

EMERITUS SECURITY AND MAINTENANCE SYSTEMS, INC., PETITIONER, VS. JANRIE C. DAILIG, RESPONDENT.

G.R. No. 204761. April 02, 2014

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 25 May 2012 Decision[2] and 11 December 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 111904. Affirming with modification the decision of the National Labor Relations Commission (NLRC), the Court of Appeals found respondent Janrie C. Dailig (respondent) illegally dismissed by petitioner Emeritus Security and Maintenance Systems, Inc. (petitioner) and ordered the payment of separation pay, instead of reinstatement, and backwages.

The Facts

In August 2000, petitioner hired respondent as one of its security guards. During his employment, respondent was assigned to petitioner's various clients, the last of which was Panasonic in Calamba, Laguna starting 16 December 2004.

On 10 December 2005, respondent was relieved from his post.

On 27 January 2006, respondent filed a complaint for underpayment of wages, non-payment of legal and special holiday pay, premium pay for rest day and underpayment of ECOLA before the Department of Labor and Employment, National Capital Region. The hearing officer recommended the dismissal of the complaint since the claims were already paid.

On 16 June 2006, respondent filed a complaint for illegal dismissal and payment of separation pay against petitioner before the Conciliation and Mediation Center of the NLRC. On 14 July 2006, respondent filed another complaint for illegal dismissal, underpayment of salaries and non-payment of full backwages before the NLRC.

Respondent claimed that on various dates in December 2005 and from January to May 2006,[4] he went to petitioner's office to follow-up his next assignment. After more than six months since his last assignment, still respondent was not given a new assignment. Respondent argued that if an employee is on floating status for more than six months, such employee is deemed illegally dismissed.

Petitioner denied dismissing respondent. Petitioner admitted that it relieved respondent from his last assignment on 10 December 2005; however, petitioner required respondent to report to the head office within 48 hours from receipt of the order of relief. Respondent allegedly failed to comply. Petitioner claimed that on 27 January 2006 it sent respondent a notice to his last known address requiring him to report to the head office within 72 hours from receipt of the said notice. Petitioner further alleged that it had informed respondent that he had been absent without official leave for the month of January 2006, and that his failure to report within 72 hours from receipt of the notice would mean that he was no longer interested to continue his employment.

Petitioner also claimed that there was no showing that respondent was prevented from returning to his work and that it had consistently manifested its willingness to reinstate him to his former position. In addition, the fact that there was no termination letter sent to respondent purportedly proved that respondent was not dismissed.

On 5 December 2007, the Labor Arbiter rendered a Decision, disposing of the case as follows:

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed. Accordingly, respondent is hereby ordered to reinstate complainant and to pay him backwages from the time his compensation was withheld by reason of his illegal dismissal until actual reinstatement. His claim for underpayment is hereby denied for lack of merit. The totality of complainant's monetary award as computed by the Computation and Examination Unit is hereby adopted as integral part of this Decision.

SO ORDERED.[5]

The computation of the monetary award is as follows:

BACKWAGES from 12/10/05 TO 12/5/07

Basic Pay

P7,560.00/mo. x 23.86 mos.

=

P180,381.60

13[th] month pay

P180,381.60/12

=

15,031.80

SIL Pay

P7,560/30 x 5 days x 23.86/12

=

2,505.30

TOTAL

P197,918.70[6]

Petitioner appealed before the NLRC, which dismissed the appeal for lack of merit. Petitioner moved for reconsideration, which the NLRC denied. The NLRC, however, pointed out that the computation of respondent's award of full backwages should be reckoned from 10 June 2006 and not 10 December 2005.

On appeal with the Court of Appeals, petitioner argued that there was abandonment on respondent's part when he refused to report for work despite notice. Thus, there was no illegal dismissal to speak of.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the finding of the Labor Arbiter and the NLRC that respondent was illegally dismissed by petitioner. However, the Court of Appeals set aside the Labor Arbiter and the NLRC's reinstatement order. Instead, the Court of Appeals ordered the payment of separation pay, invoking the doctrine of strained

relations between the parties.

The dispositive portion of the decision reads:

WHEREFORE, the instant petition for certiorari is DISMISSED. The Decision and Resolution of the NLRC-First Division, dated October 21, 2008 and October 19, 2009, respectively, in NLRC Case No. RAB IV-07-23165-06-L NLRC LAC No. 03-000954-08, are AFFIRMED with MODIFICATION, in that, petitioner is ORDERED to pay private respondent Janrie C. Dailig (a) separation pay in the amount equivalent to one (1) month pay for every year of service and (b) backwages, computed from the time compensation was withheld from him when he was unjustly terminated, up to the time of payment thereof. For this purpose, the records of this case are hereby REMANDED to the Labor Arbiter for proper computation of said awards in view of this Decision. Costs against petitioner.

SO ORDERED.[7]

The Issues

The issues are (1) whether respondent was illegally dismissed by respondent and (2) if he was, whether respondent is entitled to separation pay, instead of reinstatement.

The Ruling of the Court

The Court affirms the finding of illegal dismissal of the Labor Arbiter, NLRC, and Court of Appeals. However, the Court sets aside the Court of Appeals' award of separation pay in favor of respondent, and reinstates the Labor Arbiter's reinstatement order.

On whether respondent was illegally dismissed

Petitioner admits relieving respondent from his post as security guard on 10 December 2005. There is also no dispute that respondent remained on floating status at the time he filed his complaint for illegal dismissal on 16 June 2006. In other words, respondent was on floating status from 10 December 2005 to 16 June 2006 or more than six months. Petitioner's allegation of sending respondent a notice sometime in January 2006, requiring him to report for work, is unsubstantiated, and thus, self-serving.

The Court agrees with the ruling of the Labor Arbiter, NLRC and Court of Appeals that a floating status of a security guard, such as respondent, for more than six months constitutes constructive dismissal. In *Nationwide Security and Allied Services, Inc. v. Valderama*,^[8] the Court held:

x x x the temporary inactivity or "floating status" of security guards should continue only for six months. Otherwise, the security agency concerned could be liable for constructive dismissal. The failure of petitioner to give respondent a work assignment beyond the reasonable six-month period makes it liable for constructive dismissal. x x x.^[9]

Further, the Court notes that the Labor Arbiter, NLRC, and Court of Appeals unanimously found that respondent was illegally dismissed by petitioner. Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the Labor Arbiter.^[10] Such factual findings are given more weight when the same are affirmed by the Court of Appeals.^[11] The Court finds no reason to depart from the foregoing rule.

On whether respondent is entitled to separation pay

Article 279 of the Labor Code of the Philippines mandates the reinstatement of an illegally dismissed employee, to wit:

Security of Tenure. - x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement

without loss of seniority rights and other privileges and to his full back wages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Thus, reinstatement is the general rule, while the award of separation pay is the exception. The circumstances warranting the grant of separation pay, in lieu of reinstatement, are laid down by the Court in *Globe-Mackay Cable and Radio Corporation v. National Labor Relations Commission*,^[12] thus:

Over time, the following reasons have been advanced by the Court for denying reinstatement under the facts of the case and the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation; or that it would be 'inimical to the employer's interest;' or that reinstatement may no longer be feasible; or, that it will not serve the best interests of the parties involved; or that the company would be prejudiced by the workers' continued employment; or that it will not serve any prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable or, to an increasing extent, due to the resultant atmosphere of 'antipathy and antagonism' or 'strained relations' or 'irretrievable estrangement' between the employer and the employee.

In this case, petitioner claims that it complied with the reinstatement order of the Labor Arbiter. On 23 January 2008, petitioner sent respondent a notice informing him of the Labor Arbiter's decision to reinstate him. Accordingly, in February 2008, respondent was assigned by petitioner to Canlubang Sugar Estate, Inc. in Canlubang, Laguna, and to various posts thereafter. At the time of the filing of the petition, respondent was assigned by petitioner to MD Distripark Manila, Inc. in Biñan, Laguna.

Respondent admits receiving a reinstatement notice from petitioner. Thereafter, respondent was assigned to one of petitioner's clients. However, respondent points out that he was not reinstated by petitioner Emeritus Security and Maintenance Systems, Inc. but was employed by another company, Emme Security and Maintenance Systems, Inc. (Emme). Thus, according to respondent, he was not reinstated at all.

Petitioner counters that Emeritus and Emme are sister companies with the same Board of Directors and officers, arguing that Emeritus and Emme are in effect one and the same corporation.

Considering petitioner's undisputed claim that Emeritus and Emme are one and the same, there is no basis in respondent's allegation that he was not reinstated to his previous employment. Besides, respondent assails the corporate personalities of Emeritus and Emme only in his Comment filed before this Court. Further, respondent did not appeal the Labor Arbiter's reinstatement order.

Contrary to the Court of Appeals' ruling, there is nothing in the records showing any strained relations between the parties to warrant the award of separation pay. There is neither allegation nor proof that such animosity existed between petitioner and respondent. In fact, petitioner complied with the Labor Arbiter's reinstatement order.

Considering that (1) petitioner reinstated respondent in compliance with the Labor Arbiter's decision, and (2) there is no ground, particularly strained relations between the parties, to justify the grant of separation pay, the Court of Appeals erred in ordering the payment thereof, in lieu of reinstatement.

WHEREFORE, the Court DENIES the petition and REINSTATES the 5 December 2007 Decision of the Labor Arbiter. However, the backwages should be computed from 10 June 2006 when respondent was illegally dismissed up to the time he was reinstated in February 2008.

SO ORDERED.

Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 37-48. Penned by Associate Justice Noel G. Tijam with Associate Justices Normandie B. Pizarro and Danton Q. Bueser concurring.

[3] Id. at 49-51.

[4] 12, 16, 22 December 2005; 10, 30 January 2006; 15 February 2006; 16 March 2006; 11 April 2006; and 15 May 2006.

[5] Rollo, p. 40.

[6] Id.

[7] Id. at 47.

[8] G.R. No. 186614, 23 February 2011, 644 SCRA 299, 310-311.

[9] Id. See People's Security, Inc. v. National Labor Relations Commission, G.R. No. 96451, 8 September 1993, 226 SCRA 146, 152-153; Mobile Protective & Detective Agency v. Ompad, G.R. No. 159195, 9 May 2005, 458 SCRA 308, 323.

[10] Bank of Lubao, Inc. v. Manabat, G.R. No. 188722, 1 February 2012, 664 SCRA 772, 779.

[11] Id.

[12] G.R. No. 82511, 3 March 1992, 206 SCRA 701, 709-710.

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