Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

VICENTE C. TATEL, Petitioner, - versus - **JLFP INVESTIGATION SECURITY AGENCY, INC., JOSE LUIS F. PAMINTUAN, and/or PAOLO C. TURNO,** Respondents.	**G.R. No. 206942** Present: SERENO, *C.J.,* Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.* Promulgated: FEB 2 5 2015

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D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 14, 2012 and the Resolution[3] dated April 22, 2013 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 119997 which reversed and set aside the Decision[4] dated February 9, 2011 and the Resolution[5] dated March 31, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002496-10 and instead, reinstated the Decision[6] dated September 20, 2010 of the Labor Arbiter (LA) in NLRC NCR Case No. 05-06196-10, dismissing petitioner Vicente C. Tatel's (Tatel) labor complaint for lack of merit.

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1 *Rollo*, pp. 7-21.
2 Id. at 24-39. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring.
3 Id. at 41-42.
4 Id. at 85-93. Signed by Presiding Commissioner Benedicto R. Palacol with Commissioners Isabel G. Panganiban-Ortiguerra and Nieves Vivar-De Castro concurring.
5 Id. at 96-98.
6 Id. at 129-133. Signed by Labor Arbiter Cheryl M. April.

The Facts

On March 14, 1998, respondent JLFP Investigation Security Agency, Inc. (JLFP), a business engaged as a security agency, hired Tatel as one of its security guards.[7]

Tatel alleged that he was last posted at BaggerWerken Decloedt En Zoon (BaggerWerken) located at the Port Area in Manila.[8] He was required to work twelve (12) hours everyday from Mondays through Sundays and received only ₱12,400.00 as monthly salary.[9] On October 14, 2009, Tatel filed a complaint[10] before the NLRC against JLFP and its officer, respondent Jose Luis F. Pamintuan[11] (Pamintuan), as well as SKI Group of Companies (SKI) and its officer, Joselito Dueñas,[12] for underpayment of salaries and wages, non-payment of other benefits, 13th month pay, and attorney's fees (*underpayment case*).[13]

On October 24, 2009, Tatel was placed on "floating status";[14] thus, on May 4, 2010, or after the lapse of six (6) months therefrom, without having been given any assignments, he filed another complaint[15] against JLFP and its officers, respondent Paolo C. Turno[16] (Turno) and Jose Luis Fabella,[17] for illegal dismissal, reinstatement, backwages, refund of cash bond deposit amounting to ₱25,400.00, attorney's fees, and other money claims (*illegal dismissal case*).[18]

In their defense,[19] respondents JLFP, Pamintuan, and Turno (respondents) denied that Tatel was dismissed and averred that they removed the latter from his post at BaggerWerken on August 24, 2009 because of several infractions he committed while on duty. Thereafter, he was reassigned at SKI from September 16, 2009 to October 12, 2009, and last posted at IPVG[20] from October 21 to 23, 2009.[21]

Notwithstanding the pendency of the *underpayment case*, respondents sent a Memorandum[22] dated November 26, 2009 (November 26, 2009

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7 Id. at. 25.
8 See Position Paper for Complainant dated June 18, 2010; id. at 111-116.
9 Id. at 25.
10 Id. at 104-105.
11 Designated as former Chairman and President of JLFP. See id. at 47.
12 Designated as Project Manager of SKI. See id. at 141.
13 See id. at 104.
14 Id. at 129-130.
15 Id. at 108-109.
16 Designated as incumbent President of JLFP. Id. at 46 and 81.
17 Designated as incumbent Manager of JLFP. See records, Vol. 1, pp. 4 and 65.
18 See *rollo*, p. 108.
19 See Position Paper for Respondents dated June 23, 2010; records, Vol. 1, pp. 18-29.
20 Complete name of IPVG is not found in the records.
21 See records, Vol. 1, p. 20. See also *rollo*, p. 48.
22 *Rollo*, pp. 106.

Memorandum) directing Tatel to report back to work, noting that the latter last reported to the office on October 26, 2009. However, despite receipt of the said memorandum, respondents averred that Tatel ignored the same and failed to appear; hence, he was deemed to have abandoned his work.[23] Moreover, respondents pointed out that Tatel made inconsistent statements when he declared in the *underpayment case* that he was employed in March 1997 with a salary of ₱12,400.00 per month and dismissed on October 13, 2009, while declaring in the *illegal dismissal case* that his date of employment was March 14, 1998, with a salary of ₱6,200.00 per month, and that he was dismissed on October 24, 2009.[24]

In his reply,[25] Tatel admitted having received on December 11, 2009 the November 26, 2009 Memorandum directing him to report back to work for reassignment. However, when he went to the JLFP office, he was merely advised to "wait for possible posting."[26] He repeatedly went back to the office for reassignment, but to no avail. He likewise refuted respondents' claim that he abandoned his work, insisting that after working for JLFP for more than eleven (11) years, it was illogical for him to refuse any assignments, more so, to abandon his work and security of tenure without justifiable reasons.[27]

The LA Ruling

In a Decision[28] dated September 20, 2010, the LA dismissed Tatel's illegal dismissal complaint for lack of merit.[29] The LA did not give credence to Tatel's allegation of dismissal in light of the inconsistent statements he made under oath in the two (2) labor complaints he had filed against the respondents. The LA noted that said inconsistent statements "relate not only to the dates that he was hired and supposedly fired but, more glaringly, to the amount of his monthly salaries."[30] It also observed that Tatel failed to explain said inconsistencies.

Aggrieved, Tatel appealed[31] to the NLRC.

The NLRC Ruling

In a Decision[32] dated February 9, 2011, the NLRC reversed and set aside the LA's Decision and found Tatel to have been illegally dismissed.

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23 Records, Vol. 1, p. 24.
24 Id. at 22-23. See also *rollo*, pp. 104 and 108.
25 Dated July 2, 2010. *Rollo*, pp. 117-118.
26 Id. at 117.
27 Id. at 117-118.
28 Id. at 129-133.
29 Id. at 133.
30 Id. at 132.
31 See Memorandum of Appeal dated September 30, 2010; id. at 134-138.
32 Id. at 85-93.

Consequently, it directed respondents to reinstate him to his last position without loss of seniority or diminution of salary and other benefits, as well as to pay him the following: (*a*) backwages from the time of his illegal dismissal on August 24, 2009 until finality of the Decision; (*b*) underpaid wages computed for a period of three (3) years prior to the filing of the complaint until finality; (*c*) cash bond deposit refund amounting to ₱25,400.00; and (*d*) attorney's fees equivalent to ten percent (10%) of the total award. It likewise ruled that if reinstatement was no longer viable due to the strained relationship between the parties, respondents are liable for separation pay equivalent to one (1) month's salary for every year of service computed from the time of Tatel's employment on March 14, 1998 until finality of the Decision. All other claims were denied for lack of merit.[33]

In so ruling, the NLRC rejected respondents' defense that Tatel abandoned his work, finding no rational explanation as to why an employee, who had worked for more than ten (10) years for his employer, would just abandon his work and forego whatever benefits were due him for the length of his service.[34] Similarly, it debunked the claim of abandonment for failure of respondents to prove by substantial evidence the elements thereof, *i.e.*, (*a*) that the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (*b*) there must have been a clear intention to sever the employer-employee relationship as manifested by overt acts.[35]

Moreover, the NLRC ruled that Tatel's dismissal was not constructive but actual, and considered his being pulled out from his post on August 24, 2009 as the operative act of his dismissal. It likewise found no just and valid ground for Tatel's dismissal; neither was procedural due process complied with to effectuate the same.[36]

Respondents' motion for reconsideration [37] was denied in a Resolution[38] dated March 31, 2011. Dissatisfied, they elevated the case to the CA *via* petition for *certiorari*[39] on June 10, 2011. Meanwhile, pre-execution conferences were held at the NLRC,[40] and on July 29, 2011, respondents filed a Motion for Computation,[41] alleging that Tatel failed to report back to work despite the Return-to-Work Order[42] dated February 22, 2011, claiming "strained relations" with respondents and manifesting that he

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33 Id. at 92-93.
34 Id. at 87.
35 Id. at 87-88.
36 Id. at 88-89.
37 Dated February 25, 2011. Records, Vol. 1, pp. 129-147.
38 *Rollo*, pp. 96-98.
39 Id. at 43-80.
40 See records, Vol. 1, p. 310.
41 Id. at 310-312.
42 Id. at 122.

was already employed with another company at the time he received the aforesaid order.[43]

The CA Ruling

In a Decision[44] dated November 14, 2012, the CA reversed and set aside the NLRC's February 9, 2011 Decision and reinstated the LA's September 20, 2010 Decision dismissing the illegal dismissal complaint filed by Tatel.[45] Finding grave abuse of discretion on the part of the NLRC in rendering its assailed Decision, the CA instead concurred with the stance of the LA that Tatel's inconsistent statements cannot be given weight *vis-à-vis* the evidence presented by the respondents.[46] In this regard, the CA declared that if Tatel could not be truthful about the most basic information or explain such inconsistencies, the same may hold true for his claim for illegal dismissal.[47]

Further, the CA rejected the NLRC's finding that the operative act of Tatel's dismissal was the act of pulling him out from his assignment on **August 24, 2009** when in the complaint sheets of both the *illegal dismissal case* and the *underpayment case*, Tatel claimed that he was dismissed on **October 13, 2009** and **October 24, 2009**, respectively.[48] It noted that the NLRC failed to consider that Tatel was subsequently reassigned to SKI from September 16, 2009 to October 12, 2009, and thereafter, to IPVG from October 21 to 23, 2009, which Tatel never disputed nor denied.[49]

Corollary thereto, the CA found that Tatel ignored the November 26, 2009 Memorandum directing him to report to work for possible reassignment, signifying that he abandoned his work and that, consequently, there was no dismissal to begin with.[50] That he was given subsequent postings clearly manifest that there was no intention to dismiss him, hence, he could not have been illegally dismissed.[51]

Tatel moved for reconsideration,[52] which was denied in a Resolution[53] dated April 22, 2013; hence, this petition.

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43 Id. at 311.
44 *Rollo*, pp. 24-39.
45 Id. at 38-39.
46 Id. at 34.
47 Id. at 36.
48 Id. at 34-35.
49 Id. at 35.
50 Id. at 36.
51 Id. at 37.
52 See Motion for Reconsideration dated December 3, 2012; id. at 172-183.
53 Id. at 41-42.

The Issue Before The Court

The sole issue for the Court's resolution is whether or not the CA erred in ruling that the NLRC gravely abused its discretion in finding Tatel to have been illegally dismissed.

The Court's Ruling

The petition is meritorious.

It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the appellate court.[54] The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court.[55] The rule, however, is not without exception. In *New City Builders, Inc. v. NLRC*,[56] the Court recognized the following exceptions to the general rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) **when the findings of facts are conflicting**; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[57]

The exception, rather than the general rule, applies in the present case. When the findings of fact of the CA are contrary to those of the NLRC, whose findings also diverge from those of the LA, the Court retains its authority to pass upon the evidence and, perforce, make its own factual findings based thereon.[58]

At the core of this petition is Tatel's insistence that he was illegally dismissed when, after he was put on "floating status" on October 24, 2009,

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54 *AMA Computer College-East Rizal v. Ignacio*, 608 Phil. 436, 454 (2009).
55 *Nicolas, v. CA*, 238 Phil. 622, 630 (1987); *Tiongco v. de la Merced*, 157 Phil. 92, 96 (1974).
56 499 Phil. 207, 212-213 (2005).
57 Id., citing *Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86.
58 See *Cadiz v. CA*, 510 Phil. 721, 728 (2005).

respondents no longer gave him assignments or postings, and the period therefor had lasted for more than six (6) months. On the other hand, respondents maintained that Tatel abandoned his work, and that his inconsistent statements before the labor tribunals regarding his work details rendered his claim of illegal dismissal suspect.

After a judicious perusal of the records, the Court is convinced that Tatel was *constructively*, not actually, dismissed after having been placed on "floating status" for more than six (6) months, reckoned from **October 24, 2009**, the day following his removal from his last assignment with IPVG on October 23, 2009, and not on August 24, 2009 as erroneously held by the NLRC.

In *Superstar Security Agency, Inc. and/or Col. Andrada v. NLRC*,[59] the Court ruled that 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.[60] In security agency parlance, being placed "off-detail" or on "floating status" means "waiting to be posted."[61] In *Salvaloza v. NLRC*,[62] the Court further explained the nature of the "floating status," to wit:

> 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 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. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. **When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.**[63] (Emphasis supplied)

Relative thereto, constructive dismissal exists when an act of clear discrimination, insensibility, or disdain, on the part of the employer has become so unbearable as to leave an employee with no choice but to forego

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59 262 Phil. 930 (1990).
60 Id. at 934-935.
61 *Sentinel Security Agency, Inc. v. NLRC*, 356 Phil. 434, 443 (1998).
62 G.R. No. 182086, November 24, 2010, 636 SCRA 184.
63 Id. at 197-198.

continued employment,[64] or 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.[65]

In this case, respondents themselves claimed that after having removed Tatel from his post at BaggerWerken on August 24, 2009 due to several infractions committed thereat, they subsequently reassigned him to SKI from September 16, 2009 to October 12, 2009 and then to IPVG from October 21 to 23, 2009. Thereafter, and until Tatel filed the instant complaint for illegal dismissal six (6) months later, or on May 4, 2010, he was not given any other postings or assignments. While it may be true that respondents summoned him back to work through the November 26, 2009 Memorandum, which Tatel acknowledged to have received on December 11, 2009, records are bereft of evidence to show that he was given another detail or assignment. As the "off-detail" period had already lasted for more than six (6) months, Tatel is therefore deemed to have been constructively dismissed.

In this regard, the Court concurs with the finding of the NLRC that respondents failed to establish that Tatel abandoned his work. To constitute abandonment, two elements must concur: (*a*) the failure to report for work or absence without valid or justifiable reason, and (*b*) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a *deliberate and unjustified refusal* of the employee to resume his employment without any intention of returning.[66] Abandonment is incompatible with constructive dismissal.[67]

The charge of abandonment in this case is belied by the high improbability of Tatel intentionally abandoning his work, taking into consideration his length of service and, concomitantly, his security of tenure with JLFP. As the NLRC had opined, no rational explanation exists as to why an employee who had worked for his employer for more than ten (10) years would just abandon his work and forego whatever benefits he may be entitled to as a consequence thereof.[68] As such, respondents failed to sufficiently establish a *deliberate and unjustified refusal* on the part of Tatel to resume his employment, which therefore leads to the logical conclusion that the latter had no such intention to abandon his work.

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64 *Soliman Security Services, Inc. v. CA*, 433 Phil. 902, 910 (2002), citing *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186 (1999).

65 *MegaForce Security and Allied Services, Inc. v. Lactao*, 581 Phil. 100, 107 (2008).

66 *RBC Cable Master System and/or Cinense v. Baluyot*, 596 Phil. 729, 739-740 (2009).

67 *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, 514 Phil. 488, 497 (2005).

68 See *rollo*, p. 87.

Moreover, Tatel refuted respondents' allegation that he did not heed their directive to return to work following his receipt of the November 26, 2009 Memorandum. The Court finds no compelling reason not to give credence to such rebuff, especially in light of the filing of the instant complaint for illegal dismissal. An employee who forthwith takes steps to protest his layoff cannot, as a general rule, be said to have abandoned his work, and the filing of the complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[69] As the Court sees it, it is simply incongruent for Tatel to refuse any offer of an assignment and thereafter, seek redress by filing a case for illegal dismissal.

That Tatel made inconsistent statements pertaining to his work details in the *underpayment case* and the instant *illegal dismissal case* does not affect the Court's conclusion that he was constructively dismissed. In his petition, he explained that he was hired by JLFP in March 1997 but became a regular employee on March 14, 1998.[70] In this regard, respondents themselves have stated that they hired Tatel on **March 14, 1998**,[71] which effectively puts the issue to rest.

Similarly, Tatel clarified the discrepancy in his declared salaries, stating that **₱12,400.00** was the amount of his monthly salary, which therefore translates to ₱6,200.00 every fifteen (15) days. Such explanation is reasonable and is not far-fetched; hence, the Court accepts the same. Likewise, Tatel explained that he was constructively dismissed on October 13, 2009, after he had filed the *underpayment case* against respondents on October 11, 2009, and believed that he was actually dismissed on October 24, 2009. On this score, the Court finds that he was constructively dismissed on **October 24, 2009**, as adverted to elsewhere, considering that he was still given a last detail at the IPVG from October 21 to 23, 2009. In any case, six (6) months have already lapsed since Tatel was last given any assignment, hence, he is deemed to have already been constructively dismissed when he filed the instant case.

For all the foregoing reasons, the CA therefore erred in ascribing grave abuse of discretion on the part of the NLRC which, in fact, correctly found Tatel to have been illegally dismissed. Verily, an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction;[72] this is clearly not the case with respect to the pronouncement of the NLRC here. In consequence of the foregoing, Tatel is entitled to reinstatement and back wages. However, as reinstatement is no longer feasible in this case because of the strained relations between

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69 *Veterans SecurityAgency, Inc. v. Gonzalvo, Jr.*, supra note 67, citing *Hagonoy Rural Bank v. NLRC*, 349 Phil. 220, 233 (1998).

70 See *rollo*, p. 10.

71 Id. at 203.

72 See *INC Shipmanagement, Inc. v. Moradas*, G.R. No. 178564, January 15, 2014.

the parties and the fact that Tatel had since been employed with another company, separation pay is awarded in *lieu* of reinstatement.[73] On the matter of the computation of the monetary awards, the Court delegates and defers the same to the NLRC, being a matter falling within its expertise.[74]

WHEREFORE, the petition is **GRANTED**. The Decision dated November 14, 2012 and the Resolution dated April 22, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 119997 are hereby **REVERSED** and **SET ASIDE**. The Decision dated February 9, 2011 and the Resolution dated March 31, 2011 of the National Labor Relations Commission (NLRC) are **REINSTATED** with **MODIFICATION** reckoning the computation of back wages from the date of petitioner's constructive dismissal on **October 24, 2009** until finality hereof, computed at **₱12,400.00** per month. The rest of the NLRC Decision stands.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

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73 *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, supra note 67, at 501, citing *Nagusara v. NLRC*, 352 Phil. 854, 865 (1998).

74 See *Sps. Villaruel v. NLRC*, 348 Phil. 427, 431-436 (1998).

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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