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SECOND DIVISION

[G.R. No. 182397, September 14, 2011]

ALERT SECURITY AND INVESTIGATION AGENCY, INC. AND/OR MANUEL D. DASIG, PETITIONERS, VS. SAIDALI PASAWILAN, WILFREDO VERCELES AND MELCHOR BULUSAN, RESPONDENTS.

D E C I S I O N

VILLARAMA, JR., J.:

This petition for review on certiorari assails the Decision[1] dated February 1, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 99861. The appellate court reversed and set aside the January 31, 2007 Decision[2] and March 15, 2007 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the Labor Arbiter's Decision[4] finding petitioners guilty of illegal dismissal.

The facts follow.

Respondents Saidali Pasawilan, Wilfredo Verceles and Melchor Bulusan were all employed by petitioner Alert Security and Investigation Agency, Inc. (Alert Security) as security guards beginning March 31, 1996, January 14, 1997, and January 24, 1997, respectively. They were paid 165.00 pesos a day as regular employees, and assigned at the Department of Science and Technology (DOST) pursuant to a security service contract between the DOST and Alert Security.

Respondents aver that because they were underpaid, they filed a complaint for money claims against Alert Security and its president and general manager, petitioner Manuel D. Dasig, before Labor Arbiter Ariel C. Santos. As a result of their complaint, they were relieved from their posts in the DOST and were not given new assignments despite the lapse of six months. On January 26, 1999, they filed a joint complaint for illegal dismissal against petitioners.

Petitioners, on the other hand, deny that they dismissed the respondents. They claimed that from the DOST, respondents were merely detailed at the Metro Rail Transit, Inc. at the Light Rail Transit Authority (LRTA) Compound in Aurora Blvd. because the wages therein were already adjusted to the latest minimum wage. Petitioners presented "Duty Detail Orders"[5] that Alert Security issued to show that respondents were in fact assigned to LRTA. Respondents, however, failed to report at the LRTA and instead kept loitering at the DOST and tried to convince other security guards to file complaints against Alert Security. Thus, on August 3, 1998, Alert Security filed a "termination report"[6] with the Department of Labor and Employment relative to the termination of the respondents.

Upon motion of the respondents, the joint complaint for illegal dismissal was ordered consolidated with respondents' earlier complaint for money claims. The

records of the illegal dismissal case were sent to Labor Arbiter Ariel C. Santos, but later returned to the Office of the Labor Arbiter hearing the illegal dismissal complaint because a Decision[7] has already been rendered in the complaint for money claims on July 14, 1999. In that decision, the complaint for money claims was dismissed for lack of merit but petitioners were ordered to pay respondents their latest salary differentials.

On July 28, 2000, Labor Arbiter Melquiades Sol D. Del Rosario rendered a Decision[8] on the complaint for illegal dismissal. The Labor Arbiter ruled:

> **CONFORMABLY WITH THE FOREGOING**, judgment is hereby rendered finding complainants to have been illegally dismissed. Consequently, each complainant should be paid in solidum by the respondents the individual awards computed in the body of the decision, which is hereto adopted as part of this disposition.
>
> **SO ORDERED.**[9]

Aggrieved, petitioners appealed the decision to the NLRC claiming that the Labor Arbiter erred in deciding a re-filed case when it was filed in violation of the prohibitions against *litis pendencia* and forum shopping. Further, petitioners argued that complainants were not illegally dismissed but were only transferred. They claimed that it was the respondents who refused to report for work in their new assignment.

On January 31, 2007, the NLRC rendered a Decision[10] ruling that Labor Arbiter Del Rosario did not err in taking cognizance of respondents' complaint for illegal dismissal because the July 14, 1999 Decision of Labor Arbiter Santos on the complaint for money claims did not at all pass upon the issue of illegal dismissal. The NLRC, however, dismissed the complaint for illegal dismissal after ruling that the fact of dismissal or termination of employment was not sufficiently established. According to the NLRC, "[the] sweeping generalization that the complainants were constructively dismissed is not sufficient to establish the existence of illegal dismissal."[11] The dispositive portion of the NLRC decision reads:

> **WHEREFORE**, premises considered, the respondents' appeal is hereby given due course and the decision dated July 28, 2000 is hereby REVERSED and SET-ASIDE and a new one entered DISMISSING the complaint for illegal dismissal for lack of merit.
>
> **SO ORDERED.**[12]

Unfazed, respondents filed a petition for certiorari with the CA questioning the NLRC decision and alleging grave abuse of discretion.

On February 1, 2008, the CA rendered the assailed Decision[13] reversing and setting aside the NLRC decision and reinstating the July 28, 2000 Decision of Labor Arbiter Del Rosario. The CA ruled that Alert Security, as an employer, failed to

discharge its burden to show that the employee's separation from employment was not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. The CA also found that respondents were never informed of the "Duty Detail Orders" transferring them to a new post, thereby making the alleged transfer ineffective. The dispositive portion of the CA decision states:

> **WHEREFORE**, premises considered, the January 31, 2007 decision of the NLRC is hereby **REVERSED** and **SET ASIDE** and the July 28, 2000 decision of the Labor Arbiter is hereby **REVIVED**.
>
> **SO ORDERED.**[14]

Petitioners filed a motion for reconsideration, but the motion was denied in a Resolution[15] dated March 31, 2008.

Petitioners are now before this Court to seek relief by way of a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

Petitioners argue that the CA erred when it held that the NLRC committed grave abuse of discretion. According to petitioners, the NLRC was correct when it ruled that there was no sufficient basis to rule that respondents were terminated from their employment while there was proof that they were merely transferred from DOST to LRTA as shown in the "Duty Detail Orders". Verily, petitioners claim that there was no termination at all; instead, respondents abandoned their employment by refusing to report for duty at the LRTA Compound.

Further, petitioners argue that the CA erred when it reinstated the July 28, 2000 Decision of Labor Arbiter Del Rosario in its entirety. The dispositive portion of said decision ruled that respondents should be paid their monetary awards in *solidum* by Alert Security and Manuel D. Dasig, its President and General Manager. They argue that Alert Security is a duly organized domestic corporation which has a legal personality separate and distinct from its members or owners. Hence, liability for whatever compensation or money claims owed to employees must be borne solely by Alert Security and not by any of its individual stockholders or officers.

On the other hand, respondents claim that the NLRC committed a serious error in ruling that they failed to provide factual substantiation of their claim of constructive dismissal. Respondents aver that their Complaint Form[16] sufficiently constitutes the basis of their claim of illegal dismissal. Also, respondents aver that Alert Security itself admitted that respondents were relieved from their posts as security guards in DOST, albeit raising the defense that it was a mere transfer as shown by "Duty Detail Orders", which, however, were never received by respondents, as observed by the Labor Arbiter.

Essentially, the issue for resolution is whether respondents were illegally dismissed.

We rule in the affirmative.

As a rule, employment cannot be terminated by an employer without any just or

authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just[17]or authorized[18]causes that

must comply with the due process requirementsmandated[19] by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.

In *De Guzman, Jr. v. Commission on Elections,*[20] the Court, speaking of the Constitutional guarantee of security of tenure to all workers, ruled:

> x x x It only means that an employee cannot be dismissed (or transferred) from the service for causes other than those provided by law and after due process is accorded the employee. **What it seeks to prevent is capricious exercise of the power to dismiss**. x x x (Emphasis supplied.)

Although we recognize the right of employers to shape their own work force, this management prerogative must not curtail the basic right of employees to security of tenure. There must be a valid and lawful reason for terminating the employment of a worker. Otherwise, it is illegal and would be dealt with by the courts accordingly.

As stated in *Bascon v. Court of Appeals*:[21]

> x x x The employer's power to dismiss must be tempered with the employee's right to security of tenure. Time and again we have said that the preservation of the lifeblood of the toiling laborer comes before concern for business profits. Employers must be reminded to exercise the power to dismiss with great caution, for the State will not hesitate to come to the succor of workers wrongly dismissed by capricious employers.

In the case at bar, respondents were relieved from their posts because they filed with the Labor Arbiter a complaint against their employer for money claims due to underpayment of wages. This reason is unacceptable and illegal. Nowhere in the law providing for the just and authorized causes of termination of employment is there any direct or indirect reference to filing a legitimate complaint for money claims against the employer as a valid ground for termination.

The Labor Code, as amended, enumerates several just and authorized causes for a valid termination of employment. An employee asserting his right and asking for minimum wage is not among those causes. Dismissing an employee on this ground amounts to retaliation by management for an employee's legitimate grievance without due process. Such stroke of retribution has no place in Philippine Labor Laws.

Petitioners aver that respondents were merely transferred to a new post wherein the

wages are adjusted to the current minimum wage standards. They maintain that the respondents voluntarily abandoned their jobs when they failed to report for duty in the new location.

Assuming this is true, we still cannot hold that the respondents abandoned their posts. For abandonment of work to fall under Article 282 (b) of the Labor Code, as amended, as gross and habitual neglect of duties there must be the concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason, and second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.[22]

As regards the second element of intent to sever the employer-employee relationship, the CA correctly ruled that:

> x x x the fact that petitioners filed a complaint for illegal dismissal is indicative of their intention to remain employed with private respondent considering that one of their prayers in the complaint is for re-instatement. As declared by the Supreme Court, a complaint for illegal dismissal is inconsistent with the charge of abandonment, because when an employee takes steps to protect himself against a dismissal, this cannot, by logic, be said to be abandonment by him of his right to be able to work.[23]

Further, according to Alert Security itself, respondents continued to report for work and loiter in the DOST after the alleged transfer order was issued. Such circumstance makes it unlikely that respondents have clear intention of leaving their respective jobs. In any case, there is no dispute that in cases of abandonment of work, notice shall be served at the worker's last known address.[24] This petitioners failed to do.

On the element of the failure of the employee to report for work, we also cannot accept the allegations of petitioners that respondents unjustifiably refused to report for duty in their new posts. A careful review of the records reveals that there is no showing that respondents were notified of their new assignments. Granting that the "Duty Detail Orders" were indeed issued, they served no purpose unless the intended recipients of the orders are informed of such.

The employer cannot simply conclude that an employee is *ipso facto* notified of a transfer when there is no evidence to indicate that the employee had knowledge of the transfer order. Hence, the failure of an employee to report for work at the new location cannot be taken against him as an element of abandonment.

We acknowledge and recognize the right of an employer to transfer employees in the interest of the service. This exercise is a management prerogative which is a lawful right of an employer. However, like all rights, there are limitations to the right to transfer employees. As ruled in the case of *Blue Dairy Corporation v. NLRC*:[25]