

HOLIDAY INN MANILA AND/OR HUBERT LINER AND BABY DISQUITADO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) AND ELENA HONASAN, RESPONDENTS.

G.R. No. 109114. September 14, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The employer has absolute discretion in hiring his employees in accordance with his standards of competence and probity. This is his prerogative. Once hired, however, the employees are entitled to the protection of the law even during the probation period and more so after they have become members of the regular force. The employer does not have the same freedom in the hiring of his employees as in their dismissal.

Elena Honasan applied for employment with the Holiday Inn and was on April 15, 1991, accepted for "on-the-job training" as a telephone operator for a period of three weeks.[1] For her services, she received food and transportation allowance.[2] On May 13, 1992, after completing her training, she was employed on a "probationary basis" for a period of six months ending November 12, 1991.[3]

Her employment contract stipulated that the Hotel could terminate her probationary employment at any time prior to the expiration of the six-month period in the event of her failure (a) to learn or progress in her job; (b) to faithfully observe and comply with the hotel rules and the instructions and orders of her superiors; or (c) to perform her duties according to hotel standards.

On November 8, 1991, four days before the expiration of the stipulated deadline, Holiday Inn notified her of her dismissal, on the ground that her performance had not come up to the standards of the Hotel.[4]

Through counsel, Honasan filed a complaint for illegal dismissal, claiming that she was already a regular employee at the time of her separation and so was entitled to full security of tenure.[5] The complaint was dismissed on April 22, 1992 by the Labor Arbiter,[6] who held that her separation was justified under Article 281 of the Labor Code providing as follows:

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.

On appeal, this decision was reversed by the NLRC, which held that Honasan had become a regular employee and so could not be dismissed as a probationer.[7] In its own decision dated November 27, 1992, the NLRC ordered the petitioners to reinstate Honasan "to her former position without loss of seniority rights and other privileges

with backwages without deduction and qualification." Reconsideration was denied in a resolution dated January 26, 1993.[8]

The petitioners now fault the NLRC for having entertained Honasan's appeal although it was filed out of time and for holding that Honasan was already a regular employee at the time of her dismissal, which was made 4 days before the expiration of the probation period.

The petition has no merit.

On the timeliness of the appeal, it is well-settled that all notices which a party is entitled to receive must be coursed through his counsel of record. Consequently, the running of the reglementary period is reckoned from the date of receipt of the judgment by the counsel of the appellant.[9] Notice to the appellant himself is not sufficient notice.[10] Honasan's counsel received the decision of the Labor Arbiter on May 18, 1992.[11] Before that, however, the appeal had already been filed by Honasan herself, on May 8, 1992.[12] The petitioners claim that she filed it on the thirteenth but this is irrelevant. Even if the latter date were accepted, the appeal was nevertheless still filed on time, in fact even before the start of the reglementary period.

On the issue of illegal dismissal, we find that Honasan was placed by the petitioner on probation twice, first during her on-the-job training for three weeks, and next during another period of six months, ostensibly in accordance with Article 281. Her probation clearly exceeded the period of six months prescribed by this article.

Probation is the period during which the employer may determine if the employee is qualified for possible inclusion in the regular force. In the case at bar, the period was for three weeks, during Honasan's on-the-job training. When her services were continued after this training, the petitioners in effect recognized that she had passed probation and was qualified to be a regular employee.

Honasan was certainly under observation during her three-week on-the-job training. If her services proved unsatisfactory then, she could have been dropped as early as during that period. But she was not. On the contrary, her services were continued, presumably because they were acceptable, although she was formally placed this time on probation.

Even if it be supposed that the probation did not end with the three-week period of on-the-job training, there is still no reason why that period should not be included in the stipulated six-month period of probation. Honasan was accepted for on-the-job training on April 15, 1991. Assuming that her probation could be extended beyond that date, it nevertheless could continue only up to October 15, 1991, after the end of six months from the earlier date. Under this more lenient approach, she had become a regular employee of Holiday Inn and acquired full security of tenure as of October 15, 1991.

The consequence is that she could no longer be summarily separated on the ground invoked by the petitioners. As a regular employee, she had acquired the protection of Article 279 of the Labor Code stating as follows:

Art. 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.

The grounds for the removal of a regular employee are enumerated in Articles 282, 283 and 284 of the Labor Code. The procedure for such removal is prescribed in Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code. These rules were not observed in the case at bar as Honasan was simply told that her services were being terminated because they were found to be unsatisfactory. No administrative investigation of any kind

was undertaken to justify this ground. She was not even accorded prior notice, let alone a chance to be heard.

We find in the Hotel's system of double probation a transparent scheme to circumvent the plain mandate of the law and make it easier for it to dismiss its employees even after they shall have already passed probation. The petitioners had ample time to summarily terminate Honasan's services during her period of probation if they were deemed unsatisfactory. Not having done so, they may dismiss her now only upon proof of any of the legal grounds for the separation of regular employees, to be established according to the prescribed procedure.

The policy of the Constitution is to give the utmost protection to the working class when subjected to such maneuvers as the one attempted by the petitioners. This Court is fully committed to that policy and has always been quick to rise in defense of the rights of labor, as in this case.

WHEREFORE, the petition is DISMISSED, with costs against the petitioners. It is so ordered.

Griño-Aquino, Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 23.

[2] Ibid., p. 27.

[3] Id., p. 4.

[4] id., p. 8.

[5] id., p. 72.

[6] Annex "B-1;" Rollo, pp. 35-41.

[7] Annex "A;" Rollo, pp. 22-33.

[8] Annex "C;" Rollo, p. 42.

[9] Ruiz v. Court of Appeals, 201 SCRA 577 (1991).

[10] Zoleta v. Drilon, 166 SCRA 548 (1988).

[11] Rollo, p. 80.

[12] Ibid., p. 14.

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