SUPREME COURT
FIRST DIVISION

SENTINEL SECURITY AGENCY, INC.,
***Petitioner*,**

-versus-

G.R. No. 122468
September 3, 1998

NATIONAL LABOR RELATIONS, COMMISSION, ADRIANO CABANO, JR., VERONICO C. ZAMBO, HELCIAS ARROYO, RUSTICO ANDOY, and MAXIMO ORTIZ,
***Respondents*.**
x----------x

PHILIPPINE AMERICAN LIFE INSURANCE COMPANY,
***Petitioner*,**

-versus-

G.R. No. 122716
September 3, 1998

NATIONAL LABOR RELATIONS COMMISSION, VERONICO ZAMBO, HELCIAS ARROYO, ADRIANO CABANO, MAXIMO ORTIZ, RUSTICO ANDOY,

Respondents.

x----------x

D E C I S I O N
RESOLUTION dated November 16, 1998

PANGANIBAN, *J.*:

The transfer of an employee involves a lateral movement within the business or operation of the employer, without demotion in rank, diminution of benefits or, worse, suspension of employment even if temporary. The recall and transfer of security guards require reassignment to another post and are not equivalent to their placement on "floating status." Off-detailing security guards for a reasonable period of six months is justified only in bona fide cases of suspension of operation, business or undertaking.

The Case

This is the rationale used by the Court in dismissing the two consolidated petitions for *certiorari* before us, seeking the reversal of the Decision dated August 25, 1995, and the Resolution dated October 24, 1995, both promulgated by the National Labor Relations Commission[1] in NLRC Case No. V-0317-94 (RAB VII-01-0097-94, RAB VII-02-0173-94, and RAB VII-01-0133-94).

In the action for illegal dismissal and payment of salary differential, service incentive leave pay and separation pay filed by private respondents, Labor Arbiter Dominador A. Almirante rendered a Decision, which disposed:[2]

> "WHEREFORE, premises considered, judgment is hereby rendered ordering Sentinel Security Agency, Inc. jointly and severally with Philamlife, Cebu Branch, to pay complainants the total amount of sixty thousand one hundred twelve pesos and 50/100 (P60,112.50) in the concept of 13th month pay and service incentive leave benefits as computed by our Labor Arbitration Associate whose computation is hereto attached and forming part hereof."[3]

On appeal, the NLRC modified the labor arbiter's Decision. The dispositive portion of the NLRC Decision[4] reads:

> "WHEREFORE, the assailed Decision is hereby MODIFIED in so far as the award of 13th month pay for the previous years which is hereby excluded. Further, Sentinel Security Agency, Inc. is hereby ORDERED to pay complainants separation pay at the rate of 1/2 month pay for every year of service and for both Philippine American Life Insurance, Inc. and Sentinel Security Agency, Inc. and/or Daniel Iway to pay to the complainants jointly and severally their backwages from January 16, 1994 to January 15, 1995 and the corresponding 13th month pay for the said year. The monetary awards hereby granted are broken down as follows into separation pay, back wages, 13th month pay and service incentive leave pay:
>
> x x x."[5]

The challenged Resolution denied reconsideration "for lack of merit."[6]

The Facts

The undisputed factual backdrop is narrated by Respondent Commission as follows:[7]

> "The complainants were employees of Sentinel Security Agency, Inc., hereafter referred to as 'the Agency' since March 1, 1966 in the case of Veronico Zambo; October 27, 1975 in the case of Helcias Arroyo; September 20, 1985 in the case of Adriano Cabano; February 1, 1990 in the case of Maximo Ortiz; and

November 1, 1967 in the case of Rustico Andoy. They were assigned to render guard duty at the premises of Philippine American Life Insurance Company at Jones Avenue, Cebu City. On December 16, 1993 Philippine American Life Insurance Company 'the Client,' for brevity, through Carlos De Pano, Jr., sent notice to all concerned that the Agency was again awarded the contract of security services together with a request to replace all the security guards in the company's offices at the cities of Cebu, Bacolod, Cagayan de Oro, Dipolog and Iligan. In compliance therewith, the Agency issued on January 12, 1994, a Relief and Transfer Order replacing the complainants as guards of the Client and for them to be re-assigned to other clients effective January 16, 1994. As ordered, the complainants reported but were never given new assignments but instead they were told in the vernacular, 'gui-ilisan mo kay mga tigulang naman mo' which when translated means, 'you were replaced because you are already old.' Precisely, the complainants lost no time but filed the subject illegal dismissal cases on January 18, January 26 and February 4, 1994 and prayed for payment of separation pay and other labor standard benefits.

"The Client and the Agency maintained there was no dismissal on the part of the complainants, constructive or otherwise, as they were protected by the contract of security services which allows the recall of security guards from their assigned posts at the will of either party. It also advanced that the complainants prematurely filed the subject cases without giving the Agency a chance to give them some assignments.

"On the part of the Client, it averred further that there was no employer-employee relationship between it and the complainants as the latter were merely assigned to its Cebu Branch under a job contract; that the Agency had its own separate corporate personality apart from that of the Client. Besides, it pointed out that the functions of the complainants in providing security services to the Client's property were not necessary and desirable to the usual business or trade of the Client, as it could still operate and engage in its life insurance business without the security guards. In fine, the Client

maintains that the complainants have no cause of action against it."

Ruling of Respondent Commission

Respondent Commission ruled that the complainants were constructively dismissed, as "the recall of the complainants from their long time posts at the premises of the Client without any good reason is a scheme to justify or camouflage illegal dismissal."

It ruled that Superstar Security Agency, Inc. vs. National Labor Relations[8] and A' Prime Security Services, Inc. vs. National Labor Relations Commission[9] were not applicable to the case at bar. In the former, the security guard was placed on temporary "off-detail" due to his poor performance and lack of elementary courtesy and tact, and to the cost-cutting program of the agency. In the latter, the relief of the security guard was due to his sleeping while on duty and his repeated refusal to resume work despite notice.

In the present case, the complainants were told by the Agency that they lost their assignment at the Client's premises because they were already old, and not because they had committed any infraction or irregularity. The NLRC applied RA 7641,[10] which gives retirement benefits of one-half month pay per year of service to retirable employees, viz.:

> "As stated earlier, the complainants were in the service of [the Client] for nearly twenty (20) years in the cases of Helcias Arroyo and for more than twenty (20) years in the cases of Veronico Zambo and Rustico Andoy, which long years of service appear on record to be unblemished. The complainants were then confronted with an impending sudden loss of earnings for while the order of the Agency to 'immediately report for reassignment' momentarily gave them hope, there was in fact no immediate reinstatement. While it could have been prudent for the complainants to wait, they were set unstable and were actually threatened by the statement of the personnel in charge of the Agency that they were already old, that was why they were replaced.

> "Against these glaring facts is the new Retirement Law, R.A. 7641 which took effect on January 7, 1993 giving retirement benefits of 1/2 month pay per year of service to an employee upon reaching retirement age to be paid by the employer, in this case at quite a sizeable amount and in not so long due time as some of the complainants were described as already old."

As complainants were illegally dismissed, the NLRC ruled that they were entitled to the twin remedies of back wages for one (1) year from the time of their dismissal on January 15, 1994, payable by both the Client and the Agency, and separation pay of one-half month pay for every year of service payable only by the Agency. Reinstatement was not granted due to the resulting antipathy and resentment among the complainants, the Agency and the Client.

Hence, this petition.[11]

The Issues

In their memoranda, the Agency poses this question:[12]

> "Whether Sentinel is guilty of illegal dismissal,"

> On the other hand, the Client raises the following issues:[13]

> "Whether the complainants were illegally dismissed by their employer, Sentinel Security Agency, Inc., and in holding petitioner to be equally liable therefor.

> "Whether petitioner is jointly and severally liable with Sentinel Security Agency, Inc., in the latter's payment of backwages, 13th month pay and service incentive leave pay to its employees."

In sum, the resolution of these consolidated petitions hinges on (1) whether the complainants were illegally dismissed, and (2) whether the Client is jointly and severally liable for their thirteenth-month and service incentive leave pays.

The Court's Ruling

The petition is partly meritorious.

First Issue: Illegal Dismissal

The private respondents' transfer, according to Respondent Commission, was effected to circumvent the mandate of Republic Act 7641 (New Retirement Law), which by then had already taken effect, in view of the fact that the complainants had worked for both the Client and the Agency for 10 to 20 years and were nearing retirement age. With this premise, the NLRC concluded that the guards were illegally dismissed. The complainants add that the findings of the Commission match the remarks of the personnel manager of the Agency, Feliciano Marticion; that is, that they were being replaced because they were already old. They insist that their service records are unblemished; hence, they could not have been dismissed by reason of any just cause.

We agree that the security guards were illegally dismissed, but not for the reasons given by the public respondent. The aforecited contentions of the NLRC are speculative and unsupported by the evidence on record. As the solicitor general said in his Manifestation in Lieu of Comment, the relief and transfer order was akin to placing private respondents on temporary "off-detail."

Being sidelined temporarily is a standard stipulation in employment contracts, as the availability of assignment for security guards is primarily dependent on the contracts entered into by the agency with third parties. Most contracts for security services, as in this case, stipulate that the client may request the replacement of the guards assigned to it. In security agency parlance, being placed "off detail" or on "floating" status means "waiting to be posted."[14] This circumstance is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time.[15]

In the case at bar, the relief and transfer order per se did not sever the employment relationship between the complainants and the Agency. Thus, despite the fact that complainants were no longer assigned to the Client, Article 287 of the Labor Code, as amended by RA 7641, still binds the Agency to provide them — upon their reaching the retirement age of sixty to sixty-five years — retirement pay or

whatever else was established in the collective bargaining agreement or in any other applicable employment contract. On the other hand, the Client is not liable to the complainants for their retirement pay because of the absence of an employer-employee relationship between them.

However, the Agency claims that the complainants, after being placed off-detail, abandoned their employ. The solicitor general, siding with the Agency and the labor arbiter, contends that while abandonment of employment is inconsistent with the filing of a complaint for illegal dismissal, such rule is not applicable "where the complainant expressly rejects this relief and asks for separation pay instead."

The Court disagrees. Abandonment, as a just and valid cause for termination, requires a deliberate and unjustified refusal of an employee to resume his work, coupled with a clear absence of any intention of returning to his or her work.[16] That complainants did not pray for reinstatement is not sufficient proof of abandonment. A strong indication of the intention of complainants to resume work is their allegation that on several dates they reported to the Agency for reassignment, but were not given any. In fact, the contention of complainant is that the Agency constructively dismissed them. Abandonment has recently been ruled to be incompatible with constructive dismissal. We, thus, rule that complainants did not abandon their jobs.[17]

We will now demonstrate why we believe complainants were illegally dismissed.

In several cases, the Court has recognized the prerogative of management to transfer an employee from one office to another within the same business establishment, as the exigency of the business may require, provided that the said transfer does not result in a demotion in rank or a diminution in salary, benefits and other privileges of the employee;[18] or is not unreasonable, inconvenient or prejudicial to the latter;[19] or is not used as a subterfuge by the employer to rid himself of an undesirable worker.[20]

A transfer means a movement (1) from one position to another of equivalent rank, level or salary, without a break in the service;[21] and

(2) from one office to another within the same business establishment.[22] It is distinguished from a promotion in the sense that it involves a lateral change as opposed to a scalar ascent.[23]

In this case, transfer of the complainants implied more than a relief from duty to give them time to rest — a mere "changing of the guards." Rather, their transfer connoted a reshuffling or exchange of their posts, or their reassignment to other posts, such that no security guard would be without an assignment.

However, this legally recognized concept of transfer was not implemented. The Agency hired new security guards to replace the complainants, resulting in a lack of posts to which the complainants could have been reassigned. Thus, it refused to reassign Complainant Andoy when he reported for duty on February 2, 4 and 7, 1994; and merely told the other complainants on various dates from January 25 to 27, 1994 that they were already too old to be posted anywhere.

The Agency now explains that since, under the law, the Agency is given a period of not more than six months to retain the complainants on floating status, the complaint for illegal dismissal is premature. This contention is incorrect.

A floating status requires the dire exigency of the employer's bona fide suspension of operation, business or undertaking. In security services, this happens when the clients that do not renew their contracts with a security agency are more than those that do and the new ones that the agency gets. However, in the case at bar, the Agency was awarded a new contract by the Client. There was no surplus of security guards over available assignments. If there were, it was because the Agency hired new security guards. Thus, there was no suspension of operation, business or undertaking, bona fide or not, that would have justified placing the complainants off-detail and making them wait for a period of six months. If indeed they were merely transferred, there would have been no need to make them wait for six months.

The only logical conclusion from the foregoing discussion is that the Agency illegally dismissed the complainants. Hence, as a necessary consequence, the complainants are entitled to reinstatement and back

wages.[24] However, reinstatement is no longer feasible in this case. The Agency cannot reassign them to the Client, as the former has recruited new security guards; the complainants, on the other hand, refuse to accept other assignments. Verily, complainants do not pray for reinstatement; in fact, they refused to be reinstated. Such refusal is indicative of strained relations.[25] Thus, separation pay is awarded in lieu of reinstatement.[26]

Second Issue: Client's Liability

The Client did not, as it could not, illegally dismiss the complainants. Thus, it should not be held liable for separation pay and back wages. But even if the Client is not responsible for the illegal dismissal of the complainants, it is jointly and severally liable with the Agency for the complainants' service incentive leave pay. In Rosewood Processing, Inc. vs. National Labor Relations Commission,[27] the Court explained that, notwithstanding the service contract between the client and the security agency, the two are solidarily liable for the proper wages prescribed by the Labor Code, pursuant to Articles 106, 107 and 109 thereof, which we quote hereunder:

> "ART. 106. 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 differentiations within these types 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.
>
> "In such cases labor-only contracting, 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.
>
> "ART. 107. 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.
>
> "ART. 109. 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 provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers."

Under these provisions, the indirect employer, who is the Client in the case at bar, is jointly and severally liable with the contractor for the workers' wages, in the same manner and extent that it is liable to its direct employees. This liability of the Client covers the payment of the service incentive leave pay of the complainants during the time they were posted at the Cebu Branch of the Client. As service had been rendered, the liability accrued, even if the complainants were eventually transferred or reassigned.

The service incentive leave is expressly granted by these pertinent provisions of the Labor Code:

> "ART. 95. Right to service incentive leave. — (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court [or] administrative action."

Under the Implementing Rules and Regulations of the Labor Code, an unused service incentive leave is commutable to its money equivalent, viz.:

"Sec. 5. Treatment of benefit. — The service incentive leave shall be commutable to its money equivalent if not used or exhausted at the end of the year."

The award of the thirteenth-month pay is deleted in view of the evidence presented by the Agency, proving that such claim has already been paid to the complainants. Obviously then, the award of such benefit in the dispositive portion of the assailed Decision is merely an oversight, considering that Respondent Commission itself deleted it from the main body of the said Decision.

WHEREFORE, the Petition is **DISMISSED** and the assailed Decision and Resolution are hereby **AFFIRMED**, but the award of the thirteenth-month pay is **DELETED**. Costs against petitioners.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Quisumbing, *JJ.*, concur.

---

[1] Fourth Division, Cebu City, composed of Pres. Comm. Irenea E. Ceniza, ponente; Comms. Bernabe S. Batuhan, dissenting; and Amorito V. Cañete, concurring.

[2] Rollo (GR No 122468), p. 30.

[3] Totalling P60,112.50.
[4] NLRC Decision, pp. 9-10; rollo (GR No. 122468), pp. 41-42.
[5] Totalling P425,565.37, divided as follows: separation pay, P163,630 82; back wages, P233,758.20; 13th month pay, P19,630.82; and service incentive leave pay, P8,686.50.
[6] Rollo (GR No. 122468), p. 56; with Commissioner Batuhan still dissenting.
[7] NLRC Decision, pp. 2-4; rollo (GR No. 122468), pp. 34-36.
[8] 184 SCRA 74, April 3, 1990.
[9] 220 SCRA 143, March 19, 1993.
[10] Effective January 7, 1993.
[11] This case was deemed submitted for decision upon the receipt by the Court, on November 12, 1997, of the Memorandum for Petitioner Sentinel.
[12] Rollo (GR No. 122468), p. 151.
[13] Rollo (GR No. 122716), p. 94.
[14] Superstar Agency, Inc. vs. National Labor Relations Commission, supra.
[15] Agro Commercial Security Services Agency, Inc. vs. National Labor Relations Commission, 175 SCRA 790, 797, July 31, 1989.
[16] Escobin vs. National Labor Relations Commission, GR No. 118159; April 15, 1998, p. 25; Jackson Building Condominium Incorporation vs. National Labor Relations Commission, 246 SCRA 329, 332, July 14, 1995; Reno Foods, Inc. vs. National Labor Relations Commission, 249 SCRA 379, 386, October 18, 1995; Balayan Colleges vs. National Labor Relations Commission, 255 SCRA 1, 9-10, March 14, 1996; and Philippine Advertising Counselors, Inc. vs. National Labor Relations Commission 263 SCRA 395, 402, October 21, 1996.
[17] Escobin vs. NLRC, supra; Philippine Japan Active Carbon Corporation vs. National Labor Relations Commission, 171 SCRA 164, 168, March 8, 1989; and Philippine Advertising Counselors, Inc. vs. National Labor Relations Commission, supra.
[18] Asis vs. National Labor Relations Commission, 252 SCRA 379, 384, January 25, 1996.
[19] Chu vs. National Labor Relations Commission, 232 SCRA 764, 768, June 2, 1994.
[20] Pocketbell Philippines, Inc. vs. National Labor Relations Commission, 240 SCRA 358, 367, January 20, 1995; and Philippine Telegraph and Telephone Co. vs. Laplana, 199 SCRA 485, 1991.
[21] Millares vs. Subido, 20 SCRA 954, 962, August 10, 1967.
[22] Yuco Chemical Industries vs. MOLE, 185 SCRA 727, May 28, 1990.
[23] Millares vs. Subido, supra; and Dosch vs. National Labor Relations Commission, 123 SCRA 296, 311, July 5, 1983.
[24] JGB and Associates, Inc. vs. National Labor Relations Commission, 254 SCRA 457, 466, March 7, 1996.
[25] Congson vs. National Labor Relations Commission, 243 SCRA 260, 270, April 5, 1995.
[26] Pepsi Cola Distributors of the Philippines, Inc. vs. National Labor Relations Commission, 247 SCRA 386, 397, August 15, 1995; and L.T . Datu and Co.

vs. National Labor Relations Commission, 253 SCRA 440, 453, February 9, 1996.

[27] GR No. 116476-84, May 21, 1998, pp. 17-23.