SUPREME COURT
THIRD DIVISION

JOSE SUAN,
***Petitioner*,**

-versus-

G.R. No. 141441
June 19, 2001

NATIONAL LABOR RELATIONS COMMISSION, IRMA FISHING AND TRADING INC., ROBERTO DEL ROSARIO and EMILIANO ORIPAYPAY,
***Respondents*.**
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D E C I S I O N

GONZAGA-REYES, *J.*:

This is a Petition for Review on *Certiorari* filed by petitioner Jose Suan seeking to annul and set aside the Decision dated August 17, 1999 of the respondent Court of Appeals[1] which affirmed the Decision of the NLRC and the Labor Arbiter dismissing petitioner's illegal dismissal case against private respondents and the resolution denying petitioner's motion for reconsideration.[2]

Petitioner Jose Suan had been employed as master fisherman assigned on board a catcher vessel of the private respondent corporation Irma Fishing and Trading, Inc., with Roberto del Rosario

and Emiliano Oripaypay as its President and Personnel Manager, respectively. Sometime in the later part of November, 1996, petitioner suffered a stroke while on board the vessel and had to disembark. He applied for and was granted sick leave from December 2, 1996 to May 30, 1997 to enable him to recuperate.

On May 30, 1997, petitioner reported for work but respondents allegedly refused to accept him back and was told to secure a medical certificate attesting to his physical condition; petitioner returned with a medical certificate signed by a certain Dr. Rolando S. Punzalan of Clinica Punzalan, stating that he was fit to work, to wit:

> "Above patient was diagnosed to have Hypertension III (Severe) last 4/30/97. He was also found to have Ischmic Heart Disease. He was given appropriate medication and his HPN (hypertension) has been downgraded to HPN I (Mild). Although he has to take medication, he can resume working or (not readable)."

but private respondent Oripaypay allegedly refused to accept him back and told him that he will just be paid his separation pay of P40,000 as he was already old and sickly; that when he reported for work on July 10, 1997, he was again told to just accept his separation pay of P35,000; that realizing that it was useless to continue reporting for work, petitioner filed the case for illegal dismissal on July 14, 1997.

Respondents denied having dismissed petitioner from his employment. They claim that petitioner filed sick leave from December 2, 1996 up to April 5, 1997 and then filed vacation leave applications from April 5, 1997 to May 4, 1997 and later extended his leave until July 10, 1997. Petitioner went to the respondent office on July 10, 1997 and informed respondent Oripaypay of his intention to report for work and presented a medical certificate where it was stated that he was fit to work; that when respondent Oripaypay noticed petitioner's physical appearance, i.e., his left arm down to his left limb seemed to be paralyzed, he asked the latter if he was really fit to work to which petitioner allegedly said that "hindi ko pa kaya kung maari, sa "tabi" muna ako magtatrabaho"; that respondent Oripaypay told him that the matter will be referred to the management since

there was no clear policy regarding a transfer of assignment from "laot" to "tabi"; that due to petitioner's apparent ill health and inability to perform his work, private respondent Oripaypay suggested that petitioner accept payment of separation pay with the company paying him one (½) month salary for every year of service, to which suggestion petitioner allegedly responded that he was willing to accept provided he will be paid one half month salary for every year of service due to the fact that he was already 15 years in the service; that respondent Oripaypay advised petitioner to extend his vacation leave up to August 10, 1997 while waiting for the answer from the higher management on his request for transfer of assignment to which petitioner allegedly agreed. However, after that meeting, petitioner filed the instant case.

On July 14, 1997, petitioner filed a complaint with the Department of Labor and Employment for illegal dismissal, reinstatement, back wages, payment of holiday pay, overtime pay, damages and attorney's fees against the private respondents.[3]

During the pendency of this case with the labor arbiter, private respondent Oripaypay sent a letter dated August 16, 1997 to petitioner declaring him as absent without leave (AWOL) for his failure to report to the personnel office of the respondent corporation after his extended leave expired on August 10, 1997 and was required to explain why no disciplinary action should be taken against him for his absence.

Petitioner admitted having received private respondent Oripay pay's letter but claimed that such letter was an afterthought to counter-act his illegal dismissal complaint.

On March 31, 1998, a decision was rendered by Labor Arbiter Melquiades Sol D. Del Rosario declaring that petitioner was not dismissed from employment and gave respondents the option either to reinstate the petitioner without backwages or pay separation pay of P30,030.00.[4]

Dissatisfied, petitioner appealed to the National Labor Relations Commission (NLRC)[5] which affirmed the decision of the labor arbiter and dismissed the appeal for lack of merit.[6]

Aggrieved, petitioner filed a petition for *certiorari*[7] under Rule 65 with the respondent Court of Appeals alleging that the public respondents committed grave abuse of discretion in declaring that he was not dismissed by private respondents and not entitled to backwages.

On August 17, 1999, the respondent Court of Appeals affirmed the NLRC decision and dismissed the petition. Petitioner's motion for reconsideration was also denied in a resolution dated January 10, 2000.

Petitioner is now before us by way of a petition for review on *certiorari* alleging that the respondent court erred (a) in not ruling that the public respondents NLRC overlooked certain facts which would have altered the decision and (b) in not finding that the petitioner was illegally dismissed.

Petitioner claims that he was dismissed by respondents without notice and hearing and without any valid reason; that when he reported back to work after his illness, he was verbally told by his superior that he was already dismissed from work because he was already old and sickly and was offered separation pay. He alleges that his medical certificate stated that he was already fit to work and yet respondents refused to accept him back; that he never asked for a transfer from "laot" to "tabi".

The petition is not impressed with merit.

We find that petitioner is essentially raising a factual issue, i.e., whether petitioner was illegally dismissed from his employment by the private respondents. In petitions for review of decisions of the Court of Appeals, the jurisdiction of the Supreme Court is confined to a review of questions of law, except where the findings of fact are not supported by the record or are so glaringly erroneous as to constitute a serious abuse of discretion.[8] It is a settled ruling that the Supreme Court is not a trier of facts.[9]

The arguments herein raised are mere rehash of petitioner's contentions in his memorandum filed with the NLRC and in his

petition for *certiorari* filed with the respondent court. We find no cogent reason to disturb the findings of the respondent Court of Appeals that no grave abuse of discretion was committed by the respondent NLRC and Labor Arbiter in finding and declaring that petitioner was not dismissed by the private respondent and hence not entitled to backwages. We adopt the conclusion arrived at by the Labor Arbiter which was substantially adopted by the respondent Court of Appeals as follows:

> "Anent the issue of illegal dismissal, the records do not have any notice of termination issued by respondents to complainant even when he exceeded the six (6) months period that the latter used in recuperating from his stroke. Complainant's stance is that he wants to report for work because he is attested to be fit by the doctor who issued it. A close scrutiny of the medical certification issued by Dr. Juan Punzalan attest to the fact that complainant has Hypertension III (severe) and Ischemic Heart Disease. At the time of the issuance of the medical certificate on June 7, 1997, complainant was still certified to be sick with Hypertension, although downgraded to 1 (mild), but must have proper medication to resume working. Significantly, nothing was mentioned in the medical certificate about his heart ailment which is a dangerous ailment. Once afflicted with a heart disease, it cannot be cured. There could be maintenance tablets but the ailment is always there and may deteriorate under strenuous conditions. Moreover, this Arbitration Branch can take judicial notice that a person who suffers a stroke, wherein part of his body is paralyzed will no longer get back his strength in too short a time. It will take a year or more before he can recover his normal stride, and in the case of complainant, when he was reporting for work, his recuperative period was just a little over six (6) months. His appearance therefore, before the personnel manager on June 10, 1997 could not deceive the latter because the manager noticed that complainant's left arm down to his left limb seemed to be paralyzed. And this is usually the case since the heart is inclined more to the left portion of the body of a person.
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> Besides, the work of a master fisherman is a strenuous one where brute physical strength is needed and involved. And

definitely, complainant has not completely regained his lost physical strength. It would not be far-fetched to imagine that had complainant been allowed to return to his old job, either of two things would have happened to him on account of his heart condition, namely: a) He would again suffer a more serious severe stroke that would lead to paralysis or b) a stroke that may lead to his death.

Clearly, therefore, fully aware of his debilitated condition, his request for a transfer of work from the "laot" to "tabi" is credible. But at the time that complainant made the request on July 10, 1997 until August 10, 1997, no decision by higher management had yet been made. On August 10, 1997, management decided to send him to his former work as evidenced by the letter dated August 16, 1997, however, the instant case had already been filed.

Since there has been no dismissal of complainant, based on the records, then complainant may either be reinstated without backwages by respondents or paid in lieu of reinstatement his separation pay at one (1) month's pay or one-half (½) month's pay per year of service whichever is higher, a fraction of six (6) months being considered as one (1) whole year pursuant to Article 294 of the Labor Code. Said provision reads:

> 'An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or prejudicial to his health as well as to the health of his co-employees provided that he is paid separation pay equivalent to at least one (1) month salary or to one half (½) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.'"

We are convinced that petitioner's filing of illegal dismissal case against private respondents has no basis considering that at the time he filed his complaint on July 14, 1997, he was supposedly still on an extended leave, i.e., from July 10, 1997 to August 10, 1997, authorized by private respondent Oripaypay while petitioner was waiting for the

action of the management on his request for transfer from "laot" to "tabi" and to be able to regain his failing health. We note that the medical certificate presented by petitioner stated that he can resume his work but nowhere was it stated that petitioner was already fit to resume working as master fisherman which would require him to be on board a fishing vessel most of the time. We affirm the respondent court's conclusion that private respondents have presented substantial evidence to show that indeed petitioner had asked for a transfer of work assignment from "laot" to "tabi"; thus the respondent court stated:

> "Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion (Section 5, Rule 133, Revised Rules of Evidence.) In the present recourse, the Labor Arbiter relied not only on the evidence proffered by the Private Respondents but also on the Medical Certificate issued by Dr. Juan Punzalan, which buttressed their stance. There is no debating the facts that Petitioner suffered a severe hypertension in late November, 1996 and his ailment was so grave that Petitioner had to disembark from the vessel and seek medical treatment and medication. Indeed, the Petitioner applied for and was granted sick leaves from (sic) until May 30, 1997 or for a period of six (6) months. While it may be true that, as of June 7, 1997, Petitioner's illness may have improved considerably because his hypertension had been downgraded to mild hypertension, however, same did not discount the possibility that, as claimed by the Private Respondents, the Petitioner requested Private respondent Oripaypay that he be reassigned from the "laot" to "tabi". Besides, the Petitioner was also suffering from ischemic heart disease. The Petitioner may have been concerned that if he was assigned to a vessel plying the high seas, his hypertension might recur without the possibility of the Petitioner receiving immediate medical examination and treatment and which may prove fatal. On the other hand, if the Petitioner was reassigned on board a vessel plying near or relatively nearer the shore, the Petitioner may still receive medical examination and treatment within a relatively shorter time lapse. We cannot grudge Private Respondent Oripaypay in referring Petitioner's request to management of Private

> respondent Corporation for resolution considering that there has been as yet no clear-cut policy applicable to Petitioner's request."

Petitioner next alleges that private respondent Oripay pay's letter sent to him almost one month after the filing of the complaint for illegal dismissal which required him to explain his absence without leave (AWOL) when his extended leave expired was a mere ploy by private respondent designed to shift the burden to him; it is claimed that the letter did not erase respondents' liability, citing the case of Ranara vs. NLRC[10] wherein the Court stated:

> "The fact that his employer later made an offer to re-employ him did not cure the vice of his early arbitrary dismissal. The wrong had been committed and the wrong done. Notably, it was only after the complaint had been filed that it occurred to Chang, in a belated gesture of good will, to invite Ranara back to work in his store. Chang's sincerity is suspect. We doubt if his offer would have been made if Ranara had not complained against him. At any rate, sincere or not, the offer of reinstatement could not correct the earlier illegal dismissal of the petitioner. The private respondents incurred liability under the Labor Code from the moment Ranara was illegally dismissed and the liability did not abate as a result of Chang's repentance."

We are not persuaded.

The factual backdrop of the Ranara case is not the same as in the instant case. In the Ranara case, petitioner Carlos Ranara was employed as driver of the respondent Oro Union Construction Supply when he was dismissed by the secretary of another private respondent Jimmy Ting Chang. Although respondent Chang denied such dismissal claiming that he was not around and did not authorize his secretary to dismiss petitioner, this Court, however, found that petitioner had been illegally dismissed because the secretary would not have presumed to dismiss petitioner if she had not been authorized to do so, considering the seriousness of the act and that neither Chang's mother, who was the officer-in-charge in his absence, nor Chang himself upon his return, reversed the secretary's act and

reinstated petitioner. This Court went further by saying that Chang even accepted Ranara's replacement without question which showed that the replacement had been employed earlier, in advance of Ranara's dismissal; thus, this Court concluded that the offer to re-employ Ranara did not cure the vice of his earlier arbitrary dismissal as the wrong had been committed and the harm done. In contrast to the instant case, petitioner Jose Suan was not dismissed but was only asked to go on extended leave from July 10 to August 10, 1997 because when petitioner reported for work on July 10, 1997, after more than six months of sick leave, respondent Oripaypay noticed that petitioner's left arm down to his left limb was paralyzed, thus Oripaypay could readily see that petitioner was not yet ready and physically well to perform his usual assignment as master fisherman. However, after petitioner's extended leave expired he did not return to work which prompted private respondent Oripaypay to send him a letter dated August 16, 1997 requiring him to explain why no disciplinary action should be taken against him for his absence without official leave. The letter is hereby quoted as follows:[11]

> "August 16, 1997
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> MR. JOSE T. SUAN
> Blk. 31, Lot 13, 4th Street,
> Urban Bliss Tanong, Malabon,
> Metro Manila
>
> Ginoong Suan,
>
> Ipinapaalam sa iyo na ikaw ay tinuturing na Absent Without Official Leave o AWOL dahilan sa hindi mo pag-report sa trabaho mulang matapos ang extension ng iyong sick leave noong Agosto 10, 1997.
>
> Sa dahilang ito, ang lantsang-CARRIER na sana ay masasakyan mo papunta sa iyong destino ay lubhang naabala dahil sa paghihintay sa iyo. Hindi lingid sa iyong kaalaman na ang nasabing Carrier ay may kargang YELO, na alam mong natutunaw at mahalaga sa preserbasyon ng isda; KRUDO, na hinihintay ng mga lantsa sa laot na gagamitin sa pamamalakaya; pati na, ang mga SUPPLIES at SPARE PARTS

na alam mo ding mahalaga sa mga tao at mga lantsang naghihintay sa laot. Ang naging resulta ay isang malaking kawalan ng oportunidad na makahuli ng isda ang mga lantsang naghihintay sa loob ng dalawang gabi.

Sa pagkatanggap mo ng notisyang ito, ikaw ay inaatasang magreport at magpaliwanag sa Personnel Office kung bakit hindi ka dapat patawan ng kaukulang disiplina, ayon sa regulasyon ng kompanya, sa ginawang mong hindi pag-report sa iyong trabaho sa itinakdang petsa.

Para sa iyong patnubay at katuparan.

Emiliano B. Oripaypay

Personnel Manager"

The above-quoted letter clearly shows that respondent Oripaypay was waiting for the return of petitioner unlike in the Ranara case, wherein petitioner Ranara, upon reporting for work, was surprised to find some other person handling the vehicle previously assigned to him, thus confirming his dismissal without proper notice.

WHEREFORE, the Decision of the Court of Appeals is hereby **AFFIRMED.**

SO ORDERED.

Melo, Vitug, Panganiban and Sandoval-Gutierrez, JJ ., concur.

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[1] Penned by Justice Romeo J. Callejo, Sr. and concurred in by Justices Quirino D. Abad Santos, Jr. and Mariano M. Umali; Rollo, pp. 17-23.
[2] Rollo, p. 25.
[3] Docketed as NLRC NCR Case No. 00-07-04965-97.
[4] Rollo, pp. 27-35.
[5] Docketed as NLRC CA No. 015340-98.
[6] Rollo, pp. 38-45; Decision dated September 30, 1998 penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo.

[7] Docketed as CA-GR SP No. 51867.
[8] Fule vs. CA, 286 SCRA 698 citing BA Finance Corp. vs. CA, 229 SCRA 566.
[9] Ilocos Sur Electric Cooperative, Inc. vs. NLRC, 241 SCRA 36; Union Insurance Society of Canton vs. Court of Appeals, 260 SCRA 431.
[10] 212 SCRA 631.
[11] CA Rollo, p. 59.