403 Phil. 264

FIRST DIVISION

[G.R. No. 114316, January 26, 2001]

SECURITY AND CREDIT INVESTIGATION, INC. AND VICENTE REYES, JR., PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), FELICIANO MERCADO, EDGAR SOMOSOT AND DANTE OLIVER AND THE COMMISSION ON HUMAN RIGHTS, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This is a petition for certiorari assailing the Decision of respondent National Labor Relations Commission (NLRC), First Division, dated January 24, 1994, in NLRC Case Nos. 00-03-01791-90 and 00-03-01886-90 which affirmed with modification the Decision, dated November 18, 1993, of Labor Arbiter Jose G. De Vera ordering petitioner Security and Credit Investigation, Inc. (petitioner) to reinstate private respondents Feliciano Mercado (Mercado), Edgar Somosot (Somosot), and Dante Oliver (Oliver) without backwages and ordering third-party respondent Commission on Human Rights (CHR) to reimburse petitioner in the amount of Twenty Eight Thousand Five Hundred Pesos (P28,500.00).

The facts of the case are as follows:

Private respondents Mercado, Somosot and Oliver were employed as security guards by petitioner and assigned to the CHR which was petitioner's client.

Sometime in February 1990, about eighteen (18) of petitioner's security guards detailed at the CHR, including Mercado, Somosot and Oliver, filed a complaint for money claims against petitioner. However, upon petitioner's request that the security guards withdraw the complaint, each of the complainants, except for Mercado, Somosot and Oliver, signed a Release and Quitclaim in favor of petitioner.

Mercado averred that he was being pressured by petitioner to sign a Release and Quitclaim, so he went on leave from work on March 22, 1990. When he called petitioner's office on the afternoon of the same day to inquire about his work assignment, petitioner's officer-in-charge, Rogelio Vecido, informed him that he was not assigned anywhere because he was suspended from work.

Somosot likewise claimed that on March 22, 1990, Mr. Igmedio Tomenio, petitioner's shift-in-charge at the CHR, tried to pressure him to sign a Release and Quitclaim but he refused. That afternoon, Somosot learned that he had been suspended from work. When he attempted to report for work the next day, he was informed verbally that his employment was already terminated.

The next day, March 23, 1990, Mercado and Somosot filed a complaint for illegal

dismissal and underpayment of wages, overtime pay, legal holiday pay, premium pay for holiday and rest day, 13th month pay, service incentive leave benefits and night differential against petitioner. The case was docketed as NLRC-NCR Case No. 00-03-01791-90.

Like Mercado and Somosot, respondent Oliver asseverated that on March 27, 1990 he went to petitioner's office to reiterate his money claims and was forced by Mr. Reynaldo Dino, petitioner's operations manager, to sign a Release and Quitclaim. Because of his refusal to sign the same, he was not given any new assignment by petitioner. He was thus surprised to receive on March 29, 1990 a telegram from petitioner requiring him to explain his absence from work without leave from March 27, 1990. Subsequently, Oliver filed a complaint for illegal dismissal and underpayment of backwages against petitioner, which case was docketed as NLRC-NCR Case No. 00-03-01886-90.

Upon motion of petitioner, the two cases were consolidated.

Petitioner, on the other hand, denied that it dismissed Mercado, Somosot and Oliver and alleged that the latter abandoned their employment.

Meanwhile, on February 18, 1991, petitioner filed a third-party complaint against the CHR, claiming that its failure to effect the increase in the minimum wage of respondent security guards from July 1, 1989 to March 31, 1990, was due to the failure of the CHR to promptly pay the increases in the wage rates of said guards pursuant to Section 6 of Republic Act No. 6727[1] (R.A. 6727). The CHR approved payment of increased wage rates only from April 16, 1990. Petitioner claimed that under R.A. 6727, the CHR was mandated to pay increased wages to the security guards commencing from July 1, 1989.

The CHR denied that it was obliged to pay the increase in the wage rates of the respondent guards. It averred that R.A. 6727 is not applicable to it, because it had already been paying the respondent security guards more than P100.00 a day even before the effectivity of said law. Its decision to increase the salaries of respondent guards effective August 16, 1990 was due only to humanitarian reasons.

In his Decision dated November 18, 1991,[2] the Labor Arbiter found that there was neither dismissal by petitioner of the respondent security guards nor abandonment of employment by the latter, and that the controversy resulted from miscommunication and misapprehension of facts by the parties. The Labor Arbiter, however, ruled that there was underpayment of respondent guards' salaries, holiday pay, premium pay for holidays and rest days, overtime pay, 13th month pay and service incentive leave benefits in the total amount of Forty Two Thousand Six Hundred Thirty Five Pesos and Eighteen Centavos (P42,635.18). Of this amount, the CHR was ordered to reimburse petitioner an amount of Twenty Eight Thousand Five Hundred Pesos (P28,500.00). The dispositive portion thereof stated:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to reinstate the complainants without backwages and to pay said complainants as follows:

1. P33,054.18 as wage differential inclusive of holiday pay and premium pay;

2. P4,423.18 as total overtime pay differential;

3. P4,505.82 as aggregate 13th month pay differential; and

4. P652.00 as differential for service incentive leave pay;

All other claims of the complainants are denied for lack of merit.

And on the third-party complaint, the third-party respondent is hereby ordered to reimburse the third-party complainant the sum of P28,500.00 based on the above disposition.

SO ORDERED.[3]

All parties filed their respective appeals with the National Labor Relations Commission.

In their partial appeal, respondents Mercado and Somosot argued that the Labor Arbiter erred in not finding that they were illegally dismissed and in not awarding backwages in their favor.

Petitioner, on the other hand, claimed that the Labor Arbiter erred in not finding that respondent security guards abandoned their employment, and that it is the CHR which should be held liable for the monetary award given to respondent security guards.

The CHR for its part contended that the Labor Arbiter erred in not finding that R.A. 6727 does not apply to it, and in failing to appreciate the CHR's Letter dated April 16, 1990 which stated that it was increasing the wage rates of the security guards beginning April 16, 1990.

On January 24, 1994, the NLRC rendered its Decision,[4] the dispositive portion of which states:

WHEREFORE, in view thereof, the decision appealed from is hereby affirmed with modification. The order of Labor Arbiter Jose G. De Vera on the third-party complaint that the third-party respondent reimburses (sic) the third-party complainants the amount of Twenty-Eight Thousand Five Hundred (P28,500.00) Pesos representing their salaries from July 1, 1989 up to April 15, 1990 is SET ASIDE.

SO ORDERED.[5]

Hence, this petition. Petitioner raises the following arguments:

A. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENTS DID NOT ABANDON THEIR POSTS.

B. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT COMPUTED THE OVERTIME DIFFERENTIAL, 13TH MONTH DIFFERENTIAL AND THE DIFFERENTIAL FOR THE SERVICE INCENTIVE LEAVE PAY WITHOUT EXCLUDING THE PERIOD FOR SEPTEMBER 1, 1988 UP TO JUNE 30, 1989 DURING WHICH, ACCORDING TO ITS OWN DECLARATION, THERE WAS NO UNDERPAYMENT.

C. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT SET ASIDE THE ORDER OF LABOR ARBITER JOSE G. DE VERA REQUIRING THE CHR TO REIMBURSE PETITIONER.[6]

The Court finds that the NLRC committed no grave abuse of discretion in affirming the finding that petitioner did not dismiss respondent security guards, and that the latter did not abandon their employment.

Both the NLRC and the Labor Arbiter found no clear proof that petitioner had in fact dismissed respondent security guards. Mercado based his claim of illegal dismissal only on the statement of officer-in-charge Mr. Vecido that he had not been assigned to any post. Similarly, Somosot relied merely on the verbal information relayed to him that he had been terminated. Oliver's belief that he had been illegally dismissed was founded on the telegram from petitioner requiring him to explain his absence without leave which he received on March 29, 1990. None of them exerted efforts to confirm from petitioner's office whether they had in fact been dismissed.

In the case of *Indophil Acrylic Manufacturing Corporation vs. NLRC,*[7] where private respondent filed a complaint for illegal dismissal against his employer after he was prevented by the company guard from entering the company premises on the ground that he had resigned, the Court, which held that private respondent was not illegally dismissed, stated:

x x x

> The present case, which has lasted for almost four (4) years, could have been avoided had private respondent made previous inquiry regarding the veracity of Mr. Gaviola's instruction, and not simply relied on the bare statement of the company guard. Private respondent should have been more vigilant of his rights as an employee because at stake was not only his position but also his means of livelihood. x x x

Furthermore, petitioner denied the allegation that it terminated respondent security guards' employment without just cause and even alleged that respondent guards abandoned their employment. Thus, absent any showing of an overt or positive act proving that petitioner had dismissed Mercado, Somosot and Oliver, their claim of illegal dismissal cannot be sustained.[8]

There being no finding that respondent security guards were illegally dismissed, there is no basis for an award of backwages in their favor. It is axiomatic that before backwages may be granted, there must be unjust or illegal dismissal from work.[9]

Neither did the NLRC find evidence to support petitioner's allegation that Mercado, Somosot and Oliver abandoned their employment. The records reveal that their failure to report for duty was not caused by a willful and deliberate intent to abandon their employment. Rather, such failure resulted from their belief, though mistaken, that they had been suspended or terminated from work. The rule is that for abandonment to exist, two elements must concur: first, the employee must have failed to report for work or must have been absent without justifiable reason; and second, there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[10] The filing by Mercado, Somosot and Oliver of their complaints for illegal dismissal negates the existence of any intention on their part to abandon their employment.[11]

On the other hand, there is merit in petitioner's argument that there was an error in the computation of the amounts constituting underpayment of overtime pay, 13th month pay and service incentive leave benefits to respondent security guards by the Labor Arbiter, which in turn was affirmed by the NLRC. The Labor Arbiter found that Mercado, Somosot and Oliver were not paid the minimum wage from January 1, 1988 to March 22, 1990. On the basis of this finding, he determined that respondent security guards incurred underpayments in their wages for the periods January 1, 1988 to August 31, 1988 and July 1, 1989 to March 22, 1990.[12] However, he noted that there were no underpayments in their wages for the period September 1, 1988 to June 30, 1989.[13] The discrepancy between the minimum wage prevailing for the periods concerned and the wages and other benefits received by the security guards also served as the basis for the Labor Arbiter's computation of underpayments for overtime, 13th month and service incentive leave benefits.

However, in computing the underpayment for overtime, 13th month and service incentive leave benefits, the Labor Arbiter erroneously included the period from September 1, 1988 to June 30, 1989 in spite of his finding that there was no underpayment in wages during said period.

The period from September 1, 1988 to June 30, 1989 should thus be excluded in the computation of the underpayments for overtime, 13th month and service incentive leave benefits of respondent security guards. Accordingly, there is a need to recompute the underpaid amounts due to the respondent security guards with respect to their overtime, 13th month and service incentive leave benefits in conformity with the evidence presented.

The Court also finds merit in petitioner's argument that the NLRC should not have reversed the Labor Arbiter's finding that the CHR is liable for the payment of P28,500.00 representing the differentials of respondent security guards' wage, overtime, 13th month and service incentive leave benefits for the period July 1, 1989 to April 15, 1990.

The record shows that petitioner informed the CHR regarding the increase in the wages of the security guards effective July 1, 1989, pursuant to R.A. 6727 which mandated a Twenty Five Peso (P25.00) increase in the daily wage rate in a Letter dated August 7, 1989.[14] In its reply letter dated April 16, 1990, the CHR stated that it had approved the increase in the wages effective April 16, 1990.[15]