SUPREME COURT
SECOND DIVISION

METRO TRANSIT ORGANIZATION, INC.,
***Petitioner*,**

-versus-

G.R. No. 119724
May 31, 1999

NATIONAL LABOR RELATIONS COMMISSION and VICTORIO T. TURING,
***Respondents*.**
x----------x

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for *Certiorari* to set aside the Resolution[1] of the National Labor Relations Commission (NLRC) affirming in toto the Decision of the Labor Arbiter finding petitioner guilty of illegal dismissal and ordering it to reinstate private respondent with backwages.

Petitioner Metro Transit Organizations, Inc. is a government-owned and controlled corporation and a subsidiary of the Light Rail Transit Authority which operates a light rail transit system.

Private respondent Victorio T. Turing was a train operator of the light rail transit system of petitioner. He was hired on November 22, 1984

at a monthly salary of P4,150.00. On March 29, 1990, he was dismissed for abandonment of work.

Earlier, on January 9, 1990, private respondent had been suspended for three (3) days for having been absent without leave, for ten (10) days on December 14, 15, 16, 18, 23, 24, 27, 28, 30 and 31, 1989.[2] On February 14, 1990, he applied far leave of absence for three (3) days (February 17, 20, and 21, 1990), but after his leave had expired, he failed to report for work. On March 6, 1990, the company's social worker, Emma Luciano, went to see him at his home address but did not find him. She later learned that private respondent had gone to Calamba, Laguna. Nonetheless, private respondent, on the same day, informed petitioner that he would be reporting for work on March 15, 1990. As a matter of fact, he returned to work on March 12, 1990, explaining that he had been absent because of domestic problems. (It appears that private respondent's wife left him and their six children because of some misunderstanding between the two of them). However, on March 29, 1990, private respondent was dismissed for abandonment of work.

Another employee of petitioner, Reynaldo C. Pohol, was also suspended for unauthorized absences on various dates in January, March, April, May, and December 1989. He was again absent without leave on February 4, 6, 7, 17, 20, 22, 23 and 24, 1990. As his explanations were found unsatisfactory, he was dismissed on April 2, 1990.

The two cases were heard by the Labor Arbiter who found Pohol's dismissal to be for cause, but that of private respondent to be illegal. The dispositive portion of his decision, dated September 13, 1991, reads:

> WHEREFORE, judgment is rendered declaring the complainant Victorio Turing was illegally dismissed. Accordingly, respondent Metro Transit Organization, Inc. is hereby directed to REINSTATE him as Train Operator within three days from the date complainant would present himself for that purpose, without loss of seniority rights and with payment of backwages equivalent to six months, or the amount of TWENTY-FOUR THOUSAND NINE HUNDRED PESOS (P24,900.00).

> Judgment is likewise hereby rendered declaring that complainant Reynaldo Pohol was dismissed for a just cause and after due process. Consequently, his instant complaint is hereby DISMISSED for lack of merit.
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> Respondent is likewise assessed the amount of P2,490.00 by way of attorney's fees.
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> SO ORDERED.

On appeal, the Labor Arbiter's decision was affirmed by the NLRC. Petitioner moved for a reconsideration, but its motion was denied. Hence, this petition for *certiorari* alleging grave abuse of discretion by the NLRC for denying petitioner's right as employer to discipline its employees. Petitioner maintains that private respondent was guilty of abandonment of work.

The contention has no merit.

Whether or not private respondent is guilty of abandonment of work is a factual issue.[3] It is settled that findings of fact made by labor arbiters, when affirmed by the NLRC, are entitled not only to great respect but even finality and are binding on this Court if they are supported by substantial evidence.[4] The power of this Court to review labor cases is limited to questions of jurisdiction and grave abuse of discretion.[5]

In this case, petitioner was declared guilty of illegal dismissal on the basis of the following facts found by the Labor Arbiter:[6]

> The notice of termination dated March 29, 1990 addressed to complainant Turing shows that he was dismissed for abandonment of work for having incurred a total of 17 days of absence without official leave and after his explanation was found unmeritorious. This absence refers to the period from February 17, 20, & 21, 1990 to March 13, 1990 when he submitted his explanation. It was therefore complainant's absences during that period that was the "just cause" referred to by respondent because the former's absence of ten days in

> December, 1989 was already the subject of his three-day suspension (Annex "1" Respondent's PP).

The problem experienced by complainant was about his wife having left him and their six children (Annex "4", Ibid; Complainant's PP, p. 4). Everybody will perhaps agree that the problem was too personal and so serious that anyone affected would surely lose concentration in his job especially during, the early stages of its occurrence and discovery. We note from complainant's handwritten explanation (Annex "5", Respondents' PP) that he was thankful to God that "hindi niya tinutulutan na ako ay panlabuan ng isipan" and resolved to face the problem. To our mind, complainant's plea for understanding and forgiveness should have merited respondent's kind consideration Needless to say, no husband of sane mind should expect any problem of that nature and perhaps only a few would be able to maintain his mental composure Respondent should have considered that complainant's job involves many passengers and any moment of mental lapse on his part while the train moves on would surely endanger so many lives. In short, we believe that there was really no "just cause" for complainant Turing's dismissal.

In affirming the Labor Arbiter's decision the NLRC stated:[7]

> We are [not] impressed with the submission of respondent that complainant Turing has abandoned his work during the period the absences in question were incurred. While it is true that the respondent submitted proof that it exerted efforts to contact the complainant pursuant to legal procedure, yet on the March 6, 1990 home visit conducted by Social Worker Emma M. Luciano, the complainant personally and unequivocably signified interest to return to work on March 15, 1990. The Social Worker Report clearly disclosed the fact that the complainant expressed that he really needed his job for his children. The report also stated that the complainant even talked with Jordan Basa, TCAD Clerk of the respondent, apparently regarding his scheduled reporting for work. We also took into account the complainant's letter dated March 12, 1990 to the respondent (respondent's position paper) detailing expression of regrets regarding his absences and the cause why the same was incurred. Also taken into account is the letter dated March 13, 1990 (Annex 5) of

complainant Turing assuring management of his attendance for work now that his family problems are already normalized.

In the instant case, the main reason of complainant's dismissal was anchored on abandonment arising from his seventeen (17) days of total absences from work without the company's permission. Thus, the main point in controversy hinges on the merit and validity for which the absence was availed We have taken into account the admission made by the complainant regarding his unauthorized absence not only from the statement he made before the Social Worker who attended to his case but also before the respondent company under a subsequent letter on March 12, 1990. As correctly pointed out by the Labor Arbiter who rendered the decision, the problem that confronted the complainant was very personal and too serious that any one affected would surely lose concentration in his job especially during the early stages of its occurrence and discovery and that is followed by the further observation that complainant's plea for understanding and forgiveness should have merited kind consideration. The Labor Arbiter also observed correctly that the nature of the complainant's job involves safety of passengers and mental lapse on his part being a train operator, would surely endanger many lives. More importantly we believe the purpose of the law in requiring respondent to exert efforts to contact the complainant under the doctrine of abandonment is to determine the legal propriety in the expected dismissal of an employee who is being cited for abandonment. The mere act of undertaking effort of locating complainant does not automatically confer legality in the exercise of management right to dismiss on the pretext of abandonment. Judging from the surrounding circumstances, specifically the nature the absence was committed, the admission made, his repentance and the promise made to report normally for work after recovering from deep encounter with his marital problem, the dismissal of complainant Turing should have been cautiously studied and examined since it affects one's property which is protected against undue deprivation. We find the absence of the complainant not willful as to be characterized for a total relinquishment of one's job. In instant case, respondent's act in dismissing complainant was

> inappropriate and without legal basis. The Labor Arbiter, in ruling for the complainant, did not err. Respondent's appeal does not persuade us. As aptly pointed out by our Supreme Court, unauthorized absence does not amount to gross neglect of duty or abandonment (Velasco vs. Inciong, 164 SCRA 775, August 4, 1998).

Indeed, for abandonment of work to be a just and valid ground for dismissal, there must be a deliberate and unjustified refusal on the part of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment.[8] To warrant a finding of abandonment, there must be evidence not only of the failure of an employee to report for work or his absence without valid or justifiable reason, but also of his intention to sever the employer-employee relationship. The second element is the more determinative factor, being manifested by overt acts.[9]

To be sure, considering the reason for his absence, private respondent cannot be said to have abandoned his work. Indeed, petitioner has adduced no proof of overt acts on the part of private respondent showing clearly and unequivocably his intention to abandon his work. To the contrary, the evidence shows that when the social worker Emma M. Luciano conducted a home visit, private respondent declared his intention to return to work on March 15, 1990. As a matter of fact, he reported for work on March 12. In his letters to petitioner dated March 12 and 13, 1990, he expressed regrets for his absences. Then, after learning that he had been dismissed, private respondent filed a complaint for illegal dismissal. All these belie petitioner's allegation that private respondent had abandoned his job. We have ruled in several cases[10] that a timely filing of an illegal dismissal case negates abandonment.

However, it is one thing to say that private respondent did not abandon his work. It is quite another to say that he is likewise not guilty of absence without leave (AWOL). No matter what marital problems private respondent had, he had no excuse for not informing his employer of the reason for his failure to report for works. The record shows that he went on leave for three days on February 17, 20, and 21, 1990, but after his leave had expired, he did not report for

work. Considering that just a month before, on January 9, 1990, been suspended for precisely being absent without leave, private respondent should have taken care that his absence was not considered habitual, at least by sending word to his employer that this time he had a good excuse.

Consequently, we hold that while private respondent may not be dismissed for abandonment of work, he should be suspended for three months for being absent without leave. For this purpose, he should be considered suspended for the period March 29, 1990 to June 26, 1990, inclusive.

We affirm the resolution of the NLRC, with modification, however, that full backwages should be granted to private respondent in accordance with R.A. No. 6715, which took effect on March 21, 1989. Private respondent is entitled to payment of full backwages considering that his dismissal took place on March 29, 1990, after the effectivity of R.A. No. 6715. Such backwages should cover the period from the time private respondent's compensation was withheld from him (which, as a rule, is from the time of his illegal dismissal) up to the time of his actual reinstatement, less backwages for three months corresponding to the period of his suspension for the period March 29, 1990 to June 26, 1990, inclusive, and should include allowances and other benefits or their monetary equivalent. The award should be made without deducting from backwages the earnings derived elsewhere by the concerned employee during the period of his illegal dismissal.[11]

WHEREFORE, the Resolution of the NLRC is **AFFIRMED** with the **MODIFICATION** that private respondent shall be paid full backwages from June 27, 1990 up to the time of his actual reinstatement.

SO ORDERED.

Bellosillo, Puno, Quisumbing and Buena, *JJ.*, concur.

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[1] Per Commissioner Alberto R. Quimpo and concurred in by Presiding Commissioner Bartolome S. Carale and Commissioner Vicente S.E. Veloso.

[2] Annex D of Petition, Rollo, p. 35.
[3] Premiere Development Bank vs. NLRC, G.R. No. 114695, July 23, 1998.
[4] Spouses Santos vs. NLRC, G.R. No. 120914, July 23, 1998.
[5] Premiere Development Bank vs. NLRC, supra.
[6] Rollo, pp. 32-33.
[7] Rollo, pp. 22-25.
[8] De Paul/King Philip Customs Tailor vs. NLRC, G.R. No. 129824, March 10, 1999, citing Del Monte Philippines, Inc. vs. NLRC, 287 SCRA 71 (1998).
[9] Supra, note 3.
[10] E.g., Del Monte Philippines, Inc. vs. NLRC, supra; Mendoza vs. NLRC, 287 SCRA 51 (1998); Hagonoy Rural Bank, Inc. vs. NLRC, 285 SCRA 297 (1998); Fernandez vs. NLRC, 285 SCRA 149 (1998); Hda. Dapdap I vs. NLRC, 285 SCRA 9 (1998); Cindy and Lynsy Garment vs. NLRC, 284 SCRA 38 (1998).
[11] Bustamante vs. NLRC, 265 SCRA 61 (1996); Highway Copra Trades vs. NLRC, G.R. No. 108889, July 30, 1998.