

LION INTEGRATED SERVICES, INC., JOSE B. POE III AND NOEL PATUBO, PETITIONERS, VS. RODNEY ABISADO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the October 15, 2012[2] Decision and December 14, 2012[3] Resolution of the National Labor Relations Commission (NLRC), 7[th] Division, Cebu City in NLRC Case No. VAC-05-000336-2012. The assailed Decision affirmed with modification the March 29, 2012 Decision[4] of the Labor Arbiter in RAB Case Nos. VI-10-10524-11 by deleting the award of separation pay to private respondent and reinstated the latter to his former position without loss of seniority rights and other privileges. On the other hand, the assailed Resolution denied petitioner's motion for reconsideration.

The Antecedents

The instant case arose from the complaint of illegal dismissal and underpayment of 13[th] month pay with a claim for moral and exemplary damages and attorney's fees filed by private respondent Rodney A. Abisado against petitioners Lion Integrated Services, Inc. (LSI) and/or Jose Vingson Po (Po) and Noel Patubo (Patubo), its owner and officer-in-charge, respectively, before the NLRC, Regional Arbitration Branch (RAB) No. VI, Bacolod City. Private respondent thereafter amended his complaint to include payment of vacation/sick leave pay and changed the date of his employment from December 2006 to December 2005. Failing to amicably settle during their mandatory conciliation proceedings, both parties were directed to file their respective position papers.

In his Position Paper,[5] private respondent alleged that he was hired as security guard in December 2005. Since the time of his engagement up to the time of his dismissal, private respondent was assigned at Hawaiian-Philippine Company (HPCO), a sugar central in Negros Occidental. Private respondent rendered twelve (12) to fifteen (15) days every quincena and was paid a salary of two hundred and sixty five pesos (Php 265.00) daily. He was not paid vacation/sick leave pay nor service incentive leave pay and received only five thousand pesos (Php 5,000.00) as 13[th] month pay in the years 2009 and 2010 but did not receive any in the year 2011.

On March 25, 2011, private respondent was on duty at the Cubay gate of HPCO when at about 2:45 a.m., Engr. Joey Aguilar (Aguilar), HPCO Mill Supervisor, called Cosmos (the security agency's radio base) to wake up the employee in charge of the pollution area, Security Guard (SG) Ronilo Duron (Duron), so that the latter could open the sluice gate as water was flooding the mill site. After the task was accomplished, SG Duron called up Cosmos and asked that Engr. Aguilar be notified accordingly. However, Cosmos replied that it could not reach Engr. Aguilar through radio. SG Duron then asked why there were no guards in Cubay. Upon hearing this statement, private respondent answered that he could not leave his post because his fellow guard was on roving duty and he was alone. At that point, a certain Medardo Parreno (Parreno), a covert security guard of petitioner LSI whose identity is so kept so as to facilitate detection of suspected pilferers or other criminal elements in the area, intercepted the radio saying, "Ginago na ang imo. Tinamad na." (This is plain stupidity. You are just being lazy.)

Private respondent answered back saying, “Indi kaya mag intra, amon ni ya obra.” (Do not interfere. This is our work.) Heated exchanges ensued between private respondent and Parreno until they were stopped by their Shift-in-Charge. [6]

After his tour of duty, private respondent caused the incident with Parreno to be recorded in the police blotter[7] and also referred the matter to the Brgy. Lupon.[8] Shortly before the barangay conciliation conference, HPCO Detachment Commander Noel Patubo (Patubo) called private respondent and Parreno to a conference and reprimanded private respondent for bringing the matter to the barangay. Private respondent explained that it was a personal matter between him and Parreno since the latter was not his superior officer and had no business reprimanding him or telling him what to do, much less, insulting him. On March 29, 2011, private respondent received a show-cause memorandum[9] requiring him to explain within twenty-four (24) hours why no drastic action will be taken against him for having acted negatively in emergency cases, particularly referring to the incident on March 26, 2011. Private respondent was also asked to explain why he brought his complaint against Parreno to the barangay and not through the security agency's chain of command.[10]

On March 30, 2011, without waiting for private respondent's answer, Patubo sent the private respondent a post-dated memorandum[11] relieving him from his assignment and directing him to report to the security agency's headquarters in Mandaluyong City. On April 8, 2011, private respondent managed to report to the security agency's headquarters in Mandaluyong City where he met Mr. Jayme Lanillo (Lanillo), Operations Officer, who was surprised of his personal visit and intimated that the private respondent could have just communicated with the office entailing lesser expense on his part. Private respondent showed Lanillo his relief order from Patubo. Lanillo then informed him to stand by because there was no vacancy yet. Private respondent kept on following up on his assignment by communicating with Lanillo through text messaging but no new assignment was given to him. After a lapse of six (6) months without any posting, private respondent filed the instant suit.[12]

For their part, petitioners presented a different version in their Position Paper[13] and contend that private respondent was employed on January 12, 2006 and assigned at HPCO, Negros Occidental. That on March 29, 2011, at around 11:00 p.m., there was a heavy downpour of rain which caused the flooding in the area. When the water at the factory reached critical level, the Mill Supervisor requested assistance from SG Duron to control the valve going to the pollution area so that the water would subside from the factory. After completing said task, SG Duron radioed private respondent to check the water level at the mill area because it was near his post. However, private respondent refused to leave his post because it was raining. He further communicated over the radio that it was not his job to check the water level. Private respondent's communication with SG Duron and his obstinate refusal to proceed to the mill area was heard by his co-guards. In fact, his patent refusal reached the Factory Manager and Security Officer of HPCO, both of whom felt that private respondent's act placed the factory at risk, and hampered or affected the operation and safety of their property.

On March 29, 2011, OIC Patubo sent private respondent a notice[14] to explain within twenty-four (24) hours regarding his refusal to respond to the emergency, a notice which complainant refused to receive. Twenty-four (24) hours having elapsed without the private respondent having filed his explanation, OIC Patubo was constrained to relieve the private respondent from his post on March 31, 2011 and submit the matter to the headquarters of petitioner LSI.[15] In the said relief order, private respondent was directed to report to petitioner LSI's headquarters to personally explain the matter. Allegedly, private respondent never reported thereto and since then, nothing was heard from him again.[16]

The Decisions of the Labor Arbiter and NLRC

After carefully weighing the parties' allegations and counter-allegations and the evidence on hand, the Labor Arbiter rendered its Decision[17] on March 29, 2012, declaring private respondent as constructively dismissed from employment and thus, directed petitioner LSI to pay private respondent backwages, separation pay, in lieu of reinstatement, and attorney's fees. The dispositive portion of said Decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding complainant Rodney A. Abisado to have been constructively dismissed by respondent Lion Integrated Services Incorporated. Accordingly, the latter is hereby ordered to pay complainant backwages and separation pay, in lieu of reinstatement. It is also found that complainant is entitled to attorney's fees.

The awarded backwages, separation pay and attorney's fees are computed as follows:

1. Backwages

(3/31/11-3/29/12 + 11.94 mos.)

P265.00 x 26 x 11.94 mos. ----- P 82,266.60

13[th] mo. - P82,266.60/12 ----- 6,855.55

SILP – P265.00 x 4.974 days ----- 1,318.11

ECOLA (7/16/11-10/11=3mos.)

P12 x 26 x 3mos. ----- 936.00 P91,376.36

2. Separation Pay (1mo./yr)

(in lieu of Reinstatement)

12/06 – 3/29/12 = 5 yrs.)

P265.00 x 26 x 5 yrs. ----- 34,450.00

Sub-Total ----- P125,826.26

3. Attorney's Fees (10%) ----- 12,582.63

GRAND TOTAL ----- P138,408.89

Respondents Lion Integrated Services Incorporated is ordered to deposit the total amount of ONE HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED EIGHT AND 89/100 (P138,408.89) with the Cashier of this Arbitration Branch within ten (10) days from receipt of this Decision.

Claims against respondents Jose Vingson Po and Noel Patubo and all other claims are DISMISSED for lack of merit.”

Aggrieved, petitioner LSI appealed[18] the aforesaid ruling to the NLRC. On appeal, the NLRC upheld the ruling of constructive dismissal but under a different theory than that advanced by the Labor Arbiter. According to the NLRC, private respondent was not validly placed on floating status considering that the removal of private respondent from his post was not brought about by the dire exigency of the employer's bona fide suspension of operation, business or undertaking but was done in an arbitrary and capricious manner with the objective of

retaliating at private respondent for not having reacted the way they had expected him to react in that instance. As such, private respondent is entitled to reinstatement and payment of backwages from the time compensation was withheld from him on March 31, 2011 up to his actual reinstatement.

On October 15, 2012, the NLRC promulgated its Decision[19] affirming the appealed decision but modified the same by deleting the award of separation pay to private respondent and ordering his reinstatement. The dispositive portion of said Decision reads:

“WHEREFORE, premises considered, the Decision of the Labor Arbiter dated 29 March 2012 is hereby AFFIRMED, with the modification that, the award of separation pay be deleted and complainant be REINSTATED to his former position without loss of seniority rights and other privileges.

Respondents are ordered to pay the amount of P139,893.44 as backwages, subject to further re-computation up to actual reinstatement. The award of attorney's fees is sustained and correspondingly adjusted in the amount of P13,989.34.”

From the aforesaid Decision, petitioner LSI moved for reconsideration,[20] which was opposed[21] by private respondent, but the NLRC denied the same in its December 14, 2012 Resolution.[22]

Hence, petitioner LSI filed the present petition imputing grave abuse of discretion on the part of the NLRC based on the following grounds:

- I.
the public respondent national labor relations commission committed grave abuse of discretion when it held that private respondent was constructively dismissed from employment when he was relieved from duty at Hawaiian-Philippines.
- II.
The public respondent national labor relations commission committed grave abuse of discretion when it held that private respondent is entitled to backwages.
- III.
Assuming without admitting that complainant – appellee is entitled to backwages, the same must be reckoned six (6) months after his relief from duty at Hawaiian-Philippines.
- IV.
Complainant-appellee is not entitled to attorney's fees. [23]

This Court's Ruling

The petition is bereft of merit.

Basic is the rule that judicial review of labor cases does not go so far as to evaluate the sufficiency of evidence on which the labor officials' findings rest.[24] As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[25]

After a judicious scrutiny of the records, the allegations of petitioner LSI and the submissions of private respondent, this Court sustains the findings of public respondent NLRC.

NLRC's Findings of Constructive Dismissal Upheld

Primarily, petitioner LSI assails the NLRC's ruling which sustained the labor arbiter's finding of constructive dismissal and as such, entitlement of private respondent to backwages, reinstatement and attorney's fees.

On whether the private respondent was illegally dismissed, We rule in the affirmative.

In the present case, petitioner admits relieving private respondent from his post as security guard on March 31, 2011. There is also no dispute that the private respondent remained on floating status at the time he filed his complaint for illegal dismissal on October 26, 2011. In other words, private respondent was on floating status from March 31, 2011 to October 26, 2011 or for more than six (6) months.

The question now posed before Us by petitioner LSI is whether private respondent's recall or relief from HPCO immediately resulted to constructive dismissal.

The Labor Arbiter ruled that private respondent was constructively dismissed when he was not given any posting after the 6-month period expired. However, in so far as the private respondent's backwages is concerned, the Labor Arbiter reckoned the same from March 31, 2011 or the day when he was relieved from his post.

On the other hand, the NLRC, while upholding the Labor Arbiter's ruling of constructive dismissal, advanced a different theory but sustained the Labor Arbiter's reckoning point of private respondent's backwages. The NLRC instead opined that the removal of private respondent from his post was not brought about by the dire exigency of the employer's bona fide suspension of operation, business or undertaking nor was there any surplus of security guards over available assignments so as to justify placing the private respondent off-detail pending his re-assignment elsewhere.

This Court agrees with the rationale of the NLRC that the private respondent was not validly placed on floating status and in such a case, he is deemed to have been illegally dismissed from his employment.

We are mindful of the fact that, in cases involving security guards, most contracts for security services stipulate that the client may request the replacement of the guards assigned to it. A relief and transfer order in itself does not sever the employment relationship between a security guard and the agency. It is true that a security guard has the right to security of tenure, but this does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of or transfer the security guard to a station where his services would be most beneficial to the client. Indeed, an employer has the right to transfer or assign its employees from one office or area of operation to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.[26]

Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.[27]

In the case at bar, there was no surplus of security guards over available assignments. Thus, there was no

suspension of operation, business or undertaking, bona fide or not, that would have justified placing the private respondent on floating status and making him wait for more than six months.

For its part, petitioner LSI maintains that the private respondent's relief was brought about by the client's dissatisfaction by the failure of the private respondent to respond to an emergency situation. However, as the records disclosed, petitioner's allegation of client's dissatisfaction over private respondent's performance is unsubstantiated and thus, self-serving. Moreover, petitioner LSI likewise posits that the refusal of private respondent to receive the Notice to Explain and submit himself to the disciplinary procedure of the company necessarily constrained Patubo to relieve private respondent and endorse him to the headquarters. The records show that private respondent was required to explain his side within twenty-four (24) hours from receipt of the written notice to explain and the very next day, after no written explanation allegedly having been submitted by private respondent, the latter was given a relief order and directed to report to headquarters in order to explain himself there. Under these circumstances, this Court cannot help but agree with the NLRC that there was absolutely no intimation at all of any written explanation that was still being expected.

Even if We are to consider the reasons behind private respondent's being relieved as stated by petitioner LSI to be true, the same will still not work in its favor as it will only bolster the fact that the private respondent's removal from his post was motivated by discrimination or bad faith or effected as a form of punishment or an act of retaliation against private respondent for not reacting the way they expected him to react in that particular situation.

Further, this Court notes that the Labor Arbiter and NLRC unanimously found that private respondent was illegally dismissed by petitioner LSI. Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the Labor Arbiter.[28] This Court finds no reason to depart from the foregoing rule.

With respect to the monetary awards, as earlier discussed, having ruled that private respondent was illegally dismissed, he then is entitled to the twin reliefs of backwages and reinstatement as well as attorney's fees as he was compelled to file an action for the recovery of his lawful wages and other benefits.

No Grave Abuse of Discretion On the Part of the NLRC

A petition for certiorari is an extraordinary remedy that is available only and restrictively in truly exceptional cases. The sole office of this is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. It does not include correction of the NLRC's evaluation of the evidence or of its factual findings. Thus, a party assailing the findings of the NLRC bears the burden of showing that the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy in order that the extraordinary writ of certiorari will lie.[29]

In a special action for certiorari, the burden is on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. "By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." [30]

Petitioner LSI failed to discharge this burden. This Court believes that nowhere in the records is there any acceptable demonstration that the public respondent NLRC acted either with grave abuse of discretion or without

or in excess of its jurisdiction. This Court is convinced that there is no showing that the conclusions made by the public respondent NLRC are manifestly mistaken. Even assuming that there is an error of judgment in the resolution of the factual issues by public respondent NLRC, there is to Our mind, no capricious exercise of judgment that would warrant the issuance of the extraordinary writ of certiorari. Moreover, the issues for resolution in this petition involve an inquiry into factual matters, hence, are not proper subjects of a petition for certiorari.

Based on the foregoing disquisition, We find and so hold that no grave abuse of discretion could be imputed to the public respondent NLRC in rendering the assailed resolutions.

WHEREFORE, the instant Petition is hereby DISMISSED for lack of merit. The October 15, 2012 Decision and December 14, 2012 Resolution of the NLRC, 7th Division, Cebu City in NLRC Case No. VAC-05-000336-2012 are hereby AFFIRMED in toto.

SO ORDERED.

Delos Santos, J., Chairperson and Azcarraga-Jacob, JJ., concur.

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- [1] Rollo, pages 8-28.
- [2] Penned by Commissioner by Violeta Ortiz-Bantug, rollo, pages 27-44.
- [3] Penned by Commissioner by Violeta Ortiz-Bantug, rollo, pages 45-46.
- [4] Penned by Labor Arbiter Henry B. Tañoso, rollo, pages 47-63.
- [5] Rollo, pages 88-95.
- [6] See Position Paper before the Labor Arbiter, supra.
- [7] Rollo, page 96.
- [8] Rollo, page 97.
- [9] Rollo, page 98.
- [10] See Position Paper before the Labor Arbiter, supra.
- [11] Rollo, page 99.
- [12] See Position Paper before the Labor Arbiter, supra.
- [13] Rollo, pages 64-74.
- [14] Rollo, page 81.
- [15] Rollo, page 83.
- [16] See Position Paper, supra.
- [17] Supra, at note 4.
- [18] See Memorandum on Appeal, rollo, pages 114-132.
- [19] Supra, at note 2.

[20] Rollo, pages 187-200.

[21] See Opposition to Motion for Reconsideration, rollo, pages 201-205.

[22] Supra, at note 3.

[23] See pages 7-8 of Petition, rollo, pages 10-11 .

[24] CBL Transit, Inc. v. NLRC, G.R. No. 128425, March 11, 2004; Austria v. NLRC, G.R. 123646, July 14, 1999.

[25] Peckson v. Robinsons Supermarket Corp., G.R. No. 198534, July 3, 2013; Acebedo Optical v. National Labor Relations Commission, 554 Phil. 524, 541 (2007).

[26] Salvaloya v. NLRC, G.R. No. 182086, November 24, 2010; Leopard Integrated Services, Inc. v. Macalinao, G.R. No. 159808, September 30, 2008; Megaforce Security and Allied Services, Inc. v. Lactao, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 116-117; Tinio v. Court of Appeals, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 540; OSS Security & Allied Services, Inc. v. NLRC, 382 Phil. 35, 44-45 (2000).

[27] Salvaloya v. NLRC, supra; Megaforce Security and Allied Services, Inc. v. Lactao, supra, at 117; Pido v. National Labor Relations Commission, G.R. No. 169812, February 23, 2007, 516 SCRA 609, 615-616; Phil. Industrial Security Agency Corp. v. Dapiton, 377 Phil. 951, 962 (1999); Sentinel Security Agency, Inc. v. NLRC, 356 Phil. 434, 443, 446 (1998).

[28] Emeritus Security and Maintenance Systems, Inc. v. Dailig, G.R. No. 204761, April 2, 2014; Bank of Lubao, Inc. v. Manabat, G.R. No. 188722, February 1, 2012.

[29] Odango v. NLRC, G.R. No. 147420. June 10, 2004.

[30] Solvic Industrial Corp. vs. NLRC, 296 SCRA 432, 441 [1998]; Tomas Claudio Memorial College, Inc. vs. Court of Appeals, G.R. No. 124262, October 12, 1999.

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