SUPREME COURT
FIRST DIVISION

SECURITY AND CREDIT INVESTIGATION, INC. and VICENTE REYES, JR.,
***Petitioners*,**

-versus-

G.R. No. 114316
January 26, 2001

THE NATIONAL LABOR RELATIONS COMMISSION (First Division), FELICIANO MERCADO, EDGAR SOMOSOT and DANTE OLIVER and the COMMISSION ON HUMAN RIGHTS,
***Respondents*.**
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D E C I S I O N

KAPUNAN, *J.*:

This is a Petition for *Certiorari* assailing the Decision of respondent National Labor Relations Commission (NLRC), First Division, dated January 24, 1994, in NLRC Case Nos. 00-03-01791-90 and 00-03-01886-90 which affirmed with modification the Decision, dated November 18, 1993, of Labor Arbiter Jose G. De Vera ordering petitioner Security and Credit Investigation, Inc. (petitioner) to reinstate private respondents Feliciano Mercado (Mercado), Edgar

Somosot (Somosot), and Dante Oliver (Oliver) without backwages and ordering third-party respondent Commission on Human Rights (CHR) to reimburse petitioner in the amount of Twenty Eight Thousand Five Hundred Pesos (P28,500.00).

The facts of the case are as follows:

Private respondents Mercado, Somosot and Oliver were employed as security guards by petitioner and assigned to the CHR which was petitioner's client.

Sometime in February 1990, about eighteen (18) of petitioner's security guards detailed at the CHR, including Mercado, Somosot and Oliver, filed a complaint for money claims against petitioner. However, upon petitioner's request that the security guards withdraw the complaint, each of the complainants, except for Mercado, Somosot and Oliver, signed a Release and Quitclaim in favor of petitioner.

Mercado averred that he was being pressured by petitioner to sign a Release and Quitclaim, so he went on leave from work on March 22, 1990. When he called petitioner's office on the afternoon of the same day to inquire about his work assignment, petitioner's officer-in-charge, Rogelio Vecido, informed him that he was not assigned anywhere because he was suspended from work.

Somosot likewise claimed that on March 22, 1990, Mr. Igmedio Tomenio, petitioner's shift-in-charge at the CHR, tried to pressure him to sign a Release and Quitclaim but he refused. That afternoon, Somosot learned that he had been suspended from work. When he attempted to report for work the next day, he was informed verbally that his employment was already terminated.

The next day, March 23, 1990, Mercado and Somosot filed a complaint for illegal dismissal and underpayment of wages, overtime pay, legal holiday pay, premium pay for holiday and rest day, 13th month pay, service incentive leave benefits and night differential against petitioner. The case was docketed as NLRC-NCR Case No. 00-03-01791-90.

Like Mercado and Somosot, respondent Oliver asseverated that on March 27, 1990 he went to petitioner's office to reiterate his money claims and was forced by Mr. Reynaldo Dino, petitioner's operations manager, to sign a Release and Quitclaim. Because of his refusal to sign the same, he was not given any new assignment by petitioner. He was thus surprised to receive on March 29, 1990 a telegram from petitioner requiring him to explain his absence from work without leave from March 27, 1990. Subsequently, Oliver filed a complaint for illegal dismissal and underpayment of backwages against petitioner, which case was docketed as NLRC-NCR Case No. 00-03-01886-90.

Upon motion of petitioner, the two cases were consolidated.

Petitioner, on the other hand, denied that it dismissed Mercado, Somosot and Oliver and alleged that the latter abandoned their employment.

Meanwhile, on February 18, 1991, petitioner filed a third-party complaint against the CHR, claiming that its failure to effect the increase in the minimum wage of respondent security guards from July 1, 1989 to March 31, 1990, was due to the failure of the CHR to promptly pay the increases in the wage rates of said guards pursuant to Section 6 of Republic Act No. 6727[1] (R.A. 6727). The CHR approved payment of increased wage rates only from April 16, 1990. Petitioner claimed that under R.A. 6727, the CHR was mandated to pay increased wages to the security guards commencing from July 1, 1989.

The CHR denied that it was obliged to pay the increase in the wage rates of the respondent guards. It averred that R.A. 6727 is not applicable to it, because it had already been paying the respondent security guards more than P100.00 a day even before the effectivity of said law. Its decision to increase the salaries of respondent guards effective August 16, 1990 was due only to humanitarian reasons.

In his Decision dated November 18, 1991,[2] the Labor Arbiter found that there was neither dismissal by petitioner of the respondent security guards nor abandonment of employment by the latter, and that the controversy resulted from miscommunication and misapprehension of facts by the parties. The Labor Arbiter, however,

ruled that there was underpayment of respondent guards' salaries, holiday pay, premium pay for holidays and rest days, overtime pay, 13th month pay and service incentive leave benefits in the total amount of Forty Two Thousand Six Hundred Thirty Five Pesos and Eighteen Centavos (P42,635.18). Of this amount, the CHR was ordered to reimburse petitioner an amount of Twenty Eight Thousand Five Hundred Pesos (P28,500.00). The dispositive portion thereof stated:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to reinstate the complainants without backwages and to pay said complainants as follows:
>
> 1. P33,054.18 as wage differential inclusive of holiday pay and premium pay;
>
> 2. P4,423.18 as total overtime pay differential;
>
> 3. P4,505.82 as aggregate 13th month pay differential; and
>
> 4. P652.00 as differential for service incentive leave pay;
>
> All other claims of the complainants are denied for lack of merit.
>
> And on the third-party complaint, the third-party respondent is hereby ordered to reimburse the third-party complainant the sum of P28,500.00 based on the above disposition.
>
> SO ORDERED.[3]

All parties filed their respective appeals with the National Labor Relations Commission.

In their partial appeal, respondents Mercado and Somosot argued that the Labor Arbiter erred in not finding that they were illegally dismissed and in not awarding backwages in their favor.

Petitioner, on the other hand, claimed that the Labor Arbiter erred in not finding that respondent security guards abandoned their employment, and that it is the CHR which should be held liable for the monetary award given to respondent security guards.

The CHR for its part contended that the Labor Arbiter erred in not finding that R.A. 6727 does not apply to it, and in failing to appreciate the CHR's Letter dated April 16, 1990 which stated that it was increasing the wage rates of the security guards beginning April 16, 1990.

On January 24, 1994, the NLRC rendered its Decision,[4] the dispositive portion of which states:

> WHEREFORE, in view thereof, the decision appealed from is hereby affirmed with modification. The order of Labor Arbiter Jose G. De Vera on the third-party complaint that the third-party respondent reimburses (sic) the third-party complainants the amount of Twenty-Eight Thousand Five Hundred (P28,500.00) Pesos representing their salaries from July 1, 1989 up to April 15, 1990 is SET ASIDE.
>
> SO ORDERED.[5]

Hence, this petition. Petitioner raises the following arguments:

> A. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT PRIVATE RESPONDENTS DID NOT ABANDON THEIR POSTS.
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> B. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT COMPUTED THE OVERTIME DIFFERENTIAL, 13TH MONTH DIFFERENTIAL AND THE DIFFERENTIAL FOR THE SERVICE INCENTIVE LEAVE PAY WITHOUT EXCLUDING THE PERIOD FOR SEPTEMBER 1, 1988 UP TO JUNE 30, 1989 DURING

WHICH, ACCORDING TO ITS OWN DECLARATION, THERE WAS NO UNDERPAYMENT.

C. THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT SET ASIDE THE ORDER OF LABOR ARBITER JOSE G. DE VERA REQUIRING THE CHR TO REIMBURSE PETITIONER.[6]

The Court finds that the NLRC committed no grave abuse of discretion in affirming the finding that petitioner did not dismiss respondent security guards, and that the latter did not abandon their employment.

Both the NLRC and the Labor Arbiter found no clear proof that petitioner had in fact dismissed respondent security guards. Mercado based his claim of illegal dismissal only on the statement of officer-in-charge Mr. Vecido that he had not been assigned to any post. Similarly, Somosot relied merely on the verbal information relayed to him that he had been terminated. Oliver's belief that he had been illegally dismissed was founded on the telegram from petitioner requiring him to explain his absence without leave which he received on March 29, 1990. None of them exerted efforts to confirm from petitioner's office whether they had in fact been dismissed.

In the case of Indophil Acrylic Manufacturing Corporation vs. NLRC,[7] where private respondent filed a complaint for illegal dismissal against his employer after he was prevented by the company guard from entering the company premises on the ground that he had resigned, the Court, which held that private respondent was not illegally dismissed, stated:

x x x

> The present case, which has lasted for almost four (4) years, could have been avoided had private respondent made previous inquiry regarding the veracity of Mr. Gaviola's instruction, and not simply relied on the bare statement of the company guard. Private respondent should have been more vigilant of his rights

as an employee because at stake was not only his position but also his means of livelihood.

Furthermore, petitioner denied the allegation that it terminated respondent security guards' employment without just cause and even alleged that respondent guards abandoned their employment. Thus, absent any showing of an overt or positive act proving that petitioner had dismissed Mercado, Somosot and Oliver, their claim of illegal dismissal cannot be sustained.[8]

There being no finding that respondent security guards were illegally dismissed, there is no basis for an award of backwages in their favor. It is axiomatic that before backwages may be granted, there must be unjust or illegal dismissal from work.[9]

Neither did the NLRC find evidence to support petitioner's allegation that Mercado, Somosot and Oliver abandoned their employment. The records reveal that their failure to report for duty was not caused by a willful and deliberate intent to abandon their employment. Rather, such failure resulted from their belief, though mistaken, that they had been suspended or terminated from work. The rule is that for abandonment to exist, two elements must concur: first, the employee must have failed to report for work or must have been absent without justifiable reason; and second, there must have been a clear intention to sever the employer-employee relationship manifested by some overt acts.[10] The filing by Mercado, Somosot and Oliver of their complaints for illegal dismissal negates the existence of any intention on their part to abandon their employment.[11]

On the other hand, there is merit in petitioner's argument that there was an error in the computation of the amounts constituting underpayment of overtime pay, 13th month pay and service incentive leave benefits to respondent security guards by the Labor Arbiter, which in turn was affirmed by the NLRC.

The Labor Arbiter found that Mercado, Somosot and Oliver were not paid the minimum wage from January 1, 1988 to March 22, 1990. On the basis of this finding, he determined that respondent security guards incurred underpayments in their wages for the periods January 1, 1988 to August 31, 1988 and July 1, 1989 to March 22,

1990.[12] However, he noted that there were no underpayments in their wages for the period September 1, 1988 to June 30, 1989.[13] The discrepancy between the minimum wage prevailing for the periods concerned and the wages and other benefits received by the security guards also served as the basis for the Labor Arbiter's computation of underpayments for overtime, 13th month and service incentive leave benefits.

However, in computing the underpayment for overtime, 13th month and service incentive leave benefits, the Labor Arbiter erroneously included the period from September 1, 1988 to June 30, 1989 in spite of his finding that there was no underpayment in wages during said period.

The period from September 1, 1988 to June 30, 1989 should thus be excluded in the computation of the underpayments for overtime, 13th month and service incentive leave benefits of respondent security guards. Accordingly, there is a need to recompute the underpaid amounts due to the respondent security guards with respect to their overtime, 13th month and service incentive leave benefits in conformity with the evidence presented.

The Court also finds merit in petitioner's argument that the NLRC should not have reversed the Labor Arbiter's finding that the CHR is liable for the payment of P28,500.00 representing the differentials of respondent security guards' wage, overtime, 13th month and service incentive leave benefits for the period July 1, 1989 to April 15, 1990.

The record shows that petitioner informed the CHR regarding the increase in the wages of the security guards effective July 1, 1989, pursuant to R.A. 6727 which mandated a Twenty Five Peso (P25.00) increase in the daily wage rate in a Letter dated August 7, 1989.[14] In its reply letter dated April 16, 1990, the CHR stated that it had approved the increase in the wages effective April 16, 1990.[15]

The CHR, however, maintains that it is not liable to pay increased wages to the security guards and claims that there is a proviso in Section 4 of R.A. 6727[16] which exempts employees already receiving more than P100.00 daily from receiving the P25.00 increase required under said law. The CHR argues that since the security guards were

receiving P103.56 daily for the year 1989, it was not required to pay them the P25.00 per day increase under R.A. 6727. The CHR further asserts that its approved increase in the security guards' wages from April 16, 1990 was due only to humanitarian reasons and was not an admission of any obligation to increase the same under R.A. 6727.[17]

It must be noted that both the Labor Arbiter and the NLRC found that there were discrepancies in the minimum wage prescribed under R.A. 6727 and what were actually received by respondent security guards from July 1, 1989. The rule is that the factual findings of the Labor Arbiter, when affirmed by the NLRC are accorded to great weight and respect when supported by substantial evidence, and devoid of any unfairness and arbitrariness.[18]

Section 6 of R.A. 6727 imposes the liability for payment of the increase in wages on the principal which in this case is the CHR, thus:

> In case of contracts for construction projects and for security, janitorial and similar services, the prescribed increases in the wage rates of the workers shall be borne by the principals or clients of the construction/service contractors and the contract shall be deemed amended accordingly. In the event however, that the principal or client fails to pay the prescribed wage rates, the construction/service contractor shall be jointly and severally liable with his principal or client. (Emphasis supplied.)

It is thus clear that the CHR is the party liable for payment of the wage increase due to respondent security guards. While petitioner, as the contractor, is held solidarily liable for the payment of wages, including wage increases, as prescribed under the Labor Code,[19] the obligation ultimately belongs to the CHR as principal.

The Court in Eagle Security Agency, Inc. vs. NLRC,[20] also cited in Rabago vs. NLRC,[21] and Spartan Security and Detective Agency vs. NLRC,[22] ruled on this issue as follows:

> The Wage Orders are explicit that payment of the increase are "to be borne" by the principal or client. "To be borne", however, does not mean that the principal, PTSI in this case, would directly pay the security guards the wage and allowance

> increases because there is no privity of contract between them. The security guards' contractual relationship is with their immediate employer, EAGLE. As an employer, EAGLE is tasked, among others, with the payment of their wages [See Article VII, Sec. 3 of the Contract for Security Services, Supra, and Bautista vs. Inciong, G.R. No. 52824, March 16, 1988, 158 SCRA 665].

On the other hand, there existed a contractual agreement between PTSI and EAGLE wherein the former availed of the security services provided by the latter. In return, the security agency collects from its client payment for its security services. This payment covers the wages for the security guards and also expenses for their supervision and training, the guards' bonds, firearms with ammunitions, uniforms and other equipments [sic], accessories, tools, materials and supplies necessary for the maintenance of a security force.

Premises considered, the security guards' immediate recourse for the payment of the increases is with their direct employer, EAGLE. However, in order for the security agency to comply with the new wage and allowance rates it has to pay the security guards, the Wage Orders made specific provision to amend existing contracts for security services by allowing the adjustment of the consideration paid by the principal to the security agency concerned What the Wage Orders require, therefore, is the amendment of the contract as to the consideration to cover the service contractor's payment of the increase mandated. In the end therefore, the ultimate liability for the payment of the increases rests with the principal (Emphasis supplied.).[23]

The Labor Arbiter was therefore correct in requiring the CHR to reimburse petitioner the amount of P28,500.00 representing the unpaid wage increases of respondent security guards for the period July 1, 1989 to April 15, 1990.

Petitioner's Letter dated August 7, 1989 addressed to the CHR regarding the increase in wage rates of its security guards pursuant to R.A. 6727 cannot be interpreted as a mere proposal for wage increases for its employees, because the wage increase referred to therein is one mandated by law, and as R.A. 6727 expressly provides

in Section 6 thereof existing contracts for security services between the service contractor and the principal are deemed amended by said law. There is, therefore, no merit in the NLRC's assertion that since the CHR agreed to increase the wages of respondent security guards only from April 16, 1990, it can only be held liable for wage increases from that date instead of from July 1, 1989.

WHEREFORE, the assailed Decision of the NLRC in NLRC Case Nos. 00-03-01791-90 and 00-03-01886-90 is hereby affirmed with the **MODIFICATION** that the amounts corresponding to the underpayment of overtime, 13th month and service incentive leave benefits for the period September 1, 1988 to June 30, 1989 as determined by the Labor Arbiter be recomputed; and the ruling of the Labor Arbiter that the CHR is liable to reimburse petitioner in the amount of Twenty Eight Thousand Five Hundred Pesos (P28,500.00) representing the unpaid wage increases from July 1, 1989 to April 15, 1990 due to respondents Mercado, Somosot and Oliver is hereby **REINSTATED.**

SO ORDERED.

Davide, Jr., *C.J.*, Puno, Pardo and Ynarez-Santiago, *JJ.*, concur.

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[1] An Act to Rationalize Wage Policy Determination by Establishing the Mechanism and Proper Standards Therefor, Amending for the Purpose Article 99 of, and Incorporating Articles 120, 121, 122, 123, 124, 126 and 127 into, Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, Fixing New Wage Rates, Providing Wage Incentives for Industrial Dispersal to the Countryside, and for Other Purposes.
[2] Rollo, pp. 146-158.
[3] Id., at 158.
[4] Id., at 19-33.
[5] Id., at 32-33.
[6] Petition, Id., at 9.
[7] 226 SCRA 723 (1993).
[8] Chong Guan Trading vs. NLRC, 172 SCRA 831, 841 (1989).
[9] Filflex Industrial and Manufacturing Corporation vs. NLRC, 286 SCRA 245, 253 (1998).

[10] Golden Thread Knitting Industries, Inc., et al. vs. NLRC, et al., 304 SCRA 568, 585 (1999).
[11] Golden Thread Knitting Industries, Inc., et al. vs. NLRC, et al., supra Note 10; Masagana Concrete Products vs. NLRC, 313 SCRA 579, 592-593 (1999); Kams International, Inc., et al. vs. NLRC, 315 SCRA 316, 323 (1999); Philippine Industrial Security Corporation vs. NLRC, G.R. No. 127421, December 8, 1999.
[12] Decision of the Labor Arbiter dated November 18, 1991, Rollo, p. 154.
[13] Ibid.
[14] See Rollo, p. 70.
[15] Id., at 71.
[16] Section 4, R A. 6727 states:
(a) Upon effectivity of this Act, the statutory minimum wage rates of all workers and employees in the private sector, whether agricultural or non-agricultural, shall be increased by twenty-five pesos (P25.00) per day, except that workers and employees in plantation agricultural enterprises outside of the National Capital Region (NCR) with an annual gross sales of less than five million pesos (P5,000,000.00} in the preceding year shall be paid an increase of twenty pesos (P20.00), and except further that workers and employees of cottage/handicraft industries, non-plantation agricultural enterprises, retail/service establishments regularly employing not more than ten (10) workers, and business enterprises with a capitalization of not more than five hundred thousand pesos (P500,000.00) and employing not more than twenty (20) employees, which are located or operating outside the NCR, shall be paid only an increase of fifteen pesos (P15.00): Provided, That those already receiving above the minimum wage rates up to one hundred pesos (P100.00) shall also receive an increase of twenty-five pesos (P25.00) per day, except that the workers and employees mentioned in the first exception clause of this Section shall also be paid only an increase of twenty pesos (P20.00), and except further that those employees enumerated in the second exception clause of this Section shall also be paid an increase of fifteen pesos (P15.00): Provided further, That the appropriate Regional Board is hereby authorized to grant additional increases to the workers and employees mentioned in the exception clauses of this Section if, on the basis of its determination pursuant to Article 124 of the Labor Code such increases are necessary. (Emphasis supplied.)
[17] Memorandum for the CHR, Rollo, pp. 139-140.
[18] Pepsi-Cola Products Philippines, Inc. vs. NLRC, 315 SCRA 587, 597 (1999).
[19] Article 106 of the Labor Code states:
Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to

the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiation's within this type of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machinery, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. IN such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

Article 107 of the Labor Code provides:

Indirect employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

Article 109 of the Labor Code provides:

Solidary liability. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provisions of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

[20] 173 SCRA 479 (1989).
[21] 200 SCRA 158, 161-163 (1991)
[22] 213 SCRA 528, 533 (1992).
[23] 173 SCRA 479, 486 487 (1989).