Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MACARIO S. PADILLA,
Petitioner,

-versus-

AIRBORNE SECURITY SERVICE, INC. AND/OR CATALINA SOLIS,
Respondents.

G.R. No.210080

Present:

VELASCO, JR., *J.*, *
BERSAMIN, *Acting Chairperson*,**
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:
November 22, 2017

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DECISION

LEONEN, *J.*:

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. Security guards dismissed in this manner are ordinarily entitled to reinstatement. It is not for tribunals resolving these kinds of dismissal cases to take the initiative to rule out reinstatement. Otherwise, the discriminatory conduct of their employers in excluding them from employment shall unwittingly find official approval.

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* On official leave.

** Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

Age, per se, cannot be a valid ground for denying employment to a security guard.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed April 18, 2013 Decision[2] and November 11, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 122700 be reversed and set aside.

The assailed Court of Appeals April 18, 2013 Decision sustained the August 3, 2011 Decision[4] of the National Labor Relations Commission, which affirmed the September 10, 2010 Decision[5] of Labor Arbiter Fedriel S. Panganiban (Labor Arbiter Panganiban) dismissing petitioner Macario S. Padilla's (Padilla) Complaint[6] for illegal dismissal. The assailed Court of Appeals November 11, 2013 Resolution denied petitioner's Motion for Reconsideration.[7]

On September 1, 1986, Padilla was hired by respondent Airborne Security Service, Inc. (Airborne) as a security guard.[8] He was first assigned at an outlet of Trebel Piano along Ortigas Avenue Extension, Pasig City.[9]

Padilla allegedly rendered continuous service until June 15, 2009, when he was relieved from his post at City Advertising Ventures Corporation and was advised to wait for his re-assignment order. On July 27, 2009, he allegedly received a letter from Airborne directing him to report for assignment and deployment. He called Airborne's office but was told that he had no assignment yet. On September 9, 2009, he received another letter from Airborne asking him to report to its office. He sent his reply letter on September 22, 2009 and personally reported to the office to inquire on the status of his deployment with a person identified as Mr. Dagang, Airborne's Director for Operations. He was told that Airborne was having a hard time finding an assignment for him since he was already over 38 years old. Padilla added that he was advised by Airborne's personnel to resign, but he refused. In December 2009, when he reported to the office to collect his 13th month pay, he was again persuaded to hand in his resignation letter.

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1 *Rollo*, pp. 11–29.

2 Id. at 31–41. The Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. of the Twelfth Division, Court of Appeals, Manila.

3 Id. at 43–44. The Resolution was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr. of the Twelfth Division, Court of Appeals, Manila.

4 Id. at 169–176. The Decision, docketed as NLRC-LAC-No. 01-000062-11 [NLRC NCR 02-02851-10 (05-07337-10)], was penned by Commissioner Angelo Ang Palana and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena of the Fourth Division, National Labor Relations Commission, Quezon City.

5 Id. at. 150–156.

6 Id. at 115–117.

7 Id. at 241–246.

8 Id. at 32.

9 Id. at 151.

Still not having been deployed or re-assigned, on February 23, 2010, Padilla filed his Complaint for illegal dismissal,[10] impleading Airborne and its president, respondent Catalina Solis (Solis).[11]

Respondents countered that Padilla was relieved from his post on account of a client's request.[12] Thereafter, Padilla was directed to report to Airborne's office in accordance with a Disposition/Relieve Order dated June 15, 2009. However, he failed to comply and went on absence without leave instead.[13] Respondents added that more letters—dated July 27, 2009; September 9, 2009, which both directed Padilla to submit a written explanation of his alleged unauthorized absences; January 12, 2010; and May 27, 2010—instructed Padilla to report to Airborne's office, to no avail.[14] Respondents further denied receiving Padilla's September 22, 2009 letter of explanation.[15]

In his September 10, 2010 Decision,[16] Labor Arbiter Panganiban dismissed Padilla's Complaint.[17] He lent credence to respondents' claim that Padilla failed to report for work despite the letters sent to him.[18]

In its August 3, 2011 Decision,[19] the National Labor Relations Commission affirmed in toto Labor Arbiter Panganiban's Decision.[20]

The assailed Court of Appeals April 18, 2013 Decision sustained the rulings of the National Labor Relations Commission and of Labor Arbiter Panganiban.[21] It concluded that, if at all, Padilla was placed on floating status for only two (2) months, from June 15, 2009, when he was recalled, to July 27, 2009.[22] It emphasized that the temporary "off-detail" or placing on "floating" status of security guards for less than six (6) months does not amount to dismissal[23] and that there is constructive dismissal only when a security agency fails to provide an assignment beyond the six (6)-month threshold.[24] The Court of Appeals also found that it was Padilla who failed to report for work despite respondents' July 27, 2009 and September 9, 2009 letters.[25]

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10 Id.
11 Id. at 115.
12 Id. at 152.
13 Id.
14 Id. at 152–153.
15 Id. at 153.
16 Id. at 150–156.
17 Id. at 156.
18 Id. at 155.
19 Id. at 169–176.
20 Id. at 175.
21 Id. at 40.
22 Id.
23 Id. at 38–40.
24 Id.
25 Id.

Following the Court of Appeals' denial of his Motion for Reconsideration,[26] Padilla filed the present Petition before this Court.

For this Court's resolution is the sole issue of whether or not petitioner Macario S. Padilla was constructively dismissed from his employment with respondent Airborne Security Service, Inc., he having been placed on floating status apparently on the basis of his age and not having been timely re-assigned.

The Court of Appeals gravely erred in ruling that petitioner was not constructively dismissed and in concluding that he went on absence without leave and abandoned his work.

I

Rule 45 petitions, such as the one brought by petitioner, may only raise questions of law.[27] Equally settled however, is that this rule admits of the following exceptions:

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) *when the inference made is manifestly mistaken, absurd or impossible*; (3) when there is grave abuse of discretion; (4) *when the judgment is based on a misapprehension of facts*; (5) when the findings of facts are conflicting; (6) when in making its findings the [Court of Appeals] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) *when the [Court of Appeals] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.*[28] (Emphasis supplied, citation omitted)

The Court of Appeals made a gross misapprehension of facts and overlooked other material details. The facts of this case, when more appropriately considered, sustain a conclusion different from that of the

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26 Id. at 241–246.

27 RULES OF COURT, Rule 45, Section 1:
Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

28 *Tatel v. JLFP Investigation Security Agency, Inc.*, 755 Phil. 171, 181–182 (2015) [J. Perlas-Bernabe First Division].

Court of Appeals. Petitioner was constructively dismissed from employment owing to his inordinately long floating status.

II

The practice of placing security guards on "floating status" or "temporary off-detail" is a valid exercise of management prerogative.[29] Jurisprudence has settled that the period of temporary off-detail must not exceed six (6) months. Beyond this, a security guard's floating status shall be tantamount to constructive dismissal.[30] In *Reyes v. RP Guardians Security Agency*:[31]

> Temporary displacement or temporary off-detail of security guard is, generally, allowed in a situation where a security agency's client decided not to renew their service contract with the agency and no post is available for the relieved security guard. Such situation does not normally result in a constructive dismissal. *Nonetheless, when the floating status lasts for more than six (6) months, the employee may be considered to have been constructively dismissed.* No less than the Constitution guarantees the right of workers to security of tenure, thus, employees can only be dismissed for just or authorized causes and after they have been afforded the due process of law.[32] (Emphasis supplied, citations omitted)

Therefore, a security guard's employer must give a new assignment to the employee within six (6) months.[33] This assignment must be to a specific or particular client.[34] "A general return-to-work order does not suffice.":[35]

> 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, 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.[36]

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29 *Soliman Security Services, Inc. v. Sarmiento*, G.R. No. 194649, August 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/194649.pdf> [J. Perez, Third Division].

30 *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598 (2013) [J. Mendoza, Third Division].

31 Reyes v. RP Guardians Security Agency, Inc.,.708 Phil. 598 (2013) [J. Mendoza, Third Division].

32 Id. at 603–604.

33 *Ibon v. Genghis Khan Security Services*, G.R. No. 221085, June 19, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/221085.pdf> 7 [J. Mendoza, Second Division].

34 Id.

35 Id.

36 Id.

III

To prove that petitioner was offered a new assignment, respondents presented a series of letters requiring petitioner to report to respondent Airborne's head office.[37] These letters merely required petitioner to report to work and to explain why he had failed to report to the office. These letters did not identify any specific client to which petitioner was to be re-assigned. The letters were, at best, nothing more than general return-to-work orders.

Jurisprudence is consistent in its disapproval of general return-to-work orders as a justification for failure to timely render assignments to security guards.

In *Ibon v. Genghis Khan Security Services*,[38] petitioner Ravengar Ibon (Ibon) filed a complaint for illegal dismissal after he was placed on floating status for more than six (6) months by his employer, respondent Genghis Khan Security Services (Genghis Khan). In its defense, Genghis Khan claimed that Ibon abandoned his work after he failed to report for work despite its letters requiring him to do so. Ruling in favor of Ibon, this Court noted 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.[39]

Similarly, in *Soliman Security Services, Inc. v. Sarmiento*,[40] respondent security guards claimed that they were illegally dismissed after they were placed on floating status for more than six (6) months. Their employer, petitioner Soliman Security Services, Inc. (Soliman), presented notices requiring them to go back to work. However, this Court found that the notices did not absolve Soliman of liability:

> The crux of the controversy lies in the consequences of the lapse of a significant period of time without respondents having been reassigned. Petitioner agency faults the respondents for their repeated failure to comply with the directives to report to the office for their new

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37 *Rollo*, pp. 39–40.

38 G.R. No. 221085, June 19, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/221085.pdf> [J. Mendoza, Second Division].

39 Id. at 6.

40 G.R. No. 194649, August 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/194649.pdf> [J. Perez, Third Division].

assignments. To support its argument, petitioner agency submitted in evidence notices addressed to respondents, which read:

> You are directed to report to the undersigned to clarify your intentions as you have not been reporting to seek a new assignment after your relief from Interphil.
>
> To this date, we have not received any update from you neither did you update your government requirements . . .
>
> We are giving you up to May 10, 2007 to comply or we will be forced to drop you from our roster and terminate your services for abandonment of work and insubordination.
>
> Consider this our final warning.

As for respondents, they maintain that the offers of new assignments were mere empty promises. Respondents claim that they have been reporting to the office for new assignments only to be repeatedly turned down and ignored by petitioner's office personnel. . . . .

> Instead of taking the opportunity to clarify during the hearing that respondents were not dismissed but merely placed on floating status and instead of specifying details about the available new assignments, the agency merely gave out empty promises. No mention was made regarding specific details of these pending new assignments. If respondent guards indeed had new assignments awaiting them, as what the agency has been insinuating since the day respondents were relieved from their posts, the agency should have identified these assignments during the hearing instead of asking respondents to report back to the office. The agency's statement in the notices — that respondents have not clarified their intentions because they have not reported to seek new assignments since they were relieved from their posts — is specious at best.[41]

IV

As a further defense, respondents add that it was petitioner who abandoned his work.[42]

For an employee to be considered to have abandoned his work, two (2) requisites must concur. First, the employee must have failed to report for work or have been absent without a valid or justifiable reason. Second, the employee must have had a "clear intention to sever the employer-employee relationship."[43] This Court has emphasized that "the second element [i]s the

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41 Id. at 5–6.

42 *Rollo*, pp. 33–34.

43 *Tatel v. JLFP Investigation Security Agency, Inc.*, 755 Phil. 171, 179 (2015) [J. Perlas-Bernabe First Division].

more determinative factor."[44] This second element, too, must be "manifested by some overt acts."[45]

Petitioner's conduct belies any intent to abandon his work. To the contrary, it demonstrates how he took every effort to retain his employment. Right after he received the first letter dated July 27, 2009, he called Airborne's head office, only to be told that he had no assignment yet.[46] Upon being informed by his wife of a subsequent letter dated September 9, 2009, he replied in the following manner:[47]

> SIR,
>
> HEREWITH MY EXPLANATION REGARDING YOUR LETTER THAT I RECEIVED MY WIFE YESTERDAY 22 SEPT. 09, WHY IM NOT REPORTING IN YOUR OFFICE, SINCE I RECEIVED IN MY POST AT CITY ADVERTISING CORP. JUNE 15 – 09. THAT'S NOT TRUE, SIR.
>
> KINABUKASAN PAGKA RECEIVED KO SA CITY ADS CORP. NAG-REPORT AKO PERO DI TAYO NAGKITA NAKA-ALIS KA NA, NAGKA-USAP TAYO SA CELLPHONE NG OPISINA KAY MAM POPS. SABI MO SA PAY-DAY NA LANG TAYO MAG-USAP.
>
> AFTER OUR CONVERSATION ON PAY-DAY, YOU TOLD ME "NO AVAILABLE POST FOR YOU RIGHT NOW, BUT JUST CALL ME UP, OR I WILL CALL YOU IF THERE'S A POSSIBLE POST." SO OFTENTIMES I'LL CALL, YOUR ANSWER'S THE SAME: "NO POST".
>
> SO DON'T WORRY, SIR, I'LL ALWAYS PRAY TO OUR ALMIGHTY GOD, SOMEDAY, YOU GIVE ME WORK / BEST POST.
>
> THANK YOU AND HOPING FOR YOUR UNDERSTAND REGARDING THESE MATTER.
>
> RESPECTFULLY YOURS,
>
> Mr. M. PADILLA[48]

Petitioner emphasized that he also personally reported to Airborne's Operations Director, Mr. Dagang, to inquire about his re-assignment. However, Mr. Dagang told him that "they were having difficulty finding him a deployment because he was already old."[49] Petitioner added that sometime

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44 Tatel v. JLFP Investigation Security Agency, Inc., Id. at 184.
45 Tatel v. JLFP Investigation Security Agency, Inc., Id.
46 *Rollo*, pp. 151–152, Labor Arbiter Decision.
47 Id. at 19–20.
48 Id. (Grammatical errors in the original).
49 Id. at 19.

in December 2009, when he personally reported to the head office to get this 13th month pay, he was persuaded to resign.[50]

Considering petitioner's 24 years of uninterrupted service, it is highly improbable that he would abandon his work so easily.[51] There is no logical explanation why petitioner would abandon his work. Being a security guard has been his source of income for 24 long years.

In *Tatel v. JLFP Investigation Security Agency*,[52] Vicente Tatel (Tatel), a security guard, filed a complaint for illegal dismissal after being placed on floating status for more than six (6) months. In finding that Tatel did not abandon his work, this Court gave consideration to Tatel's prolonged service or continuous employment:

> The charge of abandonment in this case is belied by the high improbability of Tatel intentionally abandoning his work, taking into consideration his length of service and, concomitantly, his security of tenure with JLFP. As the NLRC had opined, no rational explanation exists as to why an employee who had worked for his employer for more than ten (10) years would just abandon his work and forego whatever benefits he may be entitled to as a consequence thereof. As such, respondents failed to sufficiently establish a deliberate and unjustified refusal on the part of Tatel to resume his employment, which therefore leads to the logical conclusion that the latter had no such intention to abandon his work.[53]

Equally belying petitioner's intent to abandon his work is his immediate filing of a Complaint for illegal dismissal on February 23, 2010. This was only eight (8) months after he was placed on floating status.[54] As similarly noted in *Tatel v. JLFP Investigation Security Agency*:[55]

> An employee who forthwith takes steps to protest his layoff cannot, as a general rule, be said to have abandoned his work, and the filing of the complaint is proof enough of his desire to return to work, thus negating any suggestion of abandonment.[56] (Citation omitted)

Taking the totality of circumstances into consideration, this Court is unable to conclude that petitioner abandoned his work. Rather, this Court finds that he was placed on floating status for more than six (6) months. Thus, he was constructively dismissed.

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50 Id.

51 *See Tatel v. JLFP Investigation Security Agency, Inc.*, 755 Phil. 171 (2015) [J. Perlas-Bernabe First Division].

52 755 Phil. 171 (2015) [J. Perlas-Bernabe First Division].

53 Tatel v. JLFP Investigation Security Agency, Inc., Id. at 184–185.

54 *Rollo*, p. 13, Petition.

55 *Tatel v. JLFP Investigation Security Agency, Inc.*, 755 Phil. 171 (2015) [J. Perlas-Bernabe First Division].

56 Id. at 185.

V

As a consequence of the finding of illegal dismissal, petitioner would ordinarily be entitled to reinstatement, pursuant to Article 294 of the Labor Code:

> Article 294. Security of Tenure. — . . . An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

It is unreasonable to deny employees their means of earning a living exclusively on the basis of age when there is no other indication that they are incapable of performing their functions. It is true that certain tasks require able-bodied individuals. Age, per se, is not a reliable indication of physical stamina or mental rigor. What is crucial in determining capacity for continuing employment is an assessment of an employee's state of health, not his or her biological age. Outside of limitations founded on scientific and established wisdom such as the age of minority, proscriptions against child labor, or a standard retirement age, it is unjust to discriminate against workers who are within an age range that is typical of physical productivity.

Ordinarily, it is not for this Court to foreclose an employee's chances of regaining employment through reinstatement. It is not for this Court to rule out reinstatement on its own. To do so would amount to a tacit approval of the abusive, discriminatory conduct displayed by employers such as Airborne. It would be a capitulation to and virtual acceptance of the employer's assertion that employees of a certain age can no longer engage in productive labor. However, considering that petitioner himself specifically prayed for an award of separation pay and has also been specific in asking that he no longer be reinstated, this Court awards him separation pay, in lieu of reinstatement.

VI

Respondent Solis may not be held personally liable for the illegal termination of petitioner's employment.

As this Court explained in *Saudi Arabian Airlines v. Rebesencio*:[57]

> A corporation has a personality separate and distinct from those of the persons composing it. Thus, as a rule, corporate directors and officers are not liable for the illegal termination of a corporation's employees. It is only when they acted in bad faith or with malice that they become solidarily liable with the corporation.
>
> In *Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical*, this court clarified that "[b]ad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud."[58]

Other than Solis' designation as Airborne's president, this Court finds no indication that she acted out of bad faith or with malice specifically aimed at petitioner as regards the termination of his employment. Thus, this Court finds that she did not incur any personal liability.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The assailed April 18, 2013 Decision and November 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 122700 are **REVERSED and SET ASIDE**. Accordingly, respondent Airborne Security Service, Inc. is ordered to pay petitioner Macario S. Padilla:

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.

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 judgment.

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57 750 Phil. 791 (2015) [Per J. Leonen, Second Division].

58 Id. at 844–845, *citing Ever Electrical Manufacturing, Inc. (EEMI) v. Samahang Manggagawa ng Ever Electrical*, 687 Phil. 529 (2012) [Per J. Mendoza, Third Division].

The case is **DISMISSED** with respect to respondent Catalina Solis.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

On official leave
PRESBITERO J. VELASCO, JR.
Associate Justice

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

SAMUEL R. MARTIRES
Associate Justice

ALEXANDER G. GESMUNDO
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.

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 05 2018