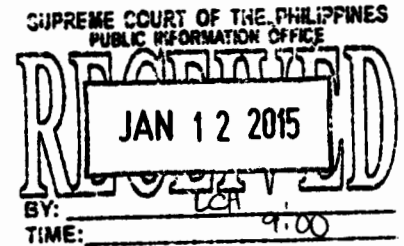




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION



**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **10 December 2014** which reads as follows:*

**G.R. No. 195539 - *Wilson M. Bonifacio, Jr. v. Sun and Shield Security Agency, Inc. and Mr. Ramon S. Orosa.***

Before the Court is a Petition for Review under Rule 45 of the Rules of Court assailing the May 24, 2010 Decision<sup>1</sup> and January 6, 2011 Resolution<sup>2</sup> of the Court of Appeals (*CA*), in CA-G.R. SP No. 109783, which affirmed the February 27, 2009 Decision and May 20, 2009 Resolution of the National Labor Relations Commission (*NLRC*) in LAC No. 11-002899-07, a case for illegal dismissal, underpayment and non-payment of service incentive leave, underpayment of wages, 13<sup>th</sup> month pay, separation pay, payment of damages, and attorney's fees.

Petitioner Wilson M. Bonifacio (*Bonifacio*) was hired by respondent Sun and Shield Security Agency (*Sun and Shield*) as security guard. Bonifacio was detailed to the various clients of Sun and Shield, the last of which was on May 17, 2006, when he was assigned in one of the foreclosed properties of Export Industry Bank (*EIB*) in Binangonan, Rizal.

On November 29, 2006, Bonifacio was placed on floating status. From said date, he kept on reporting to the office of Sun and Shield for reassignment but to no avail. In one instance, he was made to report for work but only to relieve an unavailable security guard. After said detail, he was not given another assignment. He wrote a letter to the Operation Department of Sun and Shield demanding a full-day schedule but nothing came out of it.

On May 31, 2007, due to Sun and Shield's continuous inaction, Bonifacio filed a complaint against it for illegal dismissal, underpayment and non-payment of service incentive leave, underpayment of wages, 13<sup>th</sup> month pay, separation pay, payment of damages, and attorney's fees.

<sup>1</sup> *Rollo*, pp. 101-108. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Ramon M. Bato, Jr. and Florito S. Macalino, concurring.

<sup>2</sup> *Id.* at 113-114.

In its Answer, Sun and Shield claimed that Bonifacio was not dismissed. His separation was due to his deliberate failure to work and to accept the available posting assigned to him. Notices of assignments were sent through registered mail on May 3, 2007, May 9, 2007 and May 11, 2007.

Bonifacio, however, denied having received any notice from Sun and Shield.

On October 22, 2008, the Labor Arbiter (*LA*) rendered a Decision,<sup>3</sup> giving credence to the version of Sun and Shield. According to the LA:

[C]ontrary to the claim of complainant that he was placed on floating status for a period exceeding six (6) months from November 29, 2006 to May 31, 2007, evidence adduced by the respondents consisting of a posting of assignment dated January 23, 2007 and warning notice dated March 24, 2007 both duly sent by registered mail show otherwise.

The foregoing, coupled with the fact that complainant even admitted that he was summoned and reported for work as a reliever after November 29, 2006 clearly shows that there is no constructive dismissal to speak of in the instant case. Certainly as between the bare allegation of complainant that he was constructively dismissed and the documentary evidence submitted by the respondents showing otherwise, the latter shall prevail

Thus, the LA disposed:

**WHEREFORE**, premises considered, judgment is hereby rendered ordering the respondent security agency to pay complainant the sum of Ten Thousand Nine Hundred Seventy Pesos (P12,000.00 x 10.97/12=P10,970.00) representing his proportionate 13<sup>th</sup> month pay for the year 2006.

All other claims are ordered dismissed for lack of merit.

**SO ORDERED.**<sup>4</sup>

On appeal, the NLRC partially granted the appeal. It stated that Sun and Shield failed to adduce substantial evidence that would show that there was lack of available post after Bonifacio was relieved in November 2006 to warrant his being placed on floating status. The NLRC did not give credence

<sup>3</sup> Id. at 76.

<sup>4</sup> Id. at 77.

to Sun and Shield's contention that Bonifacio abandoned his work by reason of his continuous failure to heed its notices to return to work. There was no evidence that would show that he received said notices or that the return-to-work memos were sent prior to the institution of the complaint. The registry receipt does not even reflect the date when the letters were mailed. Hence, the decretal portion of the NLRC Decision<sup>5</sup> reads:

**WHEREFORE**, premises considered, the instant appeal is hereby partially granted. The assailed decision is hereby reversed and set aside and a new one entered finding the respondent Sun and Shield Security Agency inc., guilty of constructive dismissal and ordering the said agency to pay the complainant separation pay equivalent to P102,000.00.

All other claims are hereby dismissed for lack of merit.

**SO ORDERED.**

Dissatisfied, Bonifacio filed with the CA a petition for *certiorari*. He contended that the NLRC erred in not granting backwages, damages and attorney's fees on account of his illegal dismissal from service.

On May 24, 2010, the CA denied the petition. It stated that the NLRC did not err in not awarding backwages to Bonifacio. Department Order No. 14, which specifically applies to security guards who have been put on reserved status for more than six months does not provide for an award of backwages. Bonifacio's claim for damages and attorney's fees was also denied. It agreed with the NLRC that the claim for damages and attorney's fees was without factual and legal basis. Hence, the *fallo* of the CA Decision reads:

**WHEREFORE**, premises considered, the present Petition for Certiorari is hereby **DENIED DUE COURSE** and accordingly, **DISMISSED** for lack of merit. The assailed Decision dated February 27, 2009 and Resolution dated May 20, 2009 of the NLRC are hereby **AFFIRMED**.

**SO ORDERED.**<sup>6</sup>

Bonifacio sought reconsideration of the CA decision, but in a January 6, 2011 Resolution, his motion was denied for lack of merit.

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<sup>5</sup> Id. at 92.

<sup>6</sup> Id. at 107.

Hence, the present petition.

In his petition, Bonifacio argues that the NLRC and the CA were not correct in denying him of his right to backwages, damages and attorney's fees. He asserted that the grant of separation pay does not preclude a grant of backwages as they are not inconsistent with each other.

Sun and Shield failed to comment on the petition.

The Court finds the petition meritorious.

In the case at bench, both the NLRC and the CA were unanimous in their finding that Bonifacio was constructively dismissed. This is contrary to the LA's finding and Sun and Shield's insistence that Bonifacio was not dismissed either actually or constructively and that his employment was severed because of his deliberate failure to report for work and to accept the Notices of Posting/Assignments that were supposedly to be given to him.

Applying Article 286<sup>7</sup> of the Labor Code by analogy, this Court has repeatedly recognized that security guards may be temporarily sidelined by their security agency as their assignments primarily depend on the contracts entered into by the latter with third parties. Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster.<sup>8</sup> It also happens in instances where 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, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for

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<sup>7</sup> ART. 292. *When Employment Not deemed Terminated.*- The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfilment (sic) by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from military or civic duty.

<sup>8</sup> *LSIA v. Quitoy*. G.R. No. 186344, February 20, 2013, 691 SCRA 440, 449.

more than six (6) months, the employee may be considered to have been constructively dismissed.<sup>9</sup>

Based on the foregoing, Bonifacio was not on floating status. He was constructively dismissed. It is noted that, except for a single instance when he was made to relieve an unavailable security guard, he was not given any assignment from November 29, 2006 to May 31, 2007.

Sun and Shield claimed that Bonifacio was the one who abandoned his work. This assertion, however, cannot just be considered at face value. The burden of proof falls upon the employer to show that it terminated his employment for a just cause. Mere allegation that it did not dismiss him does not discharge this burden; neither can it escape liability by claiming that he abandoned his work.<sup>10</sup> For abandonment to prosper as a valid ground for dismissal, there must be *a deliberate, unjustified refusal* of the employee to resume his employment. The employee's refusal must be clearly shown. Mere absence is not sufficient. It must be accompanied by overt acts unerringly pointing to the fact that the employee did not want to work anymore.<sup>11</sup> In fact, this claim of abandonment is negated by the letter<sup>12</sup> sent by Atty. Robert H. Samarita in behalf of Bonifacio to Sun and Shield requesting for a full-time duty assignment dated May 2, 2007, and the complaint for illegal dismissal. The very act of filing the Complaint on May 31, 2007 for illegal dismissal should have negated any intention on his part to sever his employment.<sup>13</sup>

Now, the next question that needs to be addressed is: what is the consequence of Bonifacio's illegal dismissal?

The Constitution guarantees the right of workers to security of tenure.<sup>14</sup> Employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.<sup>15</sup> An employee who is dismissed without any just and authorized causes shall be deemed to have been unlawfully dismissed. It will entitle him to reinstatement without loss of seniority rights 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 up to the time of actual reinstatement.<sup>16</sup> If reinstatement is not possible, such as when "considerable time" has lapsed between the dismissal and the resolution of

<sup>9</sup> *Salvalosa v. NLRC*, G.R. No. 182086, November 24, 2010, 636 SCRA 184, 197-198.

<sup>10</sup> *Seven Star Textile Company v. Dy*, 541 Phil. 468, 480 (2007).

<sup>11</sup> *Fianza v. NLRC*, G. R. No. 163061, June 26, 2013, 699 SCRA 602, 607-608.

<sup>12</sup> *Rollo*, p. 37. Annex "D".

<sup>13</sup> *Fianza v. NLRC*, supra note 11, at 609.

<sup>14</sup> Constitution, Article 13, Section 3.

<sup>15</sup> Article 277, Labor Code.

<sup>16</sup> *Philippine Spring Water Resources, Inc. v. CA*, G.R. No. 205278, June 11, 2014.

the case, then the award of separation pay is proper.<sup>17</sup> Thus, as an illegally or constructively dismissed employee, Bonifacio is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. These two reliefs are separate and distinct from each other and are awarded conjunctively.<sup>18</sup>

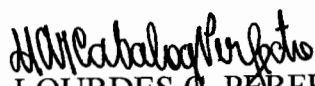
As to Bonifacio's claim for attorney's fees, he was compelled to file an action for the recovery of his lawful wages and other benefits and, in the process, incurred expenses. Hence, he is entitled to attorney's fees equivalent to ten percent (10%) of the monetary award.<sup>19</sup>

Finally, with respect to his prayer for moral damages, the Court denies his claim. Worth reiterating is the rule that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy.<sup>20</sup> Apart from his allegations, Bonifacio did not adduce convincing evidence to prove that his dismissal was attended with bad faith or was done oppressively.

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. The May 24, 2010 Decision and January 6, 2011 Resolution of the Court of Appeals, in CA-G.R. SP No. 109783 are **MODIFIED** in that Sun and Shield Security Agency is further ordered to pay backwages and attorney's fees to Wilson M. Bonifacio, Jr. plus interest at the rate of six (6%) percent per annum. (*Brion, J., on sick leave; Villarama, Jr., J., designated Acting Member, per Special Order No. 1888, dated November 28, 2014*)

**SO ORDERED.**

Very truly yours,

  
MA. LOURDES Q. PERFECTO  
Division Clerk of Court 6/18

<sup>17</sup> *Manila Jockey Club, Inc. v. Trajano*, G.R. No. 160982, June 26, 2013, 699 SCRA 582, 600.

<sup>18</sup> *Philippine Spring Water Resources, Inc. v. CA*, supra note 16.

<sup>19</sup> *Kaisahan at Kapatiran ng mga Manggawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, G.R. No. 174179, November 16, 2011, 660 SCRA 263, 275.

<sup>20</sup> *Pasos v. PNCC*, G.R. No. 192394, July 3, 2013.

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