

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RHODA P. AMOR, LOURDES R. BALANQUIT, GLORIA G. NARAG,
JOVELYN G. BUENO, AGNES B. RICERRA, VALENTINA H. ADALID, ELYNOR R. ROMERO,
MARIA FE J. CLARO, ELIZABETH C. CATULAY, CELESTINA V. MAGTOLIS,
JONALYN R. ROMERO, JASMIN B. BORLAGDATAN-ARAMBULO,
MARISSA C. BUSEL and GLENDA M. TORDILLO,

G.R. No. 259988
Present:

LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J.*, and
KHO, JR., JJ.

Petitioners,

-versus-

CONSTANT PACKAGING
CORPORATION/WILLIAM CHAN
and VIRGINIA CHAN,
Respondents.

Promulgated:
MAY 19 2025

X-----X

DECISION

LEONEN, J.:

The act of preventing an employee from reporting to work is considered dismissal, and the lack of just or authorized cause and procedural due process makes it illegal.

* On official business.

This Court resolves a Petition for Review on *Certiorari*¹ assailing the Court of Appeals Decision² and Resolution³ dismissing the Petition for *Certiorari* filed by Rhoda P. Amor (Amor), Lourdes R. Balanquit (Balanquit), Gloria G. Narag (Narag), Jovelyn G. Bueno (Bueno), Agnes B. Ricerra (Ricerra), Valentina H. Adalid (Adalid), Elynor R. Romero (Elynor), Maria Fe J. Claro (Claro), Elizabeth C. Catulay (Catulay), Celestina V. Magtolis (Magtolis), Jonalyn R. Romero (Jonalyn), Jasmin B. Borlagdatan-Arambulo (Arambulo), Marissa C. Busel (Busel), and Glenda M. Tordillo (Tordillo) (collectively known as Amor et al.). Amor et al. contested the National Labor Relations Commission's Decision,⁴ which found that they were not illegally dismissed. The Commission previously reversed a Decision⁵ by the Labor Arbiter finding in favor of Amor et al.

Constant Packaging Corporation (Constant Packaging) hired Amor et al. as sorters, revisers, and packers on *pakyaw* basis. Constant Packaging is engaged in printing packaging materials. William Chan is its chairperson, and Virginia Chan is a stockholder.⁶

Amor et al. aired their grievances via petition to Constant Packaging's management, but they were told to leave their jobs if they were dissatisfied with the working conditions. Tensions escalated when Narag and Balanquit were prevented from entering the company premises after failing to attend the company Christmas Party.⁷

Amor and Arambulo were also barred from entering work premises because the management did not like it when the two raised concerns about their below minimum wage, 12-hour work day, 7-day work week, non-remittance of their SSS, PhilHealth, and Pag-IBIG contributions, as well as delays in the release of their salaries. They reported these concerns to the Department of Labor and Employment.⁸ When Constant Packaging's management received summons from the Department of Labor and Employment, Bueno, Ricerra, Adalid, Elynor, Jonalyn, Claro, Catulay, and Magtolis were also prevented from entering the plant.⁹

¹ *Rollo*, pp. 10–38.

² *Id.* at 40–53. The September 27, 2021 Decision was penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Manuel M. Barrios and Bonifacio S. Pascua of the Tenth Division, Court of Appeals, Manila.

³ *Id.* at 56–58. The March 30, 2022 Resolution was penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Manuel M. Barrios and Bonifacio S. Pascua of the Former Tenth Division, Court of Appeals, Manila.

⁴ *Id.* at 346–370. The October 30, 2019 Decision in NLRC LAC No. 09-003439-19 and NLRC NCR Case No. 01-01277-19 was penned by Commissioner Agnes Alexis A. Lucero-De Grano and concurred in by Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra of the Sixth Division, National Labor Relations Commission, Quezon City.

⁵ *Id.* at 227–241. The July 25, 2019 Decision in NLRC NCR Case 01-01277-19 was issued by Labor Arbiter Gaudencio P. Demaisip, Jr.

⁶ *Id.* at 41.

⁷ *Id.*

⁸ *Id.* at 41–42.

⁹ *Id.* at 42.

As to Busel and Tordillo, the two resigned from their posts because of health reasons and the pressure from their supervisor, Imelda Vea.¹⁰

For its part, Constant Packaging claimed that the company never dismissed Amor et al. since they were allowed to work anytime on a *pakyaw* basis. The company also claimed that it did not control their hours of work. Time-in and time-out were not required, and they were not disciplined for producing little to no output. Thus, Constant Packaging asserted that no employer-employee relationship existed. They also rejected the claim that the workers were made to work 12 hours a day and that their daily wage was below the minimum wage.¹¹

The labor arbiter ruled in favor of the workers, declaring them regular employees. The labor arbiter found the workers, except for Busel and Tordillo, were illegally dismissed. The dispositive portion of the Decision reads:

IN VIEW OF THE FOREGOING, except for complainant[s] Bussel (sic) and Tordillo, the complainants are herein declared to have been illegally dismissed hence, the respondent Corporation shall pay separation pays and back wages in the total amount of Php2,655,707.50.

The complainants shall also be paid their 13th month pay in the amount of Php474,163.26.

....

SO ORDERED.¹²

On appeal by both parties, the National Labor Relations Commission agreed with the labor arbiter that the workers were regular employees but reversed the finding of illegal dismissal. The Commission found that the fact of dismissal was not proven, as the act of barring the workers from entering the workplace "cannot be construed as an overt act of termination"¹³ of employment. Thus, the Commission ordered the workers to return to work and for the company to accept them back.¹⁴ Busel and Tordillo were found to have voluntarily renounced their employment.¹⁵ It also removed the award of 13th month pay, saying that workers paid on *pakyaw* basis were excluded from receiving this. The dispositive portion of Commission's Decision reads:

WHEREFORE, the Appeal of complainants Marissa C. Busel and Glenda M. Tor[d]illo dated August 16, 2019 is **DENIED** for lack of merit.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 235-236.

¹³ *Id.* at 43.

¹⁴ *Id.*

¹⁵ *Id.*

The Appeal of respondent Constant Packaging Corporation dated August 19, 2019 is **PARTIALLY GRANTED**. The Decision dated July 25, 2019 rendered by Labor Arbiter Gaudencio P. Demaisip, Jr. is hereby **AFFIRMED WITH MODIFICATIONS**, in that (1) complainants are declared to not have been illegally dismissed; and (2) the award of 13th month pay is DELETED.

Respondents are, however, **ORDERED TO PAY** complainants their Service Incentive Leave and Holiday Pay, per the attached Computation which shall form part of this Decision.

Further, complainants Rhoda D. Amor, Lourdes R. Balanquit, Glora G. Narag, Jovelyn G. Bueno, Agnes B. Ricerra, Valentina H. Adalid, Elynor R. Romero, Maria Fe J. Claro, Elizabeth C. Catulay, Celestina V. Magtolis, Jonalyn R. Romero, and Jasmin B. Borlagdatan-Arambulo are hereby **ORDERED** to immediately report back to work within 10 days from the receipt of this Decision and respondent Constant Packaging Corporation is **ORDERED** to accept the complainants back to work.

SO ORDERED.¹⁶

Amor et al. moved for reconsideration. However, their motion was likewise denied by the Commission.¹⁷

They filed a Petition for *Certiorari* before the Court of Appeals, which was dismissed in the assailed Decision. The dispositive portion of the Decision reads:

WHEREFORE, the *Petition* is **DISMISSED** for lack of merit.

SO ORDERED.¹⁸

Amor et al.'s subsequent motion for reconsideration was likewise denied in a Resolution.¹⁹

Hence, the present Petition. Petitioners Amor et al. argue that the fact of their dismissal from service is supported by substantial evidence.²⁰ They point to the findings of the labor arbiter, which stated that the security guards stationed at the gates, who control the entry and exit of people, prevented petitioners from entering the company premises. Ultimately, barring petitioners from entering the company premises meant that they were not allowed to work.²¹

¹⁶ *Id.* at 367.

¹⁷ *Id.* at 44.

¹⁸ *Id.* at 53.

¹⁹ *Id.* at 56-58.

²⁰ *Id.* at 21.

²¹ *Id.* at 25.

Petitioners also say that they were told by the plant manager, "*Kung ayaw mo ng patakaran ng kumpanya, maluwag ang pinto. Isa ang aalis, 10 ang papalit*" after they filed a complaint with the Department of Labor and Employment concerning their working conditions.²²

Moreover, a total of 12 workers were prevented by the security guard from entering the company premises on various dates, demonstrating that it was a management order to bar them from going inside and work.²³

Busel and Tordillo maintain that they were constructively dismissed due to harassment, pressure, and tension from their supervisor. All these led to health problems and their eventual resignation.²⁴

Thus, they pray for separation pay in lieu of reinstatement, and 13th month pay.²⁵

For their part, private respondents Constant Packaging Corporation, William Chan, and Virginia Chan filed their Comment.²⁶

They first argue that the Petition raises questions of fact which are outside the scope of a petition for review under Rule 45.²⁷ They also claim that the fact of petitioners' dismissal is not supported by evidence.²⁸

According to respondents, the fact that petitioners went to the Department of Labor and Employment to complain about allegedly being barred from entering their workplace "cannot be equated as proof that they were indeed dismissed from their jobs. This will not clearly, positively, and convincingly prove the factual basis of their dismissal... Except for their bare and self-serving allegation, petitioners proffered no evidence to substantiate the same."²⁹ They claim that petitioners were not able to discharge the burden of proving their allegation that they were dismissed in the first place.³⁰

Respondents maintain that the "best evidence of dismissal is the written notice," and if there is none, the burden is on the employee to prove the fact of dismissal.³¹ On this point, respondents assert that there could be no illegal dismissal because petitioners were not notified of their dismissal,

²² *Id.* at 27.

²³ *Id.*

²⁴ *Id.* at 29.

²⁵ *Id.*

²⁶ *Id.* at 594-624.

²⁷ *Id.* at 594-596.

²⁸ *Id.* at 599-600.

²⁹ *Id.* at 600.

³⁰ *Id.* at 602.

³¹ *Id.* at 603.

nor were they prevented from coming to work.³² They claim that, if petitioners had indeed been prevented from entering the premises, the prudent thing to do would have been to confer with management, “[a]nd if [their] effort to seek audience still failed, [they] would not easily give up; [they] will resort to other means of communication like writing a letter, making... telephone calls or even sending text messages. Unfortunately for petitioners, they did not present any proof, not even an allegation or slightest manifestation, to this effect. This is clearly against human experience.”³³

Respondents also insist that the liberal application of rules in favor of labor should still be subject to the rules of fair play. They argue this in relation to the admission of video footage contained in a USB, which allegedly show the manner how the security guard prevented petitioners from entering company premises, because they were submitted late.³⁴ Without any other evidence, the allegation that they were barred from entry in their work premises is only hearsay.³⁵

As to petitioners Busel and Tordillo’s claim of constructive dismissal, respondents reiterate the uniform findings of the labor arbiter, the National Labor Relations Commission, and the Court of Appeals that the allegation of oppressive conduct resulting in constructive dismissal is unsubstantiated.³⁶ Moreover, their complaint was for actual dismissal and not constructive dismissal, so their arguments should not be considered.³⁷

Finally, respondents argue that petitioners are not entitled to separation pay in lieu of reinstatement and their 13th month pay as there is no basis for these claims. It was petitioners’ refusal to work that caused the termination of their employment, so respondents should not be held liable. Petitioners must bear their own losses,³⁸ including any claims for backwages.³⁹ As to the claim for 13th month pay, the implementing rules of Presidential Decree No. 851 exclude those who are paid on a task basis from receiving this benefit. Since petitioners were *pakyaw* workers, they are not legally entitled to 13th month pay.⁴⁰

The main issue on the legality of the 12 other petitioners’ dismissal is anchored on the issue of whether they were dismissed in the first place. For 12 of the petitioners, they argue that the act of barring them from entering their workplace should have been considered as evidence of their dismissal, especially considering the circumstances surrounding their employment at

³² *Id.*

³³ *Id.* at 604–605.

³⁴ *Id.* at 606–607.

³⁵ *Id.* at 610–612.

³⁶ *Id.* at 613.

³⁷ *Id.* at 615.

³⁸ *Id.* at 615–617.

³⁹ *Id.* at 619.

⁴⁰ *Id.* at 620.

that time. Particularly, they were under scrutiny by management because they filed a complaint with the Department of Labor and Employment, and because they did not attend the company Christmas Party.

As to the other two petitioners, Busel and Tordillo, they claim that the pressures and harassment they suffered from their supervisor led them to their resignation. They say that this should be considered as constructive dismissal.

Respondents argue that the 12 petitioners never established the fact of dismissal to begin with. However, a perusal of the Court of Appeals Decision shows that the appellate court decided on whether the act of preventing these petitioners from entering company premises is tantamount to a dismissal, which is already a question of law:

The Court, therefore, clings to the view that the security guard's alleged act of preventing petitioners from reporting for work on separate occasions is not tantamount to a dismissal. Besides, the links between the acts of the guard and the supposed instructions of the Plant Manager, and the latter with the purported marching orders of private respondents, have not been shown by the requisite clear, positive, and convincing evidence.⁴¹

Petitioners aptly question the correctness of the Court of Appeals' finding that the act of preventing them from entering company premises does not amount to dismissal. On this point, this Court agrees with petitioners that this is tantamount to a dismissal. When an employee is able and willing to work, evidenced by their proceeding to the company premises, and the employer arbitrarily prevents them from working for no known and valid reason, then there is illegal dismissal. Respondents' insistence that the absence of a written notice proves that there was no dismissal is precisely the issue here. These 12 petitioners' services were abruptly terminated without undergoing the necessary processes and without just cause. Respondents cannot put the burden on these petitioners when it is their own lack of compliance with legal requirements that makes the dismissal illegal.

In any case, when respondents claim that they did not dismiss the petitioners from work, what respondents are actually arguing is that they abandoned their employment. Respondents insist that petitioners' jobs remained open and that they were free to return to work anytime, and that it was on their own volition that petitioners decided that they were dismissed. Respondents are quick to deny petitioners' narration of what transpired to show that there was no fact of dismissal, but fall short of making the necessary inference from their own theory that petitioners abandoned their jobs.

⁴¹ *Id.* at 49.

To be considered abandonment, the employer must show that: (1) the employee must have failed to report to work or must have been absent without valid or justifiable reason; and (2) there must have been an overt act demonstrating clear intention on the part of the employee to sever the employer-employee relationship.⁴²

In *Hubilla v. HSY Marketing Ltd., Co.*,⁴³ the employees were likewise prevented from entering their employer's stores, and respondents also argue that there was no dismissal done. This Court said:

There is likewise no proof that petitioners abandoned their employment. To constitute abandonment, the employer must prove that "first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, [that] there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act."

Abandonment is essentially a matter of intent. It cannot be presumed from the occurrence of certain equivocal acts. There must be a positive and overt act signifying an employee's deliberate intent to sever his or her employment. Thus, mere absence from work, even after a notice to return, is insufficient to prove abandonment. The employer must show that the employee unjustifiably refused to report for work and that the employee deliberately intended to sever the employer-employee relation. Furthermore, there must be a concurrence of these two (2) elements. Absent this concurrence, there can be no abandonment.⁴⁴

Thus, to sustain respondents' theory, they must satisfy the twin requirements to prove abandonment of work. More glaringly lacking is the second element: that the 12 petitioners deliberately intended, as shown by overt acts, to sever the employer-employee relationship.

However, respondents are only able to point how the 12 petitioners reacted to being prevented from entering company premises. According to respondents, these petitioners should have resorted to other means of communicating with management instead of simply concluding that their being barred from entry was an act of dismissal, but even this fails to show any intention on the part of petitioners to sever the employer-employee relationship. When investigated closely, respondents' argument does not hold water.

Like *Hubilla*, "[w]here both parties in a labor case have not presented substantial evidence to prove their allegations, the evidence is considered to be in equipoise. In such a case, the scales of justice are tilted in favor of

⁴² *Hubilla v. HSY Marketing Ltd., Co.*, 823 Phil. 358, 385 (2018) [Per J. Leonen, Third Division].

⁴³ 823 Phil. 358 (2018) [Per J. Leonen, Third Division].

⁴⁴ *Id.* at 385-386.

labor. Thus, petitioners are hereby considered to have been illegally dismissed.”⁴⁵

To be sure, we affirm the finding of fact by the labor arbiter that petitioners were indeed prevented by respondents’ security guard from entering the company premises and rendering work, which constitutes an overt act of dismissal. In the labor arbiter’s Decision:

The respondents allege that the complainants may work anytime and they may stop working anytime without any sanction; and they are not barred from doing *pakyaw* work.

The complainants allege that they were barred by respondent’s security guard from entering the plant premises.

Respondents, in its Reply, mentioned about its security guard who controlled entry and exit of workers from company premises.

Complainants, in their Reply, stress that the Plant Manager, Roderic Badua, instructed the security guard of the respondent not to allow the entries of the complainants.

The allegations of the complainants that they were not allowed of entry to respondent work premises [sic] are possible because the respondents station security guards at the company gate.

Respondents imply, in its Reply, that employees or visitors cannot enter the company premises without security passes from the security guards.

Simply put, the contention of the complainants, that they were not allowed to enter the work premises of the respondents by the security guards, is possible because respondents station security guards at its gate and the security guard control entrance and exit from the company premises.

The respondent failed to convincingly argue that the complainants were not prevented by the security guards to enter the company premises.

Hence, it may be safe to conclude that the complainants were terminated from the service because they were not allowed to report for work.⁴⁶

However, as to petitioners Busel and Tordillo, we affirm the uniform findings of the labor tribunal and the Court of Appeals that they were unable to substantiate their claim of oppressive conduct resulting in their constructive dismissal.



⁴⁵ *Id.* at 386.

⁴⁶ *Rollo*, pp. 233–234.

In *Ascent Skills Human Resources Services, Inc. v. Manuel*,⁴⁷ this Court stated that:

In resolving such an impasse, the Court is guided by the aphorisms in labor cases that an employer has the burden of proving that an employee voluntarily resigned. However, an allegation of constructive dismissal must be proven by the employee. Moreover, to determine the existence of constructive dismissal *vis-a-vis* the voluntariness of resignation, courts should weigh the evidence presented by the parties and delve into the totality of circumstances.

Jurisprudence defines resignation as the “voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment.” On the other hand, constructive dismissal can happen in any number of ways. At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action. In *Jacob v. First Step Manpower Int'l Services, Inc. (Jacob)*, the Court explained that constructive dismissal does not always entail a forthright dismissal or diminution in rank, compensation, benefit, and privileges. There can also be constructive dismissal where an act of clear discrimination, insensibility, or disdain by employers becomes so unbearable for the employees that it could foreclose any choice by the latter except to forego their continued employment.⁴⁸

Thus, while voluntary resignation of the employee should be proven by the employer, the burden to prove the circumstances that led to the constructive dismissal is on the employee. These circumstances that constitute discriminatory acts, insensibility, or disdain towards the employee should be clearly shown in evidence, such that the working environment created by the employer leaves the employee no other choice but to resign. In other words, the resignation is prompted by external factors within the control of the employer and not borne out of the employee's free choice.

In this case, petitioners Busel and Tordillo were unable to discharge this burden. The labor arbiter, National Labor Relations Commission, and the Court of Appeals are consistent in their factual findings. At any rate, respondents are correct to point out that the original complaint was for illegal dismissal, which, as discussed, raises an issue different from a claim of constructive dismissal.

Finally, as to their claim for 13th month pay, however, this Court agrees with respondents and the Court of Appeals that being *pakyaw* workers, petitioners are excluded from receiving this benefit. As pointed out, the Rules and Regulations Implementing Presidential Decree No. 851 excludes the following:

⁴⁷ 912 Phil. 971 (2021) [Per J. Zalameda, Third Division].

⁴⁸ *Id.* at 977–978.

Section 3. Employers covered. — The Decree shall apply to all employers except to:

....

(e) Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned.

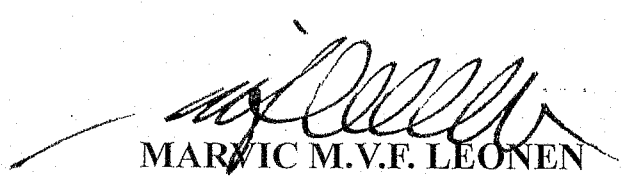
Here, petitioners work on *pakyaw* basis as sorters, revisers, and packers. Because their jobs are task based, they are excluded from the coverage of those who can claim 13th month pay. The deletion of this award should therefore be sustained.

ACCORDINGLY, the Petition is **PARTIALLY GRANTED**. The Court of Appeals September 27, 2021 Decision and March 30, 2022 Resolution in CA-G.R. SP No. 164597 are **REVERSED AND SET ASIDE**. Petitioners Rhoda P. Amor, Lourdes R. Balanquit, Gloria G. Narag, Jovelyn G. Bueno, Agnes B. Ricerra, Valentina H. Adalid, Elynor R. Romero, Maria Fe J. Claro, Elizabeth C. Catulay, Celestina V. Magtolis, Jonalyn R. Romero, and Jasmin B. Borlagdatan-Arambulo are found to have been **ILLEGALLY DISMISSED**.

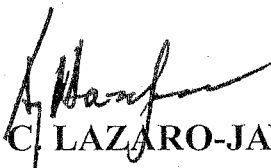
Respondent Constant Packaging Corporation is **ORDERED TO PAY** petitioners their separation pay and backwages, as well as their service incentive leave and holiday pay, but they are not entitled to 13th month pay. The case is **REMANDED** to the labor arbiter for the computation of the monetary awards due to these 12 petitioners.

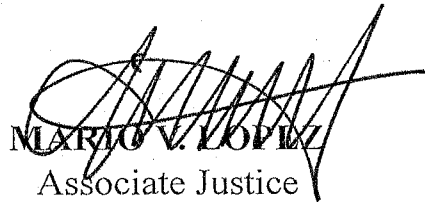
However, petitioners Marissa C. Busel and Glenda M. Tordillo are found to not have been illegally dismissed.

SO ORDERED.


MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice

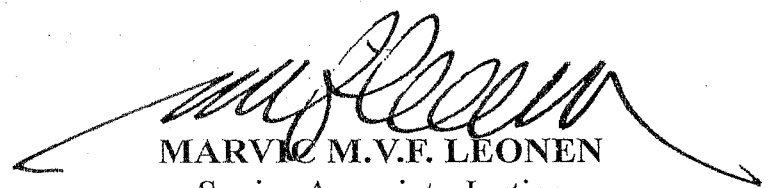

MARIO V. LOPEZ
Associate Justice

On official business
JHOSEY Y. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

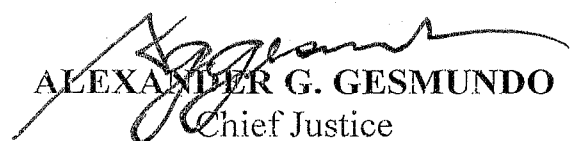
ATTESTATION

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.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice