

BRAHM INDUSTRIES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, REYNALDO C. GAGARINO, ROBERTO M. DURIAN AND JONE M. COMENDADOR, RESPONDENTS.*G.R. No. 118853. October 16, 1997*

Ponente: BELLOSILLO, J.

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Matters concerning dismissal of workers are, admittedly, within the ambit of management prerogative. However, certain mandatory requirements laid down by law must be complied with to insure that this prerogative is exercised without arbitrariness or abuse of discretion. Our legal system dictates that both the reason for and the manner of dismissing a worker must be appropriate otherwise the termination itself is gravely defective and may be declared unlawful. This is because a worker's job has some of the characteristics of property rights and is therefore within the constitutional mantle of protection that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." As such, a person cannot be deprived of his property right without observance of the proper legal procedure.[1]

Roberto M. Durian, Jone M. Comendador and Reynaldo C. Gagarino filed a case for illegal suspension, illegal dismissal, illegal lay-off, illegal deductions, non-payment of service incentive leave, 13th month pay, and actual, moral and exemplary damages against Brahm Industries, Inc. (BRAHM) before the Labor Arbiter. In their complaints, they alleged that they were employed by BRAHM on various dates with varying salary rates and for different positions.[2] All three (3) claimed that they worked seven (7) days a week from eight o' clock in the morning to five o'clock in the afternoon; that they were required to work overtime three (3) times a week from five o' clock in the afternoon until midnight and at least once a week for the whole night; that they were paid overtime pay based on the minimum wage only; and that without cause and due process, Gagarino's employment was terminated in October 1990, while Durian and Comendador were dismissed in December 1992.[3]

For its part, BRAHM maintained that Gagarino left the company sometime in 1990 to work abroad. When he returned to the Philippines he worked with another company. With respect to Durian and Comendador, Brahm claimed that they abandoned their jobs in 1992 after having been reprimanded by their employer for not finishing some welding work assigned to them. That another reason for Durian's and Comendador's alleged abandonment of their jobs was due to their inability to account for some tools worth P10,000.00 which were under their custody and accountability.

Moreover, BRAHM asserted that complainants were never employed on a regular basis as the latter had their own customers who required them to render home service. That being a small-scale enterprise engaged in contracting and subcontracting projects for the construction of water purifiers and waste control devices, most of its laborers, including herein complainants, were contractual employees hired on a per project basis. Since its business depended on the availability of contracts or projects, the character of employment of its work force was not permanent but rather coterminous with the project to which they were assigned.

On 8 February 1994 Labor Arbiter Fatima J. Franco ruled that complainants Roberto M. Durian and Jone M. Comendador were illegally dismissed by BRAHM and accordingly ordered the latter to: (a) reinstate complainants to their former positions or equivalent positions without loss of seniority rights, but if reinstatement was no longer possible, to pay them separation pay equivalent to one (1) month for every year of service; (b) pay Roberto M. Durian the amount of Forty-Eight Thousand Thirty-Eight Pesos and Twenty-Five Centavos (P48,038.25) representing his back wages; and, Jone M. Comendador the amount of Sixty Thousand Four Hundred Seventy-Four Pesos and Ninety-Two Centavos (P60,474.92) representing his back wages, 13th month pay and service incentive leave pay; and, (c) pay complainants the amount equivalent to 10% of the total award as attorney's fees.[4]

As regards the case of Reynaldo C. Gagarino, the same was dismissed when the Labor Arbiter found that he filed his complaint only after more than two (2) years from the date of his dismissal. According to the Labor Arbiter, "this lukewarm attitude of complainant (Gagarino) bolstered the conclusion that the filing of his case was merely an afterthought, i.e., when he learned that Durian and Comendador were dismissed, he joined them in filing the instant case." [5] Gagarino did not appeal the dismissal of his case.

Upon appeal by BRAHM, the NLRC affirmed the decision of the Labor Arbiter, subject to the modification that the attorney's fees awarded be reduced to five percent (5%) of the total monetary award.

BRAHM now argues that the NLRC gravely abused its discretion when it held that: (a) private respondents Roberto M. Durian and Jone M. Comendador were regular employees and not merely contractual employees hired on a per project basis; (b) they were illegally dismissed; and, (c) they were entitled to attorney's fees despite the fact that the award lacks factual and legal basis.

We find no merit in the petition. A project employee is one whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.[6] Before an employee hired on a per project basis can be dismissed, a report must be made to the nearest employment office of the termination of the services of the workers everytime it completed a project, pursuant to Policy Instruction No. 20.[7]

There was no showing that BRAHM observed the above-mentioned requirement. In fact, it even admitted in the petition its failure to comply with Policy Instruction No. 20. In *Ochoco v. National Labor Relations Commission*, [8] the failure of the employer to report to the nearest employment office the termination of employment of workers everytime it completed a project was considered by this Court as proof that the dismissed employees were not project employees but regular employees. Petitioner cannot evade the unfavorable repercussions of its failure to comply with the law by arguing that the requirement under Policy Instruction No. 20 is not mandatory.

Furthermore, Art. 280 of the Labor Code defines who a regular employee is -

Art. 280. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: provided, that, any employee who has rendered at least one (1) year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists (underscoring supplied).

The primary standard to determine regularity of employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. This connection can be determined by considering the nature and work performed and its relation to the scheme of the particular business or trade in its entirety.[9]

The law deems the repeated and continuing need for the service of any employee who has been performing his job for at least one (1) year, even if the performance is not continuous or merely intermittent, as sufficient evidence of the necessity if not the indispensability of that activity to the business.

The work performed by private respondents as "welders" were undoubtedly necessary and desirable to BRAHM's business or trade of manufacturing water purifiers and waste control devices. Without the performance of such services on a regular basis, BRAHM's business is expected to grind to a halt. Likewise, BRAHM's practice of re-hiring private respondents after the completion of every project, which practice continued throughout Comendador's nine (9) years and Durian's five (5) years of employment in the company confirms that they were considered by BRAHM as regular employees.

As employer, BRAHM has unlimited access to all pertinent documents and records on the status of employment of its workers. Yet, even as it stubbornly insists that private respondents were project employees only, no contract, payroll or any other convincing evidence which may attest to the nature of their employment was ever presented to substantiate its claim. Instead, what was offered as evidence were merely self-serving affidavits of petitioner's other employees declaring that private respondents were project employees like them, which affidavits were inadequate to buttress its claim.

On the validity of private respondents' dismissal, there are two (2) facets of valid termination of employment: (a) the legality of the act of dismissal, i.e., the dismissal must be under any of the just causes provided under Art. 282 of the Labor Code; and, (b) the legality of the manner of dismissal, which means that there must be observance of the requirements of due process.[10] In this connection, the employer is required to furnish the worker sought to be dismissed with two (2) written notices before his dismissal can be legally effected, namely, notice which appraises the employee of the particular acts or omissions for which his dismissal is sought (in cases of abandonment of work, the notice shall be served at the worker's last known address); and, subsequent notice which informs the employee of the employer's decision to dismiss him. These requirements are mandatory, non-compliance with which renders any judgment reached by management void and inexistent.[11]

Petitioner failed to satisfy these requisites. While it imputes "abandonment" as the cause of dismissal, no proof was offered in support thereof other than the bare allegation that private respondents did not report for work after they were reprimanded by their employer. On the contrary, the filing by private respondents of the complaint for illegal dismissal with prayers for reinstatement, upon learning that they were dismissed, clearly suggests that they were not abandoning their work. To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning back.

Even assuming abandonment, the dismissal of private respondents is still illegal for lack of due process. As correctly observed by the Labor Arbiter and sustained by the NLRC, petitioner failed to furnish private respondents with the first of the required two (2) notices at their last known addresses, which could have apprised them of petitioner's intention to dismiss them. This requirement is not a mere formality that may be dispensed

with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice.[12]

Petitioner contends that the charge of abandonment of work should be sustained as it was never rebutted nor refuted by private respondents. It is in effect postulating that the onus of proving the illegality of the dismissal is on private respondents themselves, not on the employer. This is not the intention of Art. 277, par. (b), of the Labor Code which in clear and unambiguous terms mandates that the burden of proving the validity of the termination of employment rests on the employer. Failure to do so would necessarily mean that the dismissal was not justified and, therefore, illegal.[13] The employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[14]

With regard to the propriety of the award of attorney's fees in favor of private respondents, petitioner contends that it was erroneous for the NLRC to merely reduce the award of attorney's fees when it should have been completely deleted. Petitioner claims that the award is baseless since the matter of attorney's fees was touched only once in the dispositive portion of the Labor Arbiter's decision and no discussion or reason was stated therefor.

This argument is unfounded. A perusal of the decision shows that the reason for the award of attorney's fees is clearly and unequivocally set forth in the body of the Labor Arbiter's decision, to wit: "Having been compelled to litigate, complainants should be paid an amount equivalent to ten percent (10%) of the total award as and for attorney's fees." It used as basis Art. 2208 of the Civil Code which allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought.[15]

However, nothing precludes the appellate courts from reducing the award of attorney's fees when it is found to be unconscionable or excessive under the circumstances. Thus, we agree with the NLRC's ruling that "the award of attorney's fees is proper on account of complainants' being compelled to litigate their claims against respondent. The amount is however reduced to five percent (5%) of the adjudged relief, it appearing that the substantial portion of the award refers to complainants' back wages and not to withheld salaries."

Finally, this Court has consistently held that findings of fact of administrative agencies and quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality and are binding upon this Court unless there is grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record.[16] Petitioner failed to convince us that we should depart from this time-honored rule.

WHEREFORE, the instant petition is DISMISSED for lack of merit and the decision of the National Labor Relations Commission is AFFIRMED. Costs against petitioner.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Azucena, C.A., The Labor Code with Comments and Cases, Vol. II, 1993 Rev. Ed., p. 606.

[2] Roberto M. Durian was hired in 1987 as laborer-welder earning P120.00 daily with food, Jone M. Comendador was employed as laborer in 1983, later became machine welder operator with a daily salary of P140.00, with food, but dismissed in 1992. Reynaldo C. Gagarino became a laborer, then painter in 1984, earning a daily wage of P140.00 with food.

[3] Records, pp. 2-4.

[4] Rollo, pp. 53-54.

[5] See Decision of the Labor Arbiter, p. 4, Rollo, p. 49.

[6] Philippine National Construction Corporation v. National Labor Relations Commission, G.R. No. 85323, 20 June 1989, 174 SCRA 191. See also Art. 280, Labor Code.

[7] Philippine National Construction Corporation v. National Labor Relations Commission, G.R. No. 85323, 20 June 1989, 174 SCRA 191, 194. See also Policy Instruction No. 20 which mandates: "Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes."

[8] G.R. No. 56363, 24 February 1983, 120 SCRA 774, 777.

[9] De Leon v. National Labor Relations Commission, G.R. No. 70705, 21 August 1989, 176 SCRA 615, 621.

[10] Shoemart, Inc. v. National Labor Relations Commission, G.R. No. 74225, 11 August 1989, 176 SCRA 385.

[11] Pepsi Cola Bottling Co. v. National Labor Relations Commission, G.R. No. 101900, 23 June 1992, 210 SCRA 277, 286 citing Tingson, Jr. v. National Labor Relations Commission, G.R. No. 84702, 18 May 1990, 185 SCRA 498; National Service Corporation v. National Labor Relations Commission, G.R. No. 69870, 29 November 1988, 168 SCRA 122; Ruffy v. National Labor Relations Commission, G.R. No. 84193, 15 February 1990, 182 SCRA 365.

[12] Miguel v. National Labor Relations Commission, G.R. No. 78993, 22 June 1988, 162 SCRA 441, 445.

[13] Royal Crown Internationale v. National Labor Relations Commission, G.R. No. 78085, 16 October 1989, 178 SCRA 569.

[14] Dizon v. National Labor Relations Commission, G.R. No. 79554, 14 December 1989, 180 SCRA 52.

[15] See Solid Homes Inc. v. Court of Appeals, G.R. No. 97255, 12 August 1994, 235 SCRA 299, 303.

[16] Maya Farms Employees Organization v. National Labor Relations Commission, G.R. No. 106256, 28 December 1994, 239 SCRA 508, 512.

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