REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **25 November 2020** *which reads as follows*:

"G.R. No. 228697 ***(Nestor B. Navarro, Jr. v. Combined Blue Dragon Security and Services, Inc. and Mario B. Bartolome).*** – This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the January 6, 2016 Decision[1] and November 14, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 131578. The CA affirmed the April 25, 2013 Decision[3] and May 31, 2013 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC LAC No. 01-000167-13(8) declaring Nestor B. Navarro, Jr. *(petitioner)* to have been validly terminated from employment due to abandonment.

Antecedents

On September 18, 2012, petitioner and Gary A. Ramos *(Ramos)* filed a complaint for illegal dismissal, illegal deduction, and other money claims against Combined Blue Dragon Security and Services, Inc. and Mario B. Bartolome *(respondents)*.[5]

Petitioner averred in his Position Paper[6] that he was employed by respondent company in August 2004 until his termination on March 18, 2012; that Inspector Taizan informed him that he will be transferred to the SM

[1] *Rollo*, pp. 24-32; penned by Associate Justice Noel G. Tijam (a retired member of this Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.
[2] Id. at 34-34-A.
[3] Id. at 56-63; penned by Commissioner Gregorio O. Bilog, III with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.
[4] Id. at 53-54.
[5] Id. at 76-77.
[6] Id. at 64-73.

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Masinag Branch *(SM)*, but he did not receive any notice of transfer; that Mr. Pale Cutuna told him that he was considered absent without leave *(AWOL)* at SM; that he did not receive any memorandum placing him on AWOL status; that when he reported for work, Ms. Josephine Olarte informed him that he was already terminated;[7] that the alleged notices sent to him by respondents were mere afterthought considering that he was already dismissed on March 31, 2012.[8]

On the other hand, respondents alleged that petitioner committed dereliction of duty despite the notices sent to him[9] dated May 31, 2012,[10] June 14, 2012,[11] July 10, 2012[12] and September 3, 2012.[13] They likewise contended that petitioner and Ramos committed misrepresentation because their Social Security System *(SSS)* records show that they were already employed with Aglipay Security, Inc. when they filed the illegal dismissal complaint.[14]

On November 23, 2012, Labor Arbiter *(LA)* Jose Antonio C. Ferrer rendered a Decision[15] dismissing the complaint for lack of merit. Petitioner and Ramos filed an appeal before the NLRC.

NLRC Decision

The NLRC promulgated its Decision[16] on April 25, 2013 partially granting the appeal only insofar as Ramos is concerned. The NLRC found Ramos to have been illegally dismissed and thus, awarded him his money claims.

However, the NLRC was convinced that petitioner had been validly terminated. The NLRC concurred with the factual findings of the LA, more particularly that petitioner had admitted receiving the May 31, 2012 Notice to report to the office. The NLRC also noted that respondent company also sent two (2) Notices dated June 14, 2012 and July 10, 2012, both of which instructed petitioner to report to the office for his reassignment. Petitioner

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[7] Id. at 66-67.
[8] Id. at 97.
[9] Id. at 81 and 83.
[10] Id. at 94.
[11] Id. at 93.
[12] Id. at 92.
[13] Id. at 95.
[14] Id. at 107.
[15] Id. at 116-120.
[16] Id. at 55-63.

ignored the said notices and failed to report for work.[17] Accordingly, petitioner's termination on the ground of being AWOL was justified.[18]

Petitioner moved for reconsideration, but his motion was denied by the NLRC in its Resolution dated May 31, 2013.[19] Aggrieved, he filed a Petition for *Certiorari*[20] before the CA.

CA Decision

On January 6, 2016, the CA rendered the now assailed Decision dismissing the petition and affirming the decision and consequent resolution of the NLRC.

The CA ruled that petitioner had abandoned his work since all the elements constituting abandonment were present.[21] The appellate court explained that petitioner had the clear intention of not returning when he was already employed in another security agency at the time he received the second notice, thus:

> Petitioner failed to report for work after receipt of three (3) notices requiring him to report to work for his reassignment. Petitioner clearly intended to sever his employer-employee relationship with herein Private Respondents because on the date of the second notice to report for work, Petitioner was already employed by another company which also provides security services. This is evidenced by Petitioner's SSS Employee Static Information showing that petitioner was already employed by Aglipay Security Inc. on June 2012.[22] (citation omitted)

Petitioner Filed a Motion for Reconsideration, but his motion was denied in the November 14, 2016 Resolution[23] of the CA. Hence, the present petition.

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[17] Id. at 61.
[18] Id.
[19] Id. at 53-54.
[20] Id. at 35-51.
[21] Id. at 30.
[22] Id.
[23] Id. at 34-34-A.

Issues

Petitioner submits the following issues for resolution of the Court:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE NLRC'S FINDING THAT PETITIONER'S TERMINATION WAS JUSTIFIED DUE TO ABANDONMENT;

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THAT PETITONER WAS NOT ILLEGALLY DISMISSED, HENCE NOT ENTITLED TO BACKWAGES, SEPARATION PAY IN LIEU OF REINSTATEMENT, MORAL AND EXEMPLARY DAMAGES, 13TH MONTH PAY, SERVICE INCENTIVE LEAVE PAY, COLA AND ATTORNEY'S FEES.[24]

Petitioner denies that he abandoned his work. He claims that he was not only unilaterally dismissed from service without a just or authorized cause but was also terminated *sans* observance of the mandatory twin-notice requirement.[25] He argues that finding another employment is an effort on his part to survive[26] for which he can legitimately ignore the notices to return to work and file a case against the respondents for illegal dismissal. Petitioner also insists on his monetary claims considering that respondents failed to present proof that they had paid his backwages, 13th month pay, and service incentive leave pay, among others.[27]

Respondents counter that petitioner was legally dismissed by operation of law due to abandonment because he unjustifiably failed to report for duty at SM. His disobedience became prejudicial to their interest especially when the management of SM had warned them of non-renewal of their security agreement.[28]

As regards petitioner's allegation that he was deprived of procedural due process, respondents firmly claim that they sent four (4) Notices: the first Notice dated May 31, 2012 asked petitioner to report to their office; the second and third Notices dated June 14, 2012 and July 12, 2012 required him to report

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[24] Id. at 8-9.
[25] Id. at 12.
[26] Id. at 17.
[27] Id. at 15-16.
[28] Id. at 188-189.

for re-assignment; and the fourth Notice dated September 3, 2012 placed him on AWOL status. Despite having received these notices, petitioner still refused to report for work.[29]

Based on the above postulations of the parties, the basic issue to be resolved is whether or not the CA committed reversible error when it did not rule that the NLRC gravely abused its discretion in declaring petitioner to have committed abandonment of work.

Our Ruling

The petition lacks merit.

Jurisprudence is replete with cases reiterating that factual findings of labor tribunals are given respect and generally binding upon the Court, especially when they are affirmed by the CA. *Ebuenga v. Southfield Agencies, Inc.*[30] explains:

> In the first place, this Court is duty-bound to respect the uniform findings of Labor Arbiter Savari, the National Labor Relations Commission, and the Court of Appeals. In the context of the present Rule 45 Petition, this Court is limited to resolving pure questions of law. **It should be careful not to substitute its own appreciation of the facts to those of the tribunals which have previously weighed the parties' claims and even personally perused the evidence:**
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> > As a rule, only questions of law may be raised in a Rule 45 petition. In one case, we discussed the particular parameters of a Rule 45 appeal from the CA's Rule 65 decision on a labor case, as follows:
> >
> > > In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of**

[29] Id. at 190-191.
[30] 828 Phil. 122 (2018).

> **discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.
>
> Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this court."[31] (emphases supplied)

This Court, not being a trier of facts, will not review the findings of fact that are based on evidence. In here, the LA, the NLRC and the CA did not arbitrarily declare petitioner to have abandoned his employment. On the contrary, they had consistently based their conclusions on substantial evidence. Hence, We do not find any reason to reverse the decision of the CA.

At any rate, abandonment as a just and valid ground for dismissal requires the deliberate and unjustified refusal of the employee to return to work.[32] It requires the concurrence of two elements: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and manifested by some overt acts.[33]

Although mere absence or failure to report for work is not tantamount to abandonment of work,[34] the same does not find application here. Petitioner had incurred absences without leave without sufficient justification. He deliberately refused to report for work despite being required to do so. While respondents had been sending him return-to-work notices, he had already found employment and started working in Aglipay Security, Inc. Taken altogether, these circumstances establish petitioner's unequivocal intention to sever his ties with respondents. Thus, there had been no error in declaring him to have abandoned his employment.

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[31] Id. at 138-139, citing *Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1, 9-10 (2012); citation omitted.

[32] *South Davao Development Company, Inc. v. Gamo*, 605 Phil. 604, 614 (2009).

[33] *Miñano v. Sto. Tomas General Hospital*, G.R. No. 226338, June 17, 2020; *South Davao Development Company, Inc. v. Gamo*, supra.

[34] *Doctor v. NII Enterprises*, 821 Phil. 251, 268 (2017); citation omitted.

In *Demex Rattancraft, Inc. v. Leron*,[35] the Court stressed 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. 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.[36]

In here, petitioner insists that he was not afforded due process when he was terminated.

We disagree.

While it is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause,[37] it is incumbent upon the employees to first establish the fact of their dismissal before the burden is shifted to the employer.[38] If there is no dismissal, then there can be no question as to the legality or illegality thereof.[39]

Petitioner's bare assertion of illegal dismissal, without any corroborative and competent proof, will not overcome the existence of the notices sent by the respondents on different dates. Furthermore, the September 3, 2012 Notice that respondents had sent to petitioner, reads as follows:

> Dear Sg. Navarro:
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> Records show, letters and notices were sent to you as follows:
>
> 1. May 31, 2012 - to report to the office.
> 2. June 14, 2012 - reiterated previous notice to report for duty.
> 3. July 10, 2012 - final notice for employment.
>
> All the above notices were duly received by you, notwithstanding which you still failed to report. **This will therefore advise you that you are placed on AWOL and the agency will effect the necessary termination procedure in accordance with law**, to prevent further damage and prejudice to the agency.[40] (emphasis supplied)

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[35] 820 Phil. 693 (2017).
[36] Id. at 705, citing *Kams International, Inc. v. National Labor Relations Commission*, 373 Phil. 950, 959 (1999).
[37] *Remoticado v. Typical Construction Trading Corp.*, 830 Phil. 508, 515 (2018).
[38] *Exodus International Construction Corp. v. Biscocho*, 659 Phil. 142, 146 (2011).,
[39] *MZR Industries v. Colambot*, 716 Phil. 617, 624 (2013).
[40] *Rollo*, p. 95.

Evidently, respondents neither dismissed petitioner nor considered him terminated when they sent the September 3, 2012 Notice. To be precise, the said notice served two (2) purposes: (1) to apprise petitioner that he had been placed on AWOL status after he failed to respond to the return-to-work notices; and (2) to advise petitioner that they would subsequently initiate the procedure for terminating his employment. Petitioner had therefore erroneously assumed that he had been terminated without due process. It is clear from the subject notice that respondents had expressly indicated their intention to undergo the legal procedure of terminating him.

On this note, the Court shall rectify the inaccurate pronouncements made by the LA, the NLRC and the CA that petitioner was terminated due to abandonment. For purposes of clarity, respondents were about to initiate the procedure for termination after placing petitioner on AWOL status as indicated in the September 3, 2012 Notice. However, petitioner had essentially pre-empted respondents from proceeding with the process of termination when he filed the Complaint for Illegal Dismissal on September 18, 2012. Hence, there was no termination, valid or not, to speak of.

To reiterate, petitioner had not been terminated from employment. At that time when petitioner filed a complaint for illegal dismissal, respondents had only placed him under AWOL status after he refused to return to work despite several notices.

Finally, petitioner insists that he had not received his statutory benefits such as 13th month pay, service incentive leave, and cost of living allowance *(COLA),* among others. While petitioner may not have been terminated by respondents, he is still entitled to these claims that had accrued while he was still under their employ. Unfortunately, petitioner's monetary claims had not been resolved and respondents failed to manifest in the proceedings below that they already paid the same. Thus, We deem it proper to remand the case to the LA for determination of the said pecuniary benefits, if duly warranted, to be reckoned from the time they had been withheld from petitioner until September 18, 2012, the date of Judicial Demand, with interest of six percent (6%) *per annum*.

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the Decision dated January 6, 2016 and Resolution dated November 14, 2016 of the Court of Appeals in CA-G.R. SP No. 131578; and **REMANDS** this case to the Labor Arbiter for the determination of petitioner's entitlement to 13th

month pay, service incentive leave, cost of living allowance *(COLA),* and other statutory benefits, from the time they had been withheld until September 18, 2012, plus interest of six percent (6%) *per annum.*

SO ORDERED. (Rosario, *J.,* designated additional member per Special Order No. 2797 dated November 5, 2020)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
07 JAN 2021

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*with copy of CA Decision dated 6 January 2016.
Please notify the Court of any change in your address.
GR228697. 11/25/2020(120)

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