

## **ROLANDO ROXAS SURVEYING COMPANY, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND MATHEW LEONARDO, RESPONDENTS.**

*G.R. No. 61684. October 11, 1983*

Ponente: RELOVA, J.

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### **RELOVA, J.:**

Labor Arbiter Fernando A. Sambajon, in the complaint filed by private respondent Mathew Leonardo against herein petitioner Rolando Roxas Surveying Co. with the Regional Office No. IV, Ministry of Labor, for illegal dismissal, unpaid wages and unpaid per diems, rendered a decision on June 27, 1979, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering respondent to reinstate complainant to his former position with back salaries of P450.00 monthly, from October 1, 1976 up to the date of reinstatement without loss of seniority rights, and to pay to complainant emergency allowance of P15.00 monthly for the period of his service from March 1, 1976 to September 15, 1976.

"The claims of unpaid wages and per diems are denied for lack of merit..

"SO ORDERED." (p. 42, Rollo)

Petitioner appealed to respondent National Labor Relations Commission (NLRC) which, on February 11, 1982, rendered judgment as follows:

"WHEREFORE, let the decision appealed from be MODIFIED in the sense that the respondent is hereby ordered to pay the complainant two years backwages and one month separation pay subject to computation by the Socio -Economic Analyst of this Commission. The decision is affirmed in all other respects.

"SO ORDERED." (p. 53, Rollo)

Upon denial of its motion for reconsideration, petitioner filed with Us a petition for certiorari with prayer, among others, that "the award of two (2) years backwages, be deleted from the decision, if only to make it conform with the rulings laid down by this Honorable Court as above-quoted."

The facts of the case are stated in the decision of respondent NLRC, as follows:

"A review of the record shows that the complainant applied for and was accepted as surveyman by the respondent on the strength of his 14 years of experience in survey work with the Bureau of Lands; that on March 1, 1976, he started working as such surveyman with seven men under him in Surigao del Sur; that in September 1976, he requested and was granted 15 days vacation leave; that after the expiration of his leave of absence, he reported for work but was not allowed by the engineer of the cadastral survey party unless the consent of the respondent had been obtained; that for this reason, he sent a telegram to the respondent but received no reply so he proceeded to Manila and called up the respondent who told him he could no longer return to his job because of the irregularities he had committed during his employment; that this created a

misunderstanding between the complainant and the respondent which resulted in the filing of charges and counter-charges against each other." (p. 50, Rollo)

Petitioner contends that the reason for private respondent's dismissal was his anomalous conduct while working for the company - unauthorized collection of money from people whose lands were being surveyed; that his continuance in the service, is patently inimical to its interest, aside from the fact that his dishonesty is shown when he did not disclose his conviction for malversation of public funds, with the penalty of perpetual disqualification to hold government office; that the finding and observation of respondent NLRC that reinstatement of private respondent to his former position "would be imprudent and impracticable" lead to the inevitable conclusion that he should not be paid back wages. To do otherwise, it is argued, "would be doing violence to the rule that conclusions made in the decision must be consistent with the findings of facts." (Memorandum for the petitioner, p. 111, Rollo).

Further, petitioner points out that private respondent was employed merely for the cadastral survey being conducted in Surigao del Sur and that there was no fixed period for said employment. Thus, the company has the right to terminate private respondent at any time and even without cause.

We find no merit in this petition. In the first place, the claim that private respondent asked money from people whose lands were being surveyed is not supported by evidence, except the testimony of Engineer Eugenio Morales who, however, did not confront the private respondent, much less, present the persons from whom he allegedly demanded or received money.

With respect to the issue that private respondent was only an apprentice and not a regular employee, petitioner relied on the letter, dated January 30, 1976, addressed to Engineer Morales, as follows:

"1-30-76

Engr. Jamison or Morales

Cadastral Survey Party

Cad-5-37-D, San Miguel Cadastre

San Miguel, Surigao del Sur

The bearer is Mr. Mathew Leonardo also likes to join our office and field force there in our project operation. As alleged he knows transit work so with little office work so please assess him and I'll be the one who will determine his salary upon arrival. I'll be arriving soon, as my Lanao project has a little problem.

Regards: Good luck to all

Sgd. (Illegible)" (p. 136, Rollo)

The above communication to Engineer Morales for him to assess the capabilities of private respondent is not sufficient to show that he was taken in as an apprentice. There was no written agreement that his services had been engaged as an apprentice. On the contrary, every circumstance would indicate that he was accepted on the basis of his credentials that he had been an employee for several years as a surveyor in the Bureau of Lands. He was given a salary of P450.00 a month and, on June 1, 1976, was sent to Surigao del Sur to perform the work of a surveyor, with seven men under him to supervise. For all intents and purposes, he comes within the meaning of a regular employee "to perform activities which are usually necessary or desirable in the usual business or trade of the employees." (Article 281 of the Labor Code). In short, if it was really the intention of petitioner to employ private respondent as an apprentice only, it should have so stated the same clearly and in writing.

Thus, as a regular employee, private respondent cannot be terminated except for a just cause or when authorized under Article 283 of the Labor Code, which provides:

"Art. 283. Termination by employer. -An employer may terminate an employee without a definite period for any of the following just causes:

- (a) The closing or cessation of operation of the establishment or enterprise, or where the employer has to reduce his workforce by more than one-half (½) due to serious business reverses, unless the closing is for purpose of circumventing the provision of this Chapter;
- (b) Serious misconduct or willful disobedience by the employee of the orders of his employer or representative in connection with his work;
- (c) Gross and habitual neglect by the employee of his duties;
- (d) Fraud or willful breach by the employee of the trust reposed in him by his employer or representative;
- (e) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or representative; and
- (f) Other causes analogous to the foregoing."

Finally, We find merit in the submission of the Solicitor General that "considering the circumstances of the case and the seeming bad faith of petitioner in dis-missing private respondent, it is in consonance with justice, reason and equity that respondent NLRC awarded back wages to private respondent. Private respondent, during his lay-off, and his family have to undergo diffi-culties and hardships of life (National Shipyards and Steel Corporation vs. CIR, et al., 57 SCRA 642). It has not been shown that in the interim from his illegal dis-missal, private respondent has found some means of live-lihood to support himself and his family."

WHEREFORE, for lack of merit, the petition is dis-missed and the temporary restraining order issued on September 22, 1982 is hereby LIFTED.

**SO ORDERED.**

Melencio-Herrera, (Acting Chairman), Abad Santos, Plana, and Escolin, JJ., concur.

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