

FIRST DIVISION

[G.R. No. 245422, July 07, 2020]

ALLAN M. ADOR, PETITIONER, VS. JAMILA AND COMPANY SECURITY SERVICES, INC., SERGIO JAMILA III AND EDDIMAR O. ARCENA, RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition^[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 140764:

1. Decision^[2] dated July 24, 2018 finding petitioner not to have been illegally or constructively dismissed; and
2. Resolution^[3] dated February 18, 2019 denying petitioner's motion for reconsideration.

The Antecedents

On February 13, 2014, petitioner Allan M. Ador (Ador) sued respondents Jamila and Company Security Services, Inc., its President Sergio Jamila III (Jamila), and HR Manager Eddimar O. Arcena (Arcena) for illegal dismissal, underpayment of salary, overtime pay, holiday pay, rest day pay, service incentive leave pay, 13th month pay, ECOLA, night shift differential, separation pay, unpaid paternity leave benefits, moral and exemplary damages, and attorney's fees.^[4]

Petitioner essentially claimed that on May 27, 2010, respondent Jamila Security hired him as security guard. He worked from Monday to Sunday for twelve (12) hours daily on a shifting basis. He did not receive holiday pay, rest day pay, night shift differential, overtime pay, 13th month pay (except P3,000), service incentive leave pay, and his paternity leave benefits.^[5]

After he got involved in a brawling incident against a co-employee, the security agency stopped giving him posting assignments from April 2012 to April 2013.^[6]

On June 11, 2013, he talked to the security agency's HR. Manager Eddimar Arcena

and requested for a new assignment. Arcena instructed him to first renew his security guard license and clearances. He was, however, surprised to receive three (3) notices dated June 29, 2013, July 31, 2013, and August 31, 2013 bearing respondents' plan to terminate him. The notices were sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, respectively.^[7] He reported to respondents' office every time he received the notices, but respondents refused to give him posting assignments. On September 18, 2013, after receiving the 2nd notice, he gave a letter to the security agency stating that he cannot renew the documents because he did not have money. On November 27, 2013, however, he received a Memorandum^[8] dated September 31, 2013^[9] terminating his employment for insubordination.^[10]

In their Position Paper,^[11] respondents countered that petitioner was paid all the wages and benefits mandated by law. They submitted petitioner's payroll summary indicating the amounts he received.^[12]

Petitioner was first assigned at Hyatt Hotel and Casino. His posting did not last long because he caused damage to the hotel's property and to one of the vehicles belonging to a hotel guest. He got assigned to various postings but was again subjected to several disciplinary actions for different violations of company policies. When he got re-assigned to Hyatt Hotel and Casino, he got involved in a fistfight with his co-security guard. He suffered fracture in the forearm and went on sick leave to recuperate. After he was declared fit to work, he was given augmentation assignments from May 12, 2012 to September 2012 since there were no available postings for him.^[13]

When petitioner reported for work on December 17, 2012, he was directed to renew his documentary requirements before he may be given a regular assignment, *i.e.*, security guard license, barangay clearance, police clearance, PNP clearance, NBI clearance, court clearance, and neurological test result.^[14] Petitioner, however, did not comply. He again reported for work on February 6, 2013 and April 11, 2013 but still failed to submit the renewed requirements.^[15]

On June 29, 2013, respondents sent petitioner a 1st Notice to Report *via* registered mail informing him of a new posting assignment. Petitioner did not reply.^[16] A 2nd Notice to Report dated July 31, 2013 was sent directing him to return to work and submit a written explanation on why he should not be charged with insubordination. Still, the notice was left unheeded. Thus, a 3rd and Final Notice to Report dated August 31, 2013 was sent to petitioner requiring him to return to work and comply with the updated requirements; otherwise, he may be administratively charged with insubordination.^[17]

On September 18, 2013,^[18] petitioner went to respondents' office and submitted a written explanation informing the security agency he had no money to renew his requirements. Thereafter, respondents sent him a Memorandum of termination^[19] for insubordination for ignoring the three (3) notices sent him to report back for work.^[20]

During the arbitration conference on January 23, 2014, respondents informed

petitioner that he was not dismissed from employment. He was only required to comply with the renewal of his documents under Republic Act No. 5487 (RA 5487) or the Private Security Agency Law^[21] specifically his security guard license before an assignment order can be issued him. Respondents also told petitioner to just disregard the termination letter since he had already explained his side on September 18, 2013; but he should first submit his updated requirements so he can be given a post. Instead of renewing his documents, petitioner initiated the complaint for illegal dismissal.^[22]

The Ruling of the Labor Arbiter

By Decision^[23] dated June 30, 2014, Labor Arbiter Marie Josephine C. Suarez found petitioner to have been illegally dismissed, thus:

WHEREFORE, premises considered, judgment is hereby rendered declaring ALLAN M. ADOR ILLEGALLY DISMISSED. JAMILA AND COMPANY SECURITY SERVICE, INC. is ordered to pay ALLAN M. ADOR:

[1] Separation pay equivalent to one month pay per year of service, starting May 27, 2010;

[2] Full backwages starting October 1, 2013 [;]

Both separation pay and full backwages should be computed up to date of promulgation of this Decision.

[3] Attorney's fees equivalent to 10% of the monetary award.

Claims for underpayment of: wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, 13th month pay, ECOLA, night shift differential and other statutory workers' benefits are dismissed without prejudice.

All other claims are dismissed for lack of merit.

The total monetary award is computed in Annex "A" [P211,315.55],^[24] forming part of this Decision.

SO ORDERED.^[25]

According to the labor arbiter, petitioner did not ignore the notices to report for work which caused his termination for insubordination. He was not able to reply to the notices because the same were belatedly sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, respectively. Petitioner nonetheless reported to respondents' office each time he received the notices, but respondents refused to give him a new assignment. On September 18, 2013, petitioner submitted a written explanation stating that he cannot renew the documents

because he did not have money. Still, respondents terminated his employment.^[26]

Too, petitioner was not afforded procedural due process. Respondents only served him a single notice of termination dated September 31, 2013.^[27] No other notice was sent him. Records showed that even before petitioner received the final notice to report for work dated August 31, 2013 on October 4, 2013, he was already dismissed as of September 31, 2013.^[28] Thus, respondents terminated petitioner without affording him the right to be heard.

Lastly, petitioner is entitled to separation pay equivalent to one (1) month pay per year of service and full backwages. Reinstatement is no longer viable due to the parties' strained relations.^[29]

The Ruling of the National Labor Relations Commission (NLRC)

Under its Decision^[30] dated December 29, 2014, the NLRC reversed, viz.:

WHEREFORE, the labor arbiter's Decision dated June 30, 2014 is hereby set aside and a new one entered dismissing the complaint for lack of merit. However, respondents are ordered to pay complainant his separation pay computed at one-half month salary for every year of service plus ten percent (10%) attorney's fees.

SO ORDERED.^[31]

The NLRC ruled that petitioner's failure to renew his security guard license and clearances was a valid justification for respondents not to give him any posting. The NLRC, however, found that even prior to his termination petitioner had already been on "floating status" for a period of one (1) year from May 12, 2012 to April 11, 2013. He was, therefore, deemed constructively dismissed. Petitioner was awarded separation pay equivalent to one-half (1/2) month salary for every year of service and attorney's fees for having been compelled to litigate to protect his interest.^[32]

The Ruling of the Court of Appeals

In its assailed Decision^[33] dated July 24, 2018, the Court of Appeals ruled that petitioner was neither illegally nor constructively dismissed. While petitioner was on "floating status" from May 12, 2012 to April 11, 2013, no bad faith can be imputed on the security agency. It offered petitioner to go back to work within the six-month period required by law.^[34] It was petitioner's fault why he was not given any assignment since he did not renew the required documents.^[35] The Court of Appeals thus ruled:

WHEREFORE, the petition is **DISMISSED**.

Private respondent Jamila and Company Security Services, Inc. is neither guilty of illegal dismissal nor constructive dismissal. Private respondent is ORDERED to look for a security assignment for petitioner within a period of thirty (30) days from finality of judgment. If one is available, private respondent is ordered to notify petitioner Allan M. Ador to report to such available guard position within ten (10) days from notice. If petitioner fails to report for work within said time period, he shall be deemed to have abandoned his employment with petitioner. In such case, petitioner is not entitled to any backwages, separation pay, or similar benefits.

If no security assignment is available for petitioner within a period of thirty (30) days from finality of judgment, private respondent[s] should comply with the requirements of DOLE Department Order No. 14, Series of 2001, in relation to Art. 289 of the Labor Code, and serve a written notice on petitioner and the DOLE one (1) month before the intended date of termination; and pay petitioner separation pay equivalent to half[-]month pay for every year of his service.

SO ORDERED.^[36]

Petitioner moved for reconsideration but it was denied under Resolution^[37] dated February 18, 2019.

The Present Petition

Petitioner now faults the Court of Appeals for ruling that respondents are not guilty of illegal dismissal. He essentially argues that: (1) respondents terminated his employment *sans* just or authorized cause and in violation of the two-notice requirement; (2) the security agency's sudden recall of the notice of termination was a mere afterthought; and (3) he is entitled to his monetary claims since he was illegally dismissed.^[38]

In their Comment,^[39] respondents riposte that petitioner was not given a new assignment due to his own failure to renew his security guard license as required under RA 5487. There was no illegal dismissal to speak of since he was repeatedly notified that he can be terminated if he did not update his employment documents. Petitioner, nonetheless, ignored these directives. He was also afforded procedural due process since he replied to the notices to report for work on September 18, 2013.

Issue

Did the Court of Appeals err in ruling that petitioner was neither illegally nor constructively dismissed?

Ruling