



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LUCIANO P. CAÑEDO,*
Petitioner,

G.R. No. 179326

Present:

- versus -

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

KAMPILAN SECURITY AND
DETECTIVE AGENCY, INC. and
RAMONCITO L. ARQUIZA,
Respondents.

Promulgated:

JUL 31 2013

Handwritten signature: H. Cabalag

X ----- X

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the Decision² dated January 25, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 01530 which denied the Petition for *Certiorari*³ filed by Luciano P. Cañedo (petitioner) and affirmed the Resolutions dated October 20, 2005⁴ and December 15, 2005⁵ of the National Labor Relations Commission (NLRC) which declared that petitioner was not illegally dismissed by respondents Kampilan Security and Detective Agency, Inc. (respondent agency) and its owner and General Manager, Engr. Ramoncito L. Arquiza (respondent Arquiza). Likewise assailed is the CA's Resolution⁶ dated July 25, 2007 which denied petitioner's Motion for Reconsideration.⁷ *Man*

* Also referred to as Luciano P. Canedo in some parts of the records.

¹ Rollo, pp. 51-102.

² CA rollo, pp. 494-504; penned by Associate Justice Antonio L. Villamor and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

³ Id. at 4-60

⁴ Id. at 75-81; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

⁵ Id. at 82-83.

⁶ Id. at 563-564.

⁷ Id. at 506-525.

Factual Antecedents

Respondent agency hired petitioner as security guard on November 20, 1996 and assigned him at the Naga Power Barge 102 of the National Power Corporation (NPC) at Sigpit Load Ends, Lutopan, Toledo City.

For not wearing proper uniform while on duty as per report of Allan Alfara (Alfara) of the NPC, petitioner was suspended for a month effective May 8, 2003.⁸

In a letter⁹ dated June 2, 2003, NPC informed respondent agency that it was no longer interested in petitioner's services and thus requested for his replacement.

On June 17, 2003, petitioner requested respondent Arquiza to issue a certification in connection with his intended retirement effective that month.¹⁰ Thus, respondent Arquiza issued the Certification¹¹ dated June 25, 2003 (June 25, 2003 Certification):

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that **Mr. Luciano Paragoso Cañedo** whose address [is] at Lower Bunga, Toledo City was employed by this agency from November 20, 1996 up to May 7, 2003 as Security Guard assign[ed] at NPC, Sigpit Substation. *He was terminated from his employment by this agency on May 7, 2003 as per client's request.*

Done this 25th day of June 2003 at Cebu City, Philippines.

(Signed)
RAMONCITO L. ARQUIZA
General Manager
KSDAI

Five days later, petitioner filed before the Labor Arbiter a Complaint for illegal dismissal, illegal suspension and non-payment of monetary benefits against respondents.

⁸ See Suspension Order dated May 8, 2003, id. at 126.

⁹ Id. at 125.

¹⁰ Id. at 127.

¹¹ Id. at 85. Italics supplied.

Proceedings before the Labor Arbiter

Petitioner alleged that his suspension was without valid ground and effected without due process, hence, illegal. He claimed that Alfafara’s report about his non-wearing of uniform was fabricated and ill-motivated because he declined Alfafara’s invitation to convert to their religion. In fact, the roving inspector who checked the attendance of guards on duty does not have any report showing his commission of any infraction. Petitioner averred that he was suspended without being given the chance to explain his side.

Petitioner narrated that when he reported back to work after his one-month suspension, he was surprised to find out that he was already terminated from the service effective May 7, 2003 as shown by the June 25, 2003 Certification issued to him by respondent Arquiza. He then claimed to have been underpaid for services rendered and that he is entitled to holiday pay, rest day pay, night shift differential, service incentive leave pay, 13th month pay, retirement benefits, damages and attorney’s fees.

Respondents, on the other hand, countered that petitioner was not dismissed from service. In fact, despite petitioner’s propensity for not wearing uniform while on duty as shown by the entries¹² in the NPC Sigpit Station logbook and after a series of infractions, they still opted to retain his services. However, in view of NPC’s request for his replacement, respondents had to pull him out from NPC. But instead of waiting for a new posting, petitioner filed a complaint against them. Respondents also denied petitioner’s entitlement to his monetary claims and averred that he has an outstanding cash advance of ₱10,000.00 as evidenced by a cash voucher¹³ duly executed by him.

Based on the June 25, 2003 Certification, the Labor Arbiter held that petitioner was illegally dismissed from the service. He also found petitioner’s prior suspension illegal and granted him all his monetary claims except for underpayment of wages. The dispositive portion of the Labor Arbiter’s Decision¹⁴ dated November 11, 2003 reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Kampilan Security and Detective Agency, Inc. to pay complainant Luciano Cañedo as follows:

1. Separation pay	-	₱43,498.00
2. Backwages	-	₱32,026.00
3. Holiday pay	-	₱ 7,170.00
4. Service incentive leave pay	-	<u>₱ 3,585.00</u>
Total award	-	₱86,279.00

¹² Id. at 386-395.
¹³ Id. at 208.
¹⁴ Id. at 61-66; penned by Labor Arbiter Ernesto F. Carreon.

The other claims and the case against respondent Ramoncito Arquiza are dismissed for lack of merit.

SO ORDERED.¹⁵

Proceedings before the National Labor Relations Commission

Respondents filed a Memorandum of Appeal¹⁶ before the NLRC arguing that the Labor Arbiter erred in concluding that petitioner was illegally dismissed based solely on the June 25, 2003 Certification. They contended that the said Certification is not sufficient to establish petitioner's dismissal as such fact must be proven by direct evidence of actual dismissal. They also averred that the word "terminated" as used in the said Certification actually meant "pulled-out" and this can be construed from the following phrase "as per client's request." This position is strengthened by petitioner's June 17, 2003 letter requesting for a Certification in connection with his intended retirement. At any rate, respondents explained that the subject Certification was only issued upon petitioner's request in order to facilitate his application for entitlement to retirement benefits with the Social Security System (SSS). And the word "terminated", assuming its literal meaning, was only used in order to serve the purpose of the same, that is, to show SSS that petitioner is no longer in service.

Petitioner in his Appellee's Memorandum¹⁷ regarded respondents' averments as clear afterthoughts and prayed for the modification of the Labor Arbiter's awards to include salary differential, night shift differential, rest day pay, 13th month pay and retirement benefits.

In a Decision¹⁸ dated June 28, 2005, the NLRC initially affirmed with modification the Labor Arbiter's Decision, viz:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby **AFFIRMED** with a modification in that complainant[']s outstanding cash advance in the amount of ₱10,000.00 shall be deducted from the monetary award herein.

It is understood that complainant's backwages and separation pay shall be computed until finality of the decision.

SO ORDERED.¹⁹

¹⁵ Id. at 65.

¹⁶ Id. at 210-222.

¹⁷ Id. at 223-242.

¹⁸ Id. at 67-74; penned by Commissioner Aurelio D. Menzon and concurred in by Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles.

¹⁹ Id. at 74.

However, in resolving respondents’ Motion for Reconsideration,²⁰ the NLRC reversed itself and set aside its earlier Decision. In a Resolution²¹ dated October 20, 2005, it held that the June 25, 2003 Certification should be read in conjunction with the June 2, 2003 letter of NPC requesting for petitioner’s relief from his post. The NLRC noted that it is common practice for clients of security agencies to demand replacement of any security guard assigned to them but cannot demand their dismissal from the employ of the security agency. And from the time petitioner was relieved from his NPC posting, he was considered on a floating status which can last for a maximum period of six months. Moreover, the NLRC opined that petitioner’s intention to retire as shown by his June 17, 2003 letter negated his claim of termination. Nevertheless, it maintained that petitioner was suspended without being notified of his infraction. Thus, he should be paid his salary during the period of his illegal suspension. The dispositive portion of the said Resolution reads:

WHEREFORE, premises considered, our Decision promulgated on June 28, 2005 is hereby **SET ASIDE**. A NEW DECISION is entered declaring that there was no dismissal whatsoever [of] complainant.

Respondent Kampilan Security and Detective Agency is hereby ordered to pay complainant the following:

1. Salary 05/08/03-06/07/03 -----	₱ 6,035.62
2. Holiday Pay -----	7,170.00
3. Service Incentive Leave Pay -----	<u>3,585.00</u>
	₱16,790.62
Less: Complainant’s Cash Advance -	10,000.00
NET AMOUNT	<u>₱ 6,790.62</u>

The grant of backwages and separation pay are hereby **DELETED**.

SO ORDERED.²²

Petitioner filed an Urgent Motion for Reconsideration,²³ which was, however, denied in a Resolution²⁴ dated December 15, 2005. Hence, he sought recourse to the CA *via* a Petition for *Certiorari*.²⁵

Ruling of the Court of Appeals

The CA, in a Decision²⁶ dated January 25, 2007, denied the Petition after it found no grave abuse of discretion on the part of the NLRC. It noted the

²⁰ Id. at 243-262.
²¹ Id. at 75-81.
²² Id. at 80.
²³ Id. at 273-282.
²⁴ Id. at 82-83.
²⁵ Id. at 4-60.
²⁶ Id. at 594-504.

following circumstances which, to it, negated petitioner's submission that he was dismissed from the service:

1. Contrary to what is stated in the certification dated June 25, 2003 that petitioner was dismissed on May 8, 2003, private respondent's memorandum of even date merely suspended petitioner for one month.
2. Contrary to what is stated in the certification, NPC did not request that petitioner be dismissed from employment but merely that he be replaced by another security guard.
3. After the expiration of his suspension on June 8, 2003, petitioner could not but labor under the belief that he has not been dismissed otherwise he would no longer declare that he wanted to retire at the end of the month.
4. No dismissal order was issued by private respondent after the end of the suspension period.
5. After receipt of the certification, petitioner could have[,] but did not[, sought] clarification from private respondent as to whether or not he was actually terminated. His omission renders doubtful the validity of his claim.
6. The terms of the certification state merely the length of assignment of petitioner in NPC which is from November 20, 1996 up to May 7, 2003, not the period of his employment with private respondent.”²⁷

In view of the above, the CA concluded that petitioner was merely placed on temporary “off-detail” which is not equivalent to dismissal. However, like the NLRC, the CA found that petitioner was deprived of due process when he was suspended and thus affirmed his entitlement to his salary during the period of suspension. It also affirmed the awards for holiday pay and service incentive leave pay as well as the deduction therefrom of ₱10,000.00 representing petitioner's cash advance. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this petition is **DENIED**. The *Resolutions* of the NLRC dated October 20, 2005 and December 15, 2005, respectively, are hereby **AFFIRMED**.

SO ORDERED.²⁸

As petitioner's Motion for Reconsideration²⁹ was likewise denied by the CA in its Resolution³⁰ dated July 25, 2007, he now comes to this Court through this Petition for Review on *Certiorari*.

²⁷ Id. at 500.

²⁸ Id. at 503-504.

²⁹ Id. at 506-525.

³⁰ Id. at 563-564.

Issues

Petitioner presents the following grounds for review:

I.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR IN LAW WHEN IT AFFIRMED THE RESOLUTION OF THE HONORABLE PUBLIC RESPONDENT AND CONFORMED TO THE INTERPRETATION OF THE WORD TERMINATED AS MERE PULL-OUT AND TOTALLY DISREGARDED THE [PIECES OF EVIDENCE] SUBMITTED BY PETITIONER, AS WELL AS THE LAWS AND SETTLED JURISPRUDENCE. SAID FINDINGS OF FACTS HAVE NO BASIS IN FACT AND IN LAW. THUS, THE QUESTIONED DECISION MUST BE NULLIFIED AND SET ASIDE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR OF SUBSTANCE IN AFFIRMING THE RESOLUTION OF THE HONORABLE PUBLIC RESPONDENT BY TOTALLY DISREGARDING THE [PIECES OF EVIDENCE] SUBMITTED BY PETITIONER SHOWING THAT PETITIONER WAS INDEED TERMINATED FROM SERVICE, WHICH [PIECES OF EVIDENCE] ARE NOT REFUTED BY RESPONDENTS AND IN MAKING CONCLUSIONS WHICH ARE NOT SUPPORTED BY ANY EVIDENCE AND CONTRARY TO LAW AND SETTLED JURISPRUDENCE IN DELETING THE AWARD OF BACKWAGES AND SEPARATION PAY. THE SAID FINDINGS OF FACTS NOT BEING SUPPORTED BY AN IOTA OF EVIDENCE IS THEREFORE, DEVOID OF ANY BASIS IN FACT AND LAW.³¹

Petitioner submits that the CA's findings are erroneous and inconsistent with the evidence on record. He insists that the June 25, 2003 Certification issued by respondent Arquiza states in unequivocal language that he was terminated from service. Thus, there is no need to interpret the word "terminated" in the Certification as "pulled out." Besides, any ambiguity in the construction of an instrument should not favor the one who caused it and any obscurity should be resolved in favor of labor. Moreover, he was neither given any new assignment nor called to work after his suspension until the filing of this Petition. He asks for separation pay and backwages for being illegally dismissed without valid cause and due process. He also prays that he be given his salary differentials, rest day pay, night shift differential, 13th month pay and retirement benefits on top of the holiday pay and service incentive leave pay already awarded in the assailed CA Decision and questions the authenticity of the cash voucher showing his outstanding cash advance of ₱10,000.00.

³¹ *Rollo*, p. 72.

Our Ruling

We deny the Petition.

The primordial issue in this Petition is whether petitioner was dismissed from service. At the outset, the Court notes that this is a question of fact which cannot be raised in a Petition for Review on *Certiorari* under Rule 45.³² However, when there is no uniformity in the factual findings of the tribunals below, as in this case, this Court is resolved to again examine the records as well as the evidence presented to determine which findings conform with the evidentiary facts.³³

In illegal dismissal cases, “[w]hile the employer bears the burden x x x to prove that the termination was for a valid or authorized cause, the employee must first establish by substantial evidence the fact of dismissal from service.”³⁴ The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive and convincing.³⁵ Thus, in this case, it is incumbent upon petitioner to prove his claim of dismissal.

Petitioner relies on the word “terminated” as used in the June 25, 2003 Certification issued him by respondent Arquiza and argues that the same is a clear indication that he was dismissed from service. We are, however, not persuaded. Petitioner cannot simply rely on this piece of document since the fact of dismissal must be evidenced by positive and overt acts of an employer indicating an intention to dismiss.³⁶ Here, aside from this single document, petitioner proffered no other evidence showing that he was dismissed from employment. While it is true that he was not allowed to report for work after the period of his suspension expired, the same was due to NPC’s request for his replacement as NPC was no longer interested in his services. And as correctly argued by respondents, petitioner from that point onward is not considered dismissed but merely on a floating status. “Such a ‘floating status’ is lawful and not unusual for security guards employed in security agencies as their assignments primarily depend on the contracts entered into by the agency with third parties.”³⁷

Countering such status, petitioner contends that even at present, he is still not given any new duties. A floating status can ripen into constructive dismissal

³² *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504.

³³ *Union Motor Corporation v. National Labor Relations Commission*, 487 Phil. 197, 204-205 (2004).

³⁴ *Montederamos v. Tri-Union International Corporation*, G.R. No. 176700, September 4, 2009, 598 SCRA 370, 376.

³⁵ *Ledesma, Jr. v. National Labor Relations Commission*, G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370 citing *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209-210 (2006).

³⁶ *Exodus International Construction Corporation v. Biscocho*, G.R. No. 166109, February 23, 2011, 644 SCRA 76, 88.

³⁷ *Agro Commercial Security Services Agency, Inc. v. National Labor Relations Commission*, 256 Phil. 1182, 1189 (1989).

only when it goes beyond the six-month maximum period allowed by law.³⁸ In this case, petitioner filed the Complaint for illegal dismissal even before the lapse of the six-month period. Hence, his claim of illegal dismissal lacks basis. Moreover and as aptly observed by the NLRC, it was in fact petitioner who intended to terminate his relationship with respondents through his planned retirement. This is further bolstered by his prayer in his Complaint where he sought for separation pay and not for reinstatement.

At any rate, upon a close reading of the June 25, 2003 Certification, this Court is of the opinion that petitioner was not dismissed from service. The import of the said Certification is that petitioner was assigned in NPC from November 20, 1996 up to May 7, 2003 and that on May 7, 2003, respondents terminated his assignment to NPC upon the latter's request. This is the correct interpretation based on the true intention of the parties as shown by their contemporaneous and subsequent acts and the other evidence on record as discussed above. Section 12 of Rule 130 of the Rules of Court states that in the construction and interpretation of a document, the intention of the parties must be pursued. Section 13 of the same Rule further instructs that the circumstances under which a document was made may be shown in order to ascertain the correct interpretation of a document.

To recap, petitioner was suspended effective May 8, 2003. On June 2, 2003, NPC requested for his replacement. He then intimated his desire to retire from service on June 17, 2003. These circumstances negate petitioner's claim that he was terminated on May 7, 2003. Clearly, there is no dismissal to speak of in this case.

With respect to the additional benefits prayed for by the petitioner, suffice it to state that this Court cannot grant him such reliefs. "[I]t is settled that a non-appellant cannot, on appeal, seek an affirmative relief."³⁹ It was held that "a party cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter-assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof for in such a case he must appeal."⁴⁰

WHEREFORE, the Petition is **DENIED**. The Decision dated January 25, 2007 and the Resolution dated July 25, 2007 of the Court of Appeals in CA-G.R. SP No. 01530 are **AFFIRMED**.

³⁸ *Salvalosa v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 198.

³⁹ *Nessia v. Fermin*, G.R. No. 102918, March 30, 1993, 220 SCRA 615, 623.

⁴⁰ *Santos v. Court of Appeals*, G.R. No. 100963, April 6, 1993, 221 SCRA 42, 46.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
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.


ANTONIO T. CARPIO
Associate Justice
Chairperson

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*