

**ATTY. CAROLINA R. RAMOS, PETITIONER, VS. COURT OF APPEALS,
NATIONAL LABOR COMMISSION, BILLEX GROUP OF COMPANIES,
MILAGROS O. HOW, WILLIAM Y. HOW AND ED**

G.R. No. 170116. December 23, 2008

Ponente: TINGA, J.

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TINGA, J.:

Atty. Carolina R. Ramos assails the Decision[1] of the Court of Appeals dated May 16, 2005, which declared her a probationary employee of respondent Billex Group of Companies (Billex Group)[2] who had been validly terminated by the latter. She also questions the appellate court's Resolution[3] dated September 16, 2005, which denied her motion for reconsideration.

There is some variance in the facts laid out by the Court of Appeals and those presented by petitioner. Our own review of the records reveals that petitioner was hired by the Billex Group as its in-house counsel effective on June 23, 1999. Although no formal employment contract or appointment was executed between the parties,[4] it was agreed that petitioner's monthly compensation would be P25,000.00 and that she would work in the morning office hours from Monday to Saturday.[5]

On July 1, 1999, petitioner was informed that she would be hired on a full-time basis and that she shall receive P50,000.00 as compensation therefor. However, on August 2, 1999, she was informed that her status shall temporarily revert to "part-time" and that her salary would accordingly be reduced to P25,000.00.

On August 14, 1999, petitioner was verbally informed that her employment would be terminated at the close of business hours of the same day. Two days later, she received a formal letter of termination dated August 14, 1999.

The foregoing circumstances prompted petitioner to file a complaint for illegal dismissal. She alleged in her complaint that she had acquired the status of a regular employee after serving the company for more than two (2) weeks, which, according to company policy, is the period for probationary employment. Being a regular employee, her services cannot be terminated without just or authorized cause and without compliance with due process requirements.

Agreeing with petitioner, the labor arbiter rendered a decision[6] dated February 25, 2003, the dispositive portion of which states:

WHEREFORE, premises all considered, judgment is hereby rendered finding the dismissal illegal and ordering respondents to pay the complainant backwages in the amount of P2,078,000.00 (8/14/99-1/31/03 = 41.56 x P50,000.00 = P2,078,000.00); moral damages of P75,000.00 and exemplary damages of P50,000.00 and 10% of the total monetary award by way of attorney's fees.

SO ORDERED.[7]

The National Labor Relations Commission (NLRC), on appeal, reversed the decision of the labor arbiter.[8]

According to the NLRC, in the absence of a written employment contract, Art. 281 of the Labor Code shall apply. Under the cited provision, probationary employment shall not exceed six (6) months from the date the employee started working and may be terminated for cause if the employee fails to qualify as a regular employee based on reasonable standards made known at the time of engagement. The NLRC seized upon a letter drafted by petitioner suggesting to respondent Eduardo P. Francisco (Francisco) that the probationary period should be lengthened to five (5) months instead of two weeks. This letter, the NLRC ruled, is an acknowledgement by petitioner herself that the Billex Group's policy for the probationary period is five (5) months and not two (2) weeks.

The NLRC denied reconsideration. On certiorari, the Court of Appeals affirmed the NLRC's resolution. Reconsideration was likewise denied by the appellate court.

In the instant Petition for Review[9] dated October 25, 2005, petitioner argues that she attained the status of a regular employee not only because she had passed the two (2)-week probationary period set by the Billex Group but, more importantly, because she allegedly performed work that was usually necessary and desirable to the usual trade and business of the Billex Group. Her dismissal was allegedly without due process; hence, void.

The Billex Group filed a Comment[10] dated March 13, 2006, insisting that petitioner knew that her status was that of a probationary employee. She was allegedly informed of the tasks expected of her, such as the completion of the job descriptions for the various positions in the company, but her work product allegedly failed to meet the standards of the company. The Billex Group further asserts that as a probationary employee, petitioner's employment can be terminated for cause any time.

The company further points out that the NLRC resolution dated October 30, 2003, reversing the decision of the labor arbiter, had already become final and executory since no petition for certiorari had been filed within the reglementary period. An Entry of Judgment was, in fact, issued by the NLRC certifying that its resolution became final and executory on June 5, 2004. Allegedly, petitioner's motion for reconsideration of the resolution of the NLRC (reversing the decision of the labor arbiter) was filed 14 days after the period for filing the same had already prescribed. Thus, the motion for reconsideration was denied. The petition for certiorari was allegedly filed five (5) months after the period for filing the same had already prescribed, considering that petitioner received a copy of the NLRC resolution on December 16, 2003 and had only until February 15, 2004 within which to file a petition for certiorari with the Court of Appeals.

In her Reply[11] dated June 10, 2006, petitioner pleads leniency and asks the Court to relax the application of the rules to enable her to fully ventilate her side.

It should be emphasized at the outset that this petition suffers from procedural imperfections too grave to merely be ignored.

The NLRC resolved respondent's appeal (of the labor arbiter's decision) on October 30, 2003. Its Resolution was received by petitioner on December 16, 2003, as she herself stated in her motion for reconsideration.[12] She therefore had 10 days thence within which to file said motion. However, she only filed her motion for reconsideration on January 9, 2004,[13] 14 days after the period for filing the same had already prescribed. The motion was expectedly denied for having been filed beyond the 10-day reglementary period and for lack of merit in the NLRC Resolution dated May 14, 2004. Entry of Judgment[14] was issued on August 3, 2004, stating that the May 14, 2004 Resolution became final and executory on June 5, 2004. Another Resolution dated September 30, 2004[15] was issued by the NLRC declaring the case closed and terminated.

In *Zapata v. NLRC*[16] we held that the implementing rules of respondent NLRC are unequivocal in requiring that a motion for reconsideration of the order, resolution, or decision of the respondent Commission should be

seasonably filed as a precondition for pursuing any further or subsequent remedy, otherwise the said order, resolution or decision shall become final and executory after 10 calendar days from receipt thereof.

Petitioner's procedural missteps in the NLRC also resulted in the late filing of her petition for certiorari with the Court of Appeals. For these reasons alone, the petition for certiorari already warranted outright dismissal. Petitioner cannot hide behind the mantle of liberality. Being herself a lawyer, she is presumed to know and is expected to follow procedural rules to the letter.

Even foregoing the procedural issues, the present petition should be denied for lack of merit.

Petitioner herself admitted that the Billex Group initially hires its officers and employees on a probationary status^[17] although she asserts, without proof, that the probationary period is only two (2) weeks. In support of her allegation, petitioner referred to a statement allegedly made by respondent Milagros How that: "Tama na ang dalawang linggo. Sa loob ng panahon na yon, makikilala mo na ang tao."^[18] Again, no proof that these words were uttered was presented by petitioner.

A probationary employee is engaged specifically with the view of eventually converting the employment into regular status if the employee meets the standards for regular employment. The probationary period serves as a trial period during which the employee's performance is evaluated. Naturally, the employee would have to render services which are usually necessary and desirable to the business of the employer for how else would the employer be able to assess the employee's performance? Petitioner's statement, therefore, that she performed services which were necessary to respondent's business does not necessarily negate the probationary status of her employment.

The Labor Code and its Implementing Rules govern probationary employment. Art. 281 of the Labor Code states:

Art. 281. Probationary Employment.--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.

Book VI, Rule I, Sec. 6, of the Implementing Rules provides:

Probationary employment.--There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x

(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just cause, when he fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

Both the NLRC and the appellate court singled out a letter written by petitioner addressed to respondent Francisco in which she suggested a probationary period of five (5) months instead of two (2) weeks presumably for another

employee of the company whose employment petitioner was then reviewing. The letter states:

EDF,

I prefer this letter form agreement than the employment contract. Likewise, I suggest a probationary period of five (5) mos. I could not see the advantage of limiting the period to two weeks, anyway, the Company has the option to terminate it anytime within the period.

CRR[19]

This letter acknowledges that petitioner was well aware of the limits of her probationary employment. She must have known, too, that under Sec. 2, Rule I, Book VI of the Implementing Rules, "If the termination is brought about by the completion of the contract, or by failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee, within a reasonable time from the effective date of termination."

Petitioner's dismissal, effected through a letter dated August 14, 1999 which petitioner received on August 16, 1999, sufficiently meets the criteria set forth above for the legality in the cause and manner of dismissal. This letter of termination cited "business considerations"[20] as the reason therefor, although respondent also insisted that the quality of petitioner's work failed to meet the standards set out by respondent and made known to petitioner at the time of her engagement.

In view of the foregoing, we find no reason to disturb the findings of the NLRC affirmed by the Court of Appeals.

WHEREFORE, the Decision and Resolution of the Court of Appeals respectively dated May 16, 2005 and September 16, 2005, affirming the Resolutions of the National Labor Relations Commission dated October 30, 2003 and May 14, 2004, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

[1]Rollo, pp. 42-49; Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Regalado E. Maambong and Vicente Q. Roxas.

[2] The Billex Group is composed of Grand Asian Shipping Lines, Inc., Universal Aquarius, Inc., Billex Development Corporation, Marman Industrial, Marman Trading, Neptuna Shipyard, Inc., Queen Clean Industrial Products and Millennium Travel Corporation. Respondents Milagros O. How and William Y. How act as either President or Executive Vice-President of the companies comprising the Billex Group. Respondent Eduardo P. Francisco, on the other hand, is the Vice-President for Administration of the Billex Group. Id. at 62-63; Petition for Review dated October 25, 2005.

[3]Id. at 51-52.

[4] As found by the Labor Arbiter in its Decision dated February 25, 2003. Id. at 187.

[5] Respondent Billex Group claims that petitioner's work schedule was arrived at upon her own request. Id. at 188.

[6] Id. at 186-194.

[7] Id. at 194.

[8]Id. at 241-251; Resolution dated October 30, 2003.

[9] Id. at 55-96.

[10]Id. at 452-484.

[11]Id. at 489-501.

[12] Records, p. 257.

[13]Id. at 302.

[14] Rollo, p. 481.

[15]Records, pp. 373-375.

[16] G.R. No. 77827, July 5, 1989, 175 SCRA 56.

[17] Records, p. 153.

[18] Rollo, p. 78.

[19]Id. at 243, 13.

[20] Records, p. 56.

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