

SECOND DIVISION

[G.R. No. 182848, October 05, 2011]

**EMIRATE SECURITY AND MAINTENANCE SYSTEMS, INC. AND
ROBERTO A. YAN, PETITIONERS, VS. GLENDA M. MENESE,
RESPONDENT.**

D E C I S I O N

BRION, J.:

Before the Court is the petition for review on *certiorari*^[1] which assails the decision^[2] and the resolution^[3] of the Court of Appeals (CA) rendered on February 28, 2008 and May 14, 2008, respectively, in CA-G.R. SP. No. 100073.^[4]

The Antecedents

The facts of the case are summarized below.

On June 5, 2001, respondent Glenda M. Menese (*Menese*) filed a complaint for constructive dismissal; illegal reduction of salaries and allowances; separation pay; refund of contribution to cash bond; overtime, holiday, rest day and premium pay; damages; and attorney's fees against the petitioners, Emirate Security and Maintenance Systems, Inc. (*agency*) and its General Manager, Robert A. Yan (*Yan*).

Menese alleged in the compulsory arbitration proceedings that on April 1, 1999, the agency engaged her services as payroll and billing clerk. She was assigned to the agency's security detachment at the Philippine General Hospital (*PGH*). She was given a monthly salary of P9,200.00 and an allowance of P2,500.00, for a total of P11,700.00 in compensation. Effective May 2001, her allowance was allegedly reduced to P1,500.00 without notice, and P100.00 was deducted from her salary every month as her contribution to a cash bond which lasted throughout her employment. She was required to work seven (7) days a week, from 8:00 a.m. to 5:00 p.m. She was also required to report for work on holidays, except on New Year's Day and Christmas. She claimed that she was never given overtime, holiday, rest day and premium pay.

Menese further alleged that on May 4, 2001, she started getting pressures from the agency for her to resign from her position because it had been committed to a certain Amy Claro, a protégée of Mrs. Violeta G. Dapula (*Dapula*) the new chief of the Security Division of the University of the Philippines (UP) Manila and PGH. Menese raised the matter with Yan who told her that the agency was in the process of establishing goodwill with Dapula, so it had to sacrifice her position to accommodate Dapula's request to hire Claro.

Menese claimed that she was told not to worry because if she was still interested in working with the agency, she could still be retained as a lady guard with a salary

equivalent to the minimum wage. She would then be detailed to another detachment because Dapula did not like to see her around anymore. If the offer was acceptable to her, she should report to the agency's personnel officer for the issuance of the necessary duty detail order. Menese thought about the offer and soon realized that she was actually being demoted in rank and salary. She eventually decided to decline the offer. She continued reporting to the PGH detachment and performed her usual functions as if nothing happened.

Menese alleged that at this juncture, Claro reported at the agency's PGH detachment and performed the functions she was doing. She bewailed that thereafter she continuously received harassment calls and letters. She was also publicly humiliated and badly treated at the detachment. The agency, through Security Officer Alton Acab, prohibited her from using the office computer. On May 18, 2001, Jose Dante Chan, the agency's PGH detachment commander, arrogantly told her to leave PGH. Again on May 25, 2001, Chan shouted at her and told her to pack her things and to leave immediately, and not to return to the detachment anymore; otherwise, she would be physically driven out of the office.

Still not satisfied with what they did, the petitioners allegedly withheld her salary for May 16-31, 2001. She claimed that the petitioners dismissed her from the service without just cause and due process.

The petitioners, for their part, denied liability. They alleged that on May 8, 2001, Dapula informed the agency in writing,^[5] through Yan, that she had been receiving numerous complaints from security guards and other agency employees about Menese's unprofessional conduct. She told the petitioners that she was not tolerating Menese's negative work attitude despite the fact that she is the wife of Special Police Major Divino Menese who is a member of the UP Manila police force, and that as a matter of policy and out of delicadeza, she does not condone nepotism in her division.

On the basis of Dapula's letter, Yan sent Menese a memorandum dated May 16, 2001,^[6] instructing her to report to the agency's head office and, there and then, discussed with her Dapula's letter. Yan informed Menese that upon Dapula's request, she would be transferred to another assignment which would not involve any demotion in rank or diminution in her salary and other benefits. Although Menese said that she would think about the matter, the petitioners were surprised to receive summons from the labor arbiter regarding the complaint.

The Compulsory Arbitration Rulings

In a decision dated March 14, 2002,^[7] Labor Arbiter Jovencio LL. Mayor, Jr. declared Menese to have been constructively dismissed. He found the petitioners wanting in good faith in transferring Menese to another detachment as she would be suffering a demotion in rank and a diminution in pay. Accordingly, he ordered the petitioners to immediately reinstate Menese and, solidarily, to pay her full backwages of P83,443.75 (latest computation); P66,924.00 in monetary benefits; P50,000.00 and P20,000.00 in moral and exemplary damages, respectively; and attorney's fees of P15,036.74.

The petitioners appealed to the National Labor Relations Commission (NLRC). On

September 30, 2003, the NLRC Second Division issued a resolution^[8] granting the appeal and reversing the labor arbiter's decision. It ruled that Menese was not constructively dismissed but was merely transferred to another detachment. It opined that the transfer was a valid exercise of the petitioners' management prerogative. However, it ruled that despite Menese's refusal to accept the transfer, she cannot be made liable for abandonment as her refusal was based on her honest belief that she was being constructively dismissed. The NLRC ordered Menese, at her option, to immediately report to the agency's head office and the agency to accept her back to work. It absolved Yan from liability, and deleted the award of backwages, overtime pay and damages.

On October 28, 2003, Menese filed a partial motion for reconsideration^[9] of the NLRC resolution and later (on June 17, 2005), a motion to recall the entry of judgment of October 31, 2003. On June 1, 2007, the NLRC rendered a resolution^[10] setting aside the entry of judgment and denying Menese's partial motion for reconsideration.

The Petition for Certiorari

Menese elevated her case to the CA through a petition for *certiorari*^[11] under Rule 65 of the Rules of Court. In the main, she argued that the agency was in bad faith when it issued the memoranda dated May 16, 2001,^[12] May 22, 2001^[13] and May 28, 2001,^[14] ordering her transfer from the PGH detachment to the agency's head office. She posited that it was a ploy to create a vacancy in the detachment to accommodate the entry of Claro, Dapula's protégée. She regarded the transfer as a removal from her position at PGH -- a constructive dismissal.

The agency, in rebuttal, posited that Menese was not illegally dismissed, but was merely transferred to its head office in response to the request of the new head of the UP-PGH security division for the transfer. The action, it maintained, was a valid exercise of its management prerogative. Thus, Menese was guilty of abandoning her employment when she refused to report for work at her new posting.

The CA Decision

The CA granted the petition in its decision of February 28, 2008.^[15] It set aside the assailed resolutions of the NLRC and reinstated the March 14, 2002 decision of the labor arbiter.

As the labor arbiter did, the CA found Menese to have been constructively, and therefore illegally, dismissed. It noted that the memoranda^[16] on Menese's transfer were prompted by Dacula's letter, dated May 8, 2001,^[17] to Yan, which contained allegations on Menese's supposed unprofessional conduct and involvement in nepotism. It further noted that when Yan asked Dapula in writing^[18] to provide the agency with documents/evidence that would support her allegations, she failed to do so. The CA thus concluded that the reasons for Menese's transfer did not exist or that no substantial evidence was presented in that regard.

The CA brushed aside the petitioners' argument that it was their prerogative to transfer Menese from the agency's PGH detachment to its head office at Ortigas

Avenue, Mandaluyong City. Relying on applicable jurisprudence, the appellate court pointed out that while it is the management's prerogative to transfer an employee from one office to another within the business establishment, it is not without limitation. It must be exercised in such a way that there is no demotion in rank or diminution in pay, benefits and other privileges. Otherwise, the transfer amounts to a constructive dismissal, as correctly pointed out by the labor arbiter in his decision of March 14, 2002.^[19] In this light, the CA held that the petitioners failed to prove that Menese abandoned her employment.

The CA sustained all the other findings of the labor arbiter. On the whole, it ruled that the NLRC misappreciated the evidence in the case. The petitioners moved for reconsideration, but the CA denied the motion in its resolution of May 14, 2008.^[20]

The Petitioners' Case

Aside from the petition itself,^[21] the petitioners filed a reply to Menese's comment^[22] and a memorandum^[23] where they asked for a reversal of the assailed CA rulings on the ground that the CA gravely erred in:

- (1) Affirming the labor arbiter's findings that Menese was constructively dismissed;
- (2) Holding Yan solidarily liable with the agency for damages; and
- (3) Sustaining the award of backwages, damages and attorney's fees, as well as overtime pay.

The petitioners insist that Menese was not illegally dismissed. They argue that it was Menese who deliberately and unjustifiably refused to work despite several notices^[24] to her after she was validly relieved from her current work assignment due to a client's request. They maintain that since Menese chose not to return to work, she must be considered either to have resigned from or to have abandoned her employment. They further maintain that nothing on record shows any positive or overt act of the agency in dismissing Menese.

Moreover, the petitioners regard Menese's continued refusal to report to the agency's head office as an act of gross insubordination constituting a just cause for termination under Article 282(a) of the Labor Code. They argue that under this law, an employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or his representative in connection with his work.

The petitioners posit that she is not entitled to reinstatement and backwages since she failed to comply with the reinstatement option stated in the NLRC resolution. Neither is she entitled to overtime pay because she did not work beyond the eight (8)-hour working period; her one (1) hour time off from twelve noon to 1:00 p.m. is not compensable. Neither is Menese entitled to moral and exemplary damages because the evidence on record does not show any malice or bad faith on their part to justify the award.

The petitioners likewise take exception to the award of attorney's fees as the labor arbiter's decision and the NLRC's resolution failed to state the justification for the award. They further contend that the CA gravely erred in upholding the labor arbiter's ruling that Yan is solidarily liable with the agency, as Yan was merely acting in his capacity as the agency's general manager, and that there is no showing that Yan acted maliciously or in bad faith when he ordered Menese's transfer. They also point out that Menese did not challenge before the CA the NLRC ruling absolving Yan from any liability.

The Case for Menese

By way of her comment^[25] and memorandum,^[26] Menese asks that the appeal be denied for lack of merit.

She claims that at the arbitration stage, the petitioners readily admitted the fact of her removal, manifesting in open session their lack of interest to settle the case amicably as they have a strong evidence to support their defense of her dismissal for cause. She observed during the hearing that the petitioners were very confident about their case, because according to them, they had Dapula's letter asking for her immediate removal.^[27]

Menese further claims that the petitioners realized that they did not have the necessary evidence, so Yan wrote Dapula a letter asking her for proof of the complaints or grievances of the security guards against Menese.^[28] Dapula did not produce or present the evidence they asked for resulting in their failure to substantiate their defense of dismissal for cause. Menese contends that the petitioners then revised their theory of the case and made it appear that she was not actually dismissed but was merely transferred, purportedly in the exercise of their management prerogative.

She posits that her transfer was motivated by ill will and bad faith, as it was done to facilitate the entry of a favored applicant to the PGH detachment. She intimates that the labor arbiter resolved the case correctly when he found her to have been constructively or illegally dismissed. She bewails the NLRC's surprising reversal of the labor arbiter's decision, but feels vindicated when the CA set aside the NLRC ruling.

Menese submits that the CA is correct in nullifying the NLRC's reversal of her illegal dismissal case because the labor tribunal closed its eyes to the fact that bad faith attended her transfer. She points out that the petitioners' twin directives, vis-à-vis her transfer upon which the NLRC based its ruling, "were both issued for a selfish and immoral purpose;"^[29] the first, dated May 16, 2001,^[30] was issued for the purpose of creating a vacancy, and the second, dated May 22, 2001,^[31] was intended to cover up the wrongdoing that was earlier committed. In other words, the directives were tainted with malice and ill will. On the matter of Yan's liability, Menese maintains that the NLRC committed a serious error in allowing him to get away with his wrongdoing considering the injustice done to her as a result of her unceremonious dismissal.

In a different vein, Menese assails the NLRC's exclusion of the one-hour meal break