SUPREME COURT
SECOND DIVISION

PREMIERE DEVELOPMENT BANK, PROCOPIO C. REYES, PACITA M. ARAOS and RENATO DIONISIO,
***Petitioners*,**

-versus-

G.R. No. 114695
July 23, 1998

NATIONAL LABOR RELATIONS COMMISSION and TEODORA LABANDA,
***Respondents*.**
x----------x

D E C I S I O N

MARTINEZ, *J.*:

Is the filing of an action for damages against one's employer tantamount to abandonment of job? This is the main issue sought to be resolved in this Petition for *Certiorari*.

The factual antecedents are as follows:

On August 8, 1985, Ramon T. Ocampo, a depositor of petitioner bank, issued a check in the amount of P6,792.66 in favor of and for deposit to the account of Country Banker's Insurance Corporation (CBISCO),

also a depositor of petitioner bank. On the same day, after the check and the deposit slip were presented to respondent Teodora Labanda, who was employed as teller at petitioner's Taytay Branch, they were turned over to the Branch cashier for verification of the fund balance and signature of the drawer. There was a confirmation of the check and the same was accepted by Labanda for deposit to the current account of CBISCO.

The check was posted by Manuel S. Torio, the Taytay Branch bookkeeper. But instead of posting it to CBISCO's account, the same was posted to the account of Ocampo treating it as "On-Us Check," that is, drawn against the Taytay Branch where the check was deposited.

On January 13, 1986, the wife of Ocampo, together with the auditor from CBISCO, went to petitioner bank and complained to petitioner Dr. Procopio C. Reyes[1] that her husband was being held accountable for the amount. It was only then that petitioner bank discovered the misposting of the check issued by Ocampo, resulting in the overstatement of his outstanding daily balance by P6,792.66. The overstatement remained undetected until Ocampo withdrew the money from the bank.

Due to this incident, petitioner Pacita M. Araos[2] sent a demand letter to private respondent requesting her to explain in writing the misposting and erroneous crediting of the subject check in issue as well as the circumstances surrounding the incident within three (3) days from receipt thereof, and in case she fails to do so, necessary action shall be taken against her.[3]

Petitioner Renato G. Dionisio,[4] upon instructions of petitioner Reyes, sent the internal auditors of the bank to investigate and make a detailed report about the incident. On January 22, 1986, the auditors came out with a report finding private respondent Labanda and bookkeeper Torio primarily liable for the incident, for the following reasons:

> "a) Firstly, there was no end-of-the-day independent balancing of cash and checks between Labanda and Torio, thus the former failed to notice the over-stated cash and

understated check reflected in the latter's blotter posting tape; and

b) Manuel Torio did not affix his initial on Labanda's blotter to indicate the balancing between them."[5]

These findings prompted petitioner Dionisio to send a letter[6] to private respondent Labanda requiring her to shoulder 20% of the amount lost via salary deduction. Private respondent replied,[7] objecting to such move, reasoning out that she is the breadwinner in the family. She further asked the bank to furnish her a copy of the audit report and requested for a full-dress investigation. For this reason, petitioners held in abeyance the salary deductions.

On March 13, 1986, respondent Labanda was placed under preventive suspension pending investigation of the incident. She was requested to report on April 4, 1986 so that she can present her side of the story. Labanda then wrote a letter[8] to petitioner Reyes requesting information on the duration of her suspension and at the same time asking for an expeditious investigation. In response thereto, she was informed that the period of her suspension shall last until the investigation is completed and a decision is made thereon.

On the date of said inquiry, Labanda executed a statement.[9] However, she manifested before Atty. Revelo during the inquiry that she will not sign any of the preliminary statements she made unless the same is with the consent and advice of her husband. She also told the inquiring officer that she could not inform petitioners of the dates when she would be available for investigation.

On April 8, 1986, another letter was sent to respondent Labanda by petitioner Reyes informing the former that her refusal to sign or authenticate preliminary statements given on April 4, 1986 was a clear indication of her unwillingness to cooperate or an effort to hide something or suppress the truth.[10]

The dates of the hearing were rescheduled by petitioners several times. The first rescheduled hearing was on April 14, 1986 where private respondent sent her lawyer bringing with him a letter asking that she be given time to confer with her counsel for which she was

given until April 23. Notices were sent to inform her of the rescheduled dates with warning that failure to attend the same shall be taken as a tacit admission of her liability and the case shall be resolved based on the evidence available. In the meantime, Bookkeeper Torio admitted liability and was allowed to resign.

On April 7, 1986, petitioners received a letter from private respondent through her counsel[11] demanding payment of actual damages in the amount of P50,000.00 for their alleged arbitrary, illegal and oppressive acts.[12] Petitioners did not heed the demand.

On May 23, 1986, private respondent filed a complaint for damages before the court.[13] Petitioners' subsequent motion to dismiss was denied. When their motion for reconsideration was likewise denied, petitioners filed a petition for *certiorari* with the Court of Appeals, which however dismissed the case without prejudice to the refiling of the complaint with the labor arbiter. The decision became final and executory on July 30, 1987.

On April 4, 1988, eight months from the finality of the Court of Appeals' decision and two years from the alleged termination of her employment, respondent Labanda filed an illegal dismissal case[14] before the Labor Arbiter on the ground that her dismissal was without lawful cause and without due process. After trial, the labor Arbiter dismissed the labor case ruling that:

> "With the filing of the complaint with the Regional Trial Court, complainant on her own, terminated her employment with the Bank. She was not dismissed by her employer. She prayed for actual and exemplary damages, attorney's fees and costs. In effect, she abandoned her job when she filed a complaint for compensatory damages with the regular court.
>
> x x x
>
> "There is definitely no dismissal, much less illegal dismissal committed by respondents in this case. No denial of due process. Accordingly, no damages could be awarded, nor any relief prayed for in the complaint.

> "WHEREFORE, for utter lack of merit, the complaint against herein respondents, Premiere Development Bank and the three individual bank officials is hereby dismissed.
>
> "SO ORDERED."[15]

On appeal, the NLRC reversed the decision of the Labor Arbiter ruling that private respondents indefinite preventive suspension amounted to constructive dismissal. Citing the Implementing Rules,[16] the NLRC declared that:

> "Based on the above-quoted provisions of law, there was no adherence made by respondent as to confer both validity and regularity in the exercise. The suspension in the first place was misplaced and was not based on complainant's actual commission of culpability, but apparently instituted to force complainant to submit to an inquiry which appears not independent in character. The preventive nature of the suspension appears not present in complainant's case as the proximate cause of the misposting was the negligence of the Bookkeeper and not that of the complainant. In the first place, all the required procedural acts and duties of a Teller ought to be performed in the appreciation of the deposit in question were properly served by the complainant. She has no more control in the mechanical act of posting the transaction in the wrong current account letter, and therefore, there is no valid reason to place her on preventive suspension, the same being the principal duty of Bookkeeper Torio."

The dispositive portion of the NLRC resolution reads:

> "Accordingly, the decision appealed from is hereby reversed and a new one is entered finding the separation of the complainant Labanda illegal and unjust.
>
> "Respondents Premiere Development Bank and Procopio Reyes are hereby ordered to immediately reinstate Labanda to her former position with backwages and other benefits for a period not exceeding three (3) years without, qualifications and deductions computed on the amount of P87,750.00.

"SO ORDERED."[17]

When petitioners' motion for reconsideration was denied by the NLRC, they filed the instant petition for *certiorari* raising the following issues for resolution:

I

Whether or not private respondent Labanda was negligent for the misposting of the deposit of subject check.

II

Whether or not public respondent NLRC gravely erred in ruling that said preventive suspension imposed by petitioners for above-mentioned incident is illegal and violative of private respondent Labanda's rights to due process.

III

Whether or not private respondent Labanda abandoned her job with petitioner bank.[18]

In essence, the above issues boil down to whether or not the filing of a complaint for damages by respondent Labanda against the petitioners amounts to abandonment. Corollarily, petitioners question the findings of the NLRC that there was violation of due process and there was no legal cause in placing respondent Labanda under preventive suspension.

In brief, petitioners claim that there was no illegal dismissal because the severance of employment was brought about by respondent Labanda's own doing when she filed a civil action for damages against them. They also contend that her preventive suspension was justified because she was negligent in the performance of her duty in complete disregard of the Bank's Manual Systems and Procedures which brought about the loss to the bank and that she could not blame Bookkeeper Torio for her fault. They further insist that her preventive

suspension lasted beyond the 30-day period prescribed by law because of her refusal to cooperate with them in the investigation.

Private respondent counters that she should not be blamed for the incident arguing that her non-performance of the end-of-the-day balancing is justified. She presented the affidavit of the former OIC-Manager of petitioner's Taytay Branch.[19] The affidavit stated that the procedure of "On-Us" checks and reconciliation of the end-of-the-day balancing which differ substantially from the authorized procedure were being implemented without petitioner bank's knowledge and approval. Petitioner bank, however, said that the OIC-Manager was suspended because of some irregularities.

The petition is without merit.

Private respondent's preventive suspension is without valid cause since she was outrightly suspended by petitioner. As of the date of her preventive suspension on March 13, 1986 until the date when the last investigation was rescheduled on April 23, 1986, more than 30 days had expired. The NLRC correctly observed that the preventive suspension beyond the maximum period amounted to constructive dismissal, thus:

> "By placing her on indefinite suspension, complainant was unduly deprived of her right to security in employment which is her only means of livelihood. It is very evident that complainant was already placed on constructive dismissal status as of March 13, 1986 when she was placed on preventive suspension indefinitely. The actuation of respondents since no other sound interpretation but a predetermined effort of dismissing complainant from the service in the guise of preventive suspension."[20]

Furthermore, the question of whether or not an employee has abandoned his/her work is a factual issue.[21] It has been consistently held that factual issues are not proper subjects of a petition for *certiorari*, as the power of the Supreme Court to review labor cases is limited to questions of jurisdiction and grave abuse of discretion.[22] Petitioners failed to show that the findings of fact of the NLRC are not

supported by substantial evidence. Hence, such findings must be accorded respect and finality on appeal.

We agree with both the NLRC and the Solicitor General that respondent Labanda did not abandon her job. To constitute abandonment, two elements must concur: (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 being manifested by some overt acts.[23] Abandoning one's job means the deliberate, unjustified refusal of the employee to resume his employment and the burden of proof is on the employer to show a clear and deliberate intent on the part of the employee to discontinue employment.[24] The law, however, does not enumerate what specific overt acts can be considered as strong evidence of the intention to sever the employee-employer relationship. An employee who merely took steps to protest her indefinite suspension and to subsequently file an action for damages, cannot be said to have abandoned her work nor is it indicative of an intention to sever the employer-employee relationship. Her failure to report for work was due to her indefinite suspension. Petitioner's allegation of abandonment is further belied by the fact that private respondent filed a complaint for illegal dismissal. Abandonment of work is inconsistent with the filing of said complaint.[25]

On procedural considerations, respondent NLRC held that there was a violation by petitioner bank of the due process requirements under the Labor Code when it held that we also have not seen any effort of notifying complainant about her interest in her job by sending letters at her home address.[26]

The twin requirements of notice and hearing constitute the essential elements of due process which are set out in Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code in this wise:

> "SEC. 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission(s) constituting the grounds for his dismissal. In cases of abandonment of work, notice shall be served at the worker's last known address.

x x x

> "SEC. 5. Answer and Hearing. — The worker may answer the allegations as stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires.
>
> "SEC. 6. Decision to Dismiss. — The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor.
>
> "SEC. 7. Right to contest dismissal. — Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Arbitration Branch of the Commission.

Granting arguendo that there was abandonment in this case, it nonetheless cannot be denied that notice still has to be served upon the employee sought to be dismissed, as the second sentence of Section 2 of the pertinent implementing rules explicitly requires service thereof at the employee's last known address. While it is conceded that it is the employer's prerogative to terminate the services of an employee, especially when there is a just cause therefor, the requirements of due process cannot be taken lightly. The law does not countenance the arbitrary exercise of such a power or prerogative when it has the effect of undermining the fundamental guarantee of security of tenure in favor of the employee.[27]

Petitioner's allegation that private respondent is guilty of laches is likewise devoid of merit. Laches is the failure for an unreasonable and unexplained length of time to do that which in exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or has declined to assert it.[28] The question of laches is addressed to the sound discretion of the court, and since it is an equitable remedy,

its application is controlled by equitable considerations. It cannot work to defeat justice or to perpetrate fraud and injustice.[29] A party cannot be held guilty of laches when he has not incurred undue delay in the assertion of his rights.[30]

Under the law,[31] an illegal dismissal case is an action predicated on the injury to the rights of the dismissed employee which prescribes in four (4) years. On April 4, 1988 or eight months from the finality of the Court of Appeals' decision and two years from the alleged termination of employment by respondent Labanda, she filed her complaint with the Labor Arbiter which is within the four-year reglementary period. She did not sleep on her rights for an unreasonable length of time.

We note with favor and give imprimatur to the Solicitor General's ratiocination, to wit:

> "The records of this case will show that private respondent Labanda never intended to abandon her job. First, after her indefinite suspension, she requested that the "full-dressed" investigation be done at the quickest time possible, and appealed to petitioner Reyes to consider that she was the breadwinner in the family. Second, she actively fought for her right to security of tenure by filing first with the Regional Trial Court an action for damages, and later with the Labor Arbiter a complaint for illegal dismissal.
>
> Moreover, private respondent Labanda's inability to report for work was not voluntary but was rather the result of her indefinite suspension, which in reality was a constructive dismissal.
>
> It is noticeable that from March 13, 1986, the date when private respondent Labanda was placed on suspension, petitioners, despite their warning that there would resolve the issue of the misposted check even without private respondent Labanda's participation, never decided who was responsible for the act. Indeed, if petitioners believed that private respondent Labanda was really responsible, they would rule squarely on the matter. But they never did, for reasons petitioners never stated.

> Moreover, petitioners never took the initiative to notify private respondent Labanda to report back to work or charge the latter with abandonment of work.
>
> The foregoing considerations indubitably show that private respondent Labanda did not abandon her job but was illegally dismissed from employment without due process of law."[32]

We thus accord respect and finality to the factual findings of respondent NLRC, supported as it is by substantial evidence, that respondent Labanda did not abandon her work. We ruled in Sampang vs. Inciong[33] that in determining the penalty to be imposed on an erring employee, due consideration must be given to the employee's length of service and the number of violations he committed during his employ.

In the case at bench, considering that respondent Labanda has been in the service of petitioner bank for the past 10 years and nowhere in the records does it appear that she committed any previous infractions of company rules and regulations, we find that the decision of respondent NLRC ordering her reinstatement with three-year backwages is just and equitable. Private respondent's dismissal from work would be too severe a penalty under the circumstances.

WHEREFORE, In view of the foregoing, the instant petition is **DISMISSED**. The challenged January 10, 1994 Resolution of the National Labor Relation Commission is hereby **AFFIRMED**.

SO ORDERED.

Regalado, Melo, Puno and Mendoza, *JJ.*, concur.

---

[1] Chairman and President of Petitioner Bank.
[2] Assistant Vice-President and Head of the Gen. Administrative and Personnel Division.
[3] Dated January 14, 1986, Rollo, p. 61.
[4] Executive Vice-President of petitioner Premier Development Bank.
[5] Petition, Rollo, p. 17; 62; 65.
[6] Dated March 10, 1986.

[7] Dated March 11, 1986, addressed to petitioner Renato G. Dionisio, Petition, Annex "G", Rollo, p. 67.
[8] Dated March 16, 1986, Petition, Annex "G", Rollo, p. 68.
[9] Taken by Atty. Isidro Revelo, Asst. VP and Head of the Legal and Collect Division and witnessed by Petitioner Araos, dated April 4, 1986, Petition, Annex "I", Rollo, p. 69.
[10] Petition, Annex "J", p. 71.
[11] Atty. Jose B. Ramos.
[12] Petition, Annex "C", p. 63.
[13] Regional Trial Court of Makati, Branch 136; See Petition, Annex "B", Rollo, p 35.
[14] Petition, Annex "A", Rollo, p. 33.
[15] Labor Arbiter's Decision, June 29, 1990, Petition, Annex "G," Rollo, p. 97.
[16] "SEC. 2. Notice of Dismissal. — Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address.
SEC. 4. Period of Suspension. — No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in 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." (Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code).
[17] NLRC Resolution penned by Hon. Commissioner Domingo H. Zapanta and concurred in by Edna Bonto-Perez and Rogelio I. Rayala, dated January 10, 1994, Rollo, p. 125.
[18] Petition, Rollo, p. 21.
[19] Onoridad E. Aquino.
[20] NLRC Resolution, Rollo, p. 125, 132.
[21] General Textiles Inc. vs. NLRC, G.R. No. 102969, April 4, 1995, 243 SCRA 232, citing Palencia vs. National Labor Relations Commission, 153 SCRA 247 [1987]
[22] PAL Employees Savings and Loan Association, Inc. vs. NLRC, 260 SCRA 758, August 22, 1996, citing Oscar Ledesma and Company vs. NLRC, 246 SCRA 2247, July 13, 1995; Loadstar Shipping Co. vs. Gallo, 229 SCRA 654, February 4, 1994.
[23] Artemio Labor, et al vs. NLRC et. al, G.R, No. 110388, September 14, 1995, 248 SCRA 183.
[24] Reno Foods, Inc. vs. NLRC, 249 SCRA 379.
[25] Santos & Judric Canning Corporation v Inciong, G.R. No. 51494, August 19, 1982, 115 SCRA 887.
[26] NLRC Resolution dated January 10, 1994, Rollo, pp. 125; 131.
[27] De Ysasi III vs. NLRC, G.R. No. 104599, 231 SCRA 173, March 11, 1994.

[28] Cormero vs. CA, 247 SCRA 291, August 14, 1995 citing Marcelino vs. CA, 210 SCRA 444 (1992), Solomon vs. Intermediate Appellate Court, 185 SCRA 352 (1990).
[29] Jimenez vs. Fernandez, 484 SCRA 190, April 6, 1990; Palmera vs. Civil Service Commission, 235 SCRA 87, August 4, 1994.
[30] Nemenzo vs. Sabillano, 25 SCRA 1; Fuentes vs. NLRC, 167 SCRA 767, November 24, 1988.
[31] Civil Code of the Philippines, Article 1146.
[32] Memorandum, Rollo, p. 430.
[33] G.R. No. L-50992, June 19, 1985, 137 SCRA 561.