

## SECOND DIVISION

[ G.R. No. 204761, April 02, 2014 ]

**EMERITUS SECURITY AND MAINTENANCE SYSTEMS, INC.,  
PETITIONER, VS. JANRIE C. DAILIG, RESPONDENT.**

### R E S O L U T I O N

**CARPIO, J.:**

#### The Case

This petition for review<sup>[1]</sup> assails the 25 May 2012 Decision<sup>[2]</sup> and 11 December 2012 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 111904. Affirming with modification the decision of the National Labor Relations Commission (NLRC), the Court of Appeals found respondent Janrie C. Dailig (respondent) illegally dismissed by petitioner Emeritus Security and Maintenance Systems, Inc. (petitioner) and ordered the payment of separation pay, instead of reinstatement, and backwages.

#### The Facts

In August 2000, petitioner hired respondent as one of its security guards. During his employment, respondent was assigned to petitioner's various clients, the last of which was Panasonic in Calamba, Laguna starting 16 December 2004.

On 10 December 2005, respondent was relieved from his post.

On 27 January 2006, respondent filed a complaint for underpayment of wages, non-payment of legal and special holiday pay, premium pay for rest day and underpayment of ECOLA before the Department of Labor and Employment, National Capital Region. The hearing officer recommended the dismissal of the complaint since the claims were already paid.

On 16 June 2006, respondent filed a complaint for illegal dismissal and payment of separation pay against petitioner before the Conciliation and Mediation Center of the NLRC. On 14 July 2006, respondent filed another complaint for illegal dismissal, underpayment of salaries and non-payment of full backwages before the NLRC.

Respondent claimed that on various dates in December 2005 and from January to May 2006,<sup>[4]</sup> he went to petitioner's office to follow-up his next assignment. After more than six months since his last assignment, still respondent was not given a new assignment. Respondent argued that if an employee is on floating status for more than six months, such employee is deemed illegally dismissed.

Petitioner denied dismissing respondent. Petitioner admitted that it relieved respondent from his last assignment on 10 December 2005; however, petitioner

required respondent to report to the head office within 48 hours from receipt of the order of relief. Respondent allegedly failed to comply. Petitioner claimed that on 27 January 2006 it sent respondent a notice to his last known address requiring him to report to the head office within 72 hours from receipt of the said notice. Petitioner further alleged that it had informed respondent that he had been absent without official leave for the month of January 2006, and that his failure to report within 72 hours from receipt of the notice would mean that he was no longer interested to continue his employment.

Petitioner also claimed that there was no showing that respondent was prevented from returning to his work and that it had consistently manifested its willingness to reinstate him to his former position. In addition, the fact that there was no termination letter sent to respondent purportedly proved that respondent was not dismissed.

On 5 December 2007, the Labor Arbiter rendered a Decision, disposing of the case as follows:

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed. Accordingly, respondent is hereby ordered to reinstate complainant and to pay him backwages from the time his compensation was withheld by reason of his illegal dismissal until actual reinstatement. His claim for underpayment is hereby denied for lack of merit. The totality of complainant's monetary award as computed by the Computation and Examination Unit is hereby adopted as integral part of this Decision.

SO ORDERED. <sup>[5]</sup>

The computation of the monetary award is as follows:

BACKWAGES from 12/10/05 TO 12/5/07

Basic Pay		
P7,560.00/mo. x 23.86 mos.	=	P180,381.60
13 <sup>th</sup> month pay		
P180,381.60/12	=	15,031.80
SIL Pay		
P7,560/30 x 5 days x 23.86/12	=	2,505.30
TOTAL		P197,918.70 <sup>[6]</sup>

Petitioner appealed before the NLRC, which dismissed the appeal for lack of merit. Petitioner moved for reconsideration, which the NLRC denied. The NLRC, however, pointed out that the computation of respondent's award of full backwages should be reckoned from 10 June 2006 and not 10 December 2005.

On appeal with the Court of Appeals, petitioner argued that there was abandonment on respondent's part when he refused to report for work despite notice. Thus, there

was no illegal dismissal to speak of.

### **The Ruling of the Court of Appeals**

The Court of Appeals affirmed the finding of the Labor Arbiter and the NLRC that respondent was illegally dismissed by petitioner. However, the Court of Appeals set aside the Labor Arbiter and the NLRC's reinstatement order. Instead, the Court of Appeals ordered the payment of separation pay, invoking the doctrine of strained relations between the parties.

The dispositive portion of the decision reads:

WHEREFORE, the instant petition for certiorari is DISMISSED. The Decision and Resolution of the NLRC-First Division, dated October 21, 2008 and October 19, 2009, respectively, in NLRC Case No. RAB IV-07-23165-06-L NLRC LAC No. 03-000954-08, are AFFIRMED with MODIFICATION, in that, petitioner is ORDERED to pay private respondent Janrie C. Dailig (a) separation pay in the amount equivalent to one (1) month pay for every year of service and (b) backwages, computed from the time compensation was withheld from him when he was unjustly terminated, up to the time of payment thereof. For this purpose, the records of this case are hereby REMANDED to the Labor Arbiter for proper computation of said awards in view of this Decision. Costs against petitioner.

SO ORDERED.<sup>[7]</sup>

### **The Issues**

The issues are (1) whether respondent was illegally dismissed by respondent and (2) if he was, whether respondent is entitled to separation pay, instead of reinstatement.

### **The Ruling of the Court**

The Court affirms the finding of illegal dismissal of the Labor Arbiter, NLRC, and Court of Appeals. However, the Court sets aside the Court of Appeals' award of separation pay in favor of respondent, and reinstates the Labor Arbiter's reinstatement order.

#### *On whether respondent was illegally dismissed*

Petitioner admits relieving respondent from his post as security guard on 10 December 2005. There is also no dispute that respondent remained on floating status at the time he filed his complaint for illegal dismissal on 16 June 2006. In other words, respondent was on floating status from 10 December 2005 to 16 June 2006 or more than six months. Petitioner's allegation of sending respondent a notice sometime in January 2006, requiring him to report for work, is unsubstantiated, and thus, self-serving.