

NINETEENTH DIVISION

[CA-G.R. SP NO. 07525, February 27, 2015]

LION INTEGRATED SERVICES, INC., JOSE B. POE III AND NOEL PATUBO, PETITIONERS, VS. RODNEY ABISADO AND NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.

D E C I S I O N

QUIJANO-PADILLA, J.:

This is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court assailing, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the October 15, 2012^[2] Decision and December 14, 2012^[3] Resolution of the National Labor Relations Commission (NLRC), 7th Division, Cebu City in NLRC Case No. VAC-05-000336-2012. The assailed Decision affirmed with modification the March 29, 2012 Decision^[4] of the Labor Arbiter in RAB Case Nos. VI-10-10524-11 by deleting the award of separation pay to private respondent and reinstated the latter to his former position without loss of seniority rights and other privileges. On the other hand, the assailed Resolution denied petitioner's motion for reconsideration.

The Antecedents

The instant case arose from the complaint of illegal dismissal and underpayment of 13th month pay with a claim for moral and exemplary damages and attorney's fees filed by private respondent Rodney A. Abisado against petitioners Lion Integrated Services, Inc. (LSI) and/or Jose Vingson Po (Po) and Noel Patubo (Patubo), its owner and officer-in-charge, respectively, before the NLRC, Regional Arbitration Branch (RAB) No. VI, Bacolod City. Private respondent thereafter amended his complaint to include payment of vacation/sick leave pay and changed the date of his employment from December 2006 to December 2005. Failing to amicably settle during their mandatory conciliation proceedings, both parties were directed to file their respective position papers.

In his Position Paper,^[5] private respondent alleged that he was hired as security guard in December 2005. Since the time of his engagement up to the time of his dismissal, private respondent was assigned at Hawaiian-Philippine Company (HPCO), a sugar central in Negros Occidental. Private respondent rendered twelve (12) to fifteen (15) days every quincena and was paid a salary of two hundred and sixty five pesos (Php 265.00) daily. He was not paid vacation/sick leave pay nor service incentive leave pay and received only five thousand pesos (Php 5,000.00) as 13th month pay in the years 2009 and 2010 but did not receive any in the year 2011.

On March 25, 2011, private respondent was on duty at the Cubay gate of HPCO when at about 2:45 a.m., Engr. Joey Aguilar (Aguilar), HPCO Mill Supervisor, called

Cosmos (the security agency's radio base) to wake up the employee in charge of the pollution area, Security Guard (SG) Ronilo Duron (Duron), so that the latter could open the sluice gate as water was flooding the mill site. After the task was accomplished, SG Duron called up Cosmos and asked that Engr. Aguilar be notified accordingly. However, Cosmos replied that it could not reach Engr. Aguilar through radio. SG Duron then asked why there were no guards in Cubay. Upon hearing this statement, private respondent answered that he could not leave his post because his fellow guard was on roving duty and he was alone. At that point, a certain Medardo Parreno (Parreno), a covert security guard of petitioner LSI whose identity is so kept so as to facilitate detection of suspected pilferers or other criminal elements in the area, intercepted the radio saying, "*Ginago na ang imo. Tinamad na.*" (This is plain stupidity. You are just being lazy.) Private respondent answered back saying, "*Indi kaya mag intra, amon ni ya obra.*" (Do not interfere. This is our work.) Heated exchanges ensued between private respondent and Parreno until they were stopped by their Shift-in-Charge. ^[6]

After his tour of duty, private respondent caused the incident with Parreno to be recorded in the police blotter^[7] and also referred the matter to the Brgy. Lupon.^[8] Shortly before the barangay conciliation conference, HPCO Detachment Commander Noel Patubo (Patubo) called private respondent and Parreno to a conference and reprimanded private respondent for bringing the matter to the barangay. Private respondent explained that it was a personal matter between him and Parreno since the latter was not his superior officer and had no business reprimanding him or telling him what to do, much less, insulting him. On March 29, 2011, private respondent received a show-cause memorandum^[9] requiring him to explain within twenty-four (24) hours why no drastic action will be taken against him for having acted negatively in emergency cases, particularly referring to the incident on March 26, 2011. Private respondent was also asked to explain why he brought his complaint against Parreno to the barangay and not through the security agency's chain of command.^[10]

On March 30, 2011, without waiting for private respondent's answer, Patubo sent the private respondent a post-dated memorandum^[11] relieving him from his assignment and directing him to report to the security agency's headquarters in Mandaluyong City. On April 8, 2011, private respondent managed to report to the security agency's headquarters in Mandaluyong City where he met Mr. Jayme Lanillo (Lanillo), Operations Officer, who was surprised of his personal visit and intimated that the private respondent could have just communicated with the office entailing lesser expense on his part. Private respondent showed Lanillo his relief order from Patubo. Lanillo then informed him to stand by because there was no vacancy yet. Private respondent kept on following up on his assignment by communicating with Lanillo through text messaging but no new assignment was given to him. After a lapse of six (6) months without any posting, private respondent filed the instant suit.^[12]

For their part, petitioners presented a different version in their Position Paper^[13] and contend that private respondent was employed on January 12, 2006 and assigned at HPCO, Negros Occidental. That on March 29, 2011, at around 11:00 p.m., there was a heavy downpour of rain which caused the flooding in the area. When the water at the factory reached critical level, the Mill Supervisor requested

assistance from SG Duron to control the valve going to the pollution area so that the water would subside from the factory. After completing said task, SG Duron radioed private respondent to check the water level at the mill area because it was near his post. However, private respondent refused to leave his post because it was raining. He further communicated over the radio that it was not his job to check the water level. Private respondent's communication with SG Duron and his obstinate refusal to proceed to the mill area was heard by his co-guards. In fact, his patent refusal reached the Factory Manager and Security Officer of HPCO, both of whom felt that private respondent's act placed the factory at risk, and hampered or affected the operation and safety of their property.

On March 29, 2011, OIC Patubo sent private respondent a notice^[14] to explain within twenty-four (24) hours regarding his refusal to respond to the emergency, a notice which complainant refused to receive. Twenty-four (24) hours having elapsed without the private respondent having filed his explanation, OIC Patubo was constrained to relieve the private respondent from his post on March 31, 2011 and submit the matter to the headquarters of petitioner LSI.^[15] In the said relief order, private respondent was directed to report to petitioner LSI's headquarters to personally explain the matter. Allegedly, private respondent never reported thereto and since then, nothing was heard from him again.^[16]

The Decisions of the Labor Arbiter and NLRC

After carefully weighing the parties' allegations and counter-allegations and the evidence on hand, the Labor Arbiter rendered its Decision^[17] on March 29, 2012, declaring private respondent as constructively dismissed from employment and thus, directed petitioner LSI to pay private respondent backwages, separation pay, in lieu of reinstatement, and attorney's fees. The dispositive portion of said Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding complainant Rodney A. Abisado to have been constructively dismissed by respondent Lion Integrated Services Incorporated. Accordingly, the latter is hereby ordered to pay complainant backwages and separation pay, in lieu of reinstatement. It is also found that complainant is entitled to attorney's fees.

The awarded backwages, separation pay and attorney's fees are computed as follows:

1. Backwages	
(3/31/11-	
3/29/12 + 11.94	
mos.)	
P265.00 x 26 x	P
11.94 mos. -----	82,266.60

13 th mo. -	6,855.55
P82,266.60/12 --	

SILP – P265.00 x	1,318.11

4.974 days -----

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ECOLA (7/16/11-
10/11=3mos.)

P12 x 26 x 3mos. 936.00 P91,376.36

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2. Separation Pay

(1mo./yr)

(in lieu of

Reinstatement)

12/06 – 3/29/12

= 5 yrs.)

P265.00 x 26 x 5

34,450.00

yrs. -----

Sub-Total -----

P125,826.26

3. Attorney's Fees

12,582.63

(10%) -----

GRAND TOTAL --

P138,408.89

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Respondents Lion Integrated Services Incorporated is ordered to deposit the total amount of ONE HUNDRED THIRTY EIGHT THOUSAND FOUR HUNDRED EIGHT AND 89/100 (P138,408.89) with the Cashier of this Arbitration Branch within ten (10) days from receipt of this Decision.

Claims against respondents Jose Vingson Po and Noel Patubo and all other claims are DISMISSED for lack of merit."

Aggrieved, petitioner LSI appealed^[18] the aforesaid ruling to the NLRC. On appeal, the NLRC upheld the ruling of constructive dismissal but under a different theory than that advanced by the Labor Arbiter. According to the NLRC, private respondent was not validly placed on floating status considering that the removal of private respondent from his post was not brought about by the dire exigency of the employer's bona fide suspension of operation, business or undertaking but was done in an arbitrary and capricious manner with the objective of retaliating at private respondent for not having reacted the way they had expected him to react in that instance. As such, private respondent is entitled to reinstatement and payment of backwages from the time compensation was withheld from him on March 31, 2011 up to his actual reinstatement.

On October 15, 2012, the NLRC promulgated its Decision^[19] affirming the appealed decision but modified the same by deleting the award of separation pay to private

respondent and ordering his reinstatement. The dispositive portion of said Decision reads:

"WHEREFORE, premises considered, the Decision of the Labor Arbiter dated 29 March 2012 is hereby AFFIRMED, with the modification that, the award of separation pay be deleted and complainant be REINSTATED to his former position without loss of seniority rights and other privileges.

Respondents are ordered to pay the amount of P139,893.44 as backwages, subject to further re-computation up to actual reinstatement. The award of attorney's fees is sustained and correspondingly adjusted in the amount of P13,989.34."

From the aforesaid Decision, petitioner LSI moved for reconsideration,^[20] which was opposed^[21] by private respondent, but the NLRC denied the same in its December 14, 2012 Resolution.^[22]

Hence, petitioner LSI filed the present petition imputing grave abuse of discretion on the part of the NLRC based on the following grounds:

I.

the public respondent national labor relations commission committed grave abuse of discretion when it held that private respondent was constructively dismissed from employment when he was relieved from duty at Hawaiian-Philippines.

II.

The public respondent national labor relations commission committed grave abuse of discretion when it held that private respondent is entitled to backwages.

III.

Assuming without admitting that complainant – appellee is entitled to backwages, the same must be reckoned six (6) months after his relief from duty at Hawaiian-Philippines.

IV.

Complainant-appellee is not entitled to attorney's fees. ^[23]

This Court's Ruling

The petition is bereft of merit.

Basic is the rule that judicial review of labor cases does not go so far as to evaluate the sufficiency of evidence on which the labor officials' findings rest.^[24] As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.^[25]