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FIRST DIVISION

[G.R. No. 206942, February 25, 2015]

VICENTE C. TATEL, PETITIONER, VS. JLFP INVESTIGATION SECURITY AGENCY, INC., JOSE LUIS F. PAMINTUAN, AND/OR PAOLO C. TURNO, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 14, 2012 and the Resolution[3] dated April 22, 2013 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 119997 which reversed and set aside the Decision[4] dated February 9, 2011 and the Resolution[5] dated March 31, 2011 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002496-10 and instead, reinstated the Decision[6] dated September 20, 2010 of the Labor Arbiter (LA) in NLRC NCR Case No. 05-06196-10, dismissing petitioner Vicente C. Tatel's (Tatel) labor complaint for lack of merit.

The Facts

On March 14, 1998, respondent JLFP Investigation Security Agency, Inc. (JLFP), a business engaged as a security agency, hired Tatel as one of its security guards.[7]

Tatel alleged that he was last posted at BaggerWerken Decloedt En Zoon (BaggerWerken) located at the Port Area in Manila.[8] He was required to work twelve (12) hours everyday from Mondays through Sundays and received only P12,400.00 as monthly salary.[9] On October 14, 2009, Tatel filed a complaint[10] before the NLRC against JLFP and its officer, respondent Jose Luis F. Pamintuan[11] (Pamintuan), as well as SKI Group of Companies (SKI) and its officer, Joselito Duefias,[12] for underpayment of salaries and wages, non-payment of other benefits, 13th month pay, and attorney's fees (*underpayment case*).[13]

On October 24, 2009, Tatel was placed on "floating status";[14] thus, on May 4, 2010, or after the lapse of six (6) months therefrom, without having been given any assignments, he filed another complaint[15] against JLFP and its officers, respondent Paolo C. Turno[16] (Turno) and Jose Luis Fabella,[17] for illegal dismissal, reinstatement, backwages, refund of cash bond deposit amounting to P25,400.00, attorney's fees, and other money claims (illegal dismissal case).[18]

In their defense,[19] respondents JLFP, Pamintuan, and Turno (respondents) denied that Tatel was dismissed and averred that they removed the latter from his post at BaggerWerken on August 24, 2009 because of several infractions he committed

while on duty. Thereafter, he was reassigned at SKI from September 16, 2009 to October 12, 2009, and last posted at IPVG[20] from October 21 to 23, 2009.[21]

Notwithstanding the pendency of the *underpayment case*, respondents sent a Memorandum[22] dated November 26, 2009 (November 26, 2009 Memorandum) directing Tatel to report back to work, noting that the latter last reported to the office on October 26, 2009. However, despite receipt of the said memorandum, respondents averred that Tatel ignored the same and failed to appear; hence, he was deemed to have abandoned his work.[23] Moreover, respondents pointed out that Tatel made inconsistent statements when he declared in the *underpayment case* that he was employed in March 1997 with a salary of P12,400.00 per month and dismissed on October 13, 2009, while declaring in the *illegal dismissal case* that his date of employment was March 14, 1998, with a salary of P6,200.00 per month, and that he was dismissed on October 24, 2009.[24]

In his reply,[25] Tatel admitted having received on December 11, 2009 the November 26, 2009 Memorandum directing him to report back to work for reassignment. However, when he went to the JLFP office, he was merely advised to "wait for possible posting."[26] He repeatedly went back to the office for reassignment, but to no avail. He likewise refuted respondents' claim that he abandoned his work, insisting that after working for JLFP for more than eleven (11) years, it was illogical for him to refuse any assignments, more so, to abandon his work and security of tenure without justifiable reasons.[27]

The LA Ruling

In a Decision dated September 20, 2010, the LA dismissed Tatel's illegal dismissal complaint for lack of merit.[29] The LA did not give credence to Tatel's allegation of dismissal in light of the inconsistent statements he made under oath in the two (2) labor complaints he had filed against the respondents. The LA noted that said inconsistent statements "relate not only to the dates that he was hired and supposedly fired but, more glaringly, to the amount of his monthly salaries."[30] It also observed that Tatel failed to explain said inconsistencies.

Aggrieved, Tatel appealed[31] to the NLRC.

The NLRC Ruling

In a Decision[32] dated February 9, 2011, the NLRC reversed and set aside the LA's Decision and found Tatel to have been illegally dismissed. Consequently, it directed respondents to reinstate him to his last position without loss of seniority or diminution of salary and other benefits, as well as to pay him the following: (*a*) backwages from the time of his illegal dismissal on August 24, 2009 until finality of the Decision; (*b*) underpaid wages computed for a period of three (3) years prior to the filing of the complaint until finality; (*c*) cash bond deposit refund amounting to P25,400.00; and (*d*) attorney's fees equivalent to ten percent (10%) of the total award. It likewise ruled that if reinstatement was no longer viable due to the strained relationship between the parties, respondents are liable for separation pay equivalent to one (1) month's salary for every year of service computed from the time of Tatel's employment on March 14, 1998 until finality of the Decision. All other

claims were denied for lack of merit.[33]

In so ruling, the NLRC rejected respondents' defense that Tatel abandoned his work, finding no rational explanation as to why an employee, who had worked for more than ten (10) years for his employer, would just abandon his work and forego whatever benefits were due him for the length of his service.[34] Similarly, it debunked the claim of abandonment for failure of respondents to prove by substantial evidence the elements thereof, *i.e.,* (*a*) that the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (*b*) there must have been a clear intention to sever the employer-employee relationship as manifested by overt acts.[35]

Moreover, the NLRC ruled that Tatel's dismissal was not constructive but actual, and considered his being pulled out from his post on August 24, 2009 as the operative act of his dismissal. It likewise found no just and valid ground for Tatel's dismissal; neither was procedural due process complied with to effectuate the same.[36]

Respondents' motion for reconsideration[37] was denied in a Resolution[38] dated March 31, 2011. Dissatisfied, they elevated the case to the CA via petition for *certiorari*[39] on June 10, 2011. Meanwhile, pre-execution conferences were held at the NLRC,[40] and on July 29, 2011, respondents filed a Motion for Computation,[41] alleging that Tatel failed to report back to work despite the Return-to-Work Order[42] dated February 22, 2011, claiming "strained relations" with respondents and manifesting that he was already employed with another company at the time he received the aforesaid order.[43]

The CA Ruling

In a Decision[44] dated November 14, 2012, the CA reversed and set aside the NLRC's February 9, 2011 Decision and reinstated the LA's September 20, 2010 Decision dismissing the illegal dismissal complaint filed by Tatel.[45] Finding grave abuse of discretion on the part of the NLRC in rendering its assailed Decision, the CA instead concurred with the stance of the LA that Tatel's inconsistent statements cannot be given weight *vis-avis* the evidence presented by the respondents.[46] In this regard, the CA declared that if Tatel could not be truthful about the most basic information or explain such inconsistencies, the same may hold true for his claim for illegal dismissal.[47]

Further, the CA rejected the NLRC's finding that the operative act of Tatel's dismissal was the act of pulling him out from his assignment on **August 24, 2009** when in the complaint sheets of both the *illegal dismissal case* and the *underpayment case*, Tatel claimed that he was dismissed on **October 13, 2009** and **October 24, 2009**, respectively.[48] It noted that the NLRC failed to consider that Tatel was subsequently reassigned to SKI from September 16, 2009 to October 12, 2009, and thereafter, to IPVG from October 21 to 23, 2009, which Tatel never disputed nor denied.[49]

Corollary thereto, the CA found that Tatel ignored the November 26, 2009 Memorandum directing him to report to work for possible reassignment, signifying

that he abandoned his work and that, consequently, there was no dismissal to begin with.[50] That he was given subsequent postings clearly manifest that there was no intention to dismiss him, hence, he could not have been illegally dismissed.[51]

Tatel moved for reconsideration,[52] which was denied in a Resolution[53] dated April 22, 2013; hence, this petition.

The Issue Before The Court

The sole issue for the Court's resolution is whether or not the CA erred in ruling that the NLRC gravely abused its discretion in finding Tatel to have been illegally dismissed.

The Court's Ruling

The petition is meritorious.

It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the appellate court.[54] The Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court.[55] The rule, however, is not without exception. In *New City Builders, Inc. v. NLRC*,[56] the Court recognized the following exceptions to the general rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) **when the findings of facts are conflicting**; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[57]

The exception, rather than the general rule, applies in the present case. When the findings of fact of the CA are contrary to those of the NLRC, whose findings also diverge from those of the LA, the Court retains its authority to pass upon the evidence and, perforce, make its own factual findings based thereon.[58]

At the core of this petition is Tatel's insistence that he was illegally dismissed when, after he was put on "floating status" on October 24, 2009, respondents no longer gave him assignments or postings, and the period therefor had lasted for more than six (6) months. On the other hand, respondents maintained that Tatel abandoned his work, and that his inconsistent statements before the labor tribunals regarding his work details rendered his claim of illegal dismissal suspect.

After a judicious perusal of the records, the Court is convinced that Tatel was *constructively*, not actually, dismissed after having been placed on "floating status" for more than six (6) months, reckoned from **October 24, 2009**, the day following his removal from his last assignment with IPVG on October 23, 2009, and not on August 24, 2009 as erroneously held by the NLRC.

In *Superstar Security Agency, Inc. and/or Col. Andrada v. NLRC*,[59] the Court ruled that placing an employee on temporary "off-detail" is not equivalent to dismissal provided that such temporary inactivity should continue only for a period of six (6) months.[60] In security agency parlance, being placed "off-detail" or on "floating status" means "waiting to be posted."[61] In *Salvaloza v. NLRC*,[62] the Court further explained the nature of the "floating status," to wit:

> Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. **When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.**[63] (Emphasis supplied)

Relative thereto, constructive dismissal exists when an act of clear discrimination, insensibility, or disdain, on the part of the employer has become so unbearable as to leave an employee with no choice but to forego continued employment,[64] or when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[65]

In this case, respondents themselves claimed that after having removed Tatel from his post at BaggerWerken on August 24, 2009 due to several infractions committed thereat, they subsequently reassigned him to SKI from September 16, 2009 to October 12, 2009 and then to IPVG from October 21 to 23, 2009. Thereafter, and until Tatel filed the instant complaint for illegal dismissal six (6) months later, or on May 4, 2010, he was not given any other postings or assignments. While it may be true that respondents summoned him back to work through the November 26, 2009 Memorandum, which Tatel acknowledged to have received on December 11, 2009, records are bereft of evidence to show that he was given another detail or