

EAGLE STAR SECURITY SERVICES, INC., PETITIONER, VS. BONIFACIO L. MIRANDO, RESPONDENT.

G.R. No. 179512. July 30, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Bonifacio Mirando (respondent), who was hired by Eagle Star Security Services, Inc. (petitioner) as a security guard on July 29, 1997, was posted at the Heroes Hill Branch (in Quezon City) of Equitable-PCI Bank (now Banco de Oro-EPCI Bank) with a 9:00 a.m.-to-5:00 p.m. shift and a daily wage of P250.00.[1]

On December 14, 2001, respondent was made to sign a duty schedule for December 15 (a Saturday). When he reported for work on December 15, 2001, he was told by the detachment commander, Juanito Endencio (Endencio), not to report for duty per instruction of the head office. Respondent thus called up the head office and was told by Wilfredo Dayon that he was removed from duty by Ernesto Agodilla (Agodilla), petitioner's operations manager.[2] As respondent was thereafter no longer asked to report for duty, he filed on December 18, 2001 a complaint[3] for illegal dismissal against petitioner and its president Wilfredo Encarnacion (Encarnacion) at the National Labor Relations Commission (NLRC). He later amended his complaint on February 1, 2002 to include a prayer for reinstatement and payment of full backwages, damages and attorney's fees.[4]

Responding to the complaint, petitioner alleged that respondent went on absence without official leave (AWOL) on December 16, 2001 and had not since reported for work, drawing it to send him a notice on December 26, 2001 to explain his absence, but he failed to respond thereto. [5]

Petitioner further alleged that in a Memorandum[6] dated December 26, 2001 sent to Agodilla, Endencio reported that respondent pulled out his uniform on December 15, 2001 and that according to him (respondent), he "w[ould] render (sic) voluntary resignation by December 17, 2001[,] Monday."

By Decision[7] of October 29, 2003, Labor Arbiter Lilia Savari found that respondent was illegally dismissed, disposing as follows:

WHEREFORE, a Decision is hereby rendered declaring complainant to have been illegally dismissed. Concomitantly, respondents are ordered to reinstate complainant to his former position without loss of seniority rights and with payment of full backwages from the time of his illegal dismissal on December 15, 2001. If reinstatement is no longer feasible, payment of separation benefits plus refund of cash bond is hereby ordered.

Further, respondents are ordered to pay complainant [service incentive leave pay] for 2001, balance of 13[th] month pay for the year 2001, P1,500.00 representing difference in uniform allowance and 10% of the aggregate amount as attorney's fees.

Computation of the award prepared by the NLRC Computation Unit is hereto attached and made integral part of this Decision.

SO ORDERED.

On appeal, the NLRC, by Decision[8] of October 28, 2005, modified the Labor Arbiter's Decision by dismissing the complaint as against Encarnacion and awarding attorney's fees based on the 13[th] month pay and service incentive leave pay.

On petitioner's and respondent's respective motions for reconsideration, the NLRC amended its Decision, by Resolution[9] of April 28, 2006, by reducing the "monetary awards to [herein respondent] representing [the] cash bond [equivalent], 13[th] month pay and service incentive leave pay" to P1,100.00, P2,403.08 and P107.17, respectively.

Petitioner, via certiorari, elevated the case to the Court of Appeals which, by Decision[10] of August 31, 2007, affirmed the NLRC Decision of October 28, 2005 and Resolution of April 28, 2006.

In affirming the NLRC ruling, the CA observed:

. . . [I]f indeed it were true that the private respondent manifested his intention to resign on December 15, 2001 to Juanito Endencio[,] then the petitioner agency would have no reason to declare the former as AWOL as their first reaction would have been to allow the private respondent to execute a resignation letter. Moreover, the Court finds it very peculiar that Juanito Endencio, whom the private respondent allegedly told of his intention to resign on December 15, 2001, did not report the incident immediately to the petitioner agency but instead waited until December 26, 2001, or 11 days after, to submit a memorandum reporting the said incident. This boggles the mind as logic dictates that such an important incident, if it were true, should have elicited a much more immediate reaction from Juanito Endencio, being the Detachment Commander or Officer in Charge of the petitioner agency. After all, a security guard threatening to quit, thereby abandoning his post, is not an incident that should be taken lightly, much less ignored by a supervisor, especially considering that the private respondent's post was at a bank. In addition, it is significant to note that the said memorandum came several days after the private respondent filed his case against the petitioner for illegal dismissal on December 18, 2001. (Emphasis and underscoring supplied)

Hence, the present petition for review which faults the appellate court

I

. . . WHEN IT AFFIRMED THE FINDINGS OF FACTS OF THE NLRC AND THE LABOR ARBITER WHICH RELIED ON MANIFESTLY MISTAKEN SPECULATIONS, SURMISES AND INFERENCES.

II

... IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED AND IN FAILING TO APPRECIATE THE OVERWHELMING EVIDENCE ESTABLISHED ON RECORD WHICH SHOWS BEYOND PERADVENTURE OF DOUBT THAT RESPONDENT WAS NEVER DISMISSED BUT RATHER WENT ON AWOL.

III

... IN FINDING RESPONDENT TO BE ENTITLED TO FULL BACKWAGES AND SEPARATION [PAY], INCLUDING ATTORNEY'S FEES DESPITE THE FACT THAT NO IOTA OF EVIDENCE [WAS PRESENTED] TO SATISFY THE BURDEN OF PROOF REQUIRED TO SUPPORT THE MONEY CLAIMS.[11] (Underscoring supplied)

Petitioner reiterates that it did not dismiss respondent who, so it claims, voluntarily separated himself from the service by refusing to report for work.[12] And it contends that respondent's amendment of his complaint after forty nine days to include a prayer for reinstatement, among other things, exposed his scheme that he did not

actually want to be reinstated but merely wanted a "windfall" in the form of backwages and separation pay.[13]

Petitioner goes on to argue that even assuming that respondent was not given any duty assignment, his filing of the complaint for illegal dismissal was "premature" as he should be considered to have been in floating status or off-detail under Article 286[14] of the Labor Code.[15]

Respondent, in his Comment,[16] maintains that the present petition was filed manifestly for delay as the grounds cited therein are mere rehash of those already sufficiently passed upon by the administrative bodies and the appellate court.

Additionally, respondent argues that the present petition must be treated as a "mere scrap of paper" since the one who signed it was "not properly authorized by the [p]etitioner to file [it] before this [Court]."

The petition must be denied.

There is no proof that petitioner's representative Reynaldo G. Tauro (Tauro) was authorized to file the petition on its behalf.[17] The Board Resolution (Annex "R" to the petition), which was adopted during petitioner's Special Board Meeting of May 20, 2006, states:

RESOLVED as it is hereby resolved that the corporation shall elevate on Certiorari before the Court of Appeals NLRC NCR Case No. 039872-04 entitled "Bonifacio L. Mirando, complainant, versus Eagle Star Security Services, Inc., respondent."

RESOLVED further as it is hereby resolved that Mr. REYNALDO G. TAURO, shall be appointed as authorized representative of the Corporation, to represent and sign in behalf of the corporation the Verification and Certification of the petition for afore-mentioned case. (Italics in the original; emphasis and underscoring supplied)

Clearly, Annex "R" was adopted for the purpose of authorizing Tauro to file petitioner's petition for "Certiorari before the Court of Appeals." [18] Despite petitioner's awareness in its Reply to respondents' Comment filed before this Court of the defect in Tauro's authority to sign for and in its behalf the Verification and Certification against Non-Forum Shopping,[19] it failed even to belatedly file the requisite authority.

Fuentebella and Rolling Hills Memorial Park v. Castro,[20] on the requirement of a certification against forum shopping, explains:

The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.

. . . Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative ...[I]f the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping as long as he is authorized by a resolution of its board of directors.

x x x x

A certification without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition. (Citations omitted; emphasis, italics and underscoring supplied)

Petitioner's discourse on relaxation of technical rules of procedure in the interest of substantial justice does not impress. While there have been instances when the Court dispensed with technicalities on the basis of special circumstances or compelling reasons,[21] there is no such circumstance or reason in the present case which warrants the liberal application of technical rules.

AT ALL EVENTS, on the merits, the appellate court did not commit any reversible error in affirming the congruent findings of the Labor Arbiter and the NLRC that respondent was illegally dismissed.

Both the Labor Arbiter and the NLRC gave weight to the January 24, 2002 Sworn Affidavit[22] of Gary Villasis (Villasis), a fellow security guard of respondent, which reads in part:

3. That I am [respondent's] co-worker as [s]ecurity [g]uard at the said bank from the period of April 30, 2000 up to December 15, 2001 and [respondent] was terminated on the dated [sic] stated above without any violation, (Underscoring supplied),

as well as to Villasis' handwritten "Pagpapatunay"[23] dated February 19, 2002 corroborating respondent's claim that he was unceremoniously relieved of his duties without any explanation.

The persistence of respondent to resume his duties, not to mention his immediate filing of the illegal dismissal complaint, should dissipate any doubt that he did not abandon his job.

Clutching at straws, petitioner argues that respondent was on temporary "off-detail," the period of time a security guard is made to wait until he is transferred or assigned to a new post or client;[24] and since petitioner's business is primarily dependent on contracts entered into with third parties, the temporary "off-detail" of respondent does not amount to dismissal as long as the period does not exceed 6 months, following Art. 286 of the Labor Code.[25]

Petitioner's citation of Article 286 of the Labor Code reading:

ART. 286. When employment not deemed terminated. â”€ 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. (Emphasis in the original; underscoring supplied)

is misplaced. Philippine Industrial Security Agency v. Dapiton teaches:

We stress that Article 286 applies only when there is a bonafide 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.[26] (Underscoring supplied)

In the present case, there is no showing that there was lack of available posts at petitioner's clients or that there was a request from the client-bank, where respondent was last posted and which continued to hire petitioner's services, to replace respondent with another. Petitioner suddenly prevented him from reporting on his tour of duty at the bank on December 15, 2001 and had not thereafter asked him to report for duty.

In fine, the appellate court's affirmance of the NLRC decision is in order.

WHEREFORE, the petition is DENIED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Chico-Nazario, Leonardo-De Castro, and Peralta,[*] JJ., concur.

[*] Additional member per Special Order No. 664 dated July 15, 2009.

[1] Rollo, pp. 50-51, 70-71, 86-87.

[2] Ibid.

[3] NLRC records I, p. 2; Docketed as NLRC NCR North Sector Case No. 12-06545-2001.

[4] Id. at 7.

[5] Id. at 26-28.

[6] Id. at 39.

[7] Rollo, pp. 85-98.

[8] Id. at 69-76; Penned by Presiding Commissioner Lourdes C. Javier with the concurrence of Commissioner Tito F. Genilo. Commissioner Romeo C. Lagman took no part.

[9] Id. at 341-346.

[10] Id. at 49-67; Penned by Associate Justice Romeo F. Barza with Associate Justices Mariano C. Del Castillo and Jose C. Mendoza concurring.

[11] Id. at 35.

[12] Id. at 36-38.

[13] Id. at 40-41.

[14] 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.

[15] Rollo at pp. 42-43.

[16] Id. at 233-239.

[17] Id. at 230.

[18] CA rollo, p. 159.

[19] Id. at 246-256.

[20] G.R. No. 15086, 494 SCRA 183 (2006).

[21] Vide: General Milling Corp. v. NLRC, 442 Phil. 425 (2002); Shippside Inc. v. Court of Appeals, G.R. No. 143377, 352 SCRA 334 (2001); Uy v. Land Bank of the Phils., 391 Phil. 303 (2000), citing Melo v. Court of Appeals, G.R. No. 123686, 318 SCRA 94 (1999) De Guia v. De Guia, G.R. No. 135384, 356 SCRA 287 (2001); and Damasco v. NLRC, G.R. Nos. 115755 & 116101, 346 SCRA 714 (2000) citing Condo Suite Club Travel, Inc.

v. NLRC, G.R. No. 125671, 323 SCRA 679 (2000); Philippine Scout Veterans Security and Investigation Agency Inc. v. NLRC, G.R. No. 124500, 299 SCRA 690 (1998); Judy Phils., Inc. v. NLRC, G.R. No. 111934, 289 SCRA 755 (1998).

[22] NLRC records I, p. 14.

[23] Id. at 36-37; Said handwritten declaration reads in part: "NA NOONG DECEMBER 14, 2001 NAGPAPIRMA ANG AMING DETACHMENT COMMANDER NA SI MR. JUANITO ENDENCIO NG SCHEDULE SA DUTY PARA SA DEC. 15, 2001. SI SG MIRANDO AY NAKAPIRMA SA NASABING [S]CHEDULE. NANG PUMASOK SI SG MIRANDO KINABUKASAN [SA] AGENCY HINDI SIYA PINADUTY NI MR. ENDENCIO AT HINDI KO ALAM KONG ANO ANG DAHILAN KAYA PINIRMAHAN KO ANG AFFIDAVIT BILANG WITNESS NI SG MIRANDO PARA PATUNAYAN NA SIYA AY NAKAPIRMA SA SCHEDULE NG DUTY PARA SA DECEMBER 15, 2001."

[24] Superstar Security Agency v. NLRC, 184 SCRA 74 (1990).

[25] Rollo, p. 42.

[26] Philippine Industrial Security Agency v. Dapiton, G.R. No. 127421, December 8, 1999, 377 Phil. 951, 962.

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