

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**AGRO COMMERCIAL SECURITY
SERVICES AGENCY, INC.,
*Petitioner,***

-versus-

**G.R. Nos. 82823-24
July 31, 1989**

**THE NATIONAL LABOR RELATIONS
COMMISSION, HON. LABOR ARBITER
BIENVENIDO V. HERMOGENES and
MANUEL JIMENEZ, ET AL.,
*Respondents.***

X-----X

DECISION

GANCAYCO, J.:

Is there an employer-employee relationship between a security agency and its security guards? Is the so-called "floating status" of a security guard lawful and could such prolonged status amount to illegal dismissal? These are the issues raised in this petition for certiorari and prohibition with preliminary injunction questioning the resolution dated January 20, 1988 of public respondent National Labor Relations Commission (NLRC) affirming the decision of public respondent labor arbiter Bienvenido V. Hermogenes dated March 19, 1987 finding private respondents to have been illegally dismissed and

ordering petitioner to pay them separation pay of one-half (1/2) month salary for every year of service, 13th month pay for the year 1986 and the money value of their respective service incentive leave amounting to fifteen (15) days salary each with allowances. The petition also assails the resolution of the respondent NLRC dated April 18, 1988 denying the motion for reconsideration filed by petitioner.

Private respondents, numbering forty-six (46) in all, worked as security guards and/or janitors under individual contracts with petitioner. They were assigned to firms and offices where petitioner had contracts providing security and janitorial services. Their service period and last rates of salary are stated in the decision of the labor arbiter.^[1] Their individual contracts of employment provide, among others, as follows:

“3.d. That the security guard, agrees to temporary suspension of his employment completely to include such changes in his employment status with the Agency, in case of termination of contract between the Agency and its Client, or reduction in force of same;”

In the early part of 1986, petitioner's service contracts with various corporations and government agencies to which private respondents were previously assigned had been terminated generally due to the sequestration of the said offices by the Presidential Commission on Good Government. Accordingly, many of the private respondents were placed on “floating status” on September 16, 1986. A number of them had been put on that status even earlier. “Floating status” means an indefinite period of time when private respondents do not receive any salary or financial benefit provided by law. A number of them later obtained employment in other security agencies.

On account of the uncertainty of their employment with the petitioner, on July 25, 1986, private respondents filed a complaint for illegal dismissal in the Arbitration Branch of the Department of Labor and Employment against petitioner. They sought the payment of their respective separation pay, 13th month pay for 1986 and service incentive leave pay. After due proceedings where the parties were required to submit their position papers and stipulation of facts, the

respondent labor arbiter ruled in favor of the private respondents whose decision as above-related was affirmed by the NLRC.

Hence, the herein petition alleging that the petitioner was denied due process of law by the NLRC and it committed a grave abuse of discretion in considering private respondents as employees of petitioner, in ruling that the “floating status” of private respondents amounted to an illegal dismissal, and in causing the execution of the judgment pending a complete and full adjudication of the issues.

Forthwith, the allegation of denial of due process is without basis. Petitioner was afforded the opportunity to file its position paper. It even entered into a stipulation of facts with private respondent.

As to the issue of employer-employee relationship, an examination of the records shows that private respondents are regular employees of petitioner. Their individual length of service ranges from four (4) to more than ten (10) years. In accordance with the stipulation of facts, it appears that private respondents worked with petitioner as security guards/janitors. Their employment contracts provide, among others:

- “1. That the AGENCY hereby undertakes to look for, procure, and/or furnish the services of the SECURITY GUARD, with any individual, business establishment, residential houses or any entity whatsoever, and the SECURITY GUARD agrees to supply his services, assignments, position and undertaking, subject to the following conditions:
 - a) That the SECURITY GUARD upon acceptance of his position or undertaking for employment, shall observe, follow and obey all rules, regulation, code of conduct required by the AGENCY and any of its contracted client, in accordance with the provisions of RA 5487 and its implementing Rules and Regulations;
 - b) That the AGENCY shall pay the SECURITY GUARD a monthly salary of P _____ /day payable on the 5th and 20th of the month;

- c) That the AGENCY shall have the exclusive right to withdraw or re-assign the SECURITY GUARD;
- d) That the SECURITY GUARD, agrees to temporary suspension of his employment completely to include such changes in his employment status with the AGENCY, in case of termination of contract between the AGENCY and its client, or reduction in force of same;
- e) That the AGENCY may terminate or dismiss the SECURITY GUARD, if, after proper and due investigation it is shown that the SECURITY GUARD has violated any rule, regulation, code of conduct and discipline, imposed by the AGENCY;
- f) That the terms and conditions pertinent to service and discipline embodied in the Agreement executed between the AGENCY and any person, establishment, or entity with whom the SECURITY GUARD is going to serve or is assigned shall be considered part of this Agreement and therefore binding on SECURITY GUARD.” [2]

It was petitioner who determined how much private respondents received as their monthly salary, overtime/night differential pay, mid-year and Christmas bonus and 13th month pay, uniforms and meal allowances and other benefits mandated by law. Private respondents were reported by the petitioner as its employees for purposes of social security coverage. Petitioner remitted their withholding taxes to the Bureau of Internal Revenue and made monthly contributions to the Pag-ibig fund for their benefit. It was petitioner who determined and decided on the assignments, promotions and salary increases of private respondents, their working hours, the firearms to be issued to them and janitorial devices and tools to be used. Likewise, it was petitioner who imposed the appropriate disciplinary measures on private respondents by way of reprimand, suspension and dismissal.

In determining the existence of an employee-employer relationship, the following elements are generally considered:

- 1) the selection and engagement of the employees;
- 2) payment of wages;
- 3) the power of dismissal; and
- 4) the power to control the employees' conduct.^[3]

It is clear, therefore, that private respondents are petitioner's regular employees who enjoy security of tenure and who cannot be dismissed except for cause.^[4]

As to the alleged illegal dismissal of private respondents, the records show that they filed their complaint against petitioner on July 25, 1986. At the time they filed their complaint, most of them were still on the job or on assignments and it was only in September 1986 when most of them were placed on "floating status."

Obviously, the filing of the complaint was premature. Apparently, this issue was not raised at all and so it is deemed waived. Thus, when the labor arbiter rendered his decision, he considered those who have been out of work or "floating status" for a period exceeding six (6) months to have been terminated from the service without just cause thus entitling them to the corresponding benefits for such separation. We agree.

Under Article 286 of the Labor Code it is provided as follows:

"ART. 286. When employment not deemed terminated. — The bonafide suspension of the operation of a business or undertaking for a period not exceeding six months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one month from the resumption of operations of his employer or from his relief from the military or civic duty."

From the foregoing it is clear that when the bonafide suspension of the operation of a business or undertaking exceeds six (6) months then the employment of the employee shall be deemed terminated. By the same token and applying the said rule by analogy to security guards, if they remained without work or assignment, that is in “floating status” for a period exceeding six (6) months, then they are in effect constructively dismissed.

The labor arbiter disagreed with the representations of petitioner that the private respondents who accepted assignments in other security agencies without previously resigning should be considered to have been dismissed with just cause. In the stipulation of facts, the parties admitted that the disciplinary rules promulgated by petitioner for its employees provide that acceptance by an employee of other employment without first resigning from the agency is a cause for dismissal.

In this case, it appears that twenty-seven (27) of the private respondents violated this rule by accepting employment in other security agencies without previously resigning from employment with petitioner. No doubt, this is a just cause for termination of their services and as such they are not entitled to any separation pay.^[5]

As regards the other seventeen (17) private respondents, they admittedly remained in “floating status” for more than six (6) months. Such a “floating status” is not unusual for security guards employed in security agencies as their assignments primarily depend on the contracts entered into by the agency with third parties. Such a stipulated status is, therefore, lawful.

The “floating status” of such an employee should last only for a reasonable time. In this case, respondent labor arbiter correctly held that when the “floating status” of said employees lasts for more than six (6) months, they may be considered to have been illegally dismissed from the service. Thus, they are entitled to the corresponding benefits for their separation.

WHEREFORE, the Petition is **GRANTED** insofar as the twenty-seven (27) private respondents are concerned who have accepted

employment elsewhere. The questioned resolutions of the NLRC dated January 29, 1988 and April 18, 1988 are hereby modified as to said twenty-seven (27) private respondents in that their complaint is hereby dismissed for lack of merit. The questioned resolutions are hereby affirmed in all other respects as to the other private respondents. No pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

-
- [1] Annex C, Petition; pages 40 to 44, Rollo.
 - [2] Page 5, Rollo.
 - [3] Social Security System vs. Court of Appeals, 39 SCRA 629 (1971).
 - [4] Article 279, Labor Code; American President Lines vs. Clave, 114 SCRA 826 (1982) and Social Security System vs. Court of Appeals, supra.
 - [5] Article 282(e), Labor Code.