

SATURNO A. VICTORIA, PETITIONER, VS. HON. AMADO G. INCIONG, DEPUTY MINISTER, AND FAR EAST BROADCASTING COMPANY, INC., RESPONDENTS.*G.R. No. L-49046. January 26, 1988*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/8c5583210295/>**FERNAN, J.:**

Petition for review of the Order of the then Acting Secretary of Labor Amado G. Inciong dated June 6, 1978, in NLRC Case No. RB-1764-75, reversing the decision of the National Labor Relations Commission dated November 17, 1976 and holding that, under the law and facts of the case, there was no necessity for private respondent to obtain a clearance for the termination of petitioner's employment under Article 257 [b] of the Labor Code, as amended, and that a mere report of such termination was sufficient, under Section 11 [f], Rule XIV of the Rules and Regulations implementing said Code.

Petitioner Saturno Victoria was employed on March 17, 1956 by private respondent Far East Broadcasting Company, Incorporated as a radio transmitter operator. Sometime in July 1971, he and his co-workers organized the Far East Broadcasting Company Employees Association. After registering their association with the then Department of Labor, they demanded recognition of said association by the company but the latter refused on the ground that being a non-profit, non-stock, non-commercial and religious corporation, it is not covered by Republic Act 875, otherwise known as the Industrial Peace Act, the labor law enforced at that time.

Several conciliation meetings were held at the Department of Labor and in those meetings, the Director of Labor Relations Edmundo Cabal advised the union members that the company could not be forced to recognize them or to bargain collectively with them because it is a non-profit, non-commercial and religious organization. Notwithstanding such advice, the union members led by Saturno Victoria as its president, declared a strike and picketed the company's premises on September 6, 1972 for the purpose of seeking recognition of the labor union.

As a countermeasure, the company filed a case for damages with preliminary injunction against the strikers before the then Court of First Instance of Bulacan docketed as Civil Case No. 750-V. Said court issued an injunction enjoining the three-day- old strike staged against the company. The complaint was later amended seeking to declare the strike illegal.

Upon the declaration of martial law on September 21, 1972 and the promulgation of Presidential Decree No. 21 creating the National Labor Relations Commission, the ad hoc National Labor Relations Commission took cognizance of the strike through NLRC Case No. 0021 entitled "Far East Broadcasting Company Employees Association, complainant, versus Far East Broadcasting Company, respondent," and NLRC Case No. 0285 entitled "Generoso Serino, complainant, versus Far East Broadcasting Company, respondent," both cases for reinstatement due to the company's refusal to accept the union's offer to return to work during the pendency of the case in the Court of First Instance.

On December 28, 1972, Arbitrator Flavio Aguas rendered a joint decision in the two cases mentioned above recognizing the jurisdiction of the Court of First Instance of Bulacan, the dispositive portion reading as follows:

“IN VIEW WHEREOF, and in the interest of justice and equity, it is hereby directed that:

1. That striking members of the Far East Broadcasting Company Employees Association return to their respective positions in the corporation;
2. The respondent Far East Broadcasting Company Incorporated to accept back the returning strikers without loss in rank, seniority or status;
3. The workers shall return to work within ten [10] days from receipt of this resolution otherwise they shall be deemed to have forfeited such right;
4. The respondent shall report compliance with this decision within fifteen [15] days from receipt hereof.

This Order shall, however, be without prejudice to whatever decision the Court of First Instance of Bulacan may promulgate in Civil Case No. 750-V and to the requirements the existing order may need of people working with the mass media of communications.

IT IS SO ORDERED.”[1]

The decision of the arbitrator was successively appealed to the ad hoc National Labor Relations Commission, the Secretary of Labor and the Office of the President of the Philippines, and was affirmed in all instances.

On April 23, 1975, the Court of First Instance of Bulacan rendered judgment, to wit:

“WHEREFORE, judgment is hereby rendered:

1. Making injunction against defendants permanent;
2. Declaring that this Court has jurisdiction to try and hear the instant case despite Section 2 of Presidential Decree No. 2;
3. Declaring that plaintiff Far East Broadcasting Company is a non-profit organization since it does not declare dividends;
4. Declaring that the strike admitted by the defendants to have been declared by them is illegal inasmuch as it was for the purpose of compelling the plaintiff-company to recognize their labor union which could not be legally done because the plaintiffs were not covered by Republic Act 875;
5. Declaring that the evidence presented is insufficient to show that defendants caused the damage to the plaintiff consequent on the destruction of its relays and its antennas as well as its transmission lines.

SO ORDERED.”[2]

On April 24, 1975, by virtue of the above decision, the company notified Saturno Victoria that he is dismissed effective April 26, 1975. Thereupon, he filed Case No. RB-IV-1764 before the National Labor Relations Commission, Regional Branch IV against the company alleging violation of Article 267 of the Labor Code which requires clearance from the Secretary of Labor for every shutdown of business establishments or dismissal of employees. On February 27, 1976, Labor Arbiter Manuel B. Lorenzo rendered a decision in petitioner's favor declaring the dismissal to be illegal, thereby ordering reinstatement with full backwages. On appeal, the arbiter's decision was affirmed by the National Labor Relations Commission. But when the commission's decision was in turn appealed to the Secretary of Labor, it was set aside and in lieu thereof the questioned Order dated June 6, 1978 was issued.

In view of its brevity and for a better understanding of the reasons behind it, We quote the disputed Order in full:

"ORDER

This is an appeal by respondent from the Decision of the National Labor Relations Commission, dated November 17, 1976.

The Commission upheld the Decision of the labor arbiter dated February 27, 1976 ordering respondent to reinstate with full backwages herein complainant Saturno A. Victoria based on the finding that respondent did not file any application for clearance to terminate the services of complainant before dismissing him from his employment.

Briefly, the facts of this case are as follows:

Complainant Saturno Victoria is the president of the Far East Broadcasting Company Employees Union. On September 8, 1972, the said union declared a strike against respondent company. On September 11, 1972, respondent filed with the Court of First Instance of Bulacan, Civil Case No. 750-V, for the issuance of an injunction and a prayer that the strike be declared illegal.

On October 24, 1972, complainant together with the other strikers filed with the ad hoc National Labor Relations Commission Case Nos. 0021 and 0285 for reinstatement. The Arbitrator rendered a decision in said case on December 28, 1972, wherein he ordered respondent to reinstate complainants subject to the following condition:

'This Order shall, however, be without prejudice to whatever decision the Court of First Instance may promulgate on Civil Case No. 750-V and to the requirements the existing order may need of people working with the mass media of communications.'

Since said decision was affirmed by the NLRC, the Secretary of Labor, and the Office of the President of the Philippines, complainants were reinstated pursuant thereto.

In a Decision dated April 23, 1975, in Civil Case No. 750-V, promulgated by the Court of First Instance of Bulacan, the strike staged by herein complainant and the other strikers was declared illegal. Based on said Decision, respondent dismissed complainant from his employment. Hence, complainant filed the instant complaint for illegal dismissal.

Under the aforecited facts, we do not agree with the ruling of the Commission now subject of this appeal that an application for clearance to terminate herein complainant is mandatory on the part of respondent before terminating complainant's services. We believe that what would have been necessary was a report as provided for under Section 11 [f], Rule XIV, Book V of the Rules and Regulations Implementing the Labor Code. Moreover, even if an application for clearance was filed, this Office would have treated the same as a report. Otherwise, it would render nugatory the Decision of the Arbitrator dated December 28, 1972 in Case Nos. 0021 and 0285 which was affirmed by the Commission, the Secretary of Labor and the Office of the President of the Philippines, ordering his temporary reinstatement, subject to whatever Decision the CFI of Bulacan may promulgate in Civil Case No. 750-V. It could be clearly inferred from said CFI Decisions that if the strike is declared illegal, the strikers will be considered to have lost their employment status under the then existing laws and jurisprudence, otherwise strikers could stage illegal strike with impunity. Since the strike was declared illegal, respondent acted in good faith when it dispensed with the services of herein complainant.

For failure of respondent to file the necessary report and based on equitable considerations, complainant should be granted separation pay equivalent to one-half month salary for every year of service.

WHEREFORE, let the decision of the National Labor Relations Commission dated November 17, 1976 be, as it is hereby, set aside and a new judgment is entered, ordering respondent to give complainant separation pay equivalent to one-half month salary for every year of service.

SO ORDERED."[3]

Petitioner elevates to Us for review on Certiorari the aforequoted Order seeking to persuade this Court that then Acting Secretary of Labor Amado G. Inciong committed reversible error in holding that, under the law and facts of this case, a mere report of the termination of the services of said petitioner was sufficient. Petitioner assigns the following errors:

I

WHETHER OR NOT A CLEARANCE FROM THE SECRETARY OF LABOR IS STILL NECESSARY BEFORE THE PETITIONER HEREIN COULD BE DISMISSED CONSIDERING THE RESTRICTIVE CONDITION IN THE DECISION OF THE COMPULSORY ARBITRATOR IN NLRC CASE NOS. 0021 AND 0285.

II

WHETHER OR NOT THE DECISION OF THE COURT OF FIRST INSTANCE OF BULACAN IN CIVIL CASE NO. 750-V IPSO FACTO GAVE THE RESPONDENT COMPANY AUTHORITY TO DISMISS HEREIN PETITIONER WITHOUT ANY CLEARANCE FROM THE SECRETARY OF LABOR.[4]

The substantive law on the matter enforced during the time of petitioner's dismissal was Article 267 [b] of the Labor Code [in conjunction with the rules and regulations implementing said substantive law.] Article 267 reads:

"No employer that has no collective bargaining agreement may shut down his establishment or dismiss or terminate the service of regular employees with at least one [1] year of service except managerial employees as defined in this book without previous written clearance from the Secretary of Labor."

Petitioner maintains that the above cited provision is very clear. It does not make any distinction as to the ground for dismissal. Whether or not the dismissal sought by the employer company is for cause, it is imperative that the company must apply for a clearance from the Secretary of Labor.

In a recent case[5] penned by Justice Abraham F. Sarmiento promulgated on June 30, 1987, we had occasion to rule in agreement with the findings of then Presidential Assistant for Legal Affairs Ronaldo Zamora that the purpose in requiring a prior clearance from the Secretary of Labor in cases of shutdown or dismissal of employees, is to afford the Secretary ample opportunity to examine and determine the reasonableness of the request.

The Solicitor General, in relation to said pronouncement and in justification of the Acting Labor Secretary's decision makes the following observations:

"It is true that Article 267 [b] of the Labor Code requires that before any business establishment is shutdown or any employee is dismissed, written clearance from the Secretary of Labor must first be obtained. It is likewise true that in the case of petitioner, there was no written clearance in the usual form. But while there may not have been strict compliance with Article 267 there was substantial compliance. The Secretary of Labor twice manifested his conformity to petitioner's dismissal.

"The first manifestation of acquiescence by the Secretary of Labor to the dismissal of petitioner was his affirmance of the decision of the arbitrator in NLRC Case Nos. 0021 and 0285. The arbitrator ordered the reinstatement of the strikers but subject to the decision of the CFI of Bulacan in Civil Case No. 750-V. The Secretary of Labor affirmed the decision of the arbitrator. In effect, therefore, the Secretary of Labor issued a carte blanche to the CFI of Bulacan to either dismiss or retain petitioner.

"The second manifestation was his decision in NLRC Case No. RB-IV-1764-65 wherein he said that clearance for the dismissal of petitioner was not required, but only a report; that even if an application for clearance was filed, he would have treated it as a mere report. While this is not prior clearance in the contemplation of Article

267, it is at least a ratification of the dismissal of petitioner.”[6]

We agree with the Solicitor General. Technically speaking, no clearance was obtained by private respondent from the then Secretary of Labor, the last step towards full compliance with the requirements of law on the matter of dismissal of employees. However, the rationale behind the clearance requirement was fully met. The Secretary of Labor was apprised of private respondent's intention to terminate the services of petitioner. This in effect is an application for clearance to dismiss petitioner from employment. The affirmance of the restrictive condition in the dispositive portion of the labor arbiter's decision in NLRC Case Nos. 0021 and 0285 by the Secretary of Labor and the Office of the President of the Philippines signifies a grant of authority to dismiss petitioner in case the strike is declared illegal by the Court of First Instance of Bulacan. Consequently and as correctly stated by the Solicitor General, private respondent acted in good faith when it terminated the employment of petitioner upon a declaration, of illegality of the strike by the Court of First Instance of Bulacan. Moreover, the then Secretary of Labor manifested his conformity to the dismissal, not once, but twice. In this regard, the mandatory rule on clearance need not be applied.

The strike staged by the union in 1972 was a futile move. The law then enforced, Republic Act 875 specifically excluded respondent company from its coverage. Even if the parties had gone to court to compel recognition, no positive relief could have been obtained since the same was not sanctioned by law. Because of this, there was no necessity on the part of private respondent to show specific acts of petitioner during the strike to justify his dismissal.

This is a matter of responsibility and of answer ability. Petitioner as a union leader, must see to it that the policies and activities of the union in the conduct of labor relations are within the precepts of law and any deviation from the legal boundaries shall be imputable to the leader. He bears the responsibility of guiding the union along the path of law and to cause the union to demand what is not legally demandable, would foment anarchy which is a prelude to chaos.

Petitioner should have known and it was his duty to impart this imputed knowledge to the members of the union that employees and laborers in non-profit organizations are not covered by the provisions of the Industrial Peace Act and the Court of Industrial Relations [in the case at bar, the Court of First Instance] has no jurisdiction to entertain petitions of labor unions or organizations of said non-profit organizations for certification as the exclusive bargaining representatives of said employees and laborers.[7]

As a strike is an economic weapon at war with the policy of the Constitution and the law at that time, a resort thereto by laborers shall be deemed to be a choice of remedy peculiarly their own, and outside of the statute, and as such, the strikers must accept all the risks attendant upon their choice. If they succeed and the employer succumbs, the law will not stand in their way in the enjoyment of the lawful fruits of their victory. But if they fail, they cannot thereafter invoke the protection of the law for the consequences of their conduct unless the right they wished vindicated is one which the law will, by all means, protect and enforce.[8]

We further agree with the Acting Secretary of Labor that what was required in the case of petitioner's dismissal was only a report as provided under Section II [f] of Rule XIV of the Rules and Regulations implementing the Labor Code which provides:

“Every employer shall submit a report to the Regional Office in accordance with the form presented by the Department on the following instances of termination of employment, suspension, lay-off or shutdown which may be effected by the employer without prior clearance within five [5] days thereafter:

x x x x x x x x

[f] All other terminations of employment, suspension, lay-offs or shutdowns, not otherwise specified in this and in the immediately preceding sections."

To hold otherwise would render nugatory the conditions set forth in the decision of Labor Arbiter Aguas on the basis of which petitioner was temporarily reinstated.

Inasmuch as there was a valid and reasonable ground to dismiss petitioner but no report as required by the implementing rules and regulations of the Labor Code was filed by respondent Company with the then Department of Labor, petitioner as held by the Acting Secretary of Labor, is entitled to separation pay equivalent to one-half month salary for every year of service.

WHEREFORE, the petition is dismissed. The decision of the acting Secretary of Labor is AFFIRMED in toto.

SO ORDERED

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Annex "A", Rollo, p. 21

[2] Annex "C", Rollo, p. 33.

[3] Annex "F", Rollo, pp. 43 to 45.

[4] Petition. Rollo, p. 13.

[5] *Madrigal & Company, Inc. v. Zamora*, G.R. No. 48237, June 30, 1987, *Madrigal & Company, Inc. v. Minister of Labor*, G.R. No. L-49023, June 30, 1987.

[6] Comment, Rollo, pp. 74, 75.

[7] *Superintendent of La Loma Catholic Cemetery v. Court of Industrial Relations*, 8 SCRA 464 [1963],

[8] *National Labor Union, Inc. v. Philippine Match Factory*, 70 Phil. 300.

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