

THIRD DIVISION

[G.R. No. 139135, January 29, 2004]

**BOLINAO SECURITY AND INVESTIGATION SERVICE, INC.,
PETITIONER, VS. ARSENIO M. TOSTON, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

The burden of proving the validity of the dismissal of the employee rests on the employer. It is therefore incumbent upon him to prove by the quantum of evidence required by law that the dismissal of an employee is not illegal; otherwise, the dismissal would be unjustified.^[1]

For resolution is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[2] dated February 8, 1999 and the Resolution^[3] dated July 6, 1999 rendered by the Court of Appeals in CA-G.R. SP No. 50525, entitled "Bolinao Security and Investigation Service, Inc. vs. Hon. National Labor Relations Commission and Arsenio M. Toston."

The facts as borne by the records are:

Sometime in March 1993, Arsenio M. Toston, respondent, was employed as a security guard by Bolinao Security and Investigation Service, Inc., petitioner, with a monthly salary of P5,000.00. Eventually, petitioner assigned respondent at the United States Agency for International Development (USAID) situated at Richgel Realty Compound, Mañalac Avenue, Bagong Tanyag, Taguig, Metro Manila.

On August 17, 1995, at about 9:15 o'clock in the evening, respondent reported early for his eight (8) hour shift^[4] at USAID. He was about to relieve Alberto Nicolas, another security guard. He then informed Nicolas to proceed and report immediately to petitioner's office for an administrative investigation of his participation in the alleged illegal lotto betting within the company premises. He also told Nicolas that earlier, he was investigated but cleared of any participation in the offense.

Enraged, Nicolas suddenly pulled out his .38 caliber service pistol and shot respondent, hitting the back of his head. When Nicolas attempted to shot him again, they grappled for the gun. Nicolas dropped the weapon. Respondent ran away and reported the incident to the Taguig Police Station where he executed a sworn statement.^[5]

Later, respondent went to the Parañaque Medical Center and was examined and treated by Dr. Salvador.

Respondent then filed with petitioner an application for a one month leave of absence or from August 17 to September 15, 1995. He also claimed his sickness and/or medical benefits. While petitioner approved his one-month leave of absence, however, it rejected his claim for benefits.

This prompted respondent to file with the Social Security System (SSS) an application for sickness/medical benefits. At this instance, he came to know that petitioner failed to remit to the SSS its monthly contributions for nine (9) consecutive months. Consequently, he reported the matter to the SSS.

On September 15, 1995, Lucy Caasi, in-charge of remitting petitioner's contributions to the SSS, scolded and rebuked respondent and told him not to report for work and that his name would be "dropped from the rolls."

On September 29, 1995, respondent filed with the Labor Arbiter a complaint against petitioner and its president, Urbano S. Caasi, Jr., for illegal dismissal and non-payment of wages and other benefits, with prayer for reinstatement and payment of full backwages, docketed as NLRC NCR Case No. 00-09-06593-95.

On December 21, 1995, petitioner sent a letter to respondent declaring him absent without leave (AWOL) since September 16, 1995. He could not report then for work due to the pendency of his complaint with the Labor Arbiter.

On January 24, 1996, after conducting an investigation, USAID submitted its report to petitioner recommending that respondent and Nicolas be relieved from their posts.

After the submission of the parties' position papers, the Labor Arbiter rendered a Decision dated August 5, 1996 finding that respondent was illegally dismissed from employment and ordering petitioner (1) to reinstate him to his former position and (2) to pay his full backwages amounting to P109,728.38, moral and exemplary damages in the sum of P50,000.00 and attorney's fees equivalent to 10% of the monetary awards. The dispositive portion of the Decision reads:

"WHEREFORE, the respondents are hereby ordered to reinstate the complainant with full backwages from the time his salaries were withheld from him until his actual reinstatement.

"The respondents are further ordered to pay the complainant P50,000.00 as moral and exemplary damages.

"The respondents are furthermore ordered to pay the complainant 10% of the monetary awards as attorney's fees.

"The complainant's backwages up to the date of this Decision, as computed by Ma. Cristina T. Paraoan of the Commission's NCR Branch is P109,728.38.

"Article 223 of the Labor Code in part provides that 'In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall

either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.' Consequently, the respondents are further directed to reinstate the complainant when he reports for work by virtue of this Decision.

"Other claims are hereby dismissed for lack of merit.

"SO ORDERED."

Upon appeal, the National Labor Relations Commission (NLRC) promulgated a Decision dated March 31, 1997 affirming with modification the Arbiter's assailed Decision in the sense that the award of moral and exemplary damages was deleted. Petitioner filed a motion for reconsideration but was denied.

Thereafter, petitioner filed with this Court a petition for certiorari which we referred to the Court of Appeals pursuant to our ruling in *St. Martin's Funeral Home vs. NLRC*.^[6]

On February 8, 1999, the Court of Appeals rendered a Decision affirming in toto the NLRC Decision and Resolution, thus:

"The records show that private respondent Arsenio M. Toston was scolded and rebuked by one Lucy Caasi of the Bolinao Agency after he filed a claim for medical benefits with the SSS, and on September 15, 1995, she told him not to report for work and that his name was dropped from the rolls. To drop him from the rolls is a definitive mode of severance of a worker from his employment upon the initiative of the employer. It constitutes a permanent separation from office, and in effect, is a removal from the service. Such separation – dropped from the rolls – for unexplained reason does not constitute a valid cause for removal (*Pizza Hut/Progressive Development Corporation vs. NLRC*, 252 SCRA 531). His dismissal was effected without notice and hearing as shown in the Labor Arbiter's finding. The removal for no justifiable cause and without notice and hearing is illegal, and entitles private respondent to reinstatement without loss of seniority rights and with full backwages (Article 279, Labor Code).

"Petitioner insists that the Labor Arbiter did not give the firm and its co-respondent Urbano Caasi the chance to reply. This insistence would not strengthen petitioner's cause. Due process connotes a reasonable opportunity to be heard and to submit evidence in support of one's defense (*Midas Touch Food Corporation vs. NLRC*, 259 SCRA 652). The requirements of due process are satisfied where the parties are given an opportunity to submit position papers (*Salonga vs. NLRC*, 254 SCRA 111). Petitioner submitted its position paper and documentary evidence. Hearings were conducted by the labor arbiter for reception of the evidence of the contending parties. Petitioner, certainly was afforded all the opportunities to be heard.

"Petitioner's offer to reinstate private respondent after such separation