Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SOLIMAN SECURITY SERVICES, INC. and TERESITA L. SOLIMAN,
Petitioners,

- versus -

IGMEDIO C. SARMIENTO, JOSE JUN CADA and ERVIN R. ROBIS,
Respondents.

G.R. No. 194649

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

August 10, 2016

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DECISION

PEREZ, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated 27 August 2010 and the Resolution[3] dated 25 November 2010 of the Court of Appeals in CA-G.R. SP No. 110905, which affirmed the 2 June 2009 Decision[4] of the National Labor Relations Commission (NLRC) declaring respondents Igmedio C. Sarmiento (Sarmiento), Jose Jun Cada (Cada), and Ervin R. Robis (Robis) to have been illegally dismissed from employment.

The Antecedent Facts

This case stemmed from a complaint filed by respondents against petitioners Soliman Security Services, Inc. (the agency) and Teresita L.

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1 *Rollo*, pp. 10-24; Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Mario L. Guariña III and Rodil C. Zalameda concurring.
2 Id. at 30- 39.
3 Id. at 41.
4 Id. at 63- 70.

Soliman (Teresita) for illegal dismissal; underpayment of salaries, overtime pay and premium pay for holiday and rest day; damages; attorney's fees; illegal deduction and non-payment of ECOLA.

Respondents were hired as security guards by petitioner Soliman Security Services, Inc. and were assigned to Interphil Laboratories, working seven (7) days a week for twelve (12) straight hours daily. Respondents alleged that during their employment – from May 1997 until January 2007 for Robis and from May 2003 until January 2007 for Sarmiento and Cada – they were paid only ₱275.00 a day for eight (8) hours of work or ₱325.00 for twelve (12) hours of work but were not paid ECOLA, night shift differentials, holiday pay, as well as rest day premiums. For cash bond and mutual aid contributions, the amounts of ₱400.00 and ₱100.00, respectively, were deducted from their salaries per month. Respondents claimed that they sought a discussion of the nonpayment of their benefits with petitioner Teresita Soliman but the latter refused to take heed and told them to tender their resignations instead. According to respondents, on 21 January 2007, they received an order relieving them from their posts and since then, they were not given any assignments.

On the other hand, the agency's version of the story hinges on an alleged placement of the respondents under a "floating status." The agency admitted relieving the respondents from duty on 20 January 2007 but insists that the same was only done pursuant to its contract with client Interphil Laboratories. To support this claim, petitioners presented a standing contract[5] with Astrazeneca Pharmaceuticals, Interphil's predecessor-in-interest. The contract contained stipulations pertaining to the client's policy of replacing guards on duty every six (6) months without repeat assignment. The agency further posits that respondent guards were directed several times to report to the office for their new assignments but they failed to comply with such directives.

A review of the records reveals the following timeline: (1) on 20 January 2007, the agency sent respondents notices informing them that they were being relieved from their current posts pursuant to a standing contract with Interphil Laboratories[6] with directives for respondents to report to the office for their new assignments; (2) on 7 February 2007, the agency sent another letter addressed to Robis, directing him to report to the office for his new assignment;[7] (3) on 22 February 2007, the first complaint for illegal

5 Id. at 396-400.
6 Id. at 97-98.
7 Id. at 101.

dismissal was filed with the Labor Arbiter;[8] (4) on 26 March 2007, a hearing before the Executive Labor Arbiter was conducted, where petitioner agency's representative presented respondents an offer to return to work;[9] (5) the agency sent respondents letters dated 24[10] and 26[11] April 2007, directing them to clarify their intentions as they have not been reporting to seek new assignments; (6) on 3 August 2007, respondents filed a Supplemental Complaint,[12] the purpose of which was to anticipate the possibility that the agency might set up the defense of pre-maturity of filing of the constructive dismissal complaint; (7) respondents executed their respective complaint affidavits on 8 August 2007;[13] (8) and finally after the parties submitted their respective position papers, the Executive Labor Arbiter rendered a decision on 4 January 2008.[14]

Finding that respondents' failure to comply with the Memoranda amounted to abandonment, the Labor Arbiter dismissed the complaint.[15] The Labor Arbiter concluded that there can be no dismissal to speak of, much less an illegal dismissal. On appeal, the NLRC reversed the 4 January 2008 decision of the the Executive Labor Arbiter, ultimately finding respondents to have been illegally dismissed. The NLRC ruled that the letters directing respondents to "clarify their intentions" were not in the nature of return-to-work orders, which may effectively interrupt their floating status. The NLRC observed that the Memoranda received by respondents were but mere afterthoughts devised after the case for illegal dismissal was filed. The NLRC also put the agency to task for failing to traverse the guards' averment that there were other employee-guards who stayed with the same client beyond the six-month term imposed.

Aggrieved, the petitioners brought the case to the Court of Appeals, asking the court to issue an extraordinary writ of *certiorari* to reverse the NLRC decision. Reiterating that the agency had no legitimate reasons for placing respondents on prolonged floating status, the appellate court affirmed the decision of the NLRC. The dispositive portion of the NLRC decision reads:

> **WHEREFORE**, premises considered, the decision of the Executive Labor Arbiter Fatima Jambaro-Franco dated 4 January 2008 is reversed and set aside and a new one is rendered ordering [petitioners] to

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8 Id. at 75.
9 Id. at 110.
10 Id. at 99.
11 Id. at 100.
12 Id. at 76.
13 Id. at 109-115.
14 Id. at 380-383.
15 Id.

pay [respondents] the following:

1. Backwages from 21 January 2007 until finality of this Decision;

2. Separation pay equivalent to one-month salary for every year of service from the date of employment as appearing in the complaint also up to finality of this Decision; and

3. Salary differentials for the period not yet barred by prescription.

All other claims are dismissed for lack of merit.[16]

Petitioners sought a reconsideration of the decision but the appellate court denied the same. Hence, this Petition for Review on *Certiorari*.

Our Ruling

After a careful evaluation of the records of the case, this Court finds no reversible error in the NLRC decision as affirmed by the Court of Appeals. The petition is denied for lack of merit.

Placement on floating status as a management prerogative

The Court is mindful of the fact that most contracts for services stipulate that the client may request the replacement of security guards assigned to it.[17] Indeed, the employer has the right to transfer or assign its employees from one area of operation to another, "provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause."[18] During that period of time when they are in between assignments or when they are made to wait for new assignments after being relieved from a previous post, guards are considered on temporary "off-detail" or under "floating status". It has long been recognized by this Court that the industry practice of placing security guards on floating status does not constitute dismissal, as the assignments primarily depend on the contracts entered into by the agency with third parties[19] and the same is a valid exercise of management

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16 Id. at 69.
17 *Salvaloza v. NLRC*, 650 Phil. 543, 557 (2010).
18 Id.
19 Id. at 557-558.

prerogative. However, such practice must be exercised in good faith and courts must be vigilant in assessing the different situations, especially considering that the security guard does not receive any salary or any financial assistance provided by law when placed on floating status.[20]

Constructive Dismissal

Though respondents were not *per se* dismissed on 20 January 2007 when they were ordered relieved from their posts, we find that they were constructively dismissed when they were not given new assignments. As previously mentioned, placing security guards under floating status or temporary off-detail has been an established industry practice. It must be emphasized, however, that they cannot be placed under floating status indefinitely; thus, the Court has applied Article 292[21] (formerly Article 286) of the Labor Code by analogy to set the specific period of temporary off-detail to a maximum of six (6) months.[22] It must also be clarified that such provision does not entitle agencies to retain security guards on floating status for a period of not more than six (6) months for whatever reason. Placing employees on floating status requires the dire exigency of the employer's *bona fide* suspension of operation. In security services, this happens when there is a surplus of security guards over available assignments as when the clients that do not renew their contracts with the security agency are more than those clients that do.[23]

The crux of the controversy lies in the consequences of the lapse of a significant period of time without respondents having been reassigned. Petitioner agency faults the respondents for their repeated failure to comply with the directives to report to the office for their new assignments. To support its argument, petitioner agency submitted in evidence notices addressed to respondents, which read:

> You are directed to report to the undersigned **to clarify your intentions as you have not been reporting to seek a new assignment after your relief from Interphil.**

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20 Id. at 557.

21 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 fulfillment 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 the military or civic duty.

22 *Exocet Security and Allied Services Corporation v. Serrano*, G.R. No. 198538, 29 September 2014, 737 SCRA 40, 51-52.

23 *Sentinel Security Agency, Inc. v. NLRC*, 356 Phil. 435, 446 (1998).

> To this date, **we have not received any update from you** neither did you update your government requirements x x x
>
> We are giving you up to May 10, 2007 to comply or we will be forced to drop you from our roster and terminate your services for abandonment of work and insubordination.
>
> Consider this our final warning.[24] (Emphasis ours)

As for respondents, they maintain that the offers of new assignments were mere empty promises. Respondents claim that they have been reporting to the office for new assignments only to be repeatedly turned down and ignored by petitioner's office personnel.[25]

We rule that such notices were mere afterthoughts. The notices were allegedly sent to respondents on 24 and 26 April 24 2007, a month after the hearing before the Executive Labor Arbiter. By the time the notices were sent, a complaint for illegal dismissal with a prayer for reinstatement was already filed. In fact, the agency, through its representative, already had the chance to discuss new assignments during the hearing before the Labor Arbiter. Instead of taking the opportunity to clarify during the hearing that respondents were not dismissed but merely placed on floating status and instead of specifying details about the available new assignments, the agency merely gave out empty promises. No mention was made regarding specific details of these pending new assignments. If respondent guards indeed had new assignments awaiting them, as what the agency has been insinuating since the day respondents were relieved from their posts, the agency should have identified these assignments during the hearing instead of asking respondents to report back to the office. The agency's statement in the notices – that respondents have not clarified their intentions because they have not reported to seek new assignments since they were relieved from their posts – is specious at best. As mentioned, before these notices were sent out, a complaint was already filed and a hearing before the Labor Arbiter had already been conducted. The complaint clarified the intention of respondents. Indeed, respondents' complaint for illegal dismissal with prayer for reinstatement is inconsistent with the agency's claim that respondents did not report for reassignment despite the notices directing them to do so. It is evident that the notices sent by the agency were mere ostensible offers for new assignments. It was intended to cover the illegality of the termination of respondents' employment.

Lack of service agreement for a continuous

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24 *Rollo*, pp. 99-100.

25 Id. at 109-115.

period of 6 months as an authorized cause for termination

It is significant to note that had the reason for such failure to reassign respondents been the lack of service agreements for a continuous period of six (6) months, petitioner agency could have exercised its right to terminate respondents for an authorized cause upon compliance with the procedural requirements.

On this score, Department Order No. 14, Series of 2001[26] (DO 14-01) of the Department of Labor and Employment is instructive. Section 9.3 of the same provides:

> 9.3 *Reserved status* – x x x
>
> x x x x
>
> If after a period of 6 months, the security agency/employer cannot provide work or give assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as described in subsection 6.5
>
> x x x x

In relation thereto, Section 6.5 of DO 14-01 treats such lack of service assignment for a continuous period of six (6) months as an authorized cause for termination of employment entitling the security guard to separation pay, to wit:

> 6.5 *Other Mandatory Benefits*. In appropriate cases, security guards/similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums form their coverage:
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> a. Maternity benefit as provided under SS Law;
> b. Separation pay if the termination of employment is for **authorized cause** as provided by law and as enumerated below:
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> *Half-Month Pay Per Year of Service*, but in no case less than One Month Pay if separation pay is due to:
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> 1. Retrenchment or reduction of personnel effected by management to prevent serious losses;

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26 Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry.

2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;
3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees;
4. **Lack of service assignment for a continuous period of 6 months.** (Emphasis and underlining supplied)

x x x x

It bears stressing that the only time a prolonged floating status is considered an authorized cause for dismissal is when the security agency experiences a surplus of security guards brought about by lack of clients.[27] We quote with approval the pertinent portion of the NLRC's decision as affirmed by the appellate court, to wit:

> Being placed on floating status is only legitimate when guaranteed by bona fide business exigencies. In security services, this happens when there is a surplus of security guards over available assignments as when the clients that do not renew their contracts with the security agency are more than those clients that do x x x.[28]

Otherwise stated, absent such justification, the placing of a security guard on floating status is tantamount to constructive dismissal. And, when the floating status is justified, the lapse of a continuous period of six (6) months results in an authorized cause for termination of employment, the security guard being entitled, however, to separation pay.

As for the procedural aspect, employer agencies must be reminded that to validly terminate a security guard for lack of service assignment for a continuous period of six months, the agency must comply with the provisions of Article 289 (previously Art. 283) of the Labor Code,[29] "which mandates that a written notice should be served on the employee on temporary off-detail or floating status and to the DOLE one (1) month

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27 *Reyes v. RP Guardians Security Agency Inc.*, 708 Phil. 598, 606 (2013).

28 *Rollo*, pp. 65-66.

29 Art. 289. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to x x x retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

before the intended date of termination."[30] Sec. 9.2 of DO 14-01 provides for a similar procedure, to wit:

> 9.2 Notice of Termination – In case of termination of employment due to authorized causes provided in Article 283 and 284 of the Labor Code and in the succeeding subsection, the employer shall serve a written notice on the security guard/personnel and the DOLE at least one (1) month before the intended date thereof.

It cannot be denied that the placement of security guards on floating status may be subject to abuse by agencies, considering that they are not obliged to pay the security guards while placed on floating status. Recognizing the jurisprudence elaborating on the application of DO 14-01, we now provide a summary as follows:

The floating status period, wherein the security guards are not paid, should not last longer than six (6) months as provided by law. Before the lapse of six (6) months, the agency should have recalled the security guard for a new assignment. If the agency failed to do so due to the lack of service agreements for a continuous period of six (6) months, an authorized cause for dismissal as per DO 14-01, the security guard may be considered permanently retrenched and validly dismissed upon compliance with the procedural requirements laid down by the Department Order and the Labor Code.[31] It must be emphasized however, that in order for the dismissal to be valid and in order for the employer agency to free itself from any liability for illegal dismissal, the justification for the failure to reassign should be the lack of service agreements for a continuous period of six (6) months, aside from the other authorized causes provided by the Labor Code. Corollarily, placing the security guard on floating status in bad faith, as when there is failure to reassign despite the existence of sufficient service agreements will make the employer agency liable for illegal dismissal. In such cases, there is no *bona fide* business exigency which calls for the temporary retrenchment or laying-off of the security guards. Lastly, if six (6) months have already lapsed and the employer agency failed to either (a) reassign the security guard or (b) validly dismiss and give him/her the corresponding separation pay, the security guard may be considered to have been constructively dismissed.[32]

On the finding that respondents are entitled to their money claims

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30 *Exocet Security and Allied Services Corporation v. Serrano*, supra note 22 at 55.

31 Id. at 60.

32 *Agro Commercial Security Services, Agency, Inc. v. NLRC*, 256 Phil. 1182, 1188 (1989).

In its decision, the Court of Appeals discussed how the NLRC might have erred in its computations of the wages received by the private respondents. However, despite such observation, the appellate court dismissed the petition for *certiorari*, ultimately holding that the NLRC based its decision on all the evidence presented, with nary an abuse of the exercise of its discretion. The appellate court found that petitioners failed to discharge their burden of showing at least an abuse of discretion on the part of the NLRC, when the latter found that the security guards were underpaid. Petitioners now fault the appellate court for affirming the NLRC decision declaring them liable for private respondents' monetary claims.

Petitioners' contention is bereft of merit

In petitioners' Motion for Reconsideration of the NLRC decision, they invested heavily in the argument about the validity of the dismissal, stating only briefly in the penultimate paragraph their manifestation to reserve a purported right to submit additional evidence in a supplemental pleading, if necessary to strengthen their arguments regarding the award of monetary claims. The Court of Appeals correctly ruled that such scheme subverts the reglementary periods established by law and more significantly, the NLRC would no longer have the opportunity to correct itself, assuming errors, since the Motion for Reconsideration filed before it did not detail the computations regarding monetary benefits. Said computations were only subsequently raised in their petition before the appellate court.

In the Court of Appeals, petitioners adopted a similar scheme. In their Petition for *Certiorari*, they did not anymore dispute the NLRC's determinations as to the monetary aspects. Instead, their arguments on the alleged issue of monetary awards were inserted in their Reply to Comment pleading. The Court of Appeals correctly ruled that such scheme contradicts elementary due process as the arguments raised were not dealt with in the comment the Reply supposedly responds to.

From the foregoing, it is quite obvious that the NLRC may not be faulted for relying on the evidence presented before it when it made its computations for underpayment. Neither may the appellate court be faulted for declaring that the NLRC did not abuse its discretion. The task of resolving the issue on monetary claims, purely factual, properly pertains to the NLRC as the quasi-judicial appellate body to which these documents were presented to review the arbiter's ruling.[33] The appellate court correctly ruled that the usual appeal in labor cases is exhausted after the NLRC has

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33 *Pasig Cylinder Mfg., Corp., et al. v. Rollo, et al.*, 644 Phil. 588, 600 (2010).

decided. Petitioner cannot fault the Court of Appeals in affirming the NLRC decision despite the alleged computational error as the special civil action of *certiorari* is a remedy to correct errors of jurisdiction and not mere errors of judgment. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*.

The present petition is a Rule 45 petition reviewing a Rule 65 ruling of the Court of Appeals. This Court's jurisdiction is thus limited to errors of law which the appellate court might have committed in its Rule 65 ruling.[34] In essence, in ruling for legal correctness, "we have to view the CA's decision in the same context that the *petition for certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case, was correct."[35] After a meticulous review of the facts of the case, the records, relevant laws and jurisprudence, we rule that the Court of Appeals correctly determined that the NLRC did not abuse its discretion when it held that respondents were constructively dismissed and entitled to their monetary claims.

WHEREFORE, the petition is **DENIED**. The assailed 27 August 2010 Decision and 25 November 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 110905 are **AFFIRMED**. Accordingly, petitioners Soliman Security Services, Inc. and Teresita L. Soliman are hereby **ORDERED** to pay respondents Igmedio C. Sarmiento, Jose Jun Cada, and Ervin R. Robis, to wit :

1. Backwages from 21 January 2007 until finality of this decision;

2. Separation pay equivalent to one-month salary for every year of service from the date of employment as appearing in the complaint also up to finality of this decision; and

3. Salary differentials for the period not yet barred by prescription.

All other claims are dismissed for lack of merit.

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34 *Magsaysay Maritime Corporation, et al. v. Simbajon*, G.R. No. 203472, 9 July 2014, 729 SCRA 631, 641-642 (2014).

35 Id. at 642.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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, it is hereby certified 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
Division Clerk of Court
Third Division

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