Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ALLAN M. ADOR, Petitioner, - versus - **JAMILA AND COMPANY SECURITY SERVICES, INC., SERGIO JAMILA III AND EDDIMAR O. ARCENA,** Respondents.	**G.R. No. 245422** **Present:** PERALTA, *C.J., Chairperson*, CAGUIOA, REYES, J.C., JR., LAZARO-JAVIER, and LOPEZ, *JJ.* **Promulgated:** JUL 07 2020

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This Petition[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 140764:

[1] Petition for Review on *Certiorari* dated April 16, 2019; *rollo*, pp. 12-38.

1. Decision[2] dated July 24, 2018 finding petitioner not to have been illegally or constructively dismissed; and

2. Resolution[3] dated February 18, 2019 denying petitioner's motion for reconsideration.

The Antecedents

On February 13, 2014, petitioner Allan M. Ador (Ador) sued respondents Jamila and Company Security Services, Inc., its President Sergio Jamila III (Jamila), and HR Manager Eddimar O. Arcena (Arcena) for illegal dismissal, underpayment of salary, overtime pay, holiday pay, rest day pay, service incentive leave pay, 13th month pay, ECOLA, night shift differential, separation pay, unpaid paternity leave benefits, moral and exemplary damages, and attorney's fees.[4]

Petitioner essentially claimed that on May 27, 2010, respondent Jamila Security hired him as security guard. He worked from Monday to Sunday for twelve (12) hours daily on a shifting basis. He did not receive holiday pay, rest day pay, night shift differential, overtime pay, 13th month pay (except P3,000), service incentive leave pay, and his paternity leave benefits.[5]

After he got involved in a brawling incident against a co-employee, the security agency stopped giving him posting assignments from April 2012 to April 2013.[6]

On June 11, 2013, he talked to the security agency's HR Manager Eddimar Arcena and requested for a new assignment. Arcena instructed him to first renew his security guard license and clearances. He was, however, surprised to receive three (3) notices dated June 29, 2013, July 31, 2013, and August 31, 2013 bearing respondents' plan to terminate him. The notices were sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, respectively.[7] He reported to respondents' office every time he received the notices, but respondents refused to give him posting assignments. On September 18, 2013, after receiving the 2nd notice, he gave a letter to the security agency stating that he cannot renew the documents because he did not have money. On November 27, 2013, however, he received a Memorandum[8] dated September 31, 2013[9] terminating his employment for insubordination.[10]

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[2] Penned by Associate Justice Myra V. Garcia-Fernandez with the concurrences of Associate Justices Ramon R. Garcia and Germano Francisco D. Legaspi, all members of the Thirteenth Division, *rollo*, pp. 40-50.
[3] *Id.* at 52-53.
[4] *Id.* at 96.
[5] Petition for Review on *Certiorari* dated April 16, 2019, *id.* at 12-38.
[6] *Id.*
[7] *Id.* at 28.
[8] Memorandum – Re: Notice of Termination dated September 31, 2013, *id.* at 136.
[9] Could be a typographical error. September has 30 days only.
[10] *Rollo*, p. 28.

In their Position Paper,[11] respondents countered that petitioner was paid all the wages and benefits mandated by law. They submitted petitioner's payroll summary indicating the amounts he received.[12]

Petitioner was first assigned at Hyatt Hotel and Casino. His posting did not last long because he caused damage to the hotel's property and to one of the vehicles belonging to a hotel guest. He got assigned to various postings but was again subjected to several disciplinary actions for different violations of company policies. When he got re-assigned to Hyatt Hotel and Casino, he got involved in a fistfight with his co-security guard. He suffered fracture in the forearm and went on sick leave to recuperate. After he was declared fit to work, he was given augmentation assignments from May 12, 2012 to September 2012 since there were no available postings for him.[13]

When petitioner reported for work on December 17, 2012, he was directed to renew his documentary requirements before he may be given a regular assignment, *i.e.,* security guard license, barangay clearance, police clearance, PNP clearance, NBI clearance, court clearance, and neurological test result.[14] Petitioner, however, did not comply. He again reported for work on February 6, 2013 and April 11, 2013 but still failed to submit the renewed requirements.[15]

On June 29, 2013, respondents sent petitioner a 1st Notice to Report *via* registered mail informing him of a new posting assignment. Petitioner did not reply.[16] A 2nd Notice to Report dated July 31, 2013 was sent directing him to return to work and submit a written explanation on why he should not be charged with insubordination. Still, the notice was left unheeded. Thus, a 3rd and Final Notice to Report dated August 31, 2013 was sent to petitioner requiring him to return to work and comply with the updated requirements; otherwise, he may be administratively charged with insubordination.[17]

On September 18, 2013,[18] petitioner went to respondents' office and submitted a written explanation informing the security agency he had no money to renew his requirements. Thereafter, respondents sent him a Memorandum of termination[19] for insubordination for ignoring the three (3) notices sent him to report back for work.[20]

During the arbitration conference on January 23, 2014, respondents informed petitioner that he was not dismissed from employment. He was only required to comply with the renewal of his documents under Republic Act No.

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[11] Position Paper dated April 23, 2014; *id.* at 151-162.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 153.
[15] *Id.*
[16] *Id.* at 151-162.
[17] *Id.*
[18] See Court of Appeals' Decision July 24, 2018, *id.* at 47.
[19] Memorandum – Re: Notice of Termination dated September 31, 2013; *id.* at 136.
[20] Position Paper dated April 23, 2014; *id.* at 151-162.

5487 (RA 5487) or the Private Security Agency Law[21] specifically his security guard license before an assignment order can be issued him. Respondents also told petitioner to just disregard the termination letter since he had already explained his side on September 18, 2013; but he should first submit his updated requirements so he can be given a post. Instead of renewing his documents, petitioner initiated the complaint for illegal dismissal.[22]

The Ruling of the Labor Arbiter

By Decision[23] dated June 30, 2014, Labor Arbiter Marie Josephine C. Suarez found petitioner to have been illegally dismissed, thus:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring ALLAN M. ADOR ILLEGALLY DISMISSED. JAMILA AND COMPANY SECURITY SERVICE, INC. is ordered to pay ALLAN M. ADOR:
>
> [1] Separation pay equivalent to one month pay per year of service, starting May 27, 2010;
>
> [2] Full backwages starting October 1, 2013 [;]
>
> Both separation pay and full backwages should be computed up to date of promulgation of this Decision.
>
> [3] Attorney's fees equivalent to 10% of the monetary award.
>
> Claims for underpayment of: wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, 13th month pay, ECOLA, night shift differential and other statutory workers' benefits are dismissed without prejudice.
>
> All other claims are dismissed for lack of merit.
>
> The total monetary award is computed in Annex "A" [P211, 315.55],[24] forming part of this Decision.
>
> SO ORDERED.[25]

According to the labor arbiter, petitioner did not ignore the notices to report for work which caused his termination for insubordination. He was not able to reply to the notices because the same were belatedly sent to him on August 23, 2013, September 6, 2013, and October 4, 2013, respectively. Petitioner nonetheless reported to respondents' office each time he received the notices, but respondents refused to give him a new assignment. On September 18, 2013, petitioner submitted a written explanation stating that he

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[21] The Private Security Agency Law, Republic Act No. 5487, June 21, 1969.
[22] Position Paper dated April 23, 2014; *rollo,* pp. 151-162.
[23] *Id.* at 261-265.
[24] See Computation of Complainant's Monetary Award; *id.* at 266.
[25] *Id.* at 265.

cannot renew the documents because he did not have money. Still, respondents terminated his employment.[26]

Too, petitioner was not afforded procedural due process. Respondents only served him a single notice of termination dated September 31, 2013.[27] No other notice was sent him. Records showed that even before petitioner received the final notice to report for work dated August 31, 2013 on October 4, 2013, he was already dismissed as of September 31, 2013.[28] Thus, respondents terminated petitioner without affording him the right to be heard.

Lastly, petitioner is entitled to separation pay equivalent to one (1) month pay per year of service and full backwages. Reinstatement is no longer viable due to the parties' strained relations.[29]

The Ruling of the National Labor Relations Commission (NLRC)

Under its Decision[30] dated December 29, 2014, the NLRC reversed, *viz.*:

> **WHEREFORE**, the labor arbiter's Decision dated June 30, 2014 is hereby set aside and a new one entered dismissing the complaint for lack of merit. However, respondents are ordered to pay complainant his separation pay computed at one-half month salary for every year of service plus ten percent (10%) attorney's fees.
>
> **SO ORDERED**.[31]

The NLRC ruled that petitioner's failure to renew his security guard license and clearances was a valid justification for respondents not to give him any posting. The NLRC, however, found that even prior to his termination petitioner had already been on "floating status" for a period of one (1) year from May 12, 2012 to April 11, 2013. He was, therefore, deemed constructively dismissed. Petitioner was awarded separation pay equivalent to one-half (1/2) month salary for every year of service and attorney's fees for having been compelled to litigate to protect his interest.[32]

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[26] *Id.* at 261-265.
[27] September 31, 2013 could be a typographical error. September has 30 days only, *id.* at 261-265.
[28] Could be a typographical error. September has 30 days only; See Memorandum – Re: Notice of Termination **dated September 31, 2013**; *id.* at 136.
[29] *Id.* at 264.
[30] Penned by Commissioner Romeo L. Go with the concurrences of Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco; *id.* at 80-87.
[31] *Id.* at 87.
[32] *Id.* at 80-87.

The Ruling of the Court of Appeals

In its assailed Decision[33] dated July 24, 2018, the Court of Appeals ruled that petitioner was neither illegally nor constructively dismissed. While petitioner was on "floating status" from May 12, 2012 to April 11, 2013, no bad faith can be imputed on the security agency. It offered petitioner to go back to work within the six-month period required by law.[34] It was petitioner's fault why he was not given any assignment since he did not renew the required documents.[35] The Court of Appeals thus ruled:

> **WHEREFORE**, the petition is **DISMISSED**.
>
> Private respondent Jamila and Company Security Services, Inc. is neither guilty of illegal dismissal nor constructive dismissal. Private respondent is ORDERED to look for a security assignment for petitioner within a period of thirty (30) days from finality of judgment. If one is available, private respondent is ordered to notify petitioner Allan M. Ador to report to such available guard position within ten (10) days from notice. If petitioner fails to report for work within said time period, he shall be deemed to have abandoned his employment with petitioner. In such case, petitioner is not entitled to any backwages, separation pay, or similar benefits.
>
> If no security assignment is available for petitioner within a period of thirty (30) days from finality of judgment, private respondent[s] should comply with the requirements of DOLE Department Order No. 14, Series of 2001, in relation to Art. 289 of the Labor Code, and serve a written notice on petitioner and the DOLE one (1) month before the intended date of termination; and pay petitioner separation pay equivalent to half[-]month pay for every year of his service.
>
> **SO ORDERED**.[36]

Petitioner moved for reconsideration but it was denied under Resolution[37] dated February 18, 2019.

The Present Petition

Petitioner now faults the Court of Appeals for ruling that respondents are not guilty of illegal dismissal. He essentially argues that: (1) respondents terminated his employment *sans* just or authorized cause and in violation of the two-notice requirement; (2) the security agency's sudden recall of the notice of termination was a mere afterthought; and (3) he is entitled to his monetary claims since he was illegally dismissed.[38]

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[33] *Id.* at 40-50.
[34] *Id.* at 46.
[35] *Id.*
[36] *Id.* at 49.
[37] *Id.* at 52-53.
[38] Petition for Review on *Certiorari* dated April 16, 2019; *id.* at 12-38.

In their Comment,[39] respondents riposte that petitioner was not given a new assignment due to his own failure to renew his security guard license as required under RA 5487. There was no illegal dismissal to speak of since he was repeatedly notified that he can be terminated if he did not update his employment documents. Petitioner, nonetheless, ignored these directives. He was also afforded procedural due process since he replied to the notices to report for work on September 18, 2013.

Issue

Did the Court of Appeals err in ruling that petitioner was neither illegally nor constructively dismissed?

Ruling

The Court, not being a trier of facts, is not duty bound to review all over again the records of the case and make its own factual determination. For factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect as they are specialized to rule on matters falling within their jurisdiction especially when supported by substantial evidence. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the quasi-judicial agency, as in this case.[40]

After a judicious review of the records, the Court is constrained to reverse the Court of Appeals' factual findings and legal conclusion.

Petitioner was constructively dismissed

Both the NLRC and Court Appeals found that prior to petitioner's dismissal, he was already on "floating status" from **May 12, 2012 to April 11, 2013**[41] or for a period of almost one (1) year.

In ***Tatel v. JLFP Investigation Security Agency, Inc.,***[42] the Court expounded on the nature of "floating status" in security agency parlance, *viz.*:

> **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

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[39] *Id.* at 395-401.
[40] *The Peninsula Manila v. Jara*, G.R. No. 225586, July 29, 2019. Citations omitted.
[41] *Rollo*, p. 46 and p. 86.
[42] 755 Phil. 171, 183 (2015), citing *Salvaloza v. NLRC*, 650 Phil. 543, 557 (2010).

> 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.** (Emphasis supplied)

Although the Labor Code does not provide a specific provision for temporary "off-detail" or "floating status," the Court has consistently applied Article 292[43] of the Labor Code to set the period of employees' temporary "off-detail" or "floating status" to a **maximum of six (6) months**,[44] thus:

> ART. 292 [previously 286]. *When employment not deemed terminated.* — The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) 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 (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

Records show that petitioner's security agency only offered him to return to work and renew his documents after being on "floating status" for more than six (6) months already. Respondents themselves admitted that they required petitioner to renew his documents on **December 17, 2012**[45] or seven (7) months reckoned from **May 12, 2012** when he was put on "floating status." Further, the three (3) notices to return to work issued by respondents were dated **June 29, 2013**, **July 31, 2013**, and **August 31, 2013**, respectively. These notices were sent to petitioner *via* registered mail after more than one (1) year had elapsed from May 12, 2012. Clearly, petitioner's "floating status" extended beyond the maximum six-month period allowed by law.

The security agency, though, insists that it cannot give petitioner a new posting assignment because his employment documents, particularly his security guard license, were expired. Records show otherwise.

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[43] ART. 292 [286]. *When employment not deemed terminated.* — The bona-fide suspension of the operation of a business or undertaking for a period not exceeding six (6) 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 (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[44] See *Sebuguero v. NLRC*, 318 Phil. 635-653 (1995); and *Agro Commercial Security Services Agency, Inc. v. National Labor Relations Commission,* 256 Phil. 1182 (1989).

[45] See Respondents' Position Paper dated April 23, 2014; *rollo*, p. 153.

As of December 17, 2012, petitioner's security guard license had not at all expired. The DILG-National Police Commission's Civil Security Group issued petitioner's security guard license on **March 29, 2012** with an expiration date on **March 29, 2015**. Petitioner's security guard license attached as **"Annex I-4"**[46] to his petition[47] before the Court of Appeals, reads:

CERTIFICATION

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT based on available records on file with this Office as of this date **SG Allan Ador y Maglinte**, is included in the list of registered private security guard/officer and his /her license to exercise private security profession paid under Special Bank Receipt (SBR) #12154664 which will expire on **March 29, 2015**.

This certification is issued upon request of subject security guard/officer for whatever legal purpose it may serve.

Issued this **29th day of March 2012**, Camp Crame, Quezon City.

FOR THE CHIEF, SOSIA.

Verified by:

(Sgd.)
SPO3 Melinda P Conanan
Action PNCO

Certified correct by:

(Sgd.)
MARY ANNA ALISDAN
Police Chief Inspector
Chief, Records Section[48]

The security agency clearly misled petitioner into believing that it cannot give him a new posting assignment because his security guard license had already expired. It repeatedly required petitioner to first renew his security guard license or he would not be given a new posting assignment, albeit in truth, petitioner's security guard license had not at all expired yet.

In ***Salvaloza v. NLRC,***[49] Salvaloza's security agency refused to give him assignment orders on ground that his security guard license had allegedly expired. The security agency, however, failed to show that Salvaloza's security guard license had actually expired before he was put on "floating status" which lasted for more than six (6) months. The Court ruled that Salvaloza was constructively dismissed.

Clearly, petitioner's "floating status" beyond six (6) months *sans* any valid justification amounted to constructive dismissal. He had already been constructively dismissed long before the security agency served him a notice of termination under Memorandum dated September 31, 2013.[50]

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[46] *Id.* at 146.
[47] *Id.* at 54-75.
[48] Emphasis supplied; see *id.* at 146.
[49] 650 Phil. 543, 558 (2010).
[50] Memorandum – Re: Notice of Termination dated September 31, 2013; *rollo*, p. 136.

Petitioner was not guilty of insubordination

As heretofore shown, although petitioner had already been constructively terminated, the security agency still served him an actual notice of termination supposedly effective September 31, 2013.[51] The ground cited was insubordination.

To begin with, an employee's employment cannot be terminated more than once either actually or constructively. By whatever form the second termination may have been effected the same does not undo, nay, supersede the previous termination that had already taken place. Be that as it may, even assuming that there was no prior constructive dismissal here, petitioner's actual termination from employment effective September 31, 2013,[52] on the ground of insubordination, was still illegal.

Willful disobedience or insubordination requires the concurrence of two (2) requisites: (1) the employee's assailed conduct must have been willful which is characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.[53]

Both requisites are not present here.

First. Respondents allegedly notified petitioner thrice (June 29, 2013, July 31, 2013, and August 31, 2013) to submit his updated requirements so he can be given a new posting assignment. But petitioner continuously ignored these notices.[54] Nothing is farthest from the truth. Petitioner was not able to immediately reply because the notices were only sent to him on August 23, 2013, September 6, 2013, and October 4, 2013 as shown in the stamps of the registered mails.[55] Respondents themselves admitted that the notices were sent to petitioner **only** *via* registered mail.[56]

The labor arbiter also found that petitioner went to respondents' office when he received the first two (2) notices from them.[57] He went there when he received the first notice on August 23, 2013 but no assignment was given him because his documents were supposedly not updated. After receiving the second notice on September 6, 2013, he again reported to respondents' office on September 18, 2013. This time, he explained in writing that he cannot afford to renew his documents for lack of money. Petitioner relied solely on his salary as security guard to pay for the processing fees. At that time, he was not anymore receiving any salary as security guard.

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[51] Could be a typographical error. September has 30 days only.
[52] *Id.*
[53] *University of Manila v. Pinera*, G.R. No. 227550, August 14, 2019 (citations omitted).
[54] Position Paper dated April 23, 2014; *rollo*, pp. 151-162.
[55] *Id.* at 130-137.
[56] See Respondents' Position Paper dated April 23, 2014; *id.* at 154.
[57] *Id.* at 263-264.

Second. The three (3) notices to report for work sent to petitioner were merely general return-to-work orders which did not specify the required details of his posting assignment.[58]

Section 5.2 of DOLE Department Order No. 14, Series of 2001[59] (DO 14-01) decrees that return to work orders must include the following details:

> 5.2 For every assignment of a security guard/personnel to a principal, the duty detail order shall contain the following, among others:
>
> a. Description of job, work or service to be performed
>
> b. Hours and days of work, work shift and applicable premium, overtime and night shift pay rates.[60]

Here, the three (3) notices to report for work are worded, as follows:

> (a) **1st Notice to Report**
>
> You are hereby directed to come to the main Office of Jamila & Company Security Services, Inc., (JCSSI), located at JCI Corporate Centre Bldg., Lantana St., Cubao, Quezon City, for posting/assignment to our client.
>
> Report to Ms. MONETTE CATBAGAN.
>
> For your information.[61]
>
> (b) **2nd Notice to Report**
>
> We sent you a Memorandum dated June 29, 2013 ordering you to come to the main Office of Jamila & Company Security Services Inc., (JCSSI), located at JCI Corporate Centre Bldg., Lantana St., Cubao, Quezon City, for posting/assignment to our client.
>
> However, as of this date you have not complied to our order, hence you are required to submit your letter of explanation why you should not be charged administratively for Insubordination.
>
> For strict compliance.[62]
>
> (c) **3rd Notice to Report**
>
> We sent you a Memorandum dated May 31, 2013 ordering you to come to the main Office of Jamila and Company Security Services Inc., (JCSSI), located at JCI Corporate Centre Bldg., Lantana St., Cubao, Quezon City for posting/assignment to our client.

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[58] *See Padilla v. Airborne Security Service, Inc.*, 821 Phil. 482, 489 (2017).
[59] Entitled, "Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry."
[60] *Id.*
[61] Memorandum with Subject: 1st Notice to Report dated June 29, 2013; *rollo*, p. 130.
[62] Memorandum with Subject: 2nd Notice to Report dated July 31, 2013; *id.* at 132.

> On June 29, 2013 another Memorandum was sent requiring you to submit your letter of explanation why you should not be charged administratively for Insubordination.
>
> As of this date we have not received any response from you, this will serve as our final notice and your failure to report to us with your explanation will be considered as a waiver [of] your right to be heard and will be charged administratively for Insubordination which is a grave offense based on [c]ompany policy with a corresponding penalty of [t]ermination.
>
> For strict compliance.[63]

Notably, the notices did not indicate the required specific details under DO 14-01. They merely directed petitioner to report to the security agency's head office and explain why he failed to comply with the orders, nothing more.

In ***Padilla v. Airborne Security Service, Inc.***,[64] the security agency presented a series of notices sent to Padilla to prove he was offered a new assignment. The notices, however, merely required him to report to work and explain why he had failed to do so. They did not identify any specific client to which Padilla was to be re-assigned. The Court held that the notices were nothing more than general return-to-work orders used by the security agency to cover up Padilla's constructive dismissal for having been on "floating status" for more than six (6) months.

Indeed, the notices to report for work allegedly violated by petitioner could hardly qualify as specific, reasonable, and sufficiently known to him. The allegation of insubordination here was an obvious attempt on the security agency's part to justify petitioner's dismissal from employment. Not every case of insubordination or willful disobedience of an employee of a work-related order is penalized with dismissal. There must be **"reasonable proportionality"** between the willful disobedience and the penalty imposed therefor.[65] Clearly, there is none in this case.

Award due to petitioner

For having been constructively dismissed, the NLRC awarded petitioner separation pay equivalent to one-half (1/2) month salary for every year of service. Although the NLRC did not state the basis for this award, the same conforms with Sections 9.3 and 6.5 of DO 14-01, *viz.*:

> 9.3 *Reserved status.* —
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> xxx xxx xxx

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[63] Memorandum with Subject: 3rd Notice to Report dated August 31, 2013; *id.* at 134.
[64] Supra note 58.
[65] *Gold City Integrated Port Services, Inc. (INPORT) v. National Labor Relations Commission*, 267 Phil. 863, 873 (1990).

If after a period of 6 months, the security agency/employer cannot provide work or give assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as described in subsection 6.5.

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6.5 *Other Mandatory Benefits.* –

In appropriate cases, security guards/similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums form their coverage:

a. Maternity benefit as provided under SSS Law;
b. Separation pay if the termination of employment is for **authorized cause** as provided by law and as enumerated below:

Half-Month Pay Per Year of Service, but in no case less than One Month Pay if separation pay is due to:

1. Retrenchment or reduction of personnel effected by management to prevent serious losses;
2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;
3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees;
4. **Lack of service assignment for a continuous period of 6 months.** (Emphasis and underlining supplied)

xxx xxx xxx

Soliman Security Services, Inc. v. Sarmiento,[66] decreed that a security guard on floating status is entitled to separation pay equivalent to one-half (1/2) month salary for every year of service when the employer opted to terminate him for **authorized cause**: that is when no assignment can be given him for a continuous period of six (6) months due to surplus of security guards and lack of service agreements. The security agency in such case must comply with the provisions of Article 289[67] of the Labor Code, which mandates that a written notice be served to the employee on "floating status" and to the DOLE one (1) month before the intended date of termination." Section 9.3 of DO 14-01 decrees:[68]

9.2 *Notice of Termination.* — In case of termination of employment due to authorized causes provided in Article 283 and 284 of the Labor Code and in the succeeding subsection, the employer shall

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[66] 792 Phil. 708 (2016).
[67] Previously Article 283.
[68] Supra note 66, at 718.

> serve a written notice on the security guard/personnel and the DOLE at least one (1) month before the intended date thereof.

Thus, the award of separation pay equivalent to one-half (1/2) month salary for every year of service under Sections 9.3 and 6.5 of DO 14-01 is only applicable when: (1) the security guard was terminated because no service agreements are available for a continuous period of six (6) months; and (2) notice of termination was served to the security guard as required under Section 9.2 of DO 14-01.

Here, the security agency did not terminate petitioner based on Sections 9.3 and 6.5 of DO 14-01 but for alleged insubordination under Article 297[69] of the Labor Code. As discussed, however, the elements of insubordination are not present here. Thus, there being no authorized cause for petitioner's dismissal under DO 14-01 or Article 297 of the Labor Code, what should apply here instead are the usual remedies or relief which illegally or constructively dismissed employees are entitled to, *viz.*: (1) reinstatement or separation pay equivalent to one (1) month salary for every year of service; and (2) backwages. These two (2) are exclusive and awarded conjunctively.[70]

Separation pay is granted when: a) the relationship between the employer and the illegally dismissed employee is already strained; and b) a considerable length of time had already passed rendering it impossible for the employee to return to work.[71] A prayer for separation pay is an indication of the strained relations between the parties.[72] Considering that petitioner himself prayed for an award of separation pay in lieu of reinstatement and eight (8) years had lapsed since he was constructively dismissed, reinstatement is rendered impracticable.[73] We, therefore, affirm the labor arbiter's award of separation pay in lieu of reinstatement. We also affirm the denial of petitioner's other monetary claims for failure to prove he is entitled to them.

As for backwages, in ***Peak Ventures Corp. v. Heirs of Villareal***,[74] the Court ruled that where there is constructive dismissal, backwages must be computed from the time the employee was unjustly relieved from duty since it was from this point that his compensation was withheld from him. Petitioner's **backwages**, therefore, must be **computed from May 12, 2012** or when the security agency put him on "floating status" without justifiable reason. Since separation pay is awarded here, backwages should be computed **up to the finality of this Decision**.[75]

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[69] Formerly Article 282; *Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.*

[70] *Siemens v. Domingo*, 582 Phil. 86, 103 (2008).

[71] See *Doctor, et al. v. NII Enterprise, et al.*, 821 Phil. 251, 268-269 (2017).

[72] *Cabañas v. Abelardo G. Luzano Law Office*, G.R. No. 225803, July 2, 2018.

[73] See *A. Nate Casket Maker v. Arango*, 796 Phil. 597 (2016).

[74] 747 Phil. 320 (2014).

[75] See *Bookmedia Press, Inc. v. Sinajon*, G.R. No. 213009, July 17, 2019.

Further, since petitioner was compelled to litigate to protect his interests,[76] the award of attorney's fees equivalent to ten percent (10%) of the total monetary award is proper.[77] Considering he was represented by the Public Attorney's Office (PAO), the attorney's fees awarded here shall be deposited to the National Treasury as trust fund and may be disbursed for special allowances of authorized officials and PAO lawyers.[78]

Finally, respondents Sergio Jamila III and Eddimar O. Arcena should not be held personally liable to pay petitioner's monetary awards. It is settled that a corporation has a personality distinct and separate from the persons composing it.[79] As a general rule, only the employer-corporation, and not its officers, may be held liable for illegal dismissal of employees. The exception applies when corporate officers acted with bad faith.[80]

Here, other than their respective designations as President and HR Manager of Jamila and Company Security Services, Inc., there was no indication that Sergio Jamila III and Eddimar O. Arcena acted in bad faith relative to petitioner's termination.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated July 24, 2018 and the Resolution dated February 18, 2019 of the Court of Appeals in CA-G.R. SP No. 140764 are **REVERSED** and **SET ASIDE**.

Petitioner Allan M. Ador is declared to have been **constructively dismissed** from employment. Respondent Jamila and Company Security Services, Inc. is **ORDERED** to **PAY** petitioner the following:

(1) Backwages computed from May 12, 2012 until the finality of this Decision;
(2) Separation pay at the rate of one (1) month pay per year of service until the finality of this Decision; and
(3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

The total amount shall earn legal interest of six percent (6%) *per annum* from the finality of this Decision until fully paid. The Labor Arbiter is **ORDERED** to prepare a comprehensive computation of the monetary award and cause its implementation, with utmost dispatch.

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[76] *Philippine National Oil Co.-Energy Development Corp. v. Buenviaje*, 788 Phil. 508 (2016).
[77] See *Alva v. High Capacity Security Force, Inc.*, 820 Phil. 677, 681 (2017).
[78] *Id.*
[79] See *Bank of Commerce v. Nite*, 764 Phil. 655 (2015).
[80] See *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1 (2010).

SO ORDERED.

AMY C. LAZARO- JAVIER
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice