

LEOPOLDO G. DIZON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND D.M. CONSUNJI, INC., RESPONDENTS.*G.R. No. 79554. December 14, 1989*

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-79554/>**FELICIANO, J.:**

Petitioner Leopoldo G. Dizon seeks to annul and set aside the decision of the respondent National Labor Relations Commission (NLRC) dated 6 March 1987 reversing the decision rendered by the Administrator of the Philippine Overseas Employment Administration (POEA). The POEA decision had ordered private respondent D.M. Consunji, Inc. (Consunji), to pay petitioner the amounts of RPP1,837.86 and US\$6,720.00 representing his unpaid salaries for the period from May to June 1982 and his wages for twenty-one (21) months covering the unexpired portion of his contract, respectively.

On 4 December 1981, petitioner Leopoldo Dizon entered into an Overseas Employment Contract[1] with respondent Consunji which stipulated, among other things, that for a period of two (2) years petitioner would work as a senior carpenter for Consunji at its New Istana Construction Project in the State of Brunei for a monthly salary of US\$320.00; that should the petitioner voluntarily resign before the expiry date of the contract or should his contract be terminated for cause as provided therein, petitioner shall be liable for the reimbursement of his transportation fare back to the Philippines and other incidental expenses incurred by the company in his favor. Petitioner departed for Brunei on 3 March 1982, the date when his contract took effect.

Sometime in April 1982, petitioner, according to him, became afflicted with skin rashes which forced him to seek medical help from the Company's clinic at the project site. He was treated there on the following dates: 13, 29 April; 3, 25, 28, 29 May; 1 and 7 June.[2] On some of those days, petitioner, by his own averment, did not report for work and was oftentimes constrained to remain inside his quarters while taking oral medication.

On 17 May 1982, petitioner was again absent from his work place when respondent's workers in the New Istana Project staged a strike demanding an increase of salary. Considering that what was being constructed on the site was the Sultan's Palace which had to be finished in time for the Independence Day of the State of Brunei in 1984, POEA Director Manuel G. Imson, upon request of Consunji, and after Brunei authorities had made clear that the strike was illegal under Brunei law, was dispatched by the Ministry of Labor and Employment to the site to resolve that problem. Director Imson, however, failed to convince the workers to enter into a compromise agreement with Consunji. Consequently, after visually observing the strike and after Consunji listed the names[3] of the participants in said strike, Director Imson issued on 21 May 1982 a return-to-work order.[4] Petitioner failed to comply with that directive; according to him, he was then still suffering from severe skin rashes. He reported to the medical clinic on 29 May 1982 and on 1 and 7 June 1982 to continue his treatment and medication.

On 9 June 1982, or barely three (3) months from the date of effectivity of petitioner's employment contract, Consunji terminated the services of some three hundred sixty (360) workers in the New Istana Project, including those of petitioner, upon the ground that they had breached paragraphs (e) and (f) of clause 13 of their

employment contracts.[5]

On 18 August 1982, after repatriation to the Philippines, petitioner commenced BES Case No. 82-2764 charging Consunji with illegal dismissal; non-payment of seventy percent (70%) of his salary for the months of May and June 1982; unfair deductions for his repatriation expenses; and unfair labor practice.

Consunji denied the illegal dismissal charge and claimed that petitioner had been validly dismissed, considering that he had breached the contract of employment by taking part in an illegal strike and disobeying the return-to-work order issued by the POEA Director.

On 7 March 1985, Administrator Patricia Sto. Tomas of the Workers' Assistance and Adjudication Office of the POEA, after finding that there was no evidence clearly showing that petitioner had participated in the illegal strike and had defied the return-to-work order of the POEA, rendered a decision in favor of petitioner. The dispositive portion of the decision states:

"WHEREFORE, consistent with the above findings, judgment is hereby rendered ordering respondent D.M. Consunji, Inc. to pay the following:

(a) the sum of P1,837.86 representing the complainant's unpaid salary (70%) for the months of May and June 1982; and

(b) the sum of US\$6,720.00 or its equivalent [in] Philippine Currency at the time of actual payment, representing complainant's wages for the unexpired portion of his contract which is 21 months at the rate of US\$320.00 a month.

SO ORDERED."[6]

Consunji went on appeal to the NLRC. The NLRC reversed the POEA Administrator in a decision[7] dated 6 March 1987 declaring petitioner's dismissal to have been effected for justifiable cause. Hence this recourse on certiorari.

The sole issue to be resolved in this case is whether the dismissal of petitioner Dizon was justified on the ground that he had participated in the illegal strike and had refused to obey Director Imson's return-to-work order.

The petition must be granted.

It is firmly settled that in an unlawful dismissal case, the employer has the burden of proving the lawful cause sustaining the dismissal of the employee.[8] Respondent Consunji did show that petitioner Dizon was not in his workplace on 17 May 1982, the day the strike was declared and went into effect, as well as on 24 May 1982, the day the return-to-work order became effective; actually, petitioner himself so stated in his pleadings before the POEA. Thus, Consunji was able to make out (even if only by petitioner's own statements) a prima facie case that petitioner had joined in the strike and had failed to comply with the return-to-work order of Director Imson, which constituted grounds for holding petitioner liable for breach of his contract of employment and hence for dismissing him from his employment. It must be noted, however, that petitioner Dizon showed, by a letter dated 4 January 1983 of respondent Consunji's project-nurse, that he had been afflicted with severe skin rashes for sometime and that he had reported at the Company clinic thrice before 17 May 1982 and visited the same clinic five (5) times after 21 May 1982, for treatment and medication.[9] Petitioner Dizon denied participation in the strike and disclaimed any intent to defy the return-to-work order. He stated that on 17 May 1982, he went to the Company clinic and thereafter returned to his quarters but that the project-nurse had failed to include 17 May 1982 among the dates he had gone to the Company clinic.[10] Thus, while petitioner's evidence (as distinguished from his pleadings) did not show affirmatively that he had indeed visited the Company clinic on 17 May 1982, it

appears to the Court that petitioner submitted on at least a prima facie basis an adequate explanation for his absence from his work station on the day the strike began and the day the return-to-work order went effective. Petitioner, in other words, offset or negated the prima facie case made out by private respondent Consunji for a lawful dismissal: the balance of evidence thus moved to equipoise.

But equipoise is not enough; the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. The burden of proof in effect moved back to and once again rested on respondent Consunji, the employer asserting the existence of a just cause for dismissal. This burden of proof Consunji did not discharge.

As a large and well organized company, Consunji may be presumed to have kept personnel records showing, e.g., which employees were present or absent for work on particular days. No records were submitted in evidence to show whether or not petitioner Dizon reported for work or went on sick call on or between the dates he went to the clinic for treatment. It is contended that Dizon's skin rashes were not debilitating and not sufficient to explain his failure to report for work; but no certificate or statement relating to the medical or physiological nature and effect of those rashes, or to the cause thereof, was presented by employer Consunji's counsel. Moreover, even should competent proof of the "non-debilitating" character of Dizon's skin rashes have been put into the record, such would not necessarily have shown intent to participate in the strike to defy Director Imson's order; such proof would have been consistent with, for instance, laziness and gold-bricking on Dizon's part. The list of the strikers' names made on the project site while the strike was in progress was similarly, and conspicuously, not submitted in evidence.

The failure of Consunji to discharge the onus probandi resting on it, must be taken in conjunction with its conceded failure to conduct an investigation on the project site before serving Dizon his notice of termination. It may be supposed that the carrying out of such an investigation on site before repatriation, would not have been easy. But petitioner was entitled under our law to an investigation where he would be informed of the charges against him and have an opportunity to present his defense or explanation before being dismissed. What is at stake in such a case is not simply a property right but also the employee's means of livelihood.[11] Besides, if an investigation had been conducted, Consunji might well have been convinced by Dizon's explanation.

We conclude that private respondent Consunji had failed to show that justifiable cause had attended petitioner Dizon's dismissal and that public respondent NLRC's decision relieving Consunji of liability for such dismissal was not supported by substantial evidence of record and hence constituted a grave abuse of discretion.

As to the amount of damages to which petitioner Dizon is entitled, the Court considers that, given all the circumstance of this case, and to avoid the delay and difficulty of proving that petitioner had earned some income during the relevant period to mitigate his damages, an award equivalent to his contract salary for fourteen (14) months, (rather than for the full unexpired term of the contract -- twenty-one [21] months) without any qualification or deduction, would be sufficient and reasonable.

We must similarly hold that private respondent Consunji had no basis for withholding from petitioner his last two months salary (for May and June 1982) and deducting there-from his repatriation and related expenses.

WHEREFORE, the decision of the public respondent NLRC dated 6 March 1987 is hereby SET ASIDE and the decision of the POEA dated 7 March 1985 is hereby REINSTATED and MODIFIED so as to require private respondent Consunji to pay petitioner Dizon the following:

- a) the sum of RPP1,837.86 representing petitioner's unpaid salary (70%) for the months of May and June 1982;
- and

b) the sum of US\$4480 or its equivalent in Philippine currency at the time of actual payment representing his wages for fourteen (14) months at the rate of US\$320 a month.

No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Record, pp. 11-16.

[2] Ibid., p. 56.

[3] Ibid., p. 59.

[4] Record, Annex "2," p. 9.

[5] "(e) Indulging in activities contrary to the COMPANY's interest, or such activities as would cause stoppage or slow downs of work, or violate company rules and regulations, violate Overseas Employment Agreement.

(f) EMPLOYEE shall have engaged himself in any activity, political or subversive, or any act of misconduct during the enforcement of this Employment Agreement; It is specially understood that under the state laws of Brunei, misbehaviour amounting to a violation of Brunei laws committed inside or outside the jobsite is punishable by deportation; unless the act itself involves the possession of any FIREARM, AMMUNITION, or any other kind of DEADLY WEAPON, which acts are strictly prohibited, and severely punishable by death under Brunei laws;" Record, Annex "2" of respondent's Position Paper, p. 9.

[6] Rollo, p. 30.

[7] Rollo, Annex "H" of Petition, pp. 47-53.

[8] Egypt Air v. National Labor Relations Commission, 148 SCRA 125 (1987); Polymedic General Hospital v. National Labor Relations Commission, 134 SCRA 420 (1985).

[9] Annex A to Petitioner's "Reply to Rejoinder" dated 14 February 1983 in BES Case No. 82-2764; Record, p. 60.

[10] Petitioner's "Reply to Rejoinder", ibid; Record, p. 59.

[11] International Harvester Macleod, Inc. v. Intermediate Appellate Court, 149 SCRA 641 (1987); and Remerco Garments Manufacturing Co. v. Minister of Labor and Employment, 135 SCRA 167 (1985).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.