Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPECTRUM SECURITY SERVICES, INC., Petitioner,	**G.R. No. 196650**
	Present:
- versus -	VELASCO, JR., *J., Chairperson,* BERSAMIN, REYES,
DAVID GRAVE, ARIEL V. AROA, TOMASINO R. DE CHAVEZ, JR., LUCITO P. SAMARITA, SAIDOMAR M. MAROHOM, LITO V. MAHILOM and OLIVER N. MARTIN, Respondents.	JARDELEZA, and TIJAM, *JJ.*
	Promulgated: June 7, 2017

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DECISION

BERSAMIN, *J.*:

A security guard placed on reserved or off-detail status is deemed constructively dismissed only if the status should last more than six months. Any claim of constructive dismissal must be established by clear and positive evidence.

The Case

The petitioner seeks the reversal of the decision promulgated March 1, 2011,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* and affirmed the decision of the National Labor Relations

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[1] *Rollo*, pp. 38-49, penned by Associate Justice Manuel M. Barrios, concurred by Associate Justice Rosmari D. Carandang and Associate Justice Ramon R. Garcia.

Commission (NLRC) dated March 16, 2010 finding it liable for the illegal dismissal of respondent security guards.[2]

Antecedents

The petitioner – a domestic corporation engaged in the business of providing security services – employed and posted the respondents at the premises of Ibiden Philippines, Inc. (Ibiden) located in the First Philippine Industrial Park in Sto. Tomas, Batangas. The controversy started when the petitioner implemented an action plan as part of its operational and manpower supervision enhancement program geared towards the gradual replacement of security guards at Ibiden.[3] Pursuant to the action plan, it issued separate "Notice(s) to Return to Unit" to the respondents in July and August 2008 directing them to report to its head office and to update their documents for re-assignment.[4]

On August 14, 2008, the respondents filed their complaint against the petitioner for constructive dismissal in Regional Arbitration Branch No. IV of the NLRC, claiming that the implementation of the action plan was a retaliatory measure against them for bringing several complaints[5] along with other employees of the petitioner to recover unpaid holiday pay and 13th month pay.[6] The complaints were consolidated, and a decision was later on rendered ordering the petitioner to pay to the respondents and their co-employees their unpaid entitlements corresponding to the period from October 16, 2007 to June 30, 2008.[7]

Decision of the Labor Arbiter

On May 22, 2009, Labor Arbiter Enrico Angelo C. Portillo dismissed the complaint for constructive dismissal upon finding that "there is no evidence adduced by complainants in the form of a termination letter and the like to substantiate their claim that they were indeed unceremoniously terminated by [petitioner] Spectrum."[8] He declared that the return to work notices issued by the petitioner belied the respondents' charge of illegal dismissal, opining that a security guard could be considered as having been constructively dismissed only when he had been placed on floating status for a period of more than six months.[9]

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2 Id. at 97-104.
3 Id. at 40.
4 Id.
5 The complaints were docketed as NLRC Case No. RAB-IV-06-26956-08-B; NLRC Case No. RAB IV 06-26978-08-B; and NLRC Case No. RAB IV 06-26979-08-B.
6 *Rollo*, p. 40.
7 Id.
8 Id. at 129.
9 Id. at 41.

Ruling of the NLRC

Aggrieved, the respondents appealed to the NLRC.

On March 16, 2010, the NLRC reversed the Labor Arbiter's dismissal, and ordered the petitioner to reinstate the respondents with backwages. It noted that had the petitioner really intended to re-assign the respondents to new posts, the petitioner should have indicated in the notices the new postings or re-assignments, to wit:

> It is too much coincidence that the complainants were relieved from their posts at Ibiden Phils., Inc. just sixteen days after the six of them filed a complaint for recovery of certain money claims against the respondents, and eight days after three of them filed a similar complaint against the respondents.
>
> Moreover, if, as contended by the respondents, their intention in relieving the complainants from their posts was simply to implement a "long standing policy of re-assignment/rotation", their "Action Plan", which has the appearance of having been carefully laid out, should have provided for new assignments for the complainants. The fact [is] that it does not indicate that the respondents never intended to give the complainants new assignments. It is also too much of a coincidence that the only security guards who were affected by the respondents' "Action Plan" were the complainants.
>
> Ordinarily, where the security guards are relieved from their posts, they are given notices informing them of their new assignments, or requiring them to explain certain charges against them. A notice directing a security guard who had just been relieved from his post to simply report to the office of the security agency is a badge of bad faith because it usually means that the security agency has no intention of giving him a new assignment. Otherwise stated, the security agency has the burden of proving that the security guard who was relieved from his post for other than disciplinary reasons was actually given a new assignment. Failing in this, it could only be concluded that there was an unjustified dismissal.
>
> **WHEREFORE**, the decision appealed from is hereby **REVERSED**. The respondent Spectrum Security Services, Inc. is hereby ordered to **REINSTATE** the complainants, and to pay them **FULL BACKWAGES** from the dates they were relieved from their last posts up to the dates of their actual reinstatement. In addition, the said respondent is ordered to pay them ten (10%) percent of the total monetary award as attorney's fees.
>
> For lack of employer-employee relationship, Ibiden Philippines, Inc. is hereby dropped as party-respondent herein.
>
> SO ORDERED.[10]

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[10] Id. at 102-104.

The NLRC denied the motion for reconsideration of the petitioner on May 17, 2010.

Decision of the CA

The petitioner assailed the adverse ruling of the NLRC in the CA on *certiorari*, contending that the NLRC gravely abused its discretion amounting to lack or excess of its jurisdiction in arbitrarily ruling that the respondents had been illegally dismissed by the petitioner.

On March 1, 2011, the CA promulgated its assailed decision upholding the NLRC, *viz.*:

> **WHEREFORE**, upon the foregoing, the petition is **DISMISSED**. The assailed Decision dated 17 May 2010 of the NLRC is hereby **AFFIRMED.**
>
> SO ORDERED.[11]

The CA concluded that although the complaint for illegal dismissal was prematurely filed because six months had not yet elapsed to warrant considering the dismissal as constructive dismissal, the continued failure to give the respondents new assignments during the proceedings before the Labor Arbiter that exceeded the reasonable six-month period rendered the petitioner liable for constructive dismissal of the respondents; that the petitioner's insistence that the respondents had abandoned their employment was bereft of basis; and that abandonment as a just ground for dismissal required clear, willful, deliberate and unjustified refusal on the part of the employees to resume their employment; hence, their mere absence from work or failure to report for work even after the notice to return was not tantamount to abandonment.

Issue

The petitioner submits that the CA erred in finding that the petitioner was guilty of illegally dismissing the respondents despite the fact that the totality of the circumstances negated such finding.

Ruling of the Court

The appeal has merit.

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[11] Id. at 48,

The NLRC and the CA concluded that there was illegal or constructive dismissal in this case as the private respondents were not given new assignments immediately after being placed on reserved status; that the lack of any indication from the "Notices to Return to Unit" of their re-assignments was a badge of bad faith; and that the timing was off because the action plan was implemented by the petitioner after the respondents had filed the complaints for their monetary claims against the petitioner and received a favorable decision thereon.

The CA also pointed out that the petitioner's failure to provide the re-assignments or new posts for the respondents during the proceedings exceeded the reasonable six-month period of being on reserved status; hence, their off-detail became permanent.

We cannot uphold the CA.

Security guards, like other employees in the private sector, are entitled to security of tenure. However, their situation *should be* differentiated from that of other employees or workers. The employment of security guards generally depends on their employers' contracts with clients who are third parties to the employment relationship, and the requirements of the latter for security services and what will be beneficial to them dictate the posting of the security guards. It is also relevant to mention that their employers retain the management prerogative to change their assignments and postings, and to decide to temporarily relieve them of their assignments. In other words, their security of tenure, though it shields them from demotions in rank or diminutions of salaries, benefits and other privileges, does not vest them with the right to their positions or assignments that will prevent their transfers or re-assignments (unless the transfers or re-assignments are motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause). Such peculiar conditions of their employment render inevitable that some of them just have to undergo periods of reserved or off-detail status that should not by any means equate to their dismissal. Only when the period of their reserved or off-detail status exceeds the reasonable period of six months without re-assignment should the affected security guards be regarded as dismissed.[12]

Indeed, there should be no indefinite lay-offs. After the period of six months, the employers should either recall the affected security guards to work or consider them permanently retrenched pursuant to the requirements

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[12] *Salvaloza v. National Labor Relations Commission*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 197-198; *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 116-117.

of the law; otherwise, the employers would be held to have dismissed them, and would be liable for such dismissals.[13]

On December 18, 2001, the Department of Labor and Employment (DOLE), through Secretary Patricia A. Sto. Tomas, adopted and promulgated DOLE Department Order No. 014-01 (*Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry*) precisely to address the peculiarities of the situation of the security guards. Under DOLE Department Order No. 014-01, the tenure of security guards in their employment is ensured by guaranteeing that their services are to be terminated only for just or authorized causes expressly recognized by the *Labor Code* after due process.

Of specific relevance is that Subsection 9.3 of DOLE Department Order No. 014-01 constitutes guidelines to be followed when the security guards are placed on reserved status, to wit:

> 9.3 Reserved Status — A security guard or similar personnel may be placed in a workpool or on reserved status due to lack of service assignments after expiration or termination of the service contract with the principal where he/she is assigned, or due to the temporary suspension of agency operations.
>
> No security guard or personnel can be placed in a workpool or on reserved status in any of the following situations: a) after expiration of a service contract if there are other principals where he/she can be assigned; b) as a measure to constructively dismiss the security guard; and c) as an act of retaliation for filing complaints against the employer on violations of labor laws, among others.
>
> If, after a period of 6 months, the security agency/employer cannot provide work or give an assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as prescribed in subsection 5.6.
>
> Security guards on reserved status who accept employment in other security agencies or employers before the end of the above six-month period may not be given separation pay.[14]

The respondents insist that they were constructively dismissed when they were relieved from their posts at Ibiden. However, the Labor Arbiter found that such insistence was unsupported by any factual foundation because there was no evidence showing that they had been dismissed. The finding of

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[13] *Exocet Security and Allied Services Corp. v. Serrano,* G.R. No. 198538, September 29, 2014, 737 SCRA 40, 52; *Sebuguero v. National Labor Relations Commission,* G.R. No. 115394, September 27, 1995, 248 SCRA 532, 543-544.

[14] Be it noted that later on, on February 9, 2016, the DOLE, through Secretary Rosalinda Dimapilis-Baldoz, adopted and promulgated DOLE Department Order No. 150-16 entitled *Revised Guidelines Governing the Employment and Working Conditions of Security Guards and Other Private Security Personnel in the Private Security Industry.*

the Labor Arbiter is correct. The notices sent to them contained nothing from which to justly infer their having been terminated from their employment. Moreover, their complaint for illegal dismissal was even prematurely filed on August 14, 2008 because the notices[15] were sent to each of them only in the period from July 3, 2008 to August 2, 2008.

Nor was the CA justified to simply dismiss the right of the petitioner to implement the action plan and thereby effect the rotation and replacement of the respondents as their security guards posted at Ibiden. We have already recognized the management prerogative of the petitioner as their employer to change their postings and assignments without severing their employment relationship.[16] Although the CA might have regarded the implementation of the action plan as dubious because the petitioner had relieved the respondents from their posts at Ibiden just 16 days after they had brought their complaint for the recovery of certain money claims from the former, thereby imputing bad faith to the petitioner would be bereft of factual or legal basis considering the failure of the respondents to sufficiently establish the fact of their dismissal from their employment. In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was legal. To discharge this burden, the employee must first prove, by substantial evidence, that he had been dismissed from employment.[17] In this case, We find otherwise. Respondents failed to properly establish that they were dismissed by the petitioner. Aside from the respondents' plain allegation that they were illegally dismissed by the petitioner, no other evidence was presented by the respondents to support their contentions.

We can only uphold the Labor Arbiter's conclusion that the respondents had actually abandoned their employment and had severed their employment relationship with the petitioner themselves. Despite having been notified of the need for them to appear before the petitioner's head office to update their documents for purposes of reposting, the respondents, except Lucito P. Samarita[18] and Saidomar M. Marohom,[19] refused to receive the notices, and did not sign the same,[20] without first knowing the contents of the memo.

The petitioner sufficiently established, too, that it did not ignore the respondents, contrary to their claims. As the records bear out, one of the respondents reported to the head office but only to claim his salary and to avail himself of a loan from the Social Security System (SSS);[21] and that

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15 *Rollo*, pp. 69-82.

16 *Nationwide Security and Allied Services, Inc. v. Valderama,* G.R. No. 186614, February 23, 2011, 644 SCRA 299, 306.

17 *Brown Madonna Press Inc. vs. Casas*, G.R. No. 200898, June 15, 2015, 757 SCRA 525,537.

18 *Rollo*, p. 85.

19 Id. at 86.

20 Id.a t 128.

21 Id. at 74.

another respondent, Oliver Martin, albeit notified of his endorsement to a new posting with a different client company,[22] did not report to the new posting.

Furthermore, assuming *arguendo* that when respondents reported to the human resource office and the company did not provide them with new assignments at that time, the six-month period had not yet lapsed. Note that the position paper submitted by the respondents to the NLRC was only received by the NLRC on December 11, 2008. The reckoning of the end of the six-month period from the supposed termination (*i.e.*, July and August 2008, the period when they were each given the "Notice to Return to Unit") would only be in January or February 2009.

Lastly, the CA erred in holding that the petitioner was guilty of providing the respondents with new assignments during the pendency of the proceedings. It appears, indeed, that by the time the respondents appealed their case in the NLRC, some of them had already gained regular employment as security guards elsewhere during their reserved status with the petitioner and prior to the lapse of the six-month period.

The new employments were indicated in their SSS employment history,[23] thusly:

Employee Name	Employment Date	Employer Name
Ariel Aroa	01-2009	Commander Security Services Inc.
Lucito Samarita	08-2008	Phoenix Security & Allied Services
Lito Mahilom	09-2008	Emirate Security Specialists
Tomasino De Chavez	09-2008	Commander Security Services Inc.
Oliver Martin Saidomar Marohom	09-2008	Sentinel Integrated Services Inc.

The act of some of the respondents of gaining employment as security guards elsewhere constituted abandonment of their employment with the petitioner. Abandonment requires the concurrence of two elements, namely: *one*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and, *two*, there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[24] Although mere absence or failure to report for work, even after notice to return, does not necessarily amount to abandonment, the law requires that there be clear proof of deliberate and unjustified intent on the part of the employee to sever the employer-employee relationship. Abandonment is a matter of intention and cannot be lightly

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22 Id. at 84.

23 Id. at 87-92.

24 *Tatel v. JLFP Investigation and Security Agency, Inc.*, G.R. No. 206942, December 9, 2015, 777 SCRA 347, 353.

presumed from certain equivocal acts. In other words, the operative act is still the employee's ultimate act of putting an end to his employment.[25]

Contrary to the findings of the CA, the respondents intended to sever their employer-employee relationship with the petitioner because they applied for and obtained employment with other security agencies while they were on reserved status. Their having done so constituted a clear and unequivocal intent to abandon and sever their employment with the petitioner. Thereby, the filing of their complaint for illegal dismissal was inconsistent with the established fact of their abandonment.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on March 1, 2011; and **REINSTATES** the decision of the Labor Arbiter dismissing the complaint for illegal dismissal.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

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[25] Id. at 361.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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

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WILFREDO V. LAPITAN
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Third Division
AUG 07 2017