

SECOND DIVISION

[G.R. No. 179326, July 31, 2013]

**LUCIANO P. CAÑEDO,* PETITIONER, VS. KAMPILAN SECURITY
AND DETECTIVE AGENCY, INC. AND RAMONCITO L. ARQUIZA,
RESPONDENTS.**

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails the Decision^[2] dated January 25, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 01530 which denied the Petition for *Certiorari*^[3] filed by Luciano P. Cañedo (petitioner) and affirmed the Resolutions dated October 20, 2005^[4] and December 15, 2005^[5] of the National Labor Relations Commission (NLRC) which declared that petitioner was not illegally dismissed by respondents Kampilan Security and Detective Agency, Inc. (respondent agency) and its owner and General Manager, Engr. Ramoncito L. Arquiza (respondent Arquiza). Likewise assailed is the CA's Resolution^[6] dated July 25, 2007 which denied petitioner's Motion for Reconsideration.^[7]

Factual Antecedents

Respondent agency hired petitioner as security guard on November 20, 1996 and assigned him at the Naga Power Barge 102 of the National Power Corporation (NPC) at Sigpit Load Ends, Lutopan, Toledo City.

For not wearing proper uniform while on duty as per report of Allan Alfafara (Alfafara) of the NPC, petitioner was suspended for a month effective May 8, 2003.^[8]

In a letter^[9] dated June 2, 2003, NPC informed respondent agency that it was no longer interested in petitioner's services and thus requested for his replacement.

On June 17, 2003, petitioner requested respondent Arquiza to issue a certification in connection with his intended retirement effective that month.^[10] Thus, respondent Arquiza issued the Certification^[11] dated June 25, 2003 (June 25, 2003 Certification):

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that **Mr. Luciano Paragoso Cañedo** whose address [is] at Lower Bunga, Toledo City was employed by this agency from

November 20, 1996 up to May 7, 2003 as Security Guard assign[ed] at NPC, Sigpit Substation. *He was terminated from his employment by this agency on May 7, 2003 as per client's request.*

Done this 25th day of June 2003 at Cebu City, Philippines.

(Signed)
**RAMONCITO L.
ARQUIZA**
General Manager
KSDAI

Five days later, petitioner filed before the Labor Arbiter a Complaint for illegal dismissal, illegal suspension and non-payment of monetary benefits against respondents.

Proceedings before the Labor Arbiter

Petitioner alleged that his suspension was without valid ground and effected

without due process, hence, illegal. He claimed that Alfafara's report about his non-wearing of uniform was fabricated and ill-motivated because he declined Alfafara's invitation to convert to their religion. In fact, the roving inspector who checked the attendance of guards on duty does not have any report showing his commission of any infraction. Petitioner averred that he was suspended without being given the chance to explain his side.

Petitioner narrated that when he reported back to work after his one-month suspension, he was surprised to find out that he was already terminated from the service effective May 7, 2003 as shown by the June 25, 2003 Certification issued to him by respondent Arquiza. He then claimed to have been underpaid for services rendered and that he is entitled to holiday pay, rest day pay, night shift differential, service incentive leave pay, 13th month pay, retirement benefits, damages and attorney's fees.

Respondents, on the other hand, countered that petitioner was not dismissed from service. In fact, despite petitioner's propensity for not wearing uniform while on duty as shown by the entries^[12] in the NPC Sigpit Station logbook and after a series of infractions, they still opted to retain his services. However, in view of NPC's request for his replacement, respondents had to pull him out from NPC. But instead of waiting for a new posting, petitioner filed a complaint against them. Respondents also denied petitioner's entitlement to his monetary claims and averred that he has an outstanding cash advance of P10,000.00 as evidenced by a cash voucher^[13] duly executed by him.

Based on the June 25, 2003 Certification, the Labor Arbiter held that petitioner was illegally dismissed from the service. He also found petitioner's prior suspension illegal and granted him all his monetary claims except for underpayment of wages. The dispositive portion of the Labor Arbiter's Decision^[14] dated November 11, 2003

reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondent Kampilan Security and Detective Agency, Inc. to pay complainant Luciano Cañedo as follows:

1. Separation pay	-	P43,498.00
2. Backwages	-	P32,026.00
3. Holiday pay	-	P 7,170.00
4. Service incentive leave pay	-	<u>P 3,585.00</u>
Total award	-	P86,279.00

The other claims and the case against respondent Ramoncito Arquiza are dismissed for lack of merit.

SO ORDERED.^[15]

Proceedings before the National Labor Relations Commission

Respondents filed a Memorandum of Appeal^[16] before the NLRC arguing that the Labor Arbiter erred in concluding that petitioner was illegally dismissed based solely on the June 25, 2003 Certification. They contended that the said Certification is not sufficient to establish petitioner's dismissal as such fact must be proven by direct evidence of actual dismissal. They also averred that the word "terminated" as used in the said Certification actually meant "pulled-out" and this can be construed from the following phrase "as per client's request." This position is strengthened by petitioner's June 17, 2003 letter requesting for a Certification in connection with his intended retirement. At any rate, respondents explained that the subject Certification was only issued upon petitioner's request in order to facilitate his application for entitlement to retirement benefits with the Social Security System (SSS). And the word "terminated", assuming its literal meaning, was only used in order to serve the purpose of the same, that is, to show SSS that petitioner is no longer in service.

Petitioner in his Appellee's Memorandum^[17] regarded respondents' averments as clear afterthoughts and prayed for the modification of the Labor Arbiter's awards to include salary differential, night shift differential, rest day pay, 13th month pay and retirement benefits.

In a Decision^[18] dated June 28, 2005, the NLRC initially affirmed with modification the Labor Arbiter's Decision, viz:

WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby **AFFIRMED** with a modification in that complainant[']s outstanding cash advance in the amount of P10,000.00 shall be deducted from the monetary award herein.

It is understood that complainant's backwages and separation pay shall

be computed until finality of the decision.

SO ORDERED.^[19]

However, in resolving respondents' Motion for Reconsideration,^[20] the NLRC reversed itself and set aside its earlier Decision. In a Resolution^[21] dated October 20, 2005, it held that the June 25, 2003 Certification should be read in conjunction with the June 2, 2003 letter of NPC requesting for petitioner's relief from his post. The NLRC noted that it is common practice for clients of security agencies to demand replacement of any security guard assigned to them but cannot demand their dismissal from the employ of the security agency. And from the time petitioner was relieved from his NPC posting, he was considered on a floating status which can last for a maximum period of six months. Moreover, the NLRC opined that petitioner's intention to retire as shown by his June 17, 2003 letter negated his claim of termination. Nevertheless, it maintained that petitioner was suspended without being notified of his infraction. Thus, he should be paid his salary during the period of his illegal suspension. The dispositive portion of the said Resolution reads:

WHEREFORE, premises considered, our Decision promulgated on June 28, 2005 is hereby **SET ASIDE**. A NEW DECISION is entered declaring that there was no dismissal whatsoever [of] complainant.

Respondent Kampilan Security and Detective Agency is hereby ordered to pay complainant the following:

1. Salary 05/08/03-06/07/03 --	P6,035.62

2. Holiday Pay -----	7,170.00

3. Service Incentive Leave Pay -	<u>3,585.00</u>

	P16,790.62
Less: Complainant's Cash - 10,000.00	
Advance	
NET AMOUNT	P 6,790.62
	=====

The grant of backwages and separation pay are hereby **DELETED**.

SO ORDERED.^[22]

Petitioner filed an Urgent Motion for Reconsideration,^[23] which was, however, denied in a Resolution^[24] dated December 15, 2005. Hence, he sought recourse to the CA via a Petition for *Certiorari*.^[25]

Ruling of the Court of Appeals

The CA, in a Decision^[26] dated January 25, 2007, denied the Petition after it found no grave abuse of discretion on the part of the NLRC. It noted the following circumstances which, to it, negated petitioner's submission that he was dismissed from the service:

1. Contrary to what is stated in the certification dated June 25, 2003 that petitioner was dismissed on May 8, 2003, private respondent's memorandum of even date merely suspended petitioner for one month.
2. Contrary to what is stated in the certification, NPC did not request that petitioner be dismissed from employment but merely that he be replaced by another security guard.
3. After the expiration of his suspension on June 8, 2003, petitioner could not but labor under the belief that he has not been dismissed otherwise he would no longer declare that he wanted to retire at the end of the month.
4. No dismissal order was issued by private respondent after the end of the suspension period.
5. After receipt of the certification, petitioner could have[,] but did not[, sought] clarification from private respondent as to whether or not he was actually terminated. His omission renders doubtful the validity of his claim.
6. The terms of the certification state merely the length of assignment of petitioner in NPC which is from November 20, 1996 up to May 7, 2003, not the period of his employment with private respondent."

^[27]

In view of the above, the CA concluded that petitioner was merely placed on temporary "off-detail" which is not equivalent to dismissal. However, like the NLRC, the CA found that petitioner was deprived of due process when he was suspended and thus affirmed his entitlement to his salary during the period of suspension. It also affirmed the awards for holiday pay and service incentive leave pay as well as the deduction therefrom of P10,000.00 representing petitioner's cash advance. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this petition is **DENIED**. The *Resolutions* of the NLRC dated October 20, 2005 and December 15, 2005, respectively, are hereby **AFFIRMED**.

SO ORDERED.^[28]

As petitioner's Motion for Reconsideration^[29] was likewise denied by the CA in its Resolution^[30] dated July 25, 2007, he now comes to this Court through this Petition