Supreme Court E-Library

exercise of authority,[48] the CTA *En Banc*'s decision should be upheld.

The Court has always decreed that tax refunds are in the nature of tax exemptions which represent a loss of revenue to the government. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[49]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 182086. November 24, 2010]

BEBINA G. SALVALOZA, representing her late husband, GREGORIO SALVALOZA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, GULF PACIFIC SECURITY AGENCY, INC., and ANGEL QUIZON,** *respondents.*

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[48] *KEPCO Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009, 608 SCRA 207, 214 citing *Commissioner of Internal Revenue v. Cebu Toyo Corporation*, 491 Phil. 625, 640 (2005).

[49] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010.

Supreme Court E-Library

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE EMPLOYEE WAS NOT DISMISSED, OR, IF DISMISSED, THAT THE DISMISSAL WAS NOT ILLEGAL.—** It is settled that, in labor cases, the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal. Failure to discharge this burden would be tantamount to an unjustified and illegal dismissal.

2. **ID.; REPUBLIC ACT NO. 5487 (THE PRIVATE SECURITY AGENCY LAW); SECURITY GUARDS; A LICENSE IS REQUIRED BEFORE ONE CAN ACT OR WORK AS A SECURITY GUARD.—** The relevant provisions of Republic Act (R.A.) No. 5487 (The Private Security Agency Law) stipulate—"Section 6. *License Necessary*. – No person shall engage in the business of, or act either as a private detective, or detective agency; and either engage in the occupation, calling or employment of watchman or in the business of watchman's agency without first having obtained the necessary permit from the Chief, Philippine Constabulary which permit as approved is prerequisite in obtaining a license or license certificate: x x x. x x x Section 9. *Employees Need Not be Licensed.* – Every person operating, managing, directing or conducting a licensed private detective or watchmen agency shall also be considered a licensed private detective, or watchman and **no person shall be employed or used in a private detective work unless he be a licensed private detective or watchman**: *Provided*, That nothing in this section shall be construed as requiring detective license for persons employed solely for clerical or manual work." From the foregoing provisions, it is clear that a license is required before one can act or work as a security guard.

3. **ID.; ID.; ID.; A SECURITY GUARD HAS THE PERSONAL RESPONSIBILITY TO ENSURE THAT HE HAS A VALID AND SUBSISTING LICENSE TO BE QUALIFIED AND AVAILABLE FOR AN ASSIGNMENT.—** [C]ontrary to the posture of Gregorio, we hold that a security guard has the personal responsibility to obtain his license. Notwithstanding the practice of some security agencies to procure the licenses of their security guards for a fee, it remains the personal obligation of a security

Supreme Court E-Library

guard to ensure that he or she has a valid and subsisting license to be qualified and available for an assignment. Thus, when Gregorio was given the Memorandum dated August 2, 2001, directing him to complete his 201 file requirements, it meant that he had to submit each and every document to show his qualifications to work as a security guard, most important of which is his security guard license. Thus, his excuse that he was not informed that he already had an expired license and had to renew the same cannot be sustained. He should have known when his license was to expire. When he received the Memorandum, Gregorio did not even bother to verify what requirement he was supposed to complete or submit, whether it was indeed the license and/or some other document. Neither was it shown that he ever complied with this directive.

4. **ID.; ID.; ID.; A RELIEF AND TRANSFER ORDER IN ITSELF DOES NOT SEVER THE EMPLOYMENT BETWEEN A SECURITY GUARD AND THE AGENCY.—** We are mindful of the fact that, in cases involving security guards, most contracts for security services stipulate that the client may request the replacement of the guards assigned to it. A relief and transfer order in itself does not sever the employment relationship between a security guard and the agency. It is true that a security guard has the right to security of tenure, but this does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of or transfer the security guard to a station where his services would be most beneficial to the client. Indeed, an employer has the right to transfer or assign its employees from one office or area of operation to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.

5. **ID.; ID.; ID.; TEMPORARY "OFF-DETAIL" OR "FLOATING STATUS"; ELUCIDATED.—** Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts

Supreme Court E-Library

are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal, as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.

6. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.— There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice except to forego continued employment. It exists when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.

7. ID.; ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— It should be pointed out that, per his service record, Gregorio was thrice put on "floating status" by Gulf Pacific: (1) from October 22, 1996 to April 13, 1997, or a total of 174 days, or six (6) days less than six (6) months; (2) from July 14, 1999 to May 2, 2001, or a total of almost 22 months; and (3) indefinitely, starting from August 30, 2001. Of the three instances when Gregorio was temporarily "off-detailed," we find that the last two already ripened into constructive dismissal. While we acknowledge that Gregorio's service record shows that his performance as a security guard was below par, we join the LA in his finding that Gulf Pacific never issued any memo citing him for the alleged repeated errors, inefficiency, and poor performance while on duty, and instead continued to assign him to various posts. This amounts to condonation by Gulf Pacific of whatever infractions Gregorio may have committed. Even assuming the reasons behind Gregorio's being relieved as indicated in his service record to be true, it was incumbent upon

Supreme Court E-Library

Gulf Pacific to be vigilant in its compliance with labor laws. Although we understand that it could have been difficult for Gulf Pacific to post Gregorio given his age, about 50 years old, and his service record, still the agency should not have allowed him to wait indefinitely for an assignment if its clients were in truth less likely to accept him. If, indeed, Gregorio was undesirable as an employee, Gulf Pacific could just have dismissed him for cause. The unreasonable lengths of time that Gregorio was not posted inevitably resulted in his being constructively dismissed from employment.

8. ID.; ID.; ID.; SEPARATION PAY; AWARDED IN LIEU OF REINSTATEMENT IN CASE AT BAR.— On the LA's ruling ordering Gregorio's reinstatement, we differ. Gregorio's position paper did not pray for reinstatement, but only sought payment of money claims. Likewise, we consider the strained relations between the parties which make reinstatement impracticable. What is more, even during the time of the LA's decision, reinstatement was no longer legally feasible since Gregorio was past the age qualification for a security guard license, taking into account his three (3) different birthdates, as appearing in his service record. Section 5 of R.A. 5487, enumerating the qualifications for a security guard, provides, among others, that the person should not be less than 21 nor over 50 years of age. And as previously mentioned, as early as June 13, 2002, Gregorio was no longer in possession of a valid license. Thus, separation pay should be paid instead of reinstatement.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
G. Echalar Calalang for respondents.

Supreme Court E-Library

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 28, 2007 and the Resolution[3] dated March 13, 2008 of the Court of Appeals (CA) in CA G.R. SP No. 96101.

The relevant facts and proceedings follow—

On March 6, 2002, petitioner Gregorio G. Salvaloza[4] (Gregorio) filed a complaint[5] against respondent Gulf Pacific Security Agency, Inc. (Gulf Pacific) for illegal dismissal with claim for underpayment of wages, non-payment of overtime pay, holiday pay, premium pay for holiday and rest day, service incentive leave pay, 13th month pay, damages, and attorney's fees before the National Labor Relations Commission (NLRC), National Capital Region. The case was docketed as NLRC NCR Case No. 03-01551-2002.

In his position paper,[6] Gregorio alleged that, in August 1996, he was employed by Gulf Pacific as a security guard, working from 7:00 a.m. to 7:00 p.m., Mondays to Sundays, receiving a monthly salary of ₱4,000.00. He stated that he was assigned to several establishments, working continuously for almost five (5) years until his alleged termination in August 2001. According to him, he reported daily to Gulf Pacific, waiting for his new assignment, but he was not given any because there was no

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[1] *Rollo*, pp. 12-36.

[2] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring; *id.* at 254-263.

[3] *Id.* at 279.

[4] Now deceased and substituted by his wife Bebina G. Salvaloza.

[5] *Rollo*, p. 68.

[6] *Id.* at 69-71.

Supreme Court E-Library

position available for him. His last visit to Gulf Pacific's office was in February 2002, but still no assignment was given to him.

In their position paper,[7] Gulf Pacific and private respondent Angel Quizon (Quizon), the owner and manager of the agency, denied Gregorio's allegations and countered that he had been relieved several times from his assignments for various reasons or had been on Absence Without Leave (AWOL), as shown by a summary of his service record[8] below—

DATE	PLACE OF ASSIGNMENT	REMARKS
07/29/96	Shakey's food chain	Relieved on August 1, 1996 due to poor performance
08/03/96	Zeus Cargo Forwarders	Relieved on October 22, 1996 due to poor performance.
10/22/96 to 04/13/97		Floating status; did not show up to ask for possible assignment
04/14/97	MS Metal Machineries	Relieved on 08/18/97 due to expired requirements
08/19/97	Skyline Garments	Relieved 04/02/98 per client's request
04/06/98	IGC Construction	AWOL from 05/10/98 to 01/03/99 (8 months); reported on 01/04/99 for a possible assignment
01/04/99	Viva Primero	Relieved on 03/01/99 upon client's request

[7] *Id.* at 72-76.

[8] *Id.* at 78.

Supreme Court E-Library

03/01/99	Venson Farm	Relieved on 07/13/99 due to body pains
07/14/99 to 05/02/01		Floating status; clients would not accept him due to old age and poor performance record
05/03/01 to 06/04/01	ABC Lumber	
06/05/01	Anfran Realty	Relieved on 08/29/01 due to habitual SOD violation and old age
08/30/01		Floating status

The service record also indicated that, per Gulf Pacific's records, Gregorio had three (3) birthdates – (a) SSS records – November 10, 1944; (b) Office of the Civil Registrar – November 10, 1948; and (c) Security Guard License – November 10, 1951.

They claimed that, in January 2002, Gregorio wanted to be posted, but was told by Gulf Pacific to first renew and update his license as a security guard. Instead of reporting back to work, Gregorio filed his complaint[9] on March 6, 2002.

On July 10, 2002, both parties filed their respective replies.

On one hand, Gregorio contended that he was given only a monthly salary of ₱4,000.00, way below the rate prescribed by the Philippine Association of Detective and Protective Agency Operators (PADPAO), which was ₱13,000.00 to ₱14,000.00 per month. Gregorio claimed that the failure to renew a security license was merely an afterthought on the part of Gulf Pacific in order to put a semblance of legality on his constructive dismissal.[10]

On the other hand, Gulf Pacific and Quizon argued that Gregorio had been paid in accordance with the contract rate

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[9] *Supra* note 5.

[10] *Rollo*, p. 82.

Supreme Court E-Library

for security guard services prescribed by PADPAO in its Memorandum Circular No. 1, Series of 2001, dated December 12, 2001,[11] *i.e.*, computing the equivalent number of days in one (1) year at ₱391.50, inclusive of ordinary days, legal holidays, Sundays, rest days, and special holidays. They further maintained that Gregorio was not illegally dismissed, but was only placed on floating status due to his failure to comply with the Memorandum dated August 2, 2001,[12] requiring him to complete the requirements for his 201 file. They pointed out that Gregorio even submitted a spurious security guard license, as rebutted by the Certification dated June 13, 2002,[13] issued by the Security Agencies and Guards Supervision Division of the Philippine National Police (PNP), to the effect that Gregorio was not included in the master list of registered private security guards.[14]

In his rejoinder,[15] Gregorio stated that he did not go on AWOL, since he was permitted to go on leave by his operations manager. He denied submitting a fake license. He said it had been the practice of Gulf Pacific for many years to renew the licenses of its security guards, with the expenses incurred for the license renewal deducted from their salaries. While he admitted signing some of the payroll sheets of Gulf Pacific, he claimed that the amounts indicated therein were not fully received by him. He further said that he was directed to sign the payroll sheets despite non-receipt of his full salaries; otherwise, he would not receive any.

In their rejoinder,[16] Gulf Pacific and Quizon denied that it was the obligation of the agency to renew the license of any of its security guards, but, rather, it was the security guards'

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[11] *Id.* at 79-81.

[12] *Id.* at 113.

[13] *Id.* at 114.

[14] *Id.* at 83-85.

[15] *Id.* at 115.

[16] *Id.* at 116-118.

Supreme Court E-Library

personal responsibility, Gregorio not exempted. They reiterated that Gregorio submitted to them a spurious license.

On June 30, 2004, the Labor Arbiter (LA) rendered a decision[17] in favor of Gregorio, disposing as follows—

> WHEREFORE, responsive to the foregoing, judgment is hereby rendered finding respondents guilty of illegal dismissal and are therefore, ordered jointly and severally liable:
>
> 1. To reinstate complainant to his former or substantially equivalent position without loss of seniority rights, benefits and privileges;
> 2. To pay complainant the amount of ₱258,355.41, representing his backwages from the time of his dismissal up to the promulgation of this decision;
> 3. To pay the aggregate amount of ₱149,996.75 representing service incentive leave pay, 13th month pay and wage differential;
> 4. To pay the equivalent amount of ten (10%) percent of the total judgment award, as and for attorney's fees;
> 5. Other claims are hereby dismissed for lack of sufficient merit.
>
> SO ORDERED.[18]

Aggrieved, Gulf Pacific and Quizon appealed to the NLRC.

On November 30, 2005, the NLRC Second Division promulgated its decision[19] reversing the LA decision, and dismissing Gregorio's complaint for lack of merit.

Consequently, Gregorio filed a Motion for Reconsideration[20] of the November 30, 2005 NLRC Second Division Decision, which was denied in the resolution dated February 28, 2006.[21]

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[17] *Id.* at 120-126.

[18] *Id.* at 125-126.

[19] *Id.* at 138-145.

[20] *Id.* at 146-148.

[21] *Id.* at 150-152.

Supreme Court E-Library

Gregorio then filed a petition for *certiorari*[22] before the CA, assailing the NLRC Second Division's reversal of the LA decision. Gulf Pacific and Quizon filed their Comment/ Opposition.[23]

On September 28, 2007, the CA rendered its Decision dismissing Gregorio's petition, thereby affirming the NLRC Second Division decision and resolution. A motion for reconsideration of the CA Decision was then filed.

During the pendency of the motion for reconsideration, Gregorio's counsel filed on December 28, 2007 a motion for substitution, alleging that Gregorio died on August 24, 2007 of Acute Myocardial Infarction, and that the Certificate of Death was made available only on December 27, 2007. The motion for substitution prayed that Gregorio be substituted by his wife, Bebina.

In the Resolution dated March 13, 2008, the CA denied the motion for reconsideration. Hence, this petition, raising the following issues—

I

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED MANIFEST ERROR IN HOLDING THAT PETITIONER WAS NOT ILLEGALLY DISMISSED, THUS, TOTALLY DISREGARDING THE EVIDENCE ON RECORD, IN VIOLATION OF THE LABOR CODE[,] AS AMENDED[,] AND THE REVISED RULES OF EVIDENCE.

II

THE DECISION OF THE HONORABLE COURT OF APPEALS IS PREMISED ON A GRAVE MISAPPREHENSION OF FACT, WHEN IT HELD THAT THE RESPONDENT SECURITY AGENCY DIRECTED IN WRITING THE PETITIONER TO RENEW HIS SECURITY GUARD LICENSE AND THAT THE LATTER FAILED

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[22] *Id.* at 48-67.

[23] *Id.* at 153-177.

Supreme Court E-Library

TO COMPLY DESPITE CONSTANT REMINDERS TO DO SO. SAID ALLEGED FACTS ARE MERE CONCLUSIONS MANIFESTLY NOT IN ACCORD WITH THE EVIDENCE ON RECORD.[24]

The petition filed on behalf of Gregorio alleges that, in termination cases, the burden of proving just cause for dismissing an employee is on the employer. It contends that Gulf Pacific and Quizon failed to discharge this burden when they claimed that Gregorio's employment was severed for his failure to renew his security guard license, for his alleged inefficiency at work, and for his submission of a spurious security guard license.

It is further argued that the Memorandum dated August 2, 2001, requiring Gregorio to complete the requirements in his 201 file does not suffice as proof that he was directed to renew his security guard license, as nowhere in the said document can be found an express statement to that effect. It is claimed that, as a matter of practice, it was Gulf Pacific that renews the licenses of its security guards, and then deducts the cost from their salaries. Gregorio was allegedly misled with respect to his lack of license when he was placed on "floating status" for an indefinite period of time. According to the petition, all the documents for Gregorio's 201 file, *i.e.*, clearances and certifications, were already in the possession of Gulf Pacific, and it could have been easy for the latter to just renew his license. It is claimed that the alleged lack of a license was just a ploy to terminate him from employment. With respect to Gregorio's salaries, it is alleged that there were no other evidence submitted by Gulf Pacific and Quizon, except for the payroll sheets, which, although Gregorio signed, did not reflect the amounts actually received by him.

It is settled that, in labor cases, the employer has the burden of proving that the employee was not dismissed, or, if dismissed, that the dismissal was not illegal. Failure to discharge this

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[24] *Id.* at 20.

Supreme Court E-Library

burden would be tantamount to an unjustified and illegal dismissal.[25]

The relevant provisions of Republic Act (R.A.) No. 5487 (The Private Security Agency Law)[26] stipulate—

> Section 6. *License Necessary*. – No person shall engage in the business of, or act either as a private detective, or detective agency; and either engage in the occupation, calling or employment of watchman or in the business of watchman's agency without first having obtained the necessary permit from the Chief, Philippine Constabulary[27] which permit as approved is prerequisite in obtaining a license or license certificate: x x x.
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> x x x x x x x x x
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> Section 9. *Employees Need Not be Licensed.* – Every person operating, managing, directing or conducting a licensed private detective or watchmen agency shall also be considered a licensed private detective, or watchman and **no person shall be employed or used in a private detective work unless he be a licensed private detective or watchman**: *Provided*, That nothing in this section shall be construed as requiring detective license for persons employed solely for clerical or manual work.[28]

From the foregoing provisions, it is clear that a license is required before one can act or work as a security guard.

On this note, contrary to the posture of Gregorio, we hold that a security guard has the personal responsibility to obtain his license. Notwithstanding the practice of some security agencies to procure the licenses of their security guards for a fee, it remains the personal obligation of a security guard to

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[25] *Leopard Integrated Services, Inc. v. Macalinao*, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 197; *Abad v. Roselle Cinema*, G.R. No. 141371, March 24, 2006, 485 SCRA 262, 268.

[26] An Act to Regulate the Organization and Operation of Private Detective Watchmen or Security Guard Agencies, as amended.

[27] Now the Philippine National Police.

[28] Emphasis supplied.

Supreme Court E-Library

ensure that he or she has a valid and subsisting license to be qualified and available for an assignment. Thus, when Gregorio was given the Memorandum dated August 2, 2001, directing him to complete his 201 file requirements, it meant that he had to submit each and every document to show his qualifications to work as a security guard, most important of which is his security guard license. Thus, his excuse that he was not informed that he already had an expired license and had to renew the same cannot be sustained. He should have known when his license was to expire. When he received the Memorandum, Gregorio did not even bother to verify what requirement he was supposed to complete or submit, whether it was indeed the license and/or some other document. Neither was it shown that he ever complied with this directive.

It is also observed that the date of the Memorandum reminding Gregorio to complete his 201 file requirements preceded the time when he was placed on "floating status" on August 30, 2001. The Memorandum indicated that, if on August 20, 2001, Gregorio had not yet completed his requirements, he would be relieved from his then assigned post at Anfran Realty. Per his service record, he was relieved from the said post on August 29, 2001, and he started to be on "floating status" on August 30, 2001.

However, it is likewise noted that the records of this case do not show when Gregorio's security guard license actually expired. Notwithstanding the admission of Gregorio that his license expired, although insisting that it was Gulf Pacific's practice to renew the licenses of its security guards for a fee, Gulf Pacific failed to specifically show when the legal impossibility of posting Gregorio for an assignment due to the latter's lack of a valid license commenced. Even the PNP Certification dated June 13, 2002 proffered by Gulf Pacific and Quizon does not conclusively show such fact. At most, it only proves that, as of that date, Gregorio was not included in the master list of registered security guards. Thus, the validity of Gulf Pacific's contention that it was legally impossible for it to assign Gregorio due to lack of a license may only be reckoned from that date.

Supreme Court E-Library

We are mindful of the fact that, in cases involving security guards, most contracts for security services stipulate that the client may request the replacement of the guards assigned to it. A relief and transfer order in itself does not sever the employment relationship between a security guard and the agency. It is true that a security guard has the right to security of tenure, but this does not give him a vested right to the position as would deprive the company of its prerogative to change the assignment of or transfer the security guard to a station where his services would be most beneficial to the client. Indeed, an employer has the right to transfer or assign its employees from one office or area of operation to another, or in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.[29]

Temporary "off-detail" or "floating status" is the period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one. It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it even for want of cause, such that the replaced security guard may be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts. During such time, the security guard does not receive any salary or any financial assistance provided by law. It does not constitute a dismissal,

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[29] *Leopard Integrated Services, Inc. v. Macalinao, supra* note 25, at 198; *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 116-117; *Tinio v. Court of Appeals*, G.R. No. 171764, June 8, 2007, 524 SCRA 533, 540; *OSS Security & Allied Services, Inc. v. NLRC*, 382 Phil. 35, 44-45 (2000).

Supreme Court E-Library

as the assignments primarily depend on the contracts entered into by the security agencies with third parties, so long as such status does not continue beyond a reasonable time. When such a "floating status" lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.[30]

There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice except to forego continued employment. It exists when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely, as an offer involving a demotion in rank and a diminution in pay.[31]

Based on the foregoing circumstances and the applicable law and jurisprudence, we now address the question of whether Gregorio was constructively dismissed by Gulf Pacific. We answer in the affirmative.

It should be pointed out that, per his service record, Gregorio was thrice put on "floating status" by Gulf Pacific: (1) from October 22, 1996 to April 13, 1997, or a total of 174 days, or six (6) days less than six (6) months; (2) from July 14, 1999 to May 2, 2001, or a total of almost 22 months; and (3) indefinitely, starting from August 30, 2001.

Of the three instances when Gregorio was temporarily "off-detailed," we find that the last two already ripened into constructive dismissal. While we acknowledge that Gregorio's service record shows that his performance as a security guard

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[30] *Megaforce Security and Allied Services, Inc. v. Lactao, supra*, at 117; *Pido v. National Labor Relations Commission*, G.R. No. 169812, February 23, 2007, 516 SCRA 609, 615-616; *Phil. Industrial Security Agency Corp. v. Dapiton*, 377 Phil. 951, 962 (1999); *Sentinel Security Agency, Inc. v. NLRC*, 356 Phil. 434, 443, 446 (1998).

[31] *Megaforce Security and Allied Services, Inc. v. Lactao, supra*, at 117-118; *Duldulao v. Court of Appeals*, G.R. No. 164893, March 1, 2007, 517 SCRA 191, 199; *Phil. Employ Services and Resources, Inc. v. Paramio*, 471 Phil. 753, 778 (2004).

Supreme Court E-Library

was below par, we join the LA in his finding that Gulf Pacific never issued any memo citing him for the alleged repeated errors, inefficiency, and poor performance while on duty, and instead continued to assign him to various posts. This amounts to condonation by Gulf Pacific of whatever infractions Gregorio may have committed. Even assuming the reasons behind Gregorio's being relieved as indicated in his service record to be true, it was incumbent upon Gulf Pacific to be vigilant in its compliance with labor laws. Although we understand that it could have been difficult for Gulf Pacific to post Gregorio given his age, about 50 years old, and his service record, still the agency should not have allowed him to wait indefinitely for an assignment if its clients were in truth less likely to accept him. If, indeed, Gregorio was undesirable as an employee, Gulf Pacific could just have dismissed him for cause. The unreasonable lengths of time that Gregorio was not posted inevitably resulted in his being constructively dismissed from employment.

However, with respect to Gregorio's "off-detail" starting from August 30, 2001, we hold that it should only be counted up to June 13, 2002, and not up to the promulgation of the decision of the LA, considering that, on that date, it was legally impossible for Gulf Pacific to deploy him for lack of a valid security guard license.

With respect to the alleged underpayment of wages and benefits, suffice it to state that Gulf Pacific was able to rebut this claim through its payroll sheets correspondingly signed by Gregorio. As the payroll sheets provide a convincing proof of payment of his salaries and other benefits during his tours of duty as a security guard, the burden of proof was shifted to Gregorio to prove otherwise, but only with respect to those salaries and benefits indicated in the said payroll sheets.

On the LA's ruling ordering Gregorio's reinstatement, we differ. Gregorio's position paper did not pray for reinstatement, but only sought payment of money claims. Likewise, we consider the strained relations between the parties which make

Supreme Court E-Library

reinstatement impracticable.[32] What is more, even during the time of the LA's decision, reinstatement was no longer legally feasible since Gregorio was past the age qualification for a security guard license, taking into account his three (3) different birthdates, as appearing in his service record. Section 5[33] of R.A. 5487, enumerating the qualifications for a security guard, provides, among others, that the person should not be less than 21 nor over 50 years of age. And as previously mentioned, as early as June 13, 2002, Gregorio was no longer in possession of a valid license. Thus, separation pay should be paid instead of reinstatement.

Finally, private respondent Quizon, manager of Gulf Pacific, should be excepted from paying Gregorio's money entitlements inasmuch as Gregorio's employer, Gulf Pacific, is a corporation with a separate and distinct legal personality.[34]

This case should therefore be remanded to the LA for the proper computation of the judgment award in favor of Gregorio.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The assailed Decision dated September 28, 2007 and the Resolution dated March 13, 2008 of the Court of Appeals in CA G.R. SP No. 96101 are *REVERSED* and *SET ASIDE*. The decision of

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[32] *Aguilar v. Burger Machine Holdings Corporation*, G.R. No. 172062, February 21, 2007, 516 SCRA 413, 414; *Coca-Cola Bottlers Phils., Inc. v. Daniel*, 499 Phil. 491, 511 (2005).

[33] Section 5. *Qualifications Required*. – No person shall be employed as a security guard or watchman or private detective unless he is: (a) a Filipino citizen; (b) a high school graduate; (c) physically and mentally fit; **(d) not less than 21 nor more than 50 years of age;** (e) at least five feet and four inches in height; and (f) suffering none of the disqualifications provided for in the preceding section: *Provided*, That foreigners who are already employed as watchmen or security guards prior to the approval of this Act shall not be subject to the above-mentioned requirements: *Provided, further*, That veterans shall be given priority in employment as security guard, watchman or private detective: *And provided, finally*, That a person convicted of any crime involving moral turpitude shall not be employed as security guard, watchman or private detective. (Emphasis supplied.)

[34] Corporation Code, Section 2.

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the Labor Arbiter dated June 30, 2004 is *REINSTATED* with the *MODIFICATION* that the deceased Gregorio Salvaloza, as represented by his wife Bebina G. Salvaloza, be awarded separation pay in lieu of reinstatement, and that his backwages and other monetary benefits be computed only up to June 13, 2002.

This case is remanded to the Labor Arbiter for the proper computation of the judgment award in favor of Gregorio within thirty (30) days from receipt hereof. Costs against Gulf Pacific Security Agency, Inc.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183699. November 24, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROSALIE COLILAP BAÑAGA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; COMMITTED IN CASE AT BAR.— The testimony given by Araceli who conducted an audit of the accounts of the landowners is supported by documentary evidence. This was not rebutted by appellant. In fact, her counsel stipulated that the pertinent data stated in Araceli's audit report refer to the monthly *deficiencies* in the amounts to be deposited to the landowners' accounts. x x x [T]he position held by appellant in St. John, and the special assignment given to her by the land owners, were vested with trust and confidence. She had custody of two bank books in