Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

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| **JOHN L. BORJA AND AUBREY L. BORJA/ DONG JUAN,**<br>Petitioners,<br><br>- versus -<br><br>**RANDY B. MIÑOZA and ALAINE S. BANDALAN,**<br>Respondents. | **G.R. No. 218384**<br><br>Present:<br><br>SERENO, *C.J.*, Chairperson,<br>LEONARDO-DE CASTRO,<br>DEL CASTILLO,<br>PERLAS-BERNABE, and<br>CAGUIOA, *JJ.*<br><br>Promulgated:<br>JUL 03 2017 |

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

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 29, 2014 and the Resolution[3] dated May 13, 2015 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 07103, which set aside the Decision[4] dated March 30, 2012 and the Resolution[5] dated June 29, 2012 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-12-000893-2011 (RAB Case No. VII-05-0827-2011) and, thereby, reinstated the Decision[6] dated September 7, 2011 of the Labor Arbiter, finding respondents Randy B. Miñoza (Miñoza) and Alaine S. Bandalan (Bandalan; collectively, respondents) to have been constructively dismissed and entitled to backwages, separation pay, 13th month pay, service incentive leave pay, moral and exemplary damages, and attorney's fees.

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1 *Rollo*, pp. 9-30.
2 Id. at 35-51. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Edgardo L. Delos Santos and Marilyn B. Lagura-Yap concurring.
3 Id. at 54-56.
4 Id. at 182-197A. Penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioner Julie C. Rendoque concurring.
5 Id. at 198-199.
6 Id. at 128-145. Penned by Labor Arbiter Emiliano C. Tiongco, Jr.

## The Facts

Respondents were employed as cooks of Dong Juan, a restaurant owned and operated by petitioners John L. Borja (John) and Aubrey L. Borja (Aubrey; collectively, petitioners) located in Cebu City. Miñoza and Bandalan were respectively hired on September 23, 2009 and September 14, 2010.[7]

Respondents alleged that on April 1, 2011, a Friday, Miñoza was absent from work. Because the company implements a "double-absent" policy, which considers an employee absent for two (2) days without pay if he/she incurs an absence on a Friday, Saturday, or Sunday, the busiest days for the restaurant, he chose not to report for work the next day, or on April 2, 2011.[8]

On the other hand, Bandalan reported for work on April 2, 2011, a Saturday, but was later advised by John to go home and take a rest, with which he complied. Bandalan discovered thereafter that John was angry at him for having drinking sessions after work on April 1, 2011. Because of the "double-absent" policy, Bandalan purposely absented himself from work on April 3, 2011.[9]

On April 3, 2011, at around ten o' clock in the morning, the company called a meeting of its employees, including respondents. When asked about his absence on April 1, 2011, Miñoza explained that he had an argument with his wife, who had been demanding for his payslips. As for Bandalan, who managed to be present at the meeting despite his intention to be absent from work, he answered that it would be pointless to report for work that day, as he would not be paid anyway, considering that he was not allowed to work the day before.[10]

The following day, or on April 4, 2011, petitioners summoned respondents once again. Angrily, John accused respondents of planning to extort money from the company and told them that if they no longer wish to work, they should resign. He then gave them blank sheets of paper and pens and ordered them to write their own resignation letters. Respondents replied that they will decide the next day.[11]

On April 5, 2011, the day after, respondents alleged that they reported for work but were barred from entering the restaurant. Instead, petitioners brought them to another restaurant where they were forced to receive

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7 See id. at 36.
8 See id. at 37.
9 Id.
10 Id.
11 Id. at 37-38.

separate memoranda asking them to justify their unexplained absences. Thereat, a certain "Mark" was present, who appeared to respondents as an intimidating and ominous person.[12]

When respondents reported for work on April 6, 2011, they were purportedly refused entry once more. At closing time that day, respondents were invited to go inside the restaurant and were subjected to an on-the-spot drug test, the results of which yielded negative. To his humiliation, Bandalan had to undergo a second test, which also came out negative.[13]

Thereafter, when Bandalan went outside to buy food, he saw "Mark" and a group of unfamiliar people standing in a dark area near the restaurant. Later, when he and Miñoza were on their way home, they heard some people, presumably "Mark" and his hired goons, shouting at them, "*[y]ou fools, do not come back here as something bad will happen to you.*"[14]

Out of fear, respondents no longer reported for work the following day, April 7, 2011, and instead, filed a complaint[15] for illegal dismissal, with claim for monetary benefits, against petitioners, docketed as RAB-VII-05-0827-2011.[16]

In defense, petitioners explained that the "double-absent" policy was actually proposed by respondents themselves, in reaction to the absences incurred by one of their co-employees, Josephus Sablada (Sablada), who failed to report for work on two (2) busy weekends. On March 14, 2011, after explaining the "double-absent" policy to the restaurant employees, who were all amenable thereto, petitioners enforced the said policy.[17]

Petitioners likewise claimed that from April 1 to 3, 2011, Miñoza failed to report for work. Thus, in a memorandum[18] dated April 4, 2011, Aubrey sought an explanation for his absences. Miñoza justified his absence on April 1 by explaining that he had a quarrel with his wife. The following day, he opted not to report for work anymore on account of the "double-absent" policy. On April 3, he claimed that he was allowed to skip work.[19]

As for Bandalan, petitioners averred that he was absent on April 3, 2011, a Sunday, and when required[20] to explain, he clarified that he opted

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12 See id. at 38.
13 See id.
14 Id.
15 Respondents' complaint was subsequently amended on June 15, 2011; id. at 103-104, including dorsal portions.
16 See id. at 39.
17 See id.
18 Id. at 66.
19 See letter dated April 6, 2011; id. at 67. See also id. at 39.
20 See memorandum dated April 4, 2011; id. at 72.

not to report for work anymore because he will no longer receive any salary for that day on account of the "double-absent" policy, having been absent on March 25, 2011 and asked to go home on April 2, 2011.[21]

On April 4, 2011, when respondents were summoned for a meeting, they expressed their intention to resign. However, the following day, they arrived at the restaurant and insisted that they wanted to work. To maintain order in the restaurant and to keep the other employees from being harassed, petitioners called on a certain Mark Opura (Opura) to stay in the restaurant and keep watch.[22]

Petitioners further claimed that respondents worked undertime on April 5, 2011. Then, Miñoza stopped reporting for work on April 7, 2011, while Bandalan ceased working on April 8, 2011.[23] Thus, Aubrey sent separate memoranda[24] to respondents on April 18, 2011 requiring them to explain their absence without official leave (AWOL), which they both failed to do. Subsequently, they were dismissed from employment.[25]

## The Labor Arbiter's Ruling

In a Decision[26] dated September 7, 2011, the Labor Arbiter (LA) found respondents to have been illegally and constructively dismissed and ordered petitioners to pay them the total amount of ₱169,077.20,[27] inclusive of backwages, separation pay, 13th month pay, service incentive leave pay, moral and exemplary damages, and attorney's fees.[28]

Giving more credence to respondents' version of the facts, the LA found that Miñoza and Bandalan were placed in a difficult situation and left with no choice but to leave their employment on April 7 and 8, 2011, respectively.[29] Respondents were brought to another restaurant on April 5, 2011 merely for the purpose of handing to them the memoranda despite evidence showing that they reported for work at the restaurant on said day. Thereat, they first encountered Opura, who they claimed was a dubious and intimidating person. Likewise, respondents were singled out to undergo an on-the-spot drug test, which yielded negative results. Respondents also decided to forego their employment when they were threatened by Opura's group.[30] As such, the LA found that respondents were able to establish the

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21 See letter dated April 6, 2011; id. at 73. See also id. at 40.
22 Id. at 40.
23 Id.
24 Id. at 70 and 76.
25 See separate memoranda dated May 2, 2011; id. at 71 and 77.
26 Id. at 128-145.
27 See computation of monetary awards, id. at 146-147.
28 Id. at 144-145.
29 Id. at 139.
30 See id. at 139-140.

existence of threats to their security and safety, which were the bases for the finding of constructive dismissal. [31]

Furthermore, the LA rejected the assertion that respondents went on AWOL beginning April 7, 2011 for Miñoza and April 8, 2011 for Bandalan, considering that they already filed the instant complaint on April 7, 2011. As such, the memoranda dated April 18, 2011, which required them to justify their unexplained absences was a mere afterthought.[32]

Having been constructively dismissed, respondents are entitled to reinstatement to their former positions with backwages from April 7, 2011. However, as reinstatement is no longer feasible, the LA instead awarded separation pay equivalent to one month pay for every year of service with a fraction of at least six (6) months service to be credited as a full year service.[33]

Likewise, the LA awarded 13th month pay and service incentive leave pay to which respondents were entitled but were not paid. It also awarded moral and exemplary damages on the ground that petitioners created a hostile work environment that was detrimental to respondents' security of tenure, as well as attorney's fees, since respondents were compelled to engage the services of counsel to protect their rights.[34] As to the other monetary claims sought by respondents, the same were dismissed for lack of basis.[35]

Dissatisfied, petitioners appealed[36] to the NLRC, docketed as NLRC Case No. VAC-12-000893-2011.

**The NLRC's Ruling**

In a Decision[37] dated March 30, 2012, the NLRC reversed and set aside the LA's Decision and entered a new one finding neither constructive dismissal nor abandonment in this case.[38] Accordingly, it directed petitioners to pay: (*a*) Miñoza the amounts of ₱14,820.00 as separation pay, ₱10,983.05 as 13th month pay, and ₱2,194.50 as service incentive leave pay; and (*b*) Bandalan the amounts of ₱7,410.00 as separation pay, and ₱4,199.00 as 13th month pay.[39]

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31 Id. at 142.
32 See id. at 141-142.
33 Id. at 143.
34 See id. at 144.
35 See id. at 143.
36 See Notice of Appeal and Memorandum of Appeal dated November 21, 2011; id. at 148-161.
37 Id. at 182-197A.
38 Id. at 195.
39 See id. at 196-197.

The NLRC found that respondents were not constructively dismissed on the basis of the following circumstances: *first*, there was nothing wrong or irregular for an employer to hold meetings with its employees if only to monitor their performance or allow them an avenue to air their grievances; *second*, there was likewise nothing wrong if an employer issues memoranda to its employees, as a means of exercising control over them; and *third*, similarly, the conduct of a drug test is within the prerogative of the employer in order to ensure that its employees are fit to remain in its employ. The NLRC stressed that petitioners also have a business interest to protect and recognized that employers have free rein to regulate all aspects of employment including the prerogative to instill discipline and to impose penalties on errant employees.[40]

As regards respondents' allegations that they were threatened, intimidated, and barred entry into the restaurant, the NLRC rejected them for lack of substantiation.[41] The presence of Opura was a preventive measure that the NLRC found justified to avert possible harassment in the work premises which cannot be construed as a means to specifically threaten or intimidate respondents. The NLRC noted the evidence[42] presented by petitioners that Bandalan had previously burned and threatened a co-employee; hence, petitioners cannot be blamed for wanting to ensure a safe and orderly work place. Thus, the NLRC concluded that Opura's presence did not create a hostile work environment for respondents; neither was it proven that they hurled threats against respondents, having been rebutted by evidence presented by petitioners.[43] Perforce, no constructive dismissal transpired in this case.

However, the NLRC held that respondents did not go on AWOL beginning April 7, 2011. Citing jurisprudence, the NLRC ruled that a charge of abandonment is inconsistent with the filing of a complaint for constructive dismissal. Moreover, respondents' prayer for reinstatement belies petitioners' claim of abandonment.[44]

Considering that neither constructive dismissal nor abandonment existed in this case, the NLRC held that reinstatement is in order. However, under the doctrine of strained relations, separation pay may be awarded in lieu of reinstatement, as in this case.[45]

Finally, finding the absence of constructive dismissal, the NLRC deleted the award of moral and exemplary damages and attorney's fees.

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40 See id. at 193.
41 See id. at 193-194.
42 See various affidavits; id. at 78-82.
43 See id. at 194.
44 See id. at 195.
45 See id. at 195-196.

However, it affirmed the awards for 13th month pay for both respondents and service incentive leave pay for Miñoza alone.[46]

Respondents moved for reconsideration,[47] which the NLRC denied in a Resolution[48] dated June 29, 2012; hence, the recourse to the CA *via* petition for *certiorari*,[49] docketed as CA-G.R. SP No. 07103.

**The CA's Ruling**

In a Decision[50] dated August 29, 2014, the CA set aside the NLRC issuances and reinstated the LA's Decision, finding respondents to have been constructively dismissed, with the modification imposing interest at the rate of six percent (6%) per annum on the monetary awards granted in respondents' favor, computed from the finality of the CA Decision until full payment.[51]

Contrary to the NLRC's findings, the CA held that petitioners made employment unbearable for respondents on account of the following circumstances: *first*, petitioners formulated and implemented a "double-absent" policy, which is offensive to sound labor-related management prerogative and actually deters employees from reporting to work;[52] *second*, respondents did not resign or go on AWOL – instead, they reported for work, showing their intention to keep their employment;[53] and *finally*, the hiring of Opura caused a hostile and antagonistic environment for respondents.[54]

Petitioners' motion for reconsideration[55] was denied in a Resolution[56] dated May 13, 2015; hence, this petition.

**The Issue Before the Court**

The issue to be resolved by the Court is whether or not the CA erred in setting aside the NLRC's issuances and reinstating the LA's Decision, which found respondents to have been constructively dismissed.

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46 Id. at 196-197.
47 Not attached to the *rollo*.
48 *Rollo*, pp. 198-199.
49 Dated September 28, 2012. Id. at 201-229.
50 Id. at 35-51.
51 Id. at 51.
52 See id. at 47-48.
53 See id. at 49.
54 See id.
55 Not attached to the *rollo*.
56 *Rollo*, pp. 54-56.

## The Court's Ruling

The petition has merit.

Well-settled is the rule in this jurisdiction that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the appellate court.[57] The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court.[58] The rule, however, is not without exception. In *New City Builders, Inc. v. NLRC,*[59] the Court recognized the following exceptions to the general rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[60]

The exception, rather than the general rule, applies in the present case. When the findings of fact of the CA are contrary to those of the NLRC, which findings also differ from those of the LA, the Court retains its authority to pass upon the evidence and, perforce, make its own factual findings based thereon.[61]

In this case, the CA, concurring with the LA, found that respondents were constructively dismissed. The Court is not convinced.

Constructive dismissal exists when an act of clear discrimination, insensibility, or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment,[62] or when there is cessation of work because continued

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57 *AMA Computer College-East Rizal v. Ignacio,* 608 Phil. 436, 454 (2009).

58 *Nicolas v. CA*, 238 Phil. 622, 630 (1987); *Tiongco v. De la Merced*, 157 Phil. 92, 96 (1974).

59 499 Phil. 207 (2005).

60 Id. at 212-213.

61 *Tatel v. JLFP Investigation Security Agency, Inc.*, G.R. No. 206942, February 25, 2015, 752 SCRA 55, 65.

62 Id. at 67, citing *Soliman Security Services, Inc. v. CA*, 433 Phil. 902, 910 (2002) and *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186 (1999).

employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[63] The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his job under the circumstances.[64]

After a punctilious examination of this case, the Court finds that respondents – as correctly concluded by the NLRC – were not constructively dismissed, in view of the glaring dearth of evidence to corroborate the same. Despite their allegations, respondents failed to prove through substantial evidence that they were discriminated against, or that working at the restaurant had become so unbearable that they were left without any choice but to relinquish their employment. Neither were they able to prove that there was a demotion in rank or a diminution in pay such that they were forced to give up their work.

In its reversed decision, the NLRC pointed out that respondents claimed to have been constructively dismissed when petitioners called several meetings where they inquired about respondents' absences, for which the latter were issued separate memoranda; they were subjected to an on-the-spot drug test; they were barred entry into the restaurant; and they were threatened and intimidated by the presence of Opura, a stranger, in the restaurant. The foregoing circumstances, however, do not constitute grounds amounting to constructive dismissal. As the NLRC correctly opined, petitioners were validly exercising their management prerogative when they called meetings to investigate respondents' absences, gave them separate memoranda seeking explanation therefor, and conducted an on-the-spot drug test on its employees, including respondents. Likewise, respondents failed to substantiate their allegation that they were prohibited from entering the restaurant, or that they were threatened and intimidated by Opura as to keep them away from the premises. Instead, and as the NLRC aptly observed, respondents failed to prove that Opura's presence created a hostile work environment, or that the latter threatened and intimidated them so much as to convince them to leave their employment. As the Court sees it, petitioners found it necessary to enforce the foregoing measures to control and regulate the conduct and behavior of their employees, to maintain order in the work premises, and ultimately, preserve their business.

Be that as it may, however, the Court finds that respondents did not go on AWOL, or abandon their employment, as petitioners claimed. To constitute abandonment, two (2) elements must concur: (a) the failure to report for work or absence without valid or justifiable reason, and (b) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some

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63 *MegaForce Security and Allied Services, Inc. v. Lactao*, 581 Phil. 100, 107 (2008).
64 *Madrigalejos v. Geminilou Trucking Service*, 595 Phil. 1153, 1157 (2008).

overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[65] Abandonment is incompatible with constructive dismissal.[66]

In this case, records show that respondents wasted no time in filing a complaint against petitioners to protest their purported illegal dismissal from employment. As the filing thereof belies petitioners' charge of abandonment, the only logical conclusion, therefore, is that respondents had no such intention to abandon their work.

Therefore, since respondents were not dismissed and that they were not considered to have abandoned their jobs, it is only proper for them to report back to work and for petitioners to reinstate them to their former positions or substantially-equivalent positions. In this regard, jurisprudence provides that in instances where there was neither dismissal by the employer nor abandonment by the employee, the proper remedy is to reinstate the employee to his former position, but without the award of backwages.[67] However, since reinstatement was already impossible due to strained relations between the parties, as found by the NLRC, each of them must bear their own loss, so as to place them on equal footing. At this point, it is well to emphasize that "in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss."[68]

In sum, the NLRC ruling holding that respondents were not constructively dismissed and that they did not abandon their jobs must be reinstated, subject to the modification that the award of separation pay in their favor must be deleted.

**WHEREFORE**, the instant petition is **GRANTED**. The Decision dated August 29, 2014 and Resolution dated May 13, 2015 rendered by the Court of Appeals in CA-G.R. SP No. 07103 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 30, 2012 and the Resolution dated June 29, 2012 of the National Labor Relations Commission in NLRC Case No. VAC-12-000893-2011 (RAB Case No. VII-05-0827-2011) are **REINSTATED**, with **MODIFICATIONS**: (*a*) deleting the awards of separation pay in favor of respondents Randy B. Miñoza and Alaine S. Bandalan (respondents) in the amounts of ₱14,820.00 and ₱7,410.00, respectively; and (*b*) imposing interest at the rate of six percent (6%) per annum on the remaining monetary awards granted in respondents' favor, computed from the finality of this Decision until full payment.

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65 *RBC Cable Master System and/or Cinense v. Baluyot*, 596 Phil. 729, 739-740 (2009).
66 *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514 Phil. 488, 497 (2005).
67 *Mallo v. Southeast Asian College, Inc.*, G.R. No. 212861, October 14, 2015, 772 SCRA 657, 669.
68 *MZR Industries v. Colambot*, 716 Phil. 617, 628 (2013).

**SO ORDERED.**

**ESTELA M. PERLAS-BERNABE**
Associate Justice

**WE CONCUR:**

**MARIA LOURDES P. A. SERENO**
Chief Justice

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

**MARIANO C. DEL CASTILLO**
Associate Justice

**ALFREDO BENJAMIN S. CAGUIOA**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice