

JOSEMARIE M. MANAGUIT, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (5TH DIVISION), HAWK SECURITY AGENCY SERVICE, INC., AND BENGIE VENTURA, RESPONDENTS.

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Decision dated 10 July 2014[2] issued by the Public Respondent National Labor Relations Commission (NLRC), and its Resolution[3] dated 27 August 2014 in NLRC NCR CN. 08-11193-13 (NLRC LAC No. 03-000709-14), the respective decretal portions of which read:

10 July 2014 Decision:

“WHEREFORE, complainant's appeal is DISMISSED for lack of merit and the Decision promulgated on 27 January 2014 is AFFIRMED.

SO ORDERED.”

27 August 2014 Resolution:

“WHEREFORE, premises considered, complainant's Motion for Reconsideration is hereby DENIED.

SO ORDERED.”

THE FACTS

On 06 August 2013, Petitioner Josemarie M. Managuit, a security guard, filed a Complaint for Illegal Dismissal[4] (with claim for unpaid salary/wages, overtime pay, holiday pay, rest day premium, service incentive leave pay, 13[th] month pay, separation pay, ECOLA, night shift differential pay and damages) before the Labor Arbiter against Private Respondents Hawk Security Agency Service, Inc. and Bengie Ventura (in his capacity as the operation's manager/president of the company).

In his Position Paper,[5] Petitioner averred:

“Complainant was employed by respondent agency on the latter days of April 2012. Complainant was made a reliever considering that there was yet no vacant position for his detail. He has therefore been detailed to various locations until he was given a regular security detail on July 18, 2012. He was on such detail until April 2013.

On April 10, 2013, complainant filed an application for leave from April 23, 2013 to June 3, 2013 in order to visit his child who was in Mindanao. His application for leave was approved. However, on May 1, 2013, complainant called up the office to inform respondent agency that he will not be able to report for work on June 3, 2013 because his child was suffering from an illness. Respondent agency allowed complainant to prolong his leave until such time that his child will recover from the illness that he was currently suffering from.

On June 18, 2013, complainant returned back (sic) to Metro Manila and immediately reported back to the respondent agency. To complainant's surprise, he was callously told by the respondent agency that his leave had expired on June 3, 2013 and consequently, he no longer had anymore security detail. Complainant reasoned out that his extension for leave was approved although it was merely through a phone call but respondent agency was adamant in no longer giving him any security detail. Complainant thus lodged the instant complaint with this Honorable Office."

Private Respondents denied the allegations of Petitioner and, in their Position Paper,[6] countered:

"3. On April 10, 2013, complainant applied for a vacation leave from April 10, 2013, to June 5, 2013. Prior to the expiration of his leave, complainant called respondents' office and requested that his leave be extended until June 10, 2013. Said request was thereafter approved xxx;

4. At the expiration of his leave on June 10, 2013, complainant failed to report back for work, neither did he inform respondents of his whereabouts. As such, respondents were constrained to deploy another guard at Wilson Manor Townhomes in replacement of complainant;

5. In his connection, a memorandum dated June 17, 2013 was sent to complainant's last known address directing him to report to respondents' office for immediate assignment to its other client xxx;

6. In compliance with said directive, complainant reported to respondents' office on June 25, 2013. On even date, a memo was issued to complainant directing him to explain his absences without permission beginning June 11, 2013;

7. In his written explanation, he claimed that his son was hospitalized and that he called respondents' office and sought for an extension of his leave until June 10, 2013 which was approved. Noticeably, complainant failed to explain his absence without official leave from June 11, 2013 until June 24, 2013 or prior to the day he reported for work on June 25, 2013 xxx;

8. Meanwhile, after submitting his written explanation, complainant refused his new assignment and requested that he be deployed back to his previous assignment at Wilson Manor Townhouses. It was explained to him that another security guard was already deployed thereat after he extended his vacation leave as its client did not want a reliever. He was likewise told to temporarily accept his assignment pending a new one, to which he replied that he would just wait for a new deployment which is near his place and will be reporting to respondents' office from time to time;

9. On June 27, 2013, complainant reported to respondents' office. On said date, he was issued a memo indicating that his written explanation relative to his absence without official leave was found to be unsatisfactory, hence, he was being directed to submit his son's medical certificate proving that the latter was hospitalized. Inadvertently, however, said memo indicated "Medical Records or Hospital Records of his son" instead of "Medical Certificate." However, it was explained to him that a medical certificate or any proof that his son was hospitalized will suffice. Said memo was personally received by complainant on even date xxx;

10. On July 1, 2013, complainant reported to respondents' office and submitted the medical records of his son xxx. After that, he left and no longer reported for work nor inform(ed) respondent of his whereabouts;

xxx xxx xxx

12. In the exercise of its management prerogative to assign and deploy its security guards, respondents, in a memo dated July 11, 2013 sent to complainant's last known address, directed him to report for work for immediate deployment to its other client. Despite receipt of said memo, complainant stubbornly refused to comply with respondents lawful and reasonable directives xxx."

On 27 January 2014, the Labor Arbiter rendered its Decision[7] which dismissed Petitioner's Complaint.

Petitioner elevated the case to the NLRC. On 10 July 2014, The Commission a quo rendered the herein assailed Decision which affirmed the 27 January 2014 ruling of the Labor Arbiter.

Petitioner seasonably filed a Motion for Reconsideration but the same was denied by the NLRC in its assailed 27 August 2014 Resolution.

Hence, this Petition.

ISSUES

Petitioner cites the following issues in his Petition for Certiorari:

“I WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT THE PETITIONER FAILED TO PROVE THE FACT OF HIS DISMISSAL.

II WHETHER THE PUBLIC RESPONDENT COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN NOT AWARDING THE PETITIONER HIS BACKWAGES, SEPARATION PAY IN LIEU OF REINSTATEMENT, MORAL AND EXEMPLARY DAMAGES, MONETARY CLAIMS AND ATTORNEY'S FEES.”[8]

THIS COURT'S RULING

The Petition fails.

While this Court recognizes the rule that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause, in the present case, however, the facts and the evidence do not establish a prima facie case that the employee was dismissed from employment. Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[9]

Withal, other than Petitioner's unsubstantiated allegation of having been verbally terminated from his work, there was no evidence presented to show that he was indeed dismissed or was prevented from returning to his work. In the absence of any showing of an overt or positive act proving that the Private Respondents had dismissed Petitioner, the latter's claim of illegal dismissal cannot be sustained.[10]

A review of the 17 June 2013 memorandum of Private Respondents addressed to Petitioner reveal that the latter, contrary to his claim that he was dismissed, was not terminated and was, in fact, even directed to report for work after his vacation leave had expired. We quote, for ready reference, the aforesaid memorandum, viz:

“Our record shows that your vacation leave is already expired last June 11, 2013.

In view hereof, you are hereby directed to report to this office for assignment in MPM SAFETY INDUSTRIES COMPANY located at No. 331 C. Cordero St., 8th Ave., Grace Park, Caloocan City on June 19, 2013. As of now, this is the only available post we could deploy you.” (Emphasis supplied)

In another memorandum dated 11 July 2013, Private Respondents reiterated their directive for Petitioner to report for work in this manner:

“You are hereby directed to report to the office within 48 hours from receipt of this memorandum for immediate deployment/assignment at Padispoint Restaurant & Bar located at #rd (sic) Floor, Fimar Bldg. Masaya St., Commonwealth Ave., Diliman, Quezon City. We wish to inform you that this assignment will be

on a temporary basis pending your request to transfer/deployment to a client located near your place. As of now, there is no available position where we could deploy you as requested.” (Emphasis supplied)

This Court further notes that the 17 June 2013 and 11 July 2013 memoranda contained no words whatsoever which imply actual or constructive dismissal. Petitioner cannot feign knowledge of these documents as the subject memoranda ordering him to report for work were all received by the latter, as evidenced by the registry return receipts duly signed by Petitioner.

In *Machica v. Roosevelt Services Center, Inc.*,^[11] the Supreme Court sustained the employer's denial as against the employees' categorical assertion of illegal dismissal. In so ruling, the High Tribunal held:

“The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.”

As between Petitioner's general allegation of having been verbally dismissed from employment vis-a-vis those of Private Respondents' which were found to be substantiated by the above-mentioned memoranda ordering Petitioner to report for work, We are persuaded by the latter. Absent any showing of an overt or positive act proving that Private Respondents indeed dismissed Petitioner, the claim of illegal dismissal cannot be sustained.

On account of this Court's determination that there is no dismissal or termination in the case at bar, We find no need to further belabor on Petitioner's claim for separation pay and damages.

All told, the Petition fails.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED and the Decision dated 10 July 2014 as well the Resolution dated 27 August 2014 both issued by the National Labor Relations Commission are AFFIRMED.

SO ORDERED.

De Leon, M.M., Chairperson and Antonio-Valenzuela, N.G., JJ., concur.

[1] Rollo, pp. 02-18

[2] Id., pp. 25-37

[3] Id., pp. 22-24

[4] Id., pp. 47-48

[5] Id., pp. 38-46

[6] Id., pp. 49-59

[7] Id., pp. 130-134

[8] Erroniously printed as “October 13, 2009”

[9] See *Philippine Rural Reconstruction Movement v. Pulgar*, (G.R. No. 169227, 05 July 2010)

[10] *Exodus International Construction Corporation v. Biscocho*, (G.R. No. 166109, 23 February 2011)

[11] 523 Phil. 199 (2006)

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