

COMMANDO SECURITY AGENCY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND NEMESIO DECIERDO, RESPONDENTS.

G.R. No. 95844. July 20, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

Petitioner assails the resolutions of the National Labor Relations Commission dated May 26, 1989 and September 25, 1990, affirming with modification the decision of the Labor Arbiter in NLRC Case No. 11--0200075-88.

Private respondent Nemesio Decierdo was a security guard of the petitioner since February 1981. In April 1987, petitioner entered into a contract to provide guarding services to the Alsons Development and Investment Corporation (ALSONS for brevity) at its Aldevinco Building on Claro M. Recto Avenue, Davao City, for a period of one year, i.e., from April 11, 1987 to April 10, 1988, unless renewed under such terms and conditions as may be mutually acceptable. The number of guards to be assigned by the petitioner would depend on ALSON's demand, sometimes two (2) guards on a daily shift, and sometimes four (4) guards. Decierdo was one of the guards assigned to the Aldevinco Building by the petitioner.

On February 9, 1988, Maria Mila D. Samonte, Properties Administration Head of ALSONS, requested the petitioner for a "periodic reshuffling" of guards. The pertinent portion of her letter reads:

"Our corporation offers spaces to tenants including services of maintenance and security. The latter causes us to hire your agency's services. It is therefore clearly understood that Aldevinco assures tenants of security of their properties found in Aldevinco's compound, and likewise Commando Security Service Agency assures Aldevinco the same.

"We hope that the above shall be clearly explained to the incoming guards, we requested for a period reshuffling. We do extend our gratitude to your immediate services in response to our request in the past." (pp. 45-A-46, Rollo.)

Pursuant to that reasonable request of its client, petitioner on February 10, 1988 served the following recall order on Decierdo:

"Report to this HQs for instruction. You are hereby recalled from your present post at Aldevinco Bldg. as per Rotation Policy Order by the management effective 11 February 1988." (p. 46, Rollo.)

On the same date, February 10, 1988, Detail Order 02-016 was issued to Decierdo assigning him to the Pacific Oil Company in Bunawan, Davao City, with instruction to report to the manager, but Decierdo refused to accept the assignment as shown by the annotation at the bottom of the Order, viz:

"Refused to accept assignment he is going to rest for a while." (p. 54, Rollo.)

On February 11, 1988, which was the effective date of the detail order, Decierdo filed a complaint for illegal

dismissal, unfair labor practice, underpayment of wages, overtime pay, night premium, 13th month pay, holiday pay, rest day pay and incentive leave pay.

On June 28, 1988, the Executive Labor Arbiter rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, in consideration of all the foregoing, judgment is hereby rendered:

"1. Ordering respondent Commando Security Agency to pay complainant Nemasio Decierdo the total amount of THIRTY-THREE THOUSAND EIGHT HUNDRED SEVENTY-SEVEN AND 92/100 PESOS (P33,877.92), as salary, holiday and rest day pay differentials, 13th month pay differentials and service incentive leave pay; and

"2. Dismissing the complaint for illegal dismissal, unfair labor practice, overtime pay and night premium for lack of merit." (pp. 19-20, Rollo.)

Petitioner appealed to the NLRC which on May 26, 1989, affirmed with modification the decision of the Labor Arbiter, to wit:

"WHEREFORE, the appealed Decision is hereby AFFIRMED with the modification that the amount of P1,498.39 representing complainant's accountability with (sic) respondent is hereby ordered deducted from the total award." (p. 58, Rollo.)

Hence, this petition for certiorari alleging that the NLRC gravely abused its discretion:

1. in failing to make a clear pronouncement that Decierdo had abandoned his employment as he went on AWOL and therefore is considered resigned;
2. in denying petitioner due process of law, or a right to be heard;
3. in not considering that Decierdo is in estoppel; and
4. in not holding that petitioner is entitled to a 25% share of his monthly salary as agreed between them.

The petition for certiorari is without merit.

The first ground of the petition is not well taken for the NLRC did find that Decierdo had given up his job and chose separation pay in lieu of reinstatement.

"Anent the first issue, suffice it to state that there was no need for the Executive Labor Arbiter to fix a period within which to require complainant to report for work considering that the latter is no longer interested in his job and had claimed for separation benefits in lieu of reinstatement. Why respondent has begrudged the Labor Arbiter's 'failure' to fix a return-to-work period escapes us considering that the Labor Arbiter practically found complainant to have abandoned his job and, besides, complainant's claims for separation pay was not granted. If there was anyone who should have been interested in being recalled to work, it should have been complainant himself and not respondent." (pp. 54-55, Rollo.)

As a result, the NLRC dismissed the charge of illegal dismissal and unfair labor practice against the petitioner and denied Decierdo's claim for separation pay.

Regarding the petitioner's allegation that it was denied due process, we have time and again pointed out that procedural due process merely requires notice and opportunity to be heard (*Var Orient Shipping Company vs. Achacoso*, 161 SCRA 732; *Bermejo vs. Barrios*, 31 SCRA 764) which the petitioner was given when it filed its position paper. The petitioner was properly notified and even took part in the conciliation conference for the amicable settlement of the case. It was made aware of the nature and specifics of the charges against it but failed

to refute them expecting that a hearing would be called. However, the Labor Arbiter proceeded to decide the case based on the parties' position papers, the records submitted by petitioner, and the report and the computations made by the Corporate Auditing Examiner regarding the sums which Decierdo was entitled to recover. That procedure complied with the Revised Rules of the NLRC, particularly Sections 2 and 3, which provide:

"Sec. 2. Submission of position papers. - During the initial conference/hearing, or immediately thereafter, the Labor Arbiter shall require the parties to simultaneously submit to him their respective verified position papers, which shall cover only the issues raised in the complaint, accompanied by all supporting documents then available to them and the affidavits of their witnesses which shall take the place of their direct testimony. The parties shall thereafter not be allowed to allege, or present evidence to prove, facts not referred to and any cause or causes of action not included in their complaint or position papers, affidavits and other documents. The parties shall furnish each other with copies of the position papers, together with the supporting affidavits and documents submitted by them.

"Sec. 3. Determination of necessity of hearing. - Immediately after the submission by the parties of their position papers and supporting proofs, the Labor Arbiter shall determine whether there is a need for a formal hearing or investigation. At this state, he may, in his discretion, and for the purpose of making such determination, elicit pertinent facts or information, including documentary evidence, if any, from any party or witness to complete, as far as possible, the facts of the case. Facts or information so elicited may serve as basis for his clarification or simplification and limitation of the issues in the case, encouraging for this purpose the submission by the parties of admissions and stipulations of fact to abbreviate the proceedings. He shall participate actively in the preparation of such stipulations, making suggestions on what facts the parties need not prove." (Underscoring supplied.)

The NLRC correctly held that:

"x x x the Executive Labor Arbiter did not err when she dispensed with a full blown hearing there being no necessity for one. Under Section 3 of the same rule as above-cited, the Labor Arbiter may, in his sound discretion, dispense with a hearing and require, instead, the parties to file their respective position papers together with all the supporting proofs. x x x all that respondent had to do was present its payrolls and other records which it is required to keep and maintain (see Sec. 6-12, Rule X, Book III of Omnibus Rules Implementing the Labor Code) and it could already be determined on the face thereof if complainant's monetary claims had actually been paid or not. x x x complainant's entitlements were computed by the Corporate Auditing Examiner (p. 63, Records) on the basis of respondent's records which was secured by virtue of a subpoena duces tecum (p. 43, record). Respondent should have met head-on the accuracy of correctness of the computations and not skirt the issue by dwelling merely on technicalities by complaining that the records were irregularly procured." (p. 56, Rollo.)

Petitioner's contention that Decierdo is estopped from complaining about the 25% deduction from his salary representing petitioner's share in procuring job placement for him, is not well taken. That provision of the employment contract was illegal and inequitable, hence, null and void.

The constitutional provisions on social justice (Sections 9 and 10, Article II) and protection to labor (Sec. 18, Article II) in the declaration of Principles and State Policies, impose upon the courts the duty to be ever vigilant in protecting the rights of workers who are placed in a contractually disadvantaged position and who sign waivers or provisions contrary to law and public policy (*Mercury Drug Co. Inc. vs. Dayao*, 117 SCRA 99, 116). We affirm the NLRC's ruling that:

"It goes without saying that respondent may not deduct its so-called 'share' from the salaries of its guards without the latter's express consent and if such deductions are not allowed by law. This is notwithstanding any previous agreement or understanding between them. Any such agreement or contract is void ab initio being contrary to law and public policy (*Mercury Drug Co. vs. Nardo Dayao*, G.R. No. 30432, September 30,

1982)." (pp. 57-58, Rollo.)

WHEREFORE, finding no abuse of discretion on the part of the National Labor Relations Commission in rendering the assailed decision, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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