Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

# NOTICE

Sirs/Mesdames

*Please take notice that the Court, Third Division, issued a Resolution dated* **July 26, 2023**, *which reads as follows:*

"**G.R. No. 252685 (*Vicente S. Evangelista, Ferdie Galisim, Joselito Casuga, and Ferdinand Ramos v. Yukon General Manpower Services Corporation and Sylvia C. Carpio*).** – This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated September 19, 2019 and Resolution[3] dated June 17, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 144671. The CA affirmed the Resolution[4] dated October 30, 2015 and Resolution[5] dated December 29, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-001981-15, which in turn reversed the Decision[6] dated June 25, 2015 of the Labor Arbiter (LA) in NLRC NCR Case No. 03-03912-15.

## The Antecedent Fact

Respondent Yukon General Manpower Services Corporation (Yukon) is a manpower agency duly registered with the Department of Labor and Employment (DOLE). Since 2003, it had a service agreement with Abacus Securities Corporation (Abacus) to provide it with workers to perform messengerial services.[7]

On various dates from 2003 and 2009, Yukon employed petitioners Vicente Evangelista, Ferdie Galisim, Joselito Casuga, and Ferdinand Ramos (collectively, petitioners) and assigned them to work for Abacus as motorized messengers. They executed Project Employment Contracts which stipulated a daily wage of ₱748.89 in addition to other benefits. It also indicated that their

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1 *Rollo*, pp. 13-28.
2 Id. at 46-59; penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Priscilla J. Baltazar-Padilla and Louis P. Acosta, concurring.
3 Id. at 61-63.
4 Id. at 226-238; penned by Commissioner Alan A. Ventura, with Presiding Commissioner Gregorio O. Bilog III and Commissioner Erlinda T. Agus, concurring.
5 Id. at 251-253.
6 Id. at 202-211; penned by Labor Arbiter Alberto S. Abalayan.
7 Id. at 207.

services as messengers were limited to the duration of the "project" which was the service agreement between Yukon and Abacus.[8]

On February 4, 2015, Abacus informed Yukon that it will no longer renew the service agreement after its expiration on March 3, 2015 since it intended to engage another manpower agency.[9] Yukon thus notified petitioners that their work project co-terminus with the service agreement would also be deemed expired on March 3, 2015.[10] Nevertheless, it sent them a letter dated March 5, 2015 directing them to report to the office within five days to discuss their re-assignment to other client companies. It was stated in the letter that their failure to report within this period would mean that they were no longer interested to continue working with Yukon.[11]

Petitioners did not report to the office which constrained Yukon to send them the letter dated March 12, 2015, giving them a "last and final warning." It cautioned that their failure to report to the office will be considered willful disobedience which is a legal ground for the termination of their employment.[12]

Despite petitioners' continued failure to comply with Yukon's orders, it found them alternative work assignments as Utility/Janitor for its other client, Rublou, Inc. (Rublou). It sent them a letter dated March 16, 2015 directing them to submit their documentary requirements as a condition for their deployment. It was reiterated that their failure to comply shall be considered as lack of interest to work with Yukon.[13]

On March 27, 2015, Yukon sent petitioners a letter giving them another "last and final warning" to comply with its orders.[14]

On March 31, 2015, petitioners suddenly filed complaints[15] against Yukon for constructive dismissal and seeking the payment of service incentive leave (SIL), 13th month pay, separation pay, damages, and attorney's fees.

On May 12, 2015, Yukon finally sent petitioners a letter informing them that they have been terminated from employment. The ground it cited was their persistent failure to comply with its lawful orders which amounted to serious misconduct and a just cause for dismissal.[16]

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8 Id.
9 Id. at 145.
10 Id. at 203.
11 Id. at 155-162.
12 Id. at 163-170.
13 Id. at 171-178.
14 Id. at 187-194.
15 Id. at 86-90.
16 Id. at 147-154.

## The LA Ruling

The LA rendered its Decision[17] ruling that petitioners were not constructively dismissed. However, it ordered Yukon to pay them separation pay, 13th month pay, SIL, and a refund of their cash bond:

> **WHEREFORE**, premises considered, respondent Yukon General Services Corporation is hereby ordered to pay complainants separation pay, 13th month pay, service incentive leave pay and refund cash bond in the total amounts as follows:
>
> | | | |
> |---|---|---|
> | 1. | V. Evangelista | P64,746.00 |
> | 2. | F. Galisin | 59,730.00 |
> | 3. | J. Casuga | 44,682.00 |
> | 4. | F. Ramos | 34,650.00 |
>
> Further, respondent corporation is further ordered to pay the National Labor Relations Commission, through its Cashier, the amount equivalent to ten percent (10%) of the total monetary awards as attorney's fees to be remitted to the National Treasury to form part of the Trust Fund created for the Public Attorney's Office under R.A. No. 9406.
>
> Other claims are dismissed for lack of merit.
>
> **SO ORDERED.**[18]

The LA held that petitioners could not have been illegally dismissed because their employment was co-terminus with the service agreement between Yukon and Abacus.[19] However, it concluded that petitioners were terminated from employment due to the expiration of the service agreement which, under Section 13 of DOLE Department Order No. 18-A, series of 2011 (D.O. No. 18-A), entitled them to separation pay and other emoluments.[20]

Unsatisfied, Yukon filed a partial appeal[21] of the LA Decision to the NLRC. It assailed the decision only insofar as it granted petitioners separation pay. It argued that D.O. 18-A could not be applied because petitioners were not terminated from employment. They were employees of Yukon, and not of Abacus. Hence, when the service agreement expired, they remained to be Yukon's employees and were given new job assignments from its other clients. It was only when they repeatedly defied Yukon's lawful orders that they were dismissed for just cause.[22]

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17 Id. at 202-211.
18 Id. at 211.
19 Id. at 208.
20 Id. at 208-209.
21 Id. at 212-223.
22 Id. at 219-221.

## The NLRC Ruling

The NLRC issued its Resolution[23] which granted Yukon's partial appeal and reversed and set aside the LA Decision:

> **WHEREFORE**, premises considered, the Decision dated June 25, 2015 is hereby **REVERSED** and **SET ASIDE**. Complainants are declared to have been validly dismissed from work. Consequently, the award of separation pay is hereby **DELETED** for lack of merit, however, the awards of service incentive leave, refund of cash bond and 13th month pay, plus 10% thereof, as attorney's fees, **STAY**.
>
> **SO ORDERED**.[24]

The NLRC affirmed the LA's finding that petitioners were not constructively dismissed when they were reassigned as Utility/Janitors to Rublou. For this reason, there was no basis to grant them separation pay in lieu of reinstatement.[25] It further held that the LA erred in granting separation pay pursuant to D.O. No. 18-A because petitioners were not terminated from employment. They were instead legally placed on "floating status" or on temporary "off-detail" while Yukon searched for new work assignments for them. This was an allowable temporary retrenchment measure under Article 286 of the Labor Code.[26]

Dismayed, petitioners sought reconsideration of the Decision but was denied by the NLRC in its Resolution[27] dated December 29, 2015.

Petitioners assailed the NLRC rulings through a Petition for *Certiorari*[28] with the CA, to which Yukon filed a Comment.[29]

## The CA Ruling

The CA rendered its Decision[30] which denied the Petition for *certiorari* and affirmed the NLRC Resolution:

> **WHEREFORE**, premises considered, the instant petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is **DENIED**.
>
> **SO ORDERED**.[31]

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23 Id. at 226-238.
24 Id. at 238.
25 Id. at 232-234.
26 Id. at 233-235.
27 Id. at 251-253.
28 Id. at 64-80.
29 Id. at 254-269.
30 Id. at 46-59.
31 Id. at 58.

The CA held that petitioners were not entitled to separation pay under D.O. No. 18-A since this applies only when there has been a termination of employment resulting from the expiration of a service agreement. However, in this case, there was no severance of employment between Yukon and petitioners despite the expiration of their service agreement with Abacus. Petitioners were instead merely placed on a temporary floating status until they were given new work assignments.[32] The only termination of employment was caused by petitioners' defiance of Yukon's lawful orders which was tantamount to willful disobedience and a just cause for their termination for which no separation pay is due.[33]

Petitioners sought reconsideration,[34] but was denied by the CA.[35]

Hence, the instant petition.

Petitioners argued that they were entitled to separation pay because Yukon's intent from the start was to allegedly terminate their employment and not to put them on floating status. It abused its managerial prerogative when it transferred them to a substantially lower job assignment which amounted to their constructive dismissal.[36] They also insisted that the LA correctly granted them separation pay under Section 13 of D.O. No. 18-A and on account of their constructive dismissal.[37]

Yukon filed a Comment[38] reiterating its main argument that petitioners cannot be granted separation pay considering they were not constructively dismissed from employment. They were merely put on temporary floating status when the service agreement with Abacus expired. It emphasized that it was petitioners who refused to accept the new work assignments for which Yukon cannot be faulted.

Petitioners thereafter filed a Manifestation[39] alleging that they will no longer respond to the Comment since they have already exhaustively argued all the relevant issues in this case in their petition for review on *certiorari*.

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32 Id. at 56-57.
33 Id. at 58.
34 Id. at 287-293.
35 Id. at 61-63.
36 Id. at 21-24.
37 Id. at 24-27.
38 Id. at 306-319.
39 Id. at 328-330.

## The Issue

The issue in this case is whether petitioners are entitled to separation pay under D.O. No. 18-A.

## The Ruling of this Court

The petition is denied.

The resolution of this case hinges on the applicability of Section 13 of D.O. No. 18-A, which provides:

> **Section 13. Effect of termination of employment**. The termination of employment of the contractor employee prior to the expiration of the Service Agreement shall be governed by Articles 282, 283 and 284 of the Labor Code.
>
> In case the termination of employment is caused by the pre-termination of the Service Agreement not due to authorized causes under Article 283, the right of the contractor employee to unpaid wages and other unpaid benefits including unremitted legal mandatory contributions, e.g., SSS, Philhealth, Pag-ibig, ECC, shall be borne by the party at fault, without prejudice to the solidary liability of the parties to the Service Agreement.
>
> **Where the termination results from the expiration of the service agreement**, or from the completion of the phase of the job, work or service for which the employee is engaged, the latter may opt for payment of separation benefits as may be provided by law or the Service Agreement, without prejudice to his/her entitlement to the completion bonuses or other emoluments, including retirement benefits whenever applicable. (Emphasis and underscoring supplied)

It is clear that this provision applies only in cases when there is a termination of employment resulting from either the pre-termination or expiration of the service agreement. The language is clear, plain, and free from ambiguity, and must therefore be given its literal meaning and applied without attempted interpretation.[40]

After reviewing the submissions of the parties, the Court concurs with the CA. Section 13 of D.O. No. 18-A cannot be applied in this case because petitioners were not terminated from employment after the expiration of the service agreement between Yukon and Abacus.

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40 *Bolos v. Bolos*, 648 Phil. 630, 637 (2010).

It is undisputed that petitioners were regular employees of Yukon, and not of Abacus. They entered into employment contracts[41] with Yukon alone and even used Identification Cards indicating Yukon as their employer.[42]

The petitioners' employment with Yukon also had a peculiar nature due to the latter's business as a manpower agency. Necessarily, petitioners were not bound to a specific work project or assignment, and could be re-assigned to other clients as the needs or circumstances warranted. This was explicitly stipulated in their Project Employment Contract as follows:

> 10. The COMPANY [Yukon] has the right to transfer you from one project to another, and to change your area of assignment, working hours, designation and such other work-related matters to meet or suit its needs and demands.[43]

Hence, when the service agreement between Yukon and Abacus expired, there was no legal termination of the employment contract between Yukon and petitioners. The only effect was on petitioners' work assignment which could be validly changed pursuant to their employment contracts. The CA and the NLRC therefore correctly ruled that they were not terminated from employment but were merely put on a temporary floating status until re-assigned to another project which, in this case, was for Rublou.

The Court affirms and the CA's pertinent discussion on the non-applicability of D.O. No. 18-A and petitioners' temporary floating status:

> Clear from the foregoing is that Section 13, paragraph 3 of DOLE Department Order No. 18-A only applies where termination of employment exists, and such termination is the result of the expiration of the service agreement. Termination of employment generally refers to the cessation or severance of contractual relationship between an employer and employee. Based on the given parameters, this Court is not convinced that Section 13, paragraph 3 of DOLE Department Order No. 18-A is applicable to the instant dispute.
>
> As the *rollo* would bear out, after the expiration of the service agreement with Abacus, there had been no severance or cessation of the employer-employee relationship between Yukon and petitioners. Petitioners were merely placed on "floating status" or temporary "off-detail" which is considered a temporary retrenchment measure allowed under Article 301 of the Labor Code, as amended, *viz*:
>
> > ART. 301 [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 fulfilment (sic) by the employee of a military or civic duty shall not terminate employment.

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41 *Rollo*, pp. 108-113.
42 Id. at 104-107.
43 Id. at 109.

> 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.

To further guide Us regarding the application of Article 301 to employees situated with herein petitioners, the Supreme Court in *Exocet Security and Allied Services Corporation vs. Serrano*, explained:

> There is no specific provision of law which treats of a temporary retrenchment or lay-off and provides for the requisites in effecting it or a period or duration therefor. These employees cannot forever be temporarily laid-off. To remedy this situation or fill the hiatus, Article 286 [now 292] may be applied but only by analogy to set a specific period that employees may remain temporarily laid-off or in floating status. Six months is the period set by law that the operation of a business or undertaking may be suspended thereby suspending the employment of the employees concerned. The temporary lay-off wherein the employees likewise cease to work should also not last longer than six months. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law, and that failing to comply with this would be tantamount to dismissing the employees and the employer would thus be liable for such dismissal.

Applying the foregoing to the instant case, once the service agreement expires, Yukon may place an employee on a temporary lay-off or floating status for a period not exceeding six (6) months. This period is the limit set for the employer to secure new work assignments for its employees placed on such temporary lay-off or floating status. Should Yukon fail to secure new work assignments within said period, it shall retrench the concerned employees and give them separation pay equivalent to half-month pay for every year of service. Otherwise, Yukon shall be liable for illegal dismissal.

In the instant case, petitioners filed their labor complaint on March 31, 2015 or merely 27 days after they were deemed placed on floating status. Thus, the 6-month period has not yet lapsed at the time of the filing of their complaint. Moreover, as early as March 16, 2015, Yukon informed petitioners of their new work assignments as Utility/Janitor to Rublou, Inc. in Cainta, Rizal albeit petitioners refused such new assignments claiming the same to be lower or lesser positions.

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In view of the foregoing, there was no termination of employment to speak of occasioned by the expiration of the service agreement that would warrant the application of Section 13, paragraph 3 of DOLE Department Order No 18-A, Series of 2011. The termination of employment which transpired in this case was grounded upon the open defiance of petitioners to the lawful orders of Yukon. Such defiance constitutes willful disobedience which is a just cause for termination of employment. Accordingly, there is no basis for the award of separation pay in favor of petitioners.[44]

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[44] Id. at 55-58.

Based on all the foregoing, the CA correctly set aside the grant of separation pay in favor of petitioners for lack of legal basis. The LA erred in applying Section 13 of D.O. No. 18-A since petitioners' employment was never terminated by reason of the expiration of the service agreement between Yukon and Abacus.

**WHEREFORE**, premises considered, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 19, 2019 and Resolution dated June 17, 2020 of the Court of Appeals in CA-G.R. SP No. 144671 are hereby **AFFIRMED**.

**SO ORDERED."** (**Caguioa**, *J., on leave*; **Inting**, *J., Acting Chairperson*, per S.O. No. 3004 dated July 10, 2023; **Dimaampao**, *J., on official business*.)

By authority of the Court:

**MISAEL DOMINGO C. BATTUNG III**
*Division Clerk of Court*

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