

RONALD MANLIMOS, FROILAN PAGALAN, MERLITA DUHAY LUNGSOD, ELIZABETH ANDAGAN, DORIS SERDAN, LEONORA BIBIANO, PERLA CUMPAY, VIRGINIA ETIC, REMEGIA NOEL, ROSARIO CUARTO, RONALD BOOC...*G.R. No. 113337. March 02, 1995*

Ponente: DAVIDE, JR., J.

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This is a special civil action for certiorari under Rule 65 of the Rules of Court to set aside, for having been rendered with grave abuse of discretion, the resolutions of 2 August 1993 [1] and 14 October 1993 [2] of public respondent National Labor Relations Commission (NLRC) in NLRC CA No. M-001378-93. The 2 August 1993 resolution reversed the decision of Labor Arbiter Marissa Macaraig-Guillen of 30 April 1993 [3] which ordered private respondent Super Mahogany Plywood Corporation/Albert Go to reinstate the petitioners to their positions without loss of seniority rights and privileges and to pay them their back wages, 13th month pay, service incentive leave pay, and attorney's fees, while the 14 October 1993 resolution denied the motion to reconsider the 2 August 1993 resolution.

After the private respondent and the public respondent, through the Office of the Solicitor General, had filed their separate comments and the petitioners, their consolidated reply to the comments, this Court resolved to give due course to the petition.

The petitioners were among the regular employees of the Super Mahogany Plywood Corporation, a domestic corporation organized in 1988 and based in Butuan City. They had been hired as patchers, taper-graders, and receivers-dryers. On 1 September 1991, a new owner/management group headed by Alfredo Roxas acquired complete ownership of the corporation. The petitioners were advised of such change of ownership; however, the petitioners continued to work for the new owner and were considered terminated, with their conformity, only as of December 1991 when they received their separation pay, 13th month pay, and all other benefits due them computed as of the said month. Each of them then executed on 17 December 1991 a Release and Waiver which they acknowledged before Atty. Nolasco Discipulo, Hearing Officer of the Butuan City District Office of the Department of Labor and Employment (DOLE).

On 27 December 1991, the new owner caused the publication of a notice for the hiring of workers, indicating therein who of the separated employees could be accepted on probationary basis. The petitioners then filed their applications for employment. Except for Rosario Cuarto, they were hired on probationary basis for six months as patchers or tapers, but were compensated on piece-rate or task basis.

For their alleged absence without leave, Perla Cumpay and Virginia Etic were considered, as of 4 May 1992, to have abandoned their work. The rest were dismissed on 13 June 1992 because they allegedly committed acts prejudicial to the interest of the new management which consisted of their "including unrepaired veneers in their reported productions on output as well as untaped corestock or whole sheets in their supposed taped

veneers/corestock." However, upon their appeal, the effectivity of such termination was deferred to 20 June 1992. [4]

Petitioners Ronald Booc, Jaime Timbal, German Gista, Federico Amper, Francisco Evale, and Renante Yacapin then filed against the private respondent with the Sub-Regional Arbitration Branch No. X of the NLRC in Butuan City a complaint (NLRC-SRAB 10-07-00104-92) for "non-payment of wages, underpayment of wages, incentive leave pay, non-payment of holiday pay, overtime pay, 13th month pay, separation pay, reinstatement with back wages, illegal termination and damages."

Petitioners Ronald Manlimos, Froilan Pagalan, Merlita Duhay Lungsod, Elizabeth Andagan, Doris Serdan, Leonora Bibiano, Perla Cumpay, Virginia Etic, Remegia Noel, and Rosario Cuarto also filed against the private respondent with the same office a complaint (NLRC Case No. SRAB-10-08-00124-92) for "illegal termination; reinstatement with back wages; non-payment of wages; underpayment of wages; non-payment of incentive leave pay, overtime pay, 13th month pay; and damages."

Both complaints were later amended and consolidated. [5]

The private respondent answered the amended complaints [6] and thereafter the parties submitted their position papers. [7]

The petitioners maintained that they remained regular employees regardless of the change of management in September 1991 and their execution of the Release and Waiver. They argue that being a corporation, the private respondent's juridical personality was unaffected even if ownership of its shares of stock changed hands. Their signing of the Release and Waiver was of no moment not only because the consideration was woefully inadequate, but also because employees who receive their separation pay are not barred from contesting the legality of their dismissal and quit claims executed by laborers are frowned upon for being contrary to public policy.

On the other hand, the private respondent contended that the petitioners were deemed legally terminated from their previous employment as evidenced by the execution of the Release and Waiver and the filing of their applications for employment with the new owner; that the new owner was well within its legal right or prerogative in considering as terminated the petitioners' probationary/temporary appointment; and that the petitioners were not illegally dismissed; hence, they are not entitled to the reliefs prayed for.

In her decision of 30 April 1993, [8] Labor Arbiter Marissa Macaraig-Guillen ruled for the petitioners and decreed as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring the dismissals of complainant Ronald Manlimos, Froilan Pagalan, Merlita Duhay lungsod, Elizabeth Andagan, Doris Serdan, Leonora Bibiano, Perla Cumpay, Virginia Etic, Remegia Noel, Ronald Booc, German Gista, Jaime Timber [sic], Federico Amper, Renante Yacapin, and Francisco Evale as invalid and illegal and ordering respondent Super Mahogany Plywood Corporation represented by its Vice President, Mr. Alberto Go to:

- To reinstate the complainants to their positions without loss of seniority rights and privileges;
- To pay them backwages, 13th month pay, service incentive leave pay and attorney's fees in the total sum of FIVE HUNDRED FORTY TWO THOUSAND ONE HUNDRED FIFTY PESOS and 40/100 ONLY (P542,150.40) in accordance with the computation herein provided for.

All other claims are dismissed for lack of merit.

It is the thesis of the Labor Arbiter that the transfer of ownership partook of a cessation of business operation not

due to business reverses under Article 283 of the Labor Code and pursuant to the doctrine laid down in *Mobil Employees Association vs. National Labor Relations Commission*, [9] the following requisites must be complied with before the dismissal of employees may be effected: (1) service of a written notice to the employees and to the Ministry of Labor and Employment (MOLE) at least one month before the intended date thereof; (2) the cessation of or withdrawal from business operations must be bona fide in character; and (3) payment to the employees of termination pay amounting to at least one-half month pay for each year of service or one month pay whichever is higher.

The Labor Arbiter ruled that the first and third requisites were present in this case; she explicitly held that each of the petitioners signed freely and voluntarily the Release and Waiver and that the termination and payment of separation pay by the previous owner of the corporation were done in good faith. The Labor Arbiter, however, ruled that there was no "cessation of operations which would lead to the dismissal of the employees." Thus:

In this case, there was actually no cessation of business operations except for the traditional break between Christmas and New Year.

In fact the notice given by Acting Resident Manager Jesus A. Cu on December 27, 1991 which is Annex 11 for respondent, clearly indicates that there was no gap to speak, between the time the previous management turned over their responsibilities to the new team of managers and the corresponding takeover.

Secondly, we are merely presuming that there was a purchase because a new list of stockholders now sit on the board of the corporation and occupy various positions as corporate officers, but this Office had never been formally apprised of what actually occurred so that the bulk of existing shareholdings were transferred to the group of Mr. Alfredo Roxas.

The Labor Arbiter then concluded that "upon resumption of their work in January of 1992, the complainants re-entered respondent's employ, not as probationary employees, but as regular employees, because they were engaged in work which was necessary and desirable to the company's operations." As regular employees, they could not be dismissed without cause and without due process. She found that in this case the irregularities allegedly committed by the petitioners were not proven.

From the above adverse judgment of the Labor Arbiter, the private respondent appealed to the NLRC (Fifth Division, Cagayan de Oro City).

In its resolution of 2 August 1993, the NLRC reversed the judgment of the Labor Arbiter, except as to the 13th month pay which was sustained subject, however, to recomputation based on the actual services of the petitioners under the new owner up to the actual date of their separation from the service on 20 June 1992. It found that the change of ownership in this case was made in good faith since there was no evidence on record that "the former owners conspired with the new owners to insulate the former management of any liability to its workers." It ruled that the Labor Arbiter:

has not only misappreciated the facts but ... has as well distorted the facts by erroneously applying the ruling in the case of *MOBIL*. The facts in said *Mobil* are far different from the facts in the instant case. The *MOBIL* case refers to retrenchment or termination of employment under Article 283 (ART. 284) of the Labor Code, as amended. It does not involve termination of employment as a result of the change of corporate ownership or corporate consolidation or merger.

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The case cited by appellants in their position paper is more in point. General rule is that "(C)hange of ownership or management of a business establishment or enterprise however, is not one of the just causes xxx to terminate

employment without a definite period." That "(N)either can it be considered as synonymous with nor analogous to closing or cessation of operation of an establishment or enterprise x x x." (Central Azucarera del Danao vs. Court of Appeals, 137 SCRA 295, 303).

However, it is equally a well settled rule that the sale or disposition of a business enterprise which has been motivated by good faith is "an element of exemption from liability." Thus, "an innocent transferee of a business has no liability to the employees of the transferor to continue employing them. Nor is the transferee liable for past unfair labor practices of the previous owner, except, when the liability is assumed by the new employer under the contract of sale, or when liability arises because the new owners participated in thwarting or defeating the rights of the employees." (Central Azucarera del Danao, *ibid.*).

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The hiring of employees on probationary basis is an exclusive management prerogative. The labor tribunal cannot substitute its own judgment on the manner how the employer will run its own business. (National Labor Union vs. Insular Yebana Tobacco Corporation, 2 SCRA 924). The right to hire and fire is basically a sole management prerogative which the courts may not interfere.

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On the other hand, the subsequent hiring of complainants on probationary basis by the new management/corporate owners being the prerogative of management must be sustained. Since the corporate business is under a new management, the latter will therefore need time to determine the qualifications of the newly hired workers, herein complainants. As probationary employees, they are therefore on trial to afford new management to determine whether or not they would qualify for permanent employment.

Their motion to reconsider the resolution having been denied by the NLRC in its resolution of 14 October 1993, the petitioners filed this special civil action for certiorari. They claim that the NLRC acted with grave abuse of discretion when it reversed the decision of the Labor Arbiter.

We disagree with the Labor Arbiter's reliance on the case of Mobil Employees Association vs. National Labor Relations Commission. [10] The NLRC was correct in holding that Mobil was not applicable because Mobil involved the termination of employment under Article 283 (before Article 284) of the Labor Code and not termination of employment as a result of the change of corporate ownership, as in the case of private respondent Super Mahogany Plywood Corporation. In Mobil, the original employer, Mobil Oil Philippines, Inc., completely withdrew from business and was even dissolved. In the case at bar, there was only a change of ownership of Super Mahogany Plywood Corporation which resulted in a change of ownership. In short, the corporation itself, as a distinct and separate juridical entity, continues to exist. The issue of whether there was a closing or cessation of business operations which could have operated as a just cause for the termination of employment was not material. The change in ownership of the management was done bona fide and the petitioners did not for any moment before the filing of their complaints raise any doubt on the motive for the change. On the contrary, upon being informed thereof and of their eventual termination from employment, they freely and voluntarily accepted their separation pay and other benefits and individually executed the Release or Waiver which they acknowledged before no less than a hearing officer of the DOLE.

A change of ownership in a business concern is not proscribed by law. [11] In Central Azucarera del Danao vs. Court of Appeals, [12] this Court stated:

There can be no controversy for it is a principle well-recognized, that it is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their

organization or operations that would insure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process. Such dismissal or termination should not however be interpreted in such a manner as to permit the employer to escape payment of termination pay. For such a situation is not envisioned in the law. It strikes at the very concept of social justice.

In a number of cases on this point, the rule has been laid down that the sale or disposition must be motivated by good faith as an element of exemption from liability. Indeed, an innocent transferee of a business establishment has no liability to the employees of the transferor to continue employing them. Nor is the transferee liable for past unfair labor practices of the previous owner, except, when the liability therefor is assumed by the new employer under the contract of sale, or when liability arises because of the new owner's participation in thwarting or defeating the rights of the employees. [13]

Where such transfer of ownership is in good faith, the transferee is under no legal duty to absorb the transferor's employees as there is no law compelling such absorption. The most that the transferee may do, for reasons of public policy and social justice, is to give preference to the qualified separated employees in the filling of vacancies in the facilities of the purchaser. [14]

Since the petitioners were effectively separated from work due to a bona fide change of ownership and they were accordingly paid their separation pay, which they freely and voluntarily accepted, the private respondent corporation was under no obligation to employ them; it may, however, give them preference in the hiring. The private respondent in fact hired, but on probationary basis, all the petitioners, except Rosario Cuarto. The non-hiring of Cuarto was legally permissible.

The hiring of employees on a probationary basis is an exclusive management prerogative. The employer has the right or privilege to choose who will be hired and who will be denied employment. It is within the exercise of this right that the employers may set or fix a probationary period within which it may test and observe the employee's conduct before hiring him permanently. [15]

It is settled that while probationary employees do not enjoy permanent status, they are accorded the constitutional protection of security of tenure. They may only be terminated for just cause or when they fail to qualify as regular employees in accordance with reasonable standards made known to them by the employer at the time of their engagement. [16] This constitutional protection, however, ends upon the expiration of the period provided for in their probationary contract of employment. Thereafter, the parties are free to renew the contract or not. [17]

The petitioners themselves admit that upon their request the effective date of their separation was deferred from 13 June 1992 to 20 June 1992. The latter date apparently coincided with the expiration of the six-month probationary period. This development has rendered moot the question of whether there was a just cause for the dismissal of the petitioners other than Perla Cumpay and Virginia Etic.

A different conclusion would have to be reached with respect to Perla Cumpay and Virginia Etic. They were dismissed on 4 May 1992 for having allegedly abandoned their work. It is settled that to constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment, without any intention of returning. [18] In this case, the private respondent not only failed to prove such intent, it as well violated the due process rule in dismissal of employees. The requirements of lawful dismissal of an employee by his employer are two-fold, viz., notice and hearing. [19] These requirements constitute the essential elements of due process. [20] These requirements not having been met with respect to Cumpay and Etic, their dismissal was, consequently, illegal.

It results, therefore, that only petitioners Perla Cumpay and Virginia Etic were entitled to reinstatement and back wages. Nonetheless, considering that their probationary employment would have similarly expired six months after commencement, reinstatement is no longer feasible.

WHEREFORE, the instant petition is partly GRANTED. The challenged resolutions of public respondent National Labor Relations Commission (Fifth Division) of 2 August 1993 and 14 October 1993 in NLRC Case No. M-001378-93 are hereby MODIFIED; and as modified, private respondent Super Mahogany Plywood Corporation is further ordered to pay petitioners Perla Cumpay and Virginia Etic their backwages corresponding to the period from 4 May 1992 up to the expiration of their probationary employment contracts.

No pronouncements as to costs in this instance.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Annex "K" of Petition; Rollo , 167.

[2] Annex "M," Id.; Id., 186.

[3] Annex "J," Id.; Id., 138.

[4] Petition, 6; Rollo , 7.

[5] Annexes "A" and "C" of Petition; Rollo , 39; 43.

[6] Annex "D," Id.; Id., 46.

[7] Annexes "F" and "H," Id.; Id., 96, 109.

[8] Annex "J" of Petition; Rollo , 138.

[9] 183 SCRA 737 [1990].

[10] Supra note 9.

[11] Sunio vs. NLRC, 127 SCRA 390 [1984].

[12] 137 SCRA 295 [1985].

[13] Id. at 304-305 (citations omitted). See also San Felipe Neri School of Mandaluyong, Inc. vs. NLRC, 201 SCRA 478 [1991].

[14] MDII Supervisors and Confidential Employees Association vs. Presidential Assistant on Legal Affairs, 79 SCRA 40 [1977]; San Felipe Neri School of Mandaluyong, Inc. vs. NLRC, supra note 13.

[15] Grand Motor Parts Corp. vs. Minister of Labor, 130 SCRA 436 [1984].

[16] Article 281, Labor Code.

[17] Biboso vs. Victorias Milling Co., 76 SCRA 250 [1977]; Colegio de San Agustin vs. NLRC, 201 SCRA 398 [1991].

[18] Nueva Ecija I Electric Cooperative, Inc. vs. Minister of Labor, 184 SCRA 25 [1990]; Dagupan Bus Co. vs.

NLRC, 191 SCRA 328 [1990]; Batangas Laguna Tayabas Bus Co. vs. NLRC, 212 SCRA 792 [1992].

[19] Cathedral School of Technology vs. NLRC, 214 SCRA 551 [1992]; Tiu vs. NLRC, 215 SCRA 540 [1992].

[20] Abiera vs. NLRC, 215 SCRA 476 [1992].

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