

THIRD DIVISION

[G.R. No. 211312, December 05, 2016]

**PEOPLE'S SECURITY, INC. AND NESTOR RACHO, PETITIONERS,
VS. JULIUS S. FLORES AND ESTEBAN S. TAPIRU, RESPONDENTS.**

RESOLUTION

REYES, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[2] dated April 25, 2013 and the Resolution^[3] dated February 7, 2014 issued by the Court of Appeals (CA) in CA-G.R. SP No. 115464.

Facts

Julius S. Flores (Flores) and Esteban S. Tapiru (Tapiru) (collectively, the respondents) were security guards previously employed by People's Security, Inc. (PSI). The respondents were assigned at the various facilities of Philippine Long Distance Telephone Company (PLDT) pursuant to a security services agreement between PSI and PLDT. On October 1, 2001, however, PSI's security services agreement with PLDT was terminated and, accordingly, PSI recalled its security guards assigned to PLDT including the respondents.^[4]

On October 8, 2001, the respondents, together with several other security guards employed by PSI, filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC) against PLDT and PSI, claiming that they are PLDT employees. The case was raffled to Labor Arbiter (LA) Felipe Pati (LA Pati) for resolution.^[5]

Thereafter, PSI assigned the respondents to the facilities of its other clients such as the warehouse of a certain Marivic Yulo in Sta. Ana, Manila and Trinity College's Elementary Department in Quezon City.^[6]

On October 22, 2002, LA Pati rendered a Decision declaring that the respondents and the other complainants therein were employees of PLDT and are, thus, entitled to be reinstated to their former assignments. Consequently, however, LA Pati's decision was set aside by the NLRC, which ruled that the complainants therein are not employees of PLDT. The NLRC's disposition was affirmed by the CA and, ultimately, by this Court.^[7]

Meanwhile, on January 13, 2003, the respondents were relieved from their respective assignments pursuant to Special Order No. 20031010^[8] dated January 10, 2003 issued by Col. Leonardo L. Aquino, the Operations Manager of PSI.^[9] Accordingly, Flores and Tapiru, on September 6 and 27, 2005, respectively, filed with

the Regional Arbitration Branch of the NLRC in Quezon City a complaint for illegal dismissal and non-payment of service incentive leave pay and cash bond, with prayer for separation pay, against PSI and its President Nestor Racho (Racho) (collectively, the petitioners).^[10]

On January 16, 2006, the petitioners filed a Motion to Dismiss^[11] the complaints for illegal dismissal on the ground of forum shopping. In their comment,^[12] the respondents denied that they are guilty of forum shopping. They pointed out that the illegal dismissal complaint that they previously filed against PLDT and PSI is a separate case since it involves their removal from their respective assignments on account of the termination of the security services agreement between PSI and PLDT.^[13]

On May 21, 2006, the LA issued an Order,^[14] dismissing the respondents' complaints on the ground of forum shopping. However, upon reconsideration, it was subsequently reversed by the NLRC in its Decision dated March 26, 2008. The case was then remanded to the LA for further proceedings.^[15]

On October 22, 2008, the LA directed the parties to submit their respective position papers within an unextendible period of 10 days from receipt of the Order.^[16]

In their position paper,^[17] the respondents claimed that, after they were relieved from their assignment in the warehouse in Sta. Ana, Manila on January 13, 2003, they repeatedly reported to PSI's office for possible assignment, but the latter refused to give them any assignment.^[18]

On the other hand, the petitioners, in their position paper,^[19] claimed that the respondents were merely relieved from their assignment in the warehouse in Sta. Ana, Manila and that the same was on account of their performance evaluation, which indicated that they were ill-suited for the said assignment. They likewise averred that while the respondents vacated their post pursuant to Special Order No. 20031010, the latter refused to acknowledge receipt of the same. The petitioners claimed that the respondents, after vacating their posts in the warehouse in Sta. Ana, Manila, no longer reported to PSI's premises for their next assignment.^[20]

The petitioners pointed out that the respondents' relief from their last assignment was an exercise of PSI's management prerogative to transfer its employees in accordance with the requirements of its business.^[21] They also claimed that the respondents, in failing to report to PSI's premises after being relieved from their previous assignment, had abandoned and effectively resigned from their employment.^[22]

On January 30, 2009, the LA rendered a Decision^[23] finding that the respondents were illegally dismissed from their employment and, thus, directing the petitioners jointly and severally liable to pay the former separation pay and backwages. The LA dismissed the petitioners' defense of abandonment, ruling that the records do not bear any credible evidence that would warrant such a finding.^[24]

On appeal, the NLRC, in its Decision^[25] dated April 14, 2010, reversed the LA

Decision dated January 30, 2009. The NLRC, in finding for the petitioners, opined that:

Undisputed here in this case is the fact that when [the respondents] were relieved from their posts on January 13, 2003, they . sought employment from other security agencies. Complainant Flores contracted regular employment with Multimodal Security and Investigation Agency, on May 2003, while complainant Tapiru also contracted employment with Pacific World Security and Investigation Agency on July 2003, as indicated by their SSS records.

All of the foregoing evidences [sic] considered, coupled by their overt acts of filing an illegal dismissal case against [the petitioners] only after they lost their case against PLDT in the Supreme Court, finding work with another security agency when the six months floating periods have not yet lapsed, and asking only for separation pay after three years from their alleged dismissal from employment, are proofs that [the respondents] herein were the ones who severed the employer-employee relationship with [PSI].^[26]

The respondents sought a reconsideration^[27] of the Decision dated April 14, 2010, but it was denied by the NLRC in its Resolution^[28] dated June 15, 2010. Aggrieved, the respondents filed a petition for *certiorari*^[29] with the CA, maintaining that they were illegally dismissed from their employment and that the petitioners failed to substantiate their defense of abandonment.

On April 25, 2013, the CA rendered the herein assailed Decision,^[30] reversing the NLRC's Decision dated April 14, 2010 and Resolution dated June 15, 2010. In finding that the respondents were illegally dismissed, the CA found that the petitioners failed to prove that the respondents had abandoned their work and that their defense of abandonment was negated by the filing of a case for illegal dismissal.^[31] The CA likewise opined that the petitioners failed to prove that it sent the respondents a written notice asking them to explain their supposed failure to report to work as required under Book V, Rule XIV, Sections 2 and 5 of the Implementing Rules of the Labor Code.^[32]

The petitioners sought reconsideration^[33] of the CA's Decision dated April 25, 2013, but it was denied by the CA in its Resolution^[34] dated February 7, 2014.

In this petition for review on *certiorari*, the petitioners claim that the CA committed reversible error in ruling that the respondents were illegally dismissed from their employment. They maintain that PSI never terminated the respondents' employment. On the contrary, they claim that the respondents freely and voluntarily resigned from their employment.^[35] They also claim that the CA erred when it ruled that they should be held jointly and solidarily liable to pay the respondents separation pay and backwages considering that there was absolutely no allegation or proof of participation, bad faith, or malice on the part of Racho in dealing with the respondents.^[36]

Issues

Essentially, the issues for the Court's resolution are: *first*, whether the respondents were illegally dismissed; and *second*, whether Racho is jointly and solidarily liable with PSI for the payment of the monetary awards to the respondents.

Ruling of the Court

The petition is denied.

As a rule, employment cannot be terminated by an employer without any just or authorized cause. No less than the 1987 Constitution in Section 3, Article 13 guarantees security of tenure for workers and because of this, an employee may only be terminated for just or authorized causes that must comply with the due process requirements mandated by law. Hence, employers are barred from arbitrarily removing their workers whenever and however they want. The law sets the valid grounds for termination as well as the proper procedure to take when terminating the services of an employee.^[37]

There is no merit to the petitioners' claim that the respondents were not dismissed, but merely relieved from their respective assignments. While it is true that Special Order No. 20031010,^[38] which the petitioners issued to the respondents on January 13, 2003, indicated that the latter were merely relieved from the warehouse in Sta. Ana, Manila, such fact alone would not negate the respondents' claim of illegal dismissal. Indeed, the respondents pointed out that after they were relieved from their previous assignment, the petitioners refused to provide them with new assignments.

It should be stressed that in termination cases, the burden of proving that the dismissal of the employees was for a valid and authorized cause rests on the employer. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.^[39]

Accordingly, the burden of proof to show that the respondents' dismissal from employment was for a just cause falls on PSI as employer. PSI cannot discharge this burden by merely alleging that it did not dismiss the respondents. It would also be the height of absurdity if PSI would be allowed to escape liability by claiming that the respondents abandoned their work. Considering that there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal.

Further, as aptly ruled by the CA, the petitioners miserably failed to prove that the respondents abandoned their work. Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. For abandonment to exist, two requisites must concur: *first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship as manifested by some overt acts.^[40]

The Court is not convinced that the respondents failed to report for work or have