Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEOPARD SECURITY AND INVESTIGATION AGENCY,
Petitioner,

G.R. No. 186344

Present:

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

- *versus* -

TOMAS QUITOY, RAUL SABANG and DIEGO MORALES,
Respondents.

Promulgated:
FEB 20 2013

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DECISION

PEREZ, *J.*:

Is an award of separation pay proper despite lack of showing of illegal dismissal? This is the main issue in this Rule 45 Petition for Review on *Certiorari* assailing the Decision[1] dated 26 September 2008[2] rendered and the Resolution dated 21 January 2009[3] issued by the Twentieth Division of the Court of Appeals (CA) in CA-G.R. SP No. 03097.

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[1] Penned by CA Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Francisco P. Acosta and Edgardo L. Delos Santos.

[2] CA's 26 September 2008 Decision, *rollo*, pp. 42-51.

[3] CA's 21 January 2009 Resolution, id. at 52.

The factual antecedents are not in dispute.

Alongside Numeriano ***Ondong***, ***respondents*** Tomas Quitoy, Raul Sabang and Diego Morales were hired as security guards by petitioner Leopard Security and Investigation Agency (***LSIA***) which maintained its office at BCC House, 537 Shaw Boulevard, Mandaluyong City.[4] All being residents of Cebu City, respondents were assigned by LSIA to the different branches of its only client in said locality, Union Bank of the Philippines (***Union Bank***). On 1 April 2005, it appears that Union Bank served a notice to LSIA, terminating the parties' security service contract effective at the end of business hours of 30 April 2005.[5] Thru its representative, Rogelio ***Morales***, LSIA informed respondents on 29 April 2005 of the termination of its contract with Union Bank which had decided to change its security provider. Upon Morales' instruction, respondents went to the Union Bank Cebu Business Park Branch on 30 April 2005, for the turnover of their service firearms to Arnel ***Cortes***, Union Bank's Chief Security Officer.[6]

On 3 May 2005, respondents and Ondong filed a complaint for illegal dismissal, unpaid 13th month pay and service incentive leave pay (***SILP***), moral and exemplary damages as well as attorney's fees against LSIA, its President, Jose ***Poe*** III, Union Bank, its Regional Service and Operations Officer, Catherine ***Cheung***, Herbert ***Hojas***, Protectors Services, Inc. (***PSI***) and Capt. Gerardo ***Jaro***. With the complaint already docketed as RAB Case No. 07-05-0979-2005 before the Regional Arbitration Branch No. VII of the National Labor Relations Commission (NLRC) in Cebu City,[7] it appears that LSIA sent on 10 May 2005 a notice requiring respondents to report for work to its Mandaluyong City office.[8] In an Order dated 6 June 2005, Cheung and Hojas were later dropped as parties-respondents from the case upon motion of respondents. In view of Ondong's execution of a quitclaim, on the other hand, his complaint was likewise dismissed with prejudice, resulting in the exclusion of PSI and Jaro as parties-respondents from the case.[9]

In support of their complaint, respondents averred that they were hired and assigned by LSIA to the different Cebu City branches of Union Bank which directly paid their salaries and whose branch managers exercised direct control and supervision over them. Required to work from 7:30 a.m. to 9:00 p.m. daily, respondents claimed that they took orders and

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4 Respondents' Personal Data Sheet, id. at 124-125.
5 Union Bank's 1 April 2005 Letter, id. at 193.
6 Id. at 85-86; 112; 143.
7 Id. at 27.
8 Id. at 113.
9 Id. at 127-129.

instructions from Union Bank's branch managers since LSIA had no administrative personnel in Cebu City. Respondents further asserted that, after introducing himself as a representative of LSIA on 29 April 2005, Morales belatedly informed them that their services would be terminated at the end of the office hours on the same business day. Directed by Morales to report to Union Bank's Cebu Business Park Branch the next day, respondents maintained that they surrendered their service firearms to Cortes who told them that Union Bank would be engaging the services of another security agency effective the next working day. Not even reimbursed their firearm bond nor told that Union Bank had no monetary obligation to them, respondents claimed they were constrained to file their complaint and to pray that the former be held jointly and severally liable with LSIA for their claims.[10]

In its position paper, LSIA, on the other hand, asseverated that upon being hired, respondents opted for an assignment in Cebu City and were, accordingly, detailed at the different branches of Union Bank in said locality. Informed by Union Bank on 1 April 2005 of the termination of their security service contract effective 30 April 2005, LSIA claimed that it relieved respondents from their assignments by the end of the business hours of the latter date. Petitioners would, on 10 May 2005, direct respondents to report for work at its Mandaluyong City office. As respondents failed to do so, LSIA alleged that it issued show cause letters on 21 June 2005, requiring the former to explain why they should not be administratively sanctioned for their unexplained absences. As the avowed direct employer of respondents, LSIA also prayed that Union Bank be dropped from the case and that the complaint be altogether dismissed for lack of merit.[11] Invoking the security service contract it executed with LSIA from which its lack of an employer-employee relationship with respondents could be readily gleaned, Union Bank, in turn, asserted that the complaint should be dismissed as against it for lack of cause of action.[12]

On 6 April 2006, Labor Arbiter Violeta Ortiz-Bantug rendered a Decision, finding LSIA liable for the illegal dismissal of respondents. Faulting LSIA for informing respondents of the termination of their services only on 30 April 2005 despite Union Bank's 1 April 2005 advice of the termination of its security service contract, the Labor Arbiter ruled that the 10 May 2005 report to work order did not show a sincere intention on the part of LSIA to provide respondents with other assignments. Aside from respondents' claims for backwages, LSIA was ordered by the Labor Arbiter

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10 Respondents' 23 June 2005 Position Paper, id. at 83-95.

11 LSIA's 7 October 2005 Position Paper, id. at 111-119.

12 Id. at 129.

to pay the former's claim for separation pay on the ground that reinstatement was no longer feasible under the circumstances. Although absolved from liability for the foregoing awards upon the finding that LSIA was an independent contractor, Union Bank was, however, held jointly and severally liable with said security agency for the payment of respondents' claims for proportionate 13th month pay and SILP for the three years immediately preceding the institution of the case.[13]

On appeal, the foregoing decision was modified in the 20 March 2007 Decision rendered by the Fourth Division of the NLRC in NLRC Case No. V-000570-2006. Applying the principle that security agencies like LSIA are allowed to put security guards on temporary off-detail or floating status for a period not exceeding six months, the NLRC discounted the factual and legal bases for the illegal dismissal determined by the Labor Arbiter as well as the backwages awarded in favor of respondents. Finding that the filing of the complaint on 3 May 2005 was premature, the NLRC took note of the fact that respondents did not even protest against the report to work order issued by LSIA. Even then, the NLRC upheld the Labor Arbiter's award of separation pay on the theory that reinstatement was no longer viable. The awards of proportionate 13th month pay and SILP for which Union Bank and LSIA were held solidarily liable were likewise sustained for failure of the latter to discharge the burden of proving payment of said labor standard benefits.[14] Belatedly submitting documents to prove its payment of SILP, LSIA filed a motion for reconsideration of the foregoing decision[15] which was, however, denied for lack of merit in the NLRC's 23 July 2007 Resolution.[16]

Dissatisfied, LSIA filed the Rule 65 Petition for *Certiorari* docketed before the CA as CA-G.R. SP No. 03097. Calling attention to the impropriety of the award of separation pay absent a finding of illegal dismissal, LSIA also faulted the NLRC for ignoring the evidence it submitted alongside its motion for reconsideration to prove the payment of respondents' SILP for the years 2003, 2004 and 2005.[17] On 26 September 2008, the then Twentieth Division of the CA rendered the herein assailed decision, affirming the NLRC's 23 July 2007 Decision and denying LSIA's petition for lack of merit. Applying the principle that respondents could not be considered illegally dismissed before the lapse of six months from their being placed on floating status by LSIA,[18] the CA justified the awards of

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13 Labor Arbiter's 6 April 2006 Decision, id. at 127-136.
14 NLRC's 20 March 2007 Decision, id. at 71-80.
15 LSIA's 25 May 2007 Motion for Reconsideration, id. at 205-218.
16 NLRC's 23 July 2007 Resolution, id. at 81.
17 LSIA's 30 October 2007 Petition for *Certiorari*, id. at 53-70
18 CA's 26 September 2008 Decision, id. at 42-51.

separation pay, proportionate 13th month pay and SILP in the following wise:

> In another vein, however, xxx respondents were caught off guard when Rogelio Morales, [LSIA's] representative summarily told them not to report to Union Bank anymore. They did not understand its implications as no one bothered to explain what would happen to them. At any rate, it is clear as day that xxx respondents no longer wish to continue their employment with [LSIA] because of the shabby treatment previously given them. Their relations have obviously turned sour. Such being the case, separation pay, in lieu of reinstatement, is proper. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employer and the employee.
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> The burden of proving payment of holiday pay and salary differentials belong to the employer, not the employee. Here [LSIA] failed to present proofs that xxx respondents received payment for [SILP] and thirteenth month pay which accrued to them under the law. As the labor arbiter ruled, however, payment of [SILP] shall only be for the last three (3) years of xxx respondents' service taking into consideration the provisions on prescription of money claims and proportionate 13th month pay for the year 2004.[19]

Aggrieved by the foregoing decision as well as the CA's 21 January 2009 denial of their motion for reconsideration thereof,[20] LSIA and Poe filed the Petition for Review on *Certiorari* at bench, on the following grounds:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT UPHELD THE NLRC DECISION AWARDING TO RESPONDENTS SEPARATION PAY DESPITE ITS FINDINGS THAT THEY WERE NOT ILLEGALLY DISMISSED.

II

THE COURT OF APPEALS ERRED WHEN IT UPHELD THE NLRC DECISION AWARDING TO RESPONDENTS SERVICE INCENTIVE LEAVE PAY FOR THE YEARS 2003, 2004 AND 2005.[21]

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19 Id. at 49-50.

20 CA's 21 January 2009 Resolution, id. at 52.

21 Id. at 30.

In urging the grant of their petition, LSIA and Poe argue that, upon discounting the factual basis for respondents' claim that they were illegally dismissed from employment, the CA should have disallowed the award of separation pay awarded by the Labor Arbiter and the NLRC. They insist that like backwages, separation pay is the legal consequence of a finding of illegal dismissal and should, perforce, be deleted in the absence thereof, particularly when no evidence was adduced to prove the strained relations between the employer and employee. LSIA and Poe also fault the CA for ignoring the Bank Advice Slips and On Demand Statement of Account belatedly submitted alongside the motion for reconsideration they filed before the NLRC, to prove payment of respondents' SILP for the years 2004 and 2005.[22] In their comment to the petition, on the other hand, respondents insist that they have been illegally dismissed from employment and that the Labor Arbiter's determination to that effect was erroneously reversed by both the NLRC and the CA.[23]

The petition is impressed with merit.

Applying Article 286[24] of the *Labor Code of the Philippines* by analogy, this Court has repeatedly recognized that security guards may be temporarily sidelined by their security agency as their assignments primarily depend on the contracts entered into by the latter with third parties.[25] Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when, as here, the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster.[26] For as long as such temporary inactivity does not continue for a period exceeding six months, it has been ruled that placing an employee on temporary "off-detail" or "floating status" is not equivalent to dismissal.[27]

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22 Id. at 31-37.

23 Id. at 262-276.

24 Art. 286. *When employment not deemed terminated*. — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

25 *Mobile Protective & Detective Agency v. Ompad*, 497 Phil. 621, 634 (2005).

26 *Salvaloza v. National Labor Relations Commission*, G.R. No. 182086, 24 November 2010, 636 SCRA 184, 197.

27 *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514, Phil. 488, 499 (2005), citing *Superstar Security Agency, Inc. and/or Col. Andrada v. NLRC*, 262 Phil. 930, 934 (1990).

In the case at bench, respondents were informed on 29 April 2005 that they were going to be relieved from duty as a consequence of the 30 April 2005 expiration of the security service contract between Union Bank and LSIA. While respondents lost no time in immediately filing their complaint on 3 May 2005, the record equally shows that they were directed by LSIA to report for work at its Mandaluyong City office on 10 May 2005 or a mere ten days from the time the former were effectively sidelined. Considering that a security guard is only considered illegally dismissed from service when he is sidelined from duty for a period exceeding six months,[28] we find that the CA correctly upheld the NLRC's ruling that respondents were not illegally dismissed by LSIA. Parenthetically, said ruling is binding on respondents who did not appeal either the decision rendered by the NLRC or the CA in line with the entrenched procedural rule in this jurisdiction that a party who did not appeal cannot assign such errors as are designed to have the judgment modified.[29]

Having correctly ruled out illegal dismissal of respondents, the CA reversibly erred, however, when it sustained the NLRC's award of separation pay on the ground that the parties' relationship had already been strained. For one, liability for the payment of separation pay is a legal consequence of illegal dismissal where reinstatement is no longer viable or feasible. Under Article 279 of the *Labor Code*, an *illegally dismissed* employee is entitled to the twin reliefs of full backwages and reinstatement without loss of seniority rights.[30] Aside from the instances provided under Articles 283[31] and 284[32] of the *Labor Code*, separation pay is, however, granted when reinstatement is no longer feasible because of strained

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28 *Valdez v. NLRC*, 349 Phil. 760, 766 (1998).

29 *Dizon, Jr. v. National Labor Relations Commission*, 260 Phil. 501, 509 (1990).

30 *Philippine Long Distance Telephone Company v. Berbano, Jr.*, G.R. No. 165199, 27 November 2009, 606 SCRA 81, 99.

31 ART. 283. *Closure of establishment and reduction of personnel*. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

32 ART. 284. *Disease as ground for termination*. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

relations between the employer and the employee.[33] In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties.[34]

As a relief granted in lieu of reinstatement, however, it consequently goes without saying that an award of separation pay is inconsistent with a finding that there was no illegal dismissal. Standing alone, the doctrine of strained relations will not justify an award of separation pay, a relief granted in instances where the common denominator is the fact that the employee *was dismissed* by the employer.[35] Even in cases of illegal dismissal, the doctrine of strained relations is not applied indiscriminately as to bar reinstatement, especially when the employee has not indicated an aversion to returning to work[36] or does not occupy a position of trust and confidence in[37] or has no say in the operation of the employer's business.[38] Although litigation may also engender a certain degree of hostility, it has likewise been ruled that the understandable strain in the parties' relations would not necessarily rule out reinstatement which would, otherwise, become the rule rather than the exception in illegal dismissal cases.[39]

Our perusal of the position paper they filed *a quo* shows that, despite erroneously believing themselves to have been illegally dismissed, respondents had alleged no circumstance indicating the strained relations between them and LSIA and had even alternatively prayed for reinstatement alongside the payment of separation pay.[40] Since application of the doctrine of strained relations presupposes a question of fact which must be demonstrated and adequately supported by evidence,[41] the CA clearly erred in ruling that the parties' relations had already soured and that an award of separation pay in favor of respondents is proper. Apprised by Union Bank on 1 April 2005 that it was no longer renewing its security service contract after 30 April 2005, LSIA may have tarried in informing respondents of the fact only on 29 April 2005. As correctly ruled by the NLRC, however, the resultant inconvenience to respondents cannot detract from the fact that the

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33 *Mt. Carmel College v. Resueda*, G.R. No. 173076, 10 October 2007, 535 SCRA 518, 541.

34 *Velasco v. National Labor Relations Commission*, G.R. No. 161694, 26 June 2006, 492 SCRA 686, 699.

35 *Capili v. National Labor Relations Commission*, 337 Phil. 210, 215.

36 *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491, 551 (2005).

37 *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, 3 March 1992, 206 SCRA 701, 712.

38 *Abalos v. Philex Mining Corporation*, 441 Phil. 386, 394 (2002).

39 *Procter and Gamble Philippines v. Bondesto*, 468 Phil. 932, 943 (2004).

40 *Rollo*, pp. 88-93.

41 *Golden Ace Builders v. Talde*, G.R. No. 187200, 5 May 2010, 620 SCRA 283, 290.

employer-employee relationship between the parties still subsisted and had yet to be severed when respondents filed their complaint on 3 May 2005.

Absent illegal dismissal on the part of LSIA and abandonment of employment on the part of respondents, we find that the latter's reinstatement without backwages is, instead, in order. In addition to respondent's alternative prayer therefor in their position paper, reinstatement is justified by LSIA's directive for them to report for work at its Mandaluyong City office as early of 10 May 2005. As for the error ascribed the CA for failing to correct the NLRC's disregard of the evidence showing LSIA's payment of respondents' SILP, suffice it to say that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases.[42] Considering that labor officials are, in fact, encouraged to use all reasonable means to ascertain the facts speedily and objectively, with little resort to technicalities of law or procedure,[43] LSIA correctly faults the CA for likewise brushing aside the evidence of SILP payments it submitted during the appeal stage before the NLRC.

The record shows that respondents were uniformly awarded SILP at the rate of ₱666.00 for the period May 3 to December 31, 2002, ₱1,000.00 for the period January 1 to December 31, 2003, ₱1,040.00 for the period January 1 to December 31, 2004 and ₱347.36 for the period January 1 to May 3, 2005 or a total of ₱3,053.36 each.[44] The Bank Advice Slips and On Demand Statement of Account[45] submitted by LSIA before the NLRC shows uniform payments of SILP to respondents in the sum of ₱1,025 for the year 2004 which should, therefore, be deducted from the award of said benefit in favor of respondent. Although LSIA also submitted a Bank Advice Slip showing a supposed ₱1,065.00 payment of SILP for the year 2005 in favor of respondent Sabang only, the absence of an On Demand Statement of Account for said amount impels Us to disallow the further deduction thereof from the SILP award.

WHEREFORE, premises considered, the petition is **GRANTED** and the assailed Decision dated 26 September 2008 is, accordingly, **MODIFIED** to direct the reinstatement of respondents in lieu of the award of separation pay and to deduct the sum of ₱1,025.00 from the SILP individually awarded in favor of respondents. The rest is **AFFIRMED.**

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42 *Clarion Printing House, Inc. v. NLRC*, 500 Phil. 61, 76 (2005).
43 *Andaya v. NLRC*, 502 Phil. 151, 158 (2005).
44 Computation of the Labor Arbiter's Award, *rollo*, pp. 161-162.
45 Id. at 213-218.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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