

## THIRD DIVISION

[ G.R. No. 189493, August 02, 2017 ]

**FCA SECURITY AND GENERAL SERVICES, INC., AND/OR MAJ. JOSE LAID, JR., PETITIONERS, VS. SOTERO M. ACADEMIA, JR. II, RESPONDENT.**

### DECISION

#### **BERSAMIN, J.:**

An employer who alleges an employee's voluntary resignation bears the burden of proving such allegation by clear, positive and convincing evidence. On the other hand, an employee who works as a security guard carries the burden of proving his allegation that he was placed on indefinite floating status, or was constructively dismissed.

#### **The Case**

The respondent, a security guard, instituted his complaint for illegal dismissal against petitioners FCA Security and General Services, Inc. (FCA) and its general manager, Maj. Jose Laid, Jr. (Maj. Laid, Jr.). In his decision issued on February 28, 2005,<sup>[1]</sup> Labor Arbiter Joel S. Lustria ruled the petitioners liable for illegal dismissal. However, the National Labor Relations Commission (NLRC) reversed the ruling on December 17, 2007, and dismissed the complaint for lack of merit.<sup>[2]</sup>

On *certiorari* initiated by the respondent, the Court of Appeals (CA) promulgated its decision on July 10, 2009 setting aside the decision of the NLRC on the ground that the latter had thereby gravely abused its discretion in reversing the Labor Arbiter, and, accordingly, reinstated the decision of the Labor Arbiter.<sup>[3]</sup> Hence, this appeal.

#### **Antecedents**

The NLRC recited the following factual and procedural antecedents:

The complainant alleges that on July 27, 1999, he was hired as a security guard by respondent FCA Security & General Services (FCA for brevity), a company engaged in the business of providing security and other related services. Complainant alleges that prior to his dismissal on January 27, 2004, his last assignment was at the RCBC, Pasay City branch. Complainant claims that "*a twist of fate happened on January 28, 2003 when he was asked to report in their office and was pulled out with (sic) his post then in Rizal Commercial Banking Corporation Pasay City Branch.*" Complainant asserts that respondent put him on "floating status" and was not given any assignment for more than six (6) months.

Hence, this complaint for illegal dismissal with monetary claims.

For their part, respondents admit that in July 1999, they employed complainant as a security guard. His latest assignment was at the RCBC branch in Edsa-Taft, Pasay City. During complainant's stint at the RCBC, he had an altercation with GEORGE CHUA, a driver of Dunking Donuts, wherein complainant drew and pointed his service firearm at CHUA. Consequently, GEORGE CHUA filed a complaint against complainant for grave threats with the Police Community Precinct No. 6, Pasay City Police Office, Southern Police District. Upon respondents' own investigation where complainant was given an opportunity to explain his side, Investigating Officer VIRGILIO D. TANGENTE recommended his suspension for seven (7) days. However, complainant expressed his preference to voluntary [sic] resign rather than receive his suspension. Thus, respondents gave him the clearance form for resigning personnel. Instead of submitting such form, complainant filed the instant case.

In his Reply, complainant asserts that he "*was relieved from duty on January 27, 2003 and promised that he will be given post again*", as evidence by a copy of respondents' memorandum dated January 27, 2003.

In their own Reply and Rejoinder, respondents stress that complainant conveniently chose not to touch the issues of his altercation with the driver of Dunkin Donut[s], the fact that he was served a suspension order which he refused to receive, and his offer to voluntarily resign from FCA. Contrary to complainant's claim that he was illegally dismissed, respondents presented the affidavit of Major JOSE A. LAID, General Manager, narrating the circumstances leading to complainant's voluntary resignation. Likewise submitted are the separate affidavits executed by three (3) FCA department heads, namely, JULIO D. GONZALES, JR., ALLAN CRUZ, and LAUDEMER TINAY[A], Personnel Officer, Supply Custodian and Property and Materials Officer, respectively, which corroboratively attest to the fact that complainant approached them in connection with his accountabilities, if any, and to facilitate his resignation from the company.

Respondents admit the issuance of memorandum dated January 27, 2003 but they strongly deny that it contained a directive for complainant's reassignment. Respondents stress that the said memorandum explicitly directed complainant "*to report at FCA Head Office for instruction and proper disposition.*" This was necessary in order to investigate the circumstances surrounding the drawing up of firearm and the resulting filing of a complaint for grave threat against herein complainant.

Respondents further stress that subsequent to memorandum dated January 27, 2003, was the issuance of inter-office memorandum dated February 5, 2003, informing complainant of the result of the investigation and the management's decision to suspend him for seven (7) days. Two (2) FCA personnel, namely, VIRGILIO TANGENTE and NELIA DE LA TORRE, issued their respective affidavits both dated February 3, 2004, stating that complainant refused to receive the suspension

order/memorandum but instead, he offered to resign. Consequently, Major LAID accepted the verbal resignation of complainant.

In his own Rejoinder, complainant states that "*he will never mention other circumstances happened on January 27, 2003 for he only stated what really transpired on said date. The best evidence of what transpired on January 27, 2003 is that stated in the memorandum attached as Annex "A" in complainant's reply.*" Complainant asserts that there was no investigation whatsoever and that he was never furnished with a copy of the said suspension order. He maintains that he was placed on "floating status" for more than six (6) months, and thus, constructively dismissed.

[4]

As stated, the Labor Arbiter, holding that the respondent had been illegally dismissed; that the seven-day suspension meted on him was uncalled for because he was only performing his duty as a security guard of the bank where he was then assigned when the incident with driver George Chua took place,<sup>[5]</sup> and that the petitioners did not substantiate their allegations about his having voluntarily resigned, and about offering to reinstate him while he was under floating status, awarded backwages of P200,083.32 and separation pay of P43,200.00 to him.<sup>[6]</sup>

On appeal, the NLRC reversed the ruling of the Labor Arbiter,<sup>[7]</sup> observing that the respondent had been oddly silent on the incidents leading to his supposed dismissal; that, on the other hand, the petitioners showed that after having been investigated on his altercation with the driver in the bank premises, he was meted the seven-day suspension; that there was sufficient proof of his voluntary resignation because several employees had affirmed such fact under oath; and that the dismissal of the complaint for lack of merit was in order. It decreed as follows:

WHEREFORE, premises considered, the Decision dated February 28, 2005 is hereby REVERSED and SET ASIDE, and the complaint is DISMISSED for lack of merit.

SO ORDERED.<sup>[8]</sup>

Upon the NLRC's denial of his motion for reconsideration,<sup>[9]</sup> the respondent assailed the outcome in the CA on *certiorari*, insisting that the NLRC had thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

### **Decision of the CA**

As earlier mentioned, the CA granted the petition for *certiorari* upon finding, from its re-examination of the evidence presented by the parties, that the petitioners had issued an inter-office memo on January 27, 2003 relieving the respondent from his post at the RCBC branch effective January 28, 2003, and directing him to report to the head office for instruction and proper disposition;<sup>[10]</sup> that the petitioners' investigation report and suspension order were made on February 3 and 5, 2003, respectively, only after the January 27, 2003 memo relieving the respondent from his post had issued; that he had been relieved of his post without any promise of re-assignment, making out a clear case of constructive dismissal, which was bolstered by the fact that he had not been given any re-assignment until the time when he