REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **April 17, 2023** *which reads as follows*:

"G.R. No. 252289 (RAFAEL D. DATU, Petitioner, **v. TAGUIG METRO LINK BUS CORP./EVELYN G. CASTRO/LOPE V. NALDO,** Respondents). — Abandonment of work is not mere failure to report to work. It requires clear evidence of the employee's intentional and unjustified refusal to return to employment.

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which upheld the National Labor Relations Commission's Resolutions[4] that, in turn, affirmed the labor arbiter's Decision[5] finding that Rafael D. Datu (Datu) was not illegally dismissed.

Datu worked as a bus conductor for Taguig Metro Link* Bus Corporation (Metro Link), on a commission basis of PHP 1,700.00 per day. He was also the auditor of Metro Link's labor union.[6]

On July 25, 2013, at around 6:00 p.m., a traffic enforcer stopped the bus to which Datu was assigned, supposedly for obstruction and illegal parking in front of the Makati Stock Exchange along Ayala Avenue. The traffic enforcer confiscated the driver's license of Bernardo* Daygo (Daygo), the driver, and never returned. Thus, Daygo went to the police station to

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1 *Rollo*, pp. 3–26.

2 *Id.* at 28–37. The June 18, 2019 Decision was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Jane Aurora C. Lantion and Perpetua T. Atal-Paño of the Special Sixteenth Division, Court of Appeals, Manila.

3 *Id.* at 39–42. The February 26, 2020 Resolution was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Ramon M. Bato, Jr. and Perpetua T. Atal-Paño of the Special Former Special Sixteenth Division, Court of Appeals, Manila.

4 *Id.* at 62–69, 71–72. The September 23, 2015 and October 29, 2015 Resolutions were penned by Presiding Commissioner Gregorio O. Bilog, III and concurred in by Commissioners Erlinda T. Agus and Alan A. Ventura of the Second Division, National Labor Relations Commission, Quezon City.

5 *Id.* at 217–226. The June 17, 2015 Decision was penned by Labor Arbiter Jonalyn M. Gutierrez.

* Alternative spelled in the *rollo* as "Metrolink."

6 *Rollo*, p. 29.

* Sometimes spelled in the *rollo* as "Bernado."

July

report the incident, leaving Datu to guard the bus. The bus was later towed to Metro Link's garage in Buendia, Makati.[7]

Metro Link investigated the incident and found Daygo guilty of abandoning the bus. Daygo was dismissed from service while Datu was suspended for one month for failing to report the incident to Metro Link. Datu filed a complaint for illegal suspension before the National Labor Relations Commission, but this was eventually dismissed.[8]

Datu alleged that since then, Metro Link engaged in harassment tactics by seldom scheduling him for duty and by assigning him to old and dilapidated buses. Thus, on February 19, 2014, Datu filed a complaint for constructive dismissal before the Single Entry Approach of the Department of Labor and Employment.[9]

Datu alleged that on March 5, 2014, Operations Manager Lope Naldo (Naldo) summoned Datu to his office upon receipt of the notice from the Department of Labor and Employment regarding the constructive dismissal case. Naldo informed him that his services were already terminated since he filed that case. He was evicted from the company barracks and escorted by a security guard out of the premises.[10]

Datu alleged that he did not push through with the constructive dismissal complaint. Instead, he filed a Complaint for illegal dismissal before the National Labor Relations Commission.[11]

In defense of the company, Naldo admitted that he was disappointed by Datu's filing of the case but denied that he summoned Datu to his office or had him evicted from the premises. He claimed that it was Datu who left the premises and failed to report back to work. This was confirmed by Metro Link's human resources and accounting assistant, Eleanor Miranda (Miranda), who even received a text message from Datu inquiring if he could still report to work, but to which she failed to reply.[12]

On June 17, 2015, the labor arbiter rendered a Decision[13] dismissing the Complaint for lack of merit.

The National Labor Relations Commission denied Datu's appeal in a September 23, 2015 Resolution.[14] It likewise denied his Motion for

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7 *Rollo*, pp. 29–30.
8 *Id.* at 30.
9 *Id.*
10 *Id.*
11 *Id.*
12 *Id.*
13 *Id.* at 217–226.
14 *Id.* at 62–69.

Reconsideration in an October 29, 2015 Resolution.[15] Thus, Datu filed a Petition for *Certiorari* before the Court of Appeals.[16]

In a June 18, 2019 Decision,[17] the Court of Appeals denied the Petition and upheld the labor tribunals' finding that Datu was not illegally dismissed. It held that Datu failed to prove that Naldo verbally dismissed him and had him escorted from the premises. It found that Datu's text message to Miranda inquiring if he could still come back to work indicated that he himself was unsure if he had been dismissed.[18] It likewise found no merit in Datu's claim that certain fees were deducted from his earnings since no deductions were stated in his Cash Remittance Sheets.[19]

Datu filed a Motion for Reconsideration, but the Court of Appeals denied this in a February 26, 2020 Resolution.[20] Hence, Datu filed the Petition for Review on *Certiorari*[21] now before this Court.

Petitioner contends that he was illegally dismissed when he was told that he was out of a job and verbally ordered to be evicted from the company premises. He points out that given the circumstances of his dismissal, it is expected that there would be no written or documentary proof of his dismissal. He adds that even before this verbal dismissal, he was already being harassed since he would usually be assigned to old and dilapidated buses.[22] He likewise asserts that he was never furnished with notices to report back to work or declared absent without leave, which contradicts respondents' claim that he abandoned his employment. Petitioner argues that Miranda's failure to reply to his text message was proof of respondents' acquiescence to his dismissal.[23]

He adds that he was also entitled to deductions to his wages in the form of "*butaw*" or "police protection" and "washing fee."[24]

Respondents counter that they submitted sworn affidavits denying that petitioner's services were terminated. They contend that while respondent Naldo told petitioner that he was disappointed, petitioner himself packed his things and left the company premises. They argue that petitioner's text message asking if he could still report to work proved that no actual dismissal happened.[25]

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15 *Id.* at 71–72.
16 *Id.* at 31.
17 *Id.* at 28–37.
18 *Id.* at 35.
19 *Id.* at 35–36.
20 *Id.* at 39–42.
21 *Id.* at 3–26.
22 *Id.* at 11.
23 *Id.* at 13–17.
24 *Id.* at 18–19.
25 *Id.* at 291–292.

Respondents assert that there was no evidence of petitioner's verbal dismissal since respondent Naldo's displeasure over petitioner's filing of the labor cases was a normal reaction, and since petitioner has not proven that he had been assigned to old and dilapidated buses.[26] They say that petitioner's filing of his labor complaints, despite earning good money, was instigated by Oscar M. Arniego, "a seasoned labor leader who . . . agitated [petitioner] (and his other cohorts) to file labor cases left and right" even if groundless.[27] Respondents likewise claim that petitioner's salaries were paid to him without any deductions, since deductions from the Cash Remittance Sheets for petitioner's various expenses were paid out of fare collections, not his salaries.[28]

The sole issue in this case is whether the Court of Appeals erred in finding that petitioner was not illegally dismissed since he failed to present substantial evidence proving his alleged dismissal.

In finding that there was no illegal dismissal, the Court of Appeals explained that petitioner failed to present evidence showing that he had been verbally dismissed and escorted from his work premises. It found that petitioner voluntarily left the work premises and never returned. This is akin to reasoning that respondents did not dismiss petitioner; rather, petitioner intentionally abandoned his work.

Abandonment of work, however, is not mere failure to report to work. It requires two conditions: (1) failure to report to work; *and* (2) the intent to sever the employee-employer relationship. In *Demex Rattancraft, Inc. v. Leron*:[29]

> Abandonment of work has been construed as "a clear and deliberate intent to discontinue one's employment without any intention of returning back." To justify the dismissal of an employee on this ground, two (2) elements must concur, namely: "(a) the failure to report for work or absence without valid or justifiable reason; and, (b) a clear intention to sever the employer-employee relationship."
>
> Mere failure to report to work is insufficient to support a charge of abandonment. The employer must adduce clear evidence of the employee's "deliberate, unjustified refusal . . . to resume his [or her] employment," which is manifested through the employee's overt acts.[30] (Citations omitted)

Here, it does not appear that petitioner intended to abandon his work.

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[26] *Id.* at 296–297.
[27] *Id.* at 300.
[28] *Id.* at 304.
[29] 820 Phil. 693 (2017) [Per J. Leonen, Third Division].
[30] *Id.* at 702.

What appears clear is that labor relations between petitioner and respondents were beginning to be strained at a time when respondents' employees were in the process of unionizing.[31] Petitioner had been one of the more active officers of the proposed union.[32]

Respondents did not adduce evidence to show that petitioner remained in the payroll or that report-to-work notices were served on him. Regardless of whether he was told to leave the work premises or he voluntarily left the work premises, respondents have not shown that there was no dismissal.

To prove that petitioner abandoned his work, it is not enough that he left the premises and never returned. There must be proof that he did not intend to ever return. These elements do not appear in this case. Petitioner insists that he was escorted out of the work premises, and that he even sent Miranda a text message asking if he could still return to work. When he did not receive a reply, he immediately filed a case for illegal dismissal, with a prayer for reinstatement. If relations have indeed soured between him and his employer, he would have requested separation pay rather than reinstatement. "It is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work."[33]

Petitioner's mere failure to return to his employment is also insufficient to prove that the employer-employee relationship had been severed. In *Kams International, Inc. v. National Labor Relations Commission*:[34]

> [I]t must be stressed that abandonment of work does not per se sever the employer-employee relationship. It is merely a form of neglect of duty, which is in turn a just cause for termination of employment. The operative act that will ultimately put an end to this relationship is the dismissal of the employee after complying with the procedure prescribed by law.[35] (Citations omitted)

In illegal dismissal cases, the employer must show that the dismissal is for just or authorized causes under the Labor Code. Since the allegation of abandonment was not sufficiently proven, petitioner's dismissal is illegal.[36]

As to petitioner's allegation that there were deductions from his

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31 *Rollo*, pp. 77, 81–82.
32 *Id.* at 77.
33 *Kams International, Inc. v. National Labor Relations Commission,* 373 Phil. 950, 959 (1999) [Per J. Bellosillo, Second Division].
34 373 Phil. 950 (1999) [Per J. Bellosillo, Second Division].
35 *Id.* at 959.
36 *Id.*

salaries in the form of "*butaw*" or "police protection" or "washing fee,"[37] these deductions are not clear from the Cash Remittance Sheets[38] on record. Thus, it is not duly proven that petitioner suffered salary deductions throughout his employment.

"In a case where the employee was neither found to have been dismissed nor to have abandoned his/her 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."[39] However, petitioner has not reported to work since March 5, 2014, or for almost 10 years. As in *Nightowl Watchman & Security Agency, Inc. v. Lumahan*,[40] petitioner should, in lieu of reinstatement, be given separation pay in an amount equivalent to one month's pay for every year of service, computed up to the time he stopped working, or until March 5, 2014.

ACCORDINGLY, the Petition is **PARTLY GRANTED**. The June 18, 2019 Decision and February 26, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 143879 are **REVERSED** and **SET ASIDE**.

Respondents Taguig Metro Link Bus Corporation, Evelyn G. Castro, and Lope V. Naldo are ordered to jointly and severally **PAY** petitioner Rafael D. Datu separation pay, in lieu of reinstatement, equivalent to one month's pay for every year of service, computed up to the time he stopped working, or until March 5, 2014. The award shall earn interest at the rate of 6% per annum from the date of the finality of this Resolution until fully paid.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
07 NOV 2023

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37 *Rollo*, pp. 18–19.
38 *Id.* at 145–173.
39 *Dee Jay's Inn and Café v. Rañeses*, 796 Phil. 574, 595–596 (2016) [Per J. Leonardo-De Castro, First Division]. (Citation omitted)
40 771 Phil. 391, 409 (2015) [Per J. Brion, Second Division].

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GR252289. 04/17/2023(233)URES