

## **ELEVENTH DIVISION**

**[ CA-G.R. SP. NO. 125811, March 21, 2014 ]**

**ELORDEGREY B. GUADALUPE, PETITIONER, VS. NATIONAL  
LABOR RELATIONS COMMISSION (THIRD DIVISION), EASTERN  
DEFENDER SECURITY AND PROTECTIVE SERVICES, INC.,  
ANTONIO CABANGON CHUA, RESPONDENTS.**

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

**ANTONIO-VALENZUELA, J.:**

This is the Petition For Certiorari<sup>[1]</sup> filed by Elordegrey B. Guadalupe ("petitioner Guadalupe"), imputing grave abuse of discretion on the part of the National Labor Relations Commission, Third Division ("NLRC") for issuing the Decision dated 21 March 2012<sup>[2]</sup> ("assailed Decision"), and the Resolution dated 16 May 2012<sup>[3]</sup> ("assailed Resolution").

The facts are as follows: on 1 November 2004, the Eastern Defender Security & Protective Services, Inc. ("private respondent Corporation") hired petitioner Guadalupe<sup>[4]</sup> to work as a security guard; on 29 September 2010, while working as the Detachment Commander at the Eternal Gardens Memorial Park, Inc. in Caloocan City, petitioner Guadalupe received Operation Special Order 2010-9-67<sup>[5]</sup> dated 29 September 2010 issued by private respondent Corporation which stated that he was temporarily relieved from his post, and instructed that he report to the management of private respondent Corporation for further instructions; petitioner Guadalupe claimed he was relieved from his position because there was an investigation on the loss of koi fish at the lagoon of the Eternal Gardens Memorial Park, Inc.; on 27 October 2010, private respondent Corporation sent petitioner Guadalupe Operation Special Order 2010-10-65,<sup>[6]</sup> informing petitioner Guadalupe that he was temporarily posted at CSBI located at 260 Quirino avenue Baclaran, Parañaque, but petitioner Guadalupe did not receive the Operation Special Order 2010-10-65 because it was not sent to his address; on 21 December 2010, Mr. Nikko Bryan Matias (private respondent Corporation's Operations Personnel Assistant) spoke to petitioner Guadalupe over the cellular phone, and told him about the available position at Eternal Gardens, Concepcion, Batangas;<sup>[7]</sup> petitioner Guadalupe declined the posting, and said he would wait for the posting promised by Mr. Mario Marahay; on 29 December 2010, Mr. Nikko Bryan Matias called petitioner Guadalupe again, and informed him of the available position at Citystate Bank, Baclaran Branch and Plaridel Branch, but petitioner Guadalupe did not accept the posting because it was far from his home;<sup>[8]</sup> private respondent Corporation sent three letters by registered mail (i.e., dated 3 January 2011;<sup>[9]</sup> dated 19 January 2011;<sup>[10]</sup> and dated 9 February 2011)<sup>[11]</sup> ("three letters") to petitioner Guadalupe at his last known address at 215 Bagong Silang, Catmon, Malabon, Metro Manila, requesting him to report to the office of private respondent Corporation for his possible posting, however, according to the three Philippine Postal Corporation Certifications all dated

28 October 2011,<sup>[12]</sup> the three letters of private respondent Corporation addressed to petitioner Guadalupe, were "returned to sender" because the address was "unknown;" petitioner Guadalupe filed the Amended Complaint<sup>[13]</sup> for constructive illegal dismissal, with prayer for reinstatement, full backwages, damages and attorney's fees, against private respondent Corporation, and Antonio Cabangon Chua ("private respondents"), before the Labor Arbiter, docketed as NLRC RAB No. NCR-04-06120-11; in the Decision dated 28 September 2011,<sup>[14]</sup> the Labor Arbiter ruled in favor of petitioner Guadalupe, and found that private respondents had constructively dismissed petitioner Guadalupe because he was placed on "floating status" for more than the six months maximum period allowed, and that private respondents should have called petitioner Guadalupe back to work after six months from 29 September 2010, thus the Labor Arbiter ordered the private respondents to pay petitioner Guadalupe separation pay, because reinstatement was not possible due to strained relations between the parties. The dispositive portion of the Labor Arbiter's Decision read:

"WHEREFORE, in the light of the foregoing, judgment is hereby rendered declaring private respondents guilty of constructive dismissal.

Respondent **EASTERN DEFENDER SECURITY AND PROTECTIVE SERVICES, INC.**, is hereby ordered to pay complainant ELORDEGREY B. GUADALUPE as follows:

1. Limited backwages computed from September 29, 2010 until April 15, 2011, in the amount of **ONE HUNDRED SEVENTY EIGHT THOUSAND SIX HUNDRED SIXTY PESOS & 69/100 (Php178,660.69)**;
2. Separation pay, in lieu of reinstatement, equivalent of one (1) month's pay for every year of service computed from May 30, 2000 until April 15, 2011, in the amount of **TWO HUNDRED NINE THOUSAND PESOS (Php209,000.00)**; and
3. Ten percent (10%) of the total award as attorney's fees, in the amount of **THIRTY EIGHT THOUSAND SEVEN HUNDRED SIXTY SIX PESOS & 07/100 (Php38,766.07)**.

SO ORDERED."

The private respondents filed an appeal. In the assailed Decision promulgated 21 March 2012,<sup>[15]</sup> the NLRC reversed the ruling of the Labor Arbiter. The dispositive portion of the NLRC's Decision read:

"WHEREFORE, the Labor Arbiter's Decision dated September 28, 2011 is hereby REVERSED and SET ASIDE. Respondent Easter (sic) Defender Security and Protective Services, Inc. is directed to accept back the complainant without loss of seniority rights as well as to provide an available posting and to submit a report of compliance within ten (10) calender days from receipt hereof.

SO ORDERED."

On 16 May 2012, the NLRC issued the assailed Resolution,<sup>[16]</sup> denying the motion for reconsideration filed by petitioner Guadalupe.

Thus, this Petition, making the lone assignment of error:

WHETHER THE PUBLIC RESPONDENT NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THERE WAS NO CONSTRUCTIVE ILLEGAL DISMISSAL.

The issues are: 1) whether the NLRC committed grave abuse of discretion in ruling that private respondents did not constructively and illegally dismiss petitioner Guadalupe; and 2) whether petitioner Guadalupe is entitled to backwages, separation pay, moral and exemplary damages, and attorney's fees.

PETITION FOR CERTIORARI<sup>[17]</sup>

Anent the first issue, the petitioner Guadalupe answers in the affirmative. The NLRC committed grave abuse of discretion in ruling that private respondents did not constructively and illegally dismiss petitioner Guadalupe.

The Petition for Certiorari<sup>[18]</sup> thrusts: private respondents are guilty of constructive illegal dismissal; on 29 September 2010, private respondents informed petitioner Guadalupe that he was "temporarily relieved" from his post effective 29 September 2010; as correctly found by the Labor Arbiter, there was no service of notice because petitioner Guadalupe did not receive the three letters sent by private respondents informing him that he (petitioner Guadalupe) was re-assigned; the Supreme Court has held that the temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six months; petitioner Guadalupe filed the Complaint against private respondents more than six months after he was placed on "floating status;" the lapse of more than six months since private respondents placed petitioner Guadalupe on "floating status," without private respondents calling petitioner Guadalupe back to work, meant private respondents constructively dismissed petitioner Guadalupe.

Regarding the second issue, the petitioner Guadalupe answers in the affirmative. Petitioner Guadalupe is entitled to backwages, separation pay, moral and exemplary damages, and attorney's fees.

The Petition for Certiorari<sup>[19]</sup> thrusts: petitioner Guadalupe can rightfully claim the payment of backwages as a consequence of his illegal dismissal because backwages is a form of relief that restores the income of the employee that was lost by reason of the unlawful dismissal; petitioner Guadalupe is also entitled to separation pay because the strained relations between the parties makes reinstatement no longer possible; moral damages should also be awarded because petitioner Guadalupe suffered moral anguish and sleepless nights due to the acts of private respondents; exemplary damages should likewise be awarded because there is a need to deter the employer from adopting similar devious acts, and to serve as an example to the public in general by suppressing the wanton and malevolent attitude of private respondents; as petitioner Guadalupe was compelled to litigate to assert his lawful claims, the award of attorney's fees is justified.

## COMMENT (TO PETITIONER'S FOR CERTIORARI)<sup>[20]</sup>

Anent the first issue, the private respondents answer in the negative. The NLRC did not commit grave abuse of discretion in ruling that they (private respondents) did not constructively and illegally dismiss petitioner Guadalupe.

The Comment (To Petitioner's for Certiorari)<sup>[21]</sup> parries: the private respondents did not constructively dismiss petitioner Guadalupe; private respondent called petitioner Guadalupe twice on his cellular phone, within six months from placing him on "floating status," to inform him that there were positions available for him, but petitioner Guadalupe declined the positions; private respondents validly sent to petitioner Guadalupe's last known address (as petitioner Guadalupe did not inform private respondents of his new address) the three letters informing him (petitioner Guadalupe) that he should report back to work; private respondents tried to re-assign petitioner Guadalupe within six months after they (private respondents) put him on "floating status," but petitioner Guadalupe declined the new assignments, he refused, hence, private respondents did not constructively and illegally dismiss petitioner Guadalupe.

Regarding the second issue, the private respondents answer in the negative. Petitioner Guadalupe is not entitled to backwages, separation pay, moral and exemplary damages, and attorney's fees.

The Comment (To Petitioner's for Certiorari)<sup>[22]</sup> parries: private respondents reinstated petitioner Guadalupe without loss of seniority rights, in compliance with the assailed Decision,<sup>[23]</sup> it is not true that petitioner Guadalupe cannot be reinstated because the parties have a strained relationship; petitioner Guadalupe is not entitled to moral and exemplary damages, and attorney's fees.

## THE COURT'S RULING

Anent the first issue, the Court answers in the negative. The NLRC did not commit grave abuse of discretion in ruling that private respondents did not constructively and illegally dismiss petitioner Guadalupe.

Petitioner Guadalupe argues that the private respondents constructively dismissed him when they (private respondents) failed to give him a work assignment within six months after they placed him on temporary status. On the other hand, the private respondents argue they did not constructively dismiss petitioner Guadalupe, but only placed him on "floating status." The private respondents add they gave petitioner Guadalupe new work assignments, but petitioner Guadalupe refused the jobs.

We find for the private respondents. The private respondents did not constructively or illegally dismiss petitioner Guadalupe.

There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice except to forego continued employment. It exists when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.<sup>[24]</sup>