

SECOND DIVISION

[G.R. No. 202613, November 08, 2017]

**SYMEX SECURITY SERVICES, INC. AND RAFAEL Y. ARCEGA,
PETITIONERS, V. MAGDALINO O. RIVERA, JR. AND ROBERTO B.
YAGO, RESPONDENTS.**

DECISION

CAGUIOA, J:

Assailed in this petition for review on certiorari^[1] are the Decision^[2] dated January 12, 2012 and the Resolution^[3] dated June 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 119039, which affirmed the Decision^[4] dated December 9, 2010 and Resolution^[5] dated February 7, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 042778-05 (RA-06-10) that, in turn, reversed the Decision^[6] dated April 30, 2010 of the Labor Arbiter (LA) in NCR-02-02569-03 which dismissed the complaint for illegal dismissal filed by respondents Magdalino O. Rivera, Jr. and Roberto B. Yago (respondents) against petitioners Symex Security Services, Inc. (petitioner Symex) and Rafael Y. Arcega (petitioner Arcega), and ordered petitioners to pay respondents in the amount of P1,543.75 each or a total of P3,087.50.

Facts

The instant case stemmed from a complaint^[7] for underpayment/nonpayment of wages, overtime pay, holiday pay, premium for rest day, service incentive leave pay, clothing allowance and 13th month pay as well as illegal deduction of cash bond and firearm bond and repair filed by respondents before the LA.

Respondents alleged that they had been employed as security guards by petitioner Symex sometime in May 1999. Petitioner Symex is engaged in the business of investigation and security services. Its President and Chairman of the Board is petitioner Arcega.^[8]

Respondents were both assigned at the offices and premises of Guevent Industrial Development Corporation (Guevent), a client of petitioner Symex. As security guards, they were tasked to guard the entrance and the exit of the building, and check the ingress and egress of the visitors' vehicles going through the building. Their tour of duty was from Monday to Saturday, from 6:00AM to 6:00PM, a twelve-hour duty, but they were not paid their overtime pay. Respondents were likewise not given a rest day, and not paid their five-day service incentive leave pay, and 13th month pay.^[9]

At the time of their employment, respondents were receiving a salary of P198.00 a day from January 20 to March 2001. From April 2001 to March 2003, they were

receiving P250.00 a day. They were required to report for work during legal holidays, but they were not paid holiday premium pay. [10]

On February 25, 2003, respondents filed a complaint for nonpayment of holiday pay, premium for rest day, 13th month pay, illegal deductions and damages. [11]

On March 13, 2003, Capt. Arcego Cura (Capt. Cura), the Operations Manager of petitioner Symex, summoned respondents to report to the head office the next day. [12]

The following day or on March 14, 2003, respondents went to the head office where Capt. Cura told them that they would be relieved from the post because Guevent reduced the number of guards on duty. Capt. Cura told them to go back on March 17, 2003 for their reassignment. [13]

On March 17, 2003, Capt. Cura told respondents that they would not be given a duty assignment unless they withdrew the complaint they filed before the LA. Respondents were made to choose between resignation or forcible leave. Capt. Cura gave them a sample affidavit of desistance for them to use as a guide. Respondents both refused to obey Capt. Cura, who then told them that they were dismissed. [14]

The next day or on March 18, 2003, respondents amended their complaint [15] before the LA to include illegal dismissal. [16]

In their defense, petitioners Symex and Arcega maintained that they did not illegally dismiss respondents. They claimed that respondents are still included in petitioner Symex's roll of security guards. They shifted the blame to respondents, arguing that respondents refused to accept available postings. [17]

The LA Ruling

In a Decision [18] dated April 30, 2010, the LA dismissed respondents' amended complaint for illegal dismissal but ordered petitioner Symex to pay respondents' their proportionate 13th month pay, viz.:

Rates: P198/day Dismissed
(1/12/01- 3/14/03
3/31/01)
P250/day
(4/1/01-
3/31/03) =

- A. MAGDALINO
 O. RIVERA,
 JR.
 PROP. 13th
 MO. PAY:
 1/1/03-
 3/14/03
 P250 X 30 X
 2.4 7/12 = P1,543.75
- B. ROBERTO B. P1,543.75

YAGO
PROP. 13th
MO. PAY:
 1/1/03-
 3/14/03
 P250 X 30 X
 2.4 7/12 =

SUMMARY OF
 COMPUTATION:

A.	MAGDALINO O. RIVERA, JR	P1,543.75
B.	ROBERTO B. YAGO	P1,543.75
	TOTAL AWARD:	P3,087.50 ^[19]

The LA found that respondents were merely relieved from their post by Capt. Cura. According to the LA, a relief order in itself does not sever the employment relationship between a security guard and the agency. Further, the LA did not give credence to the purported handwritten Affidavit of Desistance supposedly given to respondents by Capt. Cura because such affidavit offered no assurance of its authenticity as it was unsigned and at best, self-serving.^[20]

The LA also ruled that the pay slips presented by respondents themselves showed that they were not underpaid. Respondents have also failed to prove that they rendered overtime work or that they worked on a holiday/rest day. Respondents also failed to show proof that they were entitled to their claims for service incentive leave pay and for illegal deductions. The LA also ruled that there were no qualifying circumstances in the instant case to warrant the grant of damages.^[21]

Aggrieved, respondents appealed to the NLRC.

The NLRC Ruling

In a Decision^[22] dated December 9, 2010, the NLRC reversed and set aside the LA ruling, viz.:

WHEREFORE, the foregoing premises considered, the decision of the Labor Arbiter is hereby **REVERSED** and **SET ASIDE**, a new one entered declaring complainants illegally dismissed by Respondents who are hereby ORDERED to pay complainants the following, as per attached computation:

	Magdalino O. Rivera	Roberto B. Yago
1. Separation - pay	P 133,320.00	P 145,440.00
2. Full backwages	- 1,017,522.21	1,017,522.21
3. Underpaid - wages	18,713.47	17,882.59

4. Underpaid -	209.91	248.37
service		
incentive		
leave pay		
Underpaid -	1,559.46	1,490.22
5. 13 th		
month pay		
6. Moral -	10,000.00	10,000.00
damages		
7. Exemplary -	10,000.00	10,000.00
damages -	P1,191,375.05	P
Sub-Total		1,202,583.39
10% -	119,137.50	120,258.34
8. attorney's		
fees		
TOTAL	P	P
	1,310,512.55	1,322,841.72

Other claims are however dismissed for lack of basis.

SO ORDERED.^[23]

Contrary to the LA's findings, the NLRC found that respondents were illegally dismissed by Capt. Cura, the Operations Manager of petitioner Symex, who told them that unless they withdrew their complaint for money claims pending before the LA, their services would be terminated. It held that the burden of proving that the dismissal of an employee was for a valid or authorized cause lies on the employer, and that failure to discharge this burden of proof makes the employer liable for illegal dismissal. The NLRC found that petitioners failed to prove, with substantial evidence, that respondents were furnished with a written order of detail or re-assignment. It added that neither were respondents guilty of abandonment of work as they immediately amended their complaint for money claims to include a complaint for illegal dismissal. The NLRC relied on *A'Prime Security Services, Inc. v. NLRC*^[24] which held that abandonment of work is inconsistent with the filing of a complaint for illegal dismissal.^[25]

Accordingly, the NLRC held that respondents are entitled to separation pay at one month per year of service from the time of their employment up to the finality of the decision with backwages and monetary claims, subject to the three-year prescriptive period. It also awarded respondents ten thousand pesos (P10,000.00) each as moral damages and exemplary damages in the same amount, plus ten percent (10%) of the total monetary award as attorney's fees.^[26]

Petitioners moved for reconsideration, but this was denied in a Resolution^[27] dated February 7, 2011. Dissatisfied, they filed a petition for certiorari^[28] before the CA.

The CA Ruling

In a Decision^[29] dated January 12, 2012, the CA affirmed the questioned NLRC Decision.

It held that the NLRC did not gravely abuse its discretion as the undisputed facts clearly established respondents to have been illegally dismissed and that petitioners

used their prerogative to reassign and post security guards, merely as leverage to cause the withdrawal of the labor complaint filed against them by respondents.^[30]

The CA likewise found that the NLRC sufficiently ruled on respondents' money claims. It ruled that once the employee has set out with particularity in his complaint, position paper, affidavits and other documents the labor standard benefits he is entitled to, and which the employer allegedly failed to pay him, it becomes the employer's burden to prove that it has paid these money claims. One who pleads payment has the burden of proving it; and even where the employees must allege nonpayment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment.^[31]

The CA also affirmed the award for moral and exemplary damages as well as attorney's fees.^[32]

Petitioners filed a motion for reconsideration^[33] dated February 9, 2012, which was, however, denied in a Resolution^[34] dated June 27, 2012.

The Issues Before the Court

The issues for the Court's resolution are whether or not: (a) the CA correctly ruled that the NLRC did not gravely abuse its discretion, and consequently, held that respondents were illegally dismissed; (b) petitioners are liable to respondents for backwages, service incentive leave pay, 13th month pay, separation pay, moral damages, exemplary damages and attorney's fees; and (c) petitioner Arcega should be held solidarily liable with petitioner Symex for respondents' monetary awards.

The Court's Ruling

The petition is without merit.

NLRC did not commit grave abuse of discretion.

"To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."^[35]

"In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."^[36]

Guided by the foregoing considerations, the Court finds that the CA correctly found no grave abuse of discretion on the part of the NLRC in reversing the LA ruling, as the LA's finding that respondents were not illegally dismissed from employment is not supported by substantial evidence.

A judicious review of the records of the case reveals that respondents were dismissed by Capt. Cura, the Operations Manager of petitioner Symex. Even as the