

SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

JS UNITRADE MERCHANDISE,  
INC.,

G.R. No. 200405

Petitioner,

Present:

CAGUIOA, *Chairperson*  
REYES, J.C., JR.,  
LAZARO-JAVIER,  
\*ZALAMEDA, and  
LOPEZ, *JJ*

-versus-

Promulgated:

RUPERTO S. SAMSON, JR.,  
Respondent.

FEB 26 2020 *mtw*

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition for certiorari assails the following issuances of the Court of Appeals in CA-G.R. SP No. 114436 entitled “*Ruperto S. Samson, Jr. v. JS Unitrade Merchandise, Inc., and/or Samuel L. Po, Ed Barga, Luisito Morales and National Labor Relations Commission (Third Division)*.”

\* Designated additional member in lieu of Chief Justice Diosdado M. Peralta.

- 1) Decision<sup>1</sup> dated October 26, 2011, affirming the labor arbiter's award of separation pay in lieu of reinstatement but deleting the award of backwages to respondent Ruperto Samson, Jr.; and
- 2) Resolution<sup>2</sup> dated January 27, 2012, denying petitioner's motion for reconsideration.

### Proceedings before the Labor Arbiter

Respondent Ruperto Samson, Jr. filed a complaint for constructive dismissal, unused service incentive leave credits, 13<sup>th</sup> month pay, actual damages, moral damages, exemplary damages, and attorney's fees against respondent JS Unitrade Merchandise, Inc. (JS Unitrade) and its officers, namely, Samuel Po (President), Edwin Bargan (Sales Director) and Luisito Morales (HR Manager).

In his Affidavit – Position Paper<sup>3</sup> dated November 20, 2007, respondent essentially alleged:

On February 14, 2005, Samuel Po hired him as Key Account Manager with a monthly salary of ₱28,000.00 and guaranteed bonuses. He became a regular employee on August 14, 2005 and granted a salary of ₱30,000.00. On February 1, 2006 his salary was increased to ₱31,500.00. Effective July 1, 2006, he got promoted to Senior Key Account Manager with a monthly salary of ₱35,000.00. After a year, he netted a 104% growth in sales. He was even given an award for his achievement.<sup>4</sup>

In view of his excellent performance, Samuel Po and Edwin Bargan, through Interoffice Memorandum dated January 9, 2007, directed him to further develop the business in the Key Accounts within South Luzon. For this assignment, he was promoted to Associate Area Sales Manager for South Luzon with a monthly salary of ₱45,000.00 starting February 1, 2007. He was eventually awarded Best Key Account Management, Best in Charmee Feminine Protection Products, Best in Adult Diapers Category, and Runner-up in Diaper Category. He even went to Beijing, China on an incentive trip. From January to August 2007, he averaged a performance growth of 102%.<sup>5</sup>

But things changed in mid-2007. Edwin Bargan started to single him out by not appraising his performance from January to June 2007. He was one of the two (2) Key Managers who did not enjoy the performance appraisal bonus. He got faulted for alleged gaps and executional flaws in the selling

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<sup>1</sup> Penned by Associate Justice Fernanda Lampas Peralta with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla and Edwin D. Sorongon, all members of the Special Thirteenth Division, *rollo*, pp. 31-48.

<sup>2</sup> *Id.* at 49-50.

<sup>3</sup> *Id.* at 90-98.

<sup>4</sup> *Id.* at 91-92.

<sup>5</sup> *Id.* at 92.



areas though the same were not his fault. He was offered the option of being demoted to Senior Key Account Manager or receiving remuneration upon his exit from the company.<sup>6</sup>

He got replaced by a certain Joy Lim. On September 6, 2007, he was assigned to office work without field and personnel supervisory functions. He performed only clerical work. He felt harassed, shamed, and humiliated. On September 18, 2007, he stopped reporting for work and filed a complaint before the National Labor and Relations Commission (NLRC). On September 19, 2007, he returned his company-issued items. On September 20, 2007, the company issued a show cause memo pertaining to the company vehicle and abandonment. On October 18, 2007, he received *via* registered mail a Notice of Dismissal dated October 8, 2007.<sup>7</sup>

He claims he was constructively dismissed because he was illegally eased out from his employment by demoting him in an oppressive and malicious manner. Thus, he was entitled to reinstatement, backwages, unused service incentive leave, proportionate 13<sup>th</sup> month pay for 2007, damages, and attorney's fees.<sup>8</sup>

Petitioner JS Unitrade and its officers, namely, Samuel Po, Edwin Bargan, and Luisito Morales, essentially averred:

Starting May 2007, respondent's performance started to decline as the inventory for his area was frequently out of stock and coupled with low stock weight. There was also poor execution of promotional activities in Southern Luzon. Respondent's low level of performance continued for three (3) months. Through a Memorandum dated July 26, 2007, respondent was reminded of his lapses and required to explain but he did not address the same. Under Memorandum dated September 6, 2007, respondent was directed to report to the head office in Pasig City to do administrative work. He was tasked to review the performance of the Southern Luzon area, define areas of opportunity and growth, planning and forecasting, and reconciliation of hanging accounts. Respondent's tasks were still aligned with his position as Associate Area Sales Manager.<sup>9</sup>

### **Ruling of the Labor Arbiter**

By Decision<sup>10</sup> dated June 30, 2008, Labor Arbiter Romelita Riofloriod found that respondent's transfer to the head office did not amount to constructive dismissal. Respondent impliedly admitted that there were indeed issues with his performance but there was no evidence that he was singled out or discriminated against. Besides, respondent never addressed the issues

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<sup>6</sup> *Id.* at 92-93.

<sup>7</sup> *Id.* at 93-94.

<sup>8</sup> *Id.* at 95-98.

<sup>9</sup> *Id.* at 117-118.

<sup>10</sup> *Id.* at 116-124.

raised by the company officers regarding his declining performance. The latter were justified in moving him to the head office, reducing his gasoline allowance, and recalling his laptop. Further, respondent did not abandon his employment because he in fact immediately filed a complaint for illegal dismissal and reinstatement.<sup>11</sup>

Respondent was only absent for one (1) week, from September 10 to 24, 2007, thus, the penalty of dismissal imposed on him was too harsh a penalty considering it was his first infraction and he had a good record. The lesser penalty of suspension would have sufficed. Respondent was considered to have been suspended from September 18 to December 31, 2007. Respondent was entitled to backwages equivalent to six (6) months worth of salary totaling ₱270,000.00. By reason of strained relations, respondent could no longer be reinstated and was, thus, entitled to separation pay totaling ₱135,000.00 (3 years x ₱45,000.00).<sup>12</sup>

Consequently, the labor arbiter directed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered Ordering JS UNITRADE MERCHANDISE, INC. to pay complainant the amount of P405,000.00 as backwages and separation pay.

All other claims are dismissed for lack of factual or legal basis.

SO ORDERED.<sup>13</sup>

### Proceedings before the NLRC

Both petitioner and respondent appealed to the NLRC.<sup>14</sup>

On one hand, petitioner argued that the labor arbiter gravely abused her discretion when she: a) considered respondent's pleadings despite having been filed out of time; b) held that respondent did not abandon his employment; c) ruled that suspension would have sufficed for respondent's absence from work; d) found that respondent was illegally dismissed; e) awarded backwages and separation pay to respondent; and f) dismissed their claim for damages and attorney's fees.<sup>15</sup>

On the other hand, respondent, in his partial appeal, faulted the labor arbiter for: 1) ruling he was not constructively dismissed; 2) considering him to have been suspended for three (3) months; 3) not ordering his reinstatement; and 4) limiting the computation of his backwages to six (6) months only.<sup>16</sup>

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<sup>11</sup> *Id.* at 121-122.

<sup>12</sup> *Id.* at 123.

<sup>13</sup> *Id.* at 123-124.

<sup>14</sup> *Id.* at 137.

<sup>15</sup> *Id.* at 141.

<sup>16</sup> *Id.*



### **Ruling of the NLRC**

By Decision<sup>17</sup> dated February 15, 2010, the NLRC reversed. It held that respondent was validly transferred from field work to office work. The company validly exercised its management prerogative in effecting such transfer. Respondent could not have been constructively dismissed because despite his transfer, he still retained his title, salary, and earned benefits. There was no showing that the transfer was unreasonable, inconvenient or prejudicial to respondent.<sup>18</sup>

The NLRC further held that respondent abandoned his employment. Respondent was absent for a month, despite having received three (3) notices to return to work and explain his absence. Coupled with his refusal to return to work, respondent also returned the company equipment issued to him. These acts indicated his intention to sever his employment with the company.<sup>19</sup>

Respondent's motion for reconsideration<sup>20</sup> was denied under Resolution dated March 24, 2010.<sup>21</sup>

### **Proceedings before the Court of Appeals**

Through a special civil action for certiorari, respondent faulted the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction for concluding that he was not constructively dismissed and that he, instead, abandoned his employment. He essentially reiterated the arguments he raised before the labor arbiter and the NLRC.<sup>22</sup>

### **Ruling of the Court of Appeals**

By its assailed Decision dated October 26, 2011, the Court of Appeals reinstated the decision of the labor arbiter but deleted the award of backwages. It held that respondent was not constructively dismissed, nor did he abandon his employment, *viz.*:

Clearly, what happened was a case of misunderstanding between management and employee. This being the case, the Court holds that although there was no constructive dismissal by private respondents, neither was there any abandonment of work by petitioner. Both parties must therefore bear the consequences of their respective actions.<sup>23</sup>

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<sup>17</sup> *Id.* at 137-145.

<sup>18</sup> *Id.* at 142-143.

<sup>19</sup> *Id.* at 144-145.

<sup>20</sup> *Id.* at 147-152.

<sup>21</sup> *Id.* at 154.

<sup>22</sup> *Id.* at 153-172.

<sup>23</sup> *Id.* at 45.

In sum, the assailed Decision dated February 15, 2010 of public respondent NLRC finding that petitioner abandoned his employment is not supported by substantial evidence and contravenes settled jurisprudence. As such, public respondent NLRC committed grave abuse of discretion in dismissing petitioner's complaint.

**WHEREFORE**, the petition is partly granted. The Decision dated February 15, 2010 and Resolution dated March 24, 2010 of public respondent NLRC are set aside. Accordingly, the labor arbiter's Decision dated June 30, 2008 awarding separation pay in the amount of P135,000.00 is affirmed, subject to the modification that the award of backwages is deleted.

SO ORDERED.<sup>24</sup>

The parties once again moved for reconsideration, but their motions were denied under the assailed Resolution dated January 27, 2012.

### **The Present Petition**

Petitioner now invokes the Court's discretionary appellate jurisdiction *via* Rule 45 of the Rules of Court to review and reverse the assailed dispositions of the Court of Appeals. It faults the Court of Appeals for affirming the labor arbiter's award of separation pay and holding that respondent did not abandon his employment. According to petitioner, since there was no dismissal to speak of, respondent should not have been awarded separation pay. It would be an abuse of the avowed principle of "compassionate justice" in favor of the working man if the grant of financial assistance to an employee who was not even dismissed would be allowed. There is also substantial evidence on record showing that respondent indeed abandoned his employment. Respondent's intent to sever his relationship with the company was manifest when he returned the company-issued equipment and relinquished his identification card.<sup>25</sup>

By Comment<sup>26</sup> dated July 3, 2012, respondent basically repleads his arguments that he was constructively dismissed and he did not abandon his employment.

Under Reply<sup>27</sup> dated November 19, 2012, petitioner repeated the arguments in the petition.

Both parties further reproduce their respective arguments in their memoranda.<sup>28</sup>

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<sup>24</sup> *Id.* at 47-48.

<sup>25</sup> *Id.* at 10-24.

<sup>26</sup> *Id.* at 68-88.

<sup>27</sup> *Id.* at 188-201.

<sup>28</sup> *Id.* at 213-247.



### Issue

Did the Court of Appeals commit reversible error when it found that respondent did not abandon his employment and that he is entitled to separation pay?

### Ruling

First off, the issue on constructive dismissal has already been settled with finality by the Court of Appeals in its assailed Decision dated October 26, 2011 and Resolution dated January 27, 2012. Respondent, in fact, no longer questioned the issuances before this Court.<sup>29</sup>

The only remaining live issues are, first: did respondent abandon his employment?; and second: assuming respondent did not abandon his employment, is the directive for payment of separation pay proper?

We affirm.

*First.* Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under the Labor Code. To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) 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.<sup>30</sup>

Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.<sup>31</sup> On this score, the Court of Appeals keenly ruled:

Nonetheless, petitioner cannot also be said to have abandoned his job. Although petitioner failed to report for work and surrendered his work tools to private respondent company, these were obviously done on the mistaken belief that he was singled out and demoted by private respondents. Hence, petitioner's acts cannot be construed as abandonment of his job, as he immediately filed a complaint for constructive dismissal a week after he stopped reporting for work.

Clearly, what happened was a case of misunderstanding between management and employee. This being the case, the Court holds that

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<sup>29</sup> *Id.* at 217.

<sup>30</sup> *Tan Brothers Corp. of Basilan City v. Escudero*, 713 Phil. 392, 400 (2013).

<sup>31</sup> *Fernandez, et al v. NewField Staff Solutions, Inc./Lopez, Jr.*, 713 Phil. 707, 713 (2013).

although there was no constructive dismissal by private respondents, neither was there any abandonment of work by petitioner. Both parties must therefore bear the consequences of their respective actions.<sup>32</sup>

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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.<sup>33</sup> In this case, respondent's insistence that he was constructively dismissed, albeit it was disputed, and his act of immediately filing a case for constructive dismissal below, negate petitioner's charge of abandonment.

*Second.* Since there is no illegal dismissal nor abandonment to speak of here, the logical step would have been to allow respondent to resume his position as Associate Area Sales Manager for South Luzon. As it was, respondent's reinstatement is no longer feasible because of the parties' strained relation. Labor Arbiter Riofloriod aptly observed "*(i)t is unthinkable that any productive working relationship could be restored. Certainly, reinstating complainant would no longer be in his best interest.*"<sup>34</sup>

Indeed, in case the reinstatement is no longer feasible, as in this case, an award of separation pay, in lieu of reinstatement, is justified. The Court has ruled that reinstatement is no longer feasible: (a) when the former position of the illegally dismissed employee no longer exists; or (b) when the employer's business has closed down; or (c) when the employer-employee relationship has already been strained as to render the reinstatement impossible. The Court likewise considered reinstatement to be non-feasible because a "considerable time" has lapsed between the dismissal and the resolution of the case.<sup>35</sup>

Here, the labor arbiter and the Court of Appeals were correct in awarding separation pay in lieu of reinstatement because of the strained relation between petitioner and respondent.

**ACCORDINGLY**, the petition is **DENIED**. The assailed Decision dated October 26, 2011 and Resolution dated January 27, 2012 of the Court of Appeals in CA-G.R. SP No. 114436 are **AFFIRMED**.

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

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<sup>32</sup> *Rollo*, p. 45.

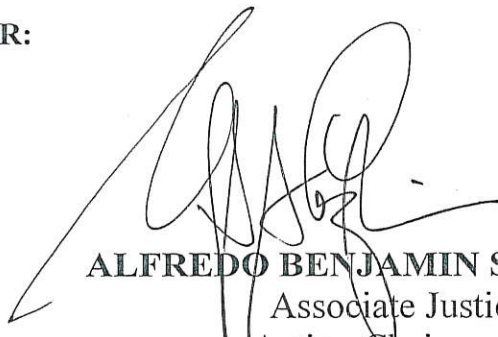
<sup>33</sup> *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 516 (2003).

<sup>34</sup> *Rollo*, p. 123.

<sup>35</sup> *Manila Jockey Club, Inc. v. Trajano*, 712 Phil. 254, 274 (2013).




**WE CONCUR:**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Acting Chairperson

(on official leave)  
**JOSE C. REYES, JR.**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice



**MARIO V. LOPEZ**  
Associate Justice

**ATTESTATION**

I attest 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.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice  
Acting Chairperson, First Division



**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.



**DIOSDADO M. PERALTA**  
Chief Justice

