisor hired workers without requiring the submission of government clearances and documents. After finding out that some workers stole and sold construction materials in other projects, RMC required its workers, including De Mesa *et al.*, to submit government documents and clearances⁴ to avoid hiring personnel with criminal records. RMC thus issued a Memorandum dated February 04, 2017

¹ *Rollo*, pp. 12–31.

² *Id.* at 58–67. The Decision dated October 04, 2019 was penned by Associate Justice Tita Marilyn Payoyo-Villordon, and concurred in by Associate Justices Ramon R. Garcia and Victoria Isabel A. Paredes.

³ *Id.* at 17–18.

⁴ National Statistics Office (NSO) Birth Certificate, Barangay Clearance, Police Clearance and National Bureau of Investigation (NBI) Clearance.

directing all hired workers to submit the required documents before reporting for work.⁵

In a February 06, 2017 Memorandum, RMC directed 27 non-compliant workers, including De Mesa *et al.*, to submit the required government documents before reporting for work.⁶ RMC claimed that instead of complying with the directives, De Mesa *et al.* did not report for work.⁷

On February 10, 2017, De Mesa *et al.* filed a Complaint against RMC for illegal dismissal and money claims before the National Labor Relations Commission.⁸ They claimed their illegal dismissal because they were directed not to report for work. They alleged that the February 06, 2017 Memorandum singled them out in retaliation for their earlier complaint for money claims against RMC.⁹

In a Decision¹⁰ dated July 18, 2017, the Labor Arbiter agreed with De Mesa *et al.* that the February 06, 2017 Memorandum was in retaliation for the employees' previous labor complaint against RMC. The issuance of the memorandum seemed arbitrary, considering that De Mesa *et al.* were already working for RMC for one to two years. The Labor Arbiter did not give credence to RMC's claim that the government documents were for registration of the workers' Social Security System (SSS), Home Development Mutual Fund (Pag-ibig) and Philippine Health Insurance (Philhealth) memberships. RMC "failed to lay the predicate that all the workers at the project or jobsite had no SSS, Pag-ibig and Philhealth x x x."¹¹ The memorandum was just "a pretext to stop the workers at the jobsite from reporting for work x x x."¹² As for the money claims, the Labor Arbiter awarded backwages, 13th month pay, service incentive leave pay, and holiday pay.¹³

RMC filed an appeal with the National Labor Relations Commission. In a Resolution¹⁴ dated December 15, 2017, the National Labor Relations Commission held that De Mesa *et al.* failed to prove the fact of their dismissal. The memorandum issued to the workers was not a termination letter. The requirements imposed were in the exercise of RMC's management prerogative. Termination could not be assumed from the tenor of the

⁵ *Rollo*, pp. 18–19.

⁶ *Id.* at 19.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 35, 59.

¹⁰ *Id.* at 34–45. The July 18, 2017 Decision in NLRC-NCR Case No. 04-05365-17 was penned by Labor Arbiter Joel A. Allones.

¹¹ *Id.* at 40.

¹² *Id.*

¹³ *Id.* at 40–45.

¹⁴ *Id.* at 47–56. The December 15, 2017 Resolution in NLRC LAC No. 12-003692-17 was penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Cecilio Alejandro C. Villanueva.

memorandum. There were no records of termination “warrant[ing] consideration in determining the propriety of the illegal dismissal.”¹⁵ De Mesa *et al.*’s filing of the complaint for illegal dismissal and their refusal to return to work further proved that they were not dismissed.¹⁶

There being no dismissal to speak of, the National Labor Relations Commission deleted the award of backwages, separation pay, and damages for being inappropriate. De Mesa *et al.* must be reinstated to their work. The Labor Arbiter’s award of 13th-month pay, service incentive leave pay, and holiday pay were upheld for RMC’s failure to dispute the same.¹⁷

De Mesa *et al.* filed a Petition for *Certiorari*¹⁸ under Rule 65, Rules of Court, before the Court of Appeals. In the assailed Decision¹⁹ dated October 04, 2019, the appellate court reinstated the Decision of the Labor Arbiter. It found doubtful the issuance of the February 06, 2017 Memorandum to De Mesa *et al.* Such memorandum was issued only two days from the first notice requiring the submission of government documents. The memorandum ordered De Mesa *et al.*, among others, to stop work for failing to submit the required documents. This clearly demonstrated a case of illegal dismissal. The appellate court was unconvinced by RMC’s claim that De Mesa *et al.* can return to work upon completing and submitting the required documents. The memorandum did not state any return-to-work directives. It only made a categorical statement of work stoppage for De Mesa *et al.*’s failure to observe the company policy in submitting documentary requirements. Its issuance was a pretext to stop De Mesa *et al.* from reporting for work. All money awards granted by the Labor Arbiter to De Mesa *et al.* were upheld.²⁰

Dismayed by the Court of Appeals Decision, RMC filed the instant appeal by *certiorari*²¹ under Rule 45, Rules of Court. RMC contends that there is no evidence of De Mesa *et al.*’s dismissal from employment. It is only their uncorroborated assumption. There is no proof that De Mesa *et al.* were prevented from reporting for work should they submit the required government documents. De Mesa *et al.* did not even attempt to comply.²²

RMC also argues that the February 06, 2017 Memorandum was not a termination letter. It required the employees to submit government documents to RMC’s project heads. As an individual applicant often processes government documents himself, RMC deemed it prudent that De Mesa *et al.*, among others, not to report for work to give them time to personally secure

¹⁵ Id. at 55.

¹⁶ Id.

¹⁷ Id. at 55–56.

¹⁸ Id. at 16.

¹⁹ Id. at 58–67.

²⁰ Id. at 65–66.

²¹ Id. at 12–31.

²² Id. at 21.

the required documents.²³ The second paragraph of the February 06, 2017 Memorandum stated that the documentary requirements must be submitted soon.²⁴ The workers must report to work upon completing and submitting their government documents.²⁵ The requirements imposed by RMC cannot be perceived as termination but as an exercise of management prerogative.²⁶

Finally, RMC contends that De Mesa *et al.* abandoned employment.²⁷ Instead of complying with the directive in the February 06, 2017 Memorandum, they filed a Complaint for illegal dismissal, which proves that they did not intend to return to work. Since there was no dismissal, the Court of Appeals erred in awarding backwages, separation pay and damages to the employees.²⁸

In their Comment,²⁹ De Mesa *et al.* maintain that the February 06, 2017 Memorandum was a termination letter. The letter was categorical in dismissing the workers. It did not mention that the order of work stoppage was temporary until the time they submit their government documents. It likewise did not make sense for RMC to require the submission of the documents when they have been with the company for more than a year. RMC could have obtained the documents at the time of hiring. De Mesa *et al.* conclude that the issuance of the memorandum was a retaliatory measure on the part of RMC for their previous complaint for money claims.³⁰

Assuming that the temporary work stoppage is true, De Mesa *et al.* were given a short period of time to comply with RMC's directives. The workers could not be expected to complete and submit the government documents in two days from the time they were informed of the new rule. Further, none of the memoranda issued by RMC provided a deadline for submission of the required documents. De Mesa *et al.* contend that they cannot just absent themselves from work. Otherwise, they will not earn any salary for the day.³¹ Finally, RMC's offer to return to work was an afterthought since De Mesa *et al.* were only furnished the notice to return after they sought assistance from the Department of Labor and Employment - Single Entry Approach (DOLE-SENA).³² Due to their illegal dismissal and strained relations with RMC, De Mesa *et al.* claim payment of their entitled remuneration and separation pay in place of reinstatement.³³

²³ Id. at 21-22.

²⁴ Id. at 21.

²⁵ Id.

²⁶ Id. at 22.

²⁷ Id. at 22-24.

²⁸ Id. at 23, 27.

²⁹ Id. at 92-104.

³⁰ Id. at 96-97.

³¹ Id. at 98-99.

³² Id. at 99-100.

³³ Id. at 100-102.

The main issue before this Court is whether De Mesa *et al.* were illegally dismissed from employment.

In every employee dismissal case, the employer bears the burden of proving the just or authorized causes of the employee's dismissal. The employer's burden of proof arises when it is established that the employee had been dismissed. In this connection, the employees must first prove the fact of their dismissal by the employer. Without any dismissal action, valid or otherwise, no burden to prove just or authorized cause arises.³⁴

The Court holds that De Mesa *et al.* failed to discharge their burden of proof. They mainly contend their summary dismissal due to the directive in the February 06, 2017 Memorandum. Reviewing the entire memorandum, the Court gives credence to RMC's claim of instructing the non-compliant personnel to submit the government document requirements. The memorandum reads:

Sa lahat ng nabanggit na pangalan ay ipinatitigil sa pagtatrabaho sa ilalim ng R.M. Construction ito ay bilang pagsunod sa patakaran ng kompanya. Ito ay tungkol sa pagsumite ng mga sumusunod:

1. NSO Birth Certificate,
2. Barangay Clearance,
3. Police Clearance,
4. NBI Clearance.

Ito ay indibidwal na isusumite ng bawat manggagawa at kailangan isumite sa namumuno ng site upang madala ng namumuno sa kasalukuyang opisina. Ipapasa ito sa lalong madaling panahon at kumpleto.³⁵ (Emphasis and underscoring omitted).

From the foregoing, the memorandum ordered the identified personnel to stop working at RMC without first submitting the government documents. They were further directed to complete and submit the same to their respective project supervisors at the soonest possible time. In such circumstance, there would be a temporary stoppage of work until the submission of the government documents. The Court is convinced that RMC did not dismiss the non-compliant workers, including De Mesa *et al.* If they were indeed dismissed, then there would have been no reason for RMC to still require them to submit the government documents. There was also no evidence or allegation that De Mesa *et al.* were refused submission of the same.

Moreover, De Mesa *et al.*'s assertion that RMC issued the memorandum in retaliation for their previous complaint for money claims is

³⁴ *Nightowl Watchman & Security Agency, Inc. v. Lumahan*, 771 Phil. 391, 403-404 (2015).

³⁵ *Rollo*, p. 65.

flimsy. The Court notes that they were not the only identified non-compliant personnel under the memorandum. Thus, the issuance of the memorandum could not have been a tool to single them out for termination as there were other non-compliant personnel, who *De Mesa et al.* did not even claim to be their co-complainants in the previous labor suit filed against RMC. The Court is persuaded that the only reason they were included in the February 6, 2017 Memorandum was due to their non-submission of the required documents. *De Mesa et al.* did not even dispute their non-compliance with the directive.

The Court does not find arbitrary RMC's rule requiring its workers to submit government documents. It is within its management prerogative. The exercise of management prerogative is valid provided it is not performed in a malicious, harsh, oppressive, vindictive or wanton manner or out of malice or spite.³⁶ The employer can exercise this prerogative without fear of liability so long as it is done in good faith and for the advancement of its interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements.³⁷ The fact that *De Mesa et al.* were already hired by RMC will not prevent the employer from subsequently requiring its workers to submit documents for record purposes. RMC's failure to require submission of the documents at the time of hiring was a risk that RMC took. It even suffered from the consequences of such negligence when its hired foremen stole construction materials from one of its projects. Other than an uncorroborated claim of maliciously issuing the February 6, 2017 Memorandum, *De Mesa et al.* did not establish that the rule requiring RMC workers to submit government documents and clearances was unreasonable or that it was applied only to them. The Court is convinced that RMC's policy was to avoid hiring people with criminal records.

The Court, however, cannot subscribe to RMC's claim that *De Mesa et al.* abandoned their employment. Abandonment of work, or the deliberate and unjustified refusal of an employee to resume his employment, is a just cause for the termination of employment under paragraph (b) of Article 297 (previously numbered as Article 282) of the Labor Code³⁸ since it constitutes neglect of duty. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship.³⁹ The second element is the more determinative factor and

³⁶ *Nagkahiutang Namumuno sa Dasuceco-National Fed. of Labor (NAMADA-NFL) v. Davao Sugar Central Co., Inc.*, 530 Phil. 35, 39 (2006) citing *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, 362 Phil. 452, 465 (1999).

³⁷ *Id.*, *Great Pacific Life Employees Union vs. Great Pacific Life Assurance Corporation*, 362 Phil. 452, 465 (1999).

³⁸ ART. 297 [282] Termination by Employer. – An employer may terminate an employment for any of the following causes:

x x x x

(b) Gross and habitual neglect by the employee of his duties;

x x x x

³⁹ *CRC Agricultural Trading, et al. v. NLRC, et al.*, 623 Phil. 789, 798–799 (2009).

must be evinced by overt acts. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume employment without any intention of returning. Mere absence is insufficient.⁴⁰

In the present case, RMC failed to present proof that De Mesa *et al.* clearly and unequivocally intended to abandon their job or to sever the employer-employee relationship. De Mesa *et al.*'s failure to report for work was in view of the temporary work-stoppage directive in the February 6, 2017 Memorandum and a misinterpretation that the same was a letter of dismissal. Further, De Mesa *et al.*'s filing of the complaint for illegal dismissal was against the charge of abandonment. Employees who took steps to protect their employment cannot by any logic be said to have abandoned work.⁴¹

Finding no dismissal, De Mesa *et al.* are not entitled to payment of backwages or separation pay. The award of moral and exemplary damages is likewise deleted for failure of De Mesa *et al.* to prove bad faith on the part of RMC. RMC's exercise of its management prerogative in requiring hires to submit government documents and clearances is not arbitrary. The award by the Labor Arbiter of the 13th-month pay, service incentive leave pay, and holiday pay is upheld, considering that RMC did not dispute nor timely assail such award.

ACCORDINGLY, the Decision dated October 4, 2019 of the Court of Appeals in CA G.R. SP No. 155535 is **REVERSED**. Petitioner Richard Mangubat, as the sole proprietor of RM Mangubat Construction, is ordered to admit respondents Agapito Moral De Mesa, Albert Bahian Bonocan, Dino Nakin Moncada, Edmar Ramos Halili, and Larry Abijuro Ador back to their previous work without loss of seniority rights upon their submission of the required employment documents. Richard Mangubat is ordered to **PAY** the following:

- 1) Pro-rated 13th-month pay computed from the time of hire until Agapito Moral De Mesa, Albert Bahian Bonocan, Dino Nakin Moncada, Edmar Ramos Halili, and Larry Abijuro Ador stopped working on February 06, 2017;
- 2) Pro-rated service incentive leave pay computed from the time of hire until Agapito Moral De Mesa, Albert Bahian Bonocan, Dino Nakin Moncada, Edmar Ramos Halili, and Larry Abijuro Ador stopped working on February 06, 2017; and

⁴⁰ *Pare v. National Labor Relations Commission*, 376 Phil. 288, 292 (1999).

⁴¹ *Id.*

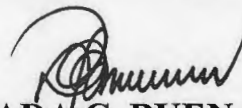
3) Pro-rated holiday pay computed from the time of hire until Agapito Moral De Mesa, Albert Bahian Bonocan, Dino Nakin Moncada, Edmar Ramos Halili, and Larry Abijuro Ador stopped working on February 06, 2017.

The foregoing monetary awards shall be subject to a legal interest amounting to six percent *per annum* pursuant to prevailing jurisprudence⁴² from finality of this Resolution until full satisfaction.

Let this case be **REMANDED** to the Labor Arbiter for the execution of this Resolution upon finality.

SO ORDERED.”

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court *ffk alz*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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MAR 01 2023

BONIFACIO & BONIFACIO LAW OFFICE
Counsel for Petitioners
7154 Schilling Lane, Villanueva Village
Dr. A. Santos Avenue, 1700 Parañaque City

Court of Appeals (x)
Manila
(CA-G.R. SP No. 155535)

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PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Respondents
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Philippine Judicial Academy (x)
Supreme Court

NATIONAL LABOR RELATIONS COMMISSION
Ben-Lor Building, 1184 Quezon Avenue
Brgy. Paligsahan, 1103 Quezon City
(NLRC LAC No. 12-003692-17)
(NLRC NCR Case No. 04-05365-17)

Judgment Division (x)
Supreme Court

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⁴² *Nacar v. Gallery Frames, et al.* G.R. No. 189871, 716 Phil. 267, 283 (2013).