



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

**VENANCIO S. REYES,
EDGARDO C. DABBAY,
WALTER A. VIGILIA,
NEMECIO M. CALANNO,
ROGELIO A. SUPE, JR.,
ROLAND R. TRINIDAD, and
AURELIO A. DULDULAO,**

Petitioners,

G.R. No. 193756

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

- versus -

**RP GUARDIANS SECURITY
AGENCY, INC.,**

Respondent.

Promulgated:

April 10, 2013

X

X

DECISION

MENDOZA, J.:

Before the Court is a petition for review under Rule 45 of the Rules of Court, assailing the May 18, 2010 Amended Decision¹ and the September 13, 2010 Resolution² of the Court of Appeals (CA), in C.A.-GR. SP No. 106643, which modified the April 9, 2008 Decision³ of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 11-002990-07, insofar as the award of backwages, the computation of separation pay, and the refund for the trust fund contributions are concerned.

¹ *Rollo*, pp. 49-53. Penned by Associate Amelita G. Tolentino and concurred in by Associate Justices Arturo G. Tayag and Franchito N. Diamante.

² *Id.* at 55-56.

³ *Id.* at 72-77.

The Facts:

Petitioners Venancio S. Reyes, Edgardo C. Dabbay, Walter A. Vigilia, Nemesio M. Calanno, Rogelio A. Supe, Jr., Roland R. Trinidad, and Aurelio A. Duldulao (*petitioners*) were hired by respondent RP Guardians Security Agency, Inc. (*respondent*) as security guards. They were deployed to various clients of respondent, the last of which were the different branches of Banco Filipino Savings and Mortgage Bank (*Banco Filipino*).

In September 2006, respondent's security contract with Banco Filipino was terminated. In separate letters,⁴ petitioners were individually informed of the termination of the security contract with Banco de Oro. In two (2) memoranda, dated September 21, 2006⁵ and September 29, 2006,⁶ petitioners were directed to turnover their duties and responsibilities to the incoming security agency and were advised that they would be placed on floating status while waiting for available post. Petitioners waited for their next assignment, but several months lapsed and they were not given new assignments.

Consequently, on April 10, 2007, petitioners filed a complaint⁷ for constructive dismissal.

In its position paper,⁸ respondent claimed that there was no dismissal, of petitioners, constructive or otherwise, and asserted that their termination was due to the expiration of the service contract which was coterminus with their contract of employment.

On August 20, 2007, the Labor Arbiter (*LA*) rendered a decision⁹ in favor of petitioners ordering respondent to pay petitioners separation pay, backwages, refund of trust fund, moral and exemplary damages, and attorneys fees.

Aggrieved, respondent appealed to the NLRC.

On April 9, 2008, the NLRC promulgated its decision¹⁰ sustaining the finding of constructive dismissal by the LA, and the awards she made in the decision. The award of moral and exemplary damages, however, were deleted.

⁴ Id. at 117-118.

⁵ Id. at 119.

⁶ Id. at 120.

⁷ *Rollo*, p. 90.

⁸ Id. at 109-116.

⁹ Id. at 82-89. Penned by Labor Arbiter Teresita D. Castillon-Lora.

¹⁰ Id. at 72-77.

Upon denial of its motion for reconsideration,¹¹ respondent filed a petition for certiorari before the CA.

On February 26, 2010, the CA rendered a decision¹² dismissing the petition and affirming the assailed NLRC decision and resolution.

On motion for reconsideration, the CA issued the Amended Decision¹³ dated May 18, 2010, modifying its earlier decision. Citing Section 6.5 (4) of Department Order No. 14 of the Department of Labor and Employment (*DOLE D.O. No. 14*), otherwise known as *Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry*, the CA reduced the computation of the separation pay from one month pay per year of service to one-half month pay for every year of service; reduced the refund of trust fund contribution from Sixty (₱60.00) Pesos to Thirty (₱30.00)Pesos; and deleted the award of backwages and attorney's fees.

Hence, this petition anchored on the following:

GROUND FOR THE PETITION

8.0 The Court of Appeals has decided a question of substance in a way that is not in accord with law and with applicable decisions of the Supreme Court concerning the Petitioner's basic right to fair play, justice and due process, with more reason that a conclusion of law cannot be made in the motion for reconsideration.

8.1 The first decision promulgated by the Court of Appeals on February 26, 2010 affirming the decision of the NLRC awarding both backwages and separation pay of one month pay for every year of service can only be set aside upon proof of grave abuse of discretion, fraud or error of law.

8.2 Petitioners are entitled to backwages for the period covered from the time the Labor Arbiter rendered the decision in their favor on August 20, 2007 until said decision was reversed by the Court of Appeals in its Amended Decision promulgated on May 18, 2010.¹⁴

There is no doubt that petitioners were constructively dismissed. The LA, the NLRC and the CA were one in their conclusion that respondent was guilty of illegal dismissal when it placed petitioners on floating status

¹¹ Id. at 79-81.

¹² Id. at 58-71. Penned by Associate Amelita G. Tolentino and concurred in by Associate Justices Arturo G. Tayag and Franchito N. Diamante.

¹³ Id. at 49-53.

¹⁴ Id. at 27.

beyond the reasonable six-month period after the termination of their service contract with Banco de Oro. Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard.¹⁵ Such situation does not normally result in a constructive dismissal. Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.¹⁶ No less than the Constitution¹⁷ guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.¹⁸

Settled is the rule that that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement.¹⁹ If reinstatement is not possible, however, the award of separation pay is proper.²⁰

Backwages and reinstatement are separate and distinct reliefs given to an illegally dismissed employee in order to alleviate the economic damage brought about by the employee's dismissal.²¹ "Reinstatement is a restoration to a state from which one has been removed or separated" while "the payment of backwages is a form of relief that restores the income that was lost by reason of the unlawful dismissal." Therefore, the award of one does not bar the other.²²

¹⁵ *Salvoza v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 197-198.

¹⁶ *Sentinel Security Agency, Inc. v. National Labor Relations Commission*, 356 Phil. 434, 443 (1998).

¹⁷ Article 13, Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

¹⁸ Article 277 Labor Code.

¹⁹ Article 279 of the Labor Code.

²⁰ *Torillo v. Leogardo, Jr.*, 274 Phil. 758, 765 (1991).

²¹ *St. Michael's Institute v. Santos*, 422 Phil. 723, 736 (2001).

²² *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 202 (1999).

In the case of *Aliling v. Feliciano*,²³ citing *Golden Ace Builders v. Talde*,²⁴ the Court explained:

Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.

The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. [Emphasis Supplied]

Furthermore, the entitlement of the dismissed employee to separation pay of one month for every year of service should not be confused with Section 6.5 (4) of DOLE D.O. No. 14 which grants a separation pay of one-half month for every year service, to wit:

6.5 Other Mandatory Benefits. In appropriate cases, security guards/similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums for their coverage:

- a. Maternity benefit as provided under the SSS Law;
- b. Separation pay if the termination of employment is for authorized cause as provided by law and as enumerated below:

Half-Month Pay Per Year of Service, but in no case less than One Month Pay, if separation is due to:

1. Retrenchment or reduction of personnel effected by management to prevent serious losses;
2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;
3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees; or
4. Lack of service assignment for a continuous period of 6 months.

²³ G.R. No. 185829, April 25, 2012, 671 SCRA 186.

²⁴ G.R. No. 187200, May 5, 2010, 620 SCRA 283, 289-290, citing *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500.

The said provision contemplates a situation where a security guard is removed for authorized causes such as when the security agency experiences a surplus of security guards brought about by lack of clients. In such a case, the security agency has the option to resort to retrenchment upon compliance with the procedural requirements of "two-notice rule" set forth in the Labor Code and to pay separation pay of one-half month for every year of service.

In this case, respondent would have been liable for reinstatement and payment of backwages. Reinstatement, however, was no longer feasible because, as found by the LA, respondent had already ceased operation of its business.²⁵ Thus, backwages and separation pay, in the amount of one month for every year of service, should be paid in lieu of reinstatement.

As to their claim of attorney's fees, petitioners were compelled to file an action for the recovery of their lawful wages and other benefits and, in the process, incurred expenses. Hence, petitioners are entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.²⁶

Finally, as to the refund of the trust fund contribution, a perusal of the records shows that the amount deducted for the trust fund contribution from each petitioner varies. Some petitioners were deducted the amount of ₱15.00 every payday while others were deducted ₱30.00 every payday. Thus, the Court deems it proper to refer the computation of the same to the LA.

WHEREFORE, the petition is **GRANTED**. The May 18, 2010 Amended Decision and the September 13, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 106643 are **REVERSED** and **SET ASIDE**. The April 9, 2008 Decision of the National Labor Relations Commission, modifying the August 20, 2007 Decision of the Labor Arbiter, is **REINSTATED**.

The case is **REMANDED** to the Labor Arbiter for further proceedings to make a detailed computation of the exact amount of monetary benefits due petitioners.


SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁵ Page 7 of the Labor Arbiter's Decision, *rollo*, p. 88.

²⁶ *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, 540 Phil. 65, 85(2006); *Rutaquio v. National Labor Relations Commission*, 375 Phil. 405, 418 (1999).

WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson



DIOSDADO M. PERALTA

Associate Justice



ROBERTO A. ABAD

Associate Justice

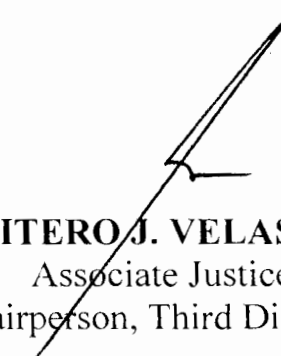


MARVIC MARIO VICTOR F. LEONEN

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice