

EURO-LINEA, PHILS., INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND JIMMY O. PASTORAL, RESPONDENTS.

G.R. No. 75782. December 01, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to reverse and set aside the resolution of public respondent,* NLRC, in Case No. RAB III-2-1589-84 entitled "Jimmy O. Pastoral v. Euro-Linea Phils., Inc." affirming the decision of the Labor Arbiter** which ordered the reinstatement of complainant with six months backwages.

The facts as found by the Solicitor General are as follows:

On August 17, 1983, petitioner hired Pastoral as shipping expediter on a probationary basis for a period of six months ending February 18, 1984. However, prior to hiring by petitioner, Pastoral had been employed by Fitscher Manufacturing Corporation also as shipping expediter for more than one and a half years. Pastoral was absorbed by petitioner but under a probationary basis.

On February 4, 1984, Pastoral received a memorandum dated January 31, 1984 terminating his probationary employment effective also on February 4, 1984 in view of his failure "to meet the performance standards set by the company." To contest his dismissal, Pastoral filed a complaint for illegal dismissal against petitioner on February 6, 1984 (Rollo, pp. 45-46).

On July 19, 1985, the Labor Arbiter found petitioner guilty of illegal dismissal, the dispositive portion of the decision reading:

"WHEREFORE all things considered the respondent or its President and/or General Manager should be as it is hereby ordered to reinstate complainant with six months backwages.

"SO ORDERED.

"San Fernando, Pampanga, Philippines, July 19, 1985.

EMILIO TONGIO

Labor Arbiter"

(Rollo, p. 32).

Petitioner appealed the decision to the NLRC on August 5, 1985 (Rollo, pp. 33-39) but the appeal was dismissed on July 16, 1986 (Resolution; Rollo, p. 41).

Hence, this petition.

Petitioner raises the following errors of the NLRC (Rollo, p. 7):

- a) The Labor Arbiter decided a question of law in a manner contrary to the spirit and purpose of the law; and

that

b) The Labor Arbiter gravely abused his discretion by ignoring the material and significant facts in favor of employer.

In the resolution of October 29, 1986, the Second Division of the Court without giving due course to the petition required the respondents to comment (Rollo, p. 42).

The Solicitor General submitted his comment on November 24, 1986 (Rollo, pp. 45-49), while petitioner through counsel filed its reply to public respondent National Labor Relations Commission's comment in compliance with the resolution of December 10, 1986 (Rollo, p. 50).

In the resolution of February 18, 1987 (Rollo, 58), the Court gave due course to the petition and required the parties to file their respective memoranda.

The only issue is whether or not the National Labor Relations Commission acted with grave abuse of discretion amounting to excess of jurisdiction in ruling against the dismissal of the respondent, a temporary or probationary employee, by his employer (Petitioner).

Although a probationary or temporary employee has a limited tenure, he still enjoys the constitutional protection of security of tenure. During his tenure of employment or before his contract expires, he cannot be removed except for cause as provided for by law (Manila Hotel Corp. v. NLRC, 141 SCRA 169 [1986]).

This brings us to the issue of whether or not private respondent's dismissal was justifiable.

Petitioner claims that the dismissal is with cause, since respondent during his period of employment failed to meet the performance standards set by the company; that employers should be given leeway in the application of his right to choose efficient workers (Rollo, p. 6) and that the determination of compliance with the standards is the prerogative of the employer as long as it is not whimsical; that it had terminated for cause the respondent before the expiration of the probationary employment (Rollo, p. 70, Petitioner's Memorandum).

The records, however, reveal the contrary.

Petitioner not only failed to present sufficient evidence to substantiate the cause of private respondent's dismissal, but likewise failed to cite particular acts or instances to show the latter's poor performance.

As correctly argued by the Solicitor General –

"There is no dispute that failure to qualify as a regular employee in accordance with reasonable standards prescribed by the employer is a ground to terminate an employee engaged on a probationary basis (Art. 282, Labor Code; Bk. VI, Rule I, Section 6(c), Implementing Rules, Labor Code). In this case, petitioner alleged that Pastoral was dismissed because he failed to meet its performance standard. However, petitioner did not bother to cite particular acts or instances in its position paper which show that Pastoral was performing below par. x x x

"Petitioner's performance as shipping expeditor can readily be gauged from specific acts as may be gleaned from his duties enumerated by petitioner to include processing of export and import documents for dispatch or release and talking to customs personnel regarding said documents." (p. 2, Annex "E" Petition).

Furthermore, what makes the dismissal highly suspicious is the fact that while petitioner claims that respondent was inefficient, it retained his services until the last remaining two weeks of the six months probationary employment.

No less important is the fact that private respondent had been a shipping expeditor for more than one and a half

years before he was absorbed by petitioner. It therefore appears that the dismissal in question is without sufficient justification.

It must be emphasized that the prerogative of management to dismiss or lay-off an employee must be done without abuse of discretion, for what is at stake is not only petitioner's position but also his means of livelihood. (Remerco Garments Manufacturing vs. Minister of Labor, 135 SCRA 137 [1985]). The right of an employer to freely select or discharge his employees is subject to regulation by the State, basically in the exercise of its paramount police power (PAL, Inc. vs. PALEA, 57 SCRA 489 [1974]). This is so because the preservation of the lives of the citizens is a basic duty of the State, more vital than the preservation of corporate profits (Phil. Apparel Workers Union v. NLRC, 106 SCRA 444 [1981]; Manila Hotel Corp. v. NLRC, *supra*).

Finally, it is significant to note that in the interpretation of the protection to labor and social justice provisions of the constitution and the labor laws and rules and regulations implementing the constitutional mandate, the Supreme Court has always adopted the liberal approach which favors the exercise of labor rights (Adamson & Adamson, Inc. v. CIR, 127 SCRA 268 [1984]).

In the instant case, it is evident that the NLRC correctly applied Article 282 in the light of the foregoing and that its resolution is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion or lack of jurisdiction (Rosario Brothers Inc. v. Ople, 131 SCRA 73 [1984]).

PREMISES CONSIDERED, the petition is DISMISSED for lack of merit, and the resolution of the NLRC is AFFIRMED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

* Presiding Commissioner Guillermo C. Medina; Commissioners Gabriel M. Gatchalian and Miguel B. Varela.

** Labor Arbiter Emilio G. Tongco.

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