

JUAN ALBERTO SUMANDI, PETITIONER, VS. VICENTE LEOGARDO, JR., AS DEPUTY MINISTER OF LABOR, AND RODOLFO CO, RESPONDENTS.

G.R. No. 67635. January 17, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review an order of the Deputy Minister of Labor which affirmed on appeal the dismissal by the Bacolod District Office of the petitioner's complaint for illegal dismissal and reinstatement with backwages. We treat the respondents' comments as answers and decide the case on its merits.

Alberto Sumandi was employed since January, 1976 as a salesman-mechanic by American Rose, a store engaged in the sale of fishing supplies and various hardware and electrical items. The store was owned by Co Chun Tun, father of respondent Rodolfo Co.

Sometime after the marriage of Rodolfo Co in November, 1979, father and son decided to separate the section of their store dealing in lamps, stoves, and electrical supplies from the rest of the business. Petitioner Sumandi and another employee were transferred together with the spun-off business to the new store headed by private respondent Rodolfo Co. The two continued to be paid by American Rose for the months of November and December, 1979 even as they were already working in the new store.

In January, 1980 the new store was named Guaranteed Best Marketing and registered in the name of "Rudy" Co, herein private respondent. Since Sumandi was working for a separate establishment, he was asked to resign from American Rose.

On March 7, 1980, the following incident, as narrated by the petitioner but not denied by the private respondent, happened:

"That on or about March 7, 1980, there were two (2) persons looking for Pantalla lamp glass; the glass cost P5.00, but pursuant to instructions, I quoted a price of P5.50 in anticipation of the customer trying to bargain; the customers offered P5.00 for the item; however, the glass had a little crack, so I told the customers to wait while I get another lamp glass; while I was getting the Pantalla lamp glass and was about to wrap it, the two (2) persons left, Rudy Co asked me if they bought the Pantalla lamp glass, I told him that they did not; after five minutes, the two (2) persons came back bringing with them a Pantalla lamp glass which they bought elsewhere, but they then wanted to buy Pantalla wick; Rudy Co asked them where they bought the Pantalla lamp glass and for how much; they answered from American Rose for P4.50; Rudy Co asked them why they did not buy from his store; they said our store was selling the item for P5.00; Rudy Co asked who told them that it was P5.00; they pointed to me, Rudy Co pounded his fist on the table; he told them that his store was also selling at P4.50 each.

"That Rudy Co then told me in a loud voice that he was the boss and not me, and that I was trying to ruin his business; Rudy Co told me not to work anymore that next day; he gave me my salary of P18.00 that noontime

and told me not to work anymore.

"That I returned to the store that afternoon March 7, 1980, and the following day, but Rudy Co would not allow me to work and told the customers that I was no longer working at the store."

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Sumandi filed a complaint for illegal dismissal and reinstatement with backwages. The Assistant Regional Director at the Bacolod office of the Ministry of Labor dismissed the complaint on the sole ground that Sumandi was a temporary employee not entitled to the benefits provided by the Labor Code. On appeal to the Ministry of Labor and Employment, the respondent Deputy Ministry affirmed the order on a finding that there is no cogent reason to disturb, much less reverse it.

Respondent Rodolfo Co states that the findings of fact of the respondent labor officials are supported by substantial evidence and in the absence of grave abuse of discretion or want or excess of jurisdiction, they should not be disturbed.

The Solicitor-General, however, holds a different view. He states:

"Significantly, the foregoing narration of petitioner was not controverted in any of the pleadings submitted and therefore, is deemed admitted by private respondent (Secs.1 and 2, Rule 19, Rules of Court).

"Thus, petitioner has satisfactorily demonstrated by his undisputed assertions the unity in management and ownership of American Rose and private respondent Guaranteed Best Marketing thereby substantiating a pivotal fact that his employment with Guaranteed Best Marketing was but a continuation of his previous employment with American Rose.

"In analogous cases, this Honorable Court held that employees absorbed by successor-employers enjoy continuity of employment status (*Cruz v. PAFLU*, 42 SCRA 68; *PAFLU v. CIR*, 4 SCRA 457, *Guerrero v. Transportation Service v. Blaylock*, June 30, 1976, 71 SCRA 621).

"The same pronouncement was held in a U.S. case where it was held that employee's right and privileges survive so as to be operative against the successor-employer company (*John Wiley and Sons, Inc. v. David Livingston*, 376 U.S. 543).

"There is no question therefore, that petitioner is a regular employee as he was when employed by American Rose whose rights are covered by the security of tenure clause of the New Labor Code as will be discussed in paragraph III hereunder."

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We agree with counsel for public respondent.

There was no reason for Sumandi to leave his former employment except that the son of the owner, upon getting married, was given a portion of the business of his father. It is true that on January 8, 1980, he signed a letter of resignation from American Rose but he contends and it is not seriously disputed that he was forced to sign the letter on pain of losing his job. Significantly, the letter mentions that he has found a better job and that all benefits to which he was entitled under the law had been given him. Sumandi denies the receipt of any benefits and states that the only amount he received was P150.00 "voluntary help." If the respondent's father had really paid termination benefits to the petitioner, that would have been the best evidence against the complaint. No proof or even allegation of such payment was made. Sumandi was not terminated in his former employment and neither did he voluntarily resign. He was transferred together with the portion of the business dealing in lamps, stoves, and electrical supplies to the new store. For the first two months, he was working in the new store but entered in

the payroll of the old store. When the new store secured a government permit or license to operate, the petitioner started receiving salaries under the new set-up.

Under the facts of this case, the rule enunciated in the decisions cited by the Solicitor-General and in *Liberation Steamship Co. v. Court of Industrial Relations* (23 SCRA 1105) applies - that the rights and privileges of an employee survive so as to be operative against the successor-employer company.

Moreover, even if we follow the private respondent's contention that Sumandi was a newly hired employee of a new firm, the questioned decision would still be contrary to law.

The public respondent and the Bacolod Labor District Office were wrong in declaring Sumandi a temporary employee. Applying their own theory, he would be a probationary employee. The Labor Code provides for the termination of probationary employees as follows:

"ART. 282 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."

The quotation of a price higher by fifty centavos with the knowledge that the customer would bargain for a lower price is not just cause. There is no question that the petitioner would easily qualify as a regular employee. He had worked for the same business since January, 1976. There is also no record of any reasonable standard made known by the employer at the time of his engagement.

The petitioner was terminated in his employment on March 8, 1980. There is no evidence in the records of the subsequent employments he has secured and the income he has earned in the meantime. Applying equitable considerations, fifty percent (50%) of all backwages and monetary benefits he would otherwise have received had he not been illegally dismissed appears fair and just.

WHEREFORE, the order of the Assistant Regional Director dated April 14, 1980 and the order of the Deputy Ministry of Labor and Employment dated March 26, 1984 are hereby REVERSED and SET ASIDE. The private respondent is ordered to REINSTATE the petitioner to his former job without loss of seniority rights and to pay him the equivalent of fifty (50%) percent of all backwages and other benefits which he would have received had he not been illegally dismissed.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

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