PHILIPPINE INDUSTRIAL SECURITY AGENCY CORPORATION, PETITIONER, VS. VIRGILIO DAPITON AND THE NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

G.R. No. 127421. December 08, 1999

Ponente: PUNO, J.

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PUNO, J.:

This case arose from a complaint for illegal dismissal, underpayment of salaries and wages, overtime pay, holiday pay, 13th month pay and service incentive leave pay filed by respondent Virgilio D. Dapiton against petitioner Philippine Industrial Security Agency Corporation and its President, Isidro Lirag.

The evidence for petitioner shows that on November 2, 1990 petitioner hired respondent as a security guard. His initial assignment was at PCIBank in Kalookan City. During his tour of duty at PCIBank on January 25, 1994, respondent had a heated argument with his fellow security guard, Roderick Lumen. The incident almost led to a shootout. After investigation, petitioner's chief investigator recommended their dismissal. Lumen was compelled to resign while respondent was suspended from work for seven (7) days.

Petitioner alleged that respondent did not serve his suspension and instead went on a leave of absence. Nonetheless, he was assigned at the BPI Family Bank in Navotas when he reported back for duty. Allegedly, respondent refused to accept his assignment.

In March 1994, respondent was assigned at Sevilla Candle Factory in Malabon. Three (3) weeks later, he abandoned his post and went on absence without leave (AWOL).

Respondent was given another assignment at Security Bank and Trust Company. He was required to report for an interview and to undergo a neurological examination. Respondent refused and allegedly again went on AWOL.

On April 15, 1994, petitioner sent a telegram to respondent to report to its office for a conference. Respondent did not show up. Instead, on April 22, 1994, respondent filed the present illegal dismissal case.

Respondent denied petitioner's allegations. He claimed that after he served his suspension, he was assigned at BPI Family Bank in Navotas. He accepted the new post. However, after a short period, he was relieved and was transferred to the Mercury Drugstore in Grand Central, Kalookan City. Again, after a brief tour of duty, he was relieved.

In March 1994, he was posted at Sevilla Candle Factory. While on duty, he witnessed some shabu dealers doing their illegal trade. Fearful for his life, he left his post and requested petitioner to transfer him to another post.

He admitted that his assignment at Security Bank did not materialize for he failed to take the neurological test. He explained he could not pay the examination fee in the amount of P250.00. He asked petitioner to pay the said amount but it refused.

Respondent alleged that thereafter, he was reduced to a mere reliever of absent security guards and was frequently

transferred from one post to another. His last assignment was at the Philippine Savings Bank (PSB) in Makati. It lasted for only one (1) day. Since April 13, 1994, he was not given any assignment. He reported to petitioner's office regularly for his posting but to no avail. Consequently, on [April 22, 1994], he sued petitioner for illegal dismissal and asked for separation pay. The case was docketed as NLRC-NCR Case No. 00-04-03291-94.

On June 15, 1994, respondent filed an Amended Complaint and Position Paper.[1] He prayed for reinstatement and further charged petitioner with underpayment of salaries and wages, overtime pay, holiday pay, 13th month pay and service incentive leave pay. He alleged that he was only paid P4,800.00 monthly for 12 hours of work per day. He became a reliever of absent security guards and sometimes he worked for more than eight (8) hours. The daily rate before December 1993 was P118.00. The rate increased by P17.00 in December 1993 and by P10.00 in April 1994. Thus, using the rate of P118.00 alone, respondent claimed that petitioner should have paid him as much as P5,752.50 per month.

On August 25, 1994, after further exchange of pleadings, Labor Arbiter Felipe Pati issued an order declaring the case as submitted for decision.[2] Nonetheless, on October 24, 1994, petitioner filed a Motion to Admit to rebut respondent's money claims.[3] Attached to the motion was a summary of the computation of the salaries, overtime pay, 13th month pay and other monetary benefits allegedly received by respondent from 1992-1994. Petitioner did not submit the employment records and payrolls of respondent for the said period allegedly because they were voluminous. However, petitioner undertook to submit said documents should the labor arbiter require it. Additionally, its managing director executed an affidavit[4] attesting to the truthfulness of its computation per the existing records of the company. The motion was not acted upon.

On December 14, 1994, Labor Arbiter Felipe P. Pati rendered a decision[5]finding petitioner liable for constructive dismissal. Essentially, the labor arbiter found that from 1990 up to 1993, respondent was assigned at PCIBank in Kalookan City. After his suspension on January 26, 1994, respondent was transferred frequently to different posts and despite its accusation that respondent was always absent from work, it continued to give him new assignments and did not take any disciplinary action against him. Thus, the labor arbiter concluded that said transfers were a mere scheme of petitioner to ease out respondent from work. The labor arbiter ordered respondent's reinstatement with payment of backwages. Moreover, petitioner and its president, Isidro Lirag, were required to pay the sum of P74,844.24, representing respondent's wage differential, overtime pay, 13th month pay and night shift differential.

Petitioner and Lirag appealed to the NLRC.

The NLRC dismissed the appeal, albeit respondent Isidro Lirag was held not liable for the money claims of respondent. The fallo of the NLRC decision reads:[6]

> "WHEREFORE, the appealed Decision is hereby AFFIRMED, except the awards, conformably with this Resolution, shall be solely the liability of (petitioner) appellant agency."

Petitioner's motion for reconsideration was denied on July 31, 1996.[7] Hence, this petition. Petitioner contends that the NLRC gravely abused its discretion in:

> "I
> "DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND AFFIRMING THE LABOR ARBITER'S FINDING OF ILLEGAL DISMISSAL NOTWITHSTANDING THE FACT THAT THERE WERE OVERWHELMING EVIDENCE TO SHOW THAT IT WAS THE PRIVATE RESPONDENT HIMSELF WHO ABANDONED HIS POST AND REFUSED PETITIONER'S OFFER OF NEW ASSIGNMENT;
>
> "II

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> "AFFIRMING THE DECISION OF THE LABOR ARBITER HOLDING PETITIONER LIABLE FOR UNDERPAYMENT SOLELY ON THE BASIS OF PRIVATE RESPONDENT'S UNSUBSTANTIATED ALLEGATIONS OR CLAIMS AND AT THE SAME TIME, TOTALLY DISREGARDING PETITIONER'S EVIDENCE."

The petition is partly meritorious.

The first issue is substantive—whether petitioner constructively dismissed the respondent. Petitioner contends that there was no dismissal, constructive or otherwise. Petitioner claims that respondent abandoned his post, refused to accept his new assignments and went on AWOL.

The records belie petitioner's posture.

Constructive dismissal is defined as a "quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay."[8] On the other hand, abandonment of work means a clear, deliberate and unjustified refusal of an employee to resume his employment and a clear intention to sever the employer-employee relationship.[9] Abandonment is incompatible with constructive dismissal.[10]

In the case at bar, we hold that there was no deliberate intent on the part of the respondent to abandon his employment with petitioner. The clear evidence that respondent did not wish to be separated from work is that, after his last assignment on April 12, 1994, he reported to petitioner's office regularly for a new posting but to no avail. He then lost no time in filing the illegal dismissal case. An employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work.[11]

Moreover, respondent's failure to assume his posts in Sevilla Candle Factory and the Security Bank and Trust Company is not without reason. He explained that he requested for a transfer of assignment from Sevilla Candle Factory because he feared for his life after he witnessed shabu dealers doing their business in his workstation. As regards the Security Bank assignment, he failed to take the neurological test for lack of money to pay for the examination fee.

Petitioner cannot overinflate the significance of the fact that respondent often absented himself from work without an approved leave. It is a settled rule that mere absence or failure to report for work is not tantamount to abandonment of work.[12] Even the failure to report for work after a notice to return to work has been served does not necessarily constitute abandonment nor does it bar reinstatement.[13]

The burden of proving that respondent has abandoned his job rests with petitioner. However, petitioner failed miserably to discharge the burden. The records show no memoranda concerning respondent's alleged unauthorized absences and refusal to work. Even the telegram petitioner sent to respondent after he allegedly went on AWOL merely required respondent to report to its office for a conference but did not mention anything about his absences. We find it incredible that petitioner did not even write respondent on his alleged refusal to accept the posts assigned to him and the abandonment of his posts considering that such acts constitute willful disobedience and gross neglect of duty which are valid grounds for dismissal.[14]

Petitioner could have also submitted the daily time records of respondent to prove that he indeed went on AWOL. It did not. Instead, it only submitted the following documents, viz: a letter-petition of respondent's fellow security guards demanding respondent's removal from their unit for his alleged arrogance (Annex "A"); the result of petitioner's investigation on the January 25, 1994 incident at the PCIBank, where its chief investigator recommended the dismissal of respondent and Lumen from the service (Annex "B"); a memorandum dated January 26, 1994, addressed to respondent, informing the latter of his suspension for seven (7) days due to his

involvement in the January 25, 1994 incident (Annex "C"); a letter of introduction dated April 15, 1994, addressed to Security Bank and Trust Company, issued by Mr. Isidro Lirag for the benefit of respondent for his possible detail at said bank (Annex "D"), and a telegram dated April 15, 1994 allegedly sent by petitioner to respondent, requiring him to report to petitioner's office for a conference.

By no stretch of the imagination can the foregoing documents prove that respondent has abandoned his job or that he unjustifiably refused the new posts assigned to him. They only show that respondent had bad relationship with his fellow security guards and that petitioner was justified in suspending and subsequently relieving him from his post at PCIBank.

Petitioner contends that respondent was only provisionally relieved from his last post and not dismissed from employment. Hence, the filing of the illegal dismissal case on April 22, 1994 was premature. If at all, it is argued that respondent should be considered on temporary "off-detail" status. Petitioner relies on the case of Superstar Security Agency, Inc. vs. NLRC,[15] where we held that 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 287 (now Article 286) of the Labor Code.

Petitioner's argument lacks merit. The case of Superstar Security Agency does not apply to the case at bar as it was decided on a different factual milieu. In said case, the security guard was temporarily sidelined because the agency's client, SMY, did not renew its security contract pursuant to its cost-cutting program. The agency was constrained to put the guard detailed at SMY on a floating status for lack of available post. We then held that there was no constructive dismissal to speak of, taking into consideration that, at times, security guards could be placed on temporary "off-detail" as their assignments primarily depend on the contracts entered into by the security agency with third parties. The ruling was anchored in Article 286 of the Labor Code. It reads:

> "Art. 286. When employment not deemed terminated.—The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty."

We stress that Article 286 applies only when there is a bona fide suspension of the employer's operation of a business or undertaking for a period not exceeding six (6) months. In such a case, there is no termination of employment but only a temporary displacement of employees, albeit the displacement should not exceed six (6) months. The paramount consideration should be the dire exigency of the business of the employer that compels it to put some of its employees temporarily out of work. In security services, the temporary "off-detail" of guards takes place when the security agency's clients decide not to renew their contracts with the security agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster.[16]

In the case at bar, the records do not show that respondent had to be placed on temporary "off-detail" for lack of available post. Petitioner just stopped giving respondent his assignment after his duty at the PSB. It was the straw that broke the camel's back, so to speak, as far as respondent was concerned.

This is not to denigrate the inherent prerogative of an employer to transfer and reassign its employees to meet the requirements of its business.[17] For instance, where the rotation of employees from the day shift to the night shift was a standard operating procedure of management, an employee who had been on the day shift for sometime may be transferred to the night shift.[18] Similarly, transfers can be effected pursuant to a company policy to

transfer employees from one place of work to another place of work owned by the employer to prevent connivance among them.[19] Likewise, we have affirmed the right of an employer to transfer an employee to another office in the exercise of what it took to be sound business judgment and in accordance with pre-determined and established office policy and practice. Particularly so when no illicit, improper or underhanded purpose can be ascribed to the employer and the objection to the transfer was grounded solely on the personal inconvenience or hardship that will be caused to the employee by virtue of the transfer.[20] In security services, the transfer connotes a changing of guards or exchange of their posts, or their reassignment to other posts. However, all are considered given their respective posts.

Be that as it may, the prerogative of the management to transfer its employees must be exercised without grave abuse of discretion. The exercise of the prerogative should not defeat an employee's right to security of tenure. The employer’s privilege to transfer its employees to different workstations cannot be used as a subterfuge to rid itself of an undesirable worker.[21]

In the case at bar, the evidence show that respondent enjoyed a single post at the PCIBank for three (3) years. It changed after his suspension. In a span of less than three (3) months, respondent was assigned to at least four (4) establishments, namely, BPI Family Bank, Mercury Drugstore, Sevilla Candle Factory and Philippine Savings Bank. He suddenly found himself being tossed to different posts and relieving absent security guards. Respondent was then left uncertain as to when and where his next assignments would be. Considering the totality of the facts of this case, the labor officials below rightly found that the frequent transfers of respondent to different posts on short periods of time were indirect ways of dismissing him.[22]

The second issue is procedural—did public respondent gravely abuse its discretion in affirming petitioner’s monetary liabilities without considering the evidence it submitted to the labor arbiter?

The settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases.[23] In fact, labor officials are mandated by the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[24] Thus, in Lawin Security Services vs. NLRC[25] and Bristol Laboratories Employees’ Association-DFA vs. NLRC,[26]we held that even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to the NLRC is enough basis for the latter to be more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first course of action would be more consistent with equity and the basic notions of fairness.

We find no cogent reason to disregard the above ruling.

We note that the labor arbiter’s decision hardly mentioned the basis for allowing the money claims of respondent. The labor arbiter merely held that—

> “As regards the issue of money claims, we likewise find for the complainants. Records show that complainant was not paid the correct minimum wage, overtime pay, night shift differential and 13th month pay.
>
> “WHEREFORE, foregoing premises considered, judgment is hereby rendered finding respondents (petitioners) to have illegally dismissed the complainant. Accordingly, respondents (petitioners) are hereby ordered to reinstate complainant with backwages. Respondents (Petitioners) are likewise ordered to pay complainant the amount of Seventy Four Thousand Eight Hundred Forty Four Pesos and 24/100 (P74,844.24), representing his wage differential, overtime pay, 13th month pay, night shift differential, computation of which is hereto attached.
>
> “Other claims are hereby dismissed for lack of merit.

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> "SO ORDERED."

The computation of the sum awarded to respondent is also vague, thus:

> "RE: COMPUTATION OF UNDERPAYMENT AND OVERTIME PAY AS PER INSTRUCTION OF L.A. FELIPE P. PATI
>
> Underpayment 12-hours
>
> 4/22/91 - 12/15/93 = 31.77 mos.
>
> P6,826.37 - P4,800 = P2,026.37
>
> x 31.77 mos = P64,377.77
>
> 12/16/93 – 3/31/94 = 3.5/ mos.
>
> P7,790.42 – P4,800 = P2,990.42
>
> X 3.5 mos. = 10,466.47
>
> Total
>
> P74,844.24
>
> Manila, Philippines, December 20, 1994."

It assumes that respondent rendered overtime work from April 22, 1991 to March 31, 1994. We could not even tell from said computation which part of the sum awarded was for the wage differential, 13th month pay, overtime pay, etc. Moreover, respondent's salary and other monetary benefits, if any, from April 1-12, 1994, were not included in the computation.

Even the computation of the backwages was not specified, although the labor arbiter's decision stated that said claim for backwages was already included in the sum of P74,844.24. However, judging from the dates mentioned in the computation, i.e., from April 22, 1991 to March 31, 1994, it appears that no backwages were awarded. Backwages have to be paid by an employer as part of the price or penalty he has to pay for illegally dismissing his employee. It is computed from the time of the employee's illegal dismissal (or from the time his compensation was withheld from him) up to the time of his reinstatement.[27]

Article 291 of the Labor Code should also be considered. It reads:

> "Art. 291. Money claims.—All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise, they shall be forever barred."

Clearly, respondent's money claims should be filed within three (3) years from the time his cause of action accrued or forever be barred by prescription. Respondent filed his money claims on June 15, 1994, through his Amended Complaint and Position Paper. His money claims from November 2, 1990 to June 14, 1992, are barred by prescription pursuant to Article 291 of the Labor Code. Apparently, the labor arbiter mistakenly relied on the date of filing of the original complaint of respondent. It is true that said complaint was filed on April 22, 1994, however, at that time, respondent merely accused petitioner of illegal dismissal and has not yet charged petitioner

with underpayment of wages or non-payment of overtime pay, 13th month pay, etc.

Before the labor arbiter decided the case, petitioner had already submitted its computation of the salaries and other benefits received by respondent during his employment. Yet, the labor arbiter simply ignored petitioner's evidence and decided the case without even stating the basis of his decision. The labor arbiter's failure to discuss the facts and the law which would support the award of P74,844.24 in favor of the respondent should have prompted the NLRC to remand the case to the labor arbiter for further proceedings to determine the monetary liabilities of petitioner to respondent. A stringent application of procedural rules may be relaxed to meet the ends of substantial justice.

IN VIEW WHEREOF, the petition is PARTIALLY GRANTED. The assailed decision of the National Labor Relations Commission in NLRC-NCR No. 00-04-03291-94, dated May 10, 1996, is AFFIRMED, subject to the modification that the monetary award in favor of respondent Virgilio Dapiton in the sum of P74,844.24 is SET ASIDE. Accordingly, the case is remanded to the labor arbiter for further proceedings solely for the purpose of determining the monetary liabilities of petitioner, if any.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Annex "D" of Petition, Rollo, pp. 34-36.

[2] Original Records, p. 54.

[3] Annex "J" of Petition, Rollo, pp. 62-70.

[4] Original Records, p. 62.

[5] Rollo, pp. 72- 77.

[6] Rollo, pp. 24-32.

[7] Annex "A" of Petition, Rollo, p. 22.

[8] Ala Mode Garments, Inc. vs. NLRC, 268 SCRA 497 (1997).

[9] Premier Development Bank vs. NLRC, 293 SCRA 49, 60 (1998).

[10] Nazal vs. NLRC, 274 SCRA 350 (1997).

[11] Ibid.

[12] Tan vs. NLRC, 271 SCRA 216 (1997).

[13] Samahan ng mga Manggagawa sa Bandolino-LMLC vs. NLRC, 275 SCRA 633 (1997).

[14] Article 282 of the Labor Code.

[15] 184 SCRA 77 (1990).

[16] Sentinel Security Agency vs. NLRC, 295 SCRA 123 (1998).

[17] PT&T Corp. vs. Laplana, et al., 199 SCRA 485, 491 (1991).

[18] Castillo vs. CIR, 39 SCRA 81 cited in PT&T Corp. vs. Laplana, et al., supra.

[19] Cinema, Stage and Radio Entertainment Free Workers vs. CIR, 18 SCRA 1071 (1966).

[20] PT&T Corp. vs. Laplana, et al., supra.

[21] Yuco Chemical Industries, Inc. vs. MOLE et al., 185 SCRA 727 (1990).

[22] Manipon, Jr. vs. NLRC, 239 SCRA 453 (1994).

[23] Favila, et al. vs. NLRC, G.R. No. 126768, June 16, 1999.

[24] Article 221 of the Labor Code.

[25] 273 SCRA 132 (1997).

[26] 187 SCRA 118 (1990).

[27] Bustamante vs. NLRC, 265 SCRA 61 (1996); Article 279 of the Labor Code as amended by R.A. No. 6715.

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