

JOSE P. ARTIFICIO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, RP GUARDIANS SECURITY AGENCY, INC., JUAN VICTOR K. LAURILLA, ALBERTO AGUIRRE, AND ANTONIO A. ANDRES, RESP...

G.R. No. 172988. July 26, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

The instant petition for certiorari under Rule 45 seeks to set aside the Decision[1] dated 31 March 2006, as well as the Resolution[2] dated 1 June 2006, of the Court of Appeals in CA-G.R. SP No. 88188. The appellate court affirmed the Decision[3] dated 31 August 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-08-05942-2002/NLRC CA No. 037809-03 finding that Petitioner Jose P. Artificio (Artificio) was not illegally dismissed and ordering respondents to reinstate Artificio to his former position without loss of seniority rights. The appellate court at the same time vacated and set aside the decision of the Labor Arbiter dated 6 October 2003, in NLRC NCR Case No. 08-05942-2002 that Artificio was illegally dismissed by the respondents.[4]

The pertinent facts are as follows:

Petitioner Jose P. Artificio was employed as security guard by respondent RP Guardians Security Agency, Inc., a corporation duly organized and existing under Philippine Laws and likewise duly licensed to engage in the security agency business.

Sometime in June 2002, Artificio had a heated argument with a fellow security guard, Merlino B. Edu (Edu). On 25 July 2002, Edu submitted a confidential report[5] to Antonio A. Andres (Andres), Administration & Operations Manager, requesting that Artificio be investigated for maliciously machinating Edu's hasty relief from his post and for leaving his post during night shift duty to see his girlfriend at a nearby beerhouse.

On 29 July 2002, another security guard, Gutierrez Err (Err), sent a report [6] to Andres stating that Artificio arrived at the office of RP Guardians Security Agency, Inc. on 25 June 2002, under the influence of liquor. When Artificio learned that no salaries would be given that day, he bad-mouthed the employees of RP Guardians Security Agency, Inc. and threatened to "arson" their office.

The report reads:

Sir:

On or about 1710 hrs. June 25, 2002 PSG ARTIFICIO JOSE assigned to BF CITYLAND CORPORATION, under influence of liquor arrived to (sic) TLC BLDG. To verify their salaries to RP GUARDIANS SECURITY AGENCY EMPLOYEES. After knowing (sic) no (sic) salaries to received on that time or day, he irked (sic) and bad (sic) mounting all employee of RP GUARDIAN'S OFFICE and before leaving the TLC Bldg. (sic) He shouted to arson (sic) the RP GUARDIAN'S OFFICE, on that moment I (sic) pacifying him to RAMBO, PSG

ARTIFICIO JOSE but he ignored me.[7]

On even date, Andres issued a Memorandum[8] temporarily relieving Artificio from his post and placing him under preventive suspension pending investigation for conduct unbecoming a security guard, such as, abandonment of post during night shift duty, light threats and irregularities in the observance of proper relieving time. He also directed Artificio to report to the office of RP Guardians Security Agency, Inc. and submit his written answer immediately upon receipt of the memorandum.

In another memorandum, Andres informed Artificio that a hearing will be held on 12 August 2002.[9]

Without waiting for the hearing to be held, Artificio filed on 5 August 2002, a complaint for illegal dismissal, illegal suspension, non-payment of overtime pay, holiday pay, premium pay for holiday and rest days, 13[th] month pay, and damages. He also prayed for payment of separation pay in lieu of reinstatement.[10]

After hearing, the Labor Arbiter rendered a decision dated 6 October 2003, finding respondents guilty of illegal suspension and dismissal. It ruled that Edu's allegation of irregularity in the observance of relieving time was not specifically detailed. Since Edu had an axe to grind against Artificio, his allegation should be taken with utmost caution. It was also held that Artificio should have been allowed to confront Edu and Err before he was preventively suspended. Since he was denied due process, his preventive suspension was illegal. Such preventive suspension ripened into illegal dismissal. The Labor Arbiter explained that:

On July 29, 2002, complainant received two (2) separate Memoranda from his employer. One Memo immediately placed him under preventive suspension effective that very day. It further directed him "to report to this Office and submit an answer in writing immediately upon receipt of this Memo x x x." Complainant received this at about 2:00 P.M., July 29, 2002.

Another Memo, likewise dated July 29, 2002, and also received on the same day by complainant directed him "to appear before this Office on Monday, August 12, 2002 (10:00 A.M.) to answer the charges leveled against you x x x."

A sensible person who received two separate Memo directing him first to "answer in writing immediately"; and, second, to appear on August 12, 2002 would be "confused," to say the least. How much more herein complainant who might have felt that the whole [world] had fallen on him on that fateful day of July 29, 2002 as he received Memos (with attached letter-accusations) after another.

Feeling aggrieved and confused, he sought the assistance of this tribunal to air his predicament and plight. This should not be taken against him. It should be borne in mind that when he was directed to immediately answer in writing, he did not stand on equal footing with his superiors.

From the foregoing, the suspensions of complainant, is illegal. And under the peculiar circumstances, this illegal suspension ripened into an illegal dismissal.

Even as the complainant does not seek reinstatement when he filed this cases, he is nevertheless entitled to backwages, albeit limited. Complainant is also entitled to separation pay in lieu of reinstatement, the computation thereof to be reckoned not from 1979 but only from 1986.

As to money claims, the supporting documents submitted by the respondents prove that other than the payment of ECOLA and the refund of the P30.00 monthly Trust Fund, herein complainant had been duly paid of his money claims.[11]

The fallo of the decision rendered by the Labor Arbiter reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring respondents guilty of illegal suspension/lay-off and illegal dismissal.

Since the complainant does not seek reinstatement, he is entitled to limited backwages and separation pay.

Respondent [RP]. Guardian Security Agency, Inc., is hereby ordered to pay complainant as follows:

- Limited backwages computed from July 29, 2002 up to the date of this Decision in the amount of P217,033.79;
- In lieu of reinstatement, separation pay equivalent to one-half (1/2) month's salary for every year of service computed from 1986 in the amount of P81,507.60;
- ECOLA from November 5, 2001 up to July 31, 2002, in the amount of P6,628.50[;] and
- Refund of P30.00 monthly contribution to Trust Fund in the amount of P5,970.00;
- Ten percent (10%) of the total award as attorney's fees in the amount of P31,113.99.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.[12]

On appeal, the NLRC, in a Decision[13] dated 31 August 2004, set aside the decision of the Labor Arbiter. It ruled that the Labor Arbiter erred in considering preventive suspension as a penalty. While it is true that preventive suspension can ripen into constructive dismissal when it goes beyond the 30-day maximum period allowed by law, such is not prevailing in this case since Artificio immediately filed a complaint before the labor tribunal. It added that it was Artificio who terminated his relationship with respondents when he asked for separation pay in lieu of reinstatement although he has not yet been dismissed. The NLRC clarified further that:

x x x While it is true that preventive suspension can ripen into a constructive dismissal when such goes beyond the 30 day maximum period allowable by law, such is not prevailing in the case at bar as it was complainant who chose to file a complaint and have due process before the courts of law. It was complainant who terminated the relationship with respondents by asking for separation pay in lieu of reinstatement when the fact of dismissal has not yet happened. From the documents presented, complainant was put on preventive suspension pending investigation of company violations which were supported by documentary evidences on July 29, 2002. He was set to be heard on August 12, 2002 but before the respondents could hear his side, he filed this instant complaint on August 5, 2002, pre-empting the administrative investigation undertaken by respondents.[14]

In the end, the NLRC decreed:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby VACATED and SET ASIDE and a new one entered, ordering respondents to reinstate complainant to his former position without loss of seniority rights. All other claims are hereby dismissed for lack of merit.[15]

The motion for reconsideration filed by Artificio was denied for lack of merit by the NLRC in a resolution dated 29 October 2004.[16]

Artificio next filed a petition for certiorari before the Court of Appeals docketed as CA G.R. SP No. 88188. On 31 March 2006, the Court of Appeals rendered a decision which affirmed the NLRC decision.[17] Artificio filed a motion for reconsideration which the Court of Appeals again denied for lack of merit in a resolution dated 1 June 2006, hence, the instant petition raising the following issues:

I.

WHETHER OR NOT PETITIONER MAY BE TERMINATED FROM HIS EMPLOYMENT ON THE VERY DATE HE RECEIVED A LETTER FOR HIS PURPORTED RELIEF WITHOUT FIRST BEING GIVEN AN OPPORTUNITY TO ANSWER THE CHARGES LEVELED AGAINST HIM AND BEING INFORMED OF [THE] NATURE AND CAUSE OF HIS DISMISSAL.

II.

WHETHER OR NOT PETITIONER MAY BE VALIDLY SUSPENDED FOR AN INDEFINITE PERIOD WITHOUT BEING CONSIDERED DISMISSED CONSTRUCTIVELY FROM HIS EMPLOYMENT.

III.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE ASSAILED RESOLUTIONS OF THE NLRC WHICH MISTAKENLY APPLIED THE RULING IN GLOBE-MACKAY AND RADIO VS. NLRC, G.R. NO. 82511, MARCH 3, 1992 TO THE INSTANT CASE.

IV.

WHETHER OR NOT AN EMPLOYEE WHO LOYALLY AND EFFICIENTLY SERVED HIS EMPLOYER FOR TWENTY THREE (23) YEARS BE VALIDLY TERMINATED FROM EMPLOYMENT WITHOUT VIOLATING HIS RIGHTS TO DUE [PROCESS] ON THE PRETEXT OF A PURPORTED CHARGE WHICH DID NOT SET FORTH THE DETAILS, PLACE, AND TIME OF THEIR ALLEGED COMMISSION.

V.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT GIVING CREDENCE TO THE FINDINGS OF FACTS OF THE LABOR ARBITER WHICH HAS A FIRST HAND AND DIRECT CONTACT WITH THE PARTY-LITIGANTS.

VI.

WHETHER OR NOT AN EMPLOYEE WHOSE RELATIONSHIP WITH HIS EMPLOYER WAS STRAINED BY THE FILING OF A LEGITIMATE LABOR COMPLAINT BE CORRECTLY ORDERED REINSTATED.[18]

Artificio maintains that he was illegally suspended since his preventive suspension was for an indefinite period and was imposed without investigation. He also argues that he was illegally dismissed because the charges against him were couched in general and broad terms. Further, he was not given any notice requiring him to explain his side.

Respondents counter that Artificio was not dismissed but merely placed under preventive suspension pending investigation of the charges against him.

Sections 8 and 9 of Rule XXIII, Implementing Book V of the Omnibus Rules Implementing the Labor Code provides:

SEC. 8. Preventive suspension. - The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SEC. 9. Period of suspension. - No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

As succinctly stated above, preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[19]

In this case, Artificio's preventive suspension was justified since he was employed as a security guard tasked precisely to safeguard respondents' client. His continued presence in respondents' or its client's premises poses a serious threat to respondents, its employees and client in light of the serious allegation of conduct unbecoming a security guard such as abandonment of post during night shift duty, light threats and irregularities in the observance of proper relieving time.

Besides, as the employer, respondent has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.

This Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[20]

This delineation of management prerogatives is relevant to the observation of the NLRC that:

x x x even assuming that one of the fellow guards, PSG Edu had an axe to grind against complainant that's why he wrote the letter asking for the latter's investigation on certain violations he has committed, the allegation that complainant committed irregularity on company's policy on relieving time was amply supported by the logbook. In fact, the labor arbiter in her decision even cited that accusation boils [down] to the alleged irregularity of complainant in the observance of relieving of time. Further, on July 25, 2002, complainant was again reported for reporting under the influence of liquor and badmouthed respondent's employees with threat to "arson" the respondent's office. Such report came from another guard in the name of PSG Gutierrez, who had no axe to grind against complainant. The allegation was also not denied by complainant. Respondents therefore could not be faulted in putting complainant under preventive suspension pending investigation of his alleged acts especially that he was the head guard.[21]

These observations can no longer be disturbed. They are now established facts before us.

Significantly, Artificio regrettably chose not to present his side at the administrative hearing scheduled to look into the factual issues that accompanied the accusation against him. In fact, he avoided the investigation into the charges by filing his illegal dismissal complaint ahead of the scheduled investigation. He, on his own decided that his preventive suspension was in fact illegal dismissal and that he is entitled to backwages and separation pay. Indeed, Artificio would even reject reinstatement revealing his bent to have his own way through his own means. As aptly noted by the NLRC, Artificio preempted the investigation that could have afforded him the due process of which he would then say he was denied.

That resolved, we next proceed to the benefits due Artificio.

As already mentioned, after Artificio was placed under preventive suspension on 29 July 2002, he forthwith, or on 5 August 2002, filed a complaint for illegal dismissal and illegal suspension. From that date until the present, he has insisted on his submission that he was illegally dismissed and that he is not seeking reinstatement as in fact right from the start, his prayer was for separation pay. Having determined that the imposition on Artificio of preventive suspension was proper and that such suspension did not amount to illegal dismissal, we see no basis for the grant of backwages.

Nonetheless, given the attendant circumstances in this case, namely, that Artificio had been working with the company for a period of sixteen (16) years and without any previous derogatory record, the ends of social and compassionate justice would be served if Artificio be given some equitable relief in the form of separation

pay.[22]

Artificio is entitled to separation pay considering that while reinstatement is an option, Artificio himself has never, at anytime after the notice of preventive suspension intended to remain in the employ of private respondents.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision dated 31 March 2006, as well as the Resolution dated 1 June 2006, of the Court of Appeals in CA-G.R. SP No. 88188 are hereby **AFFIRMED** with the modification that, in lieu of reinstatement, separation pay be granted to Artificio computed at the rate of one (1) month pay for every year of service reckoned from the start of his employment with the respondents in 1986 until 2002.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring. Rollo, pp. 25-37.

[2] Id. at 38.

[3] CA rollo, pp. 18-25.

[4] Rollo, pp. 79-92.

[5] Id. at 39.

[6] CA rollo, p. 83.

[7] Rollo, p. 87.

[8] 1. References: a) RPGSAI Circular No. 2 dtd January 6, 2002

b) Attached letter request for investigation fm PSG Edu dtd July 25, 2002

c) Verbal instruction from client

2. In connection with the above references, you are hereby temporarily relieved from your post and placed under preventive suspension effective July 29, 2002 pending investigation of the offense/s you have allegedly committed. Hence, FA issued to you, is hereby recalled effective this date.

3. Further, you are directed to report to this Office and submit an answer in writing immediately upon receipt of this memo, to the following offenses to wit:

a) Conduct unbecoming of a Security Guard

Facts:

Abandonment of post during night shift duty

Light threats

Irregularities in the observance of proper relieving time

which are contrary to the pertinent provisions of Agency Policies and RA 5487, as amended.

For your guidance and strict compliance.

(SGD) PSUPT ANTONIO A. ANDRES (inact)

Admin/Oprns Manager

Acknowledge Receipt

By (SGD) JOSE P. ARTIFICIO

Signature above printed name (Please print legibly)

Date and Time 1400 Hr 7-29-02. Id. at 36.

[9] Id. at 27.

[10] Id. at 221.

[11] Id. at 90-91.

[12] Id. at 91-92.

[13] Id. at 114.

[14] Id. at 118.

[15] Id. at 120.

[16] Id. at 129.

[17] Id. at 25.

[18] Id. at 12-13.

[19] Maricalum Mining Corporation v. Decorion, G.R. No. 158637, 12 April 2006, 487 SCRA 182, 188; Valiao v. Court of Appeals, G.R. No. 146621, 30 July 2004, 435 SCRA 543, 554.

[20] Challenge Socks Corporation v. Court of Appeals, G.R. No. 165268, 8 November 2005, 474 SCRA 356, 363.

[21] Rollo, pp. 119-120.

[22] Tanala v. National Labor Relations Commission, 322 Phil. 342, 349-350 (1996) cited in Solid Bank v. National Labor Relations Commission, G.R. No. 165951, 30 March 2010.

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