



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **September 8, 2020** which reads as follows:*

“G.R. No. 248408 – MA. KATRINA BIANCA DE LARA TRIGO, petitioner, versus THE RESULTS COMPANIES, respondent.

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court assailing the Decision² dated March 11, 2019 and Resolution³ dated July 18, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 152748, which denied petitioner Ma. Katrina Bianca De Lara Trigo’s (Trigo) petition for *certiorari* under Rule 65 of the Rules of Court.

After a judicious review of the records, the Petition is denied for lack of merit. Trigo was not illegally dismissed and she is not entitled to her money claims except for the proportionate 13th month pay for 2016. Thus, the CA was correct in affirming the Decision⁴ dated June 22, 2017 of the National Labor Relations Commission (NLRC).

Based on the facts, there are two instances when Trigo could have been illegally dismissed: on August 20, 2016 when she was barred from entering the office by Fernando Del Mundo, and on September 7, 2016 when the Notice of Termination was issued by The Results Companies (TRC).

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¹ *Rollo*, pp. 8-27, excluding Annexes.

² *Id.* at 280-296. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Danton Q. Bueser.

³ *Id.* at 318-323.

⁴ *Id.* at 198-209. Penned by Presiding Commissioner Grace E. Maniquiz-Tan, with Commissioners Dolores M. Peralta-Beley and Mercedes R. Posada-Lacap concurring.

The Labor Arbiter (LA), NLRC, and CA were all uniform in their factual finding that Trigo was not illegally dismissed on August 20, 2016. Absent any showing that this consistent finding was not supported by substantial evidence, the Court finds no reason to disturb the same.

As to the Notice of Termination issued by TRC on September 7, 2016, while Trigo's termination based on said Notice is a factual issue which generally cannot be passed upon by the Court in a Rule 45 petition, the conflicting factual findings of the LA on one hand and the NLRC and the CA on the other, constitutes an exception to the general rule.⁵ In the case at bar, the LA found that Trigo was illegally dismissed pursuant to the Notice of Termination issued on September 7, 2016, while the NLRC and the CA held that Trigo was not illegally dismissed.

To recall, TRC issued the Notice of Termination due to Trigo's unauthorized absences from August 22 to 25, 2016. Under the TRC's handbook, "[a]bsences without proper notice or authorization for 2 days or more x x x despite instructions o[r] communication to return to work from immediate superior shall be considered as abandonment of work"⁶ with penalty of termination. From TRC's perspective, there was apparent basis to dismiss Trigo due to abandonment. Even if said basis for termination is erroneous, as will be explained below, the facts nevertheless show that TRC had still considered Trigo as its employee even beyond the alleged date of termination.

After Trigo had manifested her intention to return to work during the mandatory conference before the LA, TRC revoked the Notice of Termination dated September 7, 2016 and subsequently sent her a series of Return to Work Notices, which were all unheeded.⁷ In fact, the Final Return to Work Notice dated October 25, 2016 contained the following statement: "Please recognize that your failure to appear onsite on the prescribed time upon receipt of this letter would be taken as an intentional severance of your employment from [the company]."⁸ In revoking the Notice of Termination and issuing the Return to Work Notices, it is clear that TRC had still considered Trigo as its employee even beyond the alleged date of termination, thus the NLRC and the CA were correct in ruling that Trigo was not illegally dismissed on September 7, 2016.

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⁵ See *Terp Construction Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 221771, September 18, 2019.

⁶ *Rollo*, p. 165.

⁷ *Id.* at 291.

⁸ *Id.* at 285. Underscoring supplied.

Notwithstanding her absences and the fact that Trigo did not heed the notices sent by TRC, the Court likewise affirms the finding that Trigo did not abandon her work. For abandonment to exist, two requisites must concur: (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 as manifested by overt acts.⁹ Mere absence or failure to report for work, even after notice to return, is not tantamount to abandonment.¹⁰ Here, the two requisites did not exist. Although Trigo had received the notices and failed to return to work, her actions were based on the mistaken belief that her employment was already terminated. Besides, the fact that she had filed and pursued the illegal dismissal case showed that Trigo did not intend to sever her employment with TRC.

Since Trigo was not illegally dismissed by TRC and Trigo did not abandon her employment, she should thus be ordered to return to her position without loss of seniority rights and for TRC to accept her back without any backwages.¹¹

However, as uniformly found by the LA, NLRC, and CA, petitioner does not wish to be reinstated.¹² In light of this and the fact that separation pay may not be awarded to her because her employment was not terminated in the first place, the Court affirms the CA's ruling that the burden of economic loss is not shifted to the employer. Instead, each party must bear his own loss.¹³

Pursuant to the NLRC Decision dated June 22, 2017, which was affirmed by the CA, TRC is liable to pay Trigo the proportionate 13th month pay for 2016, if said amount is still unpaid, subject to six percent (6%) interest per annum from finality of the NLRC Decision¹⁴ until full satisfaction.

In light of the foregoing, the Court resolves to **DENY** the Petition and **AFFIRM** the Decision dated March 11, 2019 and

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⁹ *Seven Star Textile Company v. Dy*, G.R. No. 166846, January 24, 2007, 512 SCRA 486, 499.

¹⁰ *Id.* at 499.

¹¹ See *Leopard Security and Investigation Agency v. Quitoy*, G.R. No. 186344, February 20, 2013, 691 SCRA 440 and *Jordan v. Grandeur Security & Services, Inc.*, G.R. No. 206716, June 18, 2014, 727 SCRA 36.

¹² *Rollo*, pp. 166, 208, 295.

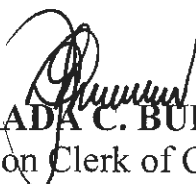
¹³ See *MZR Industries v. Colambot*, G.R. No. 179001, August 28, 2013, 704 SCRA 150, 162.

¹⁴ *N.B.*: Based on Rule VII, Section 14 vis-à-vis Rule XI, Section 4 of the NLRC Rules of Procedure, as amended, the NLRC monetary award of the proportionate 13th month pay for 2016 in favor of Trigo already became final and executory despite Trigo's filing of a petition for *certiorari* with the CA. Thus, the running of the interest imposed should be reckoned from the finality of the NLRC decision.

Resolution dated July 18, 2019 of the Court of Appeals in CA-G.R.
SP No. 152748.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *at 12/11*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(NLRC NCR Case No. 10-12456-16)

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