

TWELFTH DIVISION

[CA-G.R. SP. No. 122913, June 23, 2014]

**RVV SECURITY SYSTEMS, INC., PETITIONER, VS. THE NATIONAL
LABOR RELATIONS COMMISSION, EDWIN O. FRIAS AND
ANSELMO B. GAVANES, RESPONDENTS.**

DECISION

ELBINIAS, J.:

For disposition is a Petition for Certiorari^[1] filed under Rule 65 of the Rules of Court. The Petition assails the Decision^[2] dated August 10, 2011 of public respondent National Labor Relations Commission ("public respondent NLRC" for brevity) in NLRC LAC NO. 01-000098-11 (NLRC NCR CASE NO. 05-07201-10). The Petition also questions public respondent NLRC's Resolution^[3] dated November 29, 2011, which partially granted petitioner's eventual Motion for Reconsideration^[4].

Among the pertinent and salient facts are those as stated in public respondent NLRC's Decision^[5] of August 10, 2011, which are as follows:

"Complainants Edwin O. Frias and Anselmo B. Gavanés (*private respondents here*) **allege that they were hired as security guards by respondent RVV Security Systems Inc.** (*petitioner here*) in April 1996 and May 1995 respectively.

They worked on a twelve-hour duty from Monday to Sunday with no day-off and received a salary of P300.00 plus P50.00 ECOLA or a total of P350.00 per day.

Both complainants were assigned as building guards at Metro Properties, 1052, MPI Bldg., Magallanes Village, Makati City. Complainant Frias was assigned therein for almost ten years and seven years for complainant Gavanés.

Complainants claim that they were not paid their minimum wage, mandated overtime pay as they were only given an additional P150 for 4 hours overtime daily, holiday pay, premium pay for rest day and holidays and other benefits provided by law. In support of these allegations, complainants submitted in evidence respondent RVV's Billing Statement addressed to Metro Properties xxx showing that they should receive a monthly salary of P21,269.66 per month inclusive of overtime pay, but they only received P16,000.00 per month.

On February 16, 2010, complainants filed a complaint for wage and overtime underpayment with the Department of Labor and

Employment (DOLE) and the case was set for hearing on March 16, 2010.

On the date of said hearing, new guards arrived in their place of assignment and informed complainants that they are relieved from service upon the request of the building owner. No written order was shown by the new guards neither were they aware of any complaint lodged against them by the building owner that may have led to their being relieved from their posts. Despite all these, complainants peacefully turned-over their posts to the new guards and signed the logbook with a negative remark.

Complainants attended the hearing at the DOLE and during said hearing they were informed by Mr. Ronald De Leon, RVV's Security Manager that they have to look for another security agency as their case will take time to resolve.

On March 17, 2010, complainants received an Order dated March 15, 2010 stating that they were being relieved from their post effective March 16, 2010. Thereafter, complainants followed up on their new assignments, but they were prevented from entering respondents' office.

Sometime in August 2010, while this case was already being heard, complainant Frias belatedly received a letter dated April 5, 2010 charging them with Gross Neglect of Duty. The letter was mailed at his provincial address at 97 San Agustin, Salangan, San Miguel, Bulacan despite the fact that respondents knew that his home address is at Lot 27, Blk 8[,] Milflora Homes, Sabang, Baliuag, Bulacan as contained in his Identification Card and 201 file."^[6] (*Emphasis Supplied*)

Because of their dismissal from employment, private respondents Edwin O. Frias and Anselmo B. Gavanese' ("private respondents" for brevity) filed before the Labor Arbiter a Complaint^[7] for "Illegal Dismissal with claims for underpayment of salary, overtime pay, holiday pay, 13th [month] pay with prayer for reinstatement"^[8] against petitioner RVV Security Systems, Inc. ("petitioner" for brevity) and against Romeo Venturina, who was sued in his capacity as the Chairman of RVV Security Systems, Inc.

The rest of the facts are continued in public respondent NLRC's Decision^[9] of August 10, 2011:

"xxx respondent RVVSSI alleges that on February 22, 2010 it received a letter from its client, Metro Properties, Inc. (MPI) informing it the need to reshuffle and eventually to replace all guards assigned in their establishment effective March 16, 2010.

On March 15, 2010, in compliance to said request, respondent RVVSSI issued an order relieving four (4) security guards assigned at MPI which included complainants. After receiving said order, complainants failed to report to respondent's office.

On March 11, 2010, respondent agency received a notice from DOLE-NCR regarding the complaint filed by complainant Gavanés. On March 16, 2010 the scheduled date of hearing, complainant Gavanés was present accompanied by complainant Frias. Respondent's Security Manager Ronald De Leon advised them to report to respondent's office for possible assignment elsewhere. Complainants however informed Mr. De Leon that they will not report for fear of reprisal and indeed they did not report despite series of notices sent to them. xxx

Respondents assert that they have paid salaries and benefits due the complainants. Further, they allege that complainants are not entitled to payment of uniform allowance since they are given a set of uniform yearly.”^[10] (Emphasis Supplied)

On December 10, 2010, the Labor Arbiter rendered a Decision^[11], which found that private respondents were constructively dismissed by petitioner.^[12] The dispositive portion of the Labor Arbiter's Decision^[13] read:

“WHEREFORE, this office hereby finds that complainants were constructively and thus, illegally, dismissed by the respondents. Respondents are hereby declared and held solidarily liable to pay: (a) Complainant Edwin Frias P94,536.00 as backwages and P147,056.00 as separation pay; and, (b) Complainant Anselmo B. Gavanés P94,536.00 as backwages and P157,560.00 as separation pay. Backwages and separation pay are subject to recomputation upon finality of this decision. Other claims are dismissed.

SO ORDERED.”^[14] (Emphasis was made in the original)

Upon petitioner's appeal, public respondent NLRC, in its assailed Decision^[15] of August 10, 2011 affirmed the Labor Arbiter's Decision^[16] of December 10, 2010.

Petitioner's eventual Motion for Reconsideration^[17] was partially granted, only to the extent that Romeo Venturina was absolved from any liability, by public respondent NLRC in its assailed Resolution^[18] of November 29, 2011. Afterwards, petitioner filed the Petition^[19] at bench praying that:

“xxx the assailed Decision dated August 10, 2011 and the Resolution dated November 29, 2011 be reversed and set aside and a new one be issued dismissing the instant complaint for lack of merit.”^[20]

Petitioner raised the following grounds:

“I.

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION (6TH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE LABOR ARBITER'S DECISION FINDING [PRIVATE RESPONDENTS] AS CONSTRUCTIVELY DISMISSED,

HENCE ILLEGAL, DESPITE THE FACT THAT THE COMPLAINT DID NOT RAISE CONSTRUCTIVE DISMISSAL AS A CAUSE OF ACTION.

II.

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION (6th DIVISION) IN AFFIRMING THE LABOR ARBITER'S DECISION, COMMITTED SERIOUS ERRORS IN THE FINDINGS OF FACTS WHICH, IF NOT CORRECTED, WILL CAUSE GRAVE AND IRREPARABLE DAMAGE AND/OR INJURY TO THE [PETITIONER]

III.

WHETHER OR NOT THE NATIONAL LABOR RELATIONS COMMISSION (6th DIVISION) IN AFFIRMING THE LABOR ARBITER'S DECISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE FINDING THAT [PRIVATE RESPONDENTS] WERE ILLEGALLY DISMISSED AND AWARDED THEM BACKWAGES AND SEPARATION PAY"^[21] (*Emphasis was made in the original*)

Contrary to petitioner's arguments in its *assigned grounds I and II*, private respondents were constructively dismissed by petitioner.

Petitioner had argued as follows:

"xxx **the complaint was clearly premature** and should have been dismissed outright. **At the time of the filing of the Complaint, the six (6) month floating status had not yet expired.** Clearly, there can be no finding of constructive dismissal given this factual backdrop.

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xxx **at the time of the filing of the Complaint at the NLRC on May 25, 2010, the six month permissible 'floating status' period has not yet prescribed.** Hence, it cannot be gainsaid that at the time of the filing of the instant complaint, the Respondents were already dismissed. Simply put, Respondents only refused to report to Petitioner's office for posting.

In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him such a vested right in his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. **Temporary 'off-detail' or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal as their assignments primarily depend on the contracts entered into**

by the security agencies with third parties. Indeed, the Court has repeatedly recognized that 'off-detail' is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time; **when such a 'floating status' lasts for more than six months, the employee may be considered to have been constructively dismissed.**

XXX

xxx **before the sending out of the six (6) notices to private respondents xxx informing [them] to report to the office for possible posting, private respondents were personally advised and instructed by Mr. Ronald De Leon during the Mediation Hearing at the DOLE-NCR on March 16, 2010 to report to the office for possible posting. However, private respondent refused to do so.** Where the inaction of the private respondents was the proximate cause of their present situation, **the petitioner should not be made to suffer when it had done everything in good faith to give them a job posting elsewhere.**

XXX

Likewise, **private respondents['] claim that they tried to report to petitioner's office to follow up on their new assignments but they were barred from entering the premises by the guard on duty and that they did this for two (2) weeks but the guard on duty prevented them from entering the place, is simply unsubstantiated.**

Private respondents utterly failed to specify the dates and the time when they allegedly reported to the Petitioner's office nor the name/s of the guard/s on duty who barred them from entering, who should have been known to them being security guards like private respondents. MERE ALLEGATION IS NOT PROOF."^[22] (*Emphasis supplied*)

Defeating petitioner's arguments however, is that as the records revealed, petitioner failed to provide new work assignments to private respondents within six (6) months from the time private respondents were recalled^[23] from their previous work assignments on March 16, 2010, and were placed on "floating status".

Despite private respondents' premature filing of their Complaint^[24] for Illegal Dismissal on May 25, 2010,^[25] which was before six (6) months had lapsed since private respondents were placed on "floating status", still, petitioner failed to offer private respondents new work assignments while such Complaint^[26] was pending before the Labor Arbiter for more than six (6) months after private respondents were recalled from their previous assignment. Thus, petitioner had constructively dismissed private respondents by placing them on "floating status" for more than six (6) months. These matters were as similarly found by public respondent NLRC, to wit: