

FIFTH DIVISION

[CA-G.R. SP No. 129516, March 13, 2014]

REMEDIOS BELARMINO AND/OR TRIPLE 888 SECURITY SERVICES, PETITIONERS, VS. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND HECTOR PANAGA, RESPONDENTS.

DECISION

CARANDANG, J.:

Before Us is a petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court seeking to annul and set aside the public respondent's Decision^[1] dated August 23, 2012 which affirmed *en toto* the Decision^[2] dated September 30, 2011 of the Labor Arbiter finding petitioners guilty of constructive illegal dismissal. Likewise assailed is the Resolution^[3] dated February 20, 2013 denying petitioners' Motion for Reconsideration.

The facts of the case:

Private respondent worked as a security guard for petitioner Triple 888 from February 13, 2010 until September 14, 2010 when he was pulled out from his post in Little Tikes in Pasig City. He reported to the petitioners' main office and he was told that there was no vacancy and he should wait. Private respondent waited but more than six (6) months had passed and he was not given any assignment. Thus, he claimed that he was constructively dismissed and filed the instant complaint for illegal dismissal, damages and attorney's fees against herein petitioners (*the second case*).

Petitioners denied having dismissed private respondent. They alleged that private respondent was pulled out from Little Tikes Show Room as requested by the latter's management due to several complaints against private respondent, to wit: (1) always using his cellphone while on duty; (2) frequently asking for advances from some officers of the store; and (3) getting food from the canteen without paying and saying nothing when to pay. Private respondent was verbally informed of management decision to replace him and was formally replaced on September 16, 2010. When private respondent reported to petitioners' office on September 24, 2010, he was served an Incident/Violation Report^[4] and was directed to answer the same in writing. Private respondent refused to receive the Report and stated that he need not answer the same as he will file a case against them with the Department of Labor and Employment (DOLE). True enough, three (3) days after his relief, private respondent filed a complaint with DOLE for money claims (*the first case*).

On September 30, 2011, the Labor Arbiter rendered a Decision in the second case finding that private respondent was constructively dismissed, having been on floating status for more than six (6) months. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, respondent Triple 888 Security Services and its proprietor Ms. Remedios N. Belarmino are hereby found guilty of constructive illegal dismissal and are directed to pay complainant:

1. Backwages computed from March 15, 2011 up to date hereof ;
2. Separation pay equivalent to one month wage for every year of service; and
3. Attorney's fees equivalent to ten (10%) of the total monetary award.

All other claims are dismissed for lack of merit, The computation hereto attached is made an integral part of this Decision.

SO ORDERED."

Petitioners lodged an appeal. On August 23, 2012, the public respondent issued a Decision affirming the ruling of the Labor Arbiter. The public respondent ruled that petitioner security agency did not give private respondent any assignment within six (6) months from the time he was relieved from his post on September 16, 2010. Placing an employee on temporary "off-detail" is not equivalent to dismissal provided that such temporary inactivity should continue only for a period of six (6) months; otherwise, the security agency concerned could be held liable for constructive dismissal under Article 286 of the Labor Code.

Their motion for reconsideration having been denied in the Resolution dated February 20, 2013, petitioners filed this petition raising the following issues for resolution, to wit:

I

WHETHER THE ISSUE OF "CONSTRUCTIVE ILLEGAL DISMISSAL" IS A MERE CREATION OF THE PRIVATE RESPONDENT THE HAPPENING OF WHICH, IS BEYOND THE CONTROL OF PETITIONER.

II

WHETHER DEPARTMENT ORDER NO 14 SERIES OF 2001 OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SPECIFICALLY PERTAINING TO SECURITY GUARDS APPLIES IN THIS CASE.

We find the petition meritorious.

Petitioners argue that private respondent was not placed on a floating status, and assuming that he was placed on such status, private respondent's dismissal cannot be categorized as constructive illegal dismissal because Department Order No. 14 [Series of 2001] allows such dismissal. Petitioners assert that private respondent is not entitled to separation pay. As per the SSS Record of private respondent, it shows that he was employed as a security guard at Golden Sun Investigation & Security Agency in November of 2010, just more than a month after private respondent was pulled out by petitioners from Little Tikes in Pasig City on September 16, 2010. Petitioners further claim that the public respondent committed grave abuse of discretion in ruling that Department Order No. 14 does not apply to