



Mis+DCBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

DEC 07 2020

Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
DEC 10 2020
BY: R. SANTIAGO
TIME: 2:00

THIRD DIVISION

ROBE ANN B. LUSABIA, G.R. No. 223314
PERCIVAL CONTRERAS, NIDA
ACSAYAN, FLOR ALIMONSURIN,
LITO DENAGA, REGGIE Present:
VERGABERA, AND SHIELA LEONEN, J.,
MARIE A. BARRERA, Chairperson,
Petitioners, GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

SUPER K DRUG CORPORATION,
KRISTINE Y. GARCELLANO AND Promulgated:
MARCO Y. GARCELLANO, July 15, 2020
Respondents. Mis+DCBatt

X-----X

DECISION

CARANDANG, J.:

The instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision¹ dated September 29, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131738 dismissing the complaint for illegal dismissal and money claims filed by Robe Ann B. Lusabia (Lusabia), Percival Contreras (Contreras), Nida Acsayan (Acsayan), Flor Alimonsurin

¹ Penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Ricardo R. Rosario and Ramon Paul L. Hernando (now a Member of this Court); *rollo*, pp. 86-84.

9

(Alimonsurin), Lito Denaga (Denaga), Reggie Vergabera (Vergabera), and Sheila Marie A. Barrera (Barrera; collectively petitioners) against respondents Super K Drug Corporation, Kristine Y. Garcellano (Kristine) and Marco Y. Garcellano (Marco).

All seven petitioners are employees of SUPER K Drug Store owned by private respondents Kristine and Marco. They were hired by respondent company on separate occasions from 2009-2011.² In January 2012, petitioners received a daily wage ranging from ₱350.00 to ₱400.00. Petitioners commonly claim that they did not receive a copy of their pay slips but were forced to sign the payroll. Petitioners question the payroll because it indicates a higher amount of their wage than what they actually received. When petitioners would refuse to sign the payroll for inaccuracy of the value received, they would often be threatened by their supervisor that they would not be paid their salaries. As a result, petitioners would sign the payroll.³

Petitioners also complain of illegal deduction from their salary because they are made to shoulder the amount for every item lost at the drugstore due to theft and robberies. Their pleas for assignment of a security guard at the drugstore remained unheeded by the management.⁴ ₱500.00 would likewise be deducted from their salaries as cash bond which would often released in full at the end of every year. However, beginning 2010, private respondent no longer releases the deducted cash bonds.⁵ For these reasons, in January 2012, petitioners filed their labor complaint for money claims before the National Labor Relations Commission (NLRC) – Single Entry Approach (SENA).⁶

Before the conclusion of the NLRC-SENA proceedings, petitioner Lusabia was instructed to proceed to the residence of respondent-owner, Kristine. Petitioner Lusabia claims that Kristine forced her to withdraw her labor complaint. Otherwise, she will be dismissed from work.⁷ Petitioners Barrera and Contreras, on another occasion, were likewise directed the same orders by Kristine. However, the three petitioners refused to withdraw their labor complaints. As a result, they were dismissed from employment and prohibited from entering the work premises. Should they force to return to work, they were threatened that criminal charges for trespassing will be filed against them.⁸

After the second hearing before the NLRC-SENA, Kristine conducted another meeting with the seven petitioners. Petitioners claim that Kristine

² Alimonsurin was hired on January 31, 2007; Acsayan was hired on November 17, 2007; Vergabera was hired on August 4, 2010; Contreras was hired on August 15, 2010; Barrera was hired on January 6, 2011; Lusabia and Denaga were transferred to New Farmer's Plaza Branch in March 2011 and June 2011, respectively.

³ *Rollo*, pp. 338-339.

⁴ *Id.* at 340-341.

⁵ *Id.* at 341.

⁶ *Id.* at 342.

⁷ *Id.*

⁸ *Id.* at 343.

J

announced willingness to pay the salary differentials but no overtime pay.⁹ Petitioners then proceeded to the Trade Union Congress of the Philippines (TUCP) to seek help for filing a labor complaint with the NLRC. Petitioners alleged that upon knowledge by Kristine Garcellano of this development, the remaining four petitioners, namely Acsayan, Alimonsurin, Denaga, and Vergabera, were also dismissed from employment. Petitioners amended their complaint to include illegal dismissal as one of the charges against private respondent company and owners.¹⁰

Private respondents, on the other hand, claimed that petitioners were not prohibited from reporting to work. On February 1, 2012, petitioners no longer reported for work. Respondents claimed that it sent, by registered mail, Return to Work Notices¹¹ to petitioners during the pendency of the NLRC-SENA case hoping that grievances would be resolved. None of the petitioners replied to said Notices. Furthermore, no settlement was agreed upon by the parties at the NLRC-SENA, and petitioners failed to report for work.¹²

In a Decision¹³ dated July 27 2012, the Labor Arbiter (LA) dismissed the complaint holding that the fact of dismissal was not established. Records showed that notices to return to work were duly sent out to petitioners. The LA held that if petitioners had been dismissed, then private respondent company would not have sent out return to work notices.¹⁴ Petitioners did not deny the existence of the notices sent to them. They also did not explain their failure to comply with their employer's directives. In fact, petitioners' allegations of being denied entry at work were based on their self-serving statements. The supporting affidavit executed by an employee from TUCP was only based from an interview of petitioners. The affiant did not have any personal knowledge that petitioners were indeed prevented from returning to work.¹⁵

Anent the money claims of petitioners, the LA denied the same. Private respondents sufficiently provided voluminous records¹⁶ showing payment of salaries to petitioners in accordance with law. While petitioners presented affidavits of former employees of Super K Drug Store, such are hearsay and failed to repudiate the payroll documents. Records showed that petitioners were duly paid the correct wages and benefits.¹⁷ As to the illegal deduction on the salary for lost items in the drug store, the LA also denied the same holding that there was no proof of the fact of theft and robberies at the drugstore.¹⁸

⁹ Id.
¹⁰ Id. at 344.
¹¹ Id. at 188-199.
¹² Id. at 544.
¹³ Id. at 541-548.
¹⁴ Id. at 545-546.
¹⁵ Id. at 546.
¹⁶ Id. at 208-334.
¹⁷ Id. at 547.
¹⁸ Id. at 548.

4

Petitioners appealed the foregoing Decision. On March 27, 2013, the NLRC reversed and set aside the Decision of the LA finding that petitioners did not abandon their employment.¹⁹ Immediately filing a labor complaint is inconsistent with the logic of abandoning employment.²⁰ These incidents, coupled with the affidavit of the employee of TUCP, only proved that petitioners were prevented from returning to work. While notices dated February 6, 2012 and February 27, 2012 were sent out by Super K Drug store via registered mail, there was no proof that the same were received by petitioners. The NLRC noted that DOLE hearings and conciliatory proceedings took place on February 3, 10, and 22, 2012, March 22 and 29, 2012, and April 17 and 24, 2012, where petitioners appeared.²¹ Private respondent could have easily furnished petitioners the notices or the return to work orders on said dates, but did not. The NLRC found this suspicious and held that notices sent out were mere afterthoughts.²² The NLRC also held that there was failure to observe the twin notice rule. Petitioners were illegally dismissed. Finally, the NLRC found that the SSS Employee Static Information²³ reflected underpayment to petitioners. The LA erred in relying in the payrolls when the same were being disputed by petitioners. The SSS Employee Static Information is a true account of petitioners' salaries as the same are mandatorily reported by respondent company. Petitioners were entitled to payment of unpaid salaries, 13th month pay and commutation of service incentive leave.²⁴ The NLRC also found illegal deductions which are prohibited under Article 113²⁵ of the Labor Code of the Philippines. The NLRC ordered reinstatement of petitioners, payment of backwages, salary differentials, and labor benefits, and reimbursement of illegal deductions and unreleased cash bonds.²⁶

Unsatisfied with the Decision of the NLRC, respondents filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA. On September 29, 2015, the CA reinstated the Decision of the LA.²⁷ The CA held that private respondent company was able to prove that petitioners were made to report back to work.²⁸ What is apparent is petitioners' disobedience to such directive, which is a clear indication of their intention to sever employment with respondent.²⁹ Petitioners failed to report to their jobs and merely relied on the affidavit of the employee from TUCP which remained

¹⁹ Id. at 153-167.

²⁰ Id. at 158.

²¹ Id. at 159.

²² Id.

²³ Id. at 70-76.

²⁴ Id. at 160.

²⁵ 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:

- a. 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;
- b. 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
- c. In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment

²⁶ *Rollo*, p. 161.

²⁷ Id. at 92-94.

²⁸ Id. at 90.

²⁹ Id. at 92.

9

unsubstantiated compared to the evidentiary worth of the documents presented by Super K Drug Store.³⁰ Petitioners' neglect of duty can be a cause for termination of employment. The CA held that the "operative" fact which severs the ties of the employer-employee relationship is the twin notice requirement under the labor laws. However, private respondent was unable to even comply with the twin notice requirement as petitioners had already filed a labor complaint against respondent.³¹ The CA denied payment of petitioners' money claims. Payrolls submitted in evidence bore petitioners' signatures and was the best evidence of acknowledgment and actual amount of salaries paid to petitioners. The SSS Employee Static Information did not show actual payment of salaries and the amount duly received by petitioners. This only showed the amount duly contributed by respondent company pursuant to SSS law. Finally, the CA did not give credence to petitioners' claim that their salaries were subject to illegal deduction. While there were photographs³² showing the alleged robber, they did not prove that illegal deductions were made on petitioners' salaries.³³

Petitioners filed the instant petition, claiming that they were illegally dismissed from employment.³⁴ They argue that abandonment of their employment could not have been inferred from their actions. Apart from manifesting at the conciliatory proceedings their willingness to return to work, they eventually filed an illegal dismissal suit. They were also not aware of the return to work notices issued by respondent company, and respondent company even failed to prove their receipt of said notices. Petitioners claim that sending by registered mail the return to work notices pending the conciliatory proceedings was peculiar and questionable. Respondents could have personally furnished the same to petitioners during the conciliatory proceedings.³⁵ Absent proof of receipt of the return to work notices, it only bolsters the fact that petitioners were prevented from returning to work and unjustly dismissed from employment. The return to work notices are clearly afterthoughts in order for respondent company to be able to claim that petitioners abandoned employment.³⁶ Anent their salaries, the SSS Employee Static Information should have been given credence as this supports petitioners' claim that they were underpaid. The SSS Employee Static Information contravenes the regularity of the execution of the payroll. The *sinumpaang salaysay* of respondent company's former employees also support that there is underpayment and that petitioners were forced to sign the payroll even if it did not reflect the actual amount they received from the employer. Further, petitioners are entitled to payment of their commuted unused service incentive leaves and the value of the unauthorized deductions from their salaries.³⁷

³⁰ Id. at 91.
³¹ Id. at 92.
³² Id. at 369-370.
³³ Id. at 92-93.
³⁴ Id. at 11-35.
³⁵ Id. at 25.
³⁶ Id.
³⁷ Id. at 28-30.

9

In their Comment,³⁸ respondents claim that petitioners were told to return to work. Moreover, return to work notices sent by registered mail were duly received by petitioners. They emphasize that there are registry receipts and return cards.³⁹ The notices sent out during conciliatory proceedings only show that respondents were willing to accept petitioners back to work. The fact that the same were sent to petitioners' postal address during the conciliation proceedings does not necessarily mean that respondents should be held liable for dismissing petitioners.⁴⁰ The SSS Employee Static Information is not sufficient evidence of underpayment. This document is only used to determine the remittances being made by the employer. The best evidence to show that petitioners received their correct wage is the payroll. Respondent company doubts petitioners' claim because if there really was a disparity in the payroll and the actual salaries received, then petitioners should have long disputed this concern as they have been in the employ of the company ranging from 1 to 4 years.⁴¹ All other money claims of petitioners should be denied. There is no proof that petitioners' salaries were deducted.⁴²

Ruling of the Court

It is settled that the employer bears the burden of proving that the employee's dismissal is for a just or authorized cause.⁴³ Here, respondent company and the owners argue that abandonment of employment is a valid ground to dismiss petitioners. Petitioners' abandonment is proven by their failure to respond and comply with the return to work notices sent by respondent company.

We do not agree.

Respondent company failed to prove the fact of receipt of the return to work notice dated February 6, 2012. Records show that copies of the registry return cards⁴⁴ lacked petitioners' or their authorized persons signatures, which should signify acknowledgement of receiving the mail/notices. The registered return cards were not even accompanied by a certification from the postmaster regarding the fact of receipt. We cannot presume that petitioners received the notices to return to work solely on the basis of unsigned registry return cards. Notably, We find that all notices were sent to one mailing address at "87-D 7th Avenue Murphy Socorro, Cubao, QC,"⁴⁵ and two of the envelopes even bore markings "RTS 3-26-12"⁴⁶ and "RTS" to mean as return to sender. Respondent company did not explain the reason in sending the notices for all seven petitioners to one postal address.

³⁸ Id. at 603-614.

³⁹ Id. at 605.

⁴⁰ Id. at 608.

⁴¹ Id. at 610-611.

⁴² Id. at 612-613.

⁴³ *Distribution & Control Products, Inc. v. Santos*, 813 Phil. 423 (2017).

⁴⁴ *Rollo*, pp. 189, 191, 193, 195, 197, 199.

⁴⁵ Id.

⁴⁶ Id. at 195, 199.

9

Neither was there proof that the notices, including those bearing the marking "RTS 3-26-12," were resent, or sent to an address different from the foregoing. Further and as observed by the NLRC, the SENA hearings and conciliatory proceedings took place on February 3, 10, and 22, 2012, March 22 and 29, 2012, and April 17 and 24, 2012, where petitioners appeared. Respondent could have easily furnished petitioners the return to work notices on said dates, but did not. We are inclined to find for petitioners that they did not receive the return to work notice. Therefore, petitioners could not have violated a return to work order. Moreover, sending return to work notices during the pendency of the SENA proceedings only shows that no prior notice, written or oral, was given to petitioners. Otherwise, respondents would have submitted the same in evidence. The notices dated February 6, 2012 sent during the pendency of the SENA proceedings were an attempt of respondent company to cure the defect of its failure to order petitioners to return to work.

Consequently, petitioners did not abandon their employment. To prove abandonment, the employer must show that the employee unjustifiably refused to report for work and that the employee deliberately intended to sever the employer-employee relationship.⁴⁷ Intent to sever the employer-employee relationship can be proven through the overt acts of an employee.⁴⁸ The overt acts, after being considered as a whole, must clearly show the employee's objective of discontinuing his or her employment.⁴⁹ Mere absence from work, even after a notice to return, is insufficient to prove abandonment.⁵⁰

Records are bereft of any indication that petitioners' failure to report for work was with a clear intent to sever their employment relationship with respondent company. As a matter of fact, petitioners only filed for underpayment of their salaries, non-payment of labor benefits and illegal deduction from their salary. Their actuations only explain that they have a grievance, not that they wanted to abandon work entirely. Records also reveal that petitioners would report to work after appearing at the NLRC-SENA proceedings.⁵¹ Petitioners only modified the labor complaint to include illegal dismissal because they were declined entry to work. We give credence to this allegation as We found that respondent company failed to furnish return to work notices to petitioners. Taking all the facts together, We do not find that petitioner had the intention to sever employment. Furthermore, no notice to explain and termination notice were given to petitioners. Respondent company and owners failed to comply with both substantive and procedural due process. Hence, petitioners were illegally dismissed, entitling them to reinstatement and payment of backwages.⁵² However, petitioners prayed for payment of separation pay in lieu of

⁴⁷ *Charlie Hubilla v. Hay Marketing Ltd., Co.*, 823 Phil. 358, 385-386 (2018).

⁴⁸ *Demex Rattancraft, Inc. v. Leron*, 820 Phil. 693, 703 (2017).

⁴⁹ *Id.*

⁵⁰ *Claudia's Kitchen, Inc. v. Tanguin*, 811 Phil. 784, 796 (2017).

⁵¹ *Rollo*, p. 20.

⁵² LABOR CODE OF THE PHILIPPINES, Art. 279 [renumbered as Art. 294].

9

reinstatement,⁵³ which We find merit considering that reinstatement would no longer serve any prudent purpose in view of the strained relations between petitioners and respondents.⁵⁴

As to petitioner's claim of underpayment of salaries, it is settled that the burden to prove payment rests on the employer because all pertinent personnel files, payrolls, records, remittances and other similar documents are in the custody and control of the employer.⁵⁵ To prove correctness of payment of salaries, respondent company presented payroll records from May 2009-January 2011⁵⁶ for Super K Drug Corporation, Roxas City Branch and March 2007 to December 2011⁵⁷ for New Farmers Plaza Branch. Petitioners were hired or transferred to the New Farmers Plaza branch on separate occasions⁵⁸ within the period covered by the payroll records submitted in evidence. However, the payroll records are incomplete. From the facts, Denaga and Lusabia were originally assigned to the Capiz, Roxas branch, but the Roxas City payroll records only reflected payment to Denaga. The New Farmers Plaza Branch payroll records⁵⁹ mostly reflected payment of salaries to petitioners Acsayan and Alimonsurin only. The payroll period in New Farmers Plaza branch from June 2011 to December 2011⁶⁰ failed to reflect payment to some of the petitioners, when all seven of them were already working at said branch at that time. In view of the foregoing, We cannot agree with private respondents that there is due payment of salaries to petitioners. In fact, We found, from the payroll records and undisputed allegations of underpayment, that petitioners were not paid their salaries pursuant to the applicable wage orders.⁶¹ Thus, petitioners are entitled to salary differentials as may be computed by the labor tribunals following the wage orders. Other claims for labor benefits, namely, 13th month pay benefit and service incentive leave benefit, must also be paid to petitioners for lack of proof of payment by respondent company. Failure to release the cash bond beginning 2010 amounting to ₱500.00 is undisputed. Thus, private respondents must likewise pay the same to petitioners. Anent salary deductions claimed by petitioners, We cannot uphold the same for lack of evidence. Finally, We find that petitioners are entitled to payment of attorney's fees at 10% of the monetary award pursuant to Article 111 the Labor Code of the Philippines for unlawful withholding of wages.

⁵³ Rollo, p.173.

⁵⁴ Azucena, C.A., *Everyone's Labor Code*, 2001 Ed., p. 306; *Hernandez v. National Labor Relations Commission*, G.R. No. 34302, August 10, 2019.

⁵⁵ *Minsola v. New City Builders, Inc.*, 824 Phil. 866, 879 (2018).

⁵⁶ Rollo, pp. 421-463.

⁵⁷ Id. at 208-334.

⁵⁸ Alimonsurin was hired on January 31, 2007; Acsayan was hired on November 17, 2007; Vergabera was hired on August 4, 2010; Contreras was hired on August 15, 2010; Barrera was hired on January 6, 2011. Lusabia and Denaga were transferred to New Farmer's Plaza Branch in March 2011 and June 2011, respectively.

⁵⁹ Rollo, pp. 228-32. Payroll records from March 2007- March 2011.

⁶⁰ Id. at 208-222.

⁶¹ For the periods reflected in the payroll and as alleged by petitioners until they were illegally dismissed. The applicable wage orders include, (for Denaga and Lusabia) Wage Order No. RBVI-17, Wage Order No. RBVI-18, (for all seven petitioners) Wage Order No. NCR-15, Wage Order No. NCR-16.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 29, 2015 of the Court of Appeals in CA-G.R. SP No. 131738 is **REVERSED** and **SET ASIDE**. The Decision dated March 27, 2013 of the NLRC in NLRC NCR Case No. 02-03203-12 is **AFFIRMED with MODIFICATION** in that private respondents are ordered to pay petitioners, who were illegally dismissed:

- 1) Full backwages from the time of petitioners' respective dates of dismissal until finality of this Decision;
- 2) Separation pay, in lieu of reinstatement, beginning from the respective dates petitioners were employed until finality of this Decision, at the rate of one-month salary for every year of service, with a fraction of a year of at least six months to be considered as one whole year;⁶²
- 3) Salary differentials in accordance with the applicable wage orders;
- 4) 13th month pay benefits and service incentive leave benefits;
- 5) To release the deducted cash bond beginning 2010; and
- 6) Attorney's fees at 10% of the monetary award.

The case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to petitioners, which respondents should pay without delay.

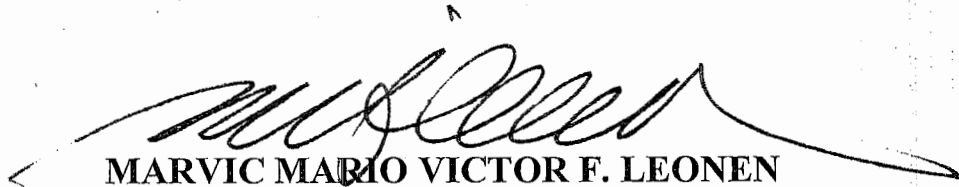
SO ORDERED.


ROSALINDA C. CARANDANG
Associate Justice

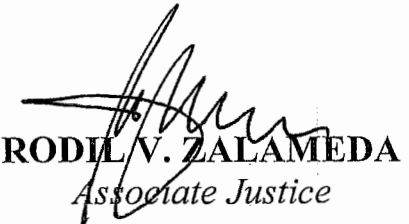
⁶²

Rivera v. Genesis Transport Services, Inc. 765 Phil. 544, 561 (2015).

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

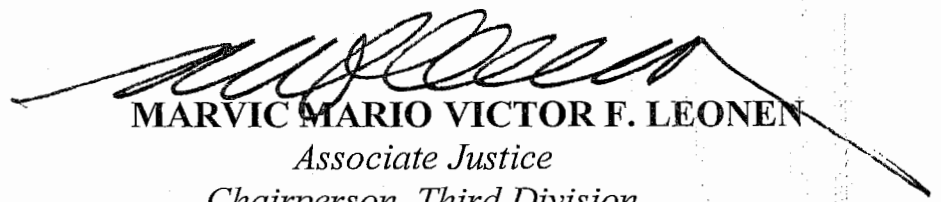

ALEXANDER G. GESMUNDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

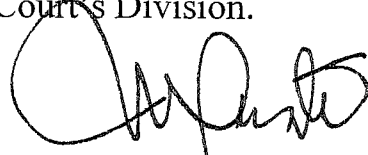
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

Mis D C Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

DEC 07 2020