

BONIFACIO MURILLO, JOSE DOMINGO, ARSENIO TAGURA, NICASIO CANETE AND MARIO VELASQUEZ, PETITIONERS, VS. SUN VALLEY REALTY, INC., STATE REALTY & INVESTMENT CORP., HONORABLE COMMISS...

G.R. No. 67272. June 30, 1988

Ponente: CORTES, J.

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CORTES, J.:

Petitioners were employed in April 1967 as maintenance men tasked with the upkeep of the roads and water system of the Sun Valley Subdivision. On January 11, 1980, they were notified by State Realty and Investment Corporation that their services would be terminated effective January 31, 1980 in view, allegedly, of the termination of the contract between Sun Valley Realty, Inc. and State Realty and Investment Corporation. Thus, on January 31, 1980, petitioners' employment was terminated without private respondents having filed any application for clearance to terminate much less a prior clearance from the Ministry of Labor. On February 26, 1980, petitioners filed their complaint for illegal dismissal, emergency living allowance and payment of service incentive leave.

At the Arbitration Branch of the Ministry of Labor, National Capital Region, the parties agreed to submit their case for decision on the basis of their respective position papers, instead of holding trial.

On December 5, 1980, the Labor Arbiter rendered a decision declaring petitioners' dismissal illegal. The dispositive portion of the decision reads:

WHEREFORE, premises considered the respondent is hereby ordered to pay the herein complainants their separation pay of one month salary for every year of service;

1. Pay the complainants their allowance under P.D. 525, from August 1974 to December 1976;
2. Pay complainants their allowance under P.D. 525, 1123 and 1614, minus the amount they already received corresponding to their allowances;
3. Pay complainants five days salary for every year of service as their service incentive leave pay.

The Socio-Economic Analyst of this Office is hereby directed to compute the foregoing award and submit a report to this Labor Arbiter within ten (10) days from receipt of this Decision.

SO ORDERED.

On January 6, 1981, private respondents appealed to the National Labor Relations Commission. On February 24, 1984, the NLRC, in a two and a half-page Decision, reversed the decision of the Labor Arbiter, solely on the ground that Petitioner's Position Paper-Affidavit was not verified, and therefore "cannot be legally considered as evidence." From the NLRC decision, petitioners interposed the present action which was given due course by this Court on November 26, 1984.

Petitioners call attention to the fact that private respondents received a copy of the Labor Arbiter's decision on December 18, 1980, and that they (private respondents) filed their appeal to the National Labor Relations Commission only on January 6, 1981, which is beyond the ten (10) calendar days allowed by law within which appeal from the decision of the Labor Arbiter may be made. Thus, it is argued, the appeal by private respondents to the NLRC was filed out of time. Petitioners rely on the case of *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.* [G.R. Nos. 58011-12, July 20, 1982, 115 SCRA 347], to support their position that the decision of the Labor Arbiter had become final and executory, and thus, beyond review by the NLRC.

This argument of petitioners must fail. The ruling in the *Vir-Jen* case cannot be applied to the present case since the appeal to the NLRC was filed by private respondents prior to the promulgation of this Court's decision in the *Vir-Jen* case. As stated in the subsequent case of *RJL Martinez Corporation v. NLRC*, [G.R. Nos. 63550-51, January 31, 1984, 127 SCRA 454]:

... If we were to reckon the 10-day reglementary period to appeal as calendar days, as held in the case of *Vir-Jen Shipping and Marine Services, Inc. vs. NLRC, et al.*, private respondents' appeal was, indeed, filed out of time. However, it was clear from *Vir-Jen* that the calendar day basis of computation would only apply "henceforth" or to future cases. That ruling was not affected by this Court's Resolution of November 18, 1983 reconsidering its Decision of July 20, 1982. When the appeal herein was filed on April 19, 1982, the governing proviso was found in Section 7, Rule XIII of the Rules and Regulations Implementing the Labor Code along with NLRC Resolution No. 1, Series of 1977, which based the computation on "working days." [*RJL Martinez Fishing Corporation v. NLRC*, G.R. Nos. 63550-51, January 31, 1984, 127 SCRA 454 at 459-60].

From December 18, 1980 to January 6, 1981 is exactly ten (10) working days considering the holidays and the Saturdays and Sundays that supervened during that period. In other words, private respondent's appeal to the NLRC having been filed during the time that the prevailing period of appeal was ten (10) working days and prior to the promulgation of the *Vir-Jen* case on July 20, 1982, it must be held to have been timely filed.

There is, however, merit in this petition.

1. The lack of verification of the Position Paper-Affidavit of petitioners is a formal, rather than a substantial, defect. It is not fatal in this case. It could have been easily corrected by requiring an oath [*Del Rosario and Sons Logging Enterprises, Inc. v. NLRC*, G.R. No. 64204, May 31, 1985, 136 SCRA 669].
2. Coming now to the more important issue of whether or not petitioners were legally dismissed, the Court notes that at the time of petitioners' dismissal, Article 278 of the Labor Code as implemented by Rule XIV (Clearance to Shut Down or to Dismiss), Book V, of the Rules and Regulations Implementing the Labor Code, was still in force. Article 278 read:

Art. 278. Miscellaneous provisions —

(b) With or without a collective agreement, no employer may shut down his establishment or terminate the employment of employees with at least one year of service during the last two years, whether such service is continuous or broken, without prior authority issued in accordance with such rules and regulations as the Secretary may promulgate.

And the Rules provided:

Sec. 1. Requirement for shutdown or dismissal. — No employer may shut down his establishment or dismiss any of his employees with at least one year of service during the last two years, whether the service is broken or continuous, without prior clearance issued therefor in accordance with this Rule. Any provision in a

collective agreement dispensing with the clearance requirement shall be null and void.

Sec. 2. Shutdown or dismissal without clearance. — Any shutdown or dismissal without prior clearance shall be conclusively presumed to be termination of employment without a just cause.

It is undisputed that no clearance to terminate was ever secured by private respondents prior to the termination of employment of petitioners. In fact, even as petitioners were terminated on January 31, 1980, it was only on February 14, 1980 that an application for clearance was filed by private respondents. Hence, petitioners' dismissal must be conclusively presumed to be without just cause.

Private respondents contend, however, that prior clearance was not required in cases of complete cessation of operations, and that only a report was necessary. [Rollo, pp. 113-114]

The fact that private respondents intended to shut down operations due to business reverses is immaterial. The Rules cited above are clear that clearance was likewise required before one could shut down his business. There is no showing that private respondent applied for a clearance to shut down prior to petitioners' dismissal from work.

3. On the issue of payment of statutory benefits, private respondents claim that benefits under Presidential Decrees Nos. 525, 1123, and 1614 were fully paid.

Suffice it to say that whether or not the benefits were paid is a question of fact. Since there is substantial evidence to support the findings of the Labor Arbiter that petitioners were underpaid, this Court will not disturb the conclusions of the Labor Arbiter.

There is merit, however, in respondents' contention that claims that accrued more than three years before the complaint was filed on February 26, 1980 had prescribed. Article 292 of the Labor Code is clear.

Art. 292. Money claims. — All money claims arising from employer-employee relations arising during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities established under this Code within one (1) year from the date of effectivity, and shall be processed or determined in accordance with implementing rules and regulations of the Code; otherwise, they shall be forever barred.

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We thus rule that all claims which accrued more than three (3) years prior to February 26, 1980 are no longer recoverable.

4. Private respondents also claim that petitioners are not entitled to service incentive leave inasmuch as establishments employing less than ten (10) employees are exempted by the Labor Code and the Implementing Rules from paying service incentive leave. Attention is called to the complaint where petitioners alleged that there were only six (6) employees in Sun Valley Subdivision "excluding others."

4. Petitioners' allegation that there were six (6) employees in Sun Valley "excluding others" in effect stated that there were other employees of the corporation, except that they were not stationed in Sun Valley Subdivision. Note, however, that the clear policy of the Labor Code is to include all establishments, except a few classes, under the coverage of the provision granting service incentive leave to workers. Private respondents' claim is that they fell within the exception. Hence, it was incumbent upon them to prove that they belonged to a class excepted by law from the general rule. Specifically, it was the duty of respondents, not of petitioners, to prove that there were less than ten (10) employees in the company. Having failed to discharge its task, private respondents must be

deemed to be covered by the general rule, notwithstanding the failure of petitioners to allege the exact number of employees of the corporation. In other words, petitioners must be deemed entitled to service incentive leave.

5. Lastly, private respondent State Realty and Investment Corporation contends that it cannot be held liable because it was merely the managing agent of the other respondent Sun Valley Realty, Inc. In other words, it is asserted that the employer of petitioners was Sun Valley Realty, Inc. only, and not State Realty and Investment Corporation.

The issue of the existence of an employer-employee relationship between the parties is a question of fact, and the finding of the Labor Arbiter on this point is entitled not only to respect but also the stamp of finality [See *RJL Martinez Fishing Corp. v. NLRC*, *supra*].

WHEREFORE, the petition is hereby GRANTED. The Decision of the National Labor Relations Commission is SET ASIDE, whereas, the Decision of the Labor Arbiter is hereby REINSTATED with the modification that petitioners are hereby awarded only those claims accruing within three years prior to February 26, 1980.

SO ORDERED.

Fernan, Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

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