821 Phil. 482

THIRD DIVISION

[G.R. No. 210080, November 22, 2017]

MACARIO S. PADILLA, PETITIONER, VS. AIRBORNE SECURITY SERVICE, INC. AND/OR CATALINA SOLIS, RESPONDENT.

DECISION

LEONEN, J.:

Placing security guards on floating status is a valid exercise of management prerogative. However, any such placement on off-detail should not exceed six (6) months. Otherwise, constructive dismissal shall be deemed to have occurred. Security guards dismissed in this manner are ordinarily entitled to reinstatement. It is not for tribunals resolving these kinds of dismissal cases to take the initiative to rule out reinstatement. Otherwise, the discriminatory conduct of their employers in excluding them from employment shall unwittingly find official approval.

Age, per se, cannot be a valid ground for denying employment to a security guard.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed April 18, 2013 Decision[2] and November 11, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 122700 be reversed and set aside.

The assailed Court of Appeals April 18, 2013 Decision sustained the August 3, 2011 Decision[4] of the National Labor Relations Commission, which affirmed the September 10, 2010 Decision[5] of Labor Arbiter Fedriel S. Panganiban (Labor Arbiter Panganiban) dismissing petitioner Macario S. Padilla's (Padilla) Complaint[6] for illegal dismissal. The assailed Court of Appeals November 11, 2013 Resolution denied petitioner's Motion for Reconsideration.[7]

On September 1, 1986, Padilla was hired by respondent Airborne Security Service, Inc. (Airborne) as a security guard.[8] He was first assigned at an outlet of Trebel Piano along Ortigas Avenue Extension, Pasig City.[9]

Padilla allegedly rendered continuous service until June 15, 2009, when he was relieved from his post at City Advertising Ventures Corporation and was advised to wait for his re-assignment order. On July 27, 2009, he allegedly received a letter from Airborne directing him to report for assignment and deployment. He called Airborne's office but was told that he had no assignment yet. On September 9, 2009, he received another letter from Airborne asking him to report to its office. He sent his reply letter on September 22, 2009 and personally repo1ted to the office to inquire on the status of his deployment with a person identified as Mr. Dagang, Airborne's Director for Operations. He was told that Airborne was having a hard time finding an assignment for him since he was already over 38 years old. Padilla added

that he was advised by Airborne's personnel to resign, but he refused. In December 2009, when he reported to the office to collect his 13th month pay, he was again persuaded to hand in his resignation letter. Still not having been deployed or re-assigned, on February 23, 2010, Padilla filed his Complaint for illegal dismissal,[10] impleading Airborne and its president, respondent Catalina Solis (Solis).[11]

Respondents countered that Padilla was relieved from his post on account of a client's request.[12] Thereafter, Padilla was directed to report to Airborne's office in accordance with a Disposition/Relieve Order dated June 15, 2009. However, he failed to comply and went on absence without leave instead.[13] Respondents added that more letters—dated July 27, 2009; September 9, 2009, which both directed Padilla to submit a written explanation of his alleged unauthorized absences; January 12, 2010; and May 27, 2010—instructed Padilla to report to Airborne's office, to no avail.[14] Respondents further denied receiving Padilla's September 22, 2009 letter of explanation.[15]

In his September 10, 2010 Decision,[16] Labor Arbiter Panganiban dismissed Padilla's Complaint.[17] He lent credence to respondents' claim that Padilla failed to report for work despite the letters sent to him.[18]

In its August 3, 2011 Decision,[19] the National Labor Relations Commission affirmed in toto Labor Arbiter Panganiban's Decision.[20]

The assailed Court of Appeals April 18, 2013 Decision sustained the rulings of the National Labor Relations Commission and of Labor Arbiter Panganiban.[21] It concluded that, if at all, Padilla was, placed on floating status for only two (2) months, from June 15, 2009, when he was recalled, to July 27, 2009.[22] It emphasized that the temporary "off-detail" or placing on "floating" status of security guards for less than six (6)-months does not amount to dismissal[23] and that there is constructive dismissal only when a security agency fails to provide an assignment beyond the six (6)-month threshold.[24] The Court of Appeals also found that it was Padilla who failed to report for work despite respondents' July 27, 2009 and September 9, 2009 letters.[25]

Following the Court of Appeals' denial of his Motion for Reconsideration[26] Padilla filed the present Petition before this Court.

For this Court's resolution is the sole issue of whether or not petitioner Macario S. Padilla was constructively dismissed from his employment with respondent Airborne Security Service, Inc., he having been placed on floating status apparently on the basis of his age and not having been timely re-assigned.

The Court of Appeals gravely erred in ruling that petitioner was not constructively dismissed and in concluding that he went on absence without leave and abandoned his work.

I

Rule 45 petitions, such as the one brought by petitioner, may only raise questions of law.[27] Equally settled however, is that this rule admits of the following exceptions:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) *when the inference made is manifestly mistaken, absurd or impossible;* (3) when there is grave abuse of discretion; (4) *when the judgment is based on a misapprehension of facts;* (5) when the findings of facts are conflicting; (6) when in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) *when the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.* [28] (Emphasis supplied, citation omitted)

The Court of Appeals made a gross misapprehension of facts and overlooked other material details. The facts of this case, when more appropriately considered, sustain a conclusion different from that of the Court of Appeals. Petitioner was constructively dismissed from employment owing to his inordinately long floating status.

II

The practice of placing security guards on "floating status" or "temporary off-detail" is a valid exercise of management prerogative.[29] Jurisprudence has settled that the period of temporary off-detail must not exceed six (6) months. Beyond this, a security guard's floating status shall be tantamount to constructive dismissal.[30] In *Reyes v. RP Guardians Security Agency:*[31]

> Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. *Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.* No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have

> been afforded the due process of law.[32] (Emphasis supplied, citations omitted)

Therefore, a security guard's employer must give a new assignment to the employee within six (6) months.[33] This assignment must be to a specific or particular client.[34] "A general return-to-work order does not suffice.":[35]

> A holistic analysis of the Court's disposition in *JLFP Investigation* reveals that: [1] an employer must assign the security guard to another posting within six (6) months from his last deployment, otherwise, he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.[36]

III

To prove that petitioner was offered a new assignment, respondents presented a series of letters requiring petitioner to report to respondent Airborne's head office.[37] These letters merely required petitioner to report to work and to explain why he had failed to report to the office. These letters did not identify any specific client to which petitioner was to be re-assigned. The letters were, at best, nothing more than general return-to-work orders.

Jurisprudence is consistent in its disapproval of general return-to-work orders as a justification for failure to timely render assignments to security guards.

In *Ibon v. Genghis Khan Security Services,*[38] petitioner Ravengar Ibon (Ibon) filed a complaint for illegal dismissal after he was placed on floating status for more than six (6) months by his employer, respondent Genghis Khan Security Services (Genghis Khan). In its defense, Genghis Khan claimed that Ibon abandoned his work after he failed to report for work despite its letters requiring him to do so. Ruling in favor of Ibon, this Court noted that:

> Respondent could not rely on its letter requiring petitioner to report back to work to refute a finding of constructive dismissal. The letters, dated November 5, 2010 and February 3, 2011, which were supposedly sent to petitioner merely requested him to report back to work and to explain why he failed to report to the office after inquiring about his posting status.[39]

Similarly, in Soliman Security Services, Inc. v. Sarmiento,[40] respondent security guards claimed that they were illegally dismissed after they were placed on floating status for more than six (6) months. Their employer, petitioner Soliman Security

Services, Inc. (Soliman), presented notices requiring them to go back to work. However, this Court found that the notices did not absolve Soliman of liability:

> The crux of the controversy lies in the consequences of the lapse of a significant period of time without respondents having been reassigned. Petitioner agency faults the respondents for their repeated failure to comply with the directives to report to the office for their new assignments. To support its argument, petitioner agency submitted in evidence notices addressed to respondents, which read:
>
> > You are directed to report to the undersigned to clarify your intentions as you have not been reporting to seek a new assignment after your relief from Interphil.
> >
> > To this date, we have not received any update from you neither did you update your government requirements. . .
> >
> > We are giving you up to May 10, 2007 to comply or we will be forced to drop you from our roster and terminate your services for abandonment of work and insubordination.
> >
> > Consider this our final warning.
>
> As for respondents, they maintain that the offers of new assignments were mere empty promises. Respondents claim that they have been reporting to the office tor new assignments only to be repeatedly turned down and ignored by petitioner's office personnel.
> . . . .
>
> Instead of taking the opportunity to clarify during the hearing that respondents were not dismissed but merely placed on floating status and instead of specifying details about the available new assignments, the agency merely gave out empty promises. No mention was made regarding specific details of these pending new assignments. If respondent guards indeed had new assignments awaiting them, as what the agency has been insinuating since the day respondents were relieved from their posts, the agency should have identified these assignments during the hearing instead of asking respondents to report back to the office. The agency's statement in the notices — that respondents have not clarified their intentions because they have not reported to seek new assignments since they were relieved from their posts — is specious at best.[41]

IV

As a further defense, respondents add that it was petitioner who abandoned his work.[42]