Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SHERYLL R. CABAÑAS, Petitioner,	**G.R. No. 225803**
	Present:
- versus	CARPIO, *J., Chairperson,* PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
ABELARDO G. LUZANO LAW OFFICE/ABELARDO G. LUZANO, Respondents.	**Promulgated:** 02 JUL 2018

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D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals dated April 21, 2016, annulling and setting aside the Decision[2] dated June 30, 2014 of the National Labor Relations Commission (*NLRC*), Sixth Division and dismissing herein petitioner Sheryll R. Cabañas' complaint for illegal dismissal and money claims.

The facts are as follows:

On October 1, 2013, petitioner Sheryll Cabañas filed before the NLRC a Complaint for illegal dismissal and money claims against herein respondent Abelardo G. Luzano Law Office and its manager, Mary Ann Z. Detera. Respondent Law Office is a service provider for the Bank of the Philippine Islands, Banco de Oro, Rizal Commercial Banking Corporation and

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1 Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jose C. Reyes, Jr. and Ramon Paul L. Hernando concurring; *rollo*, pp. 39-49

2 In NLRC LAC No. 04-001071-14; *id.* at 73-81.

Unionbank of the Philippines in the collection of delinquent credit cards and personal loan accounts.

In her Position Paper,[3] complainant-herein petitioner Cabañas stated that she was employed as an Administrative Secretary for respondent Abelardo G. Luzano Law Office from June 27, 2012 to September 18, 2013. She was tasked to act as receptionist/lawyer's staff, monitor petty cash disbursements and office employees, make demand letters and do other clerical tasks. Her performance was satisfactory as she was employed as a regular employee on [January 30, 2013] per her employment contract.[4]

In June 2013, Cabañas received a final warning in a Memorandum[5] dated June 18, 2013. The memorandum notified her that her performance as Administrative Secretary failed to meet the performance requirements of the position due to the following: (1) erroneous entry of data for the liquidation of petty cash; (2) erroneous computation of accounts for mailing; (3) erroneous breakdown of expenses for cash payments; (4) instructions from colleagues are not being strictly followed; and (5) not strict in releasing gas allowance for skiptracers. Cabañas was warned that a similar violation in the future would mean termination of her employment.

At this point, Cabañas said that the office manager, Mary Ann Detera, began meddling with her office equipment. Detera would also lose her requests relating to the demand letters that she (Cabañas) prepares. She was even asked to cover-up irregularities.

Cabañas stated that as she was in charge of the petty cash disbursements, which was used to defray the transport expenses of skiptracers or messengers, she would ask for receipts for the disbursements of Jomari Delos Santos, a messenger assigned to Detera. Detera wanted her to cover-up any irregularity which may have been committed by her messenger and not report the same to Mrs. Ivy Theresa Buenaventura, the General Manager, who was also the daughter of Atty. Abelardo G. Luzano (*Atty. Luzano*). Cabañas refused to do Detera's wishes. Thus, Detera's angry actuation began toward Cabañas.

Cabañas alleged that Detera would fail to report Mr. Delos Santos' absences, which placed Cabañas in a delicate situation as Mrs. Buenaventura would ask her regarding Mr. Delos Santos' absences. Mr. Delos Santos would also ask Cabañas for transportation expenses, but he would take three to four days to liquidate the said expenses. Detera would also belatedly submit receipts for liquidating the petty cash disbursements. It was Cabañas who bore

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3 *Rollo*, pp. 86-97.
4 *Id.* at 124-126.
5 *Id.* at 160.

the ire of her superiors for the delay. Cabañas said that she endured this ordeal as she wanted to remain employed.

On September 1, 2013, Cabañas stated that she was summoned to the office of Atty. Luzano. Atty. Luzano and his daughter and General Manager, Mrs. Buenaventura, asked her to resign and execute a resignation letter, but she did not do so.

On September 18, 2013, while Cabañas was on vacation leave, her officemate Josephine Santos told her that Detera went through her (Cabañas') box containing letters she had prepared.

On September 19, 2013, Cabañas received another Memorandum of even date with the subject: "Notice of Termination," alleging her commission of the following infractions: (1) erroneous computation of accounts for mailing; (2) erroneous encoding of petty cash liquidation report; (3) erroneous breakdown of expenses for cash payments; (4) instructions from superiors and collectors are not being strictly followed; (5) careless releasing of gas allowance for skiptracers; (6) erroneous filing of court orders to the wrong case folders; (7) erroneous photocopying of a different legal document; (8) reproduction of excessive copies of documents for case filing; (9) wastage of company resources such as paper and ink due to failure to request for mailing expenses for demand letters printed in August 2013; and (10) erroneous listing for mailing of a new batch of accounts, which were not included in the actual count of the printed demand letters on September 18, 2013.

Cabañas was given up to the close of office hours of the next day, Friday, September 20, 2013, to submit her explanation why her employment will not be terminated due to gross incompetence and negligence.

According to Cabañas, she verbally explained her side to Atty. Luzano and informed him that Detera was going through her work. Atty. Luzano advised her to prepare an incident report.

At 6:00 p.m. of the same day, September 19, 2013, Cabañas stated that she was summoned by Atty. Luzano. He asked her to execute a resignation letter, but Cabañas refused to do so.

The next day, September 20, 2013, Cabañas submitted her explanation letter to the charges against her contained in the Memorandum dated September 19, 2013. She spoke with Atty. Luzano and inquired why she was no longer given any work and she was not informed that she already had a replacement. Atty. Luzano informed her that the same date was her last day of work and that her salary would just be deposited in her account. However, on September, 30, 2013, no salary was deposited in her ATM account.

On October 1, 2013, Cabañas filed a complaint for illegal dismissal and the payment of her monetary claims against respondents.

During the mediation conferences, respondents offered a settlement, but this did not push through. Hence, both parties were required to submit their respective Position Paper and Reply.

Cabañas contended that it was undeniable that she was an employee of respondent Law Office. On September 19, 2013, a memorandum was issued asking her to explain her side, but when she submitted her explanation the following day, September 20, 2013, she was there and then dismissed, which was tantamount to illegal dismissal. Moreover, her salary was not given on September 30, 2013 as promised. She prayed that a judgment be rendered that she was illegally dismissed and entitled to the following money claims: nonpayment of service incentive leave, 13th month pay, backwages and separation pay.

On the other hand, respondents contended in their Position Paper[6] that Cabañas was not terminated from her employment, but she abandoned her work.

Respondents stated that in the early part of 2013, Cabañas' job performance deteriorated; thus, she was repeatedly admonished to be careful and avoid repetition of her errors in the liquidation of petty cash, computation of accounts for mailing, and in the breakdown of cash payments. She was admonished for repeatedly failing to follow the instructions of her superiors, doing things incorrectly, and being very lax and incorrectly releasing amounts for gas allowances of the company's motorized skiptracers as well as the unintelligible filing of papers and folders of accounts assigned to her.

Cabañas' job performance did not improve despite repeated warnings; thus, Cabañas was given a final warning in a Memorandum[7] dated June 18, 2013 that a similar violation in the future would mean termination of her employment. Since the final warning did not work, a Memorandum[8] dated September 19, 2013 was issued, requiring Cabañas to explain why her employment will not be terminated due to gross incompetence and negligence.

On September 20, 2013, a Friday, Cabañas submitted her written explanation on the charges contained in the Memorandum dated September 19, 2013. The following Monday, September 23, 2013, she stopped reporting for work. Since she abandoned her work and went on absence without leave,

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6 *Id.* at 104-107.
7 *Id.* at 160.
8 *Id.* at 112.

respondents' decision whether to terminate her or not became moot and academic.

Respondents prayed for the dismissal of the complaint.

Cabañas filed her Reply,[9] maintaining that she did not abandon her work. She averred that other than the fact that she was asked to execute a resignation letter, which she refused to do, she was also asked on September 20, 2013 to turn over all the files assigned to her to respondents' Head Administrative Assistant Antoinette Castro. She asserted that she was not absent without leave (*AWOL*), because respondents terminated her employment; hence, she is entitled to her monetary claims.

In their Reply[10] to complainant-herein petitioner Cabañas' Position Paper, respondents reiterated that they did not force complainant to resign, and that complainant was not dismissed, but she abandoned her work.

In a Decision[11] dated March 27, 2014, Labor Arbiter Marcial Galahad T. Makasiar held that Cabañas was illegally dismissed and ordered respondents to pay her backwages, separation pay, service incentive leave pay and 13th month pay.

The Labor Arbiter held that in termination cases, the employer has the *onus probandi* to prove, by substantial evidence, that the dismissal of an employee is due to a just cause. Failure to discharge this burden would be tantamount to an unjustified and illegal dismissal. He cited *Kams International, Inc., et al. v. NLRC, et al.,*[12] which held 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.[13] 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.[14] In this case, Cabañas was served a memorandum-notice regarding her performance. However, in regard to the ground of abandonment, neither notice to explain nor notice of termination was issued. Moreover, Cabañas' commencement of an action for illegal dismissal was proof of her desire to return to work, negating abandonment of her work.

The dispositive portion of the Decision of the Labor Arbiter reads:

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9 Records, pp. 76-79.
10 *Id.* at 81.
11 *Rollo*, pp. 131-135.
12 373 Phil. 950, 959 (1999).
13 *Id.*
14 *Id.*

The dispositive portion of the Decision of the Labor Arbiter reads:

x x x x

FALLO

ACCORDINGLY, the termination of complainant's employment is declared illegal. Respondent Atty. Abelardo G. Luzano is ordered to pay complainant:

a. SEPARATION PAY of PhP23,712.00
b. BACKWAGES of PhP169,540.80;
c. SERVICE INCENTIVE LEAVE PAY of PhP2,798.70;
d. 13th MONTH PAY of PhP14,553.24;

The foregoing awards shall be subject to 5% withholding tax upon payment/execution only where the same is applicable.

Respondents's claim of damages is DENIED for lack of merit.

SO ORDERED.[15]

Respondents appealed the Decision of the Labor Arbiter to the NLRC.

In a Decision[16] dated June 30, 2014, the NLRC affirmed the Decision of the Labor Arbiter and dismissed the appeal.

The NLRC considered the Memorandum dated September 19, 2013, with the subject: "Notice of Termination," as a termination letter. It held that Cabañas was terminated on the basis of her poor and unsatisfactory performance particularly in her quality of work and job knowledge. However, the NLRC found that the acts alleged in the memorandum to have been committed by Cabañas have not been proven nor substantiated by respondents for these reasons: (1) respondents have not shown any company policy which provides that the commission of any of the alleged acts shall be dealt with the penalty of dismissal from employment to bolster their claim against Cabañas; and (2) other than respondents' self-serving statements that Cabañas showed gross incompetence and negligence in the performance of her tasks, no convincing proof was offered to substantiate Cabañas' alleged negligence or incompetence.

The NLRC noted that Cabañas was employed by respondents since June 27, 2012 until her dismissal on September 19, 2013, or more than a year and three (3) months. Had Cabañas exhibited gross incompetence and negligence in her work, respondents should not have extended her employment upon completion of her probationary contract of employment.

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15 *Rollo*, p. 135.
16 *Id.* at 73-81.

Moreover, the NLRC stated that while respondents argued that in the early part of 2013, they repeatedly admonished and verbally warned Cabañas of her poor performance, there was no single evidence presented to show the particular errors allegedly committed by her.

Further, the NLRC did not agree with respondents' contention that Cabañas was not dismissed from employment, but she voluntarily severed her employment through abandonment. It held, thus:

> Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, the employer must prove, by substantial evidence, the concurrence of the employee's failure to report for work for no valid reason and his categorical intention to discontinue employment. In the present case, there is no substantial evidence that will prove complainant's categorical intention to discontinue employment. The story of abandonment is simply doubtful as complainant even refused to execute a resignation letter when she was asked to resign by respondents. In the case of *Garcia v. NLRC*, the Supreme Court emphasized that there must be *concurrence of the intention to abandon and some overt acts* from which an employee may be deduced as having no more intention to work. Moreover, as correctly observed by the Labor Arbiter, neither notice to explain nor notice of termination was issued to complainant on the ground of abandonment.
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> There being no just cause for the termination of complainant's employment, the compelling conclusion is that she was illegally dismissed from employment. x x x.[17]

The dispositive portion of the Decision of the NLRC reads:

> WHEREFORE, the appeal filed by the respondents is hereby DISMISSED for lack of merit. Accordingly, the Decision dated March 27, 2014 is AFFIRMED.[18]

Respondents' motion for reconsideration was denied for lack of merit by the NLRC in a Resolution[19] dated July 31, 2014.

On October 3, 2014, respondents filed a petition for *certiorari* with the Court of Appeals, questioning whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that petitioner Cabañas was illegally dismissed and, therefore, entitled to her monetary claims.

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17 *Id.* at 79-80.
18 *Id.* at 80.
19 *Id.* at 82-83.

On April 21, 2016, the Court of Appeals rendered a Decision in favor of herein respondents, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, the instant petition is hereby GRANTED. The assailed Decision dated June 30, 2014 of the National Labor Relations Commission, Sixth Division, in NLRC LAC No. 04-001071-14 is ANNULLED and SET ASIDE.
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> Private respondents Sheryll Cabañas' complaint for illegal dismissal and money claims is hereby DISMISSED for lack of merit.[20]

The Court of Appeals held that Cabañas was not illegally dismissed, but she abandoned her job. The appellate court stated that to constitute abandonment, two elements must be present: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[21] It found the presence of the elements of abandonment in this case.

The Court of Appeals stated that although the subject of the Memorandum dated September 19, 2013 was "Notice of Termination," the memorandum merely asked Cabañas to explain why she should not be dismissed from employment. The next day, September 20, 2013, Cabañas submitted a handwritten letter in response to the memorandum and she also made a handwritten document wherein she turned over the office files in her custody in favor of Antoinette Castro. Thereafter, she failed to report for work as evidenced by her payslip for the month of September. Based on the foregoing, the Court of Appeals concluded that Cabañas failed to report for work without valid or justifiable reason. It stressed that respondents did not ask Cabañas to leave or prevent her from working in the law firm. Although Cabañas alleged that Atty. Luzano and Mrs. Buenaventura asked her to resign, such allegation ran counter to her statement in her handwritten letter dated September 20, 2013, wherein she thanked the former for treating her well. If indeed she was asked to resign, she should have stated the same in her letter or at the very least, she should not have thanked them.

Anent the second element of abandonment, the Court of Appeals held that Cabañas showed her clear intent to sever the employer-employee relationship when she voluntarily and personally turned over the files in her custody in favor of Antoinette Castro, which is an overt act manifesting her intent to leave her post in the law firm.

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20 *Id.* at 48.

21 *Id.* at 44, citing *W.M. Manufacturing, Inc. v. Dalag, et al.*, 774 Phil. 353, 383 (2015).

The Court of Appeals cited the case of *Jo v. National Labor Relations Commission*[22] to support its ruling that although Cabañas instituted an illegal dismissal case immediately after her alleged termination, she, nonetheless, belies her claim of illegal dismissal when she prayed for separation pay, not reinstatement.

Hence, this petition for review on *certiorari* raising these issues:

I.
WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT [CABAÑAS] ABANDONED HER EMPLOYMENT.

II.
WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT [CABAÑAS] WAS NOT ILLEGALLY DISMISSED.[23]

Petitioner maintains that she did not abandon her work as ruled by the Court of Appeals, but she was illegally dismissed from employment.

She reiterated that when she went to work on September 20, 2013, she was surprised to learn that she had already been replaced. She was no longer given any work and ordered to turn over all the files assigned to her. The said files were received by Antoinette Castro as shown in the turnover that she executed. She inquired from respondent Atty. Luzano the reason therefor, and she was told that it was her last day of work and her unpaid salary would be deposited in her account.

Moreover, petitioner averred that her actuations before she allegedly abandoned her job negate any intention to sever her employment with respondents. On two separate occasions, respondent Atty. Luzano urged her to resign, but she refused to give in to his prodding. She would not have likewise gone to great lengths to prepare and submit her written explanation to the Memorandum dated September 19, 2013 had she intended to relinquish her employment. She wanted to continue to be in their employ, considering that it was her means of providing for herself and her family.

Further, petitioner stated that thanking the respondents for treating her well does not necessarily counter respondents' act of asking her to resign. She was merely being thankful for being treated well during her employ. She pointed out that respondents neither exerted any effort to question her alleged failure to report for work since September 23, 2013 nor required her to return to work, which could have enabled them to ascertain whether she had intention to resume her employment.

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22 381 Phil. 428, 438 (2000).
23 *Rollo*, p. 21.

Petitioner maintains that the respondents terminated her employment without just or valid cause and without observing the requirements of due process in violation of her right to security of tenure guaranteed by the Constitution and the Labor Code. Hence, she is entitled to reinstatement and backwages, and her other money claims. However, since reinstatement is no longer feasible due to strained relations considering her unjust termination from employment, she prayed for the payment of separation pay in lieu thereof and her other money claims. She likewise prayed for the payment of attorney's fees as she was compelled to litigate. Although she is represented by the Public Attorney's Office (*PAO*), this should not deter the award of attorney's fees, which is sanctioned by Section 6 of Republic Act (*R.A.*) No. 9406.[24]

The Ruling of the Court

The petition is meritorious.

As a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court.[25] The rule, however, is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.[26]

In this case, the factual findings of the Labor Arbiter and the NLRC differ from those of the Court of Appeals. Hence, the Court shall review and evaluate the evidence on record.

The main issue is whether or not the Court of Appeals correctly held that petitioner was not illegally dismissed, but petitioner abandoned her job.

In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was legal. To discharge this burden, the employee must first prove, by substantial evidence, that he/she had been dismissed from employment.[27]

Petitioner contends that she was terminated by respondents since she was not only asked to resign by respondent Atty. Luzano, which she refused to do, but on September 20, 2013, she was asked to turn over all the files

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[24] R.A. No. 9406 is entitled, "*AN ACT REORGANIZING AND STRENGTHENING THE PUBLIC ATTORNEY'S OFFICE (PAO), AMENDING FOR THE PURPOSE PERTINENT PROVISIONS OF EXECUTIVE ORDER NO. 292, OTHERWISE KNOWN AS THE "ADMINISTRATIVE CODE OF 1987", AS AMENDED, GRANTING SPECIAL ALLOWANCE TO PAO OFFICIALS AND LAWYERS, AND PROVIDING FUNDS THEREFOR." (Approved on March 23, 2007.)*

[25] *Alaska Milk Corp. v. Ponce*, G.R. Nos. 228412 & 228439, July 26, 2017.

[26] *Id.*

[27] *Spectrum Security Services, Inc. v. Grave*, G.R. No. 196650, June 7, 2017.

assigned to her, and when she asked Atty. Luzano why she was not given any work, she was told that it was her last day of work and that her unpaid salary would just be deposited in her ATM account.

The records show the document[28] dated September 20, 2013 evidencing petitioner's turnover of all the files assigned to her to respondents' Head Administrative Assistant Antoinette L. Castro, who acknowledged receipt of the turnover by affixing her signature on the document. In employment parlance, the turnover of work by an employee signifies severance of employment.[29] In addition, petitioner narrated that when she asked respondent Atty. Luzano, the owner of respondent Law Office, why she was not given any work, Atty. Luzano told her that it was her last day of work and that her unpaid salary would just be deposited in her ATM, which is an overt act of dismissal by petitioner's employer who had the authority to dismiss petitioner.[30] In effect, petitioner was terminated on that day, September 20, 2013, a Friday. This would explain why petitioner no longer reported to work the next working day, September 23, 2013, a Monday, and she filed a complaint for illegal dismissal on October 1, 2013.

As petitioner Cabañas has proven that she was dismissed, the burden to prove that such dismissal was not done illegally is now shifted to her employer, respondents herein. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[31]

Respondents contended that petitioner was not dismissed from work, but she stopped reporting for work the following Monday, September 23, 2013, after submitting her written explanation to the charges against her on September 20, 2013; hence, petitioner abandoned her work.

For abandonment of work to fall under Article 282 (b) of the Labor Code as gross and habitual neglect of duties, which is a just cause for termination of employment, there must be concurrence of two elements.[32] First, there should be a failure of the employee to report for work without a valid or justifiable reason; and, second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.[33]

The Court of Appeals held that petitioner abandoned her work and the intent to do so was manifested by petitioner's overt act of voluntarily turning

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28 Records, p. 80.
29 See *Reyes v. Global Beer Below Zero, Inc.*, G.R. No. 222816, October 4, 2017.
30 *Id.*
31 *People's Security, Inc. v. Flores*, G.R. No. 211312, December 5, 2016, 812 SCRA 260, 270.
32 *Id.*
33 *Id.*

over the files in her custody to Antoinette L. Castro, respondents' Head Administrative Assistant.

Thus, petitioner's act of turning over all the files assigned to her to respondents' Head Administrative Assistant is contended to be an overt act of dismissal by petitioner, while it is held to be an overt act of abandonment by the Court of Appeals.

The Court has carefully reviewed the records and we have discussed earlier that petitioner's turnover of all the files in her custody was an overt act of dismissal. Thus, the Court does not agree with the ruling of the Court of Appeals that petitioner abandoned her job and the intent to do so was manifested by her overt act of voluntarily turning over the files in her custody to Antoinette L. Castro for these reasons:

First, the records show that it was petitioner who *first* stated in her Reply[34] to respondents' Position Paper that she was illegally terminated because on September 20, 2013, when she submitted her letter of explanation to the charges against her, she was asked to turn over all the files assigned to her to respondents' Head Administrative Assistant Antoinette L. Castro.[35] In her Position Paper,[36] petitioner also stated that when she submitted her explanation letter on September 20, 2013, she inquired from Atty. Luzano why she was no longer given any work nor was she informed that she already had a replacement, and Atty. Luzano informed her that it was her last day of work and her salary would just be deposited in her ATM account.[37]

Second, respondents did not mention the fact that it was the petitioner who voluntarily turned over the files assigned to her in their Position Paper, or in their Reply to Complainant's Position Paper, or in their appeal[38] from the Labor Arbiter's Decision before the NLRC, but only mentioned it for the first time in their Reply Memorandum[39] to Complainant's Comment/Opposition before the NLRC. Such an important fact constituting the overt act of abandonment as defense could not have been taken for granted to not be alleged at the first instance by respondents in their Position Paper if it were true that it was petitioner who voluntarily turned over all the files assigned to her to respondents' representative. Hence, the belated allegation before the NLRC was merely an afterthought on the part of respondents.

Third, if petitioner wanted to abandon her job, she could just have left without turning over all the files assigned to her.

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34 Records, pp. 76-79.
35 *Id.* at 77.
36 Complainant's Position Paper, *rollo*, pp. 86-95.
37 *Id.* at 91.
38 Memorandum of Appeal; *id.* at 138-152.
39 Records, p. 378.

Fourth, the filing of an illegal dismissal case is inconsistent with abandonment of work.

Moreover, the termination of an employee must be effected in accordance with law. Therefore, the employer must furnish the worker or employee sought to be dismissed with two (2) written notices, *i.e.*, (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.[40] In this case, as observed by the Labor Arbiter and the NLRC, respondents did not issue a notice to apprise/explain and a notice of termination on the ground of abandonment; hence, respondents failed to comply with procedural due process.

Further, the Court of Appeals ruled that petitioner's prayer for separation pay, not reinstatement, belies her claim of illegal dismissal on the basis of *Jo v. National Labor Relations Commission*.[41]

The Court finds that the facts and the finding of the Court in *Jo v. National Labor Relations Commission* is different from this case; hence, the said ruling therein does not apply in this case.

The Court of Appeals summarized *Jo v. National Labor Relations Commission*, thus:

> x x x [P]rivate respondent Mejila was hired as a barber and caretaker of a barbershop. When the barbershop was sold to petitioners Jo, Mejila retained his job as a barber-caretaker. He, however, had an altercation with his co-barber which prompted him to institute a labor case against the latter and petitioners. Pending the resolution thereof, petitioners assured him that he was not being driven out as barber-caretake[r]. Hence, Mejila continued reporting for work at the barbershop. But, on January 2, 1993, he turned over the duplicate keys of the shop to the cashier and took away all his belongings therefrom. On January 8, 1993, he began working as a regular barber at the newly-opened Goldilocks Barbershop also in Iligan City. Four (4) days after, Mejila instituted a complaint for illegal dismissal against petitioners Jo. x x x.[42]

In *Jo v. National Labor Relations Commission*, the Court found that therein private respondent Mejila's intention to sever his ties with his employers or petitioners therein were manifested by the following circumstances: (1) private respondent bragged to his co-workers his plan to quit his job at Cesar's Palace Barbershop and Massage Clinic as borne out by

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40 *Kams International, Inc., et al. v. NLRC, et al., supra* note 11.

41 *Supra* note 21.

42 *Rollo*, p. 46.

the affidavit executed by his former co-workers; (2) he surrendered the shop's keys and took away all his things from the shop; (3) he did not report anymore to the shop without giving any valid and justifiable reason for his absence; (4) he immediately sought a regular employment in another barbershop, despite previous assurance that he could remain in petitioners' employ; and (5) he filed a complaint for illegal dismissal without praying for reinstatement.[43]

We find that the ruling in *Jo v. National Labor Relations Commission* that the employee's prayer for separation pay, not reinstatement, belied his claim of illegal dismissal was made in consideration of *all* the circumstances that showed the employee's intention to sever his ties with his employers, including the employee's contemporaneous conduct, and not only because of his prayer for separation pay. Hence, it does not apply in this case.

An employee's prayer for separation pay is an indication of the strained relations between the parties. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[44] The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[45] Thus, it is the task of labor tribunals and the appellate courts to resolve whether the employee be reinstated or granted separation pay.

In this case, the Labor Arbiter noted that complainant-herein petitioner Cabañas prayed for separation pay in her Complaint, and the Labor Arbiter was convinced that it is more fitting to grant separation pay to complainant in lieu of reinstatement.[46] The NLRC affirmed the decision of the Labor Arbiter. The Court accords respect to the decision of the labor tribunals considering the facts of this case.

Further, petitioner, whose legal counsel is a Public Attorney of the PAO, prayed for the award of attorney's fees in her Position Paper and now seeks the award of attorney's fees as she was compelled to litigate in order to seek redress. She contends that R.A. No. 9406 allows the PAO to receive attorney's fees, thus:

> SEC. 6. New sections are hereby inserted in Chapter 5, Title III, Book IV of Executive Order No 292 to read as follows:
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> x x x x
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> "SEC. 16-D. *Exemption from Fees and Costs of the Suit.* - The clients of the PAO shall be exempt from payment of docket and other fees

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43 *Jo v. NLRC, supra* note 22, at 437-438.

44 *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017.

45 *Id.*

46 *Rollo*, p. 133.

> incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.
>
> **The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.**"[47]

Indeed, petitioner is entitled to the award of attorney's fees equivalent to ten percent (10%) of the total monetary award.[48] R.A. No. 9406 sanctions the receipt by the PAO of attorney's fees, and provides that such fees shall constitute a trust fund to be used for the special allowances of their officials and lawyers.[49] The matter of entitlement to attorney's fees by a claimant who was represented by the PAO has already been settled in *Our Haus Realty Development Corporation v. Parian.*[50] The Court ruled therein that the employees are entitled to attorney's fees, notwithstanding their availment of free legal services offered by the PAO and the amount of attorney's fees shall be awarded to the PAO as a token recompense to them for their provision of free legal services to litigants who have no means of hiring a private lawyer.[51]

In fine, petitioner Cabañas was dismissed by respondents without just cause and without procedural due process.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The assailed Decision dated April 21, 2016 and Resolution dated June 30, 2016 of the Court of Appeals in CA-G.R. SP No. 137447 are hereby **REVERSED** and **SET ASIDE**, and the Decision dated June 30, 2014 and Resolution dated July 31, 2014 of the National Labor Relations Commission, Sixth Division in NLRC LAC No. 04-001071-14 are hereby **REINSTATED** and **UPHELD but MODIFIED** to the effect that, in addition to the award of separation pay of ₱23,712.00; backwages of ₱169,540.80; service incentive leave pay of ₱2,798.70 and 13th month pay of ₱14,553.24, petitioner Sheryll R. Cabañas is also entitled to the award of attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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47 Emphasis supplied.

48 *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, 687 Phil. 351, 375 (2012).

49 *Alva v. High Capacity Security Force, Inc.*, G.R. No. 203328, November 8, 2017.

50 740 Phil. 699, 720 (2014).

51 *Alva v. High Capacity Security Force, Inc.*, *supra* note 49.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)