Republic of the Philippines
Supreme Court
Manila

THIRD DIVISON

SAMSUDIN T. HAMID, *Petitioner,*	**G.R. No. 230968**
	Present:
- versus -	CAGUIOA, *J.*, Chairperson, INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.*
GERVASIO SECURITY AND INVESTIGATION AGENCY, INC./ SUSAN S. GERVASIO, *Respondents.*	Promulgated: July 27, 2022 MistDeBatt

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D E C I S I O N

GAERLAN, *J.*:

Subject to review under Rule 45 of the Rules of Court at the instance of Samsudin T. Hamid (petitioner) is the Decision[1] promulgated on August 28, 2015 and Resolution[2] dated March 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 130704, which deemed petitioner's Petition for *Certiorari*[3] closed and terminated.

The Antecedents

Petitioner was hired by Gervasio Security and Investigation Agency, Inc./Susan S. Gervasio, the president of the security agency (collectively, respondents) as a security guard on March 8, 2003. Sometime in October 2010,

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1 *Rollo,* pp. 38-45; penned by Associate Justice Noel G. Tijam (now a retired Member of this Court), with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

2 Id. at 47-48; penned by Associate Justice Francisco P. Acosta, with Associate Justices Eduardo B. Peralta, Jr., and Victoria Isabel A. Paredes, concurring.

3 Id. at 11-33.

petitioner was assigned at Midas Hotel in Roxas Boulevard, Pasay City, where he was required to work seven (7) days a week from 7:00 a.m. to 7:00 p.m.[4]

On May 24, 2011, after his 12-hour day shift duty, he was asked to work for the night even though it was his rest day since his co-guard assigned for night-shift duty was absent. Petitioner informed his immediate superior that he was not feeling well at that time. Notwithstanding, he was made to work and guard the Gate 2 of the hotel.[5]

On May 25, 2011, when he was about to go home after his 24-hour duty, petitioner received a Memorandum[6] asking him to explain why no disciplinary action should be passed upon him after he was caught sleeping while on duty.[7]

On May 26, 2011, petitioner submitted his written response,[8] wherein he admitted taking a nap during duty but insisted that he was not feeling well. He explained that he had a cough, and could not breathe properly. He likewise stated that he was taking Decolgen to alleviate his condition.[9]

Despite petitioner's explanation and supplication for understanding, he was suspended for 30 days without pay "effective upon receipt of this memorandum after which you are directed to report to this office in complete uniform after the completion of your suspension for proper disposition."[10]

During his suspension, petitioner received another memorandum informing him that he would be relieved from his post after his suspension by virtue of the client's request.[11] Petitioner, thus, after his suspension, waited to be assigned for another post. Petitioner, however, waited in vain for he received no call or order from respondents. Accordingly, he filed a complaint for illegal suspension, and separation pay, among others, on January 6, 2012.[12] Petitioner amended his complaint on March 14, 2012 to include illegal dismissal (constructive dismissal) as one of the causes of action.[13]

For their part, respondents averred that they did not dismiss petitioner on May 25, 2011, or any date thereafter. Respondents claimed that after petitioner's

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4 Id. at 138.
5 Id.
6 Id. at 112.
7 Id.
8 Id. at 114.
9 Id.
10 Id. at 115-116.
11 Id. at 117.
12 Id. at 98-99.
13 Id. at 100-101.

suspension, they sent four (4) notices on October 10, 2011,[14] November 8, 2011,[15] December 8, 2011[16] and January 9, 2012[17] to petitioner requiring him to report for duty for immediate posting. All these notices were sent to his last known address as per personnel files. Notwithstanding, petitioner failed to report for duty despite said notices. Instead, petitioner opted to file a complaint against them on January 6, 2012.

The Labor Arbiter Ruling

Labor Arbiter (LA) Jonalyn M. Gutierrez (Gutierrez) rendered the September 12, 2012 Decision[18] dismissing petitioner's complaint for lack of merit.[19] The LA ratiocinated that respondents were able to show proof that petitioner was notified to report to work after his suspension, but the latter failed to comply; and that petitioner failed to adequately deny that he received such notices to report.[20] The LA, thus, disposed of the case in this wise:

> WHEREFORE, premises considered, the complaint is hereby DISMISSED for lack of merit. However, respondent security agency is hereby ordered to pay complainant an equivalent of 20 days pay (P404 x 20 days = P8,080 pesos) or P8,080.00 to compensate for the harsh penalty he sustained despite having suffered to work on his rest day and for continuous duty.
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> Other claims are hereby DISMISSED for lack of merit.
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> SO ORDERED.[21]

Undaunted, petitioner filed an appeal[22] to the National Labor Relations Commission (NLRC).

The NLRC Ruling

On appeal, the NLRC affirmed the dismissal of the complaint. In its Decision[23] promulgated on March 7, 2013, the NLRC ruled that petitioner was not constructively dismissed. It explained that while petitioner claimed that he did not receive the notices to report back to work because they were sent to his

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14 Id. at 118.
15 Id. at 120.
16 Id. at 122.
17 Id. at 124.
18 Id. at 137-142.
19 Id. at 142.
20 Id. at 141.
21 Id. at 142.
22 Id. at 144-153.
23 Id. at 65-69; penned by Commissioner Numeriano D. Villena with Commissioner Angelo Ang Palaña and Presiding Commissioner Herminio V. Suelo, concurring

old address, it did not alter the fact that there was prior directive to him to report to the office after serving his suspension. The *fallo* of the NLRC's decision reads:

> **WHEREFORE**, the appeal is DISMISSED. The decision appealed from is AFFIRMED.
>
> **SO ORDERED**.[24]

Petitioner then moved for reconsideration.[25] It was, however, denied in a Resolution[26] dated April 29, 2013 for lack of merit. Hence, petitioner filed a Petition for *Certiorari* with the CA.

The CA Ruling

In the assailed Decision[27] promulgated on August 28, 2015, the CA dismissed the petition and deemed the same closed and terminated. The CA ruled that with the execution of a Quitclaim and Release executed by petitioner, the receipt of the amount of ₱9,500.00 as consideration thereof, and the dismissal of the complaint in an Order dated September 12, 2013 by the Executive LA, Fatima Jambaro-Franco (Jambaro-Franco), the petition has been rendered moot and academic.[28] The decretal portion of the assailed Decision reads:

> **WHEREFORE**, finding the terms and conditions of the Quitclaim and Release to be in order, not being contrary to law, morals, good customs and public policy, and that the same was hereby approved by the NLRC's Executive Labor Arbiter who dismissed the complaint with prejudice, judgment is hereby rendered on the Quitclaim and Release. This petition is deemed **CLOSED** and **TERMINATED**.
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> **SO ORDERED**.[29]

Aggrieved, petitioner moved for reconsideration. It was, however, denied in a Resolution[30] dated March 31, 2017.

Hence, the instant Petition for Review on *Certiorari* interposing the following issues:

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24 Id. at 69.
25 Id. at 70-77.
26 Id. at 79-81.
27 Id. at 38-45.
28 Id. at 42-43.
29 Id. at 44-45.
30 Id. at 47-48.

Issues

I.
WHETHER THE [CA] GRAVELY ERRED WHEN IT DECLARED THE CASE DEEMED CLOSED AND TERMINATED DESPITE THE FACT THAT THE APPROVED QUITCLAIM AND RELEASE PERTAINS TO A DIFFERENT CASE INVOLVING THE SAME PARTIES.

II.
WHETHER THE [CA] GRAVELY ERRED IN NOT RULING THAT THE PETITIONER WAS CONSTRUCTIVELY DISMISSED.

III.
WHETHER THE [CA] GRAVELY ERRED IN NOT RULING THAT THE PETITIONER IS ENTITLED TO ALL HIS MONETARY CLAIMS.[31]

The Court's Ruling

We find the petition meritorious.

In the instant petition, petitioner insists that the approved Quitclaim and Release pertains to a different case involving the same parties; thus, the CA's dismissal of the petition on this ground was misplaced.[32]

Petitioner further claims that he was constructively dismissed for he was placed in a floating status for more than six months. He explained that he did not receive the notices to report for immediate posting allegedly sent to his last known address which led to his failure to report for work.[33]

Meanwhile, respondents aver that they did not dismiss petitioner; and it was petitioner who failed to report for work despite the four notices which required him to report for immediate posting, sent to his known address.

We rule in favor of petitioner.

Petitioner's execution of a Quitclaim and Release after receipt of the amount of ₱9,500.00 pertains to a different case.

The amended complaint for illegal dismissal (constructive dismissal),

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31 Id. at 18.
32 Id. at 18-20.
33 Id. at 20-27.

illegal suspension and claims for moral and exemplary damages and attorney's fees from where the instant petition is rooted is docketed as NLRC-NCR-Case No. 01-0034-12.[34] It was initially filed on January 6, 2012 and amended on March 14, 2012. It was then dismissed by LA Gutierrez on September 12, 2012.

Meanwhile, the second complaint, where the same parties entered into an amicable settlement, pertains to the case filed before the Executive LA Jambaro-Franco, with docket number NLRC-NCR-06-09002-13. It was a complaint for money claim (surety bond) filed on June 21, 2013.[35] Needless to state, there were two separate and distinct cases wherein the same parties were involved.

It is established that petitioner executed a Quitclaim and Release upon receipt of the amount of ₱9,500.00 from respondents. Such quitclaim, however, pertains not to the first case for illegal dismissal but the second case for reimbursement of surety bond. Otherwise stated, the parties amicably settled in the second case (NLRC-NCR-06-09002-13), which led to the dismissal thereof.[36] This is evident in the Minutes[37] of the hearing in NLRC-NCR-06-09002-13 dated September 12, 2013 which shows that the petitioner executed the Quitclaim and Release, upon receipt of the amount of ₱9,500.00, representing the cash bond and coop refund.

Petitioner was constructively dismissed.

Placing security guards on floating status is a valid exercise of management prerogative. However, any such placement on off-detail should not exceed six (6) months. Otherwise, constructive dismissal shall be deemed to have occurred.[38]

To recall, petitioner was suspended for one month starting on May 26, 2011. Before the expiration of his one-month suspension, or on June 13, 2011, petitioner received a memorandum relieving him from his post after his suspension, as advised by the client.[39] Thus, petitioner was deemed in a floating status from June 26, 2011.

Respondents aver that petitioner was not constructively dismissed since prior to the lapse of six months, they sent him notices to report for work for immediate posting. The notices were dated October 10, 2011, November 8, 2011, December 8, 2011, and January 9, 2012.

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34 Id. at 201-203.
35 Id. at 204-205.
36 Id. at 192.
37 Id. at 193.
38 *Padilla v. Airborne Security Service, Inc.*, 821 Phil. 482, 488-489 (2017).
39 *Rollo*, p. 117.

On the other hand, petitioner claims not having received any of the notices for they were mailed to his old address. This prompted him to institute a complaint for constructive dismissal against respondents on January 6, 2012, or seven months, more or less, after he was relieved of his post.

We rule in favor of petitioner.

Records show that, indeed, there exist four notices of different dates addressed to petitioner requiring him to report for immediate posting. As to whether petitioner received or not these notices, suffice it to say that the LA and the NLRC have already ruled that respondents have mailed them to petitioner's given address and that petitioner failed to adequately deny receipt of this notices.

It bears stressing, however, that the mailing and/or serving of these notices and the receipt thereof by petitioner do not automatically hamper a case for constructive dismissal.

In a plethora of cases, We have emphasized that a security guard's employer must give a new assignment to the employee within six months. This assignment must be to a specific or particular client. "A general return-to-work order does not suffice."[40] Otherwise stated, jurisprudence requires not only that the employee be recalled to the agency's office, but that the employee be deployed to a specific client before the lapse of six months.[41] In the case of *Ibon v. Genghis Khan Security Services,* [42] (*Ibon Case*), it has been clarified that:

> Respondent could not rely on its letter requiring petitioner to report back to work to refute a finding of constructive dismissal. The letters, dated November 5, 2010 and February 3, 2011, which were supposedly sent to petitioner merely requested him to report back to work and to explain why he failed to report to the office after inquiring about his posting status. More importantly, there was no proof that petitioner had received the letters.
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> In *Tatel v. JLFP Investigation (JLFP Investigation)*, the Court initially found that the security guard was constructively dismissed notwithstanding the employer's letter ordering him to report back to work. It expounded that in spite of the report-to-work order, the security guard was still constructively dismissed because he was not given another detail or assignment. On motion for reconsideration, however, the Court reversed its ruling after it was shown that the security guard was in fact assigned to a specific client, but the latter refused the same and opted to wait for another posting.
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> A holistic analysis of the Court's disposition in *JLFP Investigation* reveals that: **[1] an employer must assign the security guard to another posting within six (6) months from his last deployment, otherwise,**

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40 *Padilla v. Airborne Security Service, Inc.*, supra note 38 at 489.

41 *Seventh Fleet Security Services, Inc. v. Loque*, G.R. No. 230005, January 22, 2020.

42 811 Phil. 250 (2017).

> **he would be considered constructively dismissed; and [2] the security guard must be assigned to a specific or particular client. A general return-to-work order does not suffice.**[43] (Emphasis suppled; citations omitted)

Applying the foregoing to the present controversy, considering that petitioner was placed on a floating status for more than six (6) months from his last assignment, he was deemed constructively dismissed. Though respondents sent him notices to report for immediate posting, such notices did not state a specific client to which he would be deployed, as required by relevant jurisprudence. This is clear from the letters of the notices, which state: we are hereby directing you "to report to the undersigned effective on the receipt of this memorandum for immediate posting."[44]

Clearly, the notices merely require petitioner to report to the security agency. The notices were, at best, nothing more than general return-to-work orders, which did not state a specific client to which petitioner would be assigned. Applying the *Ibon Case*, the service of these notices, assuming they were indeed received by petitioner, did not toll the running of petitioner's floating status.

Moreover, while respondents do not specifically and categorically claim that petitioner abandoned his job, in fact, they claim that abandonment is out of the picture, the tenor of their arguments points to abandonment as the ground why petitioner lost his job.

To reiterate, respondents claim that despite serving notices to petitioner for him to report for work, nothing was heard from him. The immediate filing of the complaint for constructive dismissal, however, belie abandonment.

Settled is the rule that a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. [45]

Furthermore, abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment.[46]

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43 Id. at 258-259.
44 *Rollo*, pp. 118-124.
45 *JS Unitrade Merchandise, Inc. v. Samson, Jr.*, G.R. No. 200405, February 26, 2020.
46 Id.

In the instant case, petitioner filed the complaint on January 6, 2012, that is, immediately after the lapse of six months from the time he was placed in a floating status. His insistence, therefore, that he was constructively dismissed, albeit it was disputed, and his act of immediately filing a case for constructive dismissal, negate abandonment.

In sum, the CA's dismissal of the Petition for *Certiorari* based on a Quitclaim and Release is misplaced. As exhaustively discussed, the Quitclaim and Release pertain to a different case, a complaint for money claims, not to the instant case for constructive dismissal.

Furthermore, petitioner was indeed constructively dismissed. He was not given a specific client within six months from the time he was placed in a floating status. While notices were sent to petitioner, these notices were merely general return-to-work orders which did not alter petitioner's floating status. The notices did not state a specific client to which petitioner would be assigned.

As a consequence of the finding of illegal dismissal, petitioner would ordinarily be entitled to reinstatement.[47] There are instances, however, that reinstatement is no longer feasible. In the case of *Dela Fuente v. Gimenez*,[48] We have ruled that reinstatement is no longer feasible:

> x x x (a) when the former position of the illegally dismissed employee no longer exists; or (b) when the employer's business has closed down; or (c) when the employer-employee relationship has already been strained as to render the reinstatement impossible. The Court likewise considered reinstatement to be non-feasible because a "considerable time" has lapsed between the dismissal and the resolution of the case. Indeed, the Court considers "considerable time," which includes the lapse of eight (8) years or more (from the filing of the complaint up to the resolution of the case) to support the grant of separation pay in lieu of reinstatement.[49] (Citations omitted)

In the instant case, the complaint for illegal dismissal was filed in 2012. Since, 10 years had passed from the time petitioner filed his complaint against respondents, then, We hold and so rule that his reinstatement is no longer practicable. More so, petitioner himself specifically prayed for an award of separation pay and has also been specific in asking that he no longer be reinstated. Thus, instead of reinstatement, We grant petitioner separation pay of one month for every year of service until the finality of this Resolution, with a fraction of a year of at least six (6) months being counted as one (1) whole year.[50]

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47 Article 294 (formerly Art. 279) of the Labor Code.
48 G.R. No. 214419, November 17, 2021.
49 Id.
50 Id.

Other monetary claims are dismissed for failure of petitioner to prove his entitlement thereto.

All told, We conclude that the LA, NLRC and the CA committed reversible error in dismissing the complaint for illegal dismissal. Clearly, petitioner was constructively dismissed after he was placed in a floating status for more than six months. A reversal thereof is, thus, warranted in this case.

Finally, in conformity with the prevailing jurisprudence,[51] interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until full payment should be imposed on the total monetary award.

WHEREFORE, in view of the foregoing premises, the instant petition is **GRANTED**. The August 28, 2015 Decision and Resolution dated March 31, 2017 of the Court of Appeals in CA-G.R. SP No. 130704, are **REVERSED and SET ASIDE**. Accordingly, respondents Gervasio Security and Investigation Agency, Inc./Susan S. Gervasio are ordered to pay petitioner Samsudin T. Hamid:

1. Full backwages and other benefits computed from the date petitioner's employment was illegally terminated until the finality of this Decision;

2. Separation pay computed from the date petitioner commenced employment until the finality of this Decision at the rate of one (1) month's salary for every year of service, with a fraction of a year of at least six (6) months being counted as one (1) whole year; and

3. Attorney's fees equivalent to ten percent (10%) of the total award.

4. Interest of six percent (6%) *per annum* on all the monetary awards from the finality of this Decision until full payment.

The case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to petitioner, which must be paid without delay, and for the execution of this Decision.

SO ORDERED.

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51 *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 716 Phil. 267 (2013); *Servflex, Inc. v. Urera*, G.R. No. 246369, March 29, 2022; *De Silva v. Urban Konstruct Studio, Inc.*, G.R. No. 251156, November 10, 2021.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice