659 Phil. 362

SECOND DIVISION

[G.R. No. 186614, February 23, 2011]

NATIONWIDE SECURITY AND ALLIED SERVICES, INC., PETITIONER, VS. RONALD P. VALDERAMA, RESPONDENT.

R E S O L U T I O N

NACHURA, J.:

Petitioner Nationwide Security and Allied Services, Inc. (petitioner) appeals by *certiorari* under Rule 45 of the Rules of Court the December 9, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 104966, and the February 24, 2009 Resolution[2] denying its reconsideration.

Respondent Ronald Valderama (Valderama) was hired by petitioner as security guard on April 18, 2002. He was assigned at the Philippine Heart Center (PHC), Quezon City, until his relief on January 30, 2006. Valderama was not given any assignment thereafter. Thus, on August 2, 2006, he filed a complaint for constructive dismissal and nonpayment of 13th month pay, with prayer for damages against petitioner and Romeo Nolasco.

Petitioner presented a different version. It alleged that respondent was not constructively or illegally dismissed, but had voluntarily resigned. Its version of the facts was summarized by the National Labor Relations Commission (NLRC) in this wise:

> [Petitioner] x x x averred that [respondent] has committed serious violations of the security rules in the workplace. On January 31, 2004, he was charged with conduct unbecoming for which he was required to explain. Months after, he and four (4) other co-security guards failed to attend a mandatory seminar. For this, he was suspended for seven (7) days. On June 5, 2004, [respondent] displayed his discourteous and rude attitude upon his superior. He said to him in a high pitch of (sic) voice, "*ano ba sir, personalan ba ito, sabihin mo lang kung ano gusto mo.*" On June 8, 2004, [petitioner] required him to explain why no disciplinary action should be meted against him.
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> Again, on January 22, 2005, seven security guards, including [respondent], were made to explain their failure to report for duty without informing the office despite the instruction during their formation day which was held a day before. On January 31, 2006, Roy Datiles, Detachment Commander, reported that [respondent] confronted and challenged him in a high pitch and on top of his voice rudely showing discourtesy and rudeness. Being his superior, Datiles recommended the relief of [respondent] in the detachment effective January 31, 2006. By

order of the Operations Manager, he was relieved from his post at the Philippine Heart Center. He was directed to report to the office. On February 10, 2006, he got his cash bond and firearm deposit. Despite his voluntary resignation, [petitioner] sent him a letter through registered mail to report for the office and give information on whether or not he was still interested for report for duty or not. [Respondent] did not bother to reply. Neither did he report to the office.[3]

After due proceedings, the Labor Arbiter (LA) rendered a decision, *viz.*:

> This office is of the view that [respondent] was constructively dismissed. [Petitioner's] defense that [respondent] voluntarily resigned on February 10, 2006 is unsubstantiated (Annex "G"). What appears on record is the pro-forma resignation dated 04 October 2004 (Annex "D") long before this complaint was filed. It is a basic rule in evidence that the burden of proof is on the part of the party who makes the allegation. [Petitioner] failed to discharge the burden.
>
> The general rule is that the filing of a complaint for illegal dismissal is inconsistent with resignation. The Supreme Court in Shie Jie Corp. vs. National Federation of Labor, G.R. No. 153148, July 15, 2005, held:
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> > "By vigorously pursuing the litigation of his action against petitioner, private respondent clearly manifested that he has no intention of relinquishing his employment which is, wholly incompatible [with] petitioner[']s assertion, that he voluntarily resigned."
>
> In Great Southern Maritime Services Corp. vs. Acuña, G.R. No. 140189, Feb. 28, 2005, it was ruled that the execution of the alleged "resignation letters cum release and quitclaim" to support the employer's claim that respondents voluntarily resigned is unavailing as the filing of the complaint for illegal dismissal is inconsistent with resignation.
>
> Further it is significant to note that [respondent] was even required by [petitioner] to undergo a "Re-Training Course" conducted from February 20, 2006 to March 1, 2006 (Annex "F"). It is not only absurd but unbelievable that [respondent] who according to [petitioner] voluntarily resigned on February 10, 2006 and yet participated in the said "Re-Training Course" after his alleged resignation.
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> In this case, [respondent] was not posted since he was relieved from his post on January 30, 2006 until the filing of the instant complaint on August 2, 2006 or for a period of more than six (6) months. In Valdez vs. NLRC, 286 SCRA 87, the Supreme Court held that, "However, it must be emphasized that such temporary activity should continue for six months. Otherwise, the security agency concerned could be held liable for constructive dismissal.

> This office is in accord with [respondent's] argument that the letter sent to the latter to report for work is an absurdity considering [petitioner's] claim that [respondent] voluntarily resigned. x x x.[4]

The LA disposed thus:

> WHEREFORE, the foregoing considered, judgment is hereby rendered declaring [respondent] to have been constructively dismissed. [Petitioner is] ordered to reinstate [respondent] to his former position without loss of seniority rights and other benefits. Further, [petitioner] Nationwide Security & Allied Services, Inc. is ordered to pay [respondent] the following monetary awards[:]
>
> 1. Backwages (see computation) 148, 125.00
> 2. Prop. 13th Month Pay
>
> 1/06 - 1/30/06 = 97 mo.
> P450 x 30 x 1/12 x .97 1,091.25
> TOTAL AWARD 149,216.25
>
> x x x x
>
> SO ORDERED.[5]

On appeal, the NLRC modified the LA decision. It declared that respondent was neither constructively terminated nor did he voluntarily resign. As such, respondent remained an employee of petitioner. The NLRC thus ordered respondent to immediately report to petitioner and assume his duty. It also deleted the award of backwages and the order of reinstatement by the LA for lack of basis.[6]

The NLRC decreed that:

> WHEREFORE, the foregoing considered, the instant appeal is PARTIALLY GRANTED deleting the award of backwages and order of reinstatement. [Respondent] is directed to report immediately and [petitioner is] ordered to accept him. [Petitioner is] also ordered to pay his 13th month pay in the amount of P1,091.25 as ordered in the Decision.
>
> SO ORDERED.[7]

Respondent filed a motion for reconsideration, but the NLRC denied it on June 11, 2008.

Respondent went to the CA via *certiorari*. On December 9, 2008, the CA rendered a Decision[8] setting aside the resolutions of the NLRC and reinstating that of the LA. In gist, the CA sustained respondent's claim of constructive dismissal. It pointed

out that respondent remained on floating status for more than six (6) months, and petitioner offered no credible explanation why it failed to provide a new assignment to respondent after he was relieved from PHC. It likewise rejected petitioner's claim that respondent voluntarily resigned, holding that no convincing evidence was offered to prove it. The CA found it odd that respondent attended the re-training course conducted by petitioner from February 20, 2006 to March 1, 2006, if respondent indeed resigned on February 10, 2006. The CA, therefore, ruled against the legality of respondent's dismissal and sustained the LA's award of backwages and order of reinstatement in favor of respondent.

The CA decreed, thus:

> **WHEREFORE**, premises considered, the Petition is GRANTED. The Resolutions dated 27 March 2008 and 11 June 2008 of the National Labor Relations Commission (Third Division) in NLRC NCR CASE NO. 00-08-06365-06; NLRC CA NO. 051626-07 are **REVERSED** and **SET ASIDE**. The Decision dated 29 November 2006 of Labor Arbiter Enrique L. Flores, Jr. is hereby REINSTATED. Costs against [petitioner].
>
> **SO ORDERED**.[9]

Petitioner filed a motion for reconsideration, but the CA denied it on February 24, 2009.[10]

Hence, this appeal by petitioner faulting the CA for sustaining respondent's claim of constructive dismissal.

The appeal lacks merit.

In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six months.[11]

The *onus* of proving that there is no post available to which the security guard can be assigned rests on the employer, *viz.*:

> When a security guard is placed on a "floating status," he does not receive any salary or financial benefit provided by law. Due to the grim economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned.[12]