SUPREME COURT
FIRST DIVISION

SUPERSTAR SECURITY AGENCY, INC. and/or Col. ARTURO ANDRADA,
***Petitioners*,**

-versus-

G.R. No. 81493
April 3, 1990

NATIONAL LABOR RELATIONS COMMISSION and FILOMENA HERMOSA,
***Respondents*.**
x----------x

D E C I S I O N

MEDIALDEA, *J.*:

This Petition for Review on *Certiorari* seeks to reverse the Decision of the public respondent National Labor Relations Commission setting aside the decision of the Labor Arbiter and ordering the reinstatement of private respondent with limited backwages of one (1) year. This is an opportune time to stress once again that the appropriate remedy to assail the decisions of the National Labor Relations Commission is through a petition for *certiorari* under Rule 65 not Rule 45 of the Rules of Court. However, in the interest of justice, We shall treat this petition as a special civil action for

certiorari (De Asis, et al. vs. NLRC, G.R. No. 82478, September 7, 1989).

The antecedent facts are as follows:

On June 24, 1981, Filomena Hermosa (Hermosa, for short) was hired by petitioner Superstar Security Agency (Agency, for short) as a Security Guard with a daily salary of P37.00 and an emergency cost of living allowance of P510.00 per month. She was assigned to different detachments in premises owned by the Agency's clients such as the Supergarment Malugay Yakal (SMY) or Rustan Commercial Corporation Warehouse, Rustan Group of Companies consisting of Rustan Commercial Corporation (Cubao and Makati Detachments), Tourist Duty Free Shop (FTI Detachment, Hyatt, Hilton and Sheraton Detachments), and Rustan Supermarket Warehouse (Rockefeller Detachment). On February 1, 1985, the Agency placed Hermosa on a temporary "off-detail." On March 5, 1985, Hermosa filed a complaint for illegal dismissal. She claimed that she was unceremoniously dismissed on suspicion that she was the author of an anonymous report about the irregularities committed by her fellow lady security guards; that it was this precise reason why she was called to the headquarters by the Agency's Personnel Supervisor, Rafael Fermo; that, thereafter, Fermo threatened and directed her to keep any information regarding the matter to herself; that further, she was instructed not to report for duty at SMY effective February 1, 1985 as she would be given a new assignment; that she did as she was told but no new assignment came despite repeated follow-ups; and that instead, the Agency informed her that the cause of her temporary "off-detail" was the cost-cutting program of the Rustan Group of Companies and the refusal of Agency's clients to accept her allegedly due to poor performance, and lack of elementary courtesy and tact. Finally, Hermosa averred that she was denied due process in that she was neither informed of the alleged complaints against her nor afforded the opportunity to explain her side.

Petitioners, on the other hand, claimed that Hermosa was relieved of her SMY post due to the cost-cutting program of its clients; that while she was on temporary "off-detail" since February 1, 1985, the Agency continued to look for an available assignment for her with the other detachments; that, however, the respective Security Directors of the

said detachments signified their unwillingness to accept her because of her poor performance and undesirable conduct and behavior (Exhs. 6 to 13); that the Agency did not dismiss her at all; that Mr. Fermo did not receive any anonymous report of any irregularity committed by some security guards, hence, there was no basis for the supposed threat and instruction to complainant to be silent; that the Agency usually welcomes any report, if it exists, regarding the behavior of its personnel by conducting an inquiry thereon; that the Agency is committed to maintain the trust placed upon it by its clients as well as heed the latter's demands for good service; and that the complainant has been previously warned and reprimanded for breach or violation of the Agency's rules on discipline (Exh. 16 to 22).

On April 7, 1986, the Labor Arbiter rendered a decision, to wit:

> "WHEREFORE, pursuant to the above premises, the respondent Superstar Security Agency, Inc. is hereby ordered to pay the complainant the amount of P3,848.00 by way of separation pay.
>
> "SO ORDERED." (Rollo, p. 26)

On appeal to the respondent National Labor Relations Commission, the aforesaid decision was set aside and a decision favorable to complainant was issued, as follows:

> "WHEREFORE, premises considered, the appealed decision is hereby SET ASIDE, and another one entered, ordering the respondents to reinstate the complainant to her former position without loss of seniority rights and other related benefits but with a limited backwages of one (1) year without deduction and qualification.
>
> "SO ORDERED." (Rollo, pp. 20-21)

Hence, this recourse.

The sole issue presented for resolution is whether or not the petitioners are guilty of illegal dismissal (Memorandum of Petitioners, p. 6; Rollo, p. 71)

We resolve the issue in the negative. 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. (TSN, January 14, 1980, p. 35) 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, 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 Article 287 (now Article 286) of the Labor Code (see Agro case, supra). We note that Hermosa's "off-detail" from SMY was due not to petitioners' machination but to a previous request of SMY which was reiterated by the management on January 29, 1985 (Exhibit "22," Records, p. 69). Moreover, the defenses raised by the petitioners, namely, their clients' cost reduction program and their refusal to accept the complainant's services do not appear to Us as a "scheme to camouflage (Hermosa's) illegal dismissal." (NLRC decision, Records, p. 201). We simply cannot ignore the reality of the situation obtaining in this case. In the business world, companies which offer contracts for services cater to the whims and wishes of clients whether the same are reasonable or not. Clients are not expected to explain the reason for their demands while these companies are not only expected but also are bound to comply with their clients' directives. In the case at bar, We do not find it unusual for clients to resort to a cost-cutting program in view of the prevailing economic condition and then to manifest their preferences of people they want to work with in their establishments.

Hermosa maintains that her temporary "off-detail" is a mere cover-up since petitioners failed to present evidence to support their clients' cost-cutting program. We do not think so. Petitioners are neither involved in their clients' businesses nor do they exercise control over the latter's business operations. They only provide security to their clients' establishments. Consequently, the Agency has no right at all

to demand the reasons for their clients' action. Faced with its clients' negative reaction to Hermosa's detail, petitioners are practically powerless to disregard the position of its clients. To do otherwise would mean an end to petitioners' business relationship with them. Considering that it was only Hermosa among petitioners' employees who was affected by the clients' memoranda, it would be sheer foolishness for petitioners to press for Hermosa's detail to the detriment of its business. Justice, fairness and due process demand that an employer should not be penalized for situations where it had no participation or control (see M.F. Violago Oiler Tank Trucks vs. The National Labor Relations Commission, et. al., G.R. Nos. 56950-51, September 30, 1982, 117 SCRA 544 and A. Marquez vs. Leogardo, Jr., G.R. No. 63227, March 15, 1984, 128 SCRA 244).

Hermosa further argues that the clients' memoranda refusing her services are self-serving pieces of evidence since they contained a general statement of "undesirable conduct and behavior" which were secured after the complaint was filed. We are unconvinced. It must be borne in mind that at this point Hermosa was still placed on temporary "off-detail." The fact that the clients' memoranda came after the complaint bolsters the petitioners' stance that they were indeed looking for an available post for Hermosa but their clients formally turned down its request. Such refusal was not without basis. The offer of exhibits of petitioners before the Labor Arbiter reveals reports on Hermosa's past misconduct like: (1) inspecting a bag containing purchased items of a Tourist Duty-Free Shop (TDFS) customer; flaring up and talking in a loud voice upon being informed that a customer without plane ticket was allowed to purchase TDFS goods, both violative of TDFS rules and regulations; (2) reading magazines for sale and comics inside the store; (3) shouting at an employee of a client; (4) uttering unnecessary remarks while on duty which triggered a misunderstanding; and (5) wearing sexy shoes (sic) with an opening at the toes instead of the usual authorized shoes for lady security guards (Exh. "16," "17," "18", and "19," pp. 63-66). In the above infractions, the clients' respective Security Directors pursuant to an established practice took charge of the investigation and copies of the memorandum of the action taken thereon were furnished Hermosa and the Agency. Thus, the general statement of understandable conduct and behavior need not be spelled out since

petitioners already had information of Hermosa's previous misdemeanor.

Hermosa denies that she committed the foregoing acts of misconduct. She claims that the "evidence were planned and fabricated to lend a semblance of legality to the cause of (her) dismissal." (Memorandum of Petitioners, Rollo, p. 87). Hermosa's supposition is untenable. A study of the records reveals that other than her statement of denial, Hermosa did not present any corroborative evidence. Upon the other hand, the subject memoranda contained detailed reports on the incidents which would be difficult for petitioners to concoct. In the absence of a contrary evidence, the said memoranda are credible.

Considering, therefore, the circumstances of this case, We are more inclined to sustain the Labor Arbiter's award of separation pay than reinstatement. As the Labor Arbiter aptly puts it:

> "If by reason of complainant's justified placement under temporary off-detail no dismissal then could be spoken of, yet, by reason of subsequent events whereby she was rejected by the other detachments of the respondent Agency, it could be said that her continuing temporary off-detail has already become a permanent one. For this reason, there is a need to extend to the complainant separation pay equivalent to one (1) month pay for every year of service." (Decision of the Labor Arbiter, Rollo, p. 26)

ACCORDINGLY, the Decision of the NLRC dated October 30, 1987 is **SET ASIDE** and the Decision of the Labor Arbiter dated April 7, 1986 is hereby **REINSTATED**. No costs.

SO ORDERED.

Narvasa, *C.J., (Chairman)*, Gancayco and Griño-Aquino, *JJ.*, concur.
Cruz, *J.*, took no part.