

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**APOLINARIO MANIPON, JR.,  
*Petitioner,***

***-versus-***

**G.R. No. 105338  
December 27, 1994**

**NATIONAL LABOR RELATIONS  
COMMISSION AND SECURICOR  
WATCHMAN, INC.,**

***Respondents.***

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**D E C I S I O N**

**QUIASON, J.:**

This is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court to reverse and set aside the Decision of the National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 00-03-01165-89 entitled "Apolinario Manipon Jr. vs. Securicor Watchman, Inc." In said decision, NLRC reversed the decision of the Labor Arbiter finding that petitioner was illegally dismissed.

**I**

Petitioner was employed as a security guard on January 13, 1981 and was later promoted to Detachment-in-Charge by private respondent.

In February 1988, petitioner was assigned to the Kawal Pag-ibig Homes in Gen. M. Alvarez, Cavite. A service firearm (Squires Bingham Cal. 38 revolver, SN-1092050) and five rounds of ammunition were issued to him as Detachment-in-Charge. He, in turn, gave the service firearm and ammunition to Adelin G. Natata, one of the guards assigned to his detachment. The service firearm and ammunition were lost while in the possession of Natata. The latter admitted his fault for the loss. Petitioner was thereafter assessed to pay P4,065.00 or 75% of the value of the gun and ammunition while Natata was assessed to pay the 25% balance or P1,355.00. To collect the amount due from petitioner, private respondent deducted P150.00 from his salary earned before May 16, 1988 and withheld his salary for the period covering May 16-31, 1988.

On June 1, 1988, petitioner was relieved from his post at Cavite and transferred to Carmel Farms in Pangarap Village, Caloocan City. His tour of duty lasted only for three days. From then on he was not given guard duties until September 29, 1988 when he was assigned to a house in Forbes Park, Makati for one week. Since then, he was not given any assignment despite his regularity in reporting for duty.

On March 3, 1989, petitioner filed a complaint for illegal dismissal, illegal deduction, violation of P.D. No. 851 and unpaid wages against private respondent.

The Labor Arbiter rendered a decision, finding complainant illegally dismissed and ordering the payment by private respondent of petitioner's separation pay at the rate of one month pay for every year of service. The Labor Arbiter dismissed the other money claims of petitioner (Rollo, pp. 29-30). Both parties appealed to NLRC.

In its Decision dated October 7, 1991, NLRC set aside the appealed decision and dismissed the case for lack of merit (Rollo, pp. 43-54). Petitioner's motion for reconsideration was, likewise, denied by NLRC in its Resolution dated November 8, 1991.

Hence, this petition.

The issues in this case are: whether the assailed decision was issued in grave abuse of discretion amounting to lack of jurisdiction when public respondent set aside the decision of the Labor Arbiter; and, whether the act of private respondent in refusing to give petitioner a new assignment or post for more than six months constitutes constructive dismissal.

The petition has merit.

## II

We find that in adopting the theory of private respondent that petitioner was merely placed on “reserve” or “standby” pending redeployment upon the availability of a post to which he could be assigned, NLRC acted with grave abuse of discretion. NLRC, in arriving at its decision, depended on the case of *Veterans Philippine Scout Security Agency vs. National Labor Relations Commission*, 174 SCRA 347 (1989), which ruled that “the period of time a security guard was made to wait until he was transferred or assigned to a new post or client does not constitute dismissal” (Rollo, p. 52). NLRC failed to see the difference of the factual milieu in this case from that in *Veterans*, where the security guard was called to an investigation upon complaint of a client of the agency. This, however, did not materialize for failure of said security guard to appear at the investigation, giving as an excuse his financial problem. The security agency, moved with compassion because of the security guard’s sad plight, simply accepted his explanation and eventually cancelled the investigation. The security guard thereafter requested to be transferred to another post. The request was responded favorably only that the security guard had to wait for a few days for his new assignment. In the meantime, he was paid a monthly cash allowance of P500.00 with free board and lodging. Then, to the dismay of the security agency, the security guard filed a complaint for illegal dismissal. Clearly, such waiting period, as ruled by the Court, cannot be considered constructive dismissal.

By contrast, petitioner had been relieved from his post as early as June 1, 1988, after the loss of the firearm and ammunition and when he vehemently protested against the deduction of his salary. Apparently, his being relieved from his post as Detachment-in-

Charge, his being transferred to Carmel Farms for guard duties on June 18, 1988 and his being assigned to Forbes Park on September 29, 1988, were merely indirect ways of dismissing him. But we cannot just close our eyes to the facts borne by the records that private respondent was irked by petitioner's resentment of his being held accountable for the fault of another employee.

As correctly pointed out by the Solicitor General, the decision in *Superstar Security Agency, Inc. vs. National Labor Relations Commission*, 184 SCRA 74 (1990) is apropos, particularly when it held:

“Temporary ‘off-detail’ is not equivalent to dismissal. In security parlance, it means waiting to be posted. (TSN, January 14, 1980, p. 35) It is recognized fact that security guards employed in a security agency may be temporarily sidelined as their assignments primarily depend on the contracts entered into by the agency with third parties (*Agro Commercial Security Agencies, Inc. vs. NLRC, et al.*, G.R. Nos. 82823-24, July 31, 1989). However, it must be emphasized that such temporary inactivity should continue only for six months. Otherwise the security agency concerned could be liable for constructive dismissal under Art. 287 (now Article 286) of the Labor Code (see *Agro Case, supra*).” (Rollo, p. 96; Emphasis supplied).

As earlier noted, petitioner was relieved from his post as Detachment-in-Charge on June 1, 1988. From then on, he was just given assignments for short periods of time and only as an ordinary security guard and not as head of a detachment. If petitioner was merely on “standby,” private respondent should have informed him of such fact. This would have saved him the trouble of going back and forth to private respondent's office imploring for redeployment.

The burden of proving that there was no post available to petitioner lies with private respondent. The latter failed miserably to discharge this risk.

From the records of the case, it appears that from the time when he was relieved from his post as Detachment-in-Charge on June 1, 1988 until the time when he filed his complaint on March 3, 1989 for illegal

dismissal, a period of nine months had elapsed. Following the teaching in *Superstar Security Agency*, (supra.), we hold that petitioner was constructively dismissed, considering that more than six months had passed since he was put on “reserve” status.

In the interest of justice, although the issue of the grant of separation pay was never contested even at the level of the Labor Arbiter nor assigned as error at the NLRC level, we have to correct the Labor Arbiter’s ruling where he granted petitioner separation pay instead of ordering his reinstatement.

As ruled in *General Baptist Bible College vs. National Labor Relations Commission*, 219 SCRA 549 (1993) —

“In resolving whether or not the relief of reinstatement may be granted to Basa notwithstanding his failure to pray for the same in his complaint, we rule in the affirmative. We are for the granting of the relief he is entitled to under the law, although he failed to specifically pray for the same in his complaint.”

Article 279 of the Labor Code of the Philippines, as amended clearly provides that —

“Security of Tenure. —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 back wages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.”

The aforementioned law is unambiguous insofar as it mandates reinstatement of the employee in case he is unjustly dismissed. The Labor Arbiter can grant separation pay in lieu of reinstatement only in situations falling under any of the exceptions to the general rule. These exceptions are laid down by the Court in *Globe-Mackay Cable and Radio Corporation vs. National Labor Relations Commission*, 206 SCRA 701 (1992) thus —

“Over time, the following reasons have been advanced by the court for denying reinstatement under the facts of the case and

the law applicable thereto; that reinstatement can no longer be effected in view of the long passage of time (22 years of litigation) or because of the realities of the situation; or that it would be 'inimical to the employer's interest;' or that reinstatement may no longer be feasible; or, that it will not serve the best interests of the parties involved; or that the company would be prejudiced by the workers' continued employment; or that it will not serve the prudent purpose as when supervening facts have transpired which make execution on that score unjust or inequitable or, to an increasing extent, due to the resultant atmosphere of 'antipathy and antagonism' or 'strained relations' or irretrievable estrangement' between the employer and the employee."

Furthermore, we stated:

"In such cases, it should be proved that the employee concerned occupies a position where he enjoys the trust and confidence of his employer; and that it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned."

In *Maranaw Hotels and Resorts Corp. vs. Court of Appeals*, 215 SCRA 501 (1992), this Court explained:

"[S]trained relations' may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement. In the instant case, however, the relationship between private respondent, a roomboy, and management was clearly on an impersonal level."

The case at bench does not appear to be within the ambit of any of the exceptions as to warrant the grant of separation pay in lieu of reinstatement. Neither is the petitioner, as a security guard and Detachment-in-Charge, holding a position of trust and confidence. Moreover, the mere fact that petitioner filed a complaint for illegal dismissal against his employer does not give rise to a situation that would constitute "strained relations" between petitioner and private

respondent. The record shows that the parties strictly confined their dispute to the legal issues.

Petitioner is entitled to back wages from the time he was constructively dismissed, which was June 1, 1988, until June 1, 1991 only. The controlling jurisprudence on this matter is that rendered in *Maranaw Hotels*, (*supra.*) thus —

“And while we have continued applying the rule in *New Manila Candy Workers Union (Naconwa- Paflu) vs. CIR* in some cases, e.g., *Panday vs. NLRC* where five (5) years’ back wages were decreed on account of employer’s unfair labor practice and evident bad faith, the general rule remains: where the illegal dismissal transpired before the effectivity of R.A. 6715, or before 21 March 1989, the award of backwages in favor of the dismissed employee is limited to three (3) years without deduction or qualification.”

In this case, the controversy arose prior to the effectivity of R.A. No. 6715, in which case, the back wages that may be granted to petitioner is limited to three years.

**WHEREFORE**, the Petition is **GRANTED** and the Decision of NLRC vacating the Labor Arbiter’s finding of illegal dismissal is **REVERSED**. Private respondent is **ORDERED** to reinstate petitioner, to pay him his unpaid salaries for the period covering May 16-31, 1988 and to pay him back wages from June 1, 1988 until June 1, 1991 (less the amount still due for him for the loss of the gun and ammunition).

**SO ORDERED.**

**Padilla, J., (Chairman), Davide, Jr., Bellosillo and Kapunan, JJ., concur.**