FIRST DIVISION

[G.R. No. 230005, January 22, 2020]

SEVENTH FLEET SECURITY SERVICES, INC., PETITIONER, VS. RODOLFO B. LOQUE, RESPONDENT.

D E C I S I O N

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision [2] dated September 22, 2016 and Resolution[3] dated February 16, 2017 of the Court of Appeals (CA) in CA G.R. SP No. 143182 which annulled the Resolutions dated July 30, 2015[4] and September 29, 2015[5] of the National Labor Relations Commission (NLRC).

Facts

The facts, as narrated by the CA, are as follows:[6]

Sometime in May 2006, respondent Rodolfo B. Loque (Loque) was hired as a security guard by petitioner Seventh Fleet Security Services, Inc. (Seventh Fleet) and its President, Medy Lastica (Lastica). Loque alleged that he was treated with hostility after he filed a complaint for underpayment of wages and other money claims against Seventh Fleet and Lastica in September 2013. Loque claimed that on December 25, 2013, he was suddenly relieved from his post upon request of Second Midland Offices Condominium Corp. (Second Midland), Seventh Fleet's client and Loque's place of assignment. The next day, Loque received an order suspending him for 10 days. After the lapse of his 10-day suspension, or on January 7, 2014, Loque allegedly reported for work, but he was informed that he was placed on "floating status" and was advised to wait for a call from Seventh Fleet.

On May 16, 2014, a Friday, Loque received a letter from Seventh Fleet directing him to report to its office within 48 hours from receipt thereof. Loque went to Seventh Fleet's office on May 19, 2014, a Monday, but was not allowed to enter and was made to wait outside the office. Before leaving the premises, Loque handed a letter to security guard Dario Amores, Jr. (Amores), informing Seventh Fleet that he was ready to report for duty on the same day. Seventh Fleet wrote a second letter dated May 28, 2014, allegedly to make it appear that Loque failed to report to work despite Seventh Fleet's return to work order.

In a letter dated July 11, 2014, Loque inquired with Seventh Fleet regarding the status of his employment. Loque stressed that he was refused to return to work by Seventh Fleet even though he obeyed the return to work order.

On July 28, 2014, Loque filed a complaint for constructive dismissal, and payment of separation pay and full backwages. He argued that since he was placed on floating

status from January 7, 2014 to July 28, 2014, or a period of more than six months, he is deemed to have been constructively dismissed.

Seventh Fleet, on the other hand, denied Loque's allegation that he was constructively dismissed. Seventh Fleet also refuted the allegation that Loque was treated with hostility after he filed a complaint for underpayment of wages and other money claims against Seventh Fleet and Lastica. Instead, Seventh Fleet asserted that Loque was actually treated with kindness as if there was no ongoing labor dispute between them.

Seventh Fleet also added that it received a report from the security guards assigned at Second Midland regarding an offense committed by Loque. According to the security guards, in the late evening of November 7, 2013, Loque, who was then no longer on duty, went out of Second Midland and rode a motorbike with Ferdinand Manaois (Manaois), a security guard from a different agency. Loque returned to Second Midland at around midnight, used the backdoor to gain entry, and got a key from the drawer of the guard's table. Loque then opened the gate located at the building's basement so Manaois could enter the building without passing through the guards on duty. Loque and Manaois stayed in the building overnight. To avoid any argument, the guards on duty did not confront Loque but decided to write a report informing Seventh Fleet of the incident.

Seventh Fleet required Loque to explain why he returned to Second Midland with his companion and stayed beyond his hours of duty, knowing that neither Seventh Fleet's Code of Disciplinary Rules and Regulations nor Second Midland authorize, the same. In his letter, Loque reasoned that due to inclement weather he was forced to ask Engr. Nicolas Dayalo, Jr. (Engr. Dayalo), the building administrator of Second Midland, if he could stay in the building overnight. Loque also claimed that he offered to help the other guards in case of emergency or flooding in the area.

In order to avoid getting involved in the issue between Seventh Fleet and Loque, Engr. Dayalo requested that Loque be replaced. Subsequently, upon recommendation of Renato Morelos, Seventh Fleet's Operation Manager, Loque was suspended for a period of 10 days, starting December 26, 2013.

Seventh Fleet alleged that on May 14, 2014, they sent Loque a letter directing him to report for posting, but Loque did not comply with the directive. On May 28, 2014, Seventh Fleet sent Loque another letter reiterating the instruction to report for posting. However, Seventh Fleet still received no word from Loque. Seventh Fleet was surprised to learn that Loque had filed a complaint for illegal dismissal, and payment of separation pay and full backwages.

Ruling of the Labor Arbiter

The Labor Arbiter rendered a Decision[7] dated February 12, 2015 finding Seventh Fleet and Lastica guilty of illegal constructive dismissal, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding Respondents guilty of illegal constructive dismissal. Accordingly, Respondents are ordered to pay jointly and severally Complainant his separation pay in the sum of P125,820.00 and full backwages in the amount of P209,076.53, and 10% attorney's fees in the sum of P33,489.65.

All other claims are dismissed for lack of merit.

SO ORDERED.[8]

The Labor Arbiter noted that Loque was not given any work assignment after his 10-day suspension, or from January 7, 2014 until he filed the complaint for constructive dismissal on July 28, 2014. In other words, Loque was on floating status for more than six months. Thus, the Labor Arbiter, citing *Sebuguero v. NLRC*,[9] held that Loque is already deemed constructively dismissed.

The Labor Arbiter also rejected Seventh Fleet's argument that Loque was guilty of abandonment, noting that Loque was repeatedly refused entry to Seventh Fleet's office and was ignored every time he would attempt to report for duty. Moreover, the Labor Arbiter found that there was no clear intention on the part of Loque to sever his employment relationship with Seventh Fleet.

Aggrieved, Seventh Fleet and Lastica appealed the ruling of the Labor Arbiter to the NLRC.

Ruling of the NLRC

The NLRC promulgated a Resolution[10] dated July 30, 2015, reversing and setting aside the ruling of the Labor Arbiter, and dismissing the complaint for lack of merit.

The NLRC held that placing Loque on floating status was a valid exercise of Seventh Fleet's management prerogative. The NLRC rejected Loque's allegation that he went to Seventh Fleet's office and was not allowed to enter. Instead, the NLRC gave credence to the sworn statement of Amores, the security guard stationed at the gate of the village where Seventh Fleet's office is located, who narrated that Loque did not proceed to Seventh Fleet's office but only left a copy of his letter with him at the village guardhouse. Moreover, the NLRC held that Loque's inquiry on the status of his employment cannot be construed as evidence to support his allegation that he was not allowed to report for duty for six months.

Loque's motion for reconsideration of the NLRC Resolution was denied in a Resolution[11] dated September 29, 2015, prompting him to file a Petition for *Certiorari* before the CA.

Ruling of the Court of Appeals

On September 22, 2016, the CA promulgated the assailed Decision granting the petition for *certiorari*, annulling and setting aside the NLRC Resolution, and reinstating the Labor Arbiter's Decision with modification. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Certiorari is hereby **GRANTED**. Accordingly, the assailed Resolutions dated 30 July 2015 and 29 September 2015 issued by the National Labor Relations Commission are **ANNULLED** and **SET ASIDE**. Accordingly, the Decision of the Labor Arbiter dated 12 February 2015 finding that petitioner was illegally dismissed is hereby **REINSTATED** with the **MODIFICATION** that private respondent Seventh Fleet Security Services, Inc. is ordered to pay petitioner Rodolfo Balat Loque his separation pay in the sum of one hundred twenty-five thousand eight hundred twenty (P125,820.00)

pesos, full backwages in the amount of two hundred nine thousand seventy-six pesos and fifty-three centavos (P209,076.53), and attorney's fees in the sum of thirty-three thousand four hundred eighty-nine pesos and sixty-five centavos (P33,489.65).

In consonance with the prevailing jurisprudence, the monetary judgment due to the petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of the Decision until fully satisfied.

Further, for lack of legal basis, the Complaint against private respondent Medy Lastica is DISMISSED and she is ABSOLVED from liability in the payment of separation pay and full backwages to petitioner Loque.

SO ORDERED.[12]

Concurring with the Labor Arbiter, the CA held that Seventh Fleet's act of putting Loque on floating status for more than six months is tantamount to constructive dismissal. The CA further held that Loque is not guilty of abandonment. The CA also stated that Loque could not have afforded to turn down any job posting while waiting to be recalled to work considering that he had been without a regular job since January 7, 2014, and was only able to work on a reliever basis.

On the other hand, the CA absolved Lastica for want of proof of negligence or bad faith on her part.

Seventh Fleet sought reconsideration of the CA Decision but was denied in a Resolution dated February 16, 2017. Hence, this Petition.

In his Comment dated December 12, 2017, Loque insisted on his version of facts and argued that his placement on floating status for more than six months already amounted to constructive dismissal.

On the other hand, in their Reply dated August 6, 2018, Seventh Fleet and Lastica once again belied Loque's allegation that he was barred from reporting at their office. Instead, Seventh Fleet and Lastica argued that Loque failed to report to work despite the directives from Seventh Fleet.

Issue

Whether Loque was constructively dismissed from employment and, thus, entitled to his money claims.

The Court's Ruling

The Petition lacks merit.

The jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law.[13] In labor cases, a Rule 45 petition is limited to reviewing whether the CA correctly determined the presence or absence of grave abuse of discretion and deciding other jurisdictional errors of the NLRC.[14]

Here, the CA held that the NLRC committed grave abuse of discretion in reversing the Decision of the Labor Arbiter and dismissing the complaint of Loque. The Court agrees with the CA.

The instant controversy centers on the legality of Loque's "floating status." In security services, the "floating status" or temporary "off-detail" of an employee may take place when there are no available posts to which the employee may be assigned — which may be due to the non-renewal of contracts with existing clients of the agency, or from a client's request for replacement of guards assigned to it.[15]

While there is no specific provision in the Labor Code governing the "floating status" or temporary "off-detail" of employees, the Court, applying Article 301 [286] of the Labor Code by analogy, considers this situation as a form of temporary retrenchment or lay-off.[16] Article 301 [286] of the Labor Code reads:

> ART. 301. [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.

Conformably with the above provision, the placement of an employee on "floating status" must not exceed six months. Otherwise, the employee may be considered constructively dismissed.[17] Furthermore, the burden of proving that there are no posts available to which the security guard can be assigned rests on the employer.[18] However, the mere lapse of six months in "floating status" should not automatically result to constructive dismissal. The peculiar circumstances of the employee's failure to assume another post must still be inquired upon.[19]

In this case, it is undisputed that Loque was placed on floating status beginning on the lapse of his 10-day suspension on January 7, 2014. Thus, at the time he filed the complaint for constructive dismissal and money claims on July 28, 2014, he has been on "floating status" for six months and 21 days.

To avoid liability for constructive dismissal, Seventh Fleet asserted that it had directed Loque "*to report to [Seventh Fleet's office] for posting within forty eight (48) hours*"[20] through the letters dated May 14, 2014 and May 28, 2014. Seventh Fleet faulted Loque for not complying with its directive. On the other hand, Loque claimed that he went to Seventh Fleet's office to report for work on two occasions — on May 19, 2014 and July 11, 2014, as shown by his even dated letters. Loque further alleged that he was barred from entering the premises of Seventh Fleet on those dates and, thus, was constrained to write those letters instead.

As with the CA, the Court is likewise inclined to believe the allegations of Loque. The Court notes that other than bare denials, Seventh Fleet was not able to show that Loque was not barred from entering its premises. Thus, Loque could not be faulted for merely leaving the letter dated May 19, 2014 with security guard Amores, and for sending the letter dated July 11, 2014 through private courier. Also noteworthy, Seventh Fleet did not dispute the July 11, 2014 letter but merely attempted to discredit Loque by saying that the letter was merely "crafted"[21] in preparation to the filing of the complaint. Then again, Seventh Fleet did not respond nor refute the contents of said letter. At this point, it bears stressing that the factual findings of the CA are generally binding on the Court,[22] and the latter retains full discretion on