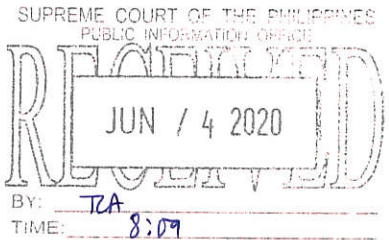




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **19 February 2020** which reads as follows:

**“G.R. No. 235806 (*Rodolfo A. Toledo v. New Mega Concrete Product Construction Supplies, et al.*).**– *If there is no dismissal, there could be no illegal dismissal to speak of.*

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> and Resolution<sup>3</sup> dated February 28, 2017 and October 10, 2017, respectively, of the Court of Appeals (CA) in CA-G.R. SPNO. 141337.

The Court of Appeals found the facts to be as follows:

On February 21, 2014, Rodolfo A. Toledo (petitioner), a helper or *pahinante* of respondent New Mega Concrete Product Construction Supplies (New Mega), together with Ramil Gomez and Agustin Catalan (Catalan) delivered ₱30,000.00 worth of concrete materials to Romy Lapie (Lapie), one of New Mega’s valued customers. The following day, Lapie canceled his orders because his ailing wife was allegedly disrespected by petitioner. The incident purportedly prompted Samson King (Samson), the *tagapamahala* of New Mega, to dismiss petitioner’s services in New Mega.<sup>4</sup>

Feeling aggrieved, petitioner filed the illegal dismissal case

<sup>1</sup> *Rollo*, pp. 11-30.

<sup>2</sup> *Id.* at 241-251; penned by Associate Justice Pedro B. Corales, with Associate Justices Sesonando E. Villon and Rodil V. Zalameda (now a member of the Court), concurring.

<sup>3</sup> *Id.* at 304-306.

<sup>4</sup> *Id.* at 242.

claiming that he was wantonly terminated without procedural and substantial due process. In support of the complaint, petitioner executed a *Sinumpaang Salaysay* wherein he denied disrespecting Lapie's wife as it was Catalan who dealt with her; and further reasoned out that his absences were due to his severe knee pain. On February 22, 2014, he secured a sick leave form which Doris King (Doris), wife of Samson King, immediately signed and later approved by the Social Security System. When he went back to New Mega on March 2, 2014 to avail himself of his sick leave benefits, Samson terminated his services insisting that Lapie would not have canceled a substantial amount of purchase were it not for petitioner's rude behavior. Highlighting his 22 years of faithful service in New Mega, petitioner argued that respondents should have commiserated with his plight instead of flagrantly violating his security of tenure. Thus, he prayed for immediate reinstatement and payment of backwages, allowances, and other benefits plus damages and attorney's fees.<sup>5</sup>

Respondents denied liability contending that petitioner abandoned his job since February 22, 2014. On February 26, 2014, they sent him a notice to explain why he should not be dismissed for quarreling with Lapie's wife. While petitioner submitted an undated letter-reply<sup>6</sup> averring that it was Catalan who dealt with Lapie's wife, he still did not report to work. Thus, on February 28, 2014, the company sent a letter<sup>7</sup> to petitioner directing him to immediately report, otherwise, his absences will be deemed abandonment of service. As evidenced by a Certification<sup>8</sup> from the Post Office, petitioner received the letter, but did not respond thereto. Considering petitioner's adamant refusal to report back to work, he is not entitled to backwages or separation pay. Respondents added that all his monetary claims should be denied for dearth of proof.<sup>9</sup>

#### *Ruling of the LA*

Labor Arbiter Enrico Angelo C. Portillo (Labor Arbiter) rendered the Decision<sup>10</sup> dated November 25, 2014 dismissing the complaint for lack of merit, *viz*:

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<sup>5</sup> *Id.* at 242-243.

<sup>6</sup> *Id.* at 82.

<sup>7</sup> *Id.* at 80.

<sup>8</sup> *Id.* at 81.

<sup>9</sup> *Id.* at 243.

<sup>10</sup> *Id.* at 113-119.

WHEREFORE, premises considered, the complaint for illegal dismissal is hereby dismissed for lack of merit. However, respondents New Mega Concrete Product & Construction Supplies is hereby ordered to pay complainant the sum of P1,417.00 by way of proportionate 13<sup>th</sup> month pay for the year 2014.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.<sup>11</sup>

Petitioner appealed the Decision to the National Labor Relations Commission (NLRC).

*Ruling of the NLRC*

In the Decision<sup>12</sup> dated February 23, 2015, the NLRC dismissed the appeal and affirmed the decision of the LA, as follows:

WHEREFORE, assailed Decision is hereby AFFIRMED, and the appeal is DISMISSED for lack of merit.

SO ORDERED.<sup>13</sup>

Petitioner moved for reconsideration<sup>14</sup> but the NLRC denied it.<sup>15</sup>

Undaunted, petitioner elevated the case to the CA by way of special civil action on *certiorari* under Rule 65.<sup>16</sup>

*Ruling of the CA*

The CA agreed with the NLRC when it ruled that petitioner was not dismissed from service. However, the CA disagreed with the finding that petitioner abandoned his job. There being no dismissal or abandonment of work, the CA held that petitioner must be reinstated to his position as helper or *pahinante* in New Mega without backwages. The dispositive part of the Decision<sup>17</sup> dated February 28, 2017 reads:

<sup>11</sup> *Id.* at 118-119.

<sup>12</sup> *Id.* at 144-149; penned by Presiding Commissioner Gerardo C. Nograles, with Commissioner Romeo L. Go, concurring.

<sup>13</sup> *Id.* at 148.

<sup>14</sup> *Id.* at 150-155.

<sup>15</sup> *Id.* at 163-164.

<sup>16</sup> *Id.* at 33-46.

<sup>17</sup> *id.* at 241-251.

WHEREFORE, the instant petition is PARTIALLY GRANTED. The February 23, 2015 Decision and May 15, 2015 Resolution of the National Labor Relations Commission, First Division in NLRC LAC No. 01-000245-15 are hereby MODIFIED as follows: private respondents New Mega Concrete Product Construction Supplies, Doris B. King, and Samson King are directed to reinstate petitioner Rodolfo A. Toledo to his former position without backwages and to pay him attorney's fees equivalent to 10% of the total award at the time of actual payment. The award to Rodolfo A. Toledo of proportionate 13<sup>th</sup> month pay for the year 2014 is sustained.

SO ORDERED.<sup>18</sup>

Petitioner filed a Motion for Reconsideration<sup>19</sup> which the CA denied in its Resolution<sup>20</sup> dated October 10, 2017.

Hence, this petition<sup>21</sup> arguing that the CA erred when it affirmed the NLRC ruling that petitioner was not illegally dismissed.

Subsequently, respondent filed its Comment<sup>22</sup> stating that, despite the Order<sup>23</sup> for petitioner's reinstatement, petitioner refused to report back to work.<sup>24</sup> Respondent argues that since petitioner actually abandoned his work, the Order<sup>25</sup> of the CA for his reinstatement is clearly uncalled for.<sup>26</sup>

In his Reply,<sup>27</sup> petitioner states that he is suffering from recurring tendonitis which affected his knees; thus, as much as he is inclined to be reinstated, his physical condition prevents him to resume to his former job as *pahinante*. He further claims that notwithstanding his physical condition, petitioner has already developed strained relations with respondents arising from this litigation and if he would be reinstated, an atmosphere of antipathy and antagonism may be generated that would

<sup>18</sup> *Id.* at 250-251.

<sup>19</sup> *Id.* at 255-259.

<sup>20</sup> *Id.* at 304-306.

<sup>21</sup> *Id.* at 11-30.

<sup>22</sup> *Id.* at 314-319.

<sup>23</sup> *Id.* at 250.

<sup>24</sup> *Id.* at 316.

<sup>25</sup> *Id.* at 250.

<sup>26</sup> *Id.* at 319.

<sup>27</sup> *Id.* at 326-329.

adversely affect the efficiency and productivity of petitioner in the workplace. Hence, instead of actual reinstatement, petitioner requests for payment of separation pay.<sup>28</sup>

### *Issue*

The primordial issue in the petition at bar is whether the petitioner was illegally dismissed from employment.

### *Discussion*

The Court finds no reversible error in the decision<sup>29</sup> of the CA.

Well-entrenched is the principle that in illegal dismissal cases, it is incumbent upon the employees to first establish the fact of their dismissal before the burden is shifted to the employer to prove that the dismissal was legal.<sup>30</sup> For there can be no illegal dismissal to speak of, in the absence of any dismissal. Furthermore, the burden of proving the allegations rests upon the party alleging and the proof must be clear, positive and convincing.<sup>31</sup>

In the present case, aside from the petitioner's bare, unsubstantiated and, thus, self-serving allegations of having been verbally terminated by Samson from employment, petitioner proffered no other evidence showing that he was dismissed from employment. Assuming *arguendo* that Samson indeed ordered petitioner not to report back to work, there is no evidence of his authority to do so. More importantly, there is no indication that petitioner was prevented to enter New Mega's premises and which would proved the alleged termination. In fact, petitioner himself averred that he was able to return to the work premises and asked for sick leave benefits.

Thus, the NLRC, in affirming the Labor Arbiter's findings, held that at the time material to the case the employment relations between petitioner and respondent continued to exist, *viz.*:

Viewed from the foregoing, it is clear that from February 22,

<sup>28</sup> *Id.* at 327-328.

<sup>29</sup> *Id.* at 241-251

<sup>30</sup> *Exodus International Construction Corp. v. Biscocho*, 659 Phil. 142, 146 (2011).

<sup>31</sup> *Cañedo v. Kampilan Security and Detective Agency, Inc.*, 715 Phil. 625, 635 (2013).

2014 to March 6, 2014, complainant failed to report to respondent's office despite verbal notice to explain the charge against him by a customer on February 22, 2014 when he simply left the work premises, claiming that he was sick, the February 26, 2014 memorandum and February 28, 2014 Notice to return to work. Nothing could have prevented him from complying with respondent's directives, not even the ailment he alleged to be suffering from. Notably, complainant was even able to go to the SSS office on February 26, 2014 in order to file the Sickness Notification form. In the same form, no less than respondent Doris King certified that his ailment occurred on February 22, 2014 while "working." The very fact that all these certifications and administrative notices and actions either transpired or were issued during the time when complainant claims that he was being ousted from employment negates his claim to that effect. No less his application for sick leave lends strength to this conclusion. Otherwise, there would be no reason for filing a sick leave application. One who believes that he has already been deprived of employment would certainly have no reason to seek approval for not being able to work from his erstwhile employer. It is illogical and therefore unworthy of belief.<sup>32</sup>

Considering that the findings of fact of the Labor Arbiter and the NLRC are supported by evidence on record, they must be accorded due respect and finality.<sup>33</sup>

Anent the findings of the CA that there was no intention on the part of petitioner to abandon his work, settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.<sup>34</sup> For abandonment to constitute a valid cause for termination of employment, there must be a deliberate unjustified refusal of the employee to resume his employment.<sup>35</sup>

As prudently observed by the CA, the petitioner's act of filing the illegal dismissal case with a prayer for reinstatement signifies the employee's desire to continue his working relationship with his employer, and militates against the latter's claim of abandonment.

In cases where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the rule is that the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.<sup>36</sup> Thus, there being no dismissal nor

<sup>32</sup> *Rollo*, pp. 147-148.

<sup>33</sup> *See Comsavings Bank v. National Labor Relations Commission*, 327 Phil. 117, 128 (1996).

<sup>34</sup> *See Samarca v. ARC-Men Industries Inc.*, 459 Phil. 506, 516 (2003).

<sup>35</sup> *Asphalt and Cement Pavers, Inc. v. Leogardo, Jr.*, 245 Phil. 287, 292 (1988).

<sup>36</sup> *Leonardo v. National Labor Relations Commission*, 389 Phil. 118, 128 (2000).

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abandonment of work, the CA correctly held that petitioner must be reinstated to his position as helper or *pahinante* in New Mega without backwages.

Anent petitioner's request for the grant of separation pay in lieu of reinstatement, it must be denied.

The grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. Thus, the Court, in the case of *Claudia's Kitchen, Inc. v. Tanguin*,<sup>37</sup> held:

To award separation pay in lieu of reinstatement to an employee who was never dismissed by his employer would only give imprimatur to the unacceptable act of an employee who is facing charges related to his employment, but instead of addressing the complaint against him, he opted to file an illegal dismissal case against his employer.

Petitioner's claim that he has already developed strained relations with respondents is a mere presumption without any factual basis. Strained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone. It must be adequately supported by substantial evidence showing that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.<sup>38</sup>

Finally, the CA correctly awarded attorney's fees to petitioner following the rule that where an employee was forced to litigate and incur expenses to protect his rights and interests, he is entitled to an award of attorney's fees.<sup>39</sup>

**WHEREFORE**, the petition is **DENIED**.


<sup>37</sup> 811 Phil. 784 (2017).

<sup>38</sup> *Fernandez, Jr. v. Manila Electric Co.*, G.R. No. 226002, June 25, 2018.

<sup>39</sup> *Rasonable v. National Labor Relations Commission*, 324 Phil.191, 195-196 (1996).

**SO ORDERED.”**

Very truly yours,



TERESITA AQUINO TUAZON  
Deputy Division Clerk of Court *with G/I*  
02 JUN 2020

FORTES LAW OFFICE AND ASSOCIATES (reg)  
Counsel for Petitioner  
2<sup>nd</sup> Floor, Buena Commercial Center  
No. 251 Chipeco Ave. Extension corner  
Lake View Subdision, Brgy. Halang  
Calamba, Laguna

MORENO GIRONELLA GO &  
DELOS SANTOS-QUIAOIT (reg)  
Counsel for Respondents  
Unit 503, Greenhills Mansion  
No. 37 Annapolis St., Greenhills  
San Juan City, Manila

NATIONAL LABOR RELATIONS  
COMMISSION (reg)  
PPSTA Building, Banawe Street  
corner Quezon Boulevard  
1100 Quezon City  
(NLRC Case No. RAB-IV-07-01200-14-RI/  
NLRC LAC No. 01-000245-15)

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