

## **THIRD DIVISION**

**[ G.R. No. 107320, January 19, 2000 ]**

**A' PRIME SECURITY SERVICES, INC., PETITIONER, VS.  
NATIONAL LABOR RELATIONS COMMISSION (SECOND  
DIVISION), HON. ARBITER VALENTIN GUANIO, AND OTHELLO  
MORENO, RESPONDENTS.**

### **D E C I S I O N**

**PURISIMA, J.:**

This special civil action for certiorari seeks to annul the decision<sup>[1]</sup> of the Second Division of the National Labor Relations Commission ("NLRC"), dated April 20, 1992, which affirmed with modification the decision of Labor Arbiter Valentin C. Guanio in NLRC-NCR Case No. 00-02-01038-89.

The facts that matter are as follows:

On February 23, 1989, private respondent Othello C. Moreno filed a complaint with the Department of Labor and Employment, Arbitration Branch, National Capital Region, against the petitioner, A' Prime Security Agency, Inc., for illegal dismissal, illegal deduction and underpayment of wages. Docketed as NLRC-NCR Case No. 00-02-01038-89, the complaint was assigned to Labor Arbiter Valentin C. Guanio ("LA Guanio").

The complaint alleged, among others, that complainant (private respondent herein) had been working as a security guard for a year with the Sugarland Security Services, Inc., a sister company of petitioner; that he was rehired as a security guard on January 30, 1988 by the petitioner and assigned to the same post at the U.S. Embassy Building along Roxas Boulevard, Manila; that he was among those absorbed by the petitioner when it took over the security contracts of its sister company, Sugarland Security Services, Inc., with the U.S. Embassy; that he was forced by petitioner to sign new probationary contracts of employment for six (6) months; that on August 1, 1988, his employment was terminated; that during his employment, the amount of P20.00 per month was deducted from his salary allegedly for withholding tax, although no withholding tax receipt was given to him, and the salary he was receiving was only P2,187.00 a month, which was way below the P2,410.17 stipulated in the PADPAO memorandum of agreement.

Petitioner, for its part, alleged that the private respondent was hired on January 30, 1988, on a probationary basis, and he signed an authority to deduct from his salary any reimbursement for any loss or damage caused to properties of the client; that he was given a copy of petitioner's rules and regulations which provide that sleeping on post is punishable by warning, suspension and dismissal and he was caught sleeping on post on March 17, 1988, for which he was sent a memorandum giving him a last warning; that on March 25, 1988, he figured in a quarrel with another

security guard, which resulted in a near shootout; that at the end of his probationary employment, he was given a psychological test and on the basis of the foregoing, petitioner told him that his probationary employment had come to an end as he did not pass the company standard and therefore, he could not be hired as a regular employee.

On November 28, 1989, LA Guanio handed down the decision<sup>[2]</sup> disposing as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent to reinstate the complainant to his former position and accord to him the status of a regular employee. The respondent is further ordered to pay the complainant his backwages from the time he was unlawfully dismissed until he is finally reinstated; and to refund to the complainant the deduction it had made from his salary in the amount of ₱20.00 per month.

The claim of the complainant for underpayment of wages is dismissed for lack of merit.

SO ORDERED."

Petitioner appealed to the National Labor Relations Commission which affirmed the decision of LA Guanio with a slight modification, holding thus:

"WHEREFORE, premises considered, the appealed decision is hereby, Modified as aforesaid. The order for the refund of the deductions made by respondent from complainant's salaries in the amount of ₱20.00 per month is hereby, Vacated and Set Aside.

Moreover, the backwages due complainant should in no case exceed the period of three (3) years.

In all other respects, the decision appealed from, stands."<sup>[3]</sup>

Petitioner presented a motion for reconsideration<sup>[4]</sup> of the aforesaid decision but to no avail. The same was denied by the respondent NLRC for lack of merit.<sup>[5]</sup>

Undaunted, petitioner found its way to this Court *via* the present petition, contending that:

"I

BASIC PUBLIC RESPONDENTS HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR IN EXCESS OF JURISDICTION WHEN THEY UNDULY PRONOUNCED PRIVATE RESPONDENT'S EMPLOYMENT WITH THE PETITIONER AS A CONTINUANCE OF ITS (*sic*) PREVIOUS EMPLOYMENT WITH ITS (*sic*) OLD EMPLOYER, THE SUGARLAND SECURITY SERVICES, INC., WITHOUT ANY SHRED OF EVIDENCE LINKING THE TWO COMPANIES, EMPLOYERS WHICH ARE DISTINCT AND DIFFERENT PERSONALITIES, AS PROVEN BY THE RECORDS OF THE CASE, RESULTING IN SERIOUS PREJUDICE OF

THE PETITIONER WHICH, LIKE LABOR, ALSO DESERVES PROTECTION OF THE LAW.

## II

BOTH PUBLIC RESPONDENT (*sic*) HAVE COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY CHARGED AND FOUND PETITIONER GUILTY OF ILLEGAL DISMISSAL AND THUS FAILED TO CONSIDER THAT THE TERMINATION OF THE PROBATIONARY CONTRACT BY THE PETITIONER IS A LEGITIMATE EXERCISE OF DISCRETION IN ANTICIPATION OF WHAT IT PERCEIVED OF AN EMPLOYEE, IN THE PERSON OF THE PRIVATE RESPONDENT, WHICH (*sic*) WILL NOT MAKE A GOOD - (*sic*) ASSET OF THE COMPANY AND INSTEAD IS A LIABILITY AS IT POSSES (*sic*) DANGERS NOT ONLY ON THE PETITIONER BUT ON ITS VERY CLIENT, THE U.S. EMBASSY, WITH WHOM PRIVATE RESPONDENT IS DIRECTLY SERVING WITH (*sic*), DUE TO ITS (*sic*) INEFFICIENCY, INEPTNESS (*sic*) AND MORE THAN (*sic*) BELOW BAR PERFORMANCE BY (*sic*) THE PRIVATE RESPONDENT DURING ITS (*sic*) SIX MONTH PROBATIONARY PERIOD;

## III

THE PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION WHEN THEY ORDERED PETITIONER FOR THE PAYMENT OF (*sic*) PRIVATE RESPONDENT'S BACK WAGES (*sic*) AND FOR ITS (*sic*) REINSTATEMENT."

For resolution can be simplified into the following issues, to wit:

1. Whether private respondent's employment with A' Prime Security Services, Inc. was just a continuation of his employment with Sugarland Security Services, Inc.;
2. Whether private respondent is a regular or probationary employee of petitioner; and
3. Whether private respondent's dismissal is illegal.

After a careful study, the Court finds the imputation of grave abuse of discretion on the part of the respondents, NLRC and "LA Guanio", barren of any sustainable basis.

Anent the first issue, records show that the allegations of the private respondent that Sugarland Security Services, Inc. ("Sugarland") is a sister company of A' Prime Security Services, Inc. ("A' Prime") and that the latter absorbed the security contracts and security guards of Sugarland with the U.S. Embassy were neither denied nor controverted by the petitioner before the Labor Arbiter. Under Section 1, Rule 9 of the Rules of Court,<sup>[6]</sup> in relation to Section 3, Rule I of the Rules of the NLRC,<sup>[7]</sup> material averments in the Complaint are deemed admitted when not specifically denied.

In the petition under scrutiny, it is contended belatedly that A' Prime and Sugarland are two separate and distinct juridical entities. However, aside from such a bare allegation, petitioner presented no supporting evidence and the Court cannot, of course, act thereupon without any legal basis.