REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **01 February 2021** *which reads as follows*:

"**G.R. No. 229848** ***(Facilities Managers, Inc. and Edilberto Bravo v. Edgar B. Villarta).*** – This is an appeal by *certiorari* seeking to reverse and set aside the November 4, 2016 Decision[1] and February 2, 2017 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 144493. The CA reversed and set aside the November 23, 2015 Decision[3] and the December 28, 2015 Resolution[4] of the National Labor Relations Commission *(NLRC),* which set aside the finding of illegal dismissal by the Labor Arbiter *(LA)* in its February 20, 2015 Decision.[5]

Antecedents

On July 7, 2014, Edgar B. Villarta *(respondent)*, together with Bernard M. Mariveles *(Mariveles)* and Vicente C. Bolaños[6] *(Bolaños),* filed a complaint for Illegal Dismissal with Money Claims against Facilities Managers, Inc. *(FMI)* and Edilberto Bravo *(Bravo)* (collectively, *petitioners).* Since only respondent was able to attend the mandatory conference and file a position paper, Mariveles' and Bolaños' complaints were dismissed.[7]

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[1] *Rollo,* pp. 65-77; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a Member of this Court), concurring.
[2] Id. at 79-80.
[3] Id. at 288-296; penned by Commissioner Mercedes R. Posada-Lacap with Commissioner Dolores M. Peralta-Beley, concurring; Presiding Commissioner Grace E. Maniquiz-Tan, dissented.
[4] Id. at 298-300.
[5] Id. at 139-145; penned by Executive Labor Arbiter Jenneth B. Napiza.
[6] "Bolanos" in some parts of the *rollo*.
[7] *Rollo,* pp. 65-66.

Respondent claimed in his position paper that he worked as a janitor for FMI, an entity engaged in the business of independent contracting through the provision of messengers, technicians, and janitors, from May 16, 2003 until his services were terminated on December 29, 2013. He narrated that on December 16, 2013, he sought permission and informed his supervisor, Fanny Azania,[8] that he would be absent on December 28, 2013 to attend the wedding of his sibling. He reported for work on December 29, 2013 but was not allowed to perform his usual tasks as there was supposedly no available work for him. He was allegedly placed on floating status. On January 1, 2014, he attempted to report for work but learned that he was already removed from Starmall Alabang. He was again told that there was no work for him. Later on, he came to know that a relative of his supervisor replaced him at work.[9]

Respondent's pleas to be reinstated went unheeded. Thus, he decided to wait to be summoned back to work but to no avail, despite the lapse of more than six (6) months. Consequently, he instituted the present suit charging petitioners of illegal dismissal and praying that he be awarded the following reliefs: (a) separation pay; (b) full backwages; (c) moral and exemplary damages; and (d) attorney's fees.[10]

For their part, petitioners denied that respondent was dismissed from their employ. They averred that he was assigned as a janitor at Starmall Alabang. Sometime in March 2014, FMI adopted rotational scheduling, a method to change current job schedules of its employees and give them equal opportunity for work, and to distribute the stress of the least desirable shift to all its employees. In line therewith, respondent was assigned as a day-off janitor-reliever. On March 6, 2014, however, he stopped reporting for work and nothing was heard from him again until FMI was informed of the pendency of this case. In support thereof, FMI submitted in evidence respondent's payslip for March 1 and 15, 2014 and the bank advice therefor.[11]

FMI further contended that respondent cannot be considered constructively dismissed as his off-detail status did not as yet exceed six months reckoned from the time he failed to report for work on March 6, 2014. Moreover, it alleged that respondent's continuous absence for four (4) months is an indication of his intent to sever his employment relations with

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[8] Id. at 108.
[9] Id. at 66.
[10] Id.
[11] Id.

FMI. There being no illegal dismissal to speak of, FMI prayed for the dismissal of respondent's complaint and denial of his money claims.[12]

Respondent maintained that he was dismissed by FMI on December 29, 2013. He refuted the latter's claim that he continued to work for FMI until March 6, 2014 by alleging that he was called to be a reliever for two (2) days in the first week of March, which would explain why his salary for the period of March 1 to 15, 2014 was only ₱874.00. Thereafter, no other assignments were given to him. In turn, FMI insisted that respondent was not dismissed from the service and submitted the bank advice for the period January 1 to March 15, 2014.[13]

The LA Ruling

In its February 20, 2015 Decision, the LA found that respondent was illegally dismissed. The dispositive portion of the LA decisions reads:

> **WHEREFORE, premises considered**, complainant Edgar B. Villarta is hereby found to have been illegally dismissed from employment and declared entitled to separation pay of one month salary per every year of service reckoned from the date of his employment (May 16, 2003) and backwages counted from the date of his dismissal (December 29, 2013) both to be computed until the finality of this Decision.
>
> Facilities Managers, Inc. is hereby ordered to pay complainant, as of the date of this Decision, the total amount of **THREE HUNDRED FIFTY TWO THOUSAND ONE HUNDRED TWENTY EIGHT PESOS AND 17/100 (₱352,128.17)** representing his separation pay, backwages, 13th month pay, ECOLA and attorney's fees per attached computation, which shall form an integral part hereof.
>
> The complaint of Bernard M. Mariveles is hereby dismissed for failure to substantiate his claims, while the complaint of Vicente B. Bolaños is hereby dismissed without prejudice.
>
> **SO ORDERED.**[14]

The LA held that FMI failed to comply with the requisites for valid dismissal. It declared that FMI replaced respondent just for being absent one (1) day despite having the permission of his immediate supervisor. He was placed on floating status and told that there was no available work for him. Thereafter, he was no longer given any assignment except as reliever for just

[12] Id. at 66-67.
[13] Id. at 67.
[14] Id. at 144-145.

two days. Accordingly, his dismissal was not based on any just or authorized causes allowed by law. In view of the strained relations of the parties, the LA awarded separation pay in lieu of reinstatement. It also awarded backwages, 13th month pay, emergency cost of living allowance *(ECOLA)*, and attorney's fees equal to ten percent (10%) of the total judgment award.[15]

The NLRC Ruling

In its November 23, 2015 Decision, the NLRC reversed and set aside the LA decision. The dispositive portion reads as follows:

> **WHEREFORE**, premises considered, the instant appeal is **PARTLY GRANTED.** The February 20, 2015 Decision of the Labor Arbiter is **MODIFIED** in that the finding of illegal dismissal is **REVERSED** and **SET ASIDE.** Accordingly, the award of backwages, separation pay and attorney's fees are **DELETED.**
>
> Respondent-appellant Facilities Managers, Inc. is ordered to reinstate complainant-appellee Villarta to his former position without loss of seniority rights but without backwages.
>
> The awards of 13th month pay and ECOLA **STAND.**
>
> **SO ORDERED.**[16]

The NLRC held that respondent failed to prove the fact of his dismissal. It noted that while respondent claimed to have been dismissed on December 29, 2013, FMI was able to submit a copy of its personnel payroll and bank advice for the months of January and February 2014 which showed that respondent was duly paid his salaries for the same period. Further, it noted that respondent admitted to have been given work assignment in March 2014, though only for two days. These facts, coupled with respondent's failure to name the person who supposedly told him that he was already dismissed, makes the claim of termination untenable. Also, it observed that respondent filed his complaint on July 7, 2014, which is well within the six-month allowable floating period. Accordingly, it ordered his reinstatement and deleted the awards of backwages, separation pay, and attorney's fees. The awards of 13th month pay and ECOLA remained.[17]

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[15] Id. at 142-145.
[16] Id. at 295-296.
[17] Id. at 292-296.

Respondent moved for reconsideration, which the NLRC denied in its December 28, 2015 Resolution.[18]

The CA Ruling

In its November 4, 2016 Decision, the CA reversed and set aside the November 23, 2015 decision of the NLRC and reinstated the LA decision. The *fallo* reads as follows:

> **WHEREFORE**, the instant petition is GRANTED. The assailed decision of the National Labor Relations Commission dated 23 November 2015 in NLRC NCR 07-08359-14 (NLRC LAC NO. 06-001415-15) is **REVERSED** and **SET ASIDE**. The decision of the Labor Arbiter, is hereby **REINSTATED**.
>
> **SO ORDERED.**[19]

The CA held that while FMI had the prerogative to reassign respondent to another work schedule, it wielded the authority unfairly. It noted that respondent was unaware of the alleged new policy. It further noted that, aside from FMI's bare allegation of such policy, no proof was offered that such policy exists. It likewise observed that, granting the policy exists, respondent was never called to work, even as a reliever, in the four (4) months prior to the filing of the complaint. This runs counter to FMI's claim that respondent always had work. It also declared that scrutiny of the records would show that there was a big discrepancy in the amount of salaries received by respondent. Thus, it concluded that FMI exercised its prerogative to reassign its employees with grave abuse of discretion.[20]

The CA also found unmeritorious the contention that FMI merely placed respondent on floating status. It held that there was no claim by FMI that there was a *bona fide* suspension of operation of business which constrained it to put respondent on floating status. It noted that, except for FMI's bare assertion, no proof was offered to support the contention that

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[18] Id. at 298-300.
[19] Id. at 76.
[20] Id. at 70-71.

respondent intended to sever the employer-employee relationship. It also found that FMI failed to offer a credible explanation why it did not provide respondent a new assignment. It concluded that respondent was dismissed without just or authorized cause. FMI also failed to comply with the twin-notice requirement. It reinstated the award for separation pay in lieu of reinstatement, backwages, and attorney's fees.[21]

Petitioners filed a motion for reconsideration, which the CA denied in its February 2, 2017 Resolution.[22]

Issues

Petitioners attribute the following errors on the part of the CA:

I.

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT IGNORED THE ESTABLISHD FACTS AND DIVERGED FROM ISSUES TO COME OUT WITH ITS RULING;

II.

THE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT RULED THAT PETITIONERS HAD THE BURDEN OF JUSTIFYING RESPONDENT VILLARTA'S DISMISSAL DESPITE THE UNCONTROVERTED FACT THAT PETITIONERS DID NOT DISMISS RESPONDENT.[23]

Petitioners contend that the CA diverted from the evidence on record when it held that respondent was illegally dismissed; that respondent's pay slips from January to March 2014 belie his claim of having been dismissed on December 29, 2013;[24] that the rotational work schedule was not put into issue by respondent and was only raised by petitioners to counter the allegation that it did not furnish him work beginning December 29, 2013; that the change in the assignment schedule of respondent is an exercise of management prerogative; that even if respondent was not given work for four (4) months, he cannot be considered dismissed because it is still within the floating status period of six (6) months; and that respondent's claim that

[21] Id. at 72-76.
[22] Id. at 79-80.
[23] Id. at 42.
[24] Id. at 43-45.

he was not allowed to return to work on or around December 29, 2013 is unsubstantiated and is, in fact, controverted by the evidence.[25]

In his September 15, 2017 Comment,[26] respondent argues that the appeal by *certiorari* is procedurally infirm because petitioners failed to attach a copy of the notice of appeal before the NLRC, the November 23, 2015 NLRC Decision, and the December 28, 2015 NLRC Resolution;[27] that the appeal raises questions of fact;[28] and that it is a mere rehash of the arguments raised in petitioners' motion for reconsideration before the CA.[29]

On the substantive aspect of the petition, respondent maintained that he was illegally dismissed and that FMI constructively dismissed him by failing to furnish him another detail or assignment within six (6) months from December 29, 2013, other than being a mere reliever for the months of January to March 2014. Since the off-detail period lasted for more than six (6) months, he is deemed constructively dismissed. The fact that he appeared in the payroll of FMI for said months is explained by the fact that he was "reliever" during said period. Having been illegally dismissed, respondent contends that he is entitled to separation pay, backwages, and attorney's fees.[30]

In their October 12, 2017 Reply,[31] FMI countered that their appeal by *certiorari* is not procedurally infirm. Since the subject of the appeal is the judgment of the CA, the NLRC documents are not required to be appended to the appeal.[32] Petitioners reiterate their claim that respondent was not unlawfully terminated, and that the rotational work scheduling implemented in March 2014 was irrelevant to the claim that he was illegally dismissed on December 29, 2013. Petitioners also contend that respondent cannot claim that he was placed on floating status prior to March 6, 2014 because he worked on a regular basis and received his salary. Since respondent was not illegally dismissed, the award of separation pay, backwages, and attorney's fees have no basis.[33]

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[25] Id. at 50-54.
[26] Id. at 257-271.
[27] Id. at 263-265.
[28] Id. at 265-266.
[29] Id. at 266-267.
[30] Id. at 267-269.
[31] Id. at 277-283.
[32] Id. at 277-279.
[33] Id. at 279-282.

The Court's Ruling

The appeal by *certiorari* is denied for lack of merit. The Court does not find error in the decision of the CA finding FMI liable for illegal dismissal.

The appeal by certiorari is not procedurally infirm

Preliminary, We shall address respondent's insistence that the present appeal is procedurally infirm for failure of petitioners to attach a copy of the notice of appeal filed before the NLRC, as well as the November 23, 2015 Decision and December 28, 2015 Resolution of the NLRC.

Respondent's claim deserves scant attention. Failure of petitioners to attach the notice of appeal and issuances of the NLRC is not fatal to their cause.

In *Metropolitan Bank and Trust Co. v. Absolute Management Corp.*,[34] the Court had explained that the requirement in Section 4, Rule 45 of the Rules of Court is not meant to be an absolute rule whose violation would automatically lead to the petition's dismissal, thus:

> The Court significantly pointed out in *F.A.T. Kee* that the requirement in Section 4, Rule 45 of the Rules of Court is not meant to be an absolute rule whose violation would automatically lead to the petition's dismissal. The Rules of Court has not been intended to be totally rigid. In fact, the Rules of Court provides that the Supreme Court "may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate"; and "[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice." These provisions are in keeping with the overriding standard that procedural rules should be liberally construed to promote their objective and to assist the parties in obtaining a just, speedy and inexpensive determination of every action or proceeding.[35] (citations omitted)

[34] 701 Phil. 200 (2013).
[35] Id. at 209-210.

At any rate, any procedural defect in petitioners' failure to attach the said documents had been cured when FMI attached the same in its Reply.

FMI is guilty of constructive dismissal

Petitioners impute error on the part of the CA when it disregarded evidence refuting respondent's claim that they prevented him from working and placed him on floating status since December 29, 2013. FMI argues that based on the personnel payroll and bank advice that it submitted,[36] respondent had worked for the period of January until March 2014. It further claims that the period from April to July 2014 that respondent was not given work cannot be considered as dismissal. Since only four (4) months had passed since respondent was not provided with work, it is still well within the period sanctioned by law for placing an employee on floating status.[37]

Petitioners' arguments are untenable.

The Court would stress at the outset that the burden of proving the fact of dismissal lies with the employee. In illegal termination cases, the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss before the burden is shifted to the employer that the dismissal was legal.[38]

In here, respondent claims to have been dismissed on December 29, 2013 but the Court finds that he was not terminated on such date. Petitioners had been correct in positing that the bank receipt and payroll established respondent's rendering of service from January until March 2014 which negates the claim of unlawful termination. As the party discharged with the burden of proving the fact of his dismissal on December 29, 2013, respondent failed in this regard.

However, the Court is not convinced that FMI implemented a "rotational schedule" program that resulted in respondent being sidelined since March 2014.

According to FMI, it adopted a rotational scheduling scheme in Starmall Alabang, where respondent was assigned, allegedly to provide its employees with equal opportunity and to distribute the stress of the least

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[36] *Rollo*, p. 71.
[37] Id. at 48.
[38] *Mehitabel, Inc. v. Alcuizar*, 822 Phil. 863, 873 (2017); citations omitted.

desirable shift to all its employees.[39] It further justifies its decision by insisting that since respondent was assigned as a day-off janitor-reliever,[40] he always had work since there are FMI employees who are on a day-off/leave everyday for him to relieve.[41] Petitioners consistently made this claim before the CA[42] and before this Court.[43]

We are not persuaded.

Firstly, FMI did not present proof of its implementation of the purported rotational scheduling among the employees assigned at Starmall Alabang. Noticeably, FMI did not adduce any written memorandum addressed to respondent notifying him of the implementation of such policy or to even report for work while observing the same. We find the defense of implementing a rotational schedule as bare and self-serving which FMI only offered to conceal its failure to furnish respondent with a regular assignment starting March 2014.

Secondly, FMI failed to prove that the rotational program would be favorable to respondent in terms of tenure and amount of wages to be received. Notably, the very nature of the position of a "day-off janitor-reliever" is transient and irregular since it is contingent on the other employees' rest days. Given the unpredictability of available work as a day-off janitor-reliever under the alleged rotation scheduling scheme, respondent's job dependability had been compromised. Ineluctably, the supposed rotational scheduling scheme was nothing but an effective means of constructively terminating respondent's services.

In *Floren Hotel v. NLRC*,[44] the Court declared that forcing employees to accept alternate work periods constitute constructive dismissal. We explained:

> For the transfer of the employee to be considered a valid exercise of management prerogatives, the employer must show that the transfer is not unreasonable, inconvenient or prejudicial to the employee; neither would it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to discharge this burden of proof, the employee's transfer shall be tantamount to constructive dismissal, which has been defined as a quitting because

[39] *Rollo*, pp. 114-119.
[40] Id. at 115.
[41] Id.
[42] Id. at 216-255; see Comment.
[43] Id. at 45-48 and 117.
[44] 497 Phil. 458 (2005).

> continued employment is rendered impossible, unreasonable or unlikely, as in an offer involving a demotion in rank and diminution in pay.
>
> In this case, Calimlim and Rico were being forced to accept alternate work periods in their new jobs as janitors, otherwise they would be unemployed. Not only did their new schedule entail a diminution of wages, because they would only be allowed to work every other week, the new schedule was also clearly for an undefined period. The June 13, 1998, memorandum did not state how long the schedule was to be effective. Indeed, it appears that the period could continue for as long as management desired it.[45] (citation omitted)

In here, the position of a day-off janitor-reliever is an irregular work assignment as it will depend on the rest days to be taken by other employees. FMI's failure to furnish respondent with work for four (4) months proved the irregularity of such work assignment. Notable also that respondent's assignment as reliever was for an undefined period. Patently, this scheme by FMI was highly prejudicial to respondent's interest.

Petitioners, however, assert that the rotational schedule was not put into issue by respondent and was only raised by petitioners to counter respondent's claim that he was illegally dismissed on December 29, 2013.

The Court finds this argument unmeritorious.

The validity of the alleged rotational scheduling was put squarely into issue by petitioners to justify FMI's failure to provide respondent with work from March until July 2014. Both parties were accorded due process and were provided with the opportunity to present their arguments involving the matter before the LA, the NLRC, and the CA. The issue regarding FMI's implementation of a rotational schedule cannot simply be ignored for it is determinative of the primordial issue of whether respondent was illegally dismissed.

This brings us to petitioners' averment that FMI's failure to furnish work to respondent for four (4) months is allowed under the "floating status" doctrine.[46] It argues that "[j]urisprudence has already acknowledged that an independent contractor may place employees on a 'floating status' as long as it does not exceed six (6) months."[47]

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[45] Id. at 473-474.
[46] *Rollo*, p. 48.
[47] Id. at 49.

FMI's concept of placing employees under floating status is highly erroneous. Its claim of implementing a rotational schedule directly conflicts with its argument of floating status.

The claim of floating status and implementation of a rotational scheme cannot coexist. A floating status requires a *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months.[48] On the other hand, a rotational schedule indicates that the business continues to be in operation.

Moreover, the validity of placing an employee on floating status does not only depend on its duration. In *Innodata Knowledge Services, Inc. v. Inting,*[49] the Court explained that there must be a *bona fide* suspension of the operation of the business or undertaking before employees may be placed on floating status, thus:

> **There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a specific period or duration.** Notably, in both permanent and temporary lay-offs the employer must act in good faith – that is, one which is intended for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under the law or under valid agreements.
>
> Certainly, the employees cannot forever be temporarily laid-off. **Hence, in order to remedy this situation or fill the hiatus, Article 301 may be applied to set a specific period wherein employees may remain temporarily laid-off or in floating status** Article 301 states:
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> > Art. 301. When Employment not Deemed Terminated. **The *bona-fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment.** In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.
>
> The law set six (6) months as the period where the operation of a business or undertaking may be suspended, thereby also suspending the employment of the employees concerned. The resulting temporary lay-off, wherein the employees likewise cease to work, should also not last longer than six (6) months. After the period of six (6) months, the employees

[48] See Article 301, Labor Code of the Philippines.
[49] 822 Phil. 314 (2017).

> should either then be recalled to work or permanently retrenched following the requirements of the law. Failure to comply with this requirement would be tantamount to dismissing the employees, making the employer responsible for such dismissal. Elsewise stated, **an employer may validly put its employees on forced leave or floating status upon *bona fide* suspension of the operation of its business for a period not exceeding six (6) months. In such a case, there is no termination of the employment of the employees, but only a temporary displacement.** When the suspension of the business operations, however, exceeds six (6) months, then the employment of the employees would be deemed terminated, and the employer would be held liable for the same.
>
> Indeed, closure or suspension of operations for economic reasons is recognized as a valid exercise of management prerogative. **But the burden of proving, with sufficient and convincing evidence, that said closure or suspension is *bona fide* falls upon the employer.**[50] (emphases supplied; citations omitted)

Aside from showing that there was *bona fide* suspension of the operation of a business or undertaking, the employer must also comply with the procedural requirements for temporarily placing employees afloat. In *Lopez v. Irvine Construction Corp.,*[51] the Court held that the employer has to notify the Department of Labor and Employment *(DOLE)* and the affected employee, at least one (1) month prior to the intended date of suspension of business operations[52] or effectivity of the floating status.

Thus, to successfully justify that respondent was temporarily off-detail since March 2014, petitioners must show proof that FMI suspended the operation of its business or that its service contract with the company to which respondent was assigned had expired and that there is no available placements for him. Furthermore, FMI should have served respondent and the DOLE with written notices at least one (1) month prior to placing the former on floating status. FMI must also prove that it acted in good faith in suspending its operations and in placing respondent on float.

Unfortunately, petitioners failed to prove, much less allege, such *bona fide* suspension of FMI's operation of its business or the expiration of its service contract with Starmall Alabang. It also did not present the 30-day written notices to respondent and the DOLE. Petitioners' failure to abide with the substantive and procedural requirements in placing respondent on floating status reveals its lack of good faith to put forth such claim. Ineluctably, petitioners' invocation of the floating status doctrine was merely

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[50] Id. at 344-346.
[51] 741 Phil. 728 (2014).
[52] *Airborne Maintenance and Allied Services, Inc. v. Egos*, G.R. No. 222748, April 3, 2019.

done to circumvent the law, particularly respondent's right to security of tenure.

All told, the Court does not find error on the part of the CA in holding FMI liable for unlawfully terminating the services of respondent. FMI's designation of respondent as a day-off janitor-reliever constitutes constructive dismissal. There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[53]

Petitioners failed to prove that respondent abandoned his job

Petitioners allege that respondent refused to work and had been continuously absent for a period of four (4) months, thereby indicating his intention to sever the employer-employee relationship.

The claim of abandonment is baseless.

Abandonment, as a just and valid ground for dismissal, means the deliberate and unjustified refusal of an employee to resume his employment. The burden of proof is on the employer to show an unequivocal intent on the part of the employee to discontinue employment.[54]

In here, petitioners failed to discharge the burden of proving abandonment of work by respondent. Once again, it did not allege or show any proof that it contacted or assigned any work to respondent during those four (4) months after the supposed implementation of the rotational scheduling policy in March 2014. There is also no allegation or proof that it required respondent to explain his supposed absences during the said period.

Further, respondent's act of filing a complaint for illegal dismissal conflicts with the charge of abandonment. For abandonment to be a valid cause for dismissal, there must be a concurrence of intention to abandon and

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[53] *SHS Perforated Materials, Inc. v. Diaz*, 647 Phil. 580, 598 (2010); citation omitted.
[54] *De Paul/King Philip Customs Tailor v. NLRC*, 364 Phil. 91,100 (1999).

some overt act from which it may be inferred that the employee had no more interest to continue working in his job. An employee who forthwith takes steps to protest his layoff cannot be said to have abandoned his work.[55]

Respondent is entitled to separation pay, backwages, attorney's fees, 13th month pay and ECOLA

In view of Our finding that respondent was unlawfully terminated, he is entitled to reinstatement and payment of his full backwages.[56] Considering the time that has lapsed since the filing of the complaint for illegal dismissal, the Court finds it proper to award him separation pay in lieu of reinstatement.

As regards the award of attorney's fees, the Court affirms the same since respondent was forced to litigate and had incurred expenses to protect his rights and interest.[57] The Court also affirms the award of 13th month pay and cost of living allowance.

Finally, pursuant to Our ruling in *Nacar v. Gallery Frames*,[58] all monetary awards due to respondent shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Resolution until full payment.[59]

WHEREFORE, the petition is **DENIED**. The November 4, 2016 Decision and February 2, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 144493 are **AFFIRMED**. All monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Resolution until fully paid.

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[55] *Nazal v. NLRC*, 340 Phil. 462, 468 (1997).
[56] *ALPS Transportation v. Rodriguez*, 711 Phil. 122, 132 (2013).
[57] *Litonjua Group of Companies v. Vigan*, 412 Phil. 627, 643-644 (2001). Since respondent is represented herein by the Public Attorney's Office *(PAO)*, the attorney's fees awarded shall be paid to said institution. Republic Act No. 9406 sanctions the receipt by the PAO of attorney's fees, and provides that such fees shall constitute a trust fund to be used for the special allowances of their officials and lawyers. *(Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, July 2, 2018, 869 SCRA 313, 335). It serves as a token recompense to the PAO for its provision of free legal services to litigants who have no means of hiring a private lawyer *(Our Haus Realty Development Corp. v. Parian*, 740 Phil. 699, 720 (2014).
[58] 716 Phil. 267 (2013).
[59] *Barroga v. Quezon Colleges of the North*. G.R. No. 235572, December 5, 2018, citing *Nacar v. Gallery Frame*, supra.

The Labor Arbiter is **ORDERED** to compute the total monetary benefits awarded and due respondent Edgar B. Villarta in accordance with this Resolution.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
29 APR 2021

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Please notify the Court of any change in your address.
GR229848. 02/01/2021(123)URES