



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

ERNESTO BROWN,
Petitioner,

G.R. No. 206891

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

MARSWIN* MARKETING, INC.,
and SANY TAN,** represented by
BERNADETTE S. AZUCENA,
Respondents.

Promulgated:
MAR 15 2017

X ----- X


DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the January 18, 2013 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 124098. The CA annulled and set aside the December 19, 2011³ and January 31, 2012⁴ Resolutions of the National Labor Relations Commission (NLRC), which affirmed the June 30, 2011 Decision⁵ of the Labor Arbiter (LA) declaring illegal the dismissal from work of Ernesto Brown (Brown). Likewise assailed is the April 23, 2013 CA Resolution⁶ denying Brown's Motion for Reconsideration.

Factual Antecedents

On June 7, 2010, Brown filed a Complaint⁷ for illegal dismissal, non-payment of salary and 13th month pay as well as claim for moral and exemplary



* Mars Win in some parts of the records.
 ** Spelled in some parts of the records as Sonny.
 1 *Rollo*, pp. 10-23.
 2 *CA rollo*, pp. 155-169; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Ramon A. Cruz.
 3 *Id.* at 72-79; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese.
 4 *Id.* at 90-91.
 5 *Id.* at 50-58; penned by Labor Arbiter Jenneth B. Napiza.
 6 *Id.* at 181-182.
 7 *Id.* at 22.

damages and attorney's fees against Marswin Marketing, Inc. (Marswin) and Sany Tan (Tan), its owner and President. He prayed for reinstatement with full backwages and payment of his other monetary claims.

In his Position Paper,⁸ Brown alleged that on October 5, 2009, Marswin employed him as building maintenance/ electrician with a salary of ₱500.00 per day; he was assigned at Marswin's warehouse in Valenzuela, and was tasked to maintain its sanitation and make necessary electrical repairs thereon.

Brown further averred that on May 28, 2010, he reported at the Main Office of Marswin, and was told that it was already his last day of work. Allegedly, he was made to sign a document that he did not understand; and, thereafter, he was no longer admitted back to work. Thus, he insisted that he was terminated without due process of law.

For their part, Marswin/Tan argued in their Position Paper⁹ and Comment¹⁰ that on October 4, 2009, Marswin, a domestic corporation engaged in wholesale trade of construction materials, employed Brown as electrician; during his eight-month stay, Marswin received negative reports anent Brown's work ethics, competence, and efficiency. On May 28, 2010, they summoned him at its Main Office to purportedly discuss the complaints of the Warehouse Manager and the Warehouse Supervisor; during the meeting, they informed Brown of the following charges against him:

1. x x x [D]isobedience to instructions given by the Electrical Engineer and Contractor during the time [of] the renovation of the staff room at the Valenzuela warehouse; making himself scarce and worse not responding to calls for errands regarding electrical connections at the warehouse;
2. Exposing the office to possible criminal liability for installing a jumper at the Valenzuela warehouse without being told to [make such installation];
3. Not performing his job well as electrician, thus, resulting to additional expenses to the company, when it could have been avoided had he been following x x x orders given to him;
4. Unreasonable refusal to perform his assigned tasks despite being repeatedly ordered to do so x x x.¹¹

Marswin/Tan stated that during the meeting, Brown excused himself purportedly to get in touch with his wife; however, he never returned and no longer reported for work.

⁸ Id. at 23-30.

⁹ Id. at 31-33.

¹⁰ Id. at 47-49.

¹¹ Id. at 32.

According to Marswin/Tan, Brown's work as electrician did not involve an activity usually necessary or desirable in the usual business of Marswin; thus, he was not its regular employee. They also contended that during the May 28, 2010 meeting, Bernadette S. Azucena (Azucena), its Accounting Supervisor and Human Resource Head, only admonished Brown but he left the meeting and no longer returned to work. They attached in their Position Paper the *Sinumpaang Salaysay*¹² executed by Azucena stating the alleged complaints she received against Brown, and the events that transpired during the May 28, 2010 meeting, to wit:

x x x x

11. x x x [Si] Ernesto Brown ay aking pinatawag sa main office noong Mayo 28, 2010 para kausapin dahil sa mga nasabing reklamo sa kanyang pagtatrabaho; noong aking binanggit sa kanya [ang] mga nasabing reklamo ay wala man lang siyang kaimik imik; sinabi ko sa kanya na kung ipagpapatuloy [nya] ang maling pagtrabaho at hindi pagsunod sa mga pinagagawa sa kanya ay walang magagawa ang opisina kundi tanggalin na siya; nanatili siyang walang imik at nagsabi siya na tatawag siya sa kanyang asawa at umalis sya; hindi na siya bumalik noon at hindi na pumasok magmula noon at nakatanggap na nga lang kami ng reklamo [mula] sa tanggapa[n] ng Labor Arbiter. x x x
12. Hindi totoo ang kanyang reklamo na siya ay dinismis; may legal na kadahilanan na para siya ay dismisiin pero hindi pa siya dinismis noong Mayo 28, 2010; siya mismo ang hindi na bumalik sa tanggapan x x x¹³

Ruling of the Labor Arbiter

On June 30, 2011, the LA rendered a Decision declaring Brown's dismissal illegal, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainant Ernesto Brown to have been illegally dismissed from work.

Respondents are directed to reinstate complainant Brown to his former position without loss of seniority rights and to notify this Office of their compliance thereto within ten (10) days from receipt of this Decision. Further respondent Marswin Marketing, Inc. is hereby directed to pay complainant Brown's backwages computed from the time he was illegally dismissed from work until his actual reinstatement pursuant to Article 279 of the Labor Code and to pay his 13th month pay computed as follows:

a) backwages	-	₱188,335.98
b) 13 th month pay	-	₱ 5,308.33



¹² Id. at 34-35.

¹³ Id. at 35.

All other claims are dismissed for lack of merit.

SO ORDERED.¹⁴

The LA held that Brown was a regular employee of Marswin because Marswin/Tan confirmed hiring him on October 4, 2009; they paid him salary; they had the power to control his conduct, especially on how he should do his work; and, they had the power to dismiss him.

In ruling that Brown was illegally dismissed, the LA noted that the alleged complaints against Brown were embodied in Azucena's affidavit yet no actual complaints or reports against him were adduced in evidence. The LA was also unconvinced that Brown left Marswin's premises and abandoned his work considering that he filed this illegal dismissal case; and his employer failed to notify him to report back to work.

Ruling of the National Labor Relations Commission

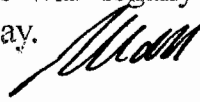
On appeal,¹⁵ the NLRC, through its Resolution dated December 19, 2011, affirmed the LA Decision.

The NLRC held that the purported complaints against Brown were only gathered by Azucena from the reports she supposedly received from the Warehouse Manager and Supervisor; thus, her affidavit was hearsay and of poor evidentiary value. It ratiocinated that Marswin/Tan did not give Brown the opportunity to confront his accusers, and did not observe due process in terminating him. It also declared that there was no showing that Brown abandoned his work as Marswin/Tan did not cite him for his alleged refusal to return to work.

On January 31, 2012, the NLRC denied the Motion for Reconsideration filed by Marswin/Tan.

Ruling of the Court of Appeals

Undaunted, Marswin/Tan filed a Petition for *Certiorari* with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the LA Decision.

On January 18, 2013, the CA annulled and set aside the NLRC Resolutions. It entered a new judgment declaring that Brown was legally dismissed and therefore not entitled to backwages and 13th month pay. 

¹⁴ Id. at 57-58.

¹⁵ Id. at 60-65.

According to the CA, aside from his allegation that he was unceremoniously terminated, Brown presented no evidence supporting such claim. It also held that there was no showing that Brown was prevented from returning or was deprived of work. It likewise gave weight to the affidavit of Azucena, which asserted that during the May 28, 2010 meeting, Brown was not dismissed but was only informed of the complaints against him.

In sum, the CA decreed that this case did not involve the dismissal of an employee on the ground of abandonment, there being no evidence proving that Brown was actually dismissed.

In its Resolution dated April 23, 2013, the CA denied the Motion for Reconsideration filed by Brown.

Issue

Aggrieved, Brown filed this Petition raising the sole issue as follows:

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED THE NLRC'S RESOLUTIONS AFFIRMING THE LABOR ARBITER'S DECISION THAT THE PETITIONER ERNESTO BROWN WAS ILLEGALLY DISMISSED BY THE PRIVATE RESPONDENTS.¹⁶

Brown contends that Marswin failed to discharge its burden to prove that he committed abandonment. He argues that the fact that he challenges his dismissal disproves that he abandoned his employment. He also stresses that the reliance of the CA on Azucena's affidavit is unwarranted as no actual complaints as regards his supposed infractions were adduced in evidence. He posits that the bare allegations of Azucena are hearsay, and are not proof that he committed any infraction.

Marswin/Tan, on their end, counter that the Court should not give due course to this Petition because it raises factual issues which are not within the ambit of a petition under Rule 45 of the Rules of Court.

Our Ruling

The Court grants the Petition.

As a rule, the Court is not a trier of facts and only questions of law may be raised in a petition under Rule 45 of the Rules of Court. A departure from this rule

¹⁶ Rollo, p. 15.



is nevertheless allowed where the factual findings of the CA are contrary to those of the lower courts or tribunals. In this case, the findings of the CA vary with those of the NLRC and LA. As such, the Court deems it necessary to review the records and determine which findings and conclusion truly conform with the evidence adduced by the parties.¹⁷

Moreover, in dismissal cases, the employer bears the burden of proving that the employee was not terminated, or if dismissed, that the dismissal was legal. Resultantly, the failure of the employer to discharge such burden would mean that the dismissal is unjustified and thus, illegal.¹⁸ The employer cannot simply discharge such burden by its plain assertion that it did not dismiss the employee; and it is highly absurd if the employer will escape liability by its mere claim that the employee abandoned his or her work. In fine, where there is no clear and valid cause for termination, the law treats it as a case of illegal dismissal.¹⁹

Thus, in order for the employer to discharge its burden to prove that the employee committed abandonment, which constitutes neglect of duty, and is a just cause for dismissal, the employer must prove that the employee 1) failed to report for work or had been absent without valid reason; and 2) had a clear intention to discontinue his or her employment. The second requirement must be manifested by overt acts and is more determinative in concluding that the employee is guilty of abandonment. This is because abandonment is a matter of intention and cannot be lightly presumed from indefinite acts.²⁰

Here, Brown contends that on May 28, 2010, his employer informed him that it was already his last day of work; and, thereafter, he was no longer admitted back to work. On the other hand, Marswin/Tan confirmed having summoned Brown on May 28, 2010 but they denied that he was dismissed, but that he left the meeting and since then never returned for work.

Nonetheless, apart from the allegation of abandonment, Marswin/Tan presented no evidence proving that Brown failed to return without justifiable reasons and had clear intentions to discontinue his work.

In fact, in her affidavit, Azucena did not specify any overt act on the part of Brown showing that he intended to cease working for Marswin. At the same time, Azucena did not establish that Marswin, on its end, exerted effort to convince Brown to return for work, if only to show that Marswin did not dismiss him and it was Brown who actually refused to return to work.²¹ And neither did Marswin send any notice to Brown to warn him that his supposed failure to report would be

¹⁷ See *Manarpils v. Texan Philippines, Inc.*, G.R. No. 197011, January 28, 2015, 748 SCRA 511, 521-522.

¹⁸ See *DUP Sound Hills v. Court of Appeals*, 676 Phil. 472, 479 (2011).

¹⁹ *People's Security, Inc. v. Flores*, G.R. No. 211312, December 5, 2016.

²⁰ *Tan Brothers Corporation of Basilan City v. Esquidero*, 713 Phil. 392, 400-402 (2013).

²¹ See *Litex Glass and Aluminum Supply v. Sanchez*, G.R. No. 198465, April 22, 2015, 757 SCRA 206, 217.

deemed as abandonment of work.²² Clearly from the foregoing, Marswin failed to discharge the burden of proving that Brown abandoned his work.

In addition, on June 7, 2010, or just ten days after Brown's last day at work (May 28, 2010), he already filed an illegal dismissal suit against his employer. Such filing conveys his desire to return, and strengthens his assertion that he did not abandon his work. To add, in his Complaint, Brown prayed for reinstatement, which further bolsters his intention to continue working for Marswin, and negates abandonment.²³ Indeed, the immediate filing of an illegal dismissal case especially so when it includes a prayer for reinstatement is totally contrary to the charge of abandonment.²⁴

Furthermore, Marswin/Tan presented the affidavit of Azucena, their Accounting Supervisor and HR Head, as proof that Brown committed abandonment. However, aside from being insufficient, self-serving, and unworthy of credence,²⁵ such affidavit did not allege any actual complaint against Brown when Marswin summoned him on May 28, 2010. In said affidavit, Azucena did not at all specify the name of any officer or employee against whom Brown allegedly committed an infraction, and neither did any of these persons submit their own affidavits to prove that Brown should be disciplined by his employer. As stated by Azucena:

5. Na tumanggap ako ng mga reklamo sa aming Warehouse Manager at Warehouse Supervisor ng aming bodega sa Valenzuela na [si] Ernesto Brown ay maálas na maraming dahilan kapag ito ay pinapapunta sa Valenzuela para maggawa; x x x
6. Na noong buwan ng Enero hanggang Marso ng taong ito (2010) ay ginawa ang opisina ng staff sa bodega sa Valenzuela at bilang elek[t]risyan ay inatasan siyang gawin ang 'electrical wireline' doon; Na nakarating [sa amin] ang sumbong nina Electrical Engineer at Kontraktor x x x na si Ernesto Brown ay hindi sumusunod sa mga pinautos nila at madalas na makagalitan dahil doon;
7. Na noong nawalan ng electric power ang bodega sa Valenzuela dahil sa electric shortage ay pinatingnan ito sa kanya, ngunit sa halip na ayusin ng tama ang problema sa electrical wireline ay nilagyan niya ito ng 'jumper' at ito ay nakita ng taga Meralco x x x;
8. Nito lang buwan ng Abril 2010 ay gumawa na naman ng kapalpakan si Ernesto Brown dito naman sa main office sa Binondo; iyong electronic lock ng front door ng office sa third floor x x x ay nagmalfunction at nasira; ang nasabing electronic lock ay covered pa ng warranty x x x; [n]ang suriin ang nasabing electronic lock ay nalaman nami[n] na may nakialam sa loob ng lock kung kaya hindi ito nakober ng warranty at nagbayad ang kumpanya ng

²² See *Harpoon Marine Services, Inc. v. Francisco*, 659 Phil. 453, 467 (2011).

²³ *Julie's Bakeshop v. Arnaiz*, 682 Phil. 95, 111 (2012).

²⁴ See *Tan Brothers' Corporation of Basilan City v. Escudero*, supra note 20 at 401.

²⁵ See *DUP Sound Phils. v. Court of Appeals*, supra note 18 at 480.

halagang ₱6,000.0[0] sa pagsasaayos nito; x x x

9. x x x [Nang] ipatawag nami[n] ang security guard ay doon lang namin nalaman na pinakialaman pala ni Ernesto Brown ang loob ng nasabing elect[r]onic lock samantalang hindi naman ito pinagagawa sa kanya;
10. Na noong ipasuri ang electrical wireline sa bodega ng Valenzuela, nakita ang sala-salabat o 'spagheiti type' na wiring nito; ilan[g] beses iniutos sa kanya na ayusin at iwasto [ang] nasabing wiring pero hindi nya ito ginagawa x x x;
11. Dahil dito si Ernesto Brown ay aking pinatawag sa main office noong Mayo 28, 2010 para kausapin dahil sa mga nasabing reklamo sa kanyang pagtatrabaho x x x[.]²⁶

Given all these, there is clearly no showing that Brown committed abandonment; instead, evidence proved that he was illegally dismissed from work.

Thus, as properly found by the LA and affirmed by the NLRC, by reason of his illegal termination, Brown is entitled to reinstatement without loss of seniority rights, and to full backwages, which include allowances and other benefits or their monetary equivalent, from the time his compensation was withheld until his actual reinstatement.²⁷

At the same time, Brown is entitled to attorney's fees of 10% of the total monetary award as he was compelled to litigate to protect his rights and interest. The legal interest of 6% *per annum* shall also be imposed on the total monetary awards from the finality of this Decision until fully paid.²⁸

WHEREFORE, the Petition is **GRANTED**. The January 18, 2013 Decision and April 23, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 124098 are **REVERSED** and **SET ASIDE**.

Accordingly, the June 30, 2011 Decision of the Labor Arbiter, as affirmed by the December 19, 2011 Resolution of the National Labor Relations Commission, is **REINSTATED** and **AFFIRMED** with **MODIFICATIONS** in that Ernesto Brown is also entitled to receive attorney's fees of 10% of the total monetary awards. The legal interest of 6% *per annum* shall be imposed on the monetary grants from the date of finality of this Decision until fully paid.

²⁶ CA rollo, pp. 34-35.

²⁷ Article 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. (now Article 294 of the *Labor Code of the Philippines, Amended & Renumbered, July 21, 2015*)

²⁸ *Balais, Jr. v. Se'Lon*, G.R. No. 196557, June 15, 2016.

SO ORDERED.



MARIANO C. DEL CASTILLO
Associate Justice


WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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

