

SPECIAL SIXTH DIVISION

[CA-G.R. SP NO. 134780, December 12, 2014]

PACIFIC WORLD BUILDING MANAGEMENT AND GENERAL SERVICES, INC. AND MANUEL DIMACULANGAN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND JOVIE J. VEGA, RESPONDENTS.

DECISION

BALTAZAR-PADILLA, J.:

This petition^[1] for *certiorari* under Rule 65 of the Rules of Court impugns the Decision^[2] dated April 26, 2013 of the National Labor Relations Commission (NLRC) and its Resolution^[3] dated March 19, 2014 in NLRC LAC No. 10-002988-12.

The facts of the case as culled from the records are as follows:

Petitioner Pacific World Building Management and General Services, Inc. (hereinafter, "Pacific") is an independent contractor engaged in the business of providing janitorial and messengerial services while petitioner Manuel Dimaculangan is its President.

On October 2, 2000, petitioner Pacific employed respondent Jovie J. Vega as motorized messenger for its client Bank of Commerce (hereinafter, "BOC") located in Pasig City.

On October 26, 2011, petitioners received a letter dated October 25, 2011 from Albert T. Janbahab, the Head of the General Services Division of BOC. In the said letter, Janbahab, requested petitioner Pacific for the termination of the service of respondent Vega as motorized messenger for the BOC, viz -

"We received your letter dated October 18, 2011 on the incident involving Mr. Jovie Vega, who was dispatched to deliver documents on October 14 and was late in returning to the Bank.

The Bank finds your explanation of the delay unacceptable, considering that Mr. Vega was even on a motorcycle. As such, we reiterate our previous demand that the assignment of Mr. Vega as motorized messenger of the Bank be immediately and permanently terminated and that a new messenger be assigned to take the place at no cost on the part of the Bank."^[4]

On October 27, 2011, respondent Vega was placed on a floating status.^[5]

On May 2, 2012, respondent Vega filed a complaint for illegal dismissal with monetary claims against petitioners.^[6]

In his position paper,^[7] respondent Vega alleged that he was hired on October 2, 2000 earning a salary of P404.00 daily; that on October 27, 2011, he was asked to report at petitioners' office where he was informed that the BOC to which he was assigned no longer wanted his service; that since then, he had been out of work; that he later learned that petitioners assigned his previous work at BOC to another messenger; that he often reported at petitioners' office hoping to be given new assignment but no attention was given to him. Consequently, he filed a complaint for illegal dismissal with monetary claims against petitioners.

On the other hand, petitioners admitted that respondent Vega was employed by petitioner Pacific as motorized messenger and was formerly assigned at the BOC's main office in Pasig City; that BOC through Albert T. Janbahab requested respondent Vega's immediate and permanent termination from his work; that because of the said request, they pulled out respondent Vega from BOC. A memorandum dated October 27, 2011 was issued, placing respondent Vega on a floating status, *viz* -

"Please be informed that you have been placed on a float status for a period of six (6) months effective October 27, 2011, in accordance with the existing rules and regulations of the Department of Labor and Employment. This is due to the client request for your replacement as Motorized Messenger.

In the meantime, we are looking if there are vacancies in our existing clients where we can place you. We will also be looking for new clients so that you can continue working with our Company."^[8]

Petitioners denied dismissing respondent Vega alleging that the latter was directed by Erick C. Dilig, Messengerial Supervisor of petitioner Pacific, to report to work on January 9, 2012 but he declined. Respondent Vega told Dilig that he cannot report for work as a motorized messenger since he already sold his motorcycle. Consequently, the available position supposedly reserved for respondent Vega was assigned to another who has a service motorcycle. In April 2012, Dilig again texted respondent Vega directing him to report for a possible position as a motorized messenger for Equicom Bank, another client of petitioner Pacific. However, after the qualifying interview, Equicom Bank did not choose respondent Vega for the position and so he was again placed on reserved status.

Petitioners contended that it cannot be said that respondent Vega had been illegally dismissed since they provided him with a new assignment before the lapse of the six (6) month-period. His posting to a new assignment did not materialize for reason attributable to him.

During the mandatory conference, petitioners offered respondent Vega a new assignment as motorized messenger but he refused to accept the same.^[9]

On August 31, 2012, the Labor Arbiter rendered a judgment^[10] which decreed as follows -

"WHEREFORE, premises considered, judgment is hereby rendered, finding the respondents guilty of illegal dismissal. Accordingly, respondents are hereby ordered to immediately reinstate complainant to his former position without loss of seniority rights and other privileges (sic) and pay him full backwages from date of his dismissal up to his actual reinstatement, which is now amounting to **P124,098.76** and attorney's fees equivalent to ten percent thereof or in the amount of **P12,409.87**.

Backwages

10/27/11 – 8/31/12 =

P404 x 26 x 7.17 = P75,313.68

6/3/12 – 8/31/12 =

P426 x 26 x 2.93 = P32,452.68 P107,766.36

13th mo. Pay

P107,766.36 / 12 = P 8,980.53

SILP

P404 x 5/12 x 7.17 = P 1,206.95

P426 x 5/12 x 2.93 = P 520.08 P 1,727.03

COLA

10/27/11 – 6/2/12

P22 x 26 x 7.17 = P 4,101.24

6/3/12 – 8/31/12

P20 x 26 x 2.93 = P 1,523.60 P 5,624.84

TOTAL P124,098.76

10% Attorney's fees

P 12,409.87

GRAND TOTAL P136,508.63

All other claims are dismissed for lack of merit.

SO ORDERED.^[11]

The Labor Arbiter ruled that respondent Vega was illegally dismissed since he was placed on a floating status without justifiable reason. Considering that no evidence was adduced to show that there was a surplus of manpower as against the available assignments or posts, petitioners need not make respondent Vega wait for a period of six months before he could be re-assigned to another client of petitioner Pacific.

On appeal filed before the NLRC, herein petitioners assailed the Labor Arbiter's decision on the ground of serious error in law in holding that respondent Vega was illegally dismissed and should be reinstated, as well as in awarding him backwages and attorney's fees. They claimed that they were justified in placing respondent Vega on a floating status. There was a valid demand on the part of the BOC to terminate his service and it was unfortunate that it had been difficult to immediately provide him a new posting since the BOC accounts already constitute more than 90% of petitioners' business.

Citing *Pido vs. NLRC*,^[12] petitioners argued that they are not required under the law to prove that petitioner Pacific has a surplus of manpower before it could put respondent Vega on a floating status. In the said case, the Supreme Court held that

"Verily, a floating status requires the dire exigency of the employer's *bona fide* suspension of operation of a business or undertaking. In security services, this happens when the security agency's clients which do not renew their contracts are more than those that do and the new ones that the agency gets. **Also, in instances when contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, the replaced security guard may be placed on temporary "off-detail" if there are no available posts under respondent's existing contracts.**"^[13]

Petitioners emphasized that although respondent Vega was placed on a floating status on October 27, 2011, the same lasted only for over two (2) months as he was already directed to report to work on January 9, 2012. Due to his own fault as he already sold his motorcycle, he was not able to get the job as motorized messenger. Also, notwithstanding that respondent Vega already sold his motorcycle, petitioners did not dismiss him. In fact, after the holy week of 2012, he was directed by petitioner Pacific to report for a possible assignment in Equicom Bank. It was just unfortunate that the said bank did not choose him for the position. Considering that respondent Vega was not illegally dismissed, it was erroneous for the Labor Arbiter to order his reinstatement and payment of backwages and attorney's fees.

On April 26, 2013,^[14] the NLRC sustained the finding of the Labor Arbiter that respondent Vega was illegally dismissed because petitioners failed to re-deploy him within six months from the date he was placed on floating status. It ruled, citing *Valdez vs. NLRC*,^[15] that "[u]nder Article 286 of the Labor Code, the *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six months shall not terminate employment. Consequently, when the *bona fide* suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. **By the same token and applying said rule by analogy, if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed.**" The NLRC held that the fact that respondent Vega was made to report for a possible assignment in Equicom Bank in April, 2012 did not toll the running of the six-month period. It emphasized that respondent Vega

was not given a new assignment when he applied at that time with the said bank. At the time he filed the complaint on May 2, 2012, respondent Vega was still on floating status. Since it has been more than 6 months that respondent Vega was not given a new assignment, he is deemed to have been constructively dismissed.

The NLRC did not give credence to petitioners' claim that they required respondent Vega to report on January 9, 2012 through a text message sent by Dilig on January 6, 2012. Since respondent Vega denied having received such message, petitioners' claim that they contacted respondent Vega to report for work on January 9, 2012 remains as mere allegation. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.

Having found respondent Vega to have been illegally dismissed, the NLRC declared him entitled to reinstatement without loss of seniority rights and other privileges; full backwages inclusive of allowances; and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him until the time of his actual reinstatement. However, it held that the computation of the monetary award should be reckoned not from the time that he was pulled out from his post on October 27, 2011 but upon the lapse of the six month floating status period which was on April 28, 2012. This is so because there was no evidence that there was an available post where respondent Vega could be assigned while he was on floating status. The law recognizes the placing of an employee under floating status provided it should not last for more than 6 months. For the duration that an employee is placed on floating status, he is not entitled to receive any salary or financial benefit.^[16]

Thus, the judgment rendered by the Labor Arbiter was modified by the NLRC as follows:

"WHEREFORE, premises considered, the Decision dated August 31, 2012 is hereby **MODIFIED**. The award of backwages is provisionally computed as follows:

Backwages

4/48/12 – 6/2/12			
P404 x 26 x 1.13	=	P11,869.52	
6/3/12 – 8/31/12			
P426 x 26 x 9.77	=	<u>P108,212.68</u>	P120,082.04

13th mo. Pay

P120,0826.04/12 [sic]			P 10,006.84
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SILP

P404 X 26 X 1.13	=	P 190.22	
P426 x 26 x 9.77	=	<u>P 1,734.18</u>	P 1,924.40

COLA

4/28/12 – 6/2/12			
P22 X 26 X 1.13	=	P 646.36	
6/3/12 – 10/31/12			
P20 X 26 X 4.93	=	P 2,563.60	
11/1/12 – 3/26/13			