

## **THIRD DIVISION**

**[ G.R. No. 124134, November 20, 1996 ]**

**DI SECURITY AND GENERAL SERVICES, INC. AND/OR  
DOMINADOR INOCENTES, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION AND DANILO T. SANTOS,  
RESPONDENTS.**

### **D E C I S I O N**

**MELO, J.:**

Public respondent National Labor Relations Commission (NLRC) reversed the decision of the labor arbiter and ordered the reinstatement, without loss of seniority rights and other privileges, and payment of full backwages inclusive of allowances and other benefits of one security guard who, after having been issued a Squires Bingham caliber .38 revolver which until the present has remained missing and unaccounted for, could not show adequate proof that he had turned over the same to the rightful personnel of his security agency, save the testimony of another security guard who allegedly observed that when private respondent left the security office that fateful morning, said witness no longer saw the revolver inside private respondent's holster.

Petitioner security agency now seeks to set aside said decision for having been rendered in grave abuse of discretion.

Briefly, the pertinent facts are as follows:

From November 1, 1986 until August 1990, private respondent was employed as security guard by petitioner DI Security and General Services, Inc. On July 5, 1990, he was assigned to the third shift (with an 8-hour tour of duty from 11 o'clock in the evening until 7 o'clock the next morning) at the Filsyn Corporation located at Sta. Rosa, Laguna, and he arrived thereat sometime past 10:30 p.m. After putting on his uniform, he proceeded to the grounds near the second gate and joined the other security guards who were lined up in formation, awaiting their specific assignments and other instructions. For that particular shift private respondent was assigned to the following posts in succession: power plant, motorpool, and the first gate.

Accordingly, private respondent proceeded to the power plant to relieve Security Guard (SG) Virgilio Lapiña. Pursuant to standard operating procedure, SG Lapiña turned over the subject revolver to private respondent. Later that night Sergeant-in-Charge (SIC) Arminio Dizon made the usual rounds and recorded the turn-over of firearms to the security guards on-duty in his SIC report.

At about 6 o'clock the next morning, private respondent was at his last post by the first gate, beside which the security office is located. After doing some minor cleaning job at the security office, private respondent felt hungry so he asked

permission from SIC Dizon to eat breakfast at the canteen.

Since it was not yet time for the next shift to take over from the evening shift, private respondent requested SG William Layto, then also on duty, to temporarily relieve him, but SG Layto replied that he himself had to go to the canteen to eat before he can temporarily take over the post. Some ten minutes thereafter, SG Layto arrived to relieve private respondent at the first gate, whereupon, private respondent went to the security office anew to seek permission from SIC Dizon to go to the canteen to eat.

According to SG Layto, he noticed that when private respondent entered the security office, the subject revolver was in the holster he was wearing, but that when private respondent went out from said security office sometime thereafter, the subject revolver was no longer inside the holster (par. 8, Sinumpaang Salaysay, Rollo, p. 79).

From July 6th up to the 10th, private respondent reported for work under the same shift from 11 o'clock in the evening up to 7 o'clock the following morning. However, on July 12, 1990, he was summoned for investigation concerning the loss of the firearm issued to him on the evening of July 5, 1990.

Private respondent was again summoned and further interrogations were conducted on July 27, 28 and 29, 1990 when, according to him, he was allegedly coerced into admitting that he knew where the subject firearm was. Other security guards were likewise investigated, including SG Virgilio Lapiña whom he relieved that evening of July 5, 1990.

Private respondent continued reporting for work until July 31, 1990 but he was no longer allowed to carry any firearm. On that date, his license as security guard expired so he informed SIC Dizon that he might not be able to work in the meantime that he was still renewing the same. Moreover, he had problems raising the money to pay for the renewal fees because he was not paid his salary from July 25 to 31, 1990.

Sometime in the early part of August 1990, petitioner, through SG Maning Aripul, served the notice of termination upon private respondent at his house.

Aggrieved by these turn of events, private respondent filed a complaint for illegal dismissal with the regional office of the NLRC. Giving more credence to the testimony of lady guard (LG) Estrellita Lopez who was present at the security office on the day of the incident that she did not see any turn-over of the subject revolver as claimed by private respondent, as against the testimony of SG Layto who claimed having seen respondent's holster empty as the latter went out from the security office that morning, the labor arbiter dismissed the complaint for lack of merit.

Private respondent thereupon elevated the case to the NLRC, which, through Presiding Commissioner Bartolome S. Carale, thereafter justified reversal upon its finding that the testimony of LG Lopez "does not rule out the possibility that the complainant turned over his gun to SIC Dizon" (Decision, p. 7; Rollo, p. 31).

The task before us now is to determine whether or not the NLRC committed grave abuse of discretion in reversing the decision of the labor arbiter. This entails a

review of factual findings of both the labor arbiter and the respondent commission as an exception to the rule that such findings of the NLRC are generally given not only respect by this Court in petitions such as the instant one, but even finality when supported by substantial evidence (Five J Taxi vs. National Labor Relations Commission, 235 SCRA 556 [1994]).

Petitioner imputes grave abuse upon public respondent for reversing the factual findings of the labor arbiter on the basis of mere inferences and speculations which allegedly have no evidentiary basis. It claims that in reversing the factual findings of the labor arbiter, respondent NLRC offered no explanation regarding the following facts:

1. Santos was issued a service revolver a Squires Bingham Caliber .38 revolver;
2. He did not adhere to the standard operating procedure in returning his issued firearm;
3. He could not substantiate his claim that he turned over his firearm to SIC Arminio Dizon;
4. SIC Arminio Dizon denied that Santos ever turned over his firearm to him on the night of 05 July 1990;
5. The witnesses Santos cited in furtherance of his complaint, William Layto and Estrellita Lopez, could not confirm his claim of having turned over his issued firearm to SIC Arminio Dizon;
6. Santos was the last person seen with the issued firearm;
7. The issued firearm was never located.

except that -

. . . From all the foregoing circumstances, and in view of the existence of the above-mentioned SOP (standard operating procedure), the complainant's claim that he turned over his firearm to SIC Dizon is not at all implausible.

and that -

. . . the testimony of Estrellita Lopez does not rule out the possibility that the complainant turned over his gun to SIC Dizon.

(Petition, p. 8; Rollo, p. 17.)

We find the petition impressed with merit.

The constitutional guarantee of protection to labor and security of tenure, requires that an employer can only terminate the services of an employee for a valid and just cause which must be supported by substantial evidence (Pili vs. National Labor Relations Commission, 217 SCRA 338 [1993]). In cases questioning the legality of dismissal, the burden is upon the employer to prove a valid and just cause for