

SECOND DIVISION

[G.R. No. 186344, February 20, 2013]

**LEOPARD SECURITY AND INVESTIGATION AGENCY,
PETITIONER, VS. TOMAS QUITOY, RAUL SABANG AND DIEGO
MORALES, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Is an award of separation pay proper despite lack of showing of illegal dismissal? This is the main issue in this Rule 45 Petition for Review on *Certiorari* assailing the Decision^[1] dated 26 September 2008^[2] rendered and the Resolution dated 21 January 2009^[3] issued by the Twentieth Division of the Court of Appeals (CA) in CA-G.R. SP No. 03097.

The factual antecedents are not in dispute.

Alongside Numeriano **Ondong, respondents** Tomas Quitoy, Raul Sabang and Diego Morales were hired as security guards by petitioner Leopard Security and Investigation Agency (**LSIA**) which maintained its office at BCC House, 537 Shaw Boulevard, Mandaluyong City.^[4] All being residents of Cebu City, respondents were assigned by LSIA to the different branches of its only client in said locality, Union Bank of the Philippines (**Union Bank**). On 1 April 2005, it appears that Union Bank served a notice to LSIA, terminating the parties' security service contract effective at the end of business hours of 30 April 2005.^[5] Thru its representative, Rogelio Morales, LSIA informed respondents on 29 April 2005 of the termination of its contract with Union Bank which had decided to change its security provider. Upon Morales' instruction, respondents went to the Union Bank Cebu Business Park Branch on 30 April 2005, for the turnover of their service firearms to Arnel **Cortes**, Union Bank's Chief Security Officer.^[6]

On 3 May 2005, respondents and Ondong filed a complaint for illegal dismissal, unpaid 13th month pay and service incentive leave pay (SILP), moral and exemplary damages as well as attorney's fees against LSIA, its President, Jose **Poe** III, Union Bank, its Regional Service and Operations Officer, Catherine **Cheung**, Herbert **Hojas**, Protectors Services, Inc. (PSI) and Capt. Gerardo **Jaro**. With the complaint already docketed as RAB Case No. 07-05-0979-2005 before the Regional Arbitration Branch No. VII of the National Labor Relations Commission (NLRC) in Cebu City,^[7] it appears that LSIA sent on 10 May 2005 a notice requiring respondents to report for work to its Mandaluyong City office.^[8] In an Order dated 6 June 2005, Cheung and Hojas were later dropped as parties-respondents from the case upon motion of respondents. In view of Ondong's execution of a quitclaim, on the other hand, his complaint was likewise dismissed with prejudice, resulting in the exclusion of PSI and Jaro as parties-respondents from the case.^[9]

In support of their complaint, respondents averred that they were hired and assigned by LSIA to the different Cebu City branches of Union Bank which directly paid their salaries and whose branch managers exercised direct control and supervision over them. Required to work from 7:30 a.m. to 9:00 p.m. daily, respondents claimed that they took orders and instructions from Union Bank's branch managers since LSIA had no administrative personnel in Cebu City. Respondents further asserted that, after introducing himself as a representative of LSIA on 29 April 2005, Morales belatedly informed them that their services would be terminated at the end of the office hours on the same business day. Directed by Morales to report to Union Bank's Cebu Business Park Branch the next day, respondents maintained that they surrendered their service firearms to Cortes who told them that Union Bank would be engaging the services of another security agency effective the next working day. Not even reimbursed their firearm bond nor told that Union Bank had no monetary obligation to them, respondents claimed they were constrained to file their complaint and to pray that the former be held jointly and severally liable with LSIA for their claims.^[10]

In its position paper, LSIA, on the other hand, asseverated that upon being hired, respondents opted for an assignment in Cebu City and were, accordingly, detailed at the different branches of Union Bank in said locality. Informed by Union Bank on 1 April 2005 of the termination of their security service contract effective 30 April 2005, LSIA claimed that it relieved respondents from their assignments by the end of the business hours of the latter date. Petitioners would, on 10 May 2005, direct respondents to report for work at its Mandaluyong City office. As respondents failed to do so, LSIA alleged that it issued show cause letters on 21 June 2005, requiring the former to explain why they should not be administratively sanctioned for their unexplained absences. As the avowed direct employer of respondents, LSIA also prayed that Union Bank be dropped from the case and that the complaint be altogether dismissed for lack of merit.^[11] Invoking the security service contract it executed with LSIA from which its lack of an employer-employee relationship with respondents could be readily gleaned, Union Bank, in turn, asserted that the complaint should be dismissed as against it for lack of cause of action.^[12]

On 6 April 2006, Labor Arbiter Violeta Ortiz-Bantug rendered a Decision, finding LSIA liable for the illegal dismissal of respondents. Faulting LSIA for informing respondents of the termination of their services only on 30 April 2005 despite Union Bank's 1 April 2005 advice of the termination of its security service contract, the Labor Arbiter ruled that the 10 May 2005 report to work order did not show a sincere intention on the part of LSIA to provide respondents with other assignments. Aside from respondents' claims for backwages, LSIA was ordered by the Labor Arbiter to pay the former's claim for separation pay on the ground that reinstatement was no longer feasible under the circumstances. Although absolved from liability for the foregoing awards upon the finding that LSIA was an independent contractor, Union Bank was, however, held jointly and severally liable with said security agency for the payment of respondents' claims for proportionate 13th month pay and SILP for the three years immediately preceding the institution of the case.^[13]

On appeal, the foregoing decision was modified in the 20 March 2007 Decision rendered by the Fourth Division of the NLRC in NLRC Case No. V-000570-2006.

Applying the principle that security agencies like LSIA are allowed to put security guards on temporary off-detail or floating status for a period not exceeding six months, the NLRC discounted the factual and legal bases for the illegal dismissal determined by the Labor Arbiter as well as the backwages awarded in favor of respondents. Finding that the filing of the complaint on 3 May 2005 was premature, the NLRC took note of the fact that respondents did not even protest against the report to work order issued by LSIA. Even then, the NLRC upheld the Labor Arbiter's award of separation pay on the theory that reinstatement was no longer viable. The awards of proportionate 13th month pay and SILP for which Union Bank and LSIA were held solidarily liable were likewise sustained for failure of the latter to discharge the burden of proving payment of said labor standard benefits.^[14] Belatedly submitting documents to prove its payment of SILP, LSIA filed a motion for reconsideration of the foregoing decision^[15] which was, however, denied for lack of merit in the NLRC's 23 July 2007 Resolution.^[16]

Dissatisfied, LSIA filed the Rule 65 Petition for *Certiorari* docketed before the CA as CA-G.R. SP No. 03097. Calling attention to the impropriety of the award of separation pay absent a finding of illegal dismissal, LSIA also faulted the NLRC for ignoring the evidence it submitted alongside its motion for reconsideration to prove the payment of respondents' SILP for the years 2003, 2004 and 2005.^[17] On 26 September 2008, the then Twentieth Division of the CA rendered the herein assailed decision, affirming the NLRC's 23 July 2007 Decision and denying LSIA's petition for lack of merit. Applying the principle that respondents could not be considered illegally dismissed before the lapse of six months from their being placed on floating status by LSIA,^[18] the CA justified the awards of separation pay, proportionate 13th month pay and SILP in the following wise:

In another vein, however, xxx respondents were caught off guard when Rogelio Morales, [LSIA's] representative summarily told them not to report to Union Bank anymore. They did not understand its implications as no one bothered to explain what would happen to them. At any rate, it is clear as day that xxx respondents no longer wish to continue their employment with [LSIA] because of the shabby treatment previously given them. Their relations have obviously turned sour. Such being the case, separation pay, in lieu of reinstatement, is proper. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employer and the employee.

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The burden of proving payment of holiday pay and salary differentials belong to the employer, not the employee. Here [LSIA] failed to present proofs that xxx respondents received payment for [SILP] and thirteenth month pay which accrued to them under the law. As the labor arbiter ruled, however, payment of [SILP] shall only be for the last three (3) years of xxx respondents' service taking into consideration the provisions on prescription of money claims and proportionate 13th month pay for the year 2004.^[19]

Aggrieved by the foregoing decision as well as the CA's 21 January 2009 denial of their motion for reconsideration thereof,^[20] LSIA and Poe filed the Petition for Review on *Certiorari* at bench, on the following grounds:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT UPHELD THE NLRC DECISION AWARDING TO RESPONDENTS SEPARATION PAY DESPITE ITS FINDINGS THAT THEY WERE NOT ILLEGALLY DISMISSED.

II

THE COURT OF APPEALS ERRED WHEN IT UPHELD THE NLRC DECISION AWARDING TO RESPONDENTS SERVICE INCENTIVE LEAVE PAY FOR THE YEARS 2003, 2004 AND 2005.^[21]

In urging the grant of their petition, LSIA and Poe argue that, upon discounting the factual basis for respondents' claim that they were illegally dismissed from employment, the CA should have disallowed the award of separation pay awarded by the Labor Arbiter and the NLRC. They insist that like backwages, separation pay is the legal consequence of a finding of illegal dismissal and should, perforce, be deleted in the absence thereof, particularly when no evidence was adduced to prove the strained relations between the employer and employee. LSIA and Poe also fault the CA for ignoring the Bank Advice Slips and On Demand Statement of Account belatedly submitted alongside the motion for reconsideration they filed before the NLRC, to prove payment of respondents' SILP for the years 2004 and 2005.^[22] In their comment to the petition, on the other hand, respondents insist that they have been illegally dismissed from employment and that the Labor Arbiter's determination to that effect was erroneously reversed by both the NLRC and the CA.^[23]

The petition is impressed with merit.

Applying Article 286^[24] of the *Labor Code of the Philippines* by analogy, this Court has repeatedly recognized that security guards may be temporarily sidelined by their security agency as their assignments primarily depend on the contracts entered into by the latter with third parties.^[25] Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when, as here, the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster.^[26] For as long as such temporary inactivity does not continue for a period exceeding six months, it has been ruled that placing an employee on temporary "off-detail" or "floating status" is not equivalent to dismissal.^[27]

In the case at bench, respondents were informed on 29 April 2005 that they were going to be relieved from duty as a consequence of the 30 April 2005 expiration of