

## **SECOND DIVISION**

**[ G.R. NO. 144376, September 13, 2006 ]**

**SALVADOR BUNAGAN, PETITIONER, VS. SENTINEL WATCHMAN & PROTECTIVE AGENCY, INC., RESPONDENT.**

### **D E C I S I O N**

**PUNO, J.:**

Petitioner Salvador Bunagan seeks a review of the decision of the Court of Appeals in CA-G.R. SP Nos. 54258-59. The Court of Appeals ruled on the consolidated petitions filed by petitioner and respondent Sentinel Watchman & Protective Agency, Inc. assailing the decision of the National Labor Relations Commission (NLRC) on the complaint for illegal dismissal filed by petitioner against respondent.

Petitioner was employed by respondent as security guard and was assigned to one of its clients, La Suerte Cigar and Cigarette Factory (La Suerte).

In May 1994, petitioner filed a criminal complaint for oral defamation against Lt. Maravillas, Security Manager of La Suerte. Lt. Maravillas thus requested respondent to replace petitioner.

On June 1, 1994, respondent formally relieved petitioner from his post at La Suerte. Prior to said date, however, petitioner was no longer allowed to report for duty at the client's premises.

Petitioner filed a complaint for illegal dismissal and money claims against respondent and La Suerte. He claimed, among others, that there was no valid or just cause for his dismissal and that he was not accorded due process before his services were terminated.

Respondent, on the other hand, asserted that petitioner was not dismissed from his employment on June 1, 1994; that he was merely relieved from his assignment upon request of La Suerte; and there was no basis for his claim for separation pay and other monetary claims. La Suerte, meanwhile, argued that there was no employer-employee relationship between it and petitioner and that it has faithfully paid all the benefits due the security guards under the Security Service Agreement.

The Labor Arbiter ruled in favor of petitioner. He held that petitioner was dismissed without just or authorized cause and due process when he was not allowed to report for duty on June 1, 1994 in the premises of La Suerte. He discredited respondent's allegation that petitioner has abandoned his work when he refused to report to the security agency's office after he was relieved from his post at La Suerte. The Labor Arbiter stated that petitioner was entitled to reinstatement without loss of seniority rights and other benefits, with backwages for one year. However, considering that reinstatement was no longer possible due to strained relations, the Labor Arbiter

ordered respondent to grant petitioner separation pay in lieu of reinstatement, plus attorney's fees. All the other claims of petitioner were dismissed as it appeared from the evidence that they have been fully complied with by the respondent.<sup>[1]</sup>

Respondent appealed to the NLRC.

The NLRC, in its resolution dated February 13, 1996, dismissed the appeal for late filing.<sup>[2]</sup>

Entry of judgment was made on March 18, 1996.<sup>[3]</sup>

On March 22, 1996, respondent filed a motion for reconsideration of the February 13, 1996 resolution.<sup>[4]</sup>

In its Decision dated July 31, 1996, the NLRC granted the motion for reconsideration despite the entry of judgment, as it was shown that respondent received a copy of the February 13, 1996 resolution only on March 21, 1996. The entry of judgment on March 18, 1996 was therefore premature. In addition, it set aside the findings of the Labor Arbiter on the validity of petitioner's dismissal. The NLRC held that respondent never dismissed petitioner and that it merely complied with the request of its client, La Suerte, to replace him. Nonetheless, it also ruled that there was no abandonment of work on the part of petitioner as shown by the filing of his complaint for illegal dismissal. The NLRC ordered respondent to reinstate petitioner as security guard without loss of seniority rights but without backwages. Should petitioner refuse to be reinstated, respondent should pay the former separation pay.<sup>[5]</sup> The dispositive portion of the decision read:

**WHEREFORE**, premises considered, the appealed decision is hereby **MODIFIED**, to read as follows:

Dismissing the complaint for illegal dismissal and non-payment of certain monetary benefits, for lack of legal basis;

Ordering respondent to reinstate complainant to his position as security guard without backwages, as discussed above; and

In lieu of reinstatement if the complainant refuse[s], ordering respondent to pay complainant separation pay computed at one month salary for every year of service, a fraction of at least six (6) months considered as one whole year.

No costs.

SO ORDERED.<sup>[6]</sup>

Petitioner and respondent filed separate petitions for certiorari with the Supreme Court assailing the decision of the NLRC. Petitioner averred that the NLRC erred in reopening the case despite the entry of judgment, hence, finality, of the resolution dismissing the appeal. Respondent, on the other hand, questioned the award of separation pay to petitioner in case he refuses to be reinstated. The two petitions were consolidated and later remanded to the Court of Appeals in accordance with

the ruling in **St. Martin Funeral Homes v. NLRC**.<sup>[7]</sup>

Granting the petition of herein respondent, the Court of Appeals ruled that Bunagan was not entitled to separation pay. It stated that separation pay may be awarded in lieu of reinstatement only when recall can no longer be effected as when the position he previously held no longer exists or when there is strained relations resulting from loss of trust and confidence. As neither of these conditions applied in the case at bar, there was no ground to grant separation pay to petitioner in case he declines reinstatement. With respect to Bunagan's petition, the Court of Appeals denied the same for lack of merit. The Court of Appeals disposed of the case, thus:

WHEREFORE, the petition filed by petitioner Salvador Bunagan in CA-G.R. SP No. 54258 is DENIED for paucity of merit.

The petition of petitioner Sentinel Watchman & Protective Agency in CA-G.R. SP No. 54259 is GRANTED and the directive of respondent NLRC in the challenged July 31, 1996 Decision requiring the payment of separation pay in lieu of reinstatement is set aside and annulled. The other dispositions in said July 31, 1996 Decision are affirmed.

SO ORDERED.<sup>[8]</sup>

Petitioner filed the instant petition for review arguing that the Court of Appeals and the NLRC erred:

1. in not considering the Resolution dismissing the appeal of Sentinel -  
- with the issuance and release of Entry of Judgment -- for having been filed out of time, final and nothing more could be done as the NLRC thereafter had lost jurisdiction over the case; and
2. in holding that the petitioner merely relied upon his submission that there was already an Entry of Judgment and did not argue anymore on the merits of the case, which failure of petitioner was even made point against him.<sup>[9]</sup>

We rule for the petitioner.

We agree with the Court of Appeals that the entry of judgment made on March 18, 1996 was premature as respondent received a copy of the NLRC resolution dismissing the appeal only on March 21, 1996. However, despite the timeliness of the motion for reconsideration which was filed on March 22, 1996, it still failed on the merits.

The NLRC initially dismissed respondent's appeal for being late. It is undisputed that respondent received a copy of the decision of the Labor Arbiter on December 1, 1995. On the tenth day, or on December 11, 1995, respondent filed a Notice of Appeal with Motion for Extension of Time to File Memorandum of Appeal. Although respondent posted a surety bond on that date, it nonetheless moved for an extension of one day to file its memorandum of appeal.

Under the law, an appeal from the decision of the Labor Arbiter is perfected upon filing of a memorandum of appeal and payment of the appeal fee **within ten (10)**