

## **SPECIAL THIRTEENTH DIVISION**

**[ SP No. 109097, January 28, 2010 ]**

**7TH SECURITY & INVESTIGATION SERVICE INC. AND/OR  
LAWRENCE T. TEJADA. PETITIONERS, VS. NATIONAL LABOR  
RELATIONS COMMISSION (SIXTH DIVISION). DENMARK J.  
MINDANA AND RENE M. DELOS SANTOS, RESPONDENTS.\***

### **D E C I S I O N**

Before Us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court assailing the Decision<sup>[2]</sup> dated January 16, 2009 of public respondent National Labor Relations Commission (NLRC), Sixth Division, which affirmed the Decision dated September 15, 2007 of the Labor Arbiter finding that private respondents were constructively dismissed from work; and, the Resolution<sup>[3]</sup> dated March 27, 2009 denying the motion for reconsideration thereof.

### **THE FACTS**

In their Position Paper<sup>[4]</sup>, private respondents Denmark J. Mindaña and Renie M. Delos Santos alleged that they were hired as security guards by petitioner 7th Security & Investigation Service, Inc. in February 2004 and on January 14, 2006, respectively. Delos Santos was immediately detailed at the Molave Trading, Inc. (MTI) located at 891 EDSA, Diliman, Quezon City while Mindaña was assigned there on February 23, 2006. They were required to render work for twelve (12) hours per day, including Sundays and holidays with a daily wage of P322.00.

On July 14, 2006, private respondents were summoned by petitioner Lawrence T. Tejada, petitioner security agency's Administrative and Personnel Manager, to report to his office. Petitioner Tejada compelled private respondents to sign a document containing a false statement that petitioner agency was paying them all the labor standard benefits mandated by law. Private respondents refused to sign because they were in fact underpaid. Due to their refusal, petitioners threatened private respondents that they would not be given a new assignment.

On July 15, 2006, petitioners reiterated the demand for private respondents to sign the false statement. This time a Duty Detail Order was shown to them by Inspector Nicanor G. Gabriel of the security agency. Upon the instructions of petitioner Tejada, Inspector Gabriel told private respondents that they could immediately render duty to Forever Living Products Philippines located at Ortigas Avenue, Greenhills, San Juan, Metro Manila provided they sign first the previous document containing untruthful statement with regard their benefits. Private respondents still vehemently refused.<sup>[5]</sup> Hence, petitioner agency did not give them a new assignment.

Aggrieved, private respondents went to the NLRC to file a complaint for illegal dismissal, underpayment of salary and nonpayment of overtime pay, holiday pay and night shift differential. However, they were advised that there was no illegal

dismissal yet since petitioner agency was allowed under the law to put them on a "floating status" for six (6) months. Private respondents then pursued only the money claims.<sup>[6]</sup>

On December 14, 2006, the Labor Arbiter ruled in favor of private respondents and directed petitioner agency and its client MTI to solidarily pay private respondents Mindaña and Delos Santos their unpaid overtime pay in the amount of P19,422.44 and P26,297.64, respectively.<sup>[7]</sup>

On March 22, 2007, petitioner agency and MTI fully satisfied the money judgment, An Admission of Satisfaction of Judgment<sup>[8]</sup> of even date was executed by private respondents.

After the lapse of six (6) months, without petitioner agency giving them a new assignment, private respondents filed the instant complaint for illegal dismissal. They prayed for the payment of separation pay in lieu of reinstatement, holiday pay, service incentive leave pay and 13th month pay.<sup>[9]</sup>

In their traverse, petitioners argued that private respondents were not unjustly terminated. Instead, private respondents abandoned their post when they failed to report in their new place of assignment. Contrary to private respondents' claim, petitioner agency in fact detailed private respondents to Forever Living Products Philippines. However, in an utter display of insubordination, private respondents refused to be transferred thereto and insisted that they continue to stay at their former post in MTI, Diliman, Quezon City. On July 17, 2006, private respondents did not report to their new post and went on absence without leave (AWOL). Notices<sup>[10]</sup> of abandonment were then sent to private respondents last known address.<sup>[11]</sup>

In a Decision dated September 15, 2007, the Labor Arbiter held that private respondents were constructively dismissed from work. Petitioners were held liable for full backwages from July 15, 2006 to September 15, 2007 and separation pay of one month salary for every year of service to private respondents Mindaña and Delos Santos in the total amount of P213,081.13 and P404,442.62, respectively. The decretal portion of the decision reads:

Wherefore, respondents are hereby directed to pay complainants' full backwages from July 15, 2006 to September 15, 2007 and separation pay of one month salary for every year of service in the total amount of P213,081.13 and P404,442.62 to Denmark J. Mindaña and Rene delos Santos, respectively.

All the money claims are hereby dismissed on ground of res judicata

SO ORDERED.<sup>[12]</sup>

Aggrieved, petitioners filed an appeal to public respondent NLRC. However, the same was denied in the assailed Decision<sup>[13]</sup> dated January 16, 2009. The NLRC held that petitioners failed to substantially prove that indeed private respondents abandoned their work. Thus, the Labor Arbiter's finding of constructive dismissal stands. The pertinent portions of the decision read:

In deciding the case in favor of the complainants-appellees, the Labor Arbiter found as follows:

"Between the diametrically opposed versions of the contending parties, we find for the complainants that they were constructively dismissed when they were no longer given assignments after they refused to sign the document which contains untruthful statements that they were receiving all the benefits mandated by law of their employer. If indeed complainants went AWOL starting July 15, 2006, Respondents must have issued to them a notice of AWOL or abandonment, sent at their last known address appearing in the personnel files, but nay."

Other than bare, allegations, respondents-appellants have not offered any proof to establish their theory of abandonment. It has been consistently held that abandonment of work is inconsistent with the filing by the employee of a complaint for illegal dismissal. It would be illogical for an employee to abandon his work and then immediately file an action seeking for his reinstatement \* \* \*.

Wherefore, judgment is hereby rendered dismissing the respondents-appellants' appeal for lack of merit. Consequently, the assailed decision is AFFIRMED.<sup>[14]</sup>

A Motion for Reconsideration was filed by petitioners but the same was denied in a Resolution<sup>[15]</sup> dated March 27, 2009.

Hence, the instant petition in which petitioners raised the following grounds<sup>[16]</sup> for its allowance, to wit:

#### I

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENTS WERE ILLEGALLY DISMISSED FROM THE SERVICE.

#### II.

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN HOLDING THAT THERE WAS NO ABANDONMENT ON THE PART OF PRIVATE RESPONDENTS.

#### III.

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN AFFIRMING THE LABOR ARBITER'S RULING THAT PRIVATE RESPONDENTS ARE ENTITLED TO BACKWAGES AND SEPARATION PAY.

#### IV

WHETHER OR NOT PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS ARE JOINTLY AND SEVERALLY LIABLE TO PAY PRIVATE RESPONDENTS THEIR MONEY CLAIMS.

### **THE ISSUE**

The pivotal issue to be resolved is whether or not public respondent NLRC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the Labor Arbiter's ruling that private respondents were constructively dismissed from work.

### **THE RULING**

The petition is bereft of merit.

Petitioners contend that public respondent NLRC gravely abused its discretion in affirming the Labor Arbiter's finding that private respondents were constructively dismissed from work. Other than the bare allegation of private respondents that they were made to sign a spurious document by petitioners, there was nothing in the records to support the same. On the other hand, private respondents were the ones who deliberately abandoned their job. While they were given a new assignment at Forever Living Products Philippines, private respondents continuously failed to render work thereat. Hence, private respondents were not illegally dismissed.

We are not persuaded.

At the outset, it may be well to state that factual findings of the NLRC, when supported by substantial evidence, are accorded great respect and even finality by the appellate courts.<sup>[17]</sup> The reason for this is that a quasi-judicial agency like the NLRC has acquired a unique expertise because its jurisdiction is confined to specific matters.<sup>[18]</sup> Here, We find no compelling reason to depart from the disquisition made by public respondent NLRC.

In *Fernando Go vs. Court of Appeals, et al.*<sup>[19]</sup>, the Supreme Court held that constructive dismissal exists where there is a cessation of work because continued employment is rendered impossible, unreasonable or unlikely. It is likewise defined as an involuntary resignation resorted to when there is a demotion in rank and/or diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes so unbearable to the employee.<sup>[20]</sup> Further, the employer has the burden of proving that the transfer of an employee was for a valid and legitimate ground such as genuine business necessity. Failure of the employer to overcome this burden of proof, the employee's transfer and demotion shall no doubt be tantamount to illegal constructive dismissal.<sup>[21]</sup>

In the case at bench, petitioners failed to discharge this burden. As aptly observed by the NLRC, private respondents were no longer given any assignment by petitioner agency. While it may appear that a Duty Detail Order was issued on July