MOBILE PROTECTIVE & DETECTIVE AGENCY AND/OR BENJAMIN AGUILAR, PETITIONERS, VS. ALBERTO G. OMPAD, RESPONDENT.

G.R. NO. 159195. May 09, 2005

Ponente: PUNO, J.

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PUNO, J.:

The instant petition stemmed from a complaint for illegal dismissal, underpayment or non-payment of wages, overtime pay, premium pay for holiday and rest day, separation pay, holiday pay, service incentive leave pay, 13th month pay and attorney's fees filed by respondent Alberto G. Ompad against petitioners Mobile Protective & Detective Agency (Agency) and/or its president and general manager, Benjamin C. Aguilar.

Respondent alleged that he was employed by the Agency as security guard in January 1990 and was, since then, detailed to its various clients. He claimed having worked twelve (12) hours a day, even during rest days and holidays, without receiving overtime pay, rest day pay, holiday pay, service incentive leave pay and 13th month pay. His daily wages of P138.00 since 1995 and P140.00 in 1997 were allegedly below the minimum wage.[2]

Sometime in June 1997, respondent inquired from the project manager of the Agency's client, Manila Southwoods, if the latter had already paid their backwages to the Agency. When petitioners found out about his query, respondent was allegedly relieved from his post and never given another assignment.[3]

On September 23, 1998, petitioners allegedly promised that they would pay respondent his money claims provided he signs a resignation letter. He was also told to copy in his handwriting the same resignation letter. As he needed the money, he complied. Thereafter, petitioners would give him only the meager amount of P5,000.00, which he rejected. Respondent filed the instant complaint the following day. He claimed that he was illegally dismissed in October 1997[4] and prayed for reinstatement with backwages or backwages with separation pay and money claims, as may be determined by the Labor Arbiter.[5]

On the other hand, petitioners denied respondent's allegations. According to their version, respondent was assigned to another client, the Valle Verde Country Club (VVCC), from August 29 to October 31, 1997 after he was relieved from his post at Manila Southwoods.[6] Respondent's co-guard at VVCC, Merlyn V. Chavez, attested that respondent drove his own tricycle whenever he was not on duty. He told her that if he engages in his tricycle operation full time, he would be earning well.[7]

On October 15, 1997, respondent reported for duty at VVCC limping due to an injury sustained from his tricycle operation. He told his headguard, Wifredo D. Bialen, "(m)alabo na siguro ang balik ko baka mamasada na lang ako ng aking tricycle" (My return is unlikely, I might just drive my own tricycle). On October 16, 1997, respondent allegedly stopped reporting for work.[8]

On September 23, 1998, the operations manager of the Agency, Domingo A. Alonzo, saw respondent in his office and asked him whether he was still available for posting. Respondent told him that he "cannot accept any duty

anymore because [he was] rheumatic and filing [his] partial disability with SSS." Alonzo advised him that if he was no longer interested to work, he might as well resign. Respondent submitted his handwritten resignation letter and left the office.[9] He secured the necessary clearance prior to his resignation which was signed by him and approved by petitioner Aguilar. Petitioners pointed out that respondent stated in his resignation letters that he had no more claims against the Agency. They also alleged that it took respondent at least a year to file the instant complaint.[10]

In his Reply to [Petitioners'] Position Paper,[11] respondent assailed the affidavits of the Agency's employees as self-serving and contended that as employer, the Agency has the burden to prove payment of salaries and benefits. In their Reply to [Respondent's] Position Paper,[12] petitioners submitted payrolls and petty cash vouchers to show that respondent received his salaries and benefits for January to December 1996, January to May 1997 and September to October 1997. They claimed that respondent's allegation that he was offered money for his resignation was a mere "product of [his] imagination." In his Rejoinder,[13] respondent submitted the Agency's Statement of Account to its client Fil-Estate Development, Inc. (Fil-Estate) and a certification from the officer-in-charge of Fil-Estate to show that he worked for 12 hours every day without rest day and even during holidays. Finally, in their Rejoinder,[14] petitioners averred that the certification submitted by respondent was self-serving because the said officer-in-charge was separated after a brief employment. They also argued that their billing to another client, Fil-Estate, is irrelevant to the case at bar.

Labor Arbiter Edgardo M. Madriaga dismissed the complaint for lack of merit.[15] He held that: "[i]t is hard to believe that he (respondent) was coerced twice [into signing the resignation letters] and he did nothing about it." He also gave credence to the official payrolls and vouchers submitted by petitioners to prove that respondent was paid all his money claims. Labor Arbiter Madriaga further held that if respondent was really aggrieved, he should have filed his complaint immediately and not one year after.

Respondent appealed to the National Labor Relations Commission (NLRC) which reversed the decision of Labor Arbiter Madriaga as to the issue of illegal dismissal. The fallo of the decision states:

> WHEREFORE, the Decision of the Labor [A]rbiter dated 15 July 1999 is MODIFIED declaring the dismissal of complainant illegal and ordering respondent to pay complainant his separation benefits in lieu of reinstatement by reason of strained relationship of one (1) month pay for every year of service based on the prevailing minimum wage times length of service as well as backwages from the time his compensation was withheld on October 1997 up to February 2000.
>
> SO ORDERED.[16]

The NLRC held that respondent, who "had been in the employ of [petitioner Agency] for almost eight (8) years and his employment being his only source of living to support his family will not [in his] right mind quit his employment if not for the fact as observed by the Labor Arbiter that he was relieved from his post and never given any detail assignment after making inquiry [with] Manila Southwood[s] about their unpaid backwages." It observed that the two identical resignation letters, one pro forma and the other handwritten, were "lopsided[ly] worded" to free the Agency from liabilities. The NLRC ruled that respondent was illegally dismissed from the time he was relieved from his post and not given subsequent assignment. It held that the offer to sign the letters of resignation in exchange for separation pay was the only option available to respondent at that time. It did not, however, change the fact that respondent was "constructively dismissed" by the Agency. The NLRC, however, agreed with the findings of the Labor Arbiter as regards the issue of money claims.[17]

Petitioners filed their motion for reconsideration of the NLRC's decision, attaching respondent's daily time records from August to October, 1997.[18] After their motion was denied,[19] they filed a Petition for Certiorari[20] with

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the Court of Appeals (CA).

In its Decision dated March 21, 2003,[21] the CA found the petition bereft of merit. It noted that the decision of the Labor Arbiter took note of the allegations of respondent "that he (respondent) was coerced into signing a resignation letter on September 23, 1998" and "that he was relieved from his post at Manila Southwoods and never given an assignment after he inquired as to payment of backwages to the agency by the client." The CA held that there is no voluntariness "[w]hen the first resignation letter was a pro forma one, entirely drafted by the petitioner Agency for the private respondent to merely affix his signature, and the second one entirely copied by the private respondent with his own hand from the first resignation letter." The CA upheld the NLRC's findings that the resignation letters were "lopsidedly worded" in favor of the Agency and gave credence to respondent's version that he only signed those letters upon petitioners' assurance that he would, in exchange, be given his separation pay. The fallo of the CA's decision states:

> WHEREFORE, premises considered, the instant petition is DENIED DUE COURSE and is hereby DISMISSED for lack of merit. The Resolution dated April 28, 2000, as well as the Resolution dated August 31, 2000, is hereby AFFIRMED.
>
> SO ORDERED.[22]

Petitioners filed a motion for reconsideration, attaching Duty Detail Order No. 9993,[23] an order from petitioner Aguilar assigning respondent to render security duties at VVCC from September 29 to October 31, 1997. Their motion was denied,[24] hence, they filed this appeal assigning the lone error that:

> THE COURT OF APPEALS GRAVELY ERRED WHEN IT DISMISSED THE PETITION AND DENIED THE MOTION FOR RECONSIDERATION BY DISREGARDING THE LAW AND JURISPRUDENCE APPLICABLE TO DISMISS THE COMPLAINT OF PRIVATE RESPONDENT.[25]

It is well-settled that in labor cases, the factual findings of the NLRC are accorded respect and even finality by this Court when they coincide with those of the Labor Arbiter and are supported by substantial evidence. However, where the findings of the NLRC and the Labor Arbiter are in variance, as in the case at bar, this Court may delve into the records and examine for itself the questioned findings.[26]

In this case, petitioners maintain that the CA and the NLRC gravely erred in ruling that there was illegal dismissal on the basis of respondent's "bare allegations." Allegedly, the two elements for a valid resignation, viz, the formal act of resignation and the intent to resign, are present in this case. First, petitioners contend that the resignation letters are the "hard evidence" that respondent resigned. Second, the affidavits of Merlyn V. Chavez, Wilfredo D. Bialen, and Domingo A. Alonzo proved respondent's intention to relinquish his position, as shown by his conduct proximate to his tender of resignation. They contend that respondent merely "concretized his intention to sever his relations" with the Agency by not reporting for duty for a period of almost one (1) year. Finally, petitioners contend that respondent's claim that he was relieved from his post at Manila Southwoods and never given any assignment after petitioners learned of his inquiry with Manila Southwoods regarding its payment of backwages to the Agency is belied by petitioners' documentary evidence consisting of Duty Detail Order No. 9993,[27] payrolls[28] and daily time records. [29]

We find the contentions unmeritorious.

First, it is a rule that quitclaims, waivers or releases are looked upon with disfavor and are commonly frowned upon as contrary to public policy and ineffective to bar claims for the measure of a worker's legal rights.[30]

In this case, the subject resignation letters identically read:

> Sept. 23/98

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(Date)

The Manager
MOBILE PROT. & DET. AGENCY, INC.
E. Rodriguez Jr. Ave. cor. Atis St.,
Valle Verde I, Pasig City

Sir:

I have the honor to tender my resignation as Security guard under your Agency effective today Sept. 23/98 .

That I have regularly received all what is due me for the services rendered as Security Guard under said Agency for the whole period of my employment.

That I have never incurred any injury during and in the course of my employment.

That the MOBILE PROTECTIVE & DETECTIVE AGENCY, INC. has no further obligation due me, either for money or otherwise as a result of or arising out of my employment, and that I have no claims or complaints against my employer or the Agency, judicial or administrative.

Hoping for your consideration on this matter.

Respectfully yours,

_____
(sgd.) Security Guard
(Print Name)
ALBERTO G. OMPAD

Approved by:

_____
(sgd.) COL. BENJAMIN C. AGUILAR (ret)
President & General Manager[31]

We agree with the NLRC and the CA that the two resignation letters are dubious, to say the least. A bare reading of their content would reveal that they are in the nature of a quitclaim, waiver or release. They were written in a language obviously not of respondent's and "lopsidedly worded" to free the Agency from liabilities. We uphold the CA's ruling that: "[w]hen the first resignation letter was a pro forma one, entirely drafted by the petitioner Agency for the private respondent to merely affix his signature, and the second one entirely copied by the private respondent with his own hand from the first resignation letter, voluntariness is not attendant."[32]

Moreover, it is a rule that resignation is difficult to reconcile with the filing of a complaint for illegal dismissal.[33] Hence, the finding that respondent's resignation was involuntary is further strengthened by the fact that respondent filed the instant case the day after the alleged tender of resignation.

Second, the affidavits of Chavez, Bialen and Alonzo are highly suspect as these affiants are under the employ of the very agency which extracted the dubious resignation letters from respondent. Even if we do give full credit to them, the following excerpts from the same affidavits put in grave doubt petitioners' claim that respondent lost interest to work: First, Chavez appears to have no direct personal knowledge of the real reason for respondent's absence. While she attested that respondent "was proud of having acquired a tricycle" and that "when off duty, he drives his tricycle for fares," she merely attested that on October 15, 1997, respondent "came in for duty limping" and that she "suspected then, that the injury was possibly due to a motor accident, considering his off duty tricycle operations."[34] (emphases supplied) Second, headguard Bialen attested that respondent approached him on

October 15, 1997 and informed him that he (respondent) had a wound on his foot and that "he may not be able to report for duty for a few days because of the condition of his foot."[35] (emphasis supplied) This shows that respondent assured Bialen that his absence was temporary. Lastly, the Agency's operations manager Alonzo stated that on October 21, 1997, he was told by respondent that he (respondent) had not been reporting for duty at VVCC. When Alonzo reacted strongly for the respondent's failure to notify his office regarding the matter, the latter allegedly told him "nakaligtaan ko babalik naman ako" (I forgot but I will be back).

Moreover, the claim that respondent absented himself from October 16, 1997 up to September 23, 1998 is absurd. Surely, respondent could not have possibly absented himself from an assignment after it had already expired on October 31, 1997. The claim that respondent went on AWOL is also unavailing. Again, even if we give full credit to the affidavits of the Agency's employees, respondent's absence cannot be said to be without notice and unjustified. Petitioners' own evidence shows that respondent approached his head guard on October 15, 1997 and told the latter that he could not report for work because of the condition of his foot.[36] This notice not being enough, headguard Bialen allegedly told respondent that he should report his absence to the office "by phone or in person."[37] On September 21, 1997, respondent allegedly went to the office of the Agency to draw his salary and upon inquiry, the operations manager of the Agency learned from respondent that he was not reporting for duty at VVCC because he "figured in a motorcycle accidents (sic)."[38] If notice may be done by phone, with more reason should this be considered as sufficient notice to petitioners.

Third, petitioners’ contention that Duty Detail Order No. 9993, the payrolls and daily time records belie respondent's claim that he was relieved from his post and never given subsequent assignment when petitioners learned of his inquiry with Manila Southwoods regarding Manila Southwoods' payment of backwages to the Agency, is unconvincing.

All that the documentary evidence proves is that respondent was assigned to VVCC from September 29 to October 31, 1997 and that he stopped reporting for duty on October 16, 1997. Such discrepancy, however, should not be overinflated. Notably, both petitioners and respondent point to the same date in referring to the time when respondent ceased to work: October 1997. After this, there was no pretense that he was given subsequent assignment. In fact, petitioners justified such lack of assignment by claiming that respondent went on AWOL and that he intended to resign. Besides, respondent's specific claim is that he was "relieved from his post and was never given any assignment" when his "inquiry came to the knowledge of [petitioners]." (emphasis supplied) Surely, this claim does not rule out the possibility that petitioners may have relieved him for this reason while he was already assigned to VVCC. In short, the inconsistency only refers to the identity of the last client to which respondent was assigned. This is of no consequence to the issue at bar: the reason for his cessation of work.

What is more, respondent should be deemed as constructively dismissed when he tendered his resignation letters on September 23, 1998. Constructive dismissal is "a quitting because continued employment is rendered impossible, unreasonable or unlikely, as, an offer involving a demotion in rank and diminution in pay."[39]

Article 286 of the Labor Code provides:

> 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.

This provision has been applied by analogy to security guards in a security agency who are placed "off detail" or on "floating" status. In security agency parlance, to be placed "off detail" or on "floating" status means "waiting to

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be posted."[40] Pursuant to Article 286 of the Labor Code, to be put off detail or in floating status requires no less than the dire exigency of the employer's bona fide suspension of operation, business or undertaking. In security services, this happens when there is a surplus of security guards over available assignments as when the clients that do not renew their contracts with the security agency are more than those clients that do and the new ones that the agency gets.[41]

Again, petitioners only alleged that respondent's last assignment was with VVCC for the period of September 29 to October 31, 1997. He was not given further assignment as he allegedly went on AWOL and lost interest to work. As explained, these claims are unconvincing. Worse still, they are inadequate under the law. The records do not show that there was a lack of available post after October 1997. It appears that petitioners simply stopped giving respondent any assignment. Absent any dire exigency justifying their failure to give respondent further assignment, the only logical conclusion is that respondent was constructively dismissed.

And even assuming that petitioners were justified in not immediately giving respondent any assignment after October 1997, the length of time that he was put on floating status made petitioners' act tantamount to constructive dismissal.

We have recognized that security guards may be temporarily sidelined by their security agency as their assignments primarily depend on the contracts entered into by the latter with third parties. However, the sidelining should continue only for six months. Otherwise, the security agency concerned could be liable for constructive dismissal.[42]

In this case, records do not show that petitioners at the very least offered and that respondent unjustifiably refused being assigned to another post after his last assignment in October 1997. Petitioners' allegations show that the semblance of an offer came only on September 23, 1998 when the Agency's operations manager allegedly saw respondent for the first time after October 1997 and asked respondent if he was still available for posting.[43] By then, however, more than eleven (11) months had elapsed.

In an illegal dismissal case, the onus probandi rests on the employer to prove that the dismissal of an employee is for a valid cause.[44] Having based their defense on resignation, it is likewise incumbent upon petitioners, as employer, to prove that respondent voluntarily resigned. From the totality of circumstances and the evidence on record, it is clear that petitioners failed to discharge this burden. We have held that if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter.[45] Accordingly, the finding of illegal dismissal must be upheld.

IN VIEW WHEREOF, the petition is dismissed. The assailed decision of the Court of Appeals in CA-G.R. SP No. 62332 dated March 21, 2003 and its Resolution dated July 23, 2003, are hereby AFFIRMED.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

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[1] The National Labor Relations Commission and the Court of Appeals were removed as public respondents pursuant to Section 4, Rule 45 of the Rules of Court.

[2] Rollo, pp. 46-47, 50.

[3] id. at 47.

[4] Complaint Form; id. at 43.

[5] id. at 47-48.

[6] id. at 52.

[7] Affidavit of Merlyn V. Chavez; id. at 57-58.

[8] Affidavit of Wilfredo D. Bialen; id. at 59-60.

[9] Affidavit of Domingo A. Alonzo; id. at 61-62.

[10] id. at 51-53.

[11] id. at 63-64.

[12] id. at 65-67.

[13] id. at 119.

[14] id. at 121.

[15] Decision dated July 15, 1999; id. at 123-127.

[16] id. at 137-138.

[17] id. at 132-137.

[18] id. at 139-146.

[19] id. at 148-149.

[20] id. at 151-169.

[21] id. at 36-41.

[22] id. at 41.

[23] id. at 225.

[24] Resolution dated July 23, 2003; id. at 42.

[25] id. at 20-21.

[26] Tres Reyes v. Maxim's Tea House 398 SCRA 288, 298 (2003), citing Ropali Trading Corporation v. National Labor Relations Commission, 296 SCRA 309, 314 (1998); Prangan v. National Labor Relations Commission, 289 SCRA 142, 146 (1998); Industrial Timber Corporation v. National Labor Relations Commission (5th Division), 273 SCRA 200, 209 (1997).

[27] Rollo, p. 225.

[28] id. at 115-117.

[29] id. at 143-146.

[30] Phil. Employ Services vs. Paramio, G.R. No. 144786, April 15, 2004, citing Peftok Integrated Services, Inc. v. NLRC, 293 SCRA 507 (1998).

[31] Rollo, pp. 54-55.

[32] id. at 40.

[33] Valdez vs. NLRC, 286 SCRA 87, 94 (1998).

[34] Rollo, pp. 52-53.

[35] id. at 59.

[36] Memorandum of Petitioners; id. at 185.

[37] id. at 59.

[38] id. at 61.

[39] R.P. Dinglasan Construction v. Atienza, G.R. No. 156104, June 29, 2004, citing Jo Cinema Corporation v. Abellana, 360 SCRA 142 (2001); Globe Telecom, Inc. v. Florendo-Flores, 390 SCRA 201 (2002).

[40] OSS Security & Allied Services, Inc. v. NLRC, 325 SCRA 157, 165 (2000), citing Sentinel Security Agency, Inc. v. NLRC, 295 SCRA 123, 131-132 (1998).

[41] Sentinel Security Agency, Inc. v. NLRC, supra.

[42] Soliman Security Services, Inc. v. CA, 384 SCRA 514, 519 (2002), citing Agro Commercial Security Agency, Inc. v. NLRC, 175 SCRA 790 (1989).

[43] Rollo, p. 62.

[44] R.P. Dinglasan Construction, Inc. vs. Atienza, supra.

[45] Asuncion vs. NLRC, 362 SCRA 56, 68 (2001).

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