

PEOPLE'S SECURITY, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ALFREDO BERDAN, FRANCISCO R. SAYNO, AND FELIZARDO Q. FUNDANO, SR., RESPONDENTS.

G.R. No. 96451. September 08, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This petition seeks to annul the decision of the National Labor Relations Commission in NLRC Case Nos. 7-2844-86, 7-2845-86, 7-2850-86 promulgated on December 6, 1990, affirming with modification the decision of the Labor Arbiter Felipe Pati dated April 2, 1990, by directing herein petitioner to reinstate private respondents to their former positions or alternatively, to give them separation pay equivalent to one month's salary for every year of service.

The antecedent facts of the case are as follows:

Private respondents Alfredo Berdan, Francisco R. Sayno, and Felizardo Q. Fundano were employed as security guards by petitioner People's Security, Inc., a corporation primarily engaged in the business of providing security services.

Private respondents were assigned at Meralco with whom petitioner had a security services contract which expired on April 15, 1986. Upon the expiration of petitioner's contract with Meralco, private respondents reported to petitioner for their new work assignments but they were not given any.

Subsequently, private respondents requested for loans to be deducted from their security bond deposits, but the requests were denied by petitioner, who insisted that private respondents must turn in their resignations first before their security bond deposits may be released. Not having been given new work assignments and being in dire financial need, private respondents turned in their resignation letters dated April 15, 1986 and April 18, 1986 to enable them to withdraw their security bond deposits.

On July 21, 1986, private respondents filed three separate complaints for money claims against petitioner, which complaints were subsequently amended on September 16, 1986 to include illegal dismissal. The three cases were consolidated.

On October 1, 1986, all three private respondents received reinstatement orders from petitioner, informing them that effective October 16, 1986, petitioner would be posting security guards at PLDT and accordingly notified them to report to petitioner's office "before October 5, 1986 for orientation and briefing," with the warning that "failure to report will mean forfeiture of your post" (p. 32, Rollo). Private respondents failed to report to petitioner's office for the said orientation and briefing.

On November 18, 1988, the Labor Arbiter rendered a decision in favor of private respondents.

On appeal to the NLRC however, the cases were remanded to the Labor Arbiter for further proceedings. The

NLRC found that the cases had been transferred from one labor arbiter to another, that there were no proofs of service on the two hearings called, and that the Labor Arbiter failed to comply with Section 4, Rule 7 of the Revised NLRC Rules on the proper procedure to be followed when the Labor Arbiter deems it unnecessary to conduct a hearing.

Consequently, Labor Arbiter Pati conducted further proceedings on the case and rendered a decision dated April 12, 1990, declaring illegal the dismissal of private respondents, and ordering petitioner to pay private respondents separation pay in an amount equivalent to one-half (1/2) month for every year of service, backwages for three years, and private respondents' other money claims.

Petitioner appealed the aforementioned decision to the NLRC, which rendered its decision dated December 6, 1990, affirming but modifying the ruling of the Labor Arbiter, to wit:

"Be that as it may, respondent should be, as it is hereby given, the option to reinstate complainants to their former positions, within one (1) month after the finality of this decision, and failing which it is ordered to pay complainant separation pay equivalent to one (1) month's salary for every year of service in lieu of reinstatement.

WHEREFORE, in view of all the foregoing considerations, the decision appealed from should be, as it is hereby affirmed in all respects, except the modification herein above determined.

SO ORDERED." (Rollo, p. 34)

The NLRC held that petitioner did not really consider private respondents as resigned, considering that the former ordered them to report back to work several months later. The NLRC also dismissed petitioner's contention that private respondents abandoned their jobs when they allowed themselves to be absorbed by the Roca Security and Investigation Agency, giving credence to the contention of private respondents that they repeatedly asked for new work assignments, but were not given any by petitioner, despite the fact that the latter was hiring new security guards at the time. Private respondents were held to be "forced by circumstances to sign their resignation letters" (p. 30, Rollo) and work for another security agency as they needed a means of livelihood to support their families.

Thus, the decision of the Labor Arbiter was affirmed by the NLRC with the modification that petitioner was given the option to reinstate or pay separation pay to private respondents equivalent to one (1) month's salary for every year of service.

In this petition, the following arguments are raised by petitioner:

"The assailed decision of the respondent NLRC contains grave errors of law, to wit:

- (a) In not holding that the absorption of private respondents into the security force of Roca Security and Investigation Agency and their actual assumption and rendition of work for it on April 16, 1986, and thereafter are both constitutive of private respondents' acceptance of new employment with the said agency and voluntary severance, if not abandonment of their employment with the petitioner;
- (b) In not holding that the private respondents voluntarily and freely submitted their resignation letters to the petitioner confirming their voluntary separation from their employment with petitioner;
- (c) In holding that the private respondents were illegally dismissed from their employment through constructive dismissal and ordering their reinstatement or payment of separation pay in lieu of reinstatement and payment of backwages." (Rollo, p. 14)

Before proceeding with the substantive issues raised in this petition, it is well to deal first with the procedural objection raised by counsel for private respondents, who asserts that the instant petition should be dismissed for

being in the form of a petition for review under Rule 45 and not a petition for certiorari under Rule 65 of the Rules of Court.

Counsel for private respondents cites *Royal Crown International v. NLRC*, 178 SCRA 569, 574 [1989], wherein it was held that "it is only through a petition for certiorari under Rule 65 that NLRC decisions may be reviewed and nullified on the grounds of lack of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction."

Indeed, this Court has time and again declared that the only way by which a labor case may reach the Supreme Court is through a petition for certiorari under Rule 65 of the Rules of Court alleging lack or excess of jurisdiction or grave abuse of discretion (*Pearl S. Buck Foundation v. NLRC*, 182 SCRA 446 [1990]).

This petition should not be dismissed on a mere technicality however. "Dismissal of appeal purely on technical grounds is frowned upon where the policy of the courts is to encourage hearings of appeal on their merits. The rules of procedure ought not to be applied in a very rigid technical sense, rules of procedure are used only to help secure, not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated" (*Tamayo v. Court of Appeals*, 209 SCRA 518, 522 [1992] citing *Gregorio v. Court of Appeals*, 72 SCRA 120 [1976]). Consequently, in the interest of justice, the instant petition for review shall be treated as a special civil action for certiorari.

On the merits, petitioner's main contention is that private respondents voluntarily severed their employment with petitioner by continuing with their duties at Meralco under the employment of the Roca Security and Investigation Agency, which took over the security services contract for Meralco immediately after the expiration of petitioner's own contract therewith. As proof thereof, petitioner cites the certification issued by the Roca Security and Investigation Agency stating that it had absorbed private respondents effective April 15, 1986; respondent Fundano's resignation letter dated April 15, 1986 and respondent Sayno's resignation letter dated April 18, 1986.

The NLRC held that private respondents did not voluntarily resign from their jobs but were in effect dismissed by petitioner. Constructive dismissal exists when there is a "quitting because continued employment is rendered impossible, unreasonable or unlikely; as an offer involving a demotion in rank and diminution in pay" (*Lemery Savings & Loan Bank v. NLRC*, 205 SCRA 492 [1992] citing *Philippine Japan Active Carbon Corporation v. NLRC*, 171 SCRA 164 [1989]).

As held in the case of *Agro Commercial Security Services Agency, Inc. v. NLRC*, 175 SCRA 790 [1989]:

"xxx when the bonafide suspension of operation of a business or undertaking exceeds six (6) months then the employment of the employee shall be deemed terminated. By the same token and applying the said rule by analogy to security guards, if they remained without work or assignment, that is in "floating status" for a period exceeding six (6) months, then they are in effect, constructively dismissed."

It is not unusual for security guards employed in security agencies to be on "floating status" as their assignments primarily depend on contracts entered into by the agency with third parties. Such status however, should last only for a reasonable time (*Agro* [supra.]).

In the case at bar, the period by which private respondents were deprived of any work assignment by petitioner did not exceed six (6) months but lasted almost six (6) months (from April 15 to October 1, 1986). Nevertheless, the rule as set forth above in *Agro* may be held applicable in that private respondents were deprived of work by petitioner for a period of time which may be deemed unreasonable following the standard set forth in *Agro*.

At this juncture, it is significant to note that it was only after private respondents had filed their amended/supplemental complaints that they received orders from petitioner requiring them to report to petitioner's office on

October 5, 1986 for orientation and briefing. The reason behind the said orders was the procurement by petitioner of a new security services contract with PLDT, whereby effective October 16, 1987, petitioner would be posting 104 security guards at PLDT. No hearing was ever held however, nor were private respondents given any work assignments. It is thus evident that petitioner effectively terminated the employment of private respondents by unreasonably failing to give them new work assignments.

Petitioner makes much emphasis on the fact that private respondents turned in resignation letters. The NLRC aptly observed that private respondents were merely "forced by circumstances" to submit their resignations. We find credence in the finding of the NLRC that private respondents desperately needed money to meet their respective families' needs, as borne out by their attempts to secure loans on their security bond deposits with petitioner. When Miranda told them that they would not be granted loans unless they resign, it is clear that private respondents had no choice.

As held in the case of *Intertrod Maritime, Inc. v. NLRC*, 198 SCRA 318, 323 [1991], resignation is a voluntary act of the employee which is beyond the control of the employer. Once accepted by the employer, the employee loses his right to the job. The factual background of this case however is unlike that in the *Intertrod* case where the employee, after his resignation, was accepted, changed his mind, and opted to work again. In the case at bar, it was the employer, herein petitioner, who had a change of heart. After accepting the "resignations" of private respondents, petitioner informed them months later that they could report back to work. This marked turnaround on the part of petitioner coupled with the peculiar circumstances surrounding private respondents' resignations lead to the inescapable conclusion that private respondents did not voluntarily resign from their jobs, but were illegally dismissed therefrom.

Petitioner's additional argument that private respondents abandoned their jobs likewise does not help its cause. For abandonment to be a valid cause of dismissal, there must be concurrence of the intention to abandon and some overt act from which it may be inferred that the employee had no more intent to work (*Dagupan Bus Co., Inc. v. NLRC*, 190 SCRA 505 [1990]; *Santos v. NLRC*, 166 SCRA 759 [1988]).

In the instant case, credence cannot be given to petitioner's claim that private respondent severed their working relationship or abandoned their jobs when they allowed themselves to be absorbed by the Roca Security and Investigation Agency. Private respondents were forced to accept the jobs at Roca as a practical solution to their employment problems which was caused by petitioner's refusal and failure to provide them with the new assignments. "Abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed from certain equivocal acts" (*Shin I Industrial (Phils.) v. NLRC*, 164 SCRA 8 [1988]). In private respondents' case, it would have been most illogical for them to abandon their work and then file a complaint for illegal dismissal to seek reinstatement. Similarly, if private respondents indeed left their jobs, then petitioner could very well have charged them for abandonment (*Hua Bee v. NLRC*, 186 SCRA 586 [1990]).

Finally, the two main arguments relied upon by petitioner, namely, that private respondents resigned from their jobs, and that they abandoned the same, are incompatible and contradictory. One cannot assert that one's employee resigned from his job and then in the same breath claim that the very same employee abandoned his job. This glaring contradiction alone proves that petitioner's cause is bereft of merit.

Anent private respondent's reinstatement, We find merit in the Solicitor General's observation that by the filing of the complaints for illegal dismissal, the harmonious relationship between the parties in this case has been severed such that reinstatement would no longer be beneficial to either party. This observation finds support in the order of the NLRC to petitioner to reinstate private respondents or in the alternative, to pay them separation pay. Had the NLRC found that a viable working relationship between the parties is still possible, then it would not have

alternatively ordered the payment of separation pay to private respondents.

PREMISES CONSIDERED, the decision of the NLRC dated December 6, 1990 in NLRC-NCR Case Nos. 7-2844-86, 7-2845-86 and 7-2850-86 is hereby AFFIRMED IN TOTO, subject to the modification that petitioner is hereby directed to pay private respondents separation pay equivalent to one (1) month's salary for every year of service in lieu of reinstatement.

Romero, Melo, and Vitug, JJ., concur.

Feliciano, J., (Chairman), on leave.

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