

HOLCIM PHILIPPINES INC. AND ROLAND VAN WIJEN, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND VIC RAMON A. BUENO, RESPONDENTS.

Ponente: REYES, JR., J.C., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0fcfcb0b5bc3/>

REYES, JR., J.C., J.:

This resolves the Petition for Certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision (Rollo, pp. 36-45) dated November 21, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-002295-12 as well as its Resolution (Rollo, pp. 32-34) dated February 18, 2013, which denied petitioner's Motion for Reconsideration.

The instant case arose from a Complaint (Rollo, p. 86) filed by private respondent Vic Ramon Bueno against petitioner Holcim Philippines, Inc. for illegal dismissal and non-payment of monetary benefits with prayer for regularization.

In private respondent's position paper (Rollo, pp. 122-128) submitted with the Arbitration Branch of the NLRC, it was alleged that on October 1, 2010, private respondent was hired as a project-based Mobile Maintenance Planner for the Maintenance Department in the HOLCIM ready mix plant in Taguig, Metro, Manila. On February 16, 2011, he was designated in a concurrent capacity as Officer-in-Charge (OIC) for both Plant and Mobile Maintenance Departments, thereby increasing his scope of work not only as Planner but also as an OIC, until March 31, 2011.

Thereafter, on April 1, 2011, he was engaged as Maintenance Supervisor on a probationary basis for a period of six (6) months, within which his performance is to be evaluated by his immediate supervisor. Per HOLCIM'S policy of Probationary Employment, the immediate Supervisor is to conduct a Performance Appraisal on the fourth and fifth month. Unsatisfactory performance at the end of the fifth month will result on the termination of probationary employment. According to private respondent, on the fifth month, there was no such performance evaluation conducted. He was allegedly merely required to submit a Goal Setting Dialogue form on August 19, 2011.

On September 6, 2011 at 11:28 am, private respondent was verbally instructed to write a letter of intent for an extension of his probationary employment for two more months but he did not write said letter in the belief that it is HOLCIM's prerogative to extend his probationary employment even after the 6-month period.

On September 30, 2011, private respondent was finally handed with a notice of termination advising him not to report for work the following day and to return all company-issued properties. The alleged ground cited for his termination is that "he failed to meet the standards for regularization". However, private respondent believed that his refusal to submit the letter of intent appeared to be one of the reasons for his termination.

Petitioners, on the other hand, admitted engaging the services of private respondent as Mobile Maintenance Planner on a contractual basis for a period of six months effective September 21, 2010. But before the expiration

of her employment as Mobile Maintenance Planner on March 11, 2011, private respondent allegedly manifested his desire to apply for regular position in the petitioner company. Petitioners offered him (private respondent) the position of Maintenance Supervisor but on the condition that the latter will have to undergo probationary period before being extended with a regular status. To this condition, private respondent agreed.

Thus, on April 1, 2011, petitioners extended to private respondent a probationary appointment as Maintenance Supervisor for a period of six (6) months effective said date. However, due to the alleged failure of private respondent to meet the standards to qualify for a regular employment, his probationary employment was terminated pursuant to a termination letter dated September 30, 2011.

On November 25, 2011, private respondent filed a Complaint (Rollo, p. 86) with the Arbitration Branch of the NLRC for illegal dismissal and non-payment of monetary benefits. He also prays for regularization. However, in his position paper submitted with the Labor Arbiter, he only prayed for his reinstatement, payment of full backwages and moral and exemplary damages.

After examining the allegations, arguments and evidence of the parties, the Labor Arbiter issued a Decision dated June 29, 2012, the dispositive portion of which reads as follows:

“WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company, Holcim Philippines, Inc. to reinstate the complainant to his former position as Maintenance Supervisor, or to any substantially equivalent position, with all the right, benefits and privileges appertaining thereto, and to pay complainant his full backwages which as of April 29, 2012 already amount to P293,475.00.

Further, the respondents are ordered to comply immediately with the reinstatement order irrespective of their appeal and notwithstanding the posting of bond, and to submit a report of their compliance herewith within ten (10) days from receipt of this decision.

Finally, the complainant's monetary claims are dismissed for lack of merit.

SO ORDERED.” (Rollo, p. 45).

Dissatisfied with the foregoing, petitioners filed an appeal with public respondent NLRC questioning the findings of the Labor Arbiter (See Memorandum of Appeal, Rollo, pp. 48-67). On November 21, 2012, public respondent NLRC issued the now assailed Decision (Rollo, pp. 23-31) dismissing the appeal and affirming the decision of the Labor Arbiter. Petitioners' Motion for Reconsideration likewise proved futile as it was denied in another assailed Resolution (Rollo, pp. 32-34) dated February 18, 2013.

On April 29, 2013, petitioners filed the instant Petition for Certiorari with this Court, anchored on the following:

- PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION IN FAILING TO ADDRESS SQUARELY THE SUBSTANTIVE ISSUE OF WHETHER OR NOT THERE WERE VALID GROUNDS TO TERMINATE THE PROBATIONARY EMPLOYMENT OF PRIVATE RESPONDENT BUENO.

- PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION IN COMPUTING THE PERIOD OF PRIVATE RESPONDENT'S PROBATIONARY EMPLOYMENT AS ONE HUNDRED EIGHTY (180) DAYS INSTEAD OF SIX (6) CONSECUTIVE CALENDAR MONTHS (Rollo, p. 9).

From the foregoing, petitioners set forth two main bones of contention:

First, there were indeed valid grounds to terminate private respondent, who himself admitted that throughout his probationary employment, his performance and conduct had been wholly unsatisfactory due to his multiple lapses

and his inefficiencies. Petitioners showed as evidence private respondent's conforme signature on the Internal Quality Findings Summary Report (Rollo, pp. 74-75) indicating his admission to his deficiencies.

Second, at the time of private respondent's termination on September 30, 2011, he has not yet attained a regular status employment. Petitioners argued that the sixth month period provided by law, should be reckoned from the date the appointment took effect up to the same calendar date of the 6th month following (which is September 30, 2011) and should not be counted as 180 days (which is September 28, 2011).

Before delving on whether there were valid grounds for the dismissal of private respondent, We resolve first his employment status at the time when he was served a notice of termination.

It is undisputed that at the time private respondent was hired on April 1, 2011, he was a probationary employee. But what needs to be inquired into is whether at the time the notice of termination was sent to private respondent on September 30, 2011, he had already attained the status of a regular employee. In other words, whether at the time of his dismissal, he ceases to be a probationary employee. Under Article 281 of the Labor Code, probationary employment is described as follows:

“Art. 281. Probationary Employment. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.” (Underscorings supplied)

In their petition with this Court, petitioners faulted public respondent NLRC for applying the Supreme Court pronouncement in *Mitsubishi Motors Philippines Corporation vs. Chrysler Philippines Labor Union*, 433 SCRA 206, 218 (2004) that held that the probationary period of six (6) months consists of one hundred eighty (180) days. Computing 180 days from the date when private respondent started to work on April 1, 2011 will result to September 28, 2011 being the last day of his probationary period of employment. Verily, private respondent was already a regular employee at the time when he was terminated on September 30, 2011.

Petitioners insisted that what should be applied is the ruling in the *CALS Poultry vs. Roco*, 385 SCRA 479, 488 [2002] wherein the Supreme Court, citing the case of *Cebu Royal v. Deputy Minister of Labor*, 153 SCRA 38 (1987) pronounced that the computation of the 6-month probationary period is reckoned from the date of appointment up to the same calendar date of the 6th month following. Petitioners insisted that if this would be applied, then private respondent was still a probationary and not yet a regular employee when he was terminated on September 30, 2011. Hence, private respondent's dismissal, on the ground that he failed to qualify for a regular employment, is valid.

We found no grave abuse of discretion on the part of public respondent NLRC when it sustained the ruling of the Labor Arbiter applying the Supreme Court's Decision in the *Mitsubishi* case. In the assailed Decision, public respondent NLRC emphasized not only the fact that the *Mitsubishi* decision was rendered on a much later date which gives it more persuasive force but also said *Mitsubishi* decision was more favorable to labor (See, Rollo, pp. 30-31). We agree with public respondent NLRC.

Indeed, the doctrine in the *Mitsubishi* Decision was a complete contrast with the Supreme Court pronouncement in *CALS Poultry Supply* Decision as far as the computation of the six-month probationary period of employment is concerned. In the said *Mitsubishi* Decision, the Supreme Court strictly applied to the letter paragraph one of Article 13 of the Civil Code which provides that if the months which are not designated by their names, it shall be understood as consisting of thirty (30) days each. Thus, multiplying the said 30 days into six, it therefore follows

that the six months provided for by law to be the period of probationary employment shall be understood to consist of 180 days.

It is a recognized doctrine in our jurisdiction that once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different (*Abaria vs. National Labor Relations Commission*, 661 SCRA 686, 712 [2011]). This is the principle of *Stare Decisis* which is grounded on the necessity for securing certainty and stability of judicial decisions (*Philippine Guardians Brotherhood, Inc. vs. Commission on Elections*, 619 SCRA 585, 595 [2010]).

This doctrine however is not cast in stone. For upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside (*Abaria vs. National Labor Relations Commission*, 661 SCRA 686, 713 [2011]). For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification (*ibid.*).

With the *Mitsubishi Decision* being the latest doctrine on the interpretation of the six-month period of probation, this very well justified public respondent NLRC to apply the said latest doctrine on the instant case. Public respondent NLRC correctly ruled that since the six-month period of probation started from April 1, 2011 (the date when private respondent started his employment), private respondent's status as a probationer so ended in September 28, 2011, or exactly 180-days after April 1, 2011, with the first day being excluded and the last day included in the counting. But in this case, it was not shown that private respondent's probationary employment also ended on September 28, 2011, but on the contrary, he continued working even beyond the said date. Under Article 281 of the Labor Code, an employee who is allowed to work after a probationary period shall be considered a regular employee. Hence, private respondent was already considered a regular employee when he received his letter of termination on September 30, 2011.

Being considered a regular employee, private respondent is entitled to security of tenure under Article 279 of the Labor Code and can only be dismissed for a just or authorized cause and with due process, i.e., after notice and hearing. Thus:

“Article 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. 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.”

In cases involving an employee's dismissal, the burden is on the employer to prove that the dismissal was legal (*Dacuita vs. L.M. Camus Engineering Corp.*, 629 SCRA 702, 716 [2010]). Petitioners failed to discharge this burden. As can be inferred from the records, private respondent was dismissed on the ground that he failed to meet the standards for regularization. Thus:

“Management reviewed your performance as a probationary employee for the position Maintenance Supervisor for the period 1 April 2011 – 30 September 2011. Based on performance records and feedback, we regret to inform you that you failed to meet the standards for regularization which were explained to you through our recorded one-on-one discussions and the dialogue form that you filled up. Your probationary employment is hereby terminated effective 30 September 2011.” (Rollo, p. 78)

Obviously, the ground for private respondent's dismissal such as failure to meet the standards for regularization,

was not one of those instances falling as any of the just or authorized causes enumerated under Articles 282, 283 and 284 of the Labor Code, as amended. Notwithstanding private respondent's alleged multiple lapses and unsatisfactory performance (as per evaluation conducted during the probationary period), the same becomes irrelevant and inconsequential when petitioners allowed private respondent to continue his work even beyond his probationary period of employment. As held by the Supreme Court, an employee, who was permitted to work beyond six months could not be dismissed on the ground of failure to meet the standards (See: *Servidad vs. National Labor Relations Commission*, 195 SCRA 49, 58 [1999]). To be sure, at the time when private respondent received the termination letter which indicated that he failed to meet the standards for regularization, he ceased to be on a probationary status and is already considered a regular employee. Hence, his dismissal on September 30, 2011 without any just and authorized caused is illegal.

At any rate, even if We are to assume that the letter of termination was sent during the probationary employment of private respondent, still the latter (just like a regular employee) is entitled to security of tenure. Thus, in cases of probationary employment, aside from just or authorized causes of termination, an additional ground is provided under Article 295 of the Labor Code, i.e., the probationary employee may also be terminated for failure to qualify as a regular employee in accordance with the reasonable standards made known by the employer to the employee at the time of the engagement (*Abbott Laboratories, Phil. vs. Alcaraz*, G.R. no. 192571, July 23, 2013).

Corollary to the said additional ground, the law is explicit that if the employer fails to inform the probationary employee of the reasonable standards upon which the regularization would be based on at the time of the engagement, then the said employee shall be deemed a regular employee (See: Section 6 (d), Rule I, Book VI of the Implementing Rules of the Labor Code). In other words, the employer is made to comply with two (2) requirements when dealing with a probationary employee: first, the employer must communicate the regularization standards to the probationary employee; and second, the employer must make such communication at the time of the probationary employee's engagement (*Abbott Laboratories, Phil. vs. Alcaraz*, G.R. No. 192571, July 23, 2013). If the employer fails to comply with either, the employee is deemed as a regular and not a probationary employee (*ibid.*).

A careful review of the records would show that the first requirement for regularization was not complied with. No evidence was adduced by petitioners showing that they clearly conveyed to private respondent the reasonable standards upon which his regularization would be based. While they submitted the Human Resources Policy Manual that covers policies on regularization, probationary status and other personnel movements (Rollo, p. 132-136) as well as the Job Description Manual of a Maintenance Supervisor (Rollo, pp. 105-109), there is however no showing that this was clearly conveyed and explained to private respondent. Except for petitioners' assertions that private respondent was apprised of his status as probationary and that he would be accorded regular status once he meets their standards, no evidence was presented that private respondent had been apprised of these standards at the time he was hired as a probationary employee. While there may have been existing standards, the keyword of the law is "to inform" the probationary employee with these standards. The standards under which he would qualify as a regular employee not having been communicated to him at the start of his probationary period, private respondent qualified as a regular employee. Thus, at the time he received the notice of termination on September 30, 2011, private respondent is deemed a regular employee.

Having shown that private respondent is a regular employee and that his dismissal was illegal, we now delve on the propriety of his monetary claims. An illegally dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and (2) backwages (*Goma vs. Pamplona Plantation, Inc.*, 557 SCRA 124, 138 [2008]) inclusive of allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement,

pursuant to Article 279 of the Labor Code (PNOC Energy Development Corp. vs. National Labor Relations Commission, 521 SCRA 222, 235 [2007]). In this case, public respondent NLRC is correct when it affirmed the Labor Arbiter's findings on this matter.

WHEREFORE, the instant Petition is DENIED. The assailed Decision dated November 21, 2012 and Resolution dated February 18, 2013 of the National Labor Relations Commission in NLRC LAC Case No. 08-002295-12 are hereby AFFIRMED.

SO ORDERED.

Lopez, M.V., and Inting, S.B., JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.