

JOEL K. GAJUNERA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION), Warbird Security Agency, Inc., JOSE MONTOYA, RAFFY MARTINEZ, MICHAEL ALUNAN AND/OR SPLASH...

Ponente: BARZA, J.

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BARZA, J.:

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to annul and reverse the Decision[1] of the National Labor Relations Commission (NLRC, for brevity) issued on January 24, 2013, in NLRC Case No. RAB-IV-07-01267-10-C, NLRC LAC No. 11-003152-12 and its subsequent Resolution[2] issued on June 13, 2013, which denied petitioner's motion for reconsideration on the aforementioned NLRC decision.

FACTS

The antecedents are, as follows:

On December 1, 2005, Petitioner Joel K. Gajunera was hired as a security guard with a Php298.00 daily salary by respondent Warbird Security Agency, Inc. He was first deployed at the Manila Southwoods Golf and Country Club, Carmona, Cavite. On February 22, 2010, petitioner was transferred to Splash Island Resort, Biñan, Laguna (Splash Island), being operated by Precy Torres.

Problems arose on May 25, 2010 while petitioner was tasked to man the Finance Gate of Splash Island. At around 4:30 a.m. on the same date, complainant was caught “sleeping while on duty” by Erick Panaligan, brother of Precy Torres. Consequently, Splash Island requested for the immediate relief of complainant per its May 27, 2010 letter[3]. On the same date, complainant, in his written explanation,[4] admitted that he took a short nap and did not notice and hear the honking of the car's horn right away (“medyo napaiglip lang ako hindi ko napansin agad”) and apologized for doing so. Despite his explanation, the complainant was relieved from his post at Splash Island and directed to report to respondent's office. On July 1, 2010, complainant was issued a Duty Detail Order No. NCR-09-0222-10[5], deploying him at Sherwood Hills Golf and Country Club, Trece Martires, Cavite, from July 1, 2010 to July 31, 2010. However, on July 8, 2010, respondent issued an Information Report[6] stating, to wit:

“that Joel Gajunera (herein petitioner) is not reporting for duty effective July 1, 2010 up to present, and said security guard is charged for a violation of ABSENT WITHOUT OFFICIAL LEAVE to this detachment, Sherwood Hills Res. Estate Golf & Country Club, Trece Martires, Cavite”

On July 06, 2010, petitioner filed a complaint,[7] which was amended on August 03, 2010,[8] against respondents for illegal dismissal, underpayment of wages, non-payment of wages, overtime pay, service incentive leave pay, and pro-rata 13th month pay, moral, exemplary, actual and nominal damages and attorney's fees.

Petitioner argued that he was summarily dismissed, viz:

“that after being relieved from his post at Splash Island on May 27, 2010, and upon reporting to respondent's office, respondents' Capt. Raffy Martinez uttered to him the following words: 'PUTANG INA MO, TULOG KA NG TULOG, magresign ka na lang x x x' 'UMALIS KA NA LANG AT BAKA MASIPA KITA NG KALIWAT KANAN x x x'; after three (3) days, he returned to respondents' office, only to be told: 'BAKIT NANDITO KA PA? x x x'; that later, complainant found out he was already terminated, as requested by Precy Torres of Splash Island, per May 27, 2010 letter of respondents' Capt. Raffy Martinez; that he was illegally dismissed without just cause and procedural due process; that he was underpaid, being paid only P298.00, instead of being P320.00 applicable wage in Biñan, Laguna; that being underpaid his wages, he was also underpaid his overtime and night differential pay; that he was not paid service incentive leave for the entire duration of his employment with respondents; that he should be paid moral/exemplary/nominal damages and attorney's fees for being illegally dismissed and having suffered serious anxiety and sleepless nights; and that individual respondents should be made personally liable in this case for having active participation in his illegal dismissal and underpayment of wages/benefits.

xxx...xxx...xxx

Respondents, on the other hand, countered, viz:

“that while complainant was deployed at Manila Southwoods Golf and Country Club, Carmona, Cavite, he was charged and found guilty of accidentally firing the shotgun of his co-guard while under the influence of liquor and suspended for forty-five (45) days effective January 6, 2010; that after serving his 45-day suspension, complainant was assigned at Splash Island; that complainant was relieved from his post at Splash Island in compliance with the request of client Splash Island which found him 'sleeping while on duty' on May 25, 2010; that complainant's relief from Splash Island Resort cannot be tantamount to dismissal since complainant was merely placed 'off-detail' or waiting to be posted; that words allegedly uttered by Capt. Raffy Martinez were not uttered to complainant; that complainant was recalled back to work on July 1, 2010 but complainant refused to do so; that complainant was also advised to report for reposting during the preliminary conference with the Labor Arbiter but complainant refused to do so; that complainant was not underpaid his P298.00 daily wage rate being within the mandated wage for Biñan, Laguna; that all wages due to complainant were duly paid to him, as shown in the payrolls; that complainant is not entitled to overtime pay; that claims for non-payment of overtime pay and night differential pay were not included in the complaint as among complainant's causes of action; that there being no illegal dismissal, claims for damages and attorney's fees must be rejected.

The Labor Arbiter (LA), in his Decision,[9] dated August 22, 2012, held that complainant was not illegally dismissed, but merely relieved from his last assignment at Splash Island on May 27, 2010, in compliance with the request of client Splash Island which found complainant “sleeping while on duty.” As to complainant's claim of not being paid his wages, the same was rejected, giving credibility to the payrolls submitted by respondent. Claims for damages and attorney's fees were likewise rejected for being baseless.

On January 24, 2013, the NLRC, in its Decision,[10] partly granted the appeal of petitioner and modified the Labor Arbiter's decision. Holding that petitioner was not dismissed but merely placed under floating status, the NLRC, however, granted the money claims. The NLRC disposed, thus:

WHEREFORE, premises considered, judgment is rendered PARTLY GRANTING complainant's Appeal. The decision of Labor Arbiter Edgar B. Bisana dated August 22, 2012 is hereby MODIFIED by ordering respondent Warbird Security Agency, Inc:

1) to pay complainant salary differentials from February 22, 2010 to May 26, 2010; and

2) to pay complainant attorney's fees equivalent to 10% of the monetary award.

Other dispositions STAY.

SO ORDERED.

Its motion for reconsideration having been denied on June 13, 2013, the petitioner has come to this Court on certiorari. The petitioner claims grave abuse of discretion and gross ignorance of the law on the part of NLRC for finding that petitioner was placed on floating status and not illegally dismissed, and for granting only the money claims while other dispositions stay.

ISSUES

Petitioner raises the following issues for Our Resolution, to wit:

I.

THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONER WAS VALIDLY PLACED UNDER FLOATING STATUS, AND WAS NOT DISMISSED.

II.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT PETITIONER IS NOT ENTITLED TO REINSTATEMENT, MORAL, EXEMPLARY AND NOMINAL DAMAGES INCLUDING ATTORNEY'S FEES.

III.

ASSUMING IN ARGUMENTI, THE PETITIONER WAS VALIDLY PLACED UNDER FLOATING STATUS, THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING THE RELIEFS OF REINSTATEMENT OR FOR FAILING TO ORDER THE REINSTATEMENT OF HEREIN PETITIONER.

RULING OF THE COURT

The petition is bereft of merit.

Petitioner asserted that the relief of security guards and placing them on floating status not to exceed six months could be validly done: 1) when the service contract between the security agency and the client expired; and/or 2) when there is a request from the client, authorized under the contract; that the respondents failed to show their service contract with Splash Island which allowed the latter to request for the relief of security guards; and that respondents were not able to discharge the burden of proof and evidence to show validity of the petitioner's pull out from Splash Island, because the material and relevant evidence relative to the pull-out which is the provision of the contract authorizing Splash Island to ask for the relief or replacement of herein petitioner, who was allegedly caught sleeping on duty, was not adduced in evidence.

The Court is not persuaded. In the business world, companies which offer contracts for services cater to the whims and wishes of clients whether the same are reasonable or not. Clients are not expected to explain the reason for their demands while these companies are not only expected but also are bound to comply with their clients' directives.[11] In the case at bar, the respondent Splash Island manifested their preference that petitioner Joel K. Gajunera to no longer work in their establishment. Respondent Warbird cannot disregard such preference otherwise it would be detrimental to the business relationship they have with their client Splash Island. The assignment of personnel is the prerogative of the employer in the management of its business.[12] The NLRC correctly cited the case of OSS Security & Allied Services, Inc. vs. NLRC, G.R. No. 112752, February 9, 2000,

viz:

Service-oriented enterprises, such as petitioner's business of providing security services, generally adhere to the business adage that "the customer or client is always right". To satisfy the interests, conform to the needs, and cater to the whims and wishes of its clients, along with its zeal to gain substantial returns on its investments, employers adopt means designed towards these ends. These are called management prerogatives in which the free will of management to conduct its own affairs to achieve its purpose, takes form. Accordingly, an employer can regulate, generally without restraint, according to its own discretion and judgment, every aspect of business.

In the employment of personnel, the employer can prescribe the hiring, work assignments, working methods, time, place and manner of work, tools to be used, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work, subject only to limitations imposed by laws. Thus, the transfer of an employee ordinarily lies within the ambit of management prerogatives. However, a transfer amounts to constructive dismissal when the transfer is unreasonable, inconvenient, or prejudicial to the employee, and it involves a demotion in rank or diminution of salaries, benefits and other privileges. In the case at bench, nowhere in the record does it show that the transfer of private respondent was anything but done in good faith, without grave abuse of discretion, and in the best interest of the business enterprise.

The transfer of an employee ordinarily lies within the ambit of management prerogatives. However, a transfer amounts to constructive dismissal when the transfer is unreasonable, inconvenient, or prejudicial to the employee, and it involves a demotion in rank or diminution of salaries, benefits and other privileges. In the case at bar, nowhere in the record does it show that the transfer of private respondent was anything but done in good faith, without grave abuse of discretion, and in the best interest of the business enterprise. The mere fact that it would be inconvenient for her does not by itself make private respondent's transfer illegal. An employee has a right to security of tenure, but this does not give her vested right in her position as would deprive petitioner of its prerogative to change her assignment or transfer her where her service, as security guard, will be most beneficial to the client. Thus, there was no basis to order reinstatement and backwages.

Likewise, as held in the case of *Nationwide Security & Allied Services, Inc. v. Valderama*, G.R. No. 186614, February 23, 2011:

“In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six months.”
(Emphasis ours)

The charge of illegal dismissal is prematurely filed. The records disclose that barely a month after petitioner was placed on a temporary “off-detail” on May 27, 2010, respondent Warbird sent a Memorandum,[13] dated July 01, 2010, directing petitioner to report to Operations Office for reassignment/posting. A Duty Detail Order[14] was likewise sent to petitioner deploying him to Sherwood Hills Golf & Country Club & Residential Estate, Trece Martires, Cavite City. Petitioner, however, did not report for duty at his new assignment.[15] Based on respondent Warbird's Reply,[16] petitioner refused to acknowledge the receipt of the said notice to report and duty detail order despite the fact that the same was served on him personally. Such fact was attested by Pedrito Recaido, Bonifacio Dacanay and Benny Melaya who signed the duty detail order with the notation “refused to received.”

The petitioner next puts in issue the fact that he is entitled to moral, exemplary and nominal damages, including attorney's fees. He avers that he received verbal abuse from his superiors in the security agency, viz:

“Complainant alleged: that after being relieved from his post at Splash Island on May 27, 2010, and upon reporting to respondent's office, respondents' Capt. Raffy Martinez uttered to him the following words: 'PUTANG INA MO, TULOG KA NG TULOG, magresign ka na lang x x x' 'UMALIS KA NA LANG AT BAKA MASIPA KITA NG KALIWAT KANAN x x x'; after three (3) days, he returned to respondents' office, only to be told: 'BAKIT NANDITO KA PA? x x x;’”

We resolve in the negative. Respondent Capt. Raffy Martinez vehemently denies the statements being imputed to him by petitioner and maintains that such were self-serving statements.[17] The fact remains that there was no illegal dismissal to speak of. We, therefore, uphold the ruling of the NLRC, to wit: “there being no illegal dismissal thus petitioner's claims for backwages and damages must be rejected for lack of factual and legal bases.”

Lastly, petitioner asserts that assuming in argumenti he was not dismissed, he is entitled to reinstatement and asks this Court to order the respondent to grant the petitioner a new detail order or to pay him separation pay after six months of floating status.

We rule in the negative. Petitioner caused his own separation by his refusal to return to work. Based on the record, despite the finding that petitioner had been sleeping while on duty to which he admitted in his Explanation Report, respondent Warbird did not terminate his service for that offense. The records show that respondent relieved him from Splash Island but reassigned him to another post within barely a month. Petitioner, however, refused to receive his Duty Detail Order and refused to report to his new post. There is no basis to order reinstatement or an award of separation as the petitioner was not illegally dismissed or constructively dismissed.

Prescinding from the foregoing, there was no grave abuse of discretion committed by the NLRC when it issued the assailed Decision dated January 24, 2013 and its Resolution dated June 13, 2013. At the outset, it should be noted that a petition for certiorari under Rule 65 of the Rules of Court will prosper only if there is a showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the National Labor Relations Commission.[18] The Supreme Court, in several cases, had discussed the meaning of grave abuse of discretion. The case of *Rio vs. Colegio de Sta. Rosa-Makati*, G.R. No. 189629, August 4, 2014, citing *Yu v. Judge Reyes-Carpio*[19], citing *Beluso v. Commission on Elections*[20] and *J.L. Bernardo Construction v. CA*,[21] is instructive:

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."

The petitioner failed to show that the NLRC exercised its judgment capriciously, whimsically, arbitrarily or despotically by reason of passion and hostility. Such a showing is needed for a reversal of the ruling of the NLRC here questioned.

WHEREFORE, the petition is hereby DENIED. The challenged Decision of the NLRC dated January 24, 2013 and its Resolution dated June 13, 2013, are AFFIRMED.

SO ORDERED.

Carandang, R. D., Chairperson and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 116-123

[2] Rollo, pp. 130-133

[3] Rollo, pp. 85 and 87

[4] Rollo, p. 88

[5] Rollo, pp. 89-90

[6] Rollo, p. 91

[7] Rollo, p. 48

[8] Rollo, p. 49

[9] Rollo, pp. 105-108

[10] Rollo, pp.. 116-123

[11] Superstar Security Agency, Inc. vs. NLRC, et al., G.R. No. 81493, April 3, 1990

[12] A' Prime Security Services, Inc. vs. NLRC, G.R. No. 93476, March 19, 1993

[13] Rollo, p. 89 Annex "M"

[14] Rollo, p. 90 Annex "N"

[15] Rollo, p. 91 Annex "O"

[16] Rollo, p. 53

[17] Rollo, p. 57

[18] National Federation of Labor v. NLRC, G.R., December 15, 1997 citing ComSavings Bank v. NLRC, 257 SCRA 307

[19] G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348

[20] G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457 citing De Vera v. De Vera, G.R. No 172832, April 7, 2009, 584 SCRA 506, 514-515; Fajardo v. CA, G.R. No. 157707, October 29, 2008, 570 SCRA 156-163 381 Phil 25, 36 (2000)

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