

**PHILIPPINE AMERICAN TIMBER COMPANY, INC., PETITIONER, VS.
HON. DANTE ARDIVILLA, PABLO W. MONTESCLAROS, MODESTO
MONTANER, FELIXBERTO A. DUPIO, ELSIE TORRES, JUNE EVE
SILVA, SUSAN...**

G.R. Nos. 74590-91. March 11, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Until sometime in 1980, petitioner Philippine American Timber Company, Inc. (hereafter, simply the COMPANY) was engaged in logging and agriculture in the Island of Negros. On October 4, 1979 its timber license (NO. 94) was cancelled by the Ministry of Forest Development for the following reasons:

"(1) minimal performance on reforestation;

(2) failure to cut and manifest the required 60% of the total annual allowable cut - manifested only 37% for the year 1978 and

(3) delinquency in the payment of forest and other government charges."

On January 27, 1981, the COMPANY filed an application dated January 27, 1981 with the Regional District Office of the Ministry of Labor at Dumaguete City for clearance to terminate the employment of one hundred twenty (120) of its employees, specifically naming them. The application stated that the termination of employment was "with cause due to phasing out of operation" "by virtue of government directive and policy." The application was docketed as TFU Cases Nos. 81-18 and 81-18-A (Re Application for Clearance to Terminate Modesto Montañer, et al., Philippine American Timber Co. (PATIC), Applicant).[1]

Eighty-six (86) of the COMPANY's employee filed an opposition to the application. They claimed that the application was "not based on valid grounds" and contained untruthful averments, and should therefore be denied. Alternatively, they prayed that they be granted separation pay.

The application was adjudged to be meritorious. Accordingly, on March 20, 1981, the Regional Director, through his Assistant, issued a "CLEARANCE" reading as follows:

"Finding the application for clearance in the above-entitled case to be meritorious and upon recommendation of Atty. Geoffrey P. Villahermosa, member, Special Task Force Unit, a clearance is hereby issued to Philippine American Timber Company (PATIC) to terminate the services of Modesto Montañer, et al."

On June 12, 1981, the 86 oppositors appealed to the Ministry of Labor which, after due proceedings, set aside the clearance thus granted. In an Order rendered on April 27, 1983 by Deputy Minister Vicente Leogardo, Jr. "by authority of the Minister," the causes given by the Ministry of Forest Development for the cancellation of the COMPANY's timber license were declared to be in accord with the facts; hence, "the cancellation of the applicant's timber license was due to its own fault, for its failure to comply with rules and regulations of the

Ministry of Forest Development; and the oppositors were consequently "entitled to separation pay equivalent to one month salary or one month salary for every year of service, whichever is higher, a fraction of at least six months being considered one whole year." The COMPANY's motion for reconsideration was denied by Order dated April 18, 1985.

About a year later, or on March 12, 1986, Regional Director Dante Ardivilla issued a "Partial Alias Writ of Execution" directing Acting Regional Sheriff Pablo W. Montesclaros to enforce payment by the COMPANY to the oppositors of separation pay in the total amount of P310,667.00.

On May 27, 1986, the COMPANY commenced in this Court the special civil action of certiorari at bar praying for the perpetual inhibition of the writ of execution of March 12, 1986 and the Order of April 27, 1983. It argues that

- 1) the Order of April 27, 1983 setting aside the Clearance of March 20, 1981 is void ab initio: it was rendered without jurisdiction, because the oppositors' appeal from said clearance was out of time: notice of the clearance was served on Modesto Montañer on May 16, 1981, who received it in behalf of all the oppositors, but the oppositors' appeal was not taken until June 12, 1981 -- considerably more than the 10 days fixed by law therefor;
- 2) the writ of execution attempts to compel the COMPANY to give separation pay not only to the 86 oppositors but to all of its 136 employees, including those still working, those who had agreed to the termination of their employment, those who voluntarily resigned, and even those not employees of the COMPANY; and
- 3) the closure of the COMPANY's logging business constituted valid cause for termination of employment for which no liability for separation pay could be imposed on it.

I. Anent the first ground -- respecting the tardiness of the 86 oppositors' appeal from the resolution of the Regional Director of March 20, 1981, declaring the COMPANY's application for clearance to be meritorious and granting the same -- it is significant that the comments of private and public respondents contain no denial of the COMPANY's factual assertions that (a) notice of said order granting clearance was received by the oppositors' representative on May 16, 1981 and (b) they appealed therefrom (by filing their memorandum on appeal) on June 12, 1981.

The private respondents simply say that the petition contains no allegation of fraud, which is the only ground to annul a final judgment, and that an independent action is needed for the purpose. The public respondent's counsel deals with the issue not at all. He merely states that the 86 oppositors filed their appeal on June 12, 1981, and then develops the thesis that since there was no valid cause for closure of the COMPANY's business, it was liable to give separation pay to its employees. The respondents' reticence about the dates involved in the appeal from the order of clearance is quite understandable. As will shortly be shown, that appeal was indeed taken out of time.

By a Resolution dated August 18, 1986, this Court required the respondents (a) to submit a verified statement of the material dates and other data relevant to appeal taken by private respondents from the aforesaid order ("Clearance") of Assistant Regional Director Lomuntad dated March 20, 1981, and (b) to EXPLAIN how the amount of P310,667.00 was computed and arrived at, as well as the number and identities of the parties for whose benefit the writ of execution for that amount was intended.

In response, the Office of the Solicitor General submitted:

a) a "Partial Compliance with Manifestation" dated October 30, 1986 transmitting to the Court:

- (1) the 4th indorsement dated October 14, 1986 of Labor Deputy Minister Noriel which, in turn, relayed to the Solicitor General the 3rd indorsement of October 14, 1986 of Regional Director Ardivilla, to the effect that (a) the computation of the amount supposedly due in execution of the NLRC Order of April 27, 1983 was made by

the Acting Sheriff based on list submitted by Montañer, the leader of the 86 oppositors, the salaries, according to Montañer, being reckoned at the prevailing minimum wage at the time of the COMPANY's closure; and that (b) the manager of the Company had declared verbally that not all the employees named in the application for clearance had been laid off, and undertook to submit a correct list of the names, length of service and rate of pay of all employees whose services had been actually terminated; and

(2) copy of a three-page list of employees in whose favor execution was being attempted by the sheriff, numbering one hundred eighty-two (182), not only eighty-six (86); and

b) a "Compliance" dated November 26, 1986, presenting to the Court the verified statement dated November 19, 1986 of Candido M. Cumba, the Officer-in-Charge of MOLE Regional Office No. 7, certifying that from the Order (Clearance) of March 20, 1981, "an Appeal, dated June 5, 1981, was filed with the Ministry's Regional Office No. VII on June 17, 1981 praying that, among others, appellants be granted separation pay" -- but making no reference to the date when notice of that order of March 10, 1981 was served on the oppositors.

For their part, the private respondents submitted a SUPPLEMENTAL COMMENT under date of November 5, 1986, acknowledging that said respondents' authorized representative, Montañer, received a copy of the clearance on May 16, 1981, and, still tight-lipped about their appeal, declaring simply that their appeal was filed within 10 working days therefrom. It is worthy of note that although the respondents state in their Supplemental Comment that they were annexing to it a copy of their appeal memorandum, they have not in fact attached that copy to their pleading.

The facts thus disclosed establish the tardiness of the appeal taken from the order granting the COMPANY clearance to terminate the services of certain of its employees, and the excessiveness in the number of the employees for whose benefit the judgment of the Secretary of Labor is attempted to be enforced.

The Labor Code and its Implementing Rules generally set down a uniform period of ten (10) days for an appeal to the NLRC.[2] As regards appeals in applications for clearance to terminate employment, a similar ten-day period is fixed for appeals to the Secretary of Labor, counted from notice of the denial of the application, if opposed.[3]

There is, to be sure, no explicit provision governing appeals in the event of the grant or approval of an application for clearance. Nonetheless, the plain intent of the law and the rules is quite easily discernible, that appeals in those cases shall also be taken within ten (10) days from notice of the order granting the clearance to terminate employment. The silence of the law may not be taken as a prohibition of an appeal altogether when an application for clearance is granted, or that the employees thereby aggrieved may appeal at any time they please. Either construction is quite obviously, unreasonable and untenable.

The appeal taken by the private respondents from the Order of March 20, 1981 in TFU Cases Nos. 81-18 and 81-18-A of the MOLE Regional District Office at Dumaguete City, having been revealed as taken thirty-two (32) days after notice thereof had been served on said respondents and therefore way beyond the 10-day period therefor prescribed by applicable law and rules, it follows as a matter of established legal principle that the Secretary of Labor and Employment never acquired appellate jurisdiction over the case.[4]

II. The second claim asserted by petitioner COMPANY -- that execution is attempted to compel the COMPANY to give separation pay not only to the 86 oppositors but to all of its 136 employees, including those still working, those who had agreed to the termination of their employment, those who had voluntarily resigned, and even those not its employees -- has not been denied by the public or private respondents. The matter has not, in truth, been dealt with at all by the respondents. In any event, the record sustains the validity of the claim. The three-page list submitted by public respondent, purportedly containing the names of the employees in whose favor execution is being attempted by the sheriff, shows that those employees number one hundred eighty-two (182), not only

eighty-six (86). The execution being thus attempted is clearly in excess of authority and cannot be sanctioned, apart from its being founded on an order of the Secretary of Labor rendered without jurisdiction and therefore void ab initio.

WHEREFORE, the Order rendered on April 27, 1983 by Deputy Minister Vicente Leogardo, Jr. "by authority of the Minister" and all writs of execution issued for the enforcement thereof, including the "Partial Alias Writ of Execution" issued on March 12, 1986 by Regional Director Dante Ardivilla to enforce payment by the COMPANY to the oppositors of separation pay in the total amount of P310,667.00, are hereby ANNULLED AND SET ASIDE as being void ab initio, and the Order rendered on March 20, 1981 by the Regional Director at Dumaguete City, through his assistant, in TFU Cases Nos. 81-18 and 81-18-A (Re Application for Clearance to Terminate Modesto Montañer, et al., Philippine American Timber Co. (PATIC), Applicant) is REINSTATED AND AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] N.B. Batas Pambansa Bilang 130, effective August 21, 1981, removed the requirement of a written clearance prior to termination of employment; as a result, proceedings similar to those in the case at bar became functus officio.

[2] ART. 223, Labor Code (PD 442), as amended; Sec. 7, Rule XIII, Book V, Rules & Regulations Implementing the Labor Code (re NLRC Procedures); Sec. 1, Rule VIII, Revised Rules of the NLRC, Nov. 6, 1986. N.B. There was some confusion about the reference to "days," as being either "working" or "calendar." The rule now is that the ten-day appeal period has reference to ten (10) calendar days.

[3] Sec. 8, Rule XIV, Book V, Rules & Regulations Implementing the Labor Code, Feb. 16, 1976

[4] *Vir-Jen Shipping and Marine Services, Inc. v. NLRC*, 115 SCRA 127 (1982); *R.J.L. Martinez Fishing Corp. v. NLRC*, 127 SCRA 454 (1984); *Bongay v. Martinez*, 158 SCRA 552 (1988); *John Clement Consultants, Inc. v. NLRC*, 157 SCRA 635 (1988); *Dizon, Jr. v. NLRC*, 181 SCRA 472 (1990); *Narag v. National Labor Relations Commission, et al.*, 155 SCRA 199 (1987); *Insular Life Assurance Co., Ltd. v. NLRC*, 156 SCRA 740 (1987); *SM Agri and General Machineries v. NLRC*, 169 SCRA 20 (1989); *Camara Shoes v. Kapisanan ng mga Manggagawa sa Camara Shoes*, 173 SCRA 127 (1989)

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