Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DIONARTO Q. NOBLEJAS,
Petitioner,

- versus -

ITALIAN MARITIME ACADEMY PHILS., INC., CAPT. NICOLO S. TERREI, RACELI B. FERREZ and MA. TERESA R. MENDOZA,
Respondents.

G.R. No. 207888

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
VILLARAMA, JR.,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

June 9, 2014

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DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking the reversal of the February 22, 2013 Decision[1] and the June 21, 2013 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 124146, concerning an illegal dismissal case.

Petitioner Dionarto Q. Noblejas *(Noblejas)* filed a complaint for illegal dismissal, tax refund, moral and exemplary damages, non-payment of 13th month pay, food, gasoline and schooling allowances, health insurance, monetized leave, and attorney's fees, against Italian Maritime Academy Phils., Inc. *(IMAPI)*, Capt. Nicolo S. Terrei *(Capt. Terrei)*, Raceli S. Ferrez *(Ferrez)*, and Ma. Teresa R. Mendoza *(Mendoza)*.

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* Designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691, dated May 22, 2014.

[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justice Ramon R. Garcia and Associate Justice Danton Q. Bueser, concurring; *rollo* pp. 27-36.

[2] Id. at 38-39.

IMAPI was a training center for seamen and an assessment center for determination of the qualifications and competency of seamen and officers for possible promotion. Capt. Terrei was the Managing Director of IMAPI while Ferrez was his secretary. Mendoza was the company's Administrative Manager.

Record shows that Procerfina SA. Terrei, IMAPI President, wrote a letter[3] to Noblejas informing him that he had been appointed as training instructor/assessor of the company on a contractual basis for a period of three (3) months effective May 20, 2009, with a monthly salary of □75,000.00 inclusive of tax. After the expiration of the 3-month period, IMAPI hired Noblejas anew as training instructor/assessor with the same salary rate, but no written contract was drawn for his rehiring.[4]

The absence of a written contract to cover the renewal of his employment became Noblejas' major concern. To address all his apprehensions, he wrote Capt. Terrei a letter, dated March 9, 2010, requesting that a new contract be executed to reflect the following provisions that they had allegedly agreed upon during their conversation on May 19, 2009, to wit: 1] that his monthly salary would be □75,000.00, tax excluded, and that 50% of his SSS premium would be shouldered by the company; and 2] that after the completion of his 3-month contract, he would be given the option to choose either - a) to be regularly employed as an instructor of IMAPI; or b) to go on board a vessel with the company extending him financial aid for the processing of pertinent documents, which amount would be later on deducted from his salary. Likewise in the same letter, Noblejas intimated that he was electing to continue working for the company as its regular instructor.

Noblejas averred that the company did not act on his letter-request, so he sought an audience with Capt. Terrei on March 16, 2010. During the meeting, an altercation between them ensued. He claimed that after that incident, Capt. Terrei instructed Ferrez to dismiss him from employment. He claimed that when he asked from Ferrez for a copy of his old contract, she allegedly replied, "*No, you better pack up all your things now and go, you are now dismissed and you are no longer part in this office – clearly, you are terminated from this day on*."[5]

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[3] Id. at 59.
[4] Id. at 52.
[5] Id. at 11-13.

In their position paper,[6] respondents submitted that they could not be adjudged guilty of illegal dismissal because there was no positive and overt act of dismissing Noblejas from employment.

Respondents presented a different version of what took place on March 16, 2010. According to respondents, Noblejas got angry, hurled invectives against Ferrez and even threatened to file a case against them after she had relayed to him the response of Capt. Terrei to his March 9, 2010 letter to the effect that there was no previous agreement to grant him tax refund, health insurance and food, schooling and gasoline allowances and that he had to render at least one year of service before the company could decide whether to accord him the status of a regular employee. The following day, March 17, 2010, he did not report for work anymore and filed the complaint against them.

Respondents theorized that the complaint was filed on the mistaken impression by Noblejas that the failure to meet his demands, enumerated in his March 9, 2010 letter, was tantamount to his termination from employment. They, however, insisted that he was not entitled to 13th month pay because he was hired as a consultant and not as a regular employee. For unused leave credits, they posited that IMAPI could not be held liable in view of their payment to him of his sick leave pay in the aggregate amount of □21,075.00.

On October 15, 2010, Labor Arbiter Lutricia F. Quitevis-Alconcel *(LA)* handed down her decision,[7] finding that Noblejas was illegally dismissed from his employment, and awarded him limited backwages. The LA gave credence to his allegation that Capt. Terrei instructed his secretary, Ferrez, to terminate his employment after he had sought clarification on matters pertaining to his employment contract and monetary benefits. The LA concluded that Noblejas was a regular employee and, as such, was entitled to his proportionate 13th month pay. The other monetary claims were denied for being unfounded. The LA added that, as reinstatement was no longer feasible considering the strained relationship between the parties, payment of separation pay was the more equitable relief. The dispositive portion of the LA decision reads:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered declaring respondents guilty of illegal dismissal.
>
> Respondent Italian Maritime Academy Philippines, Inc. is hereby ordered to pay complainant Dionarto Q. Noblejas, as follows:

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[6] Id. at 51-58.
[7] Id. at 181-187.

> 1. Limited backwages computed from March 16, 2010 up to the date of this decision, in the amount of FOUR HUNDRED EIGHTY EIGHT THOUSAND NINE HUNDRED THIRTY NINE PESOS and 90/100 (Php488,939.90);
>
> 2. Separation pay, in lieu of reinstatement, equivalent to one (1) month salary, in the amount of SEVENTY FIVE THOUSAND PESOS (Php75,000.00)
>
> 3. Proportionate 13th month pay, in the amount of FIFTEEN THOUSAND SIX HUNDRED TWENTY FIVE PESOS (Php15,625.00).
>
> Other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.
>
> SO ORDERED.[8]

Dissatisfied, respondents appealed the October 15, 2010 decision of the LA before the National Labor Relations Commission (*NLRC*).

On October 27, 2011, the NLRC *reversed* the LA decision in a judgment[9] exonerating respondents from the charge of illegal dismissal. The NLRC explained that there was no showing that respondents committed any positive and overt act of dismissal and that the claim of Noblejas that Capt. Terrei ordered Ferrez to terminate his employment was not substantiated. According to the NLRC, it was Noblejas who severed his employment with IMAPI after it had refused to grant his numerous demands. Moreover, Noblejas was a contractual employee of IMAPI and, hence, there was no basis for his monetary award. The decretal portion of the decision reads:

> WHEREFORE, premises considered, the appealed Decision is hereby REVERSED AND SET ASIDE and another one is entered DISMISSING the complaint for lack of merit.
>
> SO ORDERED.[10]

Noblejas filed a motion for reconsideration, but it was denied by the NLRC in its Resolution, dated January 27, 2012.

Aggrieved, Noblejas filed a petition for *certiorari* before the CA ascribing grave abuse of discretion on the part of the NLRC for ruling that he was a contractual employee and that he was not illegally dismissed.

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[8] Id. at 187.
[9] Id at 222-230.
[10] Id. at 230.

On February 22, 2013, the CA rendered the challenged decision finding the petition for *certiorari* to be devoid of merit. It upheld the findings of the NLRC that Noblejas was a contractual employee of IMAPI and that there was no evidence to prove that he was dismissed from employment. Accordingly, the CA adjudged:

> WHEREFORE, in view of the foregoing, the petition is DISMISSED. The decision dated October 27, 2011, and the resolution dated January 27, 2012, both issued by the public respondent National Labor Relations Commission are AFFIRMED.
>
> SO ORDERED.[11]

Noblejas filed a motion for reconsideration, but the same was denied by the CA in its Resolution, dated June 21, 2013.

Unfazed, Noblejas filed the present petition for review on *certiorari* imputing to the CA the following

ERRORS:

A.

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER IS A CONTRACTUAL EMPLOYEE.

B.

THE COURT OF APPEALS ERRED IN DECLARING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED.

C.

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER WAS NOT ENTITLED TO HIS MONEY CLAIMS.[12]

It is the position of petitioner Noblejas that in illegal dismissal cases, the burden of proving that an employee was not dismissed, or if dismissed, that the dismissal was not illegal, rests on the employer. He submits that the failure of respondents to discharge this burden shows that his dismissal from employment was not justified. He avers that his act of immediately filing a complaint for illegal dismissal praying for reinstatement effectively negated the finding that he was disinterested in continuing his employment with IMAPI.

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[11] Id at 35-36.
[12] Id at 16-17.

Noblejas further points out that the nature of an employment is determined by the nature of activities being performed by the employee. In his case, he already attained the status of a regular employee because he was allowed to work beyond the stipulated period of his employment and he performed functions which were necessary or desirable in the usual business or trade of IMAPI.

Resolution of the Court

Before the Court tackles the issue of illegal dismissal, there should first be a determination of the status of his employment. In this regard, the Court finds Noblejas to be a regular employee of IMAPI.

Pursuant to Article 280 of the Labor Code, there are two kinds of regular employees, namely: (1) those who are engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; and (2) those who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed.[13] Regular employees are further classified into (1) regular employees - by nature of work and (2) regular employees - by years of service.[14] The former refers to those employees who perform a particular function which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of its nature thereof, for at least a year.[15]

In the case at bench, Noblejas was employed by IMAPI as a training instructor/assessor for a period of three (3) months effective May 20, 2009. After the end of the 3-month period, he was rehired by IMAPI for the same position and continued to work as such until March 16, 2010. There is no dispute that the work of Noblejas was necessary or desirable in the business or trade of IMAPI, a training and assessment center for seamen and officers of vessels. Moreover, such continuing need for his services is sufficient evidence of the necessity and indispensability of his services to IMAPI's business. Taken in this light, Noblejas had indeed attained the status of a regular employee at the time he ceased to report for work on March 17, 2010.

There was, however, no illegal dismissal.

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[13] *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 369 (2004).
[14] *San Miguel Corporation v. Teodosio*, G.R. No. 163033, October 2, 2009, 602 SCRA 197, 211.
[15] *Rowell Industrial Corporation v. Court of Appeals*, 546 Phil. 516, 526 (2007).

Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal.[16] The Court is not unmindful of the rule in labor cases that the employer has the burden of proving that the termination was for a valid or authorized cause. It is likewise incumbent upon the employees, however, that they should first establish by competent evidence the fact of their dismissal from employment.[17] It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing.[18] Mere allegation is not evidence. [19]

Aside from his mere assertion, no corroborative and competent evidence was adduced by Noblejas to substantiate his claim that he was dismissed from employment. The record is bereft of any indication that he was prevented from returning to work or otherwise deprived of any work assignment. It is also noted that no evidence was submitted to show that respondent Ferrez, the secretary of Capt. Terrei, was actually authorized by IMAPI to terminate the employment of the company's employees or that Ferrez was indeed instructed by Capt. Terrei to dismiss him from employment.

The Court finds it odd that, instead of clarifying from Capt. Terrei what he heard from Ferrez, Noblejas immediately instituted an illegal dismissal case against the respondents the day following the alleged incident and never reported back for work since then. The Court quotes with approval the observation of the NLRC on this score:

> Complainant's allegation that he was dismissed from employment cannot be accorded credence for it is obvious that being unhappy with not being granted his demands, it was he himself who is no longer interested to continue his employment with respondent company. The filing of a complaint for illegal dismissal with numerous money claims on March 17, 2010, against respondent is obviously intended to compel respondent company to abide with his demands.
>
> Respondents' refusal to grant complainant's demands does not constitute an overt act of dismissal. On the contrary, it is rather the apparent disinterest of complainant to continue his employment with respondent company that may be considered a covert act that severed his employment when the latter did not grant the litany of his demands. xxx.[20]

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[16] *Ledesma, Jr. v. National Labor Relations Commission*, 562 Phil. 939, 951 (2007).
[17] *Basay v. Hacienda Consolacion,* G.R. No. 175532, April 19, 2010, 618 SCRA 422, 430.
[18] *Machica v. Roosevelt Services Center, Inc. and/or Dizon,* 523 Phil. 199, 209-210 (2006).
[19] *General Milling Corporation – Independent Labor Union v. General Milling Corporation,* G.R. No. 183122, June 15, 2011, 652 SCRA 235, 258.
[20] *Rollo,* p. 229.

Let it be underscored that the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss.[21] Indeed, a party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation cannot stand without offending due process.[22] Here, there is no sufficient proof showing that Noblejas was actually laid off from work. In any event, his filing of a complaint for illegal dismissal, irrespective of whether reinstatement or separation pay was prayed for, could not by itself be the sole consideration in determining whether he has been illegally dismissed. All circumstances surrounding the alleged termination should also be taken into account.

For the above reasons, the Court sustains the LA in granting Noblejas proportionate 13th month pay covering the period of January 1, 2010 to March 15, 2010 in the aggregate amount of ₱15,625.00.[23]

Furthermore, the respondents should accept him back and reinstate him to his former position. There should, however, be no payment of backwages under the principle of "no work, no pay."[24]

WHEREFORE, the petition is **DENIED**. The assailed February 22, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 124146 is **AFFIRMED** with **MODIFICATION**. Accordingly, respondent Italian Maritime Academy Philippines, Inc. is ordered to pay petitioner Dionarto Q. Noblejas his proportionate 13th month pay in the amount of ₱15,625.00; and to reinstate him to his former position.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[21] *Cañedo v. Kampilan Security and Detective Agency, Inc.*, G.R. No. 179326, July 31, 2013.
[22] *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 499 (2009).
[23] *Rollo*, p. 188.
[24] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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 assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice