

PEAK VENTURES CORPORATION AND/OR EL TIGRE SECURITY AND INVESTIGATION AGENCY, PETITIONERS, VS. HEIRS OF NESTOR B. VILLAREAL, RESPONDENTS.

G.R. No. 184618. November 19, 2014

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The twin reliefs that should be given to an illegally dismissed employee are full backwages and reinstatement.[1] Backwages restore the lost income of an employee and is computed from the time compensation was withheld up to actual reinstatement.[2] Anent reinstatement, only when it is not viable is separation pay given.[3]

This Petition for Review on Certiorari[4] assails the March 28, 2008 Decision[5] of the Court of Appeals (CA) in CA-G.R. SP No. 99440, which dismissed the Petition for Certiorari filed therewith by petitioners Peak Ventures Corporation (Peak Ventures) and/or El Tigre Security and Investigation Agency (El Tigre), and in effect affirmed the October 18, 2005 Decision[6] and March 20, 2007 Resolution[7] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 038029-03. The NLRC affirmed in toto the July 30, 2003 Decision[8] of the Labor Arbiter in NLRC NCR 00-08-06823-2002 declaring Nestor B. Villareal (Villareal) to have been illegally dismissed by petitioners and ordering them to reinstate him to his former position without loss of seniority rights, to pay him backwages and attorney's fees equivalent to 10% of the total monetary award. Likewise assailed is the CA's September 16, 2008 Resolution[9] which denied petitioners' Motion for Reconsideration.

Factual Antecedents

On June 16, 1989, Peak Ventures, the owner/operator of El Tigre, hired Villareal as security guard and assigned him at East Greenhills Village. On May 14, 2002, however, he was relieved from duty without any apparent reason. Villareal was later informed by the management that he would no longer be given any assignment because of his age. At that time, he was 42. His repeated requests for a new posting during the months of June and July of 2002 were likewise declined.

Due to his prolonged lack of assignment and dwindling resources, Villareal was constrained to claim his security bond deposits from petitioners. However, he was advised to first tender a letter of resignation before the same could be released to him. Out of sheer necessity, Villareal submitted a letter of resignation.[10] He stated therein that he was constrained to resign effective July 31, 2002 since he cannot expect to be given any assignment for another one and a half months and that he can no longer afford the fare going to petitioners' office. Villareal alleged that the tenor of his resignation letter was not acceptable to petitioners, who required him to submit another one stating that his resignation is voluntary.[11] In the first week of August 2002, petitioners released to Villareal his security bond deposits.

Proceedings before the Labor Arbiter

On August 27, 2002, Villareal filed before the Labor Arbiter a Complaint[12] for illegal dismissal with prayer for

reinstatement, backwages, 13th month pay, holiday pay, service incentive leave pay, moral and exemplary damages and attorney's fees against petitioners. He asserted that petitioners have no valid and authorized cause to relieve him from duty and place him on floating status. For one, he had dedicated almost 14 years of outstanding work performance to petitioners as shown by his commendation^[13] and award.^[14] For another, petitioners still had an existing security services contract with East Greenhills Village at the time he was relieved from his post. Villareal averred that the dire financial strait brought about by his unjustified relief from duty had made it unbearable for him to continue his employment with petitioners. Further, his illegal dismissal was effected without due process.

Petitioners denied the charge and asserted that it was Villareal who voluntarily severed his employment with them as shown by: 1) his handwritten letter of resignation, 2) a Talaan ng Pakikipanayam sa Pagbibitiw^[15] duly accomplished by Villareal which negates any act of coercion on petitioners' part, and 3) a notarized Clearance^[16] showing Villareal's receipt of his security deposits amounting to P12,700.00 and waiver of all his claims against petitioners.

The Labor Arbiter, in a Decision^[17] dated July 30, 2003, concluded that there was no valid and effective resignation on the part of Villareal; that he was constructively dismissed by petitioners; and that his dismissal was carried out without due process of law. The dispositive portion of the Labor Arbiter's Decision is as follows:

WHEREFORE, premises considered, judgment is hereby rendered declaring that the dismissal of [Villareal] by the [petitioners] in the above-entitled case was illegal and the [petitioners are] hereby ordered to reinstate immediately [Villareal] to his former position without loss of seniority rights and other privileges. The [petitioners are] directed to comply with this reinstatement order upon receipt of this decision.

Furthermore, the [petitioners are] ordered to pay [Villareal] his backwages for the period from July 3, 2002 up to July 4, 2003, in the amount of P100,800.00, subject to further adjustment or computation up to the reinstatement of [Villareal] or the finality of this decision, as the case may be.

In addition, the [petitioners are] hereby ordered to pay [Villareal] attorney's fees equivalent to ten percent (10%) of the total monetary award.

All other claims are dismissed.

SO ORDERED.^[18]

Proceedings before the National Labor Relations Commission

Petitioners appealed to the NLRC. In a Decision^[19] dated October 18, 2005, the NLRC agreed with the Labor Arbiter's findings and conclusion. Hence, the dispositive portion of its Decision, viz:

WHEREFORE, premises considered, [petitioners'] appeal is hereby DENIED. Accordingly, the assailed Decision is hereby AFFIRMED in toto.

SO ORDERED.^[20]

Petitioners filed a Motion for Reconsideration^[21] but the same was likewise denied in a Resolution^[22] dated March 20, 2007.

Proceedings before the Court of Appeals

In their Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction^[23] filed before the CA, petitioners, aside from still insisting that Villareal voluntarily resigned and is not entitled to the awards made in his favor, also called attention to the fact that they already

required Villareal to return to work, in compliance with the reinstatement aspect of the Labor Arbiter's Decision.[24]

On December 1, 2005, Villareal died.[25] The CA, in a Resolution[26] dated August 22, 2007, required Villareal's counsel of record, Atty. Alex B. Carpela, Jr. (Atty. Carpela) to cause the substitution of Villareal's heirs as respondents. However, per Manifestation[27] of Atty. Carpela, the said heirs cannot be located.

Nevertheless, the CA proceeded to resolve the case. On March 28, 2008, it rendered a Decision[28] upholding the NLRC. The CA noted that petitioners failed to afford Villareal substantive and procedural due process when he was relieved from duty and also when he was not given a new post. And as a result of the unjustified relief and non-posting, his situation became unbearable, leaving him with no choice but to forego employment. To the CA, this is a clear case of constructive dismissal. On the other hand, petitioners' evidence did not suffice to support the alleged voluntariness of Villareal's resignation.

In view of the finding of illegal dismissal, the CA made the following disquisition as to the monetary awards in favor of Villareal:

An illegally dismissed employee is entitled to the twin relief[s] of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. The award of one does not bar the other. Moreover, illegally dismissed employees are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of actual reinstatement. If reinstatement is not possible, the same shall be computed from the time of their illegal termination up to the finality of the decision.

The amount of backwages shall be computed from the time he was separated from the company, that is July 3, 2002 up to the finality of this Decision, as [Villareal] already died. Moreover, since reinstatement is now impossible, the petitioners shall give separation pay of one month pay for every year of service to [Villareal] in lieu of reinstatement.

The petitioners must also be held liable to pay [Villareal] attorney's fees equivalent to ten percent (10%) of the total monetary award. This Court deems it just and equitable that attorney's fees should be recovered pursuant to Article 2208 (11) of the New Civil Code.[29]

Ultimately, the CA dismissed the Petition, viz:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED.

SO ORDERED.[30]

In their Motion for Reconsideration,[31] petitioners questioned, among others, the award of backwages. They asserted that the backwages should be computed from the time of Villareal's relief from duty on May 14, 2002 until his actual reinstatement and not until the finality of the Decision. And since Villareal was actually reinstated and has rendered duty from November 1, 2003 to March 16, 2004, he is only entitled to backwages computed up to his actual reinstatement on November 1, 2003. To support this, petitioners presented Assignment Orders dated November 8, 2003[32] and March 15, 2004,[33] as well as Villareal's Daily Time Record (DTR) from November 8-30,[34] December 1-16, 2003[35] and March 16, 2004.[36] To show that Villareal was paid his wages and salaries during his actual reinstatement, petitioners also presented the Payroll Registry Receipts[37] and Bank Advice Slips.[38] Petitioners further explained that Villareal went on Absence Without Official Leave since March 22, 2004.[39] After submitting his letter[40] dated June 18, 2004 explaining his absences due to poor health, nothing was heard from him since then.

Aside from backwages, petitioners also questioned the computation of separation pay. They contended that the

amount should be computed at ½ month pay for every year of service and not one month pay for every year of service as awarded by the CA.

In the Comment[41] he submitted, Atty. Carpela argued, among others, that petitioners are barred from asserting that they have already complied with the order of reinstatement as to question the computation of backwages for failure to raise the same at the first instance.

In a Resolution[42] dated September 16, 2008, the CA denied petitioners' Motion for Reconsideration.

Hence, this Petition.

The Parties' Arguments

Petitioners insist that Villareal was not illegally dismissed. He voluntarily resigned from his work. Hence, he is not entitled to backwages and separation pay. Even assuming that he is entitled to backwages, the same should be computed only from the time of Villareal's relief on May 14, 2002 up to his actual reinstatement and not up to the finality of the decision. Neither should Villareal be awarded attorney's fees as there is no showing of bad faith on petitioners' part.

In Atty. Carpela's Comment,[43] he seeks for the dismissal of the Petition as it raises factual issues. He also points out that the Petition contains a defective verification and certification against forum-shopping because while the same was verified and certified by one Cirilo A. Almario (Almario) on November 6, 2008, the Petition is actually dated November 10, 2008. He thus argues that petitioners could not possibly verify and certify an inexistent petition. Besides, he maintains that the CA Decision is in accord with law and jurisprudence.

Meanwhile, the heirs of Villareal, namely: his surviving spouse, Julieta Villareal, and his children, Jocelyn and Lilybeth Villareal, filed on November 10, 2011 a Motion for Substitution of Parties[44] wherein they prayed to be substituted as parties-respondents to the case. This was granted by the Court in the Resolution[45] dated June 20, 2012.

Our Ruling

The Petition is partly meritorious.

Variance between the date of the Petition
and the date when it was verified/ certified
does not render the Petition fatally defective.

Before delving into the issues raised by petitioners, the Court shall first resolve the technical defect pointed out by respondents.

In explaining the variance between the date of the Petition and the date it was verified, petitioners submitted Almario's Affidavit[46] dated May 22, 2009. Almario, the Director for Security Operations of Peak Ventures, attested to the fact that the final draft of the Petition was shown to him on November 6, 2008 and on the same date, he read the same and executed a verification and certification of non-forum shopping. He further affirmed that the final draft of the Petition shown to him on November 6, 2008 is the same Petition dated November 10, 2008 that was filed in this Court. He explained that the variance in dates came about because petitioners wanted the Petition to bear the same date as the date of its actual filing.

"[T]he requirement regarding verification of a pleading is formal, not jurisdictional and x x x the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith." [47] With respect to the requirement of a

certification of non-forum shopping, “[t]he fact that the [Rules] require strict compliance merely underscores its mandatory nature that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.”[48]

In *Spouses Valmonte v. Alcala*,[49] the Court held that the variance between the dates of the verification/certification and the Petition does not necessarily contradict the categorical declaration made by petitioners in their affidavit that they read and understood the contents of the pleading. In that case, the Court noted that as the pleading and the verification are prepared separately, a variance in their dates is a matter that may satisfactorily be explained. It held that to demand the litigants to read the very same document that is to be filed in court is too rigorous a requirement since what the Rules require is for a party to read the contents of a pleading without any specific requirement on the form or manner in which the reading is to be done. The Court stressed that what is important is that efforts were made to satisfy the objective of the Rule, that is, to ensure good faith and veracity in the allegations of a pleading, thereby allowing the courts to act on the case with reasonable certainty that the petitioners’ real positions have been pleaded.

Thus, here, the variance between the date of the Petition and the date it was verified is not fatal to petitioners’ case. As explained, any variance does not necessarily mean that no valid verification/certification was made. Moreover, it must be emphasized that the rules of procedure, especially in labor cases, ought not to be applied in a very rigid, technical sense for they have been adopted to help secure, not override, substantial justice.[50]

Villareal was constructively dismissed.

Coming now to the substantive issues, the Court subscribes to the uniform rulings of the Labor Arbiter, the NLRC and the CA that Villareal was constructively and illegally dismissed.

Petitioners anchor their claim of voluntary resignation on Villareal’s resignation letter, the *Talaan ng Pakikipagpanayam sa Pagbibitiw* (exit interview form) accomplished by him, and his notarized clearance. However, the circumstances surrounding the execution of these documents prove otherwise.

When Villareal was relieved from duty, he was placed on floating status. “A floating status requires the dire exigency of the employer’s bona fide suspension of operation, business or undertaking.”[51] “It takes place when the security agency’s clients decide not to renew their contracts with the agency x x x” and also “in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it x x x.”[52] In the latter case, the employer should prove that there are no posts available to which the employee temporarily out of work can be assigned.[53]

As pointed out by the labor tribunals, petitioners failed to discharge the burden of proving that there were no other posts available for Villareal after his recall from his last assignment. Worse, no sufficient reason was given for his relief and continued denial of a new assignment. And because of the dire financial straits brought about by these unjustified acts of petitioners, Villareal was forced to resign and execute documents in a manner as directed by petitioners in order to claim his security bond deposits. From these circumstances, petitioners’ claim of voluntary resignation is untenable. What is clear instead is that Villareal was constructively dismissed. There is constructive dismissal when an act of clear discrimination, insensitivity or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment. “Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.”[54] Moreover, Villareal’s immediate filing of a Complaint for illegal dismissal to ask for reinstatement negates the fact of voluntary resignation.[55]

The Court, thus, finds that the CA did not err in declaring that Villareal was constructively and illegally dismissed

by petitioners.

Villareal's backwages must be computed from the time of his unjustified relief from duty up to his actual reinstatement; the award of separation pay must be deleted.

The awards granted by the CA in favor of Villareal must, however, be modified.

Under Article 279 of the Labor Code, as amended by Republic Act No. 6715, an employee who is unjustly dismissed shall be entitled to (1) reinstatement without loss of seniority rights and other privileges; and, (2) full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is no longer viable, separation pay is granted.[56] "[S]eparation pay is intended to provide the employee money during the period in which he will be looking for another employment." [57] Backwages, on the other hand, "are granted on grounds of equity for earnings lost by an employee due to his illegal dismissal." [58]

As may be recalled, the CA, in granting monetary awards to Villareal, concluded that reinstatement is no longer possible since he was already dead. Hence, it ordered the computation of backwages from the time of Villareal's separation from the company on July 3, 2002 up to the finality of the Decision and awarded separation pay. However, records reveal that Villareal was actually reinstated. As shown by his duly signed DTRs, Villareal rendered work on November 8-30, December 1-16, 2003 and March 16, 2004. Also, in his letter of June 18, 2004 where he explained his continued absence from work, he specifically mentioned that he last rendered duty in March 2004. Notably, these substantial evidence of Villareal's actual reinstatement was not disputed by respondents.

Anent the assertion that petitioners belatedly raised before the CA the fact of Villareal's reinstatement, suffice it to say that petitioners could not be faulted for the same. The need to raise the matter only came up when the said court did not consider Villareal's reinstatement and rendered its Decision ordering petitioners to pay him backwages from July 3, 2002 up to the finality of its Decision.

In view therefore of Villareal's reinstatement, modifications with respect to the awards of backwages and separation pay must necessarily be made. The award of separation pay must be deleted because as mentioned, separation pay is only granted as an alternative to reinstatement. Regarding backwages, aside from computing it up to Villareal's actual reinstatement and not up to the finality of the Decision, the reckoning point of the computation as also pointed out by petitioners themselves, must likewise be corrected. It must not be reckoned from July 3, 2002, the date when Villareal submitted his resignation letter and considered by the CA as the date of his separation from the company. Rather, it must be computed from May 14, 2002 or the time he was unjustly relieved from duty since it was from this time that his compensation was withheld from him. Hence, Villareal's backwages must be computed from the time he was unjustly relieved from duty on May 14, 2002 up to his actual reinstatement on November 8, 2003.

As to the grant of 10% of the total award as attorney's fees, the same is warranted because Villareal was impelled to litigate to protect his interests.[59]

WHEREFORE, the Petition is PARTLY GRANTED. The March 28, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 99440 is hereby MODIFIED in that (1) the award of full backwages, inclusive of allowances, and other benefits or their monetary equivalent, shall be computed from the time Nestor B. Villareal was unjustly relieved from duty on May 14, 2002 up to his actual reinstatement on November 8, 2003; and (2) the award of

separation pay is deleted.

SO ORDERED.

Carpio, (Chairperson), Brion, Mendoza, and Leonen, JJ., concur.

[1] St. Luke's Medical Center Inc. v. Notario, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 80.

[2] Buhain v. Court of Appeals, 433 Phil. 94, 102-103 (2002).

[3] Capili v. National Labor Relations Commission, 337 Phil. 210, 216 (1997).

[4] Rollo, pp. 25-50.

[5] CA rollo, pp. 221-230; penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Hakim S. Abdulwahid and Mariflor Punzalan Castillo.

[6] NLRC records, pp. 165-169; penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr. and Commissioner Perlita B. Velasco.

[7] Id. at 192-193; penned by Commissioner Romeo L. Go and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco.

[8] Id. at 52-66; penned by Labor Arbiter Francisco A. Robles.

[9] CA rollo, pp. 286-287; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Mariflor P. Punzalan Castillo.

[10] NLRC records, p. 33.

[11] Id. at 34.

[12] Id. at 1-2.

[13] Id. at 31.

[14] Id. at 32.

[15] Id. at 18.

[16] Id. at 19.

[17] Id. at 52-66.

[18] Id. at 65-66.

[19] Id. at 165-169.

[20] Id. at 168.

[21] Id. at 171-176.

[22] Id. at 192-193.

[23] CA rollo, pp. 2-17.

[24] Id.; see also El Tigre's letter to Villareal dated August 21, 2003, id. at 87.

[25] See Villareal's Death Certificate, *id.* at 141.

[26] *Id.* at 102-103.

[27] *Id.* at 158-163.

[28] *Id.* at 221-230.

[29] *Id.* at 229.

[30] *Id.*

[31] *Id.* at 236-251.

[32] *Id.* at 252.

[33] *Id.* at 253.

[34] See DTR for the periods November 1-15, 2003 and November 16-30, 2003, *id.* at 254 and 255, respectively.

[35] See DTR for the periods December 1-15, 2003 and December 16-31, 2003, *id.* at 256 and 257, respectively.

[36] See DTR for the period March 16-31, 2004, *id.* at 258.

[37] *Id.* at 259-262.

[38] *Id.* at 263-265.

[39] *Id.* at 266.

[40] *Id.* at 267.

[41] *Id.* at 276-283.

[42] *Id.* at 286-287.

[43] Rollo, pp. 337-361.

[44] *Id.* at 448-452

[45] *Id.* at 462.

[46] *Id.* at 353.

[47] *Pacquing v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, January 31, 2008, 543 SCRA 344, 356.

[48] *Huntington Steel Products, Inc. v. National Labor Relations Commission*, 485 Phil. 227, 235 (2004).

[49] 581 Phil. 505, 512-513 (2008).

[50] *Cebu Metro Pharmacy, Inc. v. Euro-Med Laboratories, Philippines, Inc.*, G.R. No. 164757, October 18, 2010, 633 SCRA 320, 331.

[51] *Sentinel Security Agency, Inc. v. National Labor Relations Commission*, 356 Phil. 434, 446 (1998).

[52] *Salvalosa v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 197.

[53] *Pido v. National Labor Relations Commission*, 545 Phil. 507, 515-516 (2007).

- [54] Nippon Housing Phil., Inc. v. Leynes, G.R. No. 177816, August 3, 2011, 655 SCRA 77, 88.
- [55] Uy v. Centro Ceramica Corporation, G.R. No. 174631, October 19, 2011, 659 SCRA 604, 617.
- [56] General Milling Corporation v. Casio, G.R. No. 149552, March 10, 2010, 615 SCRA 13, 37.
- [57] Aurora Land Projects Corporation v. National Labor Relations Commission, 334 Phil. 44, 58 (1997).
- [58] Intercontinental Broadcasting Corporation v. Benedicto, 528 Phil. 148, 159 (2006).
- [59] Tangga-an v. Philippine Transmarine Carriers, Inc., G.R. No. 180636, March 13, 2013, 693 SCRA 340, 354-356.

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