REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **14 October 2020** *which reads as follows*:

G.R. No. 240600 (*Josie T. Lizada, Jr. and Cornelio T. Otanez *v. Alcatraz Security and Investigation Agency, Inc./Ernesto A. Catungal*).** – Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated June 19, 2017 and Resolution[3] dated July 9, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 143023 which affirmed with modification the Decision[4] dated June 30, 2015 and Resolution[5] dated August 28, 2015 of the National Labor Relations Commission (NLRC) in NLRC NCR-03-02552-14/NLRC LAC No. 03-000588-15.

Facts

Ernesto A. Catungal (respondent) is the President/General Manager of Alcatraz Security and Investigation Agency, Inc., a corporation engaged in providing security services to its clients. Josie T. Lizada, Jr. (Lizada) and Cornelio T. Otanez (Otanez) (collectively, petitioners) were the security guards of respondent.

---

* Ortanez in some parts of the *rollo*.

1 *Rollo*, pp. 10-31.

2 *Id.* at 37-52; penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court) with Associate Justices Normandie B. Pizarro and Jhosep Y. Lopez, concurring.

3 *Id.* at 70-75; penned by Associate Justice Samuel H. Gaerlan (now a Member of the Court) with Associate Justices Celia C. Librea-Leagogo and Jhosep Y. Lopez, concurring.

4 *Id.* at 97-104; penned by Commissioner Mercedes R. Posada-Lacap with Commissioner Dolores M. Peralta-Beley, concurring and Presiding Commissioner Grace E. Maniquiz-Tan, voting to affirm the Labor Arbiter's Decision.

5 *Id.* at 106-109; penned by Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring.

In the Position Paper for Complainants,[6] petitioners alleged the following:

Lizada was hired on January 9, 2010 and dismissed on May 30, 2013. On the other hand, Otanez was hired on June 16, 2010 and terminated from employment on May 31, 2013. Both of them received a monthly compensation of ₱15,000.00.[7]

According to Lizada, he was erroneously charged by respondent through Jason Hular (Hular), DMCI Area Manager, with violations of company rules and regulations. Hular told Lizada, "*huwag kana* [*sic*] *mag duty at umalis kana* [*sic*]" to which he replied, "*mayroon ba akong violation sir*?" Hular failed to answer. Lizada further asked Hular if there was a reliever order issued to him. Hular's response was, "*walang reliever order kasi tanggal kana* [*sic*] *sa trabaho*."[8]

The same fate was suffered by Otanez on May 31, 2013. He was also told by respondent, through Hular, "*huwag na kayo mag duty at umalis na kayo*." When asked if he committed a violation, Hular did not answer. Likewise, when he asked for a reliever order, Hular could not present any. He was then told "*anong reliever order? wala ng reliever order kasi [tanggal] na kayo. wala na kayong babalikan dito.*" Resultantly, Otanez, being the breadwinner, got emotionally depressed and mentally affected by the incident.[9]

Petitioners further asseverated that their services were terminated by respondent without just cause and due process of law. Hence, they were prompted to file a Complaint[10] for illegal dismissal against respondent.

Respondent presented a different version of the facts. In their Position Paper,[11] they stated that Lizada and Otanez were hired in January 2010 and August 2011, respectively. Upon hiring, they were assigned to their respective posts. However, without any leave or authority from respondent, petitioners did not report for work starting June 1, 2013 and completely abandoned their posts.[12]

---

6 *Id.* at 114-121.
7 *Id.* at 115.
8 *Id.*
9 *Id.* at 116.
10 *Id.* at 110-111.
11 *Id.* at 122-126.
12 *Id.* at 123.

Due to the absences of petitioners, respondent sent them individual notices by registered mail on June 10, 2013 directing them to immediately report for work within two days from receipt thereof.[13] However, petitioners did not report back to work. Again, notices were sent to petitioners through registered mail on June 17, 2013 requiring them to report for work within two days from receipt of the notice, but still failed. To give them another chance, they were individually sent the third notice on June 24, 2013 with the same directive.[14] However, they still failed to report for work.[15]

Considering that the notices were ignored and disregarded, respondent had no choice, but to believe that petitioners already abandoned their employment. Consequently, on July 1, 2013, respondent terminated their employment and notified them of their dismissal through registered mail. Six months after, respondent was surprised to receive a complaint for illegal dismissal from petitioners.[16]

Ruling of the Labor Arbiter

In the Decision[17] dated January 20, 2015, the Labor Arbiter (LA) ruled in favor of petitioners and held that they did not abandon their work. The LA further held that respondent failed to comply with the two-notice rule and hearing requirements which deprived petitioners of their right to due process of law. The dispositive portion of the LA Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of the Complainants to be invalid and illegal. Consequently, respondents are ordered to reinstate the complainants to their previous position without loss of seniority and benefits immediately upon receipt of this decision. Respondents are likewise ordered to pay, *in solidum*, the complainants their backwages from the time they were dismissed that is from June 1, 2013 up to their actual reinstatement, which is tentatively computed in the amount of ₱300,000.00 for complainant Josie T. Lizada [Jr.,] and ₱300,000.00 for [Cornelio T. Otanez]. Furthermore, respondents are ordered to pay complainants ₱25,000.00 each as Moral damages and ₱25,000.00 each as Exemplary damages.

---

13 *Id.* at 127.
14 *Id.* at 63-64.
15 *Id.*
16 *Id.*
17 *Id.* at 157-164; penned by Labor Arbiter Norberto D. Enriquez.

Finally respondents are ordered to pay complainants ten (10%) of the total monetary award as Attorney's fees.

SO ORDERED.[18]

Aggrieved, respondent appealed[19] from the Decision[20] of the LA contending that they did not dismiss petitioners.[21]

Ruling of the National Labor Relations Commission

In the Decision[22] dated June 30, 2015, the NLRC partly granted respondent's appeal and overturned the finding of the LA. The NLRC held that petitioners failed to prove that they were illegally dismissed by respondent. At the same time however, the NLRC found that respondent failed to establish that petitioners were guilty of abandonment. As such, the NLRC ordered for petitioners' reinstatement without payment of backwages, attorney's fees, and damages.

Ruling of the Court of Appeals

In the assailed Decision[23] dated June 9, 2017, the CA affirmed with modification the ruling of the NLRC by ordering respondent to pay petitioners their accrued wages from the date of the receipt of the LA Decision up to the date of the NLRC Decision which overturned the findings of the LA.

Petitioners moved for the reconsideration of the CA Decision, which was denied in the Resolution[24] dated July 9, 2018.

Hence, the instant petition.

Issues

1. Whether petitioners abandoned their posts or were illegally dismissed from their employment; and

[18] *Id.* at 164.
[19] *Id.* at 165-172.
[20] *Id.* at 157-164.
[21] *Id.* at 170.
[22] *Id.* at 97-104.
[23] *Id.* at 37-52.
[24] Id. at 70-75.

2. Whether the CA erred in holding that petitioners' backwages should be computed only until the issuance of the NLRC Decision dated June 30, 2015.

Petitioners impute error on the part of the CA when it affirmed the findings of the NLRC that petitioners failed to establish that they were illegally dismissed by respondent from employment. Petitioners argue that they could not have filed their complaint for illegal dismissal had they not been illegally terminated by respondent.

Our Ruling

The Court is not persuaded.

It is true that in illegal termination cases, the burden is upon the employer to prove that termination of employment was for a just cause. Logic dictates, however, that the complaining employee must first establish by substantial evidence the fact of termination by the employer. If there is no proof of termination by the employer, there is no point in even considering the cause for it. There can be no illegal termination when there was no termination.[25] Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[26]

In this case, Lizada avers that he was dismissed from employment on May 30, 2013, while Otanez alleges that he suffered the same fate on May 31, 2013.

Both the NLRC and the CA found that the pieces of evidence do not establish a *prima facie* case that petitioners were dismissed from employment. Other than the bare allegations of verbal termination from their work, petitioners presented no other evidence to show that they were indeed dismissed from employment or at least prevented from returning to their posts. The rule is that, one who alleges a fact, has the burden of proving it. Petitioners could have at least presented a witness to substantiate their allegation, but there was none. In the absence of any overt or positive act showing the fact of petitioners' dismissal, their claim of illegal dismissal cannot be sustained.

---

[25] *Remoticado v. Typical Construction Trading Corp.*, 830 Phil. 508, 510 (2018).
[26] *Reyes v. Global Beer Below Zero, Inc.*, 819 Phil. 483, 495 (2017).

Petitioners now intimate that to hide the illegality of their dismissal from employment and to delude the Court into thinking that petitioners were the ones who abandoned their jobs, respondent purportedly sent them three notices to report for work, but were deliberately sent to wrong addresses. Petitioners contend that such acts of respondent show his bad faith and intention to terminate their employment.

The Court is not convinced.

Intention is a mental process and is an internal state of mind. The intention must be judged by the action, conduct and external acts of a person. What one does is the best index of his intention.[27]

In this case, Otanez avers that his correct residential address is 87 8th St., Pinagbuhatan, Pasig City, but the notices to return to work sent to him by respondent were addressed to 87 8th St., Pinagbuhatan, Taguig City. According to petitioners, this showed respondent's bad faith and lack of real intent to call them back to work.

The Court differs.

While the notices for Otanez were sent to a wrong address, the notices sent to Lizada, on the other hand, were addressed to his actual residence at 12 Sitio Dalig 2, Antipolo City. However, Lizada denied having received it.

To the Court, respondent's attempt to send the return to work notices to Lizada's actual address negates petitioners' allegation that respondent intentionally sent the notices to the wrong addresses. Even the CA and the NLRC did not consider this as something deliberate on the part of respondent. They only intimated that respondent failed to present proof that petitioners received the subject notices. As such, it would be farfetched to hold respondent guilty of illegal dismissal for this. If for anything, respondent's failure to prove that petitioners received the notices to return to work merely rendered them incapable of establishing all the elements of abandonment by petitioners. To say that this indicates respondent's intention to illegally dismiss petitioners from employment is implausible and farfetched.

Petitioners now emphasize that the period for computing the backwages during the period of appeal should only end on the date that a

[27] *People v. Regato*, 212 Phil. 268, 274. (1984).

higher tribunal reverses the labor arbitration ruling of illegal dismissal. Petitioners argue that their entitlement to backwages should not have ended because the decision of the LA which held that they were illegally dismissed was not reversed by the NLRC, but was only modified by the latter. In reasoning so, petitioners make reference to the fact that both the ruling of the LA and the NLRC ordered their reinstatement without loss of seniority rights. Because of this, petitioners argue that the CA erred in ordering respondent to pay petitioners' backwages only up to the date of the NLRC Decision.

The contention is untenable.

While it is true that the ruling of the LA and the NLRC both ordered petitioners' reinstatement, the basis of the reinstatement in the two decisions however differs. In the Decision[28] of the LA, petitioners were being reinstated on the ground that they were illegally dismissed by respondent from employment. This is the reason why the LA held that they were entitled to backwages, damages, and attorney's fees. On the contrary, the NLRC ruled that petitioners failed to prove that they were illegally dismissed by respondent. However, the NLRC also found that respondent failed to prove that petitioners were guilty of abandonment. This is the reason why the NLRC ordered petitioners' reinstatement without payment of backwages, attorney's fees, and damages.

As opposed to petitioners' averment, the Decision[29] of the NLRC did not only modify the ruling of the LA. The NLRC actually reversed the findings of the LA in holding that petitioners failed to prove that they were illegally dismissed by respondent. This totally sets aside the LA's stand that petitioners were illegally dismissed from employment.

As a general rule, in cases where there is no sufficient proof either to establish abandonment of work or illegal dismissal, as in this case, the remedy is reinstatement without backwages.[30] Such being the case, the CA did not err in affirming the ruling of the NLRC that petitioners should be reinstated to their former posts. However, since the LA's finding of illegal dismissal governed only until the issuance of the NLRC Decision[31] dated June 30, 2015, the CA did not err in ordering respondent to pay petitioners' backwages only up to the date of NLRC's ruling overturning the ruling of the LA. This conforms with the principle that the period for computing the backwages during the period of appeal

[28] *Rollo*, pp. 97-104.
[29] *Id.* at 97-104.
[30] *Prestige Cars, Inc. v. Cordoviz, Jr.*, G.R. No. 230023, December 13, 2017.
[31] *Id.* at 97-104.

should end on the date that a higher tribunal reverses the labor arbitration ruling of illegal dismissal.[32]

WHEREFORE, the petition is **DENIED**. The Decision dated June 19, 2017 and the Resolution dated July 9, 2018 of the Court of Appeals in CA-G.R. SP. No. 143023 are **AFFIRMED**.

SO ORDERED." (**BALTAZAR-PADILLA, *J.*,** on leave.)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
24 NOV 2020 11/24

ATTY. CRISTETA D. TAMAYO (reg)
Counsel for Petitioners
422 Rosas St., Villaverde Homes
Novaliches, Quezon City

MOLINA AND MOLINA LAW OFFICE (reg)
Counsel for Respondents
Unit 301, Pelbel Bldg.
Shaw Blvd., Pasig City

NATIONAL LABOR
RELATIONS COMMISSION (reg)
PPSTA Building, Banawe St. cor. Quezon Ave.
1100 Quezon City
(NLRC NCR-03-02552-14;
NLRC LAC No. 03-000588-15)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. SP No. 143023

Please notify the Court of any change in your address.
GR240600. 10/14/2020A(213)URES

[32] *Wenphil Corporation v. Abing*, 731 Phil. 685, 703 (2014).