

## FIRST DIVISION

[ G.R. No. 211210, December 02, 2015 ]

**RADAR SECURITY & WATCHMAN AGENCY, INC. PETITIONER, VS.  
JOSE D. CASTRO, RESPONDENT.**

### DECISION

**PEREZ, J.:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 130088 dated 24 October 2013 and 29 January 2014, respectively.

#### ***The Facts***

The factual antecedents of the case reveal that, in May of 2008, respondent was employed by petitioner to work as a security guard. Since then, covered by various detail orders, he was assigned to watch and secure various branches of petitioner's client, Planters Development Bank, until his alleged dismissal on 12 September 2011. Admittedly though, respondent subsequently received a letter dated 27 January 2012 from petitioner's Vice-President for Operations assigning him to render duty work at Banco De Oro branch in GMA, Cavite, but allegedly without any corresponding detail order. Thus, respondent filed a complaint against petitioner alleging that he was illegally dismissed without just cause and due process, with claims for the payment of his separation pay, backwages, and other money claims.

On the other hand, petitioner countered that there was actually no dismissal and further explained that the dispute arose only on 12 October, 2011 when a verbal altercation ensued between the respondent and his immediate superior regarding a complaint from the Senior Manager of Planters Development Bank. An investigation thereafter followed which resulted in his order of transfer with which respondent allegedly refused to comply.<sup>[3]</sup>

#### ***The Rulings of the Labor Arbiter and National Labor Relations Commission***

On 31 August 2012, the Labor Arbiter (LA) denied the complaint for lack of merit and declared that there was no dismissal in the first place; hence, there could be no illegal dismissal to speak of. Consequently, all monetary claims of respondent were also denied.<sup>[4]</sup> Said LA's Decision was later on affirmed by the National Labor Relations Commission (NLRC) in its 29 January 2013 Decision which emphasized that: (a) respondent was not constructively dismissed since he never mentioned any specific incident' showing any discrimination, disdain, or insensibility, which would result in the nature of his work as well as his regular duties as security guard being substantially removed from him; and (b) respondent merely complained about petitioner's alleged refusal to give him new assignments yet records revealed that the former was twice directed to report to the latter's office for his new assignment.

Hence, if indeed petitioner never intended to give respondent any other duty work, the former would not have exerted any effort to inform him of his new assignment in GMA, Cavite. Pertinent portions of the ruling state:

A perusal of the subject October 27, 2011 Detail Order issued by the [petitioner] reveals that the [respondent] was one of the several security guards deployed by the [petitioner] to its various clients. While the letter accompanying the order appeared that the [respondent] was told to report to the Detachment Commander as an "OJT", **there was no evidence on record showing that the [respondent] was actually demoted to an "OJT" status. The [respondent] never made (sic) any specific incident indicating the nature of his work as well as his regular duties as security guard were substantially removed from him.** In fact, the [respondent] even admitted that he worked with Planters Development Bank until September 12, 2011. **He never complained about any significant decrease of salary, duties and responsibilities and other incidents indicating discrimination, disdain or insensibility. He merely complained about [petitioner's] alleged refusal to give him new assignments.**

In this connection, we also do not subscribe to [respondent's] insistence that he was no longer given new assignments since his alleged dismissal on September 12, 2011. **Records clearly show that the [respondent] was twice directed to report to the [petitioner's] office for his new assignment. The [respondent] duly acknowledged receipt of said directives and admitted the authenticity and due execution thereof. [Respondent] cannot take solace to his misplaced argument that the [petitioner] never issued a detail order to implement the directive. If indeed the [petitioner] never intended to give the [respondent] any other duty work, we find it difficult to understand on why the [petitioner] would still exert effort to inform the [respondent] of his new assignment in GMA Cavite.** The [petitioner's] argument that it was the [respondent] who refused to accept the new assignment is supported by the fact that the [respondent] was twice issued letters informing him of his new assignments. The first one was the October 27, 2011 letter and the second was the January 27, 2012 letter (Exhibits "3", "3-A" and "4" of the [Petitioner's] Position Paper). **Thus, we agree with the Labor Arbiter when he ruled that the [respondent] was not dismissed from his employment.** (Emphases supplied)

Considering that the [respondent] was not illegally dismissed, his claims for the payment of backwages and separation pay are denied for lack of factual and legal basis. Similarly, his claim for holiday pay, overtime pay and rest day pay must be denied given the fact that it lacks the required particularities to prove his entitlement. We also do not find basis for the award of 13<sup>th</sup> month pay. *The basic rule is that mere allegation is not evidence and is not equivalent to proof* (Dv. Castor C. De Jesus v. Rafael D. Gurerro III Et Al., G.R. No. 171491 September 4, 2009; See also: *Manalabe v. Cabie*, 526 SCRA 582, 589).

**WHEREFORE,** the appeal filed by the [respondent] is hereby

**DISMISSED** for lack of merit.

Accordingly, the Decision dated August 31, 2012 of Labor Arbiter Eduardo J. Carpio is **AFFIRMED**.<sup>[5]</sup>

### ***The Ruling of the Court of Appeals***

On appeal, the CA ruled and affirmed in its 24 October 2013 Decision<sup>[6]</sup> that there was indeed no dismissal actual or construction in the present case. Petitioner was able to present evidence in support of its claim that there were two (2) detail orders issued in favor of respondent for his new assignments. However, it explained that since there was no showing that said detail orders were actually received by respondent, the latter cannot be blamed into thinking that petitioner had no intention of posting him. Consequently, the appellate court made its own pronouncement that the instant controversy was a clear case of "misunderstanding" between the parties, triggered by the letter designating respondent to be a trainee only which prompted him to believe that he was demoted from being a regular employee to a mere trainee, thus, his refusal to report for duty. It therefore concluded that since there was neither dismissal nor abandonment in the present case, and considering further that the factual milieu of the case suggested *strained* relations between the parties, respondent is entitled to separation pay instead of reinstatement, including his entitlement to backwages, 13<sup>th</sup> month pay, holiday pay, and service incentive leave pay. The dispositive portion of which states:

**WHEREFORE**, in view of the foregoing, the instant Petition is **partially GRANTED**. The assailed Decision dated January 29, 2013 and Resolution dated March 20, 2013 rendered by public respondent NLRC (FIRST DIVISION) in NLRC NCR Case No. NCR-03-03828-12/NLRC LAC No. 11-003222-12 are hereby **AFFIRMED WITH MODIFICATION**. [Respondent] Jose D. Castro is hereby **DECLARED** to be entitled to separation pay, unpaid wages from September 13, 2011-October 26, 2011, holiday pay and service incentive leave pay for the years 2008-2011, proportionate 13<sup>th</sup> month pay for the year 2011 and attorney's fees.

The case is **REMANDED** to the arbitration Branch of origin for the determination and detailed computation of the monetary benefits due [respondent] JOSE D. CASTRO which [petitioner] RADAR SECURITY & WATCHMAN AGENCY (INC.) should pay without delay.<sup>[7]</sup>

Petitioner's Partial Motion for Reconsideration of said Decision was subsequently denied for lack of merit in the Resolution of 29 January 2014.<sup>[8]</sup>

Hence, this appeal.

In support thereof, petitioner raises the following grounds: (1) the CA committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in awarding separation pay to respondent even after it affirmed the unanimous findings of the NLRC and the LA that there was no illegal dismissal in this case; and (2) the CA committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in reversing the rulings of the NLRC regarding the denial of award of