

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**SOLIMAN SECURITY SERVICES, INC.  
and/or TERESITA L. SOLIMAN,  
*Petitioners,***

***-versus-***

**G.R. No. 143215  
July 11, 2002**

**THE COURT OF APPEALS and  
EDUARDO VALENZUELA,  
*Respondents.***

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**DECISION**

**VITUG, J.:**

Respondent Eduardo Valenzuela, a security guard, was a regular employee of petitioner Soliman Security Services assigned at the BPI-Family Bank, Pasay City. On 09 March 1995, he received a memorandum from petitioners relieving him from his post at the bank, said to be upon the latter's request, and requiring him to report to the security agency for reassignment. The following month, or on 07 April 1995, respondent filed a complaint for illegal dismissal on the ground that his services were terminated without a valid cause and that, during his tenure at the bank, he was not paid his overtime pay, 13<sup>th</sup> month pay, and premium pay for services rendered during holidays and rest days. He averred that, after receiving the

memorandum of 09 March 1995, he kept on reporting to the office of petitioners for reassignment but, except for a brief stint in another post lasting for no more than a week, he was put on a “floating” status.

Petitioners contended that the relief of respondent from his post, made upon request of the client, was merely temporary and that respondent had been offered a new post but the latter refused to accept it. Petitioners argued that respondent’s floating status for barely 29 days did not constitute constructive dismissal.

On 31 July 1995, the Labor Arbiter, Ariel Cadiente Santos, arrived at a decision holding petitioners guilty of constructive dismissal and ordering the reinstatement of the complainant to his former position with full backwages from the date of his “dismissal” until his actual reinstatement; directing the Research and Information Unit to compute the various monetary benefits awarded to the complainant; and adjudging the payment, by way of attorney’s fees, of ten percent (10%) of all sums owing to the complainant.

On 16 October 1998, petitioners filed an appeal to the National Labor Relations Commission (NLRC).

On 11 November 1998, the NLRC issued an order directing petitioners to submit an affidavit to the effect that their appeal bond was genuine and that it would be in force and effect until the final disposition of the case. In his reply memorandum, dated 28 November 1998, respondent, asseverating that petitioners failed to deposit the required bond for the appeal, sought the appeal to be declared as not having been validly perfected. On 19 January 1999, petitioners submitted a manifestation and affidavit in compliance with the 11th November 1998 order of the NLRC.<sup>[1]</sup> Apparently satisfied, the NLRC, on 30 April 1999, gave due course to the appeal and rendered the presently assailed decision, reversing that of the Labor Arbiter, to wit:

“WHEREFORE, the decision appealed from is hereby SET ASIDE. However, respondent [before the NLRC] is hereby ordered to pay complainant separation pay computed at one-half (1/2) month for every year of service, reckoned from date of

employment on October 9, 1990 up to September 9, 1995, the date the complainant should have been redeployed.”<sup>[2]</sup>

A motion for reconsideration, filed by herein private respondent Valenzuela, was denied by the NLRC.

Valenzuela forthwith brought the matter up to the Court of Appeals. On the thesis that the only issue interposed was whether or not the NLRC committed grave abuse of discretion when it took cognizance of the appeal and reversed the decision of the Labor Arbiter despite the failure of herein petitioners to validly post the appeal bond, the appellate court responded in the affirmative, set aside the assailed decision of the NLRC and reinstated that of the Labor Arbiter. A motion to reconsider the decision was denied.

In the instant recourse before this Court, petitioners claim that the Court of Appeals (Eleventh Division) has committed grave abuse of discretion amounting to lack or excess of jurisdiction in declaring petitioners to have failed in perfecting their appeal with the NLRC.

This Court finds merit in the petition.

Private respondent would posit that the appeal of petitioners to the NLRC should be considered to have been made on 19 January 1999 (when petitioner submitted, pursuant to the NLRC order, a statement under oath to the effect that the surety bond it had posted was genuine and confirmed it to be in effect until the final termination of the case) which was beyond the ten-day period for perfecting an appeal. The records before the Court would show, however, that an appeal bond was posted with the NLRC at the same time that the appeal memorandum of petitioners was filed on 16 October 1998. A certified true copy of the appeal bond<sup>[3]</sup> would indicate that it was received by the Commission on 16 October 1998, the date reflected by the stamp-mark thereon. The surety bond issued by the Philippine Charter Insurance Corporation bore the date of 14 October 1998 or two days before the appeal memorandum was seasonably filed on 16 October 1998. The Order,<sup>[4]</sup> dated 11 November 1998, of the NLRC categorically stated that “records [would] disclose that the instant appeal [was] accompanied by a surety bond, as the Decision sought to be appealed involved a monetary award.” The NLRC, in fact, ordered

petitioner to submit an affidavit to confirm that its appeal bond was genuine and would be in force and effect until the final disposition of the case. The Commission's declaration that the appeal was accompanied by a surety bond indicated that there had been compliance with Article 223<sup>[5]</sup> of the Labor Code.

An appeal to the NLRC is perfected once an appellant files the memorandum of appeal, pays the required appeal fee and, where an employer appeals and a monetary award is involved, the latter posts an appeal bond or submits a surety bond issued by a reputable bonding company.<sup>[6]</sup> In line with the desired objective of labor laws to have controversies promptly resolved on their merits, the requirements for perfecting appeals are given liberal interpretation and construction.<sup>[7]</sup>

The only issue on the merits of the case is whether or not private respondent should be deemed constructively dismissed by petitioner for having been placed on "floating status," i.e., with no reassignment, for a period of 29 days. The question posed is not new. In the case of *Superstar Security Agency, Inc., vs. NLRC*,<sup>[8]</sup> this Court, addressing a similar issue, has said:

"The charge of illegal dismissal was prematurely filed. The records show that a month after Hermosa was placed on a temporary 'off-detail,' she readily filed a complaint against the petitioners on the presumption that her services were already terminated. Temporary 'off-detail' is not equivalent to dismissal. In security parlance, it means waiting to be posted. It is a 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, 31 July 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."<sup>[9]</sup>

Constructive dismissal exists when an act of clear discrimination, insensibility or disdain, on the part of an employer has become so unbearable as to leave an employee with no choice but to forego

continued employment.<sup>[10]</sup> The temporary “off-detail” of respondent Valenzuela is not such a case.

**WHEREFORE**, the instant Petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals are **SET ASIDE** and the Decision of the National Labor Relations Commission in NCR CN. 04-02620-95 is **REINSTATED**. No costs.

**SO ORDERED.**

**Davide, Jr., C.J., Kapunan, Ynares-Santiago and Austria-Martinez, JJ., concur.**

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[1] Annexes E and E-1 of the Petition, Rollo, pp. 52-53.

[2] Rollo, p. 58.

[3] Annex C, *ibid.*, Rollo, p. 46.

[4] Annex D, *ibid.*, Rollo, pp. 50-51.

[5] Art. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely on questions of law, and

(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appeal from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards or orders.

[6] Workers of Antique Electric Coop., Inc. vs. NLRC, 333 SCRA 181.

[7] Fernandez vs. NLRC, 285 SCRA 149; Alcosero vs. NLRC, 288 SCRA 129.

[8] 184 SCRA 74; see also Valdez vs. NLRC, 286 SCRA 87.

[9] At p. 77.

[10] Blue Dairy Corp. vs. NLRC, 314 SCRA 401.