470 Phil. 333

THIRD DIVISION

[G.R. No. 147473, March 30, 2004]

ACD INVESTIGATION SECURITY AGENCY, INC., PETITIONER, VS. PABLO D. DAQUERA, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated October 20, 2000 and the Resolution[2] dated March 14, 2001 rendered by the Court of Appeals in CA-G.R. SP No. 50510, entitled "*ACD Investigation Security Agency, Inc. vs. National Labor Relations Commission and Pablo D. Daquera.*"

The controversy herein stemmed from a complaint of Pablo Daquera, respondent, for illegal dismissal, illegal suspension, illegal deduction, and non-payment of benefits[3] against ACD Investigation Security Agency, Inc. (ACDISA), petitioner, Alfonso Dilla, Sr. and Public Estates Authority. The complaint was filed with the Labor Arbiter, docketed as NLRC NCR Case No. 00-05-03335-96.

Respondent, in his complaint, alleged that on February 15, 1990, he was employed as a security guard by petitioner. Subsequently or on September 1, 1994, he was reassigned to Public Estates Authority as a security officer with a monthly salary of P6,000.00 for a twelve (12) hour daily work shift. However, he was illegally suspended on April 4, 1996 and thereafter illegally dismissed for dishonesty, without prior written notice and investigation.

For its part, petitioner claims that sometime in March, 1996, it received several complaints against respondent for abandonment of post, drinking liquor while on duty, and extortion from subordinate security guards. Thus, an administrative investigation was conducted. Meantime, respondent was placed on one-month preventive suspension effective April 4, 1996. After evaluating the evidence, petitioner found respondent guilty of dishonesty and neglect of duty. Instead of terminating respondent's services, petitioner reassigned him to another post. However, he refused and took a leave of absence to seek employment elsewhere. After one week, respondent still failed to report for work and instead filed with the Labor Arbiter a complaint against petitioner.

After the submission of the parties' pleadings and position papers, the Labor Arbiter rendered a Decision dated July 3, 1997 finding respondent's dismissal from employment illegal and ordering petitioner and Alfonso Dilla (1) to reinstate him to his former or equivalent position; and (2) to pay him, jointly and severally, backwages of P78,000.00, P314,518.00 as monetary benefits , and attorney's fees. The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, the dismissal of the complainant is hereby declared as illegal. Consequently, respondents ACD Investigation Security Agency, Inc. and/or Alfonso Dilla Sr., are hereby ordered to reinstate complainant to his former or equivalent position without loss of seniority rights and to pay him jointly and severally his backwages of SEVENTY EIGHT THOUSAND PESOS (P78,000.00) and his money claims totaling TWO HUNDRED THIRTY SIX THOUSAND FIVE HUNDRED EIGHTEEN PESOS and 88/100, all in the aggregate of THREE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED EIGHTEEN PESOS and 88/100 CENTAVOS (P314,518.00) plus attorney's fees equivalent to ten (10%) percent of the total award.

"SO ORDERED."

On appeal, the National Labor Relations Commission (NLRC), in its Decision dated June 2, 1998, affirmed the Arbiter's Decision, declaring that respondent was dismissed illegally and ordering his reinstatement with payment of backwages and other benefits, but discharging Dilla from liability. Petitioner filed a motion for reconsideration but was denied by the NLRC in a Resolution dated November 9, 1998.

Petitioner then filed with the Court of Appeals a petition for certiorari seeking to set aside the NLRC Decision and Resolution.

In due course, the Court of Appeals issued the assailed Decision dated October 20, 2000, affirming *in toto* the Decision of the NLRC, thus:

"After a punctilious assessment of the records, it becomes apparent that the 'evidence' upon which said dismissal is professedly based does not measure up to that modicum of substantiality. Elsewise stated, the petitioner was unable to affirmatively show rationally adequate evidence that the dismissal was for a just cause (*Western Shipping Agency, Inc. vs. NLRC, 253 SCRA 405; P.I. Manpower Placements, Inc. vs. NLRC, 276 SCRA 451; Brahm Industries, Inc. vs. NLRC, 280 SCRA 828; Caurdanetaan Piece Workers Union vs. Laguesma, 286 SCRA 401; Stolt-Nielsen Marine Services, Inc. vs. NLRC, 3000 SCRA 713*).

x x x

"Verily, there was no substantial evidence to speak of; hence, the charges leveled against the private respondent were nothing but plain hearsay. The petitioner placed immense, albeit undue, reliance on the affidavit of the operations manager (page 134 of the Record). Such affidavit being self-serving must be received with caution. By themselves, generalized and *pro-forma* affidavits cannot constitute relevant evidence which a reasonable mind may accept as adequate (Madlos vs. NLRC, supra). An affidavit is only *prima facie* evidence and should be received with caution because of its weak probative value. It is not a complete reproduction of what the declarant had in mind. Nor is it indubitable when prepared on command or as awhen prepared on command or as arity. Unless the affiant is placed on the witness stand to testify hereon, an affidavit is considered hearsay. (*Carlos A. Gothoidered*

hearsay. (Carlos A. GothoA 164).

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"Neither can we say that the private respondent's actions were indicative of abandonment (pages 31-32, 72 of the Record; pages 13-15, 124-126 of the Rollo). To constitute such a ground for dismissal, there must be – (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention, as manifested by some overt acts, to sever the employer-employee relationship (*Pure Blue Industries, Inc. vs. NLRC, 271 SCRA 259; Hagonoy Rural Bank, Inc. vs. NLRC, 285 SCRA 297; Leonardo vs. NLRC, G.R. Nos. 125303, 126937, June 16, 2000*).

x x x

"The petitioner contends that the private respondent is estopped from pursuing his money claims inasmuch as the certification of payment (pages 17, 128 of the Rollo) is tantamount to waiver and quitclaim and is an admission against his interest (pages 33, 38, 102, 140-142 of the Record).

"We are not persuaded.

"Quitclaims by laborers are frowned upon as contrary to public policy and are held to be ineffective to bar recovery for the full measure of the workers' rights (*Marcos vs. NLRC*, 248 SCRA 146; *Agoy vs. NLRC*, 252 SCRA 588). The reason for such rule was laid down in *Cariño vs. ACCFA* (18 SCRA 183), x x x:

x x x

"Anent the procedural aspect of the alleged illegal dismissal, the record is bereft of any showing that the private respondent had been given ample opportunity to be heard and notified of the nature and cause of his termination from employment. Therefore, as argued by the Solicitor General, 'the procedural requirement in validly terminating the employment of Daquera was not complied with.' (page 75 of the Rollo). Notwithstanding that the two-notice rule had not been lawfully complied with, such infirmity does not militate against the legality of the dismissal.

x x x

"Insofar as the money claims are concerned, We find no compelling reason to modify the same. The Labor Arbiter correctly ruled that –

> 'The claim for separation pay is not in order since the dismissal of the complainant is illegal and the relief due to him x x x is reinstatement with full backwages. Likewise, the claim for underpayment and damages are dismissed for lack of merit.' (page 87 of the Record)

x x x