

**ACD INVESTIGATION SECURITY AGENCY, INC., PETITIONER, VS.
PABLO D. DAQUERA, RESPONDENT.***G.R. No. 147473. March 30, 2004*

Ponente: SANDOVAL-GUTIERREZ, J.

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This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated October 20, 2000 and the Resolution[2] dated March 14, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 50510, entitled “ACD Investigation Security Agency, Inc. vs. National Labor Relations Commission and Pablo D. Daquera.”

The controversy herein stemmed from a complaint of Pablo Daquera, respondent, for illegal dismissal, illegal suspension, illegal deduction, and non-payment of benefits[3] against ACD Investigation Security Agency, Inc. (ACDISA), petitioner, Alfonso Dilla, Sr. and Public Estates Authority. The complaint was filed with the Labor Arbiter, docketed as NLRC NCR Case No. 00-05-03335-96.

Respondent, in his complaint, alleged that on February 15, 1990, he was employed as a security guard by petitioner. Subsequently or on September 1, 1994, he was reassigned to Public Estates Authority as a security officer with a monthly salary of P6,000.00 for a twelve (12) hour daily work shift. However, he was illegally suspended on April 4, 1996 and thereafter illegally dismissed for dishonesty, without prior written notice and investigation.

For its part, petitioner claims that sometime in March, 1996, it received several complaints against respondent for abandonment of post, drinking liquor while on duty, and extortion from subordinate security guards. Thus, an administrative investigation was conducted. Meantime, respondent was placed on one-month preventive suspension effective April 4, 1996. After evaluating the evidence, petitioner found respondent guilty of dishonesty and neglect of duty. Instead of terminating respondent’s services, petitioner reassigned him to another post. However, he refused and took a leave of absence to seek employment elsewhere. After one week, respondent still failed to report for work and instead filed with the Labor Arbiter a complaint against petitioner.

After the submission of the parties’ pleadings and position papers, the Labor Arbiter rendered a Decision dated July 3, 1997 finding respondent’s dismissal from employment illegal and ordering petitioner and Alfonso Dilla (1) to reinstate him to his former or equivalent position; and (2) to pay him, jointly and severally, backwages of P78,000.00, P314,518.00 as monetary benefits, and attorney’s fees. The dispositive portion of the Decision reads:

“WHEREFORE, premises considered, the dismissal of the complainant is hereby declared as illegal. Consequently, respondents ACD Investigation Security Agency, Inc. and/or Alfonso Dilla Sr., are hereby ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay him jointly and severally his backwages of SEVENTY EIGHT THOUSAND PESOS (P78,000.00) and his money claims totaling TWO HUNDRED THIRTY SIX THOUSAND FIVE HUNDRED EIGHTEEN PESOS

and 88/100, all in the aggregate of THREE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED EIGHTEEN PESOS and 88/100 CENTAVOS (P314,518.00) plus attorney's fees equivalent to ten (10%) percent of the total award.

"SO ORDERED."

On appeal, the National Labor Relations Commission (NLRC), in its Decision dated June 2, 1998, affirmed the Arbiter's Decision, declaring that respondent was dismissed illegally and ordering his reinstatement with payment of backwages and other benefits, but discharging Dilla from liability. Petitioner filed a motion for reconsideration but was denied by the NLRC in a Resolution dated November 9, 1998.

Petitioner then filed with the Court of Appeals a petition for certiorari seeking to set aside the NLRC Decision and Resolution.

In due course, the Court of Appeals issued the assailed Decision dated October 20, 2000, affirming in toto the Decision of the NLRC, thus:

"After a punctilious assessment of the records, it becomes apparent that the 'evidence' upon which said dismissal is professedly based does not measure up to that modicum of substantiality. Elsewise stated, the petitioner was unable to affirmatively show rationally adequate evidence that the dismissal was for a just cause (Western Shipping Agency, Inc. vs. NLRC, 253 SCRA 405; P.I. Manpower Placements, Inc. vs. NLRC, 276 SCRA 451; Brahm Industries, Inc. vs. NLRC, 280 SCRA 828; Caurdanetaan Piece Workers Union vs. Laguesma, 286 SCRA 401; Stolt-Nielsen Marine Services, Inc. vs. NLRC, 3000 SCRA 713).

x x x

"Verily, there was no substantial evidence to speak of; hence, the charges leveled against the private respondent were nothing but plain hearsay. The petitioner placed immense, albeit undue, reliance on the affidavit of the operations manager (page 134 of the Record). Such affidavit being self-serving must be received with caution. By themselves, generalized and pro-forma affidavits cannot constitute relevant evidence which a reasonable mind may accept as adequate (Madlos vs. NLRC, supra). An affidavit is only prima facie evidence and should be received with caution because of its weak probative value. It is not a complete reproduction of what the declarant had in mind. Nor is it indubitable when prepared on command or as awhen prepared on command or as arity. Unless the affiant is placed on the witness stand to testify hereon, an affidavit is considered hearsay. (Carlos A. Gothoidered hearsay. (Carlos A. GothoA 164).

x x x

"Neither can we say that the private respondent's actions were indicative of abandonment (pages 31-32, 72 of the Record; pages 13-15, 124-126 of the Rollo). To constitute such a ground for dismissal, there must be – (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention, as manifested by some overt acts, to sever the employer-employee relationship (Pure Blue Industries, Inc. vs. NLRC, 271 SCRA 259; Hagonoy Rural Bank, Inc. vs. NLRC, 285 SCRA 297; Leonardo vs. NLRC, G.R. Nos. 125303, 126937, June 16, 2000).

x x x

"The petitioner contends that the private respondent is estopped from pursuing his money claims inasmuch as the certification of payment (pages 17, 128 of the Rollo) is tantamount to waiver and quitclaim and is an admission against his interest (pages 33, 38, 102, 140-142 of the Record).

"We are not persuaded.

"Quitclaims by laborers are frowned upon as contrary to public policy and are held to be ineffective to bar

recovery for the full measure of the workers' rights (Marcos vs. NLRC, 248 SCRA 146; Agoy vs. NLRC, 252 SCRA 588). The reason for such rule was laid down in Cariño vs. ACCFA (18 SCRA 183), x x x:

x x x

"Anent the procedural aspect of the alleged illegal dismissal, the record is bereft of any showing that the private respondent had been given ample opportunity to be heard and notified of the nature and cause of his termination from employment. Therefore, as argued by the Solicitor General, 'the procedural requirement in validly terminating the employment of Daquera was not complied with.' (page 75 of the Rollo). Notwithstanding that the two-notice rule had not been lawfully complied with, such infirmity does not militate against the legality of the dismissal.

x x x

"Insofar as the money claims are concerned, We find no compelling reason to modify the same. The Labor Arbiter correctly ruled that – 'The claim for separation pay is not in order since the dismissal of the complainant is illegal and the relief due to him x x x is reinstatement with full backwages. Likewise, the claim for underpayment and damages are dismissed for lack of merit.' (page 87 of the Record)

x x x

"WHEREFORE, the petition is DENIED, hereby AFFIRMING the resolution (promulgated on November 9, 1998) of the National Labor Relations Commission (NLRC) in NLRC Case No. 00-05-03335-96 (NLRC CA No. 013359-97).

"SO ORDERED."

On November 21, 2000, petitioner filed a motion for reconsideration but was denied by the Appellate Court in a Resolution dated March 14, 2001.

In this petition for review on certiorari, petitioner contends that the Court of Appeals erred in not considering that dishonesty, serious misconduct and willful breach of trust are valid causes for dismissing respondent from the service. Petitioner also contends that respondent is not entitled to reinstatement with backwages since he abandoned his work. Furthermore, the Appellate Court erred in awarding respondent his monetary benefits considering his quitclaim.

First, in *Bolinao Security and Investigation Service, Inc. vs. Toston*[4], we emphasized that "it is incumbent upon the employer to prove by the quantum of evidence required by law that the dismissal of an employee is not illegal, otherwise, the dismissal would be unjustified." Petitioner, however, failed to discharge its burden.

If it were true that respondent is guilty of demanding money from his subordinates and that he should be terminated for dishonesty, serious misconduct and breach of trust, why then did petitioner still retain his services and even promised him a future reassignment?

It bears stressing that dishonesty is too serious an offense not to be exposed at the first opportunity. The seeming lack of urgency on the part of petitioner in taking any disciplinary action against respondent negates the veracity and merit of its charges.

We have been very careful in cases of dismissal based on dishonesty, serious misconduct, and loss of trust and confidence because the same can easily be concocted by an abusive employer.

Second, we are also not convinced that respondent abandoned his work and that terminating his services is a lawful sanction.

In *Samarca vs. Arc-Men Industries, Inc.*,^[5] we held that “for abandonment of work to exist, it is essential (1) that the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) that there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts. Deliberate and unjustified refusal on the part of the employee to go back to his work post and resume his employment must be established. Absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. And the burden of proof to show that there was unjustified refusal to go back to work rests on the employer.” However, the above twin essential requirements for abandonment to exist are not present in the case at bar.

Third, it appears that petitioner was remiss in affording respondent his right to due process.

In *Loadstar Shipping Co., Inc. vs. Mesano*,^[6] we held:

“The law requires that an employee sought to be dismissed must be served two written notices before termination of his employment. The first notice is to apprise the employee of the particular acts or omissions by reason of which his dismissal has been decided upon; and the second notice is to inform the employee of the employer’s decision to dismiss him. Failure to comply with the requirement of two notices makes the dismissal illegal. The procedure is mandatory. Non-observance thereof renders the dismissal of an employee illegal and void.”

Moreover, in order to constitute a valid dismissal, two requisites must concur: (a) the dismissal must be for any of the causes expressed in Article 282 of the Labor Code; and (b) the employee must be accorded due process, basic of which is the opportunity to be heard and to defend himself.^[7]

Records show that respondent was never notified in writing of the particular acts constituting the charge of dishonesty. Neither was he required to give his side regarding the alleged serious misconduct imputed against him. Simply stated, respondent was not served by petitioner with notices, verbal or written, informing him of the particular acts for which his dismissal is sought.

As gleaned from the foregoing circumstances, the Court of Appeals correctly ruled that respondent was deprived of both his substantive and procedural rights to due process and, therefore, his termination from the service is illegal.

Respondent who was illegally dismissed from work is actually entitled to reinstatement without loss of seniority rights and other privileges as well as to his full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.^[8]

However, the circumstances obtaining in this case do not warrant the reinstatement of respondent. Antagonism caused a severe strain in the relationship between him and petitioner. A more equitable disposition would be an award of separation pay equivalent to at least one month pay for every year of service in addition to his full backwages, allowances and other benefits.^[9] Records show that respondent was employed from February 15, 1990 to April 4, 1996, or for at least six (6) years, with a monthly salary of P6,000.00. Hence, he is entitled to a separation pay of P36,000.00.

One final note. We hold that the Court of Appeals did not err when it affirmed the award of monetary benefits to respondent despite his quitclaim. In *JMM Promotions and Management, Inc. vs. Court of Appeals*,^[10] we held that “quitclaims, waivers and/or complete releases executed by employees do not stop them from pursuing their claims - if there is a showing of undue pressure or duress. The basic reason for this is that such quitclaims, waivers and/or complete releases, being figuratively exacted through the barrel of a gun, are against public policy

and therefore null and void ab initio. Accordingly, respondent's signature in the subject waiver or quitclaim, as in this case, never foreclosed his right to pursue a case for money claim."

As found by the Court of Appeals, it was out of desperation and helplessness that respondent agreed to affix his signature on the quitclaim. Therefore, he is deemed not to have waived any of his rights. *Renuntiatio non praesumitur*.

In fine, we see no compelling reason to reverse the assailed Decision and Resolution of the Court of Appeals.

WHEREFORE, the assailed Decision dated October 20, 2000 and Resolution dated March 14, 2001 of the Court of Appeals are hereby AFFIRMED with MODIFICATION in the sense that in lieu of reinstatement, respondent is awarded separation pay equivalent to P36,000.00; and his full backwages, other privileges and benefits, or their monetary equivalent, corresponding to the period from his dismissal up to his supposed actual reinstatement.

Costs against petitioner.

SO ORDERED.

Corona and Carpio-Morales, JJ., concur.

Vitug, J., (Chairman), on official leave.

[1] Annex "A", Petition for Review, Rollo at 45-56.

[2] Annex "B", *id.* at 57.

[3] Overtime compensation, premium pay, night differential pay, holiday pay, service incentive leave pay and 13th month pay.

[4] G.R. No. 139135, January 26, 2004 at 1-2, citing *Vicente Sy et al. vs. Hon. Court of Appeals*, G.R. No. 142293, February 27, 2003.

[5] G.R. No. 146118, October 8, 2003, citing *MSMG-UWP vs. Ramos*, 326 SCRA 428 (2000).

[6] G.R. No. 138956, August 6, 2003, citing *Cruz vs. NLRC*, 324 SCRA 770 (2000).

[7] *Id.*

[8] See *Cebu Marine Beach Resort vs. NLRC*, G.R. No. 143252, October 23, 2003 at 10, citing *Damasco vs. NLRC*, 346 SCRA 714 (2000).

[9] See *Bolinao Security and Investigation Service, Inc. vs. Toston*, *supra.* at 11-12, citing *Cebu Marine Beach Resort vs. NLRC*, G.R. No. 143252, October 23, 2003, *Samarca vs. Arc-Men Industries, Inc.*, G.R. No. 146118, October 8, 2003, and *Philippine Tobacco Flue-Curing and Redrying Corp. vs. NLRC*, 300 SCRA 37 (1998).

[10] See G.R. No. 139401, October 2, 2002, 390 SCRA 223, 231-232, citing *Carino vs. Agricultural Credit and Cooperative Financing Administration*, 18 SCRA 183 (1966).

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