Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TRI-C GENERAL SERVICES, Petitioner,	**G.R. No. 194686**
	Present:
- versus -	VELASCO, JR., *J., Chairperson,* PERALTA, VILLARAMA, JR., PEREZ,* and JARDELEZA, *JJ.*
NOLASCO B. MATUTO, ROMEO E. MAGNO and ELVIRA B. LAVIÑA, Respondents.	**Promulgated:** September 23, 2015

x----------x

DECISION

PERALTA, *J.:*

Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal.[1]

For resolution of this Court is a petition for review on *certiorari,* dated December 23, 2010 of petitioner Tri-C General Services, seeking the reversal of the Decision[2] dated June 17, 2010 and Resolution[3] dated December 9, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No.

---

* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

1 *Noblejas v. Italian Maritime Academy Phils., Inc., et al.,* G.R. No. 207888, June 9, 2014, 725 SCRA 570, 579.

2 Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring; *rollo,* pp. 140-149.

3 *Id.* at 161-163.

111644 reversing the Decision[4] and Resolution[5] dated June 30, 2009 and September 22, 2009, respectively, of the National Labor Relations Commission (*NLRC*) Second Division, Quezon City in LAC No. 12-003297-07 which affirmed the Decision[6] dated July 26, 2007 of the Labor Arbiter (*LA*) in NLRC Case No. RAB-IV-12-20177-04-C. The assailed Decision and Resolution of the CA declared that respondents Nolasco B. Matuto, Romeo E. Magno and Elvira B. Laviña were illegally dismissed, and ordered their reinstatement and payment of full backwages.

The facts are as follows:

Petitioner Tri-C General Services, Inc. is a manpower agency engaged in the business of supplying services to all PLDT Business Offices in Laguna.[7]

Respondents Nolasco Matuto (Matuto), Romeo Magno (Magno) and Elvira Laviña (Laviña) were hired by petitioner as janitors/janitress assigned at the PLDT Business Office in Calamba City. Magno was hired on August 1, 1993 while Matuto was hired on June 5, 1995 and Laviña on February 4, 1996.[8]

On November 3, 2004, Matuto and Laviña were barred from their work place in PLDT-Calamba, while Magno was denied entry on November 26, 2004.[9]

Thus, respondents filed an illegal dismissal case against petitioner on December 15, 2004.[10] Carmela Quiogue, the owner of Tri-C General Services, Inc., was impleaded in the complaint.[11]

For their part, respondents averred that sometime in January 1997, they spearheaded the first complaint of several janitors against petitioner for underpayment of wages and violation of labor standards before the Department of Labor and Employment. The LA decided on September 1, 2003 in their favor and ordered the petitioner to pay their underpaid salaries. However, petitioner did not pay the respondents with the mandated minimum wage but merely increased their salaries by □5.00 every year. They alleged that since then, they earned the ire of petitioner and experienced harassment and intimidation.[12]

---

4 Penned by Presiding Commissioner Raul T. Aquino, with Commissioner Angelita A. Gacutan, concurring; *rollo,* pp. 96-102.
5 *Id.* at 109-111.
6 Penned by Labor Arbiter Renell Joseph R. Dela Cruz, *id.* at 67-77.
7 *Rollo,* p. 51.
8 *Id.*
9 *Id.* at 141.
10 *Id.* at 53.
11 *Id.* at 51.
12 *Id.* at 52.

Respondents further alleged that assuming that petitioner had valid ground to terminate them, their termination was still deemed illegal since petitioner failed to furnish them with the two notices required by law. They only received a notice informing them that their services had already been terminated effective on the same date of the notice.[13]

In its defense, petitioner denied dismissing respondents. Sometime in October 2004, PLDT-Laguna informed petitioner that it would implement cost-cutting measures and that it would discontinue, after careful assessment, the services of respondents.[14] Petitioner further claimed that it had no other recourse but to temporarily put the respondents on "floating status" upon termination of client's contract since their work was entirely dependent on the need for janitorial services of its clients. It alleged that the complaint for illegal dismissal was premature since the six months legal period for placing an employee on a "floating status" has not yet lapsed.[15] It insisted that it was a legitimate exercise of its management prerogative.

In its reply to respondents' position paper, petitioner insisted that respondents abandoned their posts. It averred that its Personnel Department sent a series of letters to the respondents from October 2004 to November 2004.[16] On October 14, 2004, Matuto and Laviña received similar letters, reading as follows:

> From: PMI Personnel Department
> Subject: **Requested to Report at the Office**
>
> You are hereby requested to report on Saturday, October 16, 2004, 8:00 AM at our office #45 Zorra St., San Francisco Del Monte, Quezon City.
>
> In regards to the on going re-shuffling or Notice of transfer.
>
> Thank you.[17]

Subsequent letters dated October 19, 25 and November 11, 2004 pertain to the same request for the respondents to report at petitioner's main office. Petitioner warned respondents Matuto and Laviña in a letter[18] dated November 11, 2004 that failure to report at their office will mean that they were no longer interested in their work. When such request went unheeded, petitioner sent the final letter, dated November 16, 2004, reading as follows:

> From: Personnel Department
> Subject: **Failure to Report at the Office**

---

13 *Id.* at 68-69.
14 *Id.* at 38.
15 *Id.* at 40.
16 *Id.* at 73.
17 NLRC records, pp. 107, 112. (Emphasis ours)
18 *Id.* at 116.

> You were given ample time to report at the office since October 16, 2004 at our office at #45 Zorra St., San Francisco Del Monte, Quezon City, but you did not appear at all. Therefore, we took action that you are hereby terminating your services with this company voluntarily.
>
> Due to this, we were left with no recourse but to delete you from our active roster of employees effective today November 16, 2004.
>
> We wish you the best of luck.
>
> Thank you.[19]

Respondent Magno received similar letters on November 11 and 16, 2004 directing him to report to petitioner's main office. On November 22, 2004, he received a letter[20] informing him that his failure to appear at the office left petitioner with no recourse but to delete him from its active roster of employees.

The LA ruled in favor of the petitioner, the dispositive portion of the decision reads:

> WHEREFORE, premises considered, the complaint for illegal dismissal is DISMISSED for lack of merit except that TRI-C GENERAL SERVICES, INC. is ordered to pay complainants their separation pay as follows:
>
> | | | |
> |---|---|---|
> | Nolasco Matuto | - | □ 42,432.00 |
> | Romeo Magno | - | 45,968.00 |
> | Elvira Laviña | - | 38,896.00 |
> | GRAND TOTAL | - | □127,296.00 |
>
> SO ORDERED.[21]

The LA considered the respondents on floating status and the legal period during which they could be placed under floating status has not yet lapsed at the time of the filing of the complaint on December 15, 2004. Hence, they could not be considered constructively dismissed.[22]

Respondents elevated the matters to the NLRC, which sustained the decision of the LA that they were not illegally dismissed. The separation pay, however, was deleted. The dispositive portion of the decision states:

> WHEREFORE, premises considered, the appealed Decision is hereby AFFIRMED with MODIFICATION only insofar as Our order for the monetary award of separation pay to be DELETED from the subject Decision, for lack of basis.

---

19 *Id.* at 111. (Emphasis ours)
20 *Id.* at 118-120.
21 *Rollo,* p. 77.
22 *Id.* at 76.

SO ORDERED.[23]

The NLRC ruled that the filing of the complaint was premature since petitioner had proof that it could only be sued if no new post or assignment was given to respondents after the lapse of a period of six months. The awards of separation pay to respondents were deleted for being misplaced absent any showing that respondents were illegally dismissed.[24]

After their Motion for Reconsideration was denied, respondents filed before the CA a petition for *certiorari* under Rule 65. The CA reversed the findings of the LA and the NLRC and ruled for the respondents, the *fallo* of the decision reads:

> **WHEREFORE,** the instant petition for *certiorari* is **GRANTED**. The assailed Decision and Resolution of the public respondent National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Judgment is hereby rendered declaring the petitioners Nolasco B. Matuto, Romeo E. Magno and Elvira B. Laviña were illegally dismissed from their employment by private respondent Tri-C General Services and, accordingly, ordering said private respondent to reinstate the petitioners to their former positions without loss of seniority rights and with payment of full backwages from the time of their illegal dismissal on 03 November 2004 (for petitioners Matuto and Laviña) and on 26 November 2004 (for petitioner Magno).
>
> Private respondent is further ordered to pay petitioners the amounts equivalent to ten percent (10%) of the monetary awards as and for attorney's fees.
>
> This case is thus **REMANDED** to the Labor Arbiter for the computation, within 30 days from receipt hereof, of the backwages, inclusive of allowances and other benefits due to petitioners, computed from the time their compensation was withheld up to the time of their actual reinstatement, as well as the award of attorney's fees in their favor.
>
> **SO ORDERED**.[25]

The CA held that the paramount consideration is the dire exigency of the business of the employer which compelled it to put some of its employees temporarily out of work. It found that there was nothing to support petitioner's allegation aside from its bare assertion that its client PLDT-Laguna requested for discontinuance of its services. There was also no showing that there was lack of available posts to which the respondents might be assigned after they were relieved from their last assignment.[26]

---

23 *Id.* at 101.
24 *Id.*
25 *Rollo,* pp. 147-148 (Emphasis on the original).
26 *Id.* at 145.

The CA denied petitioner's Motion for Reconsideration. Hence, the petitioner raised before this Court the following issues:

> 1. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ANNULLING AND SETTING ASIDE THE DECISION ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION-SECOND DIVISION.
>
> 2. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING THE MOTION FOR RECONSIDERATION FILED BY TRI-C EVERLASTING FOR THE REVIEW OF ITS DECISION ISSUED ON JUNE 17, 2010.
>
> 3. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN DECLARING MATUTO, MAGNO AND LAVIÑA AS ILLEGALLY DISMISSED BY TRI-C.
>
> 4. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE REINSTATEMENT OF MATUTO, MAGNO AND LAVIÑA AND TO PAY THE LATTER'S BACKWAGES INCLUSIVE OF ALLOWANCES AND OTHER BENEFITS DUE THEM AS WELL AS ATTORNEY'S FEES.[27]

We find the instant petition meritorious.

In a petition for review on *certiorari* under Rule 45, we review the legal errors that the CA may have committed in the assailed decision, in contrast with the review for jurisdictional error undertaken in an original *certiorari* action. In reviewing the legal correctness of the CA decision in a labor case made under Rule 65 of the Rules of Court, this Court examines the decision in the context that the CA determined the presence or the absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision, on the merits of the case, was correct.[28]

The conflicting factual findings of the LA, the NLRC and the CA are not binding on us, and we retain the authority to pass on the evidence presented and draw conclusions therefrom. In the exercise of its equity jurisdiction, this Court would re-evaluate and re-examine the relevant findings.[29]

For the first two issues, petitioner alleged that the CA erred when it annulled and set aside the decision of the NLRC and denied its motion for reconsideration. It posited that when the findings of fact of the LA is affirmed

---

27 *Id.* at 18.

28 *Diamond Taxi v. Llamas, Jr.,* G.R. No. 190724 March 12, 2014, 719 SCRA 10, 19.

29 *De Jesus v. Aquino, NLRC and Supersonic Services, Inc.,* G.R. No. 164662, February 18, 2013, 691 SCRA 71, 81.

by the NLRC, said finding is considered as final and is viewed with respect by the higher tribunals.

It has been settled that judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. Hence, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[30]

It was held that in labor cases elevated to it via petition for *certiorari*, the CA is empowered to evaluate the materiality and significance of the evidence alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC in relation to all other evidence on record.[31] To make this finding, the CA necessarily has to view the evidence if only to determine if the NLRC ruling had basis in evidence.[32]

After a judicious study of the records of the case, this Court deems it proper to disregard the findings of the CA.

The Court is not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause. However, it is likewise incumbent upon the employees that they should first establish by competent evidence the fact of their dismissal from employment.[33] As an allegation is not evidence, it is elementary that a party alleging a critical fact must support his allegation with substantial evidence.[34] It was also stressed that the evidence to prove the fact of dismissal must be clear, positive and convincing.[35]

In the present case, the facts and the evidence do not establish a *prima facie* case that respondents were dismissed from employment. Aside from their mere assertion and joint affidavit, respondents failed to adduce corroborative and competent evidence to substantiate their conclusion that they were dismissed from employment. Respondents did not even present the alleged notice of termination of their employment. Therefore, in the absence of any showing of an overt or positive act proving that petitioner had dismissed respondents, the latter's claim of illegal dismissal cannot be sustained as the same would be self-serving, conjectural and of no probative value.[36]

---

30 *Acebedo Optical v. NLRC,* 554 Phil. 524, 541 (2007).

31 *Univac Development, Inc. v. Soriano,* G.R. No. 182072, June 19, 2013, 699 SCRA 88, 98.

32 *Diamond Taxi v. Llamas, Jr., supra* note 29, at 21.

33 *Noblejas v. Italian Maritime Academy Phils., Inc., et al., supra* note 1.

34 *Tan Brothers Corporation of Basilan City v. Escudero,* G.R. No. 188711, July 8, 2013, 700 SCRA 583, 593.

35 *Exodus International Construction Corporation, et al. v. Biscocho, et al.,* 659 Phil. 142, 155 (2011).

36 *MZR Industries, et. al vs. Colambot,* G.R. No. 179001, August 28, 2013, 704 SCRA 150 , 157.

The records are devoid of any indication that they were barred from petitioner's premises or were otherwise deprived of any work assignment after the discontinuance of their work in PLDT-Calamba. It was also not shown that respondents reported or even tried to report to petitioner's office and requested for another work assignment after being dismissed from PLDT-Calamba. On the contrary, the evidence presented by petitioner showed that they were repeatedly summoned to report to its main office and did not even bother to show despite several notices. Moreover, the rule that the employer bears the burden of proof in illegal dismissal cases finds no application in a case, like the present petition, where the employer denied having dismissed the employees.[37]

Petitioner alleged that the CA erred in ruling that respondents were entitled to reinstatement, payment of backwages and other monetary benefits. Petitioner believed that respondents are not entitled to the awards since they were not illegally dismissed.

Under Article 279[38] of the Labor Code and as settled in jurisprudence, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof. While we agree with the rulings of the LA and the NLRC that respondents were not illegally dismissed and not guilty of abandonment, we do not agree with their decisions to dismiss the case for lack of merit. Instead, we find that respondents are entitled to reinstatement without payment of backwages and other monetary benefits.

Anent the issue on the award of attorney's fees, Article 111 of the Labor Code provides that in cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent (10%) of the amount of wages recovered. Likewise, we have recognized that "in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable."[39] We have similarly so ruled in *RTG Construction, Inc., et al. v. Facto*[40] in which we specifically stated:

> x x x Settled is the rule that in actions for recovery of wages, or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interests, a monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII, Book III of its Implementing Rules; and paragraph 7, Article 2208 of the Civil Code. The

---

37 *Id.*

38 Art. 279. Security of tenure. - In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

39 *Fuji Television Network, Inc. v. Arlene S. Espiritu,* G.R. Nos. 204944-45, December 3, 2014.

40 623 Phil. 511 (2009).

> award of attorney's fees is proper, and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[41]

In the present case, however, it was settled that respondents were not illegally dismissed from employment and their wages were not withheld without valid and legal basis. Therefore, they are not entitled to receive attorney's fees.

As all circumstances surrounding the alleged termination are taken into account, petitioner should accept respondents back and reinstate them to their former positions. However, under the principle of "no work, no pay," there should be no payment of backwages.[42] In a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[43]

Absent any showing that there is strained relationship between petitioner and respondents, the order of reinstatement shall stand. The doctrine of strained relations is not applied indiscriminately as to bar reinstatement, especially when the employee has not indicated an aversion to returning to work or does not occupy a position of trust and confidence in or has no say in the operation of the employer's business.[44] In this case, there was no evidence that respondents disliked returning to their former posts and that they occupy a position of trust and confidence.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Decision dated June 17, 2010 and Resolution dated December 9, 2010 of the Court of Appeals in CA-G.R. SP No. 111644 are hereby **REVERSED** and **SET ASIDE**.

Petitioner Tri-C General Services, however is hereby **ORDERED** to **REINSTATE** respondents to their former positions but without payment of backwages within a period of thirty (30) days from finality of judgment. Respondents Nolasco B. Matuto, Romeo E. Magno and Elvira B. Laviña are **ORDERED** to report for work within ten (10) days from notice from petitioner, otherwise, they shall be deemed to have abandoned their employment with petitioner.

---

41 *RTG Construction, et al. v. Facto, supra,* at 521-522. (Citations omitted)

42 *Noblejas v. Italian Maritime Academy Phils., Inc., et al., supra* note 1, at 581.

43 *MZR Industries, et. al v. Colambot, supra* note 37, at 162.

44 *Leopard Security and Investigation Agency v. Quitoy et al.,* G.R. No. 186344, February 20, 2013, 691 SCRA 440, 452.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
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.

MARIA LOURDES P. A. SERENO
Chief Justice