

LEONARDO FAMISAN, PETITIONER, VS. NLRC AND BOLINAO SECURITY AND INVESTIGATION SERVICE AGENCY AND/OR URBANO CAASI--PRESIDENT, RESPONDENTS.

G.R. No. 73584. January 28, 1988

Ponente: PARAS, J.

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PARAS, J.:

Impugned in this petition for certiorari is the decision of the National Labor Relations Commission which deleted the Labor Arbiter's award of separation pay to the petitioner and the refund of his cash bond, and instead, directed the petitioner's reinstatement without backwages.

Briefly, the antecedent facts may be summarized as follows:

Private respondent Bolinao Security and Investigation Service Agency and/or Urbano Caasi-President is engaged in the business of providing security services to its clients.

In 1971, private respondent hired the petitioner as one of its security guards. On January 10, 1983, after the petitioner was recalled from his assignment at the Joint United States Military Advisory Group to the Republic of the Philippines (JUSMAG, for brevity) he received a memorandum for sleeping while on duty and abandonment of post, and was required to put in writing his promise that he would no longer commit any of the offenses attendant to the work of a security guard.

The petitioner filed an illegal dismissal case against the private respondent, claiming that the imposition of such a condition was tantamount to a constructive discharge. The petitioner also claimed for salary adjustments for the years 1980 and 1981, as well as overtime pay, and other benefits for the years 1980-1982.

After hearing, the Labor Arbiter found that the petitioner was not illegally dismissed but was only relieved of his assignment at the JUSMAG upon the latter's request communicated to the private respondent. Considering the strained relationship between the parties, the Labor Arbiter, among other things, directed the private respondent to pay the petitioner separation pay and to refund his cash bond. The dispositive portion of the decision reads, thus:

"PREMISES CONSIDERED, judgment is hereby rendered ordering respondent Bolinao Security and Investigation Agency to pay the complainant separation pay amounting to Seven Thousand Five Hundred Eighteen Pesos (P7,518.50) and Fifty Centavos computed at fifteen (15) days pay for every year of service.

"Respondent Bolinao Security and Investigation Agency is also ordered to pay the complainant the amount of Four Thousand Eight (P4,008.00) Pesos as wage differential for the years 1980 and 1981.

"Respondent Bolinao Security and Investigation Agency is further order-ed to refund to the complainant his cash bond deposit amounting to Two Hundred Fifty (P250.00) Pesos.

"All other claims are hereby dismissed for lack of merit." (Decision, p. 38, Rollo)

On appeal, the National Labor Relations Commission sustained the finding that the petitioner was not illegally

dismissed. However, instead of ordering the payment of the petitioner's separation pay and the refund of his cash bond, the National Labor Relations Commission simply directed the private respondent to reinstate the petitioner without backwages. The dispositive portion of the decision reads, thus:

"WHEREFORE, premises considered, the decision appealed from is, as it is hereby, Modified as herein-above discussed, Accordingly, respondents are directed to reinstate complainant to his former position as security guard but without backwages and to pay the amount of Four Thousand Eight (P4,008.00) Pesos as wage differential for the years 1980 and 1981. All other aspects of the decision affirmed. (Decision, p. 65, Rollo)

In the instant petition, the petitioner asserts that the National Labor Relations Commission erred in ordering his reinstatement after finding that he was not illegally dismissed. The petitioner claims that he is entitled to the payment of his separation pay and to the refund of his cash bond in view of his strained relationship with the private respondent.

The Supreme Court, in a Resolution dated July 2, 1986, resolved to dismiss the petition for lack of merit. (p. 79, Rollo)

The petitioner filed a Motion for Reconsideration of the aforesaid Resolution, alleging that he wishes to avail of his separation pay because he can no longer work harmoniously with the private respondent.

The Solicitor General interposed no objection to the petitioner's Motion for Reconsideration, finding the same geared towards the promotion of industrial peace.

The Supreme Court, in a resolution dated April 27, 1987, granted the petitioner's Motion for Reconsideration, set aside its Resolution of July 2, 1986, and gave due course to the petition. (p. 107, Rollo)

The Petition is devoid of merit. The evidence shows that there is no basis for awarding separation pay and refunding the petitioner's cash bond because the petitioner was never dismissed or actually separated from his employment.

As found by the National Labor Relations Commission:

"After a careful review of the entire records of this case, giving due consideration to the issues and arguments raised on appeal, We take exception to the award of separation pay and refund of cash bond deposit. RECORDS CLEARLY REVEAL THAT HEREIN COMPLAINANT WAS NOT AT ALL TERMINATED. As correctly found by the Arbiter below, complainant was only relieved of his assignment at JUSMAG upon request of the latter, its principal, because of a series of infractions committed such as abandonment of post and sleeping while on duty. Respondents then are not at fault if the subsequent assignment given the complainant is not of his own liking. xxx" (Decision, p. 64, Rollo) EMPHASIS SUPPLIED.

Even the Labor Arbiter declared in his decision, that:

"After a careful study of the pleadings in the light of the evidence submitted, THIS OFFICE FINDS THAT COMPLAINANT WAS NOT ILLEGALLY DISMISSED AS CHARGED BUT WAS ONLY RELIEVED OF HIS ASSIGNMENT AT THE JUSMAG UPON REQUEST OF THE LATTER TO THE COMPANY.

"The evidence on record shows that it was the JUSMAG through Mr. John M. Hatchett which requested for the immediate relief of the complainant from his post from 2200 hours, 20 October 1981 and was caught sleeping on duty on 30 and 31 December, 1982. IT ALSO APPEARS THAT RESPONDENT IN THREE (3) INSTANCES HAD GIVEN COMPLAINANT ASSIGNMENTS BUT HE REFUSED TO ACCEPT THE SAME. UNDER SUCH CIRCUMSTANCES, IF THERE IS ANYBODY WHO SHOULD BE BLAMED FOR THE MISFORTUNE OF THE COMPLAINANT, THERE IS NOBODY ELSE EXCEPT HIM AND RESPONDENT SHOULD NOT BE FAULTED AS IT TRIED TO GIVE HIM NEW POSTS OF

ASSIGNMENT WHICH WERE NOT OF COMPLAINANT'S LIKING." xxx

"The contention of the complainant that he was required to tender first his resignation prior to his re-assignment is not supported with any other evidence except his bare allegations therein. What appears is a condition that complainant should not commit any of the various offenses of a security guard, otherwise, it will mean automatic dismissal from the service. This was but a final warning addressed to the complainant in the light of complainant's appeal for a last chance to mend his ways and this is deemed necessary to maintain a sound and smooth operation of its business and instill discipline among its employees. xxx" (Decision, pp. 33-34, Rollo) EMPHASIS SUPPLIED.

Finally, in ordering the petitioner's reinstatement, the National Labor Relations Commission was just being compassionate, as private respondent was, in offering the petitioner new jobs despite the serious infractions he had committed. Anent the existence of strained relations between petitioner and the respondent, We believe that if really the petitioner cannot cope up with the situation, he should resign, in which case, he would be entitled to the refund of the cash bond, but not to the award of separation pay.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

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