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SECOND DIVISION

[G.R. NO. 159293, December 16, 2005]

VETERANS SECURITY AGENCY, INC. AND JESUS R. VARGAS, PETITIONERS, VS. FELIPE GONZALVO, JR., RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

In this petition for review, petitioner VETERANS SECURITY AGENCY, INC. (VSAI), represented by its Executive Vice-President and General Manager, JESUS R. VARGAS, challenges the Decision[1] dated 27 January 2003 of the Court of Appeals in CA-G.R. SP No. 67043, affirming the Decision of the National Labor Relations Commission (NLRC). The NLRC reversed the Decision of the Labor Arbiter and declared respondent to have been illegally dismissed. VSAI likewise implores this Court to take a look at the Resolution[2] dated 19 June 2003 of the Court of Appeals denying their motion for reconsideration.

The evidence shows that VSAI hired respondent as a security guard, with initial assignment at Overseas Workers Welfare Administration (OWWA) collection unit at the Philippines Overseas Employment Agency building in Ortigas, Pasig City from July 1991 to October 1992. His next tour of duty was at the Citytrust Bank from 20 November 1992 to 31 December 1992. He was then detailed at the National Power Corporation in Plaridel, Bulacan from January 1993 to January 1994. In February 1994 to April 1995, he was deployed at the University of Santo Tomas.

Meanwhile, on 24 April 1995, respondent brought his complaint against VSAI before the Social Security System (SSS) for non-remittance of SSS contributions. As a result, petitioners formally remitted his contributions to the SSS.

In May 1995, respondent was transferred to the OWWA's main office in Pasig City.

On 26 August 1998, VSAI again failed to remit to the SSS his contributions and loan payments prompting respondent to file another complaint against VSAI before the SSS for non-remittance of contributions and loan payments. As a result, the OWWA Detachment Commander intimated to respondent that VSAI was annoyed by the fact that he had commenced the said action against it.

Thereafter, VSAI hired three (3) additional guards for the OWWA parking lot located at San Luis Street, Pasay City. In a meeting sometime in December 1998, OWWA's Chief of Services and Property Division announced that the lease contract for said parking lot was to expire on 07 January 1999 and the three newly-hired guards posted there would have to report to VSAI's office.

On 30 December 1998, respondent, who was then manning the OWWA main office, was made to swap postings with one of these three guards manning the OWWA

parking lot. This came as a surprise to respondent because such swapping would be to his disadvantage as he would have to give up his post at the OWWA main office where he was serving for almost three (3) years to give way to one of the newly-hired security guards who would soon be displaced from the OWWA parking lot as a result of the expiration of the lease contract for said property. Resultantly, on 7 January 1999, upon the expiration of the lease contract on the parking lot, the services of the guards temporarily assigned there were withdrawn, including that of respondent.

The next day, when respondent reported for work at the OWWA Detachment Commander, he was told that he would have to be assigned somewhere else because his spouse was also assigned as a lady guard at the OWWA. This came as an utter surprise to the respondent who was single at that time.

VSAI informed respondent that his redeployment would be at the Department of Labor and Employment (DOLE). When respondent reported to the DOLE Detachment Commander, he was required to renew his Barangay, police and National Bureau of Investigation (NBI) clearances and to undergo neurological examination. Respondent requested petitioners to assign him at either the OWWA Office in Intramuros, Manila or at the OWWA Collection Unit located in Pasig City, so he need not reapply and renew his employment requirements, but was denied. From then on, respondent was placed on a "floating status" *sans* pay.

Consequently, on 14 April 1999, respondent filed a complaint against petitioner VSAI and its President, Alfredo Vargas, Jr., for overtime pay, premium for holiday and rest day, holiday pay, service incentive leave pay, thirteenth (13^{th}) month pay and non-remittance of SSS contribution starting January 1999.[3] Respondent alleged, in his Position Paper, that he was terminated by VSAI to hit back at him for his filing of two (2) complaints against the company for non-remittances of his contributions and loan payments with the SSS. [4]

On 29 September 1999, respondent filed an additional complaint for illegal dismissal with claims for separation pay and attorney's fees.[5]

In its Position Paper, VSAI retorted that on 07 January 1999, it received a memorandum from Rafael C. Velez, Officer-in-Charge of the Administrative Department of OWWA, stating that OWWA's lease contract covering the parking area had expired for which reason the services of the three (3) guards, including respondent, had to be withdrawn. On 8 January 1999, respondent was given a posting assignment at the DOLE in lieu of his OWWA assignment, but was required to undergo an interview as well as neurological examination before final posting. Respondent did not report to work thereafter, although VSAI sent no less than three (3) memoranda for him to report for work. In its Position Paper, VSAI averred that it would submit copies of the payrolls for the pertinent periods to the Labor Arbiter to show that respondent had been paid in accordance with existing labor laws. However, these were never submitted.

On 08 February 2000, the Labor Arbiter dismissed the complaint for lack of merit. The NLRC reversed the decision of the Labor Arbiter in a Decision dated 24 April 2001, with the following *fallo*:

WHEREFORE, the assailed decision is hereby REVERSED and SET ASIDE and a new one entered declaring complainant-appellant's dismissal as illegal and ordering respondent-appellee to pay him his separation pays equivalent to one-month salary per year of service and his money claims of night shift differential pay, service incentive leave, legal holiday pay, overtime pay, computed three years backward, as follows:

1.) Separation P198 x 26 days x 7 yrs.	P36,036.00
2.) Salary differential from Jan. 8, 1996 to Jan. 8, 1999 = 3 yrs.	
- From Jan. 8, 1996 to Feb.1, 1996= 76 mos P8,335.05- 4,350 (P145.00 x 30 days) = P3,985.05 x .70 mos.	P 3,028.64
-From Feb.2, 1996 to Apr. 30, 1996 = 3 mos. P9,254.76 – 4,830 (161.00 x 30 days) = P4,424.76 x 3 mos.	13,274.28
-May 1, 1996 to Feb. 5, 1997 = 9.2 mos P9,484.71 – 4,950 (165.00 x 30 days) = P4,946.95 x 2.8 mos.	41,719.33
-Feb.6, 1997 to April 30, 1997 = 2.8 mos P10,346.95 – 5,400 (180.00 x 30 days) = P4,946.95 x 2.8 mos.	13,851.46
-May 1, 1997 to Feb. 5, 1998 = 9.2 mos P10,634.37 – 5,550 (180.00 x 30 days) = P4,946.95 x 2.8 mos.	46,776.20
-Feb. 6, 1998 to Jan. 8,1999 = 11.06 mos P11,381.65 – 5,940 (P198.00 x 30 days) = P5,441.65 x 11.06 mos.	60,184.65
	Total P178,834.56.
	GRAND TOTAL P214,870.56[6]

On 27 January 2003, the Court of Appeals affirmed the ruling of the NLRC. VSAI's motion for reconsideration was denied by the Court of Appeals in the Resolution[7] of 19 June 2003.

Hard done by the said ruling, petitioner now comes to this Court as a final recourse via the instant appeal assailing the Decision and Resolution of the Court of Appeals on the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT HELD THAT THE RESPONDENT WAS ILLEGALLY DISMISSED DESPITE A JUDICIAL ADMISSION BY RESPONDENT THAT HE WAS OFFERED SENTINEL DUTY IMMEDIATELY AFTER HIS RECALL FROM HIS POSTING ASSIGNMENT AT THE PREMISES OF OVERSEAS WORKERS WELFARE ADMINISTRATION, (OWWA).

II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT SUSTAINED THE AWARD BY THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), OF OVERTIME PAY TO THE RESPONDENT DESPITE A FINDING BY THE NLRC THAT THERE WAS NO IOTA OF EVIDENCE TO SATISFY THE BURDEN OF PROOF REQUIRED TO SUPPORT THE MONEY CLAIM.[8]

The issue of whether or not respondent was constructively dismissed is the bedrock of the petition. Related to this is the issue of whether or not respondent had abandoned his job.

VSAI ardently claims that there was no dismissal, constructive or otherwise. VSAI claims that respondent abandoned his post and went on Absence Without Leave. The evidence, however, points to a different direction.

Constructive dismissal exist when an act of clear discrimination, insensibility or disdain on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment.[9] On the other hand, abandonment, as a just and valid cause for termination, requires a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work. Abandonment is incompatible with constructive dismissal.[10]

We find the absence of abandonment, in this case, as there was no deliberate intent on the part of the respondent to abandon his employment with VSAI. A strong indication of the intention of respondent to resume work is that on several dates, after his last assignment on January 1999, he reported to the VSAI's office regularly for reassignment, but was not given any. He then lost no time in filing the illegal dismissal case. An employee who forthwith takes steps to protest his layoff cannot by any stretch of imagination be said to have abandoned his work and the filing of the complaint is proof enough og his desire to return to work, thus negating any suggestion of abandonment.[11] Significantly, respondent, in his position paper,[12] prayed for a regular assignment or in the alternative VSAI should be ordered to pay salaries until the time he is gainfully employed. Respondent's entreaty to be given a regular posting is antithetical to a charge of abandonment.

Moreover, the burden of proving that respondent has abandoned his job rests with VSAI. However, VSAI failed miserably to discharge the burden. VSAI adduced in evidence three memos allegedly sent via registered mail to respondent, but as the NLRC and the Court of Appeals ruled, the evidentiary value of these documents is of dubious authenticity as the memos had not been properly identified and were only attached belatedly to the petition.[13] Moreover, we note that there was no registry return card for these memos so there is no way of telling who received these

memos, if they were received at all by respondent. What is more, the three memos appear to be exact copies of each other except for the signatories and the dates and the way the addressees were written. The three memos commonly stated, viz:

> Re: Directive To Report to VSAI
> Operations Center For
> Re-Assignment
>
> Pursuant to the Standing Policy of our Agency to give priority assignment to security guards who have been relieved from their post of assignment and who are on a floating status, you are hereby *directed to report soonest to the VSAI Personnel Office at the above address for re-assignment.*
>
> Failure to comply will be tantamount to your non-interest for re-assignment and will constitute a waiver on your part of your rights under the circumstances.
>
> Please acknowledge receipt hereof by affixing your signature over your printed name on the space provided hereunder.[14] (Emphasis supplied.)

This similarity in form and substance of the memos engenders the impression that they were just pro-forma letters aimed at making it appear that VSAI have not dismissed respondent and that on three occasions it had asked respondent to report for work, but which notices the latter refused to heed. Further, it baffles the Court that the second memorandum did not mention about the previous memorandum sent to respondent. Neither did the third memorandum mention anything about the two previous memos.

We find it equally implausible that none of the 3 memos touched on respondent's alleged refusal to accept the posts assigned to him and the abandonment of his posts considering that such acts constitute willful disobedience and gross neglect of duty which are valid grounds for dismissal.[15]

VSAI capitalized on the fact that on 7 January 1999, it received a memorandum from the Officer-in-Charge of the Administrative Department of OWWA, informing that OWWA's lease contract covering the parking area had expired for which reason the services of the three (3) guards, including respondent, had to be withdrawn. The uncontroverted fact, however, is that respondent was already previously regularly detailed at the OWWA main office, but he was uprooted from this assignment and was tossed at the OWWA parking lot in Pasay City with the knowledge that the security services in that area would soon expire, as a consequence of which he would have to be reassigned somewhere else. As the facts stand, reassignment to a new client, in this case, necessitates a renewal of Barangay clearance, training certificate, neurological test, and ultimately passing the interview by the client. In effect, he would reapply with the next client of VSAI, which is the DOLE, and in the process of application, be on "floating status" without pay, with no assurance of acceptance despite securing the said documents as he would still have to undergo the rigors of an interview. Indeed, respondent was then left uncertain as to when and where his next assignment would be.

There is likewise something devious with the fact that a new recruit replaced