

FERROCHROME PHILIPPINES, INC., REINHOLD SCHOLSNAGEL AND ENGR. WELHELM WEBER, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, (FIFTH DIVISION) AND HORST BARTSCH, RESPONDENTS.

G.R. No. 105538. September 05, 1994

Ponente: PUNO, J.

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PUNO, J.:

In this petition for certiorari, we are asked to annul two (2) Resolutions of the National Labor Relations Commission (NLRC), dated July 31, 1991 and May 13, 1992, holding that private respondent Horst Bartsch was illegally dismissed by petitioner.

Private respondent Horst Bartsch was initially employed as a consultant-engineer of the Austrian company Voest-Alpine. While thus employed, Bartsch was assigned to the Philippines as a consultant-engineer of petitioner Ferrochrome, a subsidiary of Voest-Alpine. His contract of employment[1] provided that he would be employed at Ferrochrome for a period of three (3) months, i.e., from February 15, 1988 to May 15, 1988, extendible for a term mutually agreeable to the parties.

After Bartsch's employment expired on May 15, 1988, his services were still engaged by petitioner Ferrochrome. However, his continued employment was no longer covered by any written contract.

From July 12-15, 1988, Bartsch was confined at the Capitol College General Hospital in Misamis Oriental for treatment of a psychological disorder. On July 15, 1988, Bartsch was transferred to the Makati Medical Center where he was confined until July 29, 1988.

Thereafter, petitioner granted Bartsch a vacation leave. Bartsch returned to the Philippines on September 28, 1988. On October 1, 1988, he assumed his former position at Ferrochrome.

Ferrochrome terminated his services in a letter, dated January 30, 1989,[2] which was served on Bartsch on February 13, 1989. It reads:

"Regret to inform you that during discussions with the plant management, it became apparent that your services as consultant to the Senior VP-Operations are presently no longer needed and a discontinuation in the meantime was agreed upon.

"It is our intention to avail of your services again when the equipment for the new dedusting facility is ready for installation and other projects have arrived at the implementation stage.

"We wish to thank you for your valuable contribution during the past 12 months and hope that we can resume a similarly fruitful cooperation when our projects are ready."

Thus, on June 5, 1989, Bartsch filed a complaint against petitioners for unpaid salary, non-payment of vacation leave, separation pay and 13th month pay, plus damages and attorney's fees before the NLRC, Regional

Arbitration Branch No. X, Cagayan de Oro City.[3]

After hearing, Executive Labor Arbiter Zosimo T. Vasallo dismissed the complaint[4] but granted a ten thousand peso (P10,000.00) financial assistance in favor of private respondent Bartsch. The labor arbiter ruled that: Bartsch was fully paid his salary from February 15, 1988 until the termination of his consultancy contract on February 1989; that Bartsch's employment expired on May 15, 1988, as per the Consultancy Agreement between the parties; that since there was no evidence on record which showed that Bartsch's employment period was extended for a definite term, his continued employment with Ferrochrome acquired a contractual character, renewable on a monthly basis. Thus, it was the prerogative of Ferrochrome to terminate Bartsch's consultancy services whenever the former deemed necessary.

On appeal, public respondent NLRC reversed the decision of the labor arbiter and ruled that Bartsch was illegally dismissed by Ferrochrome.[5]

Hence this petition where the following issues are raised:

I

NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RULED THAT FERROCHROME ILLEGALLY DISMISSED BARTSCH FOR IT HAD NO JURISDICTION TO RESOLVE THE QUESTION OF LEGALITY OF TERMINATION BECAUSE IT IS AN ISSUE WHICH WAS NEVER RAISED IN THE COMPLAINT, POSITION PAPER AND IN THE PROCEEDINGS BEFORE THE LABOR ARBITER.

II

ASSUMING IN ARGUENDO THAT THE LEGALITY OF DISMISSAL IS A PROPER ISSUE BEFORE THE LABOR ARBITER WHICH MAY SUBSEQUENTLY BE REVIEWED BY THE NLRC, THE LATTER NEVERTHELESS ACTED IN GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE FINDING OF THE LABOR ARBITER THAT THE DISMISSAL OF BARTSCH IS LAWFUL IS ALREADY FINAL AND COULD NOT BE THE SUBJECT TO REVIEW BY THE NLRC UNDER SECTION 5(C), RULE VIII, REVISED RULES OF THE NLRC.

III

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING BACKWAGES, SEVERANCE PAY, CHRISTMAS BONUS, SALARY BONUS AND ATTORNEY'S FEES TO BARTSCH.

In support of the first assigned error, petitioner urges that public respondent NLRC committed grave abuse of discretion when it ruled that Bartsch was illegally dismissed from service for the issue of illegal dismissal was never raised by Bartsch in his complaint or position paper filed with the labor arbiter.

We disagree. The issues presented in the complaint filed by Bartsch before the labor arbiter for non-payment of salary, vacation leave, separation pay and 13th month pay necessarily involve the determination of whether or not complainant was illegally dismissed. His right to receive these monetary benefits primarily hinges on the resolution of this issue. Thus, the NLRC defined the issues to be resolved, viz:

"First, whether or not an employer-employee relationship existed between respondents and complainant prior to the dismissal of the latter from the service;

"Second, whether or not the dismissal of complainant from the service is legal;

"Third, whether or not complainant is entitled to labor standards benefits as a result of his dismissal from the service of respondents."

Indeed, even the labor arbiter, from whose decision petitioner did not appeal, deemed it necessary to first pass upon the nature of employment of Bartsch with petitioner. Moreover, in the proceedings before the labor arbiter, petitioner itself claimed as a defense that Bartsch was not one of its regular employees but was engaged in a specific job?consultancy. In his position paper,[6] Bartsch raised as an issue the legality of his dismissal. He contended that:

"Exhibit 'C' (the termination letter) showed that the dismissal of complainant from his services without any valid reason whatsoever.

"It should be noted and emphasized here that respondent did not refer, even vaguely, to complainant's illness in the said termination letter.

"And considering that complainant was already working on the second month of the fourth quarter of his employment, the termination of his services indicates a clear proof of malice and bad faith."

Clearly, then, the nature of Bartsch's employment with petitioner and the legality of his employment's termination therein were put in issue for they were determinative of his right to receive the monetary benefits he was claiming. Thus, the NLRC did not act with grave abuse of discretion in passing upon the issue as to the legality of his dismissal.

In its second assigned error, petitioner claims that granting that the legality of Bartsch's dismissal was a proper issue to be resolved by the NLRC, still, the latter committed grave abuse of discretion in reversing the finding of the labor arbiter that the dismissal was valid. Petitioner claims that Bartsch, in his Memorandum of Appeal,[7] did not question this finding of the labor arbiter. Petitioner further claims that the labor arbiter's ruling as to the legality of Bartsch's dismissal was raised by the latter only in his Supplemental Memorandum of Appeal which was filed nine (9) months after his period to appeal has expired. Thus, failing to raise such issue in his Memorandum of Appeal, the ruling of the labor arbiter insofar as the validity of Bartsch's termination has already become final and executory.

The contention has no merit.

An examination of Bartsch's Memorandum of Appeal[8] would debunk petitioner's claim. In page 6 of Bartsch's Memorandum,[9] Bartsch raised the issue as to the legality of his dismissal, thus:

"Be it recalled that the letter of respondent which purportedly is the termination of his employment did not state, even vaguely, as the reason or cause of his separation from employment. Even if it was the supposed illness that was the reason for termination, the respondent cannot rightfully dismiss the complainant even if it complied with all the requirements of notice because the illness was not voluntary on the part of the complainant.

"x x x"

Finally, petitioners contend that in view of NLRC's lack of jurisdiction to resolve the issue of illegal dismissal, it follows that its award of backwages, severance pay, Christmas bonus, salary bonus and attorney's fees to Bartsch was likewise made in grave abuse of discretion.

As discussed earlier, it was within the province of the NLRC to pass upon the issue as to the legality of Bartsch's dismissal from service. As to NLRC's award of backwages, severance pay, Christmas bonus and attorney's fees, we find the same to be in order.

The award of backwages and severance pay to Bartsch was predicated on the finding of the NLRC that Bartsch was employed as a regular employee.

As defined under the law,[10] an employment shall be deemed regular if the employee performs activities usually necessary or desirable in the usual business and trade of the employer OR if the employee has rendered at least one (1) year of service, whether the service be continuous or broken.

Applying these two (2) tests, we find that contrary to the suppositions of petitioner, Bartsch was a regular employee of the latter. As found by the NLRC:

"x x x While the designation of complainant in the service is denominated as Consultant Engineer, yet the description of his duties states otherwise. Due consideration is accorded on the following specific duties, among others:

x x x

"2.1 Undertake such duties in relation to the Company and its business as the President of the Company shall from time to time assign to or vest in him. The President may delegate his authority or part of it to the SVP Operations/Resident Manager.

"2.2 In the discharge of such duties and in the exercise of such powers, observe and comply with all Company resolutions, regulations and directions.

"2.3 Devote substantially the whole of his time and attention during business hours to the discharge of his duties." (Underscoring supplied)

x x x

"x x x(T)he complainant under the definition of his power and duties has been consigned to and relegated to the category of an ordinary technical staff employee. The term 'consultant' is merely more of a matter of nomenclature as he is required under the contract to observe regular office hours. It therefore precludes the hiring of a mere 'consultant' who is supposed to render part-time service to the principal employer.

"Respondents (petitioners herein) could have terminated complainant from the service after the lapse of the three (3) months period stipulated in the Contract of Employment. But management found itself in dire need of the expertise of complainant that it decided to extend the services of the latter for an indefinite period which lasted until February 13, 1989 when one W. Weber representing respondents delivered to complainant the letter of termination dated January 30, 1989 x x x. When he was terminated from the service, complainant had more than qualified to be a regular employee x x x.

"x x x

"x x x (T)he extent of complainant's services with respondent cover(ed) substantially a period of one (1) year, more or less, as admitted by respondents in the (termination) letter of January 30, 1989 x x x when it stated: 'We wish it (sic) to thank you for your valuable contribution during the past 12 months and hope that we can resume a similarly fruitful cooperation when our projects are ready' x x x has invested in him the status of a regular employee under the second paragraph of Article 280 of the Labor Code, as amended. x x x"

Being a regular employee, private respondent is entitled to security of tenure and his services may be terminated only for causes provided by law.

In the case at bench, we are confounded as to the real reason why the services of private respondent were terminated.

In the termination letter[11] served by petitioner, the latter claims that the services of private respondent were no longer needed and that management intends to hire him again "when the equipment for the new dedusting facility is ready for installation and other projects have arrived at the implementation stage." It would thus appear that at

the time the termination letter was made, petitioner company did not consider private respondent Bartsch as one of its regular employees. Hence, it would appear from said letter that Bartsch's services were terminated for they were no longer deemed necessary.

However, during the proceedings before the labor arbiter, petitioner company alleged a new ground for terminating Bartsch's employment. Petitioner claimed that the "real" reason for Bartsch's dismissal was the latter's psychological illness.

It is this vacillating position of petitioner corporation regarding the cause of private respondent's termination which worked against it. As correctly found by the NLRC, petitioner's wavering stance showed its bad faith in terminating the services of private respondent.

Thus, under the circumstances, petitioner should have complied with the due process requirements of notice and hearing before terminating the services of private respondent. An employee should be notified of his employer's intent to dismiss him and the true reasons therefor.^[12] Unfortunately, these basic requisites were not met. It was not shown that private respondent was informed of the alleged "real" reason for his dismissal. Neither was he given an opportunity to air his side and defend himself.

In view of the illegality of private respondent's dismissal from service, the latter is entitled to the award of Christmas bonus and salary bonus for the year 1988 given by petitioner to all its other regular employees.

WHEREFORE, premises considered, the appealed Resolutions of public respondent NLRC are hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Mendoza, JJ., concur.

[1] Annex "E-9", Petition, Rollo, p. 93-95.

[2] Annex "D-20," Petition, Rollo, p. 65.

[3] Annex "B", Petition, Rollo, p. 42.

[4] Annex "G", Petition, Rollo, pp. 117-121.

[5] See Resolution dated July 31, 1991, Annex "K", Petition, Rollo, pp. 158-191.

[6] Annex "E-3", Rollo, p. 87.

[7] Annex "H", Petition, Rollo, pp. 122-130.

[8] Annex "H", Petition, Rollo, pp. 122-130.

[9] Annex "H-5", Petition, Rollo, p. 127.

[10] Article 280, Labor Code.

[11] Annex "D-20", Rollo, p. 65.

[12] Ferrer v. NLRC, G.R. No. 100898, July 5, 1993, 224 SCRA 410, 420, citing the cases of Kwikway Engineering Works v. NLRC, 195 SCRA 526 [1991] and Salaw v. NLRC, 202 SCRA 7 [1991].

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