

## SECOND DIVISION

[ G.R. No. 179512, July 30, 2009 ]

**EAGLE STAR SECURITY SERVICES, INC., PETITIONER, VS.  
BONIFACIO L. MIRANDO, RESPONDENT.**

### DECISION

**CARPIO MORALES, J.:**

Bonifacio Mirando (respondent), who was hired by Eagle Star Security Services, Inc. (petitioner) as a security guard on July 29, 1997, was posted at the Heroes Hill Branch (in Quezon City) of Equitable-PCI Bank (now Banco de Oro-EPCI Bank) with a 9:00 a.m.-to-5:00 p.m. shift and a daily wage of P250.00.<sup>[1]</sup>

On December 14, 2001, respondent was made to sign a duty schedule for December 15 (a Saturday). When he reported for work on December 15, 2001, he was told by the detachment commander, Juanito Endencio (Endencio), not to report for duty per instruction of the head office. Respondent thus called up the head office and was told by Wilfredo Dayon that he was removed from duty by Ernesto Agodilla (Agodilla), petitioner's operations manager.<sup>[2]</sup> As respondent was thereafter no longer asked to report for duty, he filed on December 18, 2001 a complaint<sup>[3]</sup> for illegal dismissal against petitioner and its president Wilfredo Encarnacion (Encarnacion) at the National Labor Relations Commission (NLRC). He later amended his complaint on February 1, 2002 to include a prayer for reinstatement and payment of full backwages, damages and attorney's fees.<sup>[4]</sup>

Responding to the complaint, petitioner alleged that respondent went on absence without official leave (AWOL) on December 16, 2001 and had not since reported for work, drawing it to send him a notice on December 26, 2001 to explain his absence, but he failed to respond thereto. <sup>[5]</sup>

Petitioner further alleged that in a Memorandum<sup>[6]</sup> dated December 26, 2001 sent to Agodilla, Endencio reported that respondent pulled out his uniform on December 15, 2001 and that according to him (respondent), he "w[ould] render (sic) voluntary resignation by December 17, 2001[, ] Monday."

By Decision<sup>[7]</sup> of October 29, 2003, Labor Arbiter Lilia Savari found that respondent was illegally dismissed, disposing as follows:

WHEREFORE, a Decision is hereby rendered declaring complainant to have been illegally dismissed. Concomitantly, respondents are ordered to reinstate complainant to his former position without loss of seniority rights and with payment of full backwages from the time of his illegal dismissal on December 15, 2001. If reinstatement is no longer feasible,

payment of separation benefits plus refund of cash bond is hereby ordered.

Further, respondents are ordered to pay complainant [service incentive leave pay] for 2001, balance of 13<sup>th</sup> month pay for the year 2001, P1,500.00 representing difference in uniform allowance and 10% of the aggregate amount as attorney's fees.

Computation of the award prepared by the NLRC Computation Unit is hereto attached and made integral part of this Decision.

SO ORDERED.

On appeal, the NLRC, by Decision<sup>[8]</sup> of October 28, 2005, modified the Labor Arbiter's Decision by dismissing the complaint as against Encarnacion and awarding attorney's fees based on the 13<sup>th</sup> month pay and service incentive leave pay.

On petitioner's and respondent's respective motions for reconsideration, the NLRC amended its Decision, by Resolution<sup>[9]</sup> of April 28, 2006, by reducing the "monetary awards to [herein respondent] representing [the] cash bond [equivalent], 13<sup>th</sup> month pay and service incentive leave pay" to P1,100.00, P2,403.08 and P107.17, respectively.

Petitioner, via *certiorari*, elevated the case to the Court of Appeals which, by Decision<sup>[10]</sup> of August 31, 2007, affirmed the NLRC Decision of October 28, 2005 and Resolution of April 28, 2006.

In affirming the NLRC ruling, the CA observed:

. . . [I]f indeed it were true that the private respondent manifested his **intention to resign** on December 15, 2001 to Juanito Endencio[,] then the petitioner agency would have **no reason to declare the former as AWOL** as their first reaction would have been to allow the private respondent to execute a resignation letter. Moreover, the Court finds it very peculiar that Juanito Endencio, whom the private respondent allegedly told of his intention to resign on December 15, 2001, did not report the incident immediately to the petitioner agency but instead waited until December 26, 2001, or 11 days after, to submit a memorandum reporting the said incident. This boggles the mind as logic dictates that such an important incident, if it were true, should have elicited a much more immediate reaction from Juanito Endencio, being the Detachment Commander or Officer in Charge of the petitioner agency. After all, a security guard threatening to quit, thereby abandoning his post, is not an incident that should be taken lightly, much less ignored by a supervisor, especially considering that the private respondent's post was at a bank. In addition, it is significant to note that the said memorandum came several days **after** the private respondent filed his case against the petitioner for illegal dismissal on December 18, 2001. (Emphasis and underscoring supplied)

Hence, the present petition for review which faults the appellate court

## I

. . . WHEN IT AFFIRMED THE FINDINGS OF FACTS OF THE NLRC AND THE LABOR ARBITER WHICH RELIED ON MANIFESTLY MISTAKEN SPECULATIONS, SURMISES AND INFERENCES.

## II

... IN FINDING THAT RESPONDENT WAS ILLEGALLY DISMISSED AND IN FAILING TO APPRECIATE THE OVERWHELMING EVIDENCE ESTABLISHED ON RECORD WHICH SHOWS BEYOND PERADVENTURE OF DOUBT THAT RESPONDENT WAS NEVER DISMISSED BUT RATHER WENT ON AWOL.

## III

... IN FINDING RESPONDENT TO BE ENTITLED TO FULL BACKWAGES AND SEPARATION [PAY], INCLUDING ATTORNEY'S FEES DESPITE THE FACT THAT NO IOTA OF EVIDENCE [WAS PRESENTED] TO SATISFY THE BURDEN OF PROOF REQUIRED TO SUPPORT THE MONEY CLAIMS.<sup>[11]</sup>  
(Underscoring supplied)

Petitioner reiterates that it did not dismiss respondent who, so it claims, voluntarily separated himself from the service by refusing to report for work.<sup>[12]</sup> And it contends that respondent's amendment of his complaint after forty nine days to include a prayer for reinstatement, among other things, exposed his scheme that he did not actually want to be reinstated but merely wanted a "windfall" in the form of backwages and separation pay.<sup>[13]</sup>

Petitioner goes on to argue that even assuming that respondent was not given any duty assignment, his filing of the complaint for illegal dismissal was "premature" as he should be considered to have been in floating status or off-detail under Article 286<sup>[14]</sup> of the Labor Code.<sup>[15]</sup>

Respondent, in his Comment,<sup>[16]</sup> maintains that the present petition was filed manifestly for delay as the grounds cited therein are mere rehash of those already sufficiently passed upon by the administrative bodies and the appellate court.

Additionally, respondent argues that the present petition must be treated as a "mere scrap of paper" since the one who signed it was "not properly authorized by the [p]etitioner to file [it] before this [Court]."

The petition must be denied.

There is no proof that petitioner's representative Reynaldo G. Tauro (Tauro) was authorized to file the petition on its behalf.<sup>[17]</sup> The Board Resolution (Annex "R" to the petition), which was adopted during petitioner's Special Board Meeting of May 20, 2006, states:

RESOLVED as it is hereby resolved that the corporation shall elevate **on Certiorari before the Court of Appeals** NLRC NCR Case No. 039872-04 entitled "Bonifacio L. Mirando, complainant, versus Eagle Star Security Services, Inc., respondent."

RESOLVED further as it is hereby resolved that **Mr. REYNALDO G. TAURO, shall be appointed as authorized representative of the Corporation, to represent and sign in behalf of the corporation the Verification and Certification of the petition for aforementioned case.** (Italics in the original; emphasis and underscoring supplied)

Clearly, Annex "R" was adopted for the purpose of authorizing Tauro to file petitioner's petition for "Certiorari before the Court of Appeals." <sup>[18]</sup> Despite petitioner's awareness in its Reply to respondents' Comment filed before this Court of the defect in Tauro's authority to sign for and in its behalf the Verification and Certification against Non-Forum Shopping,<sup>[19]</sup> it failed even to belatedly file the requisite authority.

*Fuentebella and Rolling Hills Memorial Park v. Castro*,<sup>[20]</sup> on the requirement of a certification against forum shopping, explains:

The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.

**. . . Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative ...[I]f the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping as long as he is authorized by a resolution of its board of directors.**

x x x x

**A certification without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition.**  
(Citations omitted; emphasis, italics and underscoring supplied)

Petitioner's discourse on relaxation of technical rules of procedure in the interest of substantial justice does not impress. While there have been instances when the