

REMEDIOS BELARMINO AND/OR TRIPLE 888 SECURITY SERVICES, PETITIONERS, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND HECTOR PANAGA, RESPONDENTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before Us is a petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court seeking to annul and set aside the public respondent's Decision[1] dated August 23, 2012 which affirmed en toto the Decision[2] dated September 30, 2011 of the Labor Arbiter finding petitioners guilty of constructive illegal dismissal. Likewise assailed is the Resolution[3] dated February 20, 2013 denying petitioners' Motion for Reconsideration.

The facts of the case:

Private respondent worked as a security guard for petitioner Triple 888 from February 13, 2010 until September 14, 2010 when he was pulled out from his post in Little Tikes in Pasig City. He reported to the petitioners' main office and he was told that there was no vacancy and he should wait. Private respondent waited but more than six (6) months had passed and he was not given any assignment. Thus, he claimed that he was constructively dismissed and filed the instant complaint for illegal dismissal, damages and attorney's fees against herein petitioners (the second case).

Petitioners denied having dismissed private respondent. They alleged that private respondent was pulled out from Little Tikes Show Room as requested by the latter's management due to several complaints against private respondent, to wit: (1) always using his cellphone while on duty; (2) frequently asking for advances from some officers of the store; and (3) getting food from the canteen without paying and saying nothing when to pay. Private respondent was verbally informed of management decision to replace him and was formally replaced on September 16, 2010. When private respondent reported to petitioners' office on September 24, 2010, he was served an Incident/Violation Report[4] and was directed to answer the same in writing. Private respondent refused to receive the Report and stated that he need not answer the same as he will file a case against them with the Department of Labor and Employment (DOLE). True enough, three (3) days after his relief, private respondent filed a complaint with DOLE for money claims (the first case).

On September 30, 2011, the Labor Arbiter rendered a Decision in the second case finding that private respondent was constructively dismissed, having been on floating status for more than six (6) months. The dispositive portion of the decision reads:

“WHEREFORE, premises considered, respondent Triple 888 Security Services and its proprietor Ms. Remedios N. Belarmino are hereby found guilty of constructive illegal dismissal and are directed to pay complainant:

- Backwages computed from March 15, 2011 up to date hereof ;
- Separation pay equivalent to one month wage for every year of service; and
- Attorney's fees equivalent to ten (10%) of the total monetary award.

All other claims are dismissed for lack of merit, The computation hereto attached is made an integral part of this Decision.

SO ORDERED.”

Petitioners lodged an appeal. On August 23, 2012, the public respondent issued a Decision affirming the ruling of the Labor Arbiter. The public respondent ruled that petitioner security agency did not give private respondent any assignment within six (6) months from the time he was relieved from his post on September 16, 2010. Placing an employee on temporary “off-detail” is not equivalent to dismissal provided that such temporary inactivity should continue only for a period of six (6) months; otherwise, the security agency concerned could be held liable for constructive dismissal under Article 286 of the Labor Code.

Their motion for reconsideration having been denied in the Resolution dated February 20, 2013, petitioners filed this petition raising the following issues for resolution, to wit:

I

WHETHER THE ISSUE OF “CONSTRUCTIVE ILLEGAL DISMISSAL” IS A MERE CREATION OF THE PRIVATE RESPONDENT THE HAPPENING OF WHICH, IS BEYOND THE CONTROL OF PETITIONER.

II

WHETHER DEPARTMENT ORDER NO 14 SERIES OF 2001 OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SPECIFICALLY PERTAINING TO SECURITY GUARDS APPLIES IN THIS CASE.

We find the petition meritorious.

Petitioners argue that private respondent was not placed on a floating status, and assuming that he was placed on such status, private respondent's dismissal cannot be categorized as constructive illegal dismissal because Department Order No. 14 [Series of 2001] allows such dismissal. Petitioners assert that private respondent is not entitled to separation pay. As per the SSS Record of private respondent, it shows that he was employed as a security guard at Golden Sun Investigation & Security Agency in November of 2010, just more than a month after private respondent was pulled out by petitioners from Little Tikes in Pasig City on September 16, 2010. Petitioners further claim that the public respondent committed grave abuse of discretion in ruling that Department Order No. 14 does not apply to instances where there is a case filed for money claims by the employee against the employer, as in this case.

It appears from the records that after private respondent was pulled out from his post at Little Tikes in Pasig City on September 16, 2010 as requested by the management, he filed a complaint for money claims (i.e., underpayment of salary/wages and non-payment of overtime pay, holiday pay, premium pay, rest day, 13[th] month pay and night shift differential) against petitioners on September 21, 2010, docketed as NLRC NCR Case No. 09-13405-10 and assigned to Labor Arbiter Madriaga. On September 24, 2010, private respondent reported to

the office of petitioners to get his salary and was asked to answer in writing the Incident/Violation Report which he refused to receive and answer, stating that he had already filed a case in court. On April 7, 2011, private respondent filed another case based on the same set of facts and grounds with constructive dismissal as additional ground. On April 29, 2011, Labor Madriaga dismissed the first case for money claims for lack of merit. On June 16, 2011, private respondent amended his second complaint by dropping his money claims and limited his cause of action for illegal dismissal.

What this Court further notes from the records is the fact that during the conciliation process of the first case for money claims before Labor Arbiter Madriaga in October 2010, barely a month after the first case was filed, the parties were asked if they could settle the case. Petitioners then offered private respondent to report back to work but the latter refused the offer. This was not denied by private respondent.

For this Court, the foregoing fact is very material in determining whether private respondent was constructively dismissed or not. Be it stressed that said offer to report back to work was done within the six-month period after private respondent was allegedly placed on “floating status”. Most contracts for security services stipulate that the client may request the replacement of the guards assigned to it, as what happened in this case. In security agency parlance, being placed “off detail” or on “floating” status means “waiting to be posted.”[5] This circumstance is not equivalent to dismissal, so long as such status does not continue beyond six months.[6]

Since private respondent was offered to report back for work barely a month after he was pulled out from his last post which he refused, there is no legal basis to say that he was constructively dismissed considering that the six-month period had not lapsed when he was asked to return to work. What happened is a clear case of abandonment on the part of private respondent.

Abandonment requires a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work.[7] Aside from the fact he refused to heed petitioners' offer to return to work without any justifiable explanation, a strong indication of private respondent's intent to sever the employer-employee relationship is the fact that private respondent was already employed in another security agency in November 2010, two months after he was pulled out from Little Tikes and within the six-month “floating” status period. Thus, We are more inclined to believe petitioners that after private respondent went to their office on September 24, 2010 to get his salary and was asked to answer the Incident/Violation Report, private respondent did not come back anymore, contrary to his allegation that he constantly followed-up on his new assignment.

In fact, during the conciliation proceeding of the instant case for illegal dismissal before Labor Arbiter Celino, petitioners again asked private respondent to report back for work but the latter refused. Private respondent did not explain why. The records do not reveal any explanation proffered by private respondent. The actual reason was that private respondent was working already with another security agency.

Verily, private respondent was not constructively dismissed. It is evident from his overt acts that he had the intent to sever his employment with petitioners even before the lapse of the six-month period or before filing his second complaint for illegal dismissal as he was already employed with another security agency duly entered in the SSS Records.

WHEREFORE, premises considered, the instant petition is GRANTED. Finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the assailed Decision dated August 23, 2012 and the Resolution dated February 20, 2013 are hereby SET ASIDE. Private respondent's complaint for illegal dismissal, damages and attorney's fees is hereby DISMISSED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, pp. 20-25.

[2] Rollo, pp. 72-77.

[3] Rollo, pp. 38-43.

[4] Rollo, p. 46.

[5] Sentinel Security Agency, Inc. vs. National Labor Relations Commission, G.R. No. 122468, September 3, 1998.

[6] Pido vs. National Labor Relations Commission, G.R. No. 169812, February 23, 2007.

[7] Philippine Industrial Security Agency Corporation vs. Dapiton & NLRC, G.R. No. 127421, December 8, 1999.

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