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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **July 13, 2020** *which reads as follows:*

"G.R. No. 250920 – JEFFREY GEVERO, JAYNEL ESTOR, REY PANIS, JADE CAPANGPANGAN, ARVIN CABUNGCAL, CRESENCIA LASTIMOSO, JR., RUEL PEDRITA, JEVIE ELIJA, JERRYL LACHICA, JOSE CATAM-ISAN, ERNESTO NORBE, ISIDRO ARCILLAS, MICHAEL BALBUTIN, EDELITO LABORA, JHONTE MABALATO, JUNIFFER BALVEZ, and ARGIE BUHAYAN v. C-FORCE SECURITY SERVICES, INC., and/or its owner, and BUKIDNON SUGAR MILLING COMPANY, INC., and/or its owner.

Antecedents

On January 19, 2017, petitioners Jeffrey Gevero, Jaynel Estor, Rey Panis, Jade Capangpangan, Arvin Cabungcal, Cresencia Lastimoso, Jr., Ruel Pedrita, Jevie Elija, Jerryl Lachica, Jose Catam-Isan, Ernesto Norbe, Isidro Arcillas, Michael Balbutin, and Edelito Labora, filed a complaint for actual illegal dismissal, which was later amended to constructive dismissal, non payment of holiday pay, separation pay, night premium, and service incentive leave pay against C-Force Security Services, Inc. and Bukidnon Sugar Milling Company, Inc. On February 28, 2017, petitioner Jhonte Mabalato filed his own complaint for the same causes of action, while on April 19, 2017, petitioners Juniffer Balvez, and Argie Buhayan followed suit.[1]

- over – twelve (12) pages ...

[1] *Rollo*, p. 158.

Petitioners alleged that C-Force Security Services, Inc. employed them as security guards on different dates from 1989 to 2014. They were all assigned at Bukidnon Sugar Milling Company, Inc. (BUSCO) located at Butong, Quezon, Bukidnon.[2]

In February 2016, an investigation was conducted regarding a report that Buhayan was asking money from drivers of the delivery trucks in exchange for priority of entry into the BUSCO plant. Buhayan denied the charge. After submitting his explanation and personally airing his side to the manager, he was directed to return after a week for the result. But when he did, no one from the company met with him. After several days of waiting for someone to talk to him, he went to Area Manager Junard Camancho. The latter, however, told him that BUSCO no longer wanted him because a CCTV footage caught him in the act of receiving money from a driver. He was never shown this footage. Despite his pleas, he was never given a new assignment.[3]

Sometime in December 2016, Gevero, Estor, Panis, Capangpangan, Cabungcal, Lastimoso, Jr., Pedrita, Elija, Lachica, Catam-Isan, Norbe, Arcillas, Balbutin, Mabalato, and Labora, heard rumors that some of the security guards assigned at BUSCO would be transferred. They were worried because from the very start, they were never reassigned to another place other than BUSCO. Because of their stable assignment at BUSCO, they all started and raised their respective families in Bukidnon. On December 31, 2016, Area Manager Camancho informed them that thirty (30) security guards, including them, would be moved from BUSCO. They later learned that they would be transferred to Ormoc City, sans any relocation assistance and benefits. They, too, would be paid less than what they getting at that time. They protested the company's decision and pleaded that they remain assigned in BUSCO. Except for Mabalato, they later reported the matter to the Department of Labor and Employment (DOLE).[4]

Mabalato, on the other hand, accepted his transfer of assignment. He was then assigned at TAO Corp., Bulua, Cagayan De Oro City. Unfortunately, before he could officially commence his new post, he got into an accident while riding his motorcycle, thus preventing him from working for days. When he asked for medical assistance from C-Force, Area Manager Camancho refused, rebuking

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2 *Id.* at 122.
3 *Id.* at 123-124.
4 *Id.* at 124-126.

him for allegedly filing a complaint against the company despite the fact that he never did. Feeling dejected, he then decided to join the complaint filed by his co-workers.[5]

As for Balvez, he was called into the C-Force office on January 27, 2017 where he was made to sign a new employment contract. But he refused because of the provision there stating he may be transferred anywhere in the Philippines. He insisted that ever since he started working for C-Force, he was never transferred to another location other than BUSCO. He wished this set up would continue. He, however, still received an order from C-Force transferring him to DCDB Bank in Quezon, Bukidnon. His protest was also denied. Thus, he filed his own complaint for constructive dismissal.[6]

C-Force argued that petitioners were not dismissed but that they were merely transferred to another post. Petitioners unjustifiably refused this transfer and later abandoned their employment despite notices to return to work and directives to explain their actions. It also denied that the company had any deployment in Ormoc City, Leyte. In any case, it was BUSCO's request to relieve the security guards and replace them with new ones in order to avoid familiarity with BUSCO employees and clients. Too, the company had been religious in paying petitioners' salaries and benefits.[7]

Ruling of the Labor Arbiter

By Decision[8] dated September 29, 2017, Labor Arbiter Joan M. Jabar-Waga (Labor Arbiter Jabar-Waga) dismissed petitioners' consolidated complaints for lack of merit. Labor Arbiter Jabar-Waga held that transfer is a valid exercise of management prerogative. A relief and transfer order in itself does not sever the employment relationship between a security guard and the agency. While it is true that a security guard has the right to security of tenure, this does not give him or her a vested right to the position as would deprive the company of its prerogative to change the assignment of a certain guard.[9]

Too, petitioners cried constructive dismissal because of their alleged transfer to Ormoc City, Leyte. Aside from their bare allegations, however, there was no proof that they would ever be

5 *Id.* at 126-127.
6 *Id.* at 127-128.
7 *Id.* at 63-64, 159 and 207.
8 *Id.* at 158-169.
9 *Id.* at 165.

transferred to Ormoc City, Leyte. C-Force even denied that they made any deployment to Ormoc City.[10]

Petitioners themselves were guilty of disobedience when they refused the transfer grounded solely on their personal inconvenience.[11]

Ruling of the National Labor Relations Commission (NLRC)

In its Resolution[12] dated April 30, 2018, the NLRC dismissed petitioners' appeal for having been filed out of time. It held that petitioners' counsel received the decision of the labor arbiter on October 20, 2017, thus, they had until October 30, 2017 within which to file their appeal. Petitioners only filed the appeal on November 9, 2017. Thus, the labor arbiter's decision had attained finality.

Petitioners then moved for a reconsideration[13] of the Resolution dated April 30, 2018. They averred that their counsel received the decision of the labor arbiter on October 30, 2017 and not October 20, 2017. The confusion was due to the indistinct writing of the date on the registry return card.

By Decision[14] dated June 6, 2018, the NLRC held its ground that in their naked eye, the registry return card showed that petitioners' counsel received the labor arbiter's decision on October 20, 2017. It, however, still reinstated the appeal and resolved the appeal on the merits.

It held that petitioners failed to prove that they were dismissed. BUSCO exercised its right to have one third of its security force replaced. Thus, C-Force was contractually bound to do as it was requested. C-Force was in good faith when it heeded BUSCO's request and transferred some of its security guards to another post, petitioners included. Sadly, petitioners irrationally defied this orders based merely on their fear that they would be transferred to Ormoc City despite not actually receiving yet any detail orders from the company. Constructive dismissal should not and cannot be declared based on mere conjectures.[15]

Thus, NLRC disposed of the appeal in this wise:

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[10] *Id.*
[11] *Id.* at 166-167.
[12] Penned by Presiding Commissioner Bario-Rod M. Talon and concurred in by Commissioner Elbert C. Restauro, *id.* at 200-201.
[13] *Id.* at 202-204.
[14] *Id.* at 205-211.
[15] *Id.* at 209-210.

> **WHEREFORE**, the foregoing premises considered, the instant Motion for Reconsideration of complainants is hereby **DENIED** for lack of merit. Further, their appeal is not only **DISMISSED** for (being) filed out of time but also for lack of merit.
>
> **SO ORDERED**.[16]

Ruling of the Court of Appeals (CA)

Through its assailed Decision [17] dated August 30, 2019, the CA dismissed the employees' petition for *certiorari* for their failure to file a motion for reconsideration before the NLRC, *viz.*:

> WHEREFORE, premises considered, the instant petition for *certiorari* is DENIED for failure of the petitioners to file the required motion for reconsideration on the 6 June 2018 Decision of the National Labor Relations Commission.
>
> SO ORDERED.[18]

The CA held that as a rule, filing of a motion for reconsideration of the assailed order or decision is a requisite before a petition for *certiorari* may be availed of. Petitioners failed to provide a reasonable ground why the general rule should not be applied in their case.[19] More so because both the labor arbiter and the NLRC agreed that petitioners' consolidated complaints had no merit. Thus, it found no valid reason to relax the rules.[20]

In its assailed Resolution[21] dated October 25, 2019, the CA denied petitioners' motion for reconsideration.[22] It emphasized that since the NLRC resolved the case on the merits, petitioners should have still filed a motion for reconsideration in order to afford the NLRC an opportunity to correct itself.

The Present Petition

Petitioners now seeks affirmative relief from the Court and pray that the assailed dispositions of the CA be reversed and they be declared to have been illegally dismissed.

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16 *Id.* at 211.
17 Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justice Oscar V. Badelles and Associate Justice Angelene Mary W. Quimpo-Sale, *id.* at 62-74.
18 *Id.* at 74.
19 *Id.* at 71-72.
20 *Id.* at 73.
21 *Id.* at 76-78.
22 *Id.* at 79-91.

According to petitioners, even though the NLRC resolved the case on the merits, it still dismissed the appeal for allegedly having been filed out of time. Thus, they could not have filed another motion for reconsideration as the same would amount to a second motion for reconsideration which is prohibited.

Petitioners also reiterate their arguments below and maintain that they were constructively dismissed from employment.

Issue

1. Did the CA err when it denied the petition for *certiorari* for petitioners' failure to file a motion for reconsideration before the NLRC?

2. Were petitioners illegally dismissed when they were pulled out from BUSCO and informed to be transferred to other posts?

Ruling

Primarily, neither petitioners' motion for extension of time to file the present petition nor the petition for review on *certiorari* itself bears its date of posting. Thus, the Court is unable to determine whether said motion and the present petition were actually filed on time.

In the interest of substantial justice, however, the Court will consider the motion and the petition as having been filed on the same date that copies thereof were sent by registered mail to the adverse parties and the CA as shown by the corresponding registry receipts dated December 3, 2019 (for the motion for extension) and January 2, 2020 (for the petition for review on *certiorari*). Both posting dates are well within the reglementary period for filing the motion for extension and the petition itself.

Another. Not all petitioners here signed the verification and certification on non-forum shopping.[23] Those who did not sign the verification and certification of non-forum shopping are Gevero, Lastimoso, Jr., Lachica, and Mabalato.

[23] *Id.* at 53-54.

Heirs of Gabriel v. Secundina Cebrero, et al.[24] reiterated the rule that the verification and certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. But again, the Court resolves to relax the applicable rules considering petitioners' common interests and causes of action.[25]

Going now to petitioners' supposed failure to seek a reconsideration of the NLRC's Decision dated June 6, 2018, they clarify that they did file a motion for reconsideration not of the aforesaid decision but of the NLRC Resolution dated April 30, 2018, dismissing their appeal for having been filed out of time. Acting thereon, the NLRC proceeded to resolve the appeal on the merits through its Decision[26] dated June 6, 2018, albeit it still affirmed the dismissal of the complaints. In the same decision though, it also maintained its earlier finding that the appeal was filed out of time. Petitioners posit that they no longer filed another motion for reconsideration which would amount to a second motion for reconsideration which is prohibited.

Petitioners' explanation shows they did not intend to violate the rule on the requisite filing of a motion for reconsideration before resorting to a petition for *certiorari*. Petitioners, indeed, were confronted with a difficult predicament on how their motion for reconsideration of the Decision dated June 6, 2018 would be treated considering that the earlier motion for reconsideration they filed against the NLRC's first decree of dismissal. Be that as it may, the Court finds that the non filing of a motion for reconsideration here may be excused because in reality, the NLRC had already exhaustively passed upon all the issues raised before it on appeal. Raising these issues anew in a motion for reconsideration would serve no practical purpose but would only cause unnecessary delay.

In ***Olores v. Manila Doctors College, et al.***,[27] the NLRC dismissed the appeal for failure of the appellant to file an appeal bond. Upon motion for reconsideration, the NLRC decided the appeal on the merits. When petitioner therein filed with the CA a petition for *certiorari*, the court dismissed the petition on ground that petitioner did not file the requisite motion for reconsideration. But this Court later allowed the petition, holding that:

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[24] G.R. No. 222737, November 12, 2018, citing *Altres, et al. v. Empleo, et al.*, 594 Phil. 246, 260 and 262 (2008).
[25] *Id.*
[26] Supra note 14.
[27] 731 Phil. 45, 59-60 (2014).

The NLRC issued a ruling on February 10, 2011 in favor of petitioner dismissing respondent's appeal on the ground that the latter failed to file an appeal bond. However, upon a motion for reconsideration filed by respondent, the NLRC completely reversed itself and set aside its earlier resolution dismissing the appeal. The NLRC had more than enough opportunity to pass upon the issues raised by both parties on appeal of the ruling of the Labor Arbiter and the subsequent motion for reconsideration of its resolution disposing the appeal. Thus, another motion for reconsideration would have been useless under the circumstances since the questions raised in the *certiorari* proceedings have already been duly raised and passed upon by the NLRC.

In a similar case, the Labor Arbiter rendered a decision dismissing petitioner's case for lack of merit. On appeal, the NLRC rendered a decision reversing the decision of the Labor Arbiter and ordered the respondent therein to pay petitioner full backwages, separation pay, salary differentials, 13th month pay and allowances. Not satisfied, respondent therein moved for reconsideration of the aforesaid NLRC resolution. The NLRC, thereafter, granted respondent's motion and reversed its previous ruling. In a like manner, the petitioner therein filed a *certiorari* petition without first filing a motion for reconsideration with the NLRC. Thus, the Court ruled in that case -

> The rationale for the requirement of first filing a motion for reconsideration before the filing of a petition for *certiorari* is that the law intends to afford the tribunal, board or office an opportunity to rectify the errors and mistakes it may have lapsed into before resort to the courts of justice can be had. In the present case, the NLRC was already given the opportunity to review its ruling and correct itself when the respondent filed its motion for reconsideration of the NLRC's initial ruling in favor of petitioner. In fact, it granted the motion for reconsideration filed by respondent and reversed its previous ruling and reinstated the decision of the Labor Arbiter dismissing the complaint of the petitioner. It would be an exercise in futility to require the petitioner to file a motion for reconsideration since the very issues raised in the petition for *certiorari, i.e.*, whether or not the petitioner was constructively dismissed by the respondent and whether or not she was entitled to her money claims, were already duly passed upon and resolved by the NLRC. Thus, the NLRC had more than one opportunity to resolve the issues of the case and in fact reversed itself upon reconsideration. It is highly improbable or unlikely under the circumstances that the Commission would reverse or set aside its resolution granting a motion for reconsideration.

So must it be.

We now resolve the second issue: were petitioners constructively dismissed when respondent pulled them out from BUSCO and informed them of their eventual assignment to other posts?

In ***Chateau Royale Sports and Country Club, Inc. v. Balba, et al.***,[28] the Court ruled that in the resolution of whether the transfer of the respondents from one area of operation to another was valid, finding a balance between the scope and limitation of the exercise of management prerogative and the employees' right to security of tenure is necessary. Courts have to weigh and consider, on the one hand, that management has a wide discretion to regulate all aspects of employment, including the transfer and re-assignment of employees according to the exigencies of the business; and, on the other, that the transfer constitutes constructive dismissal when it is unreasonable, inconvenient or prejudicial to the employee, or involves a demotion in rank or diminution of salaries, benefits and other privileges, or when the acts of discrimination, insensibility or disdain on the part of the employer become unbearable for the employee, forcing him to forego her employment. The burden of proof lies with the employer to prove that the transfer of the employee from one area of operation to another was for a valid and legitimate ground, like genuine business necessity.

Here, C-Force had sufficiently proved that on December 14, 2016, BUSCO's Vice President for Operations and resident Manager Democrito G. Oppus requested to replace one third of the security force assigned at BUSCO effective January 1, 2017. The reason given by BUSCO was to avoid familiarity between its employees and clients on one hand, and the security guards, on the other. Acting on this request, C-Force relieved some of its security guards posted at BUSCO and informed them of their transfer to other posts.[29] Surely, when the company made this decision, it was in valid exercise of its management prerogative. More so because there was no showing that petitioners' transfer meant a diminution of their salaries and benefits. There was no showing either that they would ever be posted in Ormoc City, Leyte far away from their present station in Bukidnon where their families live. As alleged in their position paper, all petitioners had were mere speculations and talks that they allegedly heard in and around the company, without actually experiencing it first hand.

As for Mabalato, although he initially chose to stay with the company, he later opted to leave just like the others when the

[28] 803 Phil. 442, 450 (2017).
[29] *Rollo*, p. 207.

company purportedly refused to give him medical assistance before he was even supposed to have started with his new post. With respect to Balvez, he claimed to have simply left when he was being made to sign a new employment contract which had a provision that he may be transferred anywhere in the Philippines during his tenure. Lastly, Buhayan voluntarily left after he was charged with extorting money from delivery truck drivers. As the labor arbiter correctly found, the company issued notices to report to work to Buhayan but he told his co-workers that he "already resigned" as he was already making good money working as a *habal-habal* driver. Buhayan did not deny this.[30]

In any event, petitioners' objection against their new post assignment was all about the perceived inconvenience they believed they would suffer by reason of their transfer. On this score, ***Chateau Royale***[31] is apropos:

> Secondly, **although the respondents' transfer to Manila might be potentially inconvenient** for them because it would entail additional expenses on their part aside from their being forced to be away from their families, **it was neither unreasonable nor oppressive.** The petitioner rightly points out that the **transfer would be without demotion in rank, or without diminution of benefits and salaries.** Instead, the transfer would open the way for their eventual career growth, with the corresponding increases in pay. It is noted that their prompt and repeated opposition to the transfer effectively stalled the possibility of any agreement between the parties regarding benefits or salary adjustments.
>
> Thirdly, the **respondents did not show by substantial evidence that the petitioner was acting in bad faith or had ill-motive in ordering their transfer.** In contrast, the urgency and genuine business necessity justifying the transfer negated bad faith on the part of the petitioner. (Emphasis supplied)

Bisig Manggagawa sa Tryco, et al. v. National Labor Relations Commission[32] further ordained:

> x x x [I]n the instant case, the transfer orders do not entail a demotion in rank or diminution of salaries, benefits and other privileges of the petitioners. Petitioners, therefore, anchor their objection solely on the ground that it would cause them great inconvenience since they are all residents of Metro Manila and they would incur additional expenses to travel daily from Manila to Bulacan. The Court has previously declared **that mere incidental inconvenience is not sufficient to warrant a claim of**

[30] *Id.* at 167-168.
[31] Supra note 28, at 451.
[32] Phil. 135, 146 (2008).

> **constructive dismissal. Objection to a transfer that is grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer.** (Emphasis supplied)

Applying ***Chateau Royale*** and ***Bisig*** here, petitioners' supposed eventual transfer to other posts may prove to be inconvenient for them, but the same did not necessarily mean it was unreasonable or oppressive. We quote with concurrence the relevant disquisition of the NLRC, *viz.*:

> x x x Their fear and assumption that they would be reassigned to Ormoc City even before actually getting details order border on mere conjecture or speculation (on) which we cannot base our finding. x x x x Their protestation of transfer is a crude attempt to stay working at BUSCO that would virtually deprive respondent C-Force to exercise its management prerogative for recall and transfer of its security guards under the given circumstance.[33]

All told, petitioners were not constructively dismissed. In truth, they voluntarily left their employment, hence, they are not entitled to separation pay and damages.

WHEREFORE, the petition is **DENIED**, for utter lack of merit.

The *ex-parte* manifestation of Atty. Evangeline Tadlas-Carrasco of Carrasco and Geñoso, counsel for petitioners, submitting a sworn declaration of the petition for review on certiorari and a compact disc containing the digital copies of the documents submitted before the Court is **NOTED**. The Cash Collection and Disbursement Division is hereby **DIRECTED** to return to petitioners the excess payment for the legal fees in the amount of ₱170.00 under O.R. No. 0272707-SC-EP dated January 16, 2020. The National Labor Relations Commission is **DROPPED** as party respondent in this case pursuant to Sec. 4, Rule 45, 1997 Rules of Civil Procedure, as amended.

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[33] *Rollo*, p. 210.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(NLRC RAB Case Nos. 10-01-00089-2017, 10-02-00173-2017, 10-04-00268-2017 & 10-04-00269-2017)

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