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Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

# NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated* **November 18, 2020** *which reads as follows:*

**"G.R. No. 246595 (Vergie U. Matalicia,** *Petitioner*, **v. IOLCOS Maritime Agencies Far East, Inc./Capt. Roberto Reyes, Capt. Giorgos Nanos,** *Respondents*). – This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated 17 December 2018 and Resolution[3] dated 11 April 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 156181, which affirmed the National Labor Relations Commission (NLRC) Decision[4] dated 23 February 2018 and Resolution[5] dated 17 April 2018. The NLRC affirmed the Labor Arbiter (LA)'s decision,[6] which dismissed the complaint for being premature, but modified the same by deleting the directive for petitioner Vergie U. Matalicia (petitioner) to return to work since she had voluntarily severed her employment.

## Antecedents

On 30 March 2016, respondent Capt. Roberto Reyes (Reyes), the Officer-in-Charge of respondent Iolcos Maritime Agencies Far East, Inc. (company) issued a show cause letter[7] to petitioner, the company's Finance Manager, informing her that she was charged with gross neglect of duties and breach of trust. She was placed under preventive suspension until the conclusion of the investigation.[8] She



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1 *Rollo*, pp. 12-36.
2 *Id.* at 43-54; penned by CA Associate Justice Jhosep Y. Lopez with Presiding Justice Romeo F. Barza and Associate Justice Franchito N. Diamante, concurring.
3 *Id.* at 55-56.
4 *Id.* at 253-269; penned by NLRC Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring.
5 *Id.* at 297-299.
6 *Id.* at 186-193; penned by Maria Mylene P. Carag-Cruz.
7 *Id.* at 57.
8 *Id.* at 149.

requested to be given until 08 April 2016 to file her answer.[9] However, instead of submitting an answer to the show cause letter, petitioner filed a case via the Single Entry Approach (SEnA) on 05 April 2016.[10]

Subsequently, she filed a Complaint[11] for constructive dismissal against the company, Reyes, and Capt. Giorgos Nanos (collectively, respondents). Petitioner claimed that she was dismissed from employment without just or authorized cause. She averred that she had already been pre-judged and could no longer get a fair investigation[12] based on a letter from Andrea TH. Petrakis and Themis A. Petrakis (collectively, Petrakises), of Iolcos Hellenic Maritime Enterprises Co. Ltd., the company's foreign principal. Part of the letter is quoted below:

> Thirdly, as you have been informed, Mrs. Virgie Matalicia has been given a notice and has been placed on preventive suspension that will most likely lead to her dismissal. This dismissal has been based on account of several acts of gross neglect of her duties, which we understand that you are all aware of and, rest assured, so were we. Very soon she will also be replaced by a well-qualified lady, to whom your new President has full belief that she will reform the Financial Department of our Company and correct the anomalies that Mrs. Bing's presence had brought about. We have known of these issues for quite some time now and had slightly tolerated them. We hope that this will act as a forewarning that such misconduct or lack of cooperation shall no longer be accepted.[13]

For their part, respondents argued that petitioner had no cause of action since she had not been dismissed from employment, but was merely placed on preventive suspension.[14]

## Ruling of the LA

In her Decision[15] dated 03 August 2017, the LA dismissed the complaint for being premature and for failure to prove the fact of dismissal. The LA ruled that since respondents had not yet concluded their investigation, there was yet no dismissal to speak of. Consequently, there was also no illegal dismissal.[16] Hence, the LA ruled:



[9] *Id.* at 150.
[10] *Id.* at 160.
[11] *Id.* at 60-61.
[12] *Id.* at 45.
[13] *Id.* at 49-50.
[14] *Id.* at 258.
[15] *Id.* at 186-193.
[16] *Id.* at 193.

> WHEREFORE, the Complaint is hereby DISMISSED for being premature and for failure to prove the fact of dismissal. Since the Complainant remains the employee of the Respondents, she is ordered to return to work within ten (10) days from receipt of this Decision and the Respondents are likewise ordered to allow the Complainant to return to work as Finance Manager under the same terms and conditions without diminution of her rights, benefits or privileges but without backwages.
>
> All other claims of the Complainant are likewise dismissed for lack of basis or merit.
>
> SO ORDERED.[17]

Aggrieved, both parties filed separate appeals with the NLRC.[18]

## Ruling of the NLRC

In its Decision[19] dated 23 February 2018, the NLRC affirmed with modification the decision of the LA, thus:

> **WHEREFORE**, the complainant's appeal is **DENIED**, for lack of merit. On the other hand, the partial appeal of respondents is **GRANTED**.
>
> Accordingly, the Decision of Labor Arbiter Maria Mylene Carag-Cruz dismissing the complaint is **AFFIRMED** with **MODIFICATION**, in that, complainant is considered to have voluntarily severed [her] employment. Accordingly, the directive for complainant to return to work and for the respondents to allow her to return to work is hereby **DELETED**.
>
> **SO ORDERED**.[20]

The NLRC found that it was petitioner who voluntarily severed her employment with the company when she filed the complaint for illegal dismissal instead of answering the administrative charges against her. This clearly signified her intention not to return to work. Accordingly, the NLRC held that there is no longer any reason for her to return to work and for the respondents to accept her back.[21]

Dissatisfied with the findings of the NLRC, petitioner filed a motion for reconsideration.[22] The NLRC denied the motion in a



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17 *Id.* at 193.
18 *Id.* at 253.
19 *Id.* at 253-269.
20 *Id.* at 268-269.
21 *Id.* at 266-268.
22 *Id.* at 270-282.

Resolution[23] dated 17 April 2018 since it was filed beyond the ten (10) day reglementary period prescribed by Section (Sec.) 15 of Rule VII of the 2011 NLRC Rules of Procedure (NLRC Rules). Petitioner, thereafter, sought recourse to the CA by filing a petition for *certiorari*.[24]

**Ruling of the CA**

In its Decision[25] dated 17 December 2018, the CA dismissed the petition. The CA explained that since the motion for reconsideration was not filed on time, the decision of the NLRC had already become immutable and can no longer be the subject of appellate review.[26] The CA added that the petition would still fail even if petitioner's non-compliance with the requisites for filing a motion for reconsideration was disregarded. What the Petrakises stated in their letter was their opinion and did not bind the company since it was not shown that they had a direct participation in managing the affairs of the company.[27] Further, the CA equated petitioner's acts of filing a complaint with the NLRC before suffering an actual harm, and failing to return to work after the lapse of her preventive suspension, as voluntary separation from her employer.[28]

Petitioner subsequently moved for reconsideration,[29] but the CA denied her motion in its Resolution[30] dated 11 April 2019. Hence, petitioner filed the instant petition before this Court.

**Issues**

In the instant petition, the Court is tasked to resolve (1) whether or not the CA correctly ruled that the decision of the NLRC had already become immutable; and (2) whether petitioner voluntarily severed her employment.

**Ruling of the Court**

The petition is without merit.



[23] *Id.* at 297-299.
[24] *Id.* at 12-42.
[25] *Id.* at 43-54.
[26] *Id.* at 49.
[27] *Id.* at 49-50.
[28] *Id.* at 52.
[29] *Id.* at 348-371.
[30] *Id.* at 55-56.

Petitioner would have the Court re-examine the evidence on record. However, in a petition for review under Rule 45, only questions of law may be raised. The Court is not a trier of facts, and this rule applies with greater force in labor cases.[31] It is not the Court's function to re-examine and re-evaluate the probative value of evidence already passed upon by the LA and the NLRC, and which formed the basis of the assailed CA Decision.[32]

*The CA did not err in ruling that the NLRC decision had already attained finality*

Sections 14[33] and 15,[34] Rule VII of the NLRC Rules mandate that a motion for reconsideration of the NLRC decision must be filed within ten (10) calendar days from receipt of said decision, otherwise, the decision shall become final and executory.[35] The seasonable filing of a motion for reconsideration within the ten (10) day reglementary period following the receipt by a party of any order, resolution, or decision of the NLRC, is a mandatory requirement to forestall the finality of such order, resolution, or decision. The statutory basis for this rule is found in Article 229[36] of the Labor Code and in Sec. 15, Rule VII of the NLRC Rules.[37]

Petitioner admits receiving a copy of the NLRC decision on 26 February 2018. Thus, she had until 08 March 2018 within which to file a motion for reconsideration. Petitioner, however, filed her motion



31 *Gaudioso Iso, Jr. v. Salcon Power Corp.*, G.R. No. 219059, 12 February 2020 [Per J. Inting].

32 *Skyway O & M Corp. v. Wilfredo M. Reinante*, G.R. No. 222233, 28 August 2019 [Per J. Inting].

33 Section 14. Finality of Decision of the Commission and Entry of Judgment. — (a) Finality of the Decisions, Resolutions or Orders of the Commission. — Except as provided in Section 9 of Rule XI, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the counsel or authorized representative or the parties if not assisted by counsel or representative. (b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

34 Section 15. Motions for Reconsideration. — Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

35 *Froel M. Pu-od v. Ablaze Builders, Inc.*, G.R. No. 230791, 20 November 2017.

36 Article 229 [223]. Appeal. -- Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

37 *Michelin Asia Pacific Application Support Center, Inc. v. Mario J. Ortiz*,G.R. No. 189861 (Resolution), 19 November 2014, 747 Phil. 397-407 (2014) [Per J. Perlas-Bernabe].

for reconsideration only on 10 March 2018.[38] Her failure to comply with the mandatory requirement on the timely filing of a motion for reconsideration rendered the NLRC decision final and executory.

In fine, the CA was correct in holding that the NLRC decision had become final and executory and could no longer be the subject of further judicial review. Further, the CA ruled on the substantive issue and found the same bereft of merit.

*Petitioner was not indefinitely suspended nor was she constructively dismissed*

Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, Series of 1997, provide:

> Section 8. Preventive suspension. — The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.
>
> Section 9. Period of suspension. — No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

Preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[39] In the instant case, petitioner is the Finance Manager of the company. Her continued presence in the company's premises posed a serious threat to respondents and their employees in light of the accusations of irregularities in the management of the company's finances.

Petitioner claims that she did not abandon or leave her employment. She insists that she was indefinitely suspended, and that the same amounted to constructive dismissal.



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[38] *Rollo*, p. 47.

[39] *Leo T. Maula v. Ximex Delivery Express, Inc.*, G.R. No. 207838, 25 January 2017, 804 Phil. 365-389 (2017) [Per J. Peralta].

It is worth reiterating that petitioner opted not to submit her answer to the show cause letter within the extension she prayed for but, instead, filed a case via SEnA for illegal dismissal five (5) days after being placed under preventive suspension. Constructive dismissal sets in when the period of preventive suspension exceeds the maximum period allowed without reinstating the employee, actually or through payroll, or when the preventive suspension is for an indefinite period.[40] Neither of these two instances appear in the instant case.

The only conclusion is that there was no constructive dismissal. The 30-day maximum period for preventive suspension had not yet lapsed when petitioner filed her complaint. The fact that there was no specific period of time mentioned in the show cause letter did not mean that petitioner's suspension was for an indefinite period. As held in the case of *Ma. Socorro Mandapat v. Add Force Personnel Services, Inc.*:[41]

> **While no period was mentioned in the show-cause memorandum, it was wrong for petitioner to infer that her suspension was for an indefinite period. It must be pointed out that the inclusion of the phrase "during the course of investigation" would lead to a reasonable and logical presumption that said suspension in fact has a duration which could very well be not more than 30 days as mandated by law.** And, as the Court of Appeals correctly observed, the suspension has been rendered moot by petitioner's resignation tendered a day after the suspension was made effective. (Emphasis supplied)

As the CA correctly observed, "[w]hile on preventive suspension, petitioner[,] on one hand, has the right not to be dismissed until the lapse of the [thirty (30)] day period and to be reinstated to her position after the lapse of such period in the absence of any concrete results. Respondents[,] on the other hand, have the obligation to finish their investigation within the [thirty (30)] day period and reinstate petitioner to her former position after the lapse of such period if no results are forthcoming. Thus, the right of petitioner could only be violated when she will be dismissed from employment within the [thirty (30)] day period or when the investigation is extended to more than [thirty (30)] days without reinstating petitioner to her former position. No such violation occurred in this case."[42]



40 *Every Nation Language Institute v. Maria Minellie Dela Cruz*, G.R. No. 225100, 19 February 2020 [Per J.C. Reyes, Jr.].

41 G.R. No. 180285, 06 July 2010, 638 Phil. 150-160 (2010) [Per J. Perez].

42 *Rollo*, p. 52.

Likewise, petitioner's claim that her case had already been pre-judged is not supported by evidence. The Petrakises have not been shown to be part of respondent company, or to be involved in managing the affairs of the company. Thus, their letter reflected only their opinion and not necessarily that of respondents. Besides, the proceedings have barely begun, considering that the company was still awaiting petitioner's answer. Respondents, then, cannot be said to have pre-judged petitioner's case.

Even assuming respondents have indeed pre-judged petitioner's case, this would only amount to lack of statutory due process warranting the payment of indemnity in the form of nominal damages, if it is found that the dismissal is for a just cause.[43]

Finally, petitioner's act of filing a complaint for illegal dismissal before suffering an actual harm clearly manifested her intent to no longer return to work, thus voluntarily severing her employment with respondent company.

In *Edna Abad v. Roselle Cinema*,[44] the Court held that an employee's act of filing a complaint before he/she could be dismissed from employment is considered an informal voluntary termination of employment, thus:

> x x x The truth of the matter is that before respondent could dismiss petitioners on ground of abandonment, petitioners filed with the LA their complaint for illegal dismissal. In the present case, it must be stressed that there is no evidence showing that respondents were actually dismissed by petitioners, let alone, on ground of abandonment. Neither is there a showing that petitioners formally resigned from work. What is actually involved herein is the informal voluntary termination of employment by the petitioners[/]employees.
>
> Thus, petitioners' filing of the complaint for illegal dismissal should not have been the NLRC's sole consideration in determining whether, indeed, they have been illegally dismissed. The filing of a complaint for illegal dismissal should be taken into account together with the surrounding circumstances of a certain case. In *Arc-Men Food Industries Inc. v. NLRC*, the Court ruled that the substantial evidence proffered by the employer that it had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed. "This is clearly a *non sequitur* reasoning that can never validly take the place of the evidence of both the employer and the employee."



[43] *See Libcap Marketing Corp. v. Lanny Jean B. Baquial*, G.R. No. 192011, 30 June 2014, 737 Phil. 349-364 (2014) [Per J. Del Castillo].

[44] G.R. No. 141371, 24 March 2006, 520 Phil. 135-149 (2006) [Per J. Austria-Martinez].

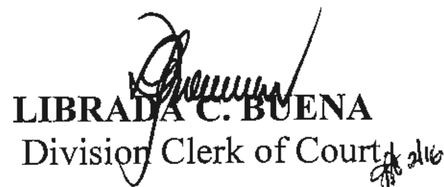
> **Given that petitioners were not illegally dismissed, but voluntarily terminated their work, therefore, they are not entitled to an award of separation pay and backwages.** (Emphasis supplied)

From the foregoing, it is clear that petitioner was not dismissed but had voluntarily severed her employment. She is, thus, not entitled to an award of separation pay and backwages.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision dated 17 December 2018 and Resolution dated 11 April 2019 of the Court of Appeals are **AFFIRMED.**

**SO ORDERED."** ***Carandang, J.***, *on official leave.*

**By authority of the Court:**



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