Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

VICENTE C. TATEL,
Petitioner,

- versus -

JLFP INVESTIGATION AND SECURITY AGENCY, INC., JOSE LUIS F. PAMINTUAN, and/or PAOLO C. TURNO,
Respondents.

G.R. No. 206942

Present:

SERENO, *C.J.*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
DEC 09 2015

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RESOLUTION

PERLAS-BERNABE, *J.*:

Before the Court is the motion for reconsideration [1] filed by respondents JLFP Investigation and Security Agency, Inc. (JLFP), Jose Luis F. Pamintuan (Pamintuan), and/or Paolo C. Turno (Turno), praying that the Court reconsider its Decision[2] dated February 25, 2015 rendered in this case, which found herein petitioner Vicente C. Tatel (Tatel) to have been constructively dismissed and accordingly, directed respondents to pay him the monetary awards pertinent thereto.

The Facts

On March 14, 1998, JLFP, a business engaged as a security agency, hired Tatel as one of its security guards.[3]

Tatel alleged that he was last posted at BaggerWerken Decloedt En Zoon (BaggerWerken) located at the Port Area in Manila.[4] He was required

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1 Dated April 21, 2015. *Rollo*, pp. 258-271.
2 Id. at 245-255.
3 Id. at. 25.
4 Id.

to work twelve (12) hours everyday from Mondays through Sundays and received only ₱12,400.00 as monthly salary.[5] On October 14, 2009, Tatel filed a complaint[6] before the National Labor Relations Commission (NLRC) against JLFP and its officer, respondent Pamintuan,[7] as well as SKI Group of Companies (SKI) and its officer, Joselito Dueñas,[8] for underpayment of salaries and wages, non-payment of other benefits, 13th month pay, and attorney's fees (*underpayment case*).[9]

On October 24, 2009, Tatel was placed on "floating status";[10] thus, on May 4, 2010, or after the lapse of six (6) months therefrom, without having been given any assignments, he filed another complaint[11] against JLFP and its officers, respondent Turno[12] and Jose Luis Fabella,[13] for illegal dismissal, reinstatement, backwages, refund of cash bond deposit amounting to ₱25,400.00, attorney's fees, and other money claims (*illegal dismissal case*).[14]

In their defense,[15] respondents JLFP, Pamintuan, and Turno (respondents) denied that Tatel was dismissed and averred that they removed the latter from his post at BaggerWerken on August 24, 2009 because of several infractions he committed while on duty. Thereafter, he was reassigned at SKI from September 16, 2009 to October 12, 2009, and last posted at IPVG[16] from October 21 to 23, 2009.[17]

Notwithstanding the pendency of the *underpayment case*, respondents sent a Memorandum[18] dated November 26, 2009 (November 26, 2009 Memorandum) directing Tatel to report back to work, noting that the latter last reported to the office on October 26, 2009. However, despite receipt of the said memorandum, respondents averred that Tatel ignored the same and failed to appear; hence, he was deemed to have abandoned his work.[19] Moreover, respondents pointed out that Tatel made inconsistent statements when he declared in the *underpayment case* that he was employed in March 1997 with a salary of ₱12,400.00 per month and dismissed on October 13, 2009, while declaring in the *illegal dismissal case* that his date of

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5 Id. at 10. (The monthly salary was mistakenly indicated by the CA in the amount of ₱6,200.00; see id. at 25.)
6 Id. at 104-105.
7 Designated as former Chairman and President of JLFP. See id. at 47.
8 Designated as Project Manager of SKI. See id. at 141.
9 See id. at 104.
10 Id. at 129-130.
11 Id. at 108-109.
12 Designated as incumbent President of JLFP. Id. at 46 and 81.
13 Designated as incumbent Manager of JLFP. See records, Vol. 1, pp. 4 and 65.
14 See *rollo*, p. 108.
15 See Position Paper for Respondents dated June 23, 2010; records, Vol. 1, pp. 18-29.
16 Complete name of IPVG is not found in the records.
17 See records, Vol. 1, p. 20. See also *rollo*, p. 48.
18 *Rollo*, p. 106.
19 Records, Vol. 1, p. 24.

employment was March 14, 1998, with a salary of ₱6,200.00 per month, and that he was dismissed on October 24, 2009.[20]

In his reply,[21] Tatel admitted having received on December 11, 2009 the November 26, 2009 Memorandum directing him to report back to work for reassignment. However, when he went to the JLFP office, he was merely advised to "wait for possible posting."[22] He repeatedly went back to the office for reassignment, but to no avail. He likewise refuted respondents' claim that he abandoned his work, insisting that after working for JLFP for more than eleven (11) years, it was illogical for him to refuse any assignments, more so, to abandon his work and security of tenure without justifiable reasons.[23]

The Labor Arbiter's Ruling

In a Decision[24] dated September 20, 2010, the Labor Arbiter (LA) dismissed Tatel's illegal dismissal complaint for lack of merit.[25] The LA did not give credence to Tatel's allegation of dismissal in light of the inconsistent statements he made under oath in the two (2) labor complaints he had filed against the respondents. The LA noted that said inconsistent statements "relate not only to the dates that he was hired and supposedly fired but, more glaringly, to the amount of his monthly salaries."[26] It also observed that Tatel failed to explain said inconsistencies.

Aggrieved, Tatel appealed[27] to the NLRC.

The NLRC Ruling

In a Decision[28] dated February 9, 2011, the NLRC reversed and set aside the LA's Decision and found Tatel to have been illegally dismissed. Consequently, it directed respondents to reinstate him to his last position without loss of seniority or diminution of salary and other benefits, as well as to pay him the following: (*a*) backwages from the time of his illegal dismissal on August 24, 2009 until finality of the Decision; (*b*) underpaid wages computed for a period of three (3) years prior to the filing of the complaint until finality; (*c*) cash bond deposit refund amounting to ₱25,400.00; and (*d*) attorney's fees equivalent to ten percent (10%) of the total award. It likewise ruled that if reinstatement was no longer viable due to the strained relationship between the parties, respondents are liable for

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20 Id. at 22-23. See also *rollo*, pp. 104 and 108.
21 Dated July 2, 2010. *Rollo*, pp. 117-118.
22 Id. at 117.
23 Id. at 117-118.
24 Id. at 129-133.
25 Id. at 133.
26 Id. at 132.
27 See Memorandum of Appeal dated September 30, 2010; id. at 134-138.
28 Id. at 85-93.

separation pay equivalent to one (1) month's salary for every year of service computed from the time of Tatel's employment on March 14, 1998 until finality of the Decision. All other claims were denied for lack of merit.[29]

In so ruling, the NLRC rejected respondents' defense that Tatel abandoned his work, finding no rational explanation as to why an employee, who had worked for more than ten (10) years for his employer, would just abandon his work and forego whatever benefits were due him for the length of his service.[30] Similarly, it debunked the claim of abandonment of work for failure of respondents to prove by substantial evidence the elements thereof, *i.e.,* (*a*) that the employee must have failed to report for work or must have been absent without valid or justifiable reason, and (*b*) there must have been a clear intention to sever the employer-employee relationship as manifested by overt acts.[31]

Moreover, the NLRC ruled that Tatel's dismissal was not constructive but actual, and considered his being pulled out from his post on August 24, 2009 as the operative act of his dismissal. It likewise found no just and valid ground for Tatel's dismissal; neither was procedural due process complied with to effectuate the same.[32]

Respondents' motion for reconsideration [33] was denied in a Resolution[34] dated March 31, 2011. Dissatisfied, they elevated the case to the CA *via* petition for *certiorari*[35] on June 10, 2011. Meanwhile, pre-execution conferences were held at the NLRC,[36] and on July 29, 2011, respondents filed a Motion for Computation,[37] alleging that Tatel failed to report back to work despite the Return-to-Work Order[38] dated February 22, 2011, claiming "strained relations" with respondents, and manifesting that he was already employed with another company at the time he received the aforesaid order.[39]

The CA Ruling

In a Decision[40] dated November 14, 2012, the CA reversed and set aside the NLRC's February 9, 2011 Decision and reinstated the LA's September 20, 2010 Decision dismissing the illegal dismissal complaint

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29 Id. at 92-93.
30 Id. at 87.
31 Id. at 87-88.
32 Id. at 88-89.
33 Dated February 25, 2011. Records, Vol. 1, pp. 129-147.
34 *Rollo*, pp. 96-98.
35 Id. at 43-80.
36 See records, Vol. 1, p. 310.
37 Id. at 310-312.
38 Id. at 122.
39 Id. at 311.
40 *Rollo*, pp. 24-39. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring.

filed by Tatel.[41] Finding grave abuse of discretion on the part of the NLRC, the CA instead concurred with the stance of the LA that Tatel's inconsistent statements cannot be given weight *vis-à-vis* the evidence presented by the respondents.[42] In this regard, the CA declared that if Tatel could not be truthful about the most basic information or explain such inconsistencies, the same may hold true for his claim for illegal dismissal.[43]

Further, the CA rejected the NLRC's finding that the operative act of Tatel's dismissal was the act of pulling him out from his assignment on **August 24, 2009** when in the complaint sheets of both the *illegal dismissal case* and the *underpayment case*, Tatel claimed that he was dismissed on **October 13, 2009** and **October 24, 2009**, respectively.[44] It noted that the NLRC failed to consider that Tatel was subsequently reassigned to SKI from September 16, 2009 to October 12, 2009, and thereafter, to IPVG from October 21 to 23, 2009, which Tatel never disputed nor denied.[45]

Corollary thereto, the CA found that Tatel ignored the November 26, 2009 Memorandum directing him to report to work for possible reassignment, signifying that he abandoned his work and that, consequently, there was no dismissal to begin with.[46] That he was given subsequent postings clearly manifest that there was no intention to dismiss him, hence, he could not have been illegally dismissed.[47]

Tatel moved for reconsideration,[48] which was denied in a Resolution[49] dated April 22, 2013; hence, he filed a petition for review on *certiorari* before the Court.

Proceedings Before the Court

In a Decision[50] dated February 25, 2015, the Court granted Tatel's petition and found that he was constructively dismissed, reversing the CA's issuances and reinstating the NLRC's Decision, with the modification reckoning the computation of backwages from the date of Tatel's constructive dismissal on October 24, 2009 until finality of the Court's Decision, computed at ₱12,400.00 per month.

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41 Id. at 38-39.
42 Id. at 34.
43 Id. at 36.
44 Id. at 34-35.
45 Id. at 35.
46 Id. at 36.
47 Id. at 37.
48 See Motion for Reconsideration dated December 3, 2012; id. at 172-183.
49 Id. at 41-42.
50 Id. at 245-255.

Undaunted, respondents moved for reconsideration,[51] maintaining its position that Tatel was not constructively dismissed and that it was the latter who had, in fact, abandoned his employment. As Tatel was not constructively dismissed, respondents likewise insist that he is not entitled to backwages, underpaid wages, damages, and attorney's fees.

In his comment[52] to respondents' motion for reconsideration, Tatel merely claimed that the Court's Decision was in accordance with law and jurisprudence and that respondent's motion for reconsideration was not verified and lacked a certificate against forum shopping. He offered a general denial of all other arguments made by respondents therein.

The Issue Before The Court

The issue for the Court's resolution is whether or not there is sufficient reason to reconsider the Court's February 25, 2015 Decision finding Tatel to have been constructively dismissed.

The Court's Ruling

The Court rules in the affirmative.

The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal, fully rests on the employer, and the failure to discharge the *onus* would mean that the dismissal was not justified and was illegal.[53] The burden of proving the allegations rests upon the party alleging and the proof must be clear, positive, and convincing.[54]

Specifically with respect to 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 a vested right to 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, so long as such status does not continue

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51 Id. at 258-271.

52 Dated June 15, 2015. Id. at 288-294.

53 *Samar-Med Distribution v. NLRC*, G.R. No. 162385, July 15, 2013, 701 SCRA 148, 160, citing *Great Southern Maritime Services Corporation v. Acuña*, 492 Phil. 518, 530 (2005).

54 *Cañedo v. Kampilan Security and Detective Agency, Inc.*, G.R. No. 179326, July 31, 2013, 702 SCRA 647, 658, citing *Ledesma, Jr. v. NLRC*, 562 Phil. 939, 951-952 (2007), further citing *Machica v. Roosevelt Services Center, Inc.*, 523 Phil. 199, 209-210 (2006).

beyond six (6) months. The *onus* of proving that there is no post available to which the security guard can be assigned rests on the employer.[55]

In this case, Tatel asserts that he was illegally dismissed when, after he was put on "floating status" on October 24, 2009, respondents no longer gave him assignments or postings, and the period therefor had lasted for more than six (6) months. On the other hand, respondents argue that Tatel abandoned his work, and that his inconsistent statements before the labor tribunals regarding his work details rendered his claim of illegal dismissal suspect.

The Court has revisited the records, as well as the evidence in this case, and finds, after a more circumspect and conscientious examination thereof, that a partial reconsideration of its earlier Decision is proper.

Records show that Tatel's last assignment was with IPVG, which ended on October 23, 2009. While he insists that he was put on continuous "floating status" for a period of more than six (6) months since then, the evidence, however, indisputably shows that respondents summoned him back to work through the November 26, 2009 Memorandum, which he even *acknowledged*[56] to have received on December 11, 2009. The aforesaid Memorandum states in part:

> MEMORANDUM
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> TO: MR. VICENTE C. TATEL
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> x x x x
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> In this connection, you are hereby directed to report to this office within three (3) days upon receipt hereof for posting to Lotus Realty[,] Inc. located at Muelle de Banco National, Plaza Goite Street, Sta. Cruz, Manila. Otherwise, we will consider you as having abandon[ed] your work.
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> x x x x[57]

In light of the foregoing, it cannot be denied that while Tatel had indeed been placed in "floating status" after his last assignment with IPVG, respondents had actually recalled him to work before the six-month period ended or on November 26, 2009 with specific instructions and for the purpose of assigning him to another client. Tatel acknowledged having received the same and claimed that while he complied with the directives stated thereon by reporting to the respondents' office, he was not given any

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55 *Exocet Security and Allied Services Corporation v. Serrano*, G.R. No. 198538, September 29, 2014, 737 SCRA 40, 56, citing *Nationwide Security and Allied Services, Inc. v. Valderama*, 659 Phil. 362, 370 (2011).

56 See Reply to Respondents' Position Paper, *rollo*, p. 117.

57 Id. at 106.

assignment at all, but instead, asked to wait for another posting.[58] However, there is dearth of evidence to show his compliance with the return-to-work order, as he had alleged. Instead, records disclose that he ignored the November 26, 2009 Memorandum and opted to file the instant case for constructive dismissal after the lapse of six (6) months.

To reiterate, jurisprudence[59] has placed upon the employer the burden of proving that an employee was not dismissed or, if dismissed, that the dismissal was for a valid or authorized cause. In this case, respondents have adequately discharged this burden, proving that they **did not dismiss** Tatel. Accordingly, the burden of proof has shifted to the latter to establish otherwise, which he, however, failed to do. Apart from mere allegations, Tatel was unable to proffer any evidence to substantiate his claim of dismissal. On the contrary, records are bereft of any indication that he was prevented from returning to work or otherwise deprived of any work assignment by respondents.

Hence, in the absence of any showing of an overt or positive act to establish that respondents had dismissed Tatel, the latter's claim of illegal dismissal cannot be sustained.[60] Conversely, respondents acted in good faith when they offered another posting to Tatel through the duly-received November 26, 2009 Memorandum. The Court notes that the Memorandum was sent during the pendency of the *underpayment case* that Tatel had, by then, lodged against respondents, thereby strengthening the stance of good faith in favor of respondents. In this regard, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of "floating status" as a case of constructive dismissal without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post,[61] as in this case. Clearly, Tatel's lack of an assignment for the six-month period cannot be attributed to respondents.

Consequently, since Tatel was not dismissed, he is not entitled to backwages and separation pay. Article 293[62] of the Labor Code of the Philippines states that "[i]n cases of regular employment, the employer shall not terminate the services of [an] employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights**

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58 See id. at 117.

59 See *Baron v. EPE Transport, Inc.*, G.R. No. 202645, August 5, 2015, citing *Samar-Med Distribution v. NLRC,* supra note 53; *Great Southern Maritime Services Corporation v. Acuña*, supra note 53; *Asia Pacific Chartering (Phils.), Inc. v. Farolan*, 441 Phil. 776 (2002); *National Bookstore, Inc. v. CA*, 428 Phil. 235 (2002)*; and Sevillana v. I.T. (International) Corp.*, 408 Phil. 570 (2001).

60 *MZR Industries v. Colambot,* G.R. No. 179001, August 28, 2013, 704 SCRA 150, 159, citing *Exodus International Construction Corporation v. Biscocho,* 659 Phil. 142, 155 (2011); *Security and Credit Investigation, Inc. v. NLRC*, 403 Phil. 264, 273 (2001).

61 *Exocet Security and Allied Services Corporation v. Serrano*, supra note 55, at 59.

62 As renumbered in view of Republic Act No. 10151 entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011 (Previously Article 279 of the Labor Code).

and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement." As such, there being no dismissal in this case, petitioner is not entitled to either backwages or separation pay.

Be that as it may, the Court maintains its position that Tatel did not abandon his work.

To constitute abandonment of work, two (2) elements must be present: first, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and second, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[63] The burden to prove whether the employee abandoned his or her work rests on the employer.[64]

The mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment. Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. The operative act is still the employee's ultimate act of putting an end to his employment.[65]

In this case, respondents failed to discharge the burden required of them to prove that Tatel had abandoned his work. In fact, the filing of a complaint for illegal dismissal is a proof of Tatel's desire to return to work, thus, effectively negating any suggestion of abandonment.[66] As the NLRC had opined, no rational explanation exists as to why an employee who had worked for his employer for more than ten (10) years would just abandon his work and forego whatever benefits he may be entitled to as a consequence thereof.[67]

For all the foregoing reasons, the Court rules that Tatel was neither constructively dismissed nor did he abandon his work. Therefore, petitioner's complaint is dismissed for lack of merit; Tatel is directed to return to work and respondents are likewise ordered to accept him.[68]

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63 *MZR Industries v. Colambot*, supra note 60, at 160, citing *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003), further citing *MSMG-UWP v. Ramos*, 383 Phil. 329, 371-372 (2000). See also *Seven Star Textile Company v. Dy*, 541 Phil. 468, 481 (2007); *Standard Electric Manufacturing Corporation v. Standard Electric Employees Union-NAFLU-KMU*, 505 Phil. 418, 427 (2005); *Icawat v. NLRC*, 389 Phil. 441, 445 (2000).

64 See *Protective Maximum Security Agency, Inc. v. Fuentes*, G.R. No. 169303, February 11, 2015.

65 *Jordan v. Grandeur Security and Services, Inc.*, G.R. No. 206716, June 18, 2014, 727 SCRA 36, 58, citing *MZR Industries v. Colambot*, supra note 60, at 161.

66 *Jordan v. Grandeur Security and Services, Inc.*, id.

67 See *rollo*, p. 87.

68 See *Jordan v. Grandeur Security and Services, Inc.*, supra note 65, at 58.

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED**. The Decision dated February 25, 2015 of the Court, which reversed the Decision dated November 14, 2012 and the Resolution dated April 22, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 119997, is hereby **SET ASIDE**, and a **NEW ONE** is entered dismissing petitioner Vicente C. Tatel's illegal dismissal complaint for lack of merit. He is hereby ordered to **RETURN TO WORK** within fifteen (15) days from receipt of this Resolution, and respondents JLFP Investigation Security Agency, Inc., Jose Luis F. Pamintuan, and/or Paolo C. Turno are likewise ordered to **ACCEPT** him. No costs.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice