Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RADAR SECURITY & WATCHMAN AGENCY, INC. Petitioner,	**G.R. No. 211210**
	Present:
- versus -	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
JOSE D. CASTRO, Respondent.	Promulgated: DEC 02 2015

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DECISION

PEREZ, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 130088 dated 24 October 2013 and 29 January 2014, respectively.

The Facts

The factual antecedents of the case reveal that, in May of 2008, respondent was employed by petitioner to work as a security guard. Since then, covered by various detail orders, he was assigned to watch and secure various branches of petitioner's client, Planters Development Bank, until his alleged dismissal on 12 September 2011. Admittedly though, respondent

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[1] *Rollo*, pp. 51-59; Penned by Associate Justice Franchito N. Diamante with Associate Justices Elihu A. Ybañez and Melchor Q.C. Sadang concurring.

[2] Id. at 61-62.

subsequently received a letter dated 27 January 2012 from petitioner's Vice-President for Operations assigning him to render duty work at Banco De Oro branch in GMA, Cavite, but allegedly without any corresponding detail order. Thus, respondent filed a complaint against petitioner alleging that he was illegally dismissed without just cause and due process, with claims for the payment of his separation pay, backwages, and other money claims.

On the other hand, petitioner countered that there was actually no dismissal and further explained that the dispute arose only on 12 October 2011 when a verbal altercation ensued between the respondent and his immediate superior regarding a complaint from the Senior Manager of Planters Development Bank. An investigation thereafter followed which resulted in his order of transfer with which respondent allegedly refused to comply.[3]

The Rulings of the Labor Arbiter and National Labor Relations Commission

On 31 August 2012, the Labor Arbiter (LA) denied the complaint for lack of merit and declared that there was no dismissal in the first place; hence, there could be no illegal dismissal to speak of. Consequently, all monetary claims of respondent were also denied.[4] Said LA's Decision was later on affirmed by the National Labor Relations Commission (NLRC) in its 29 January 2013 Decision which emphasized that: (a) respondent was not constructively dismissed since he never mentioned any specific incident showing any discrimination, disdain, or insensibility, which would result in the nature of his work as well as his regular duties as security guard being substantially removed from him; and (b) respondent merely complained about petitioner's alleged refusal to give him new assignments yet records revealed that the former was twice directed to report to the latter's office for his new assignment. Hence, if indeed petitioner never intended to give respondent any other duty work, the former would not have exerted any effort to inform him of his new assignment in GMA, Cavite. Pertinent portions of the ruling state:

> A perusal of the subject October 27, 2011 Detail Order issued by the [petitioner] reveals that the [respondent] was one of the several security guards deployed by the [petitioner] to its various clients. While the letter accompanying the order appeared that the [respondent] was told to report to the Detachment Commander as an "OJT", **there was no evidence on record showing that the [respondent] was actually**

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3 Id. at 51-52.

4 Id. at 176-182; LA Decision.

demoted to an "OJT" status. The [respondent] never made (sic) any specific incident indicating the nature of his work as well as his regular duties as security guard were substantially removed from him. In fact, the [respondent] even admitted that he worked with Planters Development Bank until September 12, 2011. **He never complained about any significant decrease of salary, duties and responsibilities and other incidents indicating discrimination, disdain or insensibility. He merely complained about [petitioner's] alleged refusal to give him new assignments**.

In this connection, we also do not subscribe to [respondent's] insistence that he was no longer given new assignments since his alleged dismissal on September 12, 2011. **Records clearly show that the [respondent] was twice directed to report to the [petitioner's] office for his new assignment. The [respondent] duly acknowledged receipt of said directives and admitted the authenticity and due execution thereof. [Respondent] cannot take solace to his misplaced argument that the [petitioner] never issued a detail order to implement the directive. If indeed the [petitioner] never intended to give the [respondent] any other duty work, we find it difficult to understand on why the [petitioner] would still exert effort to inform the [respondent] of his new assignment in GMA Cavite.** The [petitioner's] argument that it was the [respondent] who refused to accept the new assignment is supported by the fact that the [respondent] was twice issued letters informing him of his new assignments. The first one was the October 27, 2011 letter and the second was the January 27, 2012 letter (Exhibits "3", "3-A" and "4" of the [Petitioner's] Position Paper). **Thus, we agree with the Labor Arbiter when he ruled that the [respondent] was not dismissed from his employment**. (Emphases supplied)

Considering that the [respondent] was not illegally dismissed, his claims for the payment of backwages and separation pay are denied for lack of factual and legal basis. Similarly, his claim for holiday pay, overtime pay and rest day pay must be denied given the fact that it lacks the required particularities to prove his entitlement. We also do not find basis for the award of 13th month pay. *The basic rule is that mere allegation is not evidence and is not equivalent to proof* (Dr. Castor C. De Jesus v. Rafael D. Gurerro III Et Al., G.R. No. 171491 September 4, 2009; See also: *Manalabe v. Cabie*, 526 SCRA 582, 589).

WHEREFORE, the appeal filed by the [respondent] is hereby **DISMISSED** for lack of merit.

Accordingly, the Decision dated August 31, 2012 of Labor Arbiter Eduardo J. Carpio is **AFFIRMED**.[5]

The Ruling of the Court of Appeals

[5] Id. at 192-193; NLRC Decision.

On appeal, the CA ruled and affirmed in its 24 October 2013 Decision[6] that there was indeed no dismissal actual or construction in the present case. Petitioner was able to present evidence in support of its claim that there were two (2) detail orders issued in favor of respondent for his new assignments. However, it explained that since there was no showing that said detail orders were actually received by respondent, the latter cannot be blamed into thinking that petitioner had no intention of posting him. Consequently, the appellate court made its own pronouncement that the instant controversy was a clear case of "misunderstanding" between the parties, triggered by the letter designating respondent to be a trainee only which prompted him to believe that he was demoted from being a regular employee to a mere trainee, thus, his refusal to report for duty. It therefore concluded that since there was neither dismissal nor abandonment in the present case, and considering further that the factual milieu of the case suggested *strained* relations between the parties, respondent is entitled to separation pay instead of reinstatement, including his entitlement to backwages, 13th month pay, holiday pay, and service incentive leave pay. The dispositive portion of which states:

> **WHEREFORE**, in view of the foregoing, the instant Petition is **partially GRANTED**. The assailed Decision dated January 29, 2013 and Resolution dated March 20, 2013 rendered by public respondent NLRC (FIRST DIVISION) in NLRC NCR Case No. NCR-03-03828-12/NLRC LAC No. 11-003222-12 are hereby **AFFIRMED WITH MODIFICATION**. [Respondent] Jose D. Castro is hereby **DECLARED** to be entitled to separation pay, unpaid wages from September 13, 2011-October 26, 2011, holiday pay and service incentive leave pay for the years 2008-2011, proportionate 13th month pay for the year 2011 and attorney's fees.
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> The case is **REMANDED** to the arbitration Branch of origin for the determination and detailed computation of the monetary benefits due [respondent] JOSE D. CASTRO which [petitioner] RADAR SECURITY & WATCHMAN AGENCY (INC.) should pay without delay.[7]

Petitioner's Partial Motion for Reconsideration of said Decision was subsequently denied for lack of merit in the Resolution of 29 January 2014.[8]

Hence, this appeal.

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6 Id. at 51-59.
7 Id. at 59.
8 Id. at 61-62.

In support thereof, petitioner raises the following grounds: (1) the CA committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in awarding separation pay to respondent even after it affirmed the unanimous findings of the NLRC and the LA that there was no illegal dismissal in this case; and (2) the CA committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in reversing the rulings of the NLRC regarding the denial of award of money claims and thereafter resolved to granting in favor of respondent his money claims and attorney's fees despite the same having attained finality as it was not raised in the motion for reconsideration filed with the NLRC.[9]

Respondent, in his Comment filed on 22 September 2014,[10] maintains that the CA correctly ruled in his favor, positing that from the very beginning, he "prayed for his separation pay and no longer wish to remain with the company" considering that petitioner's manifestations show "disinterest on keeping the respondent under its employ."

The Issue

Whether or not the CA erred in affirming the decisions of the LA and NLRC that there was indeed no constructive dismissal, but with the modification that respondent is instead entitled to separation pay, backwages, 13th month pay, holiday pay, and service incentive leave pay.

Our Ruling

Time and again, we have held that this Court is not a trier of facts. In the absence of any attendant grave abuse of discretion, the factual findings of the LA and the NLRC are entitled not only to respect, but to our final recognition in this appellate review.

In the case at bench, based on the factual findings of both the LA and the NLRC, we agree with the CA's pronouncement that there was no dismissal that took place, more so constructive dismissal, in the present case, since it was shown that petitioner issued detail orders in favor of respondent for his new assignments. Hence, there was no intention on its part to dismiss respondent, legally or otherwise.

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9 Id. at 22-23.

10 Id. at 225-235; Respondent's Comment (On the Petition for Review on *Certiorari*) dated 19 September 2014.

In *Abad v. Roselle Cinema*,[11] we found it well settled that in labor cases, the employer has the burden of proving that the employee was *not dismissed* or if dismissed, that the dismissal was not illegal, and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[12] Thus:

> x x x The Court ruled in *Great Southern Maritime Services Corp. v. Acuña*, to wit:
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> > Time and again we have ruled that **in illegal dismissal cases like the present one, the onus of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal**. Thus, petitioners must not only rely on the weakness of respondents' evidence but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence for any decision based on unsubstantiated allegation cannot stand as it will offend due process. x x x[13] (Emphasis supplied)

It must be noted, however, that in the employment of personnel, the employer has management prerogatives subject only to limitations imposed by law. The transfer of an employee would only amount to constructive dismissal when such is unreasonable, inconvenient, or prejudicial to the employee, and when it involves a demotion in rank or diminution of salaries, benefits and other privileges.

In the case at bench, it appears that the transfer or re-assignment was done in good faith and in the best interest of the business enterprise. This is the factual finding of the LA, and such finding was affirmed by the NLRC and the CA. Without any showing of unfairness and arbitrariness, this Court will not disturb the affirmance, especially when the petition assailing the findings raises no new arguments but merely reiterates those already raised in the proceedings below. In other words, we find in order the factual finding that respondent was not dismissed. The employer in this case has discharged the burden of proving that respondent was not dismissed.

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11 520 Phil. 135, 142 (2006).

12 See also *AFI International Trading Corp. (Zamboanga Buying Station)*, 561 Phil. 451, 452 (2007).

13 *Abad v. Roselle Cinema*, supra note 11 at 142 citing *Pascua v. National Labor Relations Commission*, 351 Phil. 48, 62 (1998).

Now, given that respondent was not dismissed, we find it imperative to reverse the CA's pronouncement and rule instead that he is not entitled to an award of separation pay and backwages.

The focal provision is Article 279 of the Labor Code of the Philippines which provides 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 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.**" Undoubtedly, there being no dismissal of respondent in the present case, the appellate court has no legal basis to award respondent separation pay and backwages.

In our jurisdiction, an employee has a right to security of tenure, but this does not give him such a vested right in his position as would deprive petitioner of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. **Thus, we disagree with the CA's position since there was no basis to order the award of separation pay and backwages inasmuch as respondent was not dismissed**. Neither is respondent entitled to the award of money claims for underpayment, absent evidence to substantiate the same.[14] As similarly determined by the LA and the NLRC, other than respondent's self-serving allegations, there was no evidence presented to establish that he had rendered any compensable overtime work other than that as appearing in the general payroll, nor was there any documentary evidence to show his entitlement to any unpaid wages, holiday pay, service incentive leave pay, and proportionate 13th month pay.

Worthy of emphasis is that **the award of separation pay is likewise inconsistent with a finding that there was no illegal dismissal. Separation pay becomes due if an employee is dismissed without just cause and without due process and is therefore entitled to backwages and reinstatement**. And, in instances **where reinstatement is no longer feasible because of *strained relations* between the employee and the employer, separation pay is granted in lieu thereof**. An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable.[15] Notably, under

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14 See *OSS Security & Allied Services, Inc. v. NLRC*, 382 Phil. 35, 45 (2000).

15 *Macasero v. Southern Industrial Gases Philippine*, G.R. No. 178524, 30 January 2009, 577 SCRA 500, 507.

the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. **However, strained relations must be demonstrated as a fact to be adequately supported by evidence – substantial evidence to show that the relationship between the employer and the employee is indeed *strained* as a necessary consequence of the judicial controversy**.[16]

Applying the foregoing discussion in the present case, the CA attempted to justify its ruling for the entitlement of separation pay and backwages on the ground that the relationship between petitioner and respondent appears *strained*, and that the instant controversy was merely a clear case of "misunderstanding" between petitioner and respondent. However, the undisputed factual finding is that there was no dismissal to speak of, and therefore, we cannot find the legal basis of his entitlement to such separation pay and backwages. As we have previously pronounced, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, **the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss**.[17] Hence, based on the circumstances of this case, the employer should not be made to suffer the consequences of the employee's failure to report for duty. There was no allegation much less proof that the employer intentionally made vague the notices sent to the employee. There was, therefore, no fault on the part of the employer even if it were true that respondent misunderstood the letter which prompted him to believe that he was being demoted. The supposed "misunderstanding" cannot be an excuse for not reporting for work. Indeed there were subsequent notices of his assignment/detail orders. There can be no justification for his claim for separation pay and backwages.

By way of reiteration, we declare that in labor cases, where there is neither termination nor abandonment involved, there is no occasion to grant separation pay and backwages, nor to allow collection of any other monetary claims absent evidence to substantiate the same. The employer and the employee do not have any obligation one to the other.

WHEREFORE, the petition is **GRANTED**. The Decision dated 24 October 2013 and Resolution dated 29 January 2014 of the Court of Appeals in CA-G.R. SP No. 130088 are hereby **REVERSED** and **SET ASIDE**.

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16 See *Coca Cola Phils. Inc. v. Daniel*, 499 Phil. 491, 510 (2005) and *Paguio Transport Corporation v. NLRC*, 356 Phil. 158, 171 (1998).

17 *Danilo Leonardo v. NLRC*, 389 Phil. 118, 128 citing *Chong Guan Trading v. NLRC*, 254 Phil. 835, 844-845 (1989).

Accordingly, the 29 January 2013 Decision of the National Labor Relations Commission is hereby **AFFIRMED** in *toto*.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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