**SUPREME COURT**
**THIRD DIVISION**

**SHIE JIE CORPORATION/SEASTAR EX-IM CORP., BIEN YANG, MICHAEL YANG and SAMMY YANG,**
***Petitioners,***

***-versus-***

**G.R. No. 153148**
**July 15, 2005**

**NATIONAL FEDERATION OF LABOR, MEMBERS ARNOLD FRANCISCO, NIDA TORIBIO, SORRAYA AMPING, YOLANDA LORENZO, VIVIAN MENDOZA, MERYLENE DELOS REYES, MANUEL FRANCISCO, WILFREDO TORIBIO, YASHER TANING and ERNESTO ETRATA,**
***Respondents.***
**x----------x**

**D E C I S I O N**

**SANDOVAL-GUTIERREZ, *J.*:**

At bar is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated November 29, 2001 and Resolution[2] dated April 9, 2002 rendered by the Court of Appeals in CA-G.R. SP No. 61322.

The instant controversy stemmed from a complaint for unfair labor practice, illegal dismissal and non-payment of benefits, damages and attorney's fees filed with the Labor Arbiter, Regional Branch No. IX, Zamboanga City by the National Federation of Labor, Arnold Francisco, Nida Toribio, Sorraya Amping, Yolanda Lorenzo, Vivian Mendoza, Merylene Delos Reyes, Manuel Francisco, Wilfredo Toribio, Yasher Taning and Ernesto Etrata, respondents, against Shie Jie Corporation/Seastar Ex-Im Corporation, Bien Yang, Michael Yang and Sammy Yang, petitioners, docketed as NLRC Case No. RAB-09-03-00105-99.

Respondents, in their complaint, alleged that they were employed as fish processors by petitioners.[3] On July 20, 1998, Sammy Yang and Michael Yang, petitioners, confronted them about their union activities. Immediately, they were ordered to go home. The next day, petitioners suspended them for one week effective July 22 to 28, 1998 (except respondent Wilfredo Toribio).[4] Upon their return, they were served with a notice of petitioners' memorandum terminating their services for abandonment of work.

Petitioners, in their answer, denied respondents' allegations. They claimed that on July 20, 1998, about 2:45 o'clock in the afternoon, 13 rank-and-file employees staged a walk-out and abandoned their work. Among them were respondents Wilfredo Toribio, Nida Toribio, Yolanda Lorenzo, Sorraya Amping, Vivian Mendoza, Merylene Delos Reyes, Arnold Francisco, and Manuel Francisco. As a consequence, petitioners' business operations were interrupted and paralyzed, prompting them to issue a memorandum suspending respondents for one week or from July 22 to 28, 1998. However, on July 24, 1998, petitioners, in another memorandum, directed them to report for work on July 27, 1998. Instead, respondents Ernesto Etrata, Sorraya Amping, Yasher Taning, Yolanda Lorenzo, Merylene Delos Reyes, and Wilfredo Toribio submitted their resignation letters and quitclaims. Subsequently or on July 28, 1998, petitioners sent respondents Arnold Francisco, Nida Toribio, Vivian Mendoza, and Manuel Francisco a notice terminating their services for abandonment of work.

On August 20, 1999, the Labor Arbiter rendered a Decision finding respondents guilty of unfair labor practice (for dismissing petitioners illegally); and ordering them, jointly and severally, to pay petitioners P843,960.62, thus:

> "WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in the above-entitled case:
>
> 1. Declaring Shie Jie Corporation/Seastar Ex-Im Corporation, Michael Yang and Sammy Yang to have committed unfair labor practice against the complainants for violating the latter's constitutional rights to self-organization;
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> 2. Declaring that complainants Ernesto Etrata, Nida Toribio, Sorraya Amping, Yolanda Lorenzo, Vivian Mendoza, Merylene delos Reyes, Manuel Francisco, Wilfredo Toribio, Yasher Taning and Arnold Francisco were illegally dismissed by the respondents;
>
> 3. Ordering Shie Jie Corporation and/or Seastar Ex-Im Corporation to jointly and severally pay the complainants the claims and awards listed and specified in Annex 'A' forming an integral part hereof, in the total amount of Eight Hundred Forty Three Thousand Nine Hundred Sixty & 62/100 Pesos (P843,960.62), Philippine currency; and
>
> 4. Dismissing the claims for rest day pay and unpaid waiting time, for lack of merit.
>
> SO ORDERED."

On appeal, the National Labor Relations Commission (NLRC) promulgated its Decision dated April 27, 2000 reversing the Labor Arbiter's Decision and dismissing respondents' complaint.

Respondents then filed a motion for reconsideration but was denied by the NLRC in a Resolution dated June 29, 2000. Hence, they filed with the Court of Appeals a petition for certiorari.

On November 29, 2001, the Appellate Court rendered a Decision reversing and setting aside the NLRC's Decision and reinstating the Labor Arbiter's Decision, thus:

> "In resolving this issue we find for the petitioners.
>
> When there is no showing of a clear valid and legal cause for the termination of employment, the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. This burden of proof appropriately lies on the shoulders of the employers and not on the employee because a worker's job has some of the characteristics of property rights and is therefore within the constitutional mantle of protection. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws (Quebec, Sr. vs. NLRC, 301 SCRA 627, 633-634).
>
> Aporopos thereto, Art. 277, par. (b) of the Labor Code mandates in explicit terms that the burden of proving the validity of the termination of employment rests on the employer. Failure to discharge this evidential burden would necessarily mean that the dismissal was not justified, and, therefore, illegal. (Ibid.)
>
> In this regard, the private respondents failed.
>
> To our mind, the alleged resignation of the said six petitioners is incredible. To constitute a resignation, it must be unconditional and with the intent to operate as such. There must be an intention to relinquish a portion of the term of office accompanied by an act of relinquishment (Azcor Manufacturing, Inc. vs. NLRC, 303 SCRA 26, 33). In the instant case, the questioned resignation letters were dated July 27, 1998. If indeed they resigned on the said date then how come 17 days later or on August 13, 1998 they filed their complaints against the private respondents? The same is therefore illogical and contrary to human experience. The filing of the complaints and thereafter their active pursuance of their cases for illegal dismissal negate any intention on their part to

relinquish their job with private respondent Shie Jie Corporation/Seastar Corporation.

The fact that the resignation letters were fully written by the six petitioners themselves (Annex 'A' to Comment in Respondents' Position Paper, Id. at p. 93) is of no moment. Having introduced those resignation letters in evidence, it was incumbent upon the private respondents to prove clearly and convincingly their genuineness and due execution (Azcor Manufacturing, Inc. vs. NLRC, 303 SCRA 26, 34). (Emphasis ours).

This, they failed to do. The fact that the subject resignation letters were all exactly worded lead us to conclude that indeed the said petitioners merely copied the same and that they only accomplished said letters for fear that they would not be regularized in their jobs.

x x x

Regarding the four petitioners who were dismissed for abandonment, we rule that they were likewise illegally dismissed.

x x x

In the instant case, the intent to abandon was not convincingly shown. It is unlikely that the said petitioners abandoned their jobs considering that they have worked with the private respondent company for 4-6 years with the exception of petitioner Arnold Francisco, who started to work with the company only in November 1997.

Moreover, well-settled is the rule that the filing of the complaint for illegal dismissal negates the fact that an employee abandoned his work for it is illogical for one to abandon his employment and then thereafter file a complaint for illegal dismissal. The petitioners in immediately filing the complaints for illegal dismissal clearly indicated that they have not given up their work.

> Furthermore, it must be stressed that abandonment of work does not per se severe 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. If the employer does not follow this procedure, there is illegal dismissal (De Paul/King Philip Customs Tailor vs. NLRC, 304 SCRA 448, 458-459). If indeed they abandoned their work, then the private respondents should have served the notices dated July 28, 1998 (Annexes 'C', 'D', 'E', and 'F' to the Position Paper of the Respondents, pp. 71-74) to the last known addresses of the petitioners in accordance with the rules.
>
> x x x
>
> WHEREFORE, the decision of the public respondent is hereby REVERSED and SET ASIDE. The decision of the labor arbiter is REINSTATED with the following modifications:
>
> 1. The petitioners are entitled to the payment of full backwages; 13th month pay and service incentive leave subject to statutory limitations; and
>
> 2. Petitioner Wilfredo Toribio's monetary claim should be corrected.
>
> SO ORDERED."

On December 21, 2001, petitioners filed a motion for reconsideration, but was denied by the Appellate Court in a Resolution dated April 9, 2002.

Hence, this petition for review on certiorari.

In this petition, the basic issue posed is whether the Court of Appeals erred in holding that petitioners failed to prove by substantial evidence that respondents voluntarily resigned and/or abandoned their work.

Voluntary resignation is defined as the act of an employee, who finds himself in a situation in which he believes that personal reasons cannot be sacrificed in favor of the exigency of the service; thus, he has no other choice but to disassociate himself from his employment.[5] Acceptance of a resignation tendered by an employee is necessary to make the resignation effective.[6] No such acceptance, however, was shown in the instant case.

Moreover, the fact that respondents immediately filed a complaint for illegal dismissal against petitioners and repudiated their alleged resignation completely negated petitioners' claim that they voluntarily resigned.

In Molave Tours Corporation vs. National Labor Relations Commission,[7] we held:

> "By vigorously pursuing the litigation of his action against petitioner, private respondent clearly manifested that he has no intention of relinquishing his employment, which act is wholly incompatible to petitioner's assertion that he voluntarily resigned."

Neither do we find any indication that respondents have shown by some overt acts their intention to sever their employment in petitioner company.

In Samarca vs. Arc-Men Industries, Inc.,[8] we ruled:

> "X x x. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.
>
> x x x
>
> Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and

unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.

Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work. X x x."

In this case, respondents did not report back for work on July 27, 1998 because they were suspended by petitioners for one week effective July 22 to 28, 1998. Verily, their absence cannot be considered abandonment of work, a just cause for termination of employment.

In fine, considering that respondents did not abandon their work, their dismissal from the service is illegal.

**WHEREFORE**, the petition is **DENIED**. The assailed Decision dated November 29, 2001 and Resolution dated April 9, 2002 of the Court of Appeals in CA-G.R. SP No. 61322 are hereby **AFFIRMED**. Costs against petitioners.

**SO ORDERED.**

**PANGANIBAN, *J.*, *(Chairman)*, Corona, Carpio Morales, and GARCIA, *JJ.*, concur.**

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[1] Penned by Justice Delilah Vidallon-Magtolis, and concurred in by Associate Justice Candido V. Rivera (retired) and Associate Justice Juan Q. Enriquez, Jr., Annex "A" of the Petition, Rollo at 25-38.

[2] Annex "B", id. at 40.

[3]

| | Names of Employees | Dates Hired | Daily Wage Rates *(as of May 23, 1998)* |
|---|---|---|---|
| (1) | Ernesto Etrata | March 15, 1992 | P142.00 |
| (2) | Nida Toribio | June 19, 1992 | P142.00 |
| (3) | Sorraya Amping | August 1, 1992 | P142.00 |
| (4) | Yolanda Lorenzo | September 14, 1992 | P142.00 |
| (5) | Vivian Mendoza | August 3, 1992 | P142.00 |
| (6) | Merylene delos Reyes | September 20, 1992 | P142.00 |
| (7) | Manuel Francisco | January 4, 1994 | P112.00 |
| (8) | Wilfredo Toribio | June 24, 1994 | P162.00 |
| (9) | Yasher Taning | August 6, 1992 | P142.00 |

(10) Arnold Francisco November 8, 1997 P 96.00

[4] Respondent Wilfredo Toribio was suspended for two weeks or from July 22 to August 4, 1998.

[5] Alfaro vs. Court of Appeals, G.R. No. 140812, August 28, 2001, 363 SCRA 799, 808, citing Philippine Wireless, Inc. (Pocketbell) vs. NLRC, 310 SCRA 653 (1999); Valdez vs. NLRC, 286 SCRA 87 (1998); and Habana vs. NLRC, 298 SCRA 537 (1998).

[6] Reyes vs. Court of Appeals, G.R. No. 154448, August 15, 2003, 409 SCRA 267, 278-279, citing Indophil Acrylic MFG Corporation vs. NLRC, 226 SCRA 723 (1993).

[7] G.R. No. 112909, November 24, 1995, 250 SCRA 325, 330.

[8] G.R. No. 146118, October 8, 2003, 413 SCRA 162, 168-169, cited in Hodieng Concrete Products vs. Dante Emilia, G.R. No. 149180, February 14, 2005 at 6.