SECOND DIVISION

[CA-G.R. SP No. 125363, May 28, 2014]

ADRIANO B. TACLAY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, LAWIN SECURITY SERVICES, INC. AND/OR MR. MANUELITO ARCENAL, RESPONDENTS.

D E C I S I O N

GAERLAN, S.H., J.:

For consideration of this Court is a Petition for Certiorari[1] praying for the setting aside of the 30 March 2012 Decision[2] and the 31 May 2012 Resolution[3] of the National Labor Relations Commission (NLRC) in LAC No. 01-000435-12. The assailed Decision is a reversal of the 29 November 2011 Decision[4] of the Labor Arbiter in NLRC NCR Case No. 00-02-02147-11 while the questioned Resolution is a denial of herein petitioner's Motion for Reconsideration[5] of the earlier Decision.

The facts may be summarized in this wise:

From May 1983, petitioner Adriano B. Taclay (Taclay) served as one of the security guards of private respondent Lawin Security Services, Inc. (Lawin) which, in turn, is engaged in the business of providing security guards to its respective clients.

Taclay alleged that on 6 August 2010, he was relieved from his latest assignment and was made to report to Lawin's office for a new posting. Upon reporting, he was told to wait for a new assignment as there was no possible posting at that time. On 13 December 2010, Taclay was advised to proceed to Barangay Don Jose, Sta. Rosa, Laguna for his new assignment to the Emperador Distillers, Inc. When he reported the following day, the officer in charge was not around to receive him. Consequently, Taclay left the premises and went home.

According to Taclay, he returned to Lawin's office on 17 December 2010 to request for another assignment in Metro Manila as Sta. Rosa is far from Navotas City where he resides. Since then, Taclay was not given any other assignment which prompted him to file a complaint[6] for illegal dismissal, with monetary claims, on 7 February 2011.

On the other hand, Lawin averred that its client, Nutri Snack Food Corporation, requested the recall of Taclay on the ground of poor performance. He was then relieved from said assignment on 7 August 2010. Eventually, Taclay was assigned to Emperador Distillers, Inc. on 13 December 2010.[7] When he reported on 14 December 2010, while waiting for the officer in charge, Taclay made several inquiries regarding his new place of assignment and he was later on overheard saying: "Mahirap pala trabaho dito."

Lawin further claimed that it sent a notice via registered mail on 18 January 2011 to Taclay ordering him to explain his failure to wait for the officer in charge when he

reported in Sta. Rosa, Laguna on 14 December 2010.[8] The notice was received by a certain Jesse but the letter envelope was returned to Lawin with a notation "Refused to Received" (sic) which was signed by Taclay himself.[9] On 1 February 2011, Taclay visited Lawin's office wherein he was asked by the personnel if he received the 18 January 2011 letter. Taclay denied having received the same. Thus, he was asked to open the letter and he later on commented that: "Sir ayaw ko sa Laguna mag duty kasi malayo at hindi maayos ang barracks doon at provincial rate pa." Since there was no possible posting in Metro Manila at that time, Taclay was advised to wait further. On the following day, Lawin received a call from a client requesting for a security guard to be assigned in Dasmariñas, Makati City. Lawin immediately sent a notice[10] to Taclay via LBC courier informing him of the available assignment. However, acceptance thereof was refused on 4 February 2011.[11] Instead of reporting to his new assignment, Taclay filed a complaint for illegal dismissal and monetary claims against Lawin.

Finding merit in Taclay's complaint, the Labor Arbiter ruled in his favor stating that:

xxx

> First, respondent alleges that complainant was off-detailed from his last detail at the request of the client on account of poor performance. The records, however, do not show that such a request was made. There being no request made, the complainant was pulled out of his assignment and effectively was "transferred"to another post.
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> Ordinarily, it is management prerogative to re-assign employees for efficient operations. There are instances, however, that this prerogative is abused by the employer, so much so, that jurisprudence have set the standards of "transfers"made. It is ruled that transfers should be effected with utmost good faith.
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> Here, the respondent alleged that the reason for complainant's pull out was the client's request for complainant's relief due to poor performance yet, again, there is nothing on records which would validate this allegation. The said client's request remains to be a mere allegation.
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> Granting that there was indeed this client request for a "pull-out" the new assignment given him Laguna (sic) does, not satisfy the requirements of Article 286 of the Labor Code on "new detail."
>
> On the surface, the respondent did provide a new detail within the period provided in Article 286 of the Labor Code. Yet, this Office finds that this is not a case of "good faith"assignment since it did not take into consideration that complainant hails from Navotas and his assignment is far far away from his home.
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> It appears that the respondent made the assignment/detail purposely to discourage him from assuming this new assignment offered.
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> It did not escape notice by this Office that the new assignment was very far from his residence even from his previous assignments. It will be tasking and expensive for him to travel to and from the new assignment given. This brings to mind the test for a valid transfer, which dictates that it must not be unreasonable or inconvenient to the employee. Otherwise,

the transfer will be construed, as in this case, as a form of constructive dismissal.

Complainant for reasons above-stated was constructively illegally dismissed. Consequently, the complainant must be paid his full backwages. He could not be ordered reinstated for the reason that the relationships between the parties was strained with the filing of the complaint and the fact that respondent could not find him a new assignment which is convenient and unreasonable (sic) compared with/to his assignment. He is, thus, ordered paid separation pay, equivalent to one [1] month pay for every year of service.

The claim for unpaid 13th month pay is a statutory requirement that is mandatorily required by law to be paid the employees. The employer, to be freed from paying this can submit its payroll as proof of payment or submit proof that it is exempted from paying the same. None of the above were presented that complainant is ordered paid his 13th month pay and service incentive leave pay.

WHEREFORE, premises considered, complainant is ordered paid his full backwages from the time of his illegal dismissal to the date of this Decisions. Complainant is also ordered paid separation pay equivalent to one [1] month pay for every year of service in lieu of reinstatement, proportionate 13th month pay and service incentive leave pay.

The total of the award is a computed in Annex "A" which forms part of this Decision.

SO ORDERED.[12]

Dissatisfied, Lawin appealed[13] from the Decision of the Labor Arbiter. In its 30 March 2012 Decision,[14] the NLRC granted Lawin's appeal and dismissed the case file by Taclay against Lawin. Taclay moved for reconsideration[15] which was denied by the NLRC in its 31 May 2012 Resolution.[16] Hence, Taclay is now before this Court raising the following issues:

I. WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DICRETION WHEN IT REVERSED THE DECISION RENDERED BY THE LABOR ARBITER BELOW AND DISMISSED THE CASE FOR LACK OF MERIT.

II. WHETHER PETITIONER IS ENTITLED TO FULL BACKWAGES FROM HIS DISMISSAL UP TO ACTUAL REINSTATMENT AND NOT ONLY TO DATE OF DECISION.[17]

Taclay is of the contention that he was placed on floating status for more than six (6) months. According to him, he was not given a new assignment from 7 August 2010 until January 2011. As such, the alleged assignment on 2 February 2011 in Makati City was already beyond the six months period.

Taclay also maintains that he was constructively dismissed since he was forced to refuse his assignment in Sta. Rosa, Laguna. He asseverates that the transportation expenses from his house in Navotas City to Sta. Rosa, Laguna would leave him

merely a portion of his supposed salary. Taclay further alleges that due to his assignment in Sta. Rosa, Laguna, he would not be paid in accordance with the salary rate in Metro Manila but in accordance with the salary rate in Laguna. In addition, the assignment means that he would be away from his family.

Furthermore, Taclay is of the position that the backwages awarded by the Labor Arbiter should not only be from his dismissal up to the date of decision but until his actual reinstatement. Lastly, he contends that the award of the Labor Arbiter of his unpaid thirteenth (13th) month pay and incentive leave pay should be upheld since Lawin failed to submit proof that would prove that he was given said benefits.

The instant petition is partly meritorious.

Constructive dismissal exists where there is cessation of work, because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay and other benefits.[18] Constructive dismissal may likewise exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment.[19]

Taclay argues that he was constructively dismissed as he was given an assignment away from home which is more expensive and inconvenient on his part. However, under the surrounding circumstances in this case, this Court rules that he was not constructively dismissed.

Service-oriented enterprises, such as Lawin's business of providing security services, generally adhere to the business adage "the customer or client is always right". To satisfy the interests, conform to the needs, and cater to the whims and wishes of its clients, along with its zeal to gain substantial returns on its investments, employers adopt means designed towards these ends.[20] At this juncture, it should be noted that most contracts for security services stipulate that the client may request the replacement of the guards assigned to it, and a relief and transfer order in itself does not sever employment relationship between a security guard and his agency.[21]

Although it is true that a security guard has the right to security of tenure this does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of or transfer the security guard to a station where his services would be most beneficial to the client.[22] Verily, an employer has the right to transfer or assign its employees from one office or area of operation to another in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.[23]

In this case, Taclay's recall from his previous post was requested by Lawin's client allegedly due to poor performance. Lawin is not involved in its client's businesses and it has no exercise over the latter's business operations as it merely provides security to its client's establishments. As a consequence thereof, it has no right at all to demand the reasons for their clients' action and is practically powerless to disregard the position of its clients, otherwise, it would mean an end to its business relationship with them. Justice, fairness and due process demand that an employer,