[Syllabus]

SECOND DIVISION

[G.R. No. 109390. March 7, 1996]

JGB and ASSOCIATES, INC., *petitioner, vs.* NATIONAL LABOR RELATIONS COMMISSION and ARTURO C. ARROJADO, *respondents.*

D E C I S I O N

MENDOZA, *J.:*

This is a petition for certiorari to annul the decision and the resolution of the National Labor Relations Commission in NLRC NCR CA No. 002149-91, finding petitioner and its principal, Tariq Hajj Architects, guilty of having illegally dismissed private respondent and, for this reason, ordering them to pay his salaries corresponding to the unexpired portion of his employment contract, salary differentials and reimbursement of the amount withheld for telephone bills. The decision reverses the contrary decision of the Philippine Overseas Employment Administration, dismissing the complaint filed by private respondent.

The facts are as follow:

Private respondent Arturo C. Arrojado was hired by petitioner JGB and Associates, Inc. for its principal, Tariq Hajj Architects, to work as draftsman in Saudi Arabia. The contract of employment was for two years, commencing May 27, 1989. The salary was US$500.00 a month, although private respondents Travel Exit Pass (TEP) showed that his monthly salary was US$525.00.

On February 25, 1990, before the expiration of his contract of employment, private respondent was given notice by his employer that his employment was terminated for the reason that his performance both in productivity and efficiency was below average. The termination of his employment took effect on the same day. He was immediately scheduled to depart Saudi Arabia and on February 28, 1990, three days after his dismissal, he found himself already in the Philippines.

On March 12, 1990, private respondent filed with the POEA a complaint against JGB and Associates, Inc., Tariq Hajj Architects and Country Bankers Insurance Corporation, alleging illegal dismissal and seeking payment of salaries corresponding to the unexpired portion of his employment contract, salary differential, refund of S.R. 1,000 which was withheld from him for telephone bills, moral damages and attorneys fees.

Private respondent alleged that he did his job conscientiously and that he was even asked to make scale models, in addition to his regular duties. He claimed that he was never reprimanded nor informed of his alleged negligence and incompetence either by his immediate supervisor or by his employer. He also complained that he was denied due process because his dismissal took effect on the same day he was given notice and claimed that, because he was immediately repatriated, he had no opportunity to challenge his arbitrary dismissal. Private respondent admitted that he signed a waiver of claims but alleged that he did so under

compulsion and that, in any event, he was not precluded from questioning the legality of his dismissal and from recovering monetary claims due him.

On the other hand, petitioner averred that private respondent was dismissed for neglect of duties and performance below par. Petitioner also alleged that although no prior notice of dismissal was given to private respondent, he was given in lieu thereof a notice pay equivalent to one month salary. Petitioner denied liability for salary differential on the ground that the employment contract stipulated that his monthly salary was US$500.00. Petitioner invoked a quitclaim signed by private respondent as evidence that he had been paid all the monetary claims due him.

The POEA dismissed private respondents complaint for illegal dismissal but ordered as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay complainant jointly and severally the peso equivalent at the time of actual payment the amount of SR1,000 representing the refund of the telephone bills deducted from the latter.

Ten percent (10%) of the total refund as and for attorneys fees to be paid by complainant.

All other claims are dismissed for lack of merit.

SO ORDERED.

Private respondent timely appealed to the NLRC, which found private respondents dismissal illegal and ordered petitioner as follows:

WHEREFORE, premises considered, the assailed decision is hereby set-aside and a new one is entered declaring complainants dismissal from employment illegal.

Hence, respondents are hereby ordered to pay complainant jointly and severally the peso equivalent at the time of payment of the following amount:

1. US Dollars Seven Thousand Eight Hundred Seventy Five (US$7,875.00 or its peso equivalent, representing the unexpired portion of the contract.

2. US Dollars Two Hundred Twenty Five (US$225.00) representing salary differential for nine (9) months

3. Saudi Riyals One Thousand (S.R. 1,000.00) representing refund for telephone bill.

SO ORDERED.

Petitioner filed a motion for reconsideration but the same was dismissed by the NLRC in a resolution dated January 27, 1993, for lack of merit. Hence this petition. Petitioner alleges that the NLRC committed grave abuse of discretion.

The issue in this case is whether the NLRC gravely abused its discretion in reversing the decision of the POEA and ruling that private respondent was illegally dismissed.

We find that petitioner failed to prove that the NLRC committed grave abuse of discretion in holding that private respondent was illegally dismissed. In termination cases, the burden of proving just cause for dismissal is on the employer. In this case, the grounds for the dismissal of private respondent were stated in two documents presented by petitioner before the POEA:

(1) the notice of termination given to private respondent on February 20, 1990; and (2) the letter of the principal, Tariq Hajj on August 1, 1990. In the termination letter, the foreign employer stated that private respondents performance was below average. In its August 1, 1990 letter, the foreign employer stated that:

ever since the early days of Mr. Arrojado with us (,) we were not fully satisfied with his performance and our expectations from him were much higher than we saw him actually producing. Nevertheless (,) to be very fare [sic] with Mr. Arrojado(,) we gave him a lot of time to develop and to get acquainted with our work, system, environment and standards. However and for more than eight (8) months he spent with us(,) *we have not witnessed any development in skills or abilities. Moreover, we noticed a very evident neglect by Mr. Arrojado of the duties assigned to him.* This combined with a very thorough evaluation of his performance which resulted from his continuous and repeated neglect throughout the period he spent with us, our decision was very natural. We felt that Mr. *Arrojado was causing our firm tangible financial lose [sic] and considerable technical difficulties due to his incompetent performance.*[1] (Italics added)

The contract of employment between the parties provided in pertinent part:

D. *Termination by Employer.* An Employer may terminate the contract of employment for any of the following causes:

xxx xxx xxx

(c) Gross and habitual neglect by the employee of his duties

(d) Fraud or willful neglect by the employee of his duties

Gross negligence connotes want of care in the performance of ones duties.[2] Habitual neglect implies repeated failure to perform ones duties for a period of time, depending upon the circumstances. On the other hand, fraud and willful neglect of duties imply bad faith on the part of the employee in failing to perform his job to the detriment of the employer and the latters business.

None of these causes is stated in the two letters of the employer as reasons for dismissing private respondent. None of the reasons there stated even approximates any of the causes provided in the contract of employment for the termination of employment by the employer.

Indeed, the grounds given for private respondents dismissal are nothing but general, vague and amorphous allegations. As the NLRC noted, the letters do not state particular acts which show that private respondent was indeed negligent and that his performance was below par. Nor did petitioner show the tangible financial loss which it claimed it suffered as a result of private respondents alleged neglect of duty.

It is noteworthy that when private respondent was given notice of the termination of his employment, he had already served his employer for nearly ten months. The letter of termination, expressed disappointment that despite the length of time he had been with the company he had not shown any development in skills or abilities. It may be assumed, however, that before private respondent was employed, he was tested for his skill and his ability. Why petitioner suffered him so long in its employ if he did not come up to its expectations has not been explained. On the other hand, what is clear from the record is that petitioner made private respondent work on scale models, in addition to the latters regular work. If private respondents performance was below average, it is difficult to understand why he should be given additional task to perform.

Indeed, the burden of proving just cause for terminating an employee-employer relationship is on the employer. The employee has no duty to prove his competence in order to prove the illegality of his dismissal. As the NLRC rightly held:

> What is worse, a finding was made that complainant has the burden of proving that he was not incompetent or inefficient. This is a serious error and contrary to the well-settled rule that in termination cases it is the employer who has the burden of proof that the dismissal is for a just and valid cause. Failure to do so would necessarily mean that the dismissal is illegal (Polymedic General Hospital *v.* NLRC, 134 SCRA 420). Hence, there is no valid basis for the Administrator to conclude that there was a semblance of truth to the charges of incompetence or unsatisfactory performance when the complainant failed to rebut the same. Thus, in the absence of any other evidence submitted by respondents to substantiate the general charges hurled against complainant, the documents, which comprise respondents evidence in chief, contain empty and self-serving statements insufficient to establish just and valid cause for the dismissal of complainant (Royal Crown International *v.* NLRC, 178 SCRA 569). For to allow an employer to terminate the employment of his worker merely based on pure allegations and generalities will place the latter on a dangerous situation as he will be at the sole mercy of the former and therefore, the right to security of tenure which were bound to protect will be unduly emasculated.[3]

Nor is the quitclaim signed by private respondent a bar to the filing of the complaint. We have already held in a number of cases[4] that a deed of release or quitclaim can not bar an employee from demanding what is legally due him. The reason for this is that the employee does not really stand on an equal footing with his employer. In some cases he may be so penurious that he is willing to bargain even rights secured to him by law. There is good reason for applying this ruling here because private respondent was made to sign the deed of quitclaim in this case on the same day he was dismissed. He was in a foreign country and he had no one to help him. In three days he was due for repatriation to the Philippines. He had no means of questioning his employers acts. He had no choice but to accept what was being offered to him. Necessitous men are not free men.

Furthermore, as the NLRC noted, the fact that private respondent had to be granted by the POEA salary differential for nine months and ordered reimbursed in the amount of 1,000 Saudi Riyal belies the claim that private respondent had been paid everything legally due to him.

Employees enjoy security of tenure; they can only be dismissed for just cause and only after due process.[5] If an employee is dismissed without just cause, he is entitled to reinstatement with backwages up to the time of his actual reinstatement,[6] if the contract of employment is not for a definite period; or to the payment of his salaries corresponding to the unexpired portion of the employment contract, if the contract is for a definite period.[7] If the dismissal is for a just cause but it was made without due process, the employee is entitled to the payment of an indemnity.[8]

In the case at bar, private respondent was not only dismissed without cause but his dismissal was made without due process. He was informed of the reason for his dismissal only at the time his employment was terminated on February 25, 1990. Giving him notice pay equivalent to his one month salary in lieu of the notice in the contract of employment could not take the place of notice before dismissal as required by law. The notice required is not a mere technicality but a requirement of due process to which every employee is entitled to insure that the employers prerogative to dismiss is not exercised in an arbitrary manner.[9]

As the employment contract in the case at bar is for a definite period, private respondent is

entitled to the payment of his salaries corresponding to the unexpired portion of his contract. The NLRC, therefore, correctly awarded private respondent the amount which is equivalent to the unexpired portion of his contract. The notice pay given to private respondent should be deemed as indemnity for his dismissal without due process.[10]

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Regalado (Chairman), Romero, and *Puno, JJ.,* concur.

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[1] POEA Decision, Annex D, Petition, *Rollo, pp.* 36-37.

[2] Llosa-Tan *v.* Silahis International Hotel, 181 SCRA 738 (1990).

[3] Annex B, Petition, *Rollo,* pp. 22-23.

[4] Marcos *v.* NLRC, G.R. No. 111744, September 8, 1995; Fuentes *v.* NLRC, 167 SCRA 767 (1988); De Leon *v.* NLRC, 100 SCRA 691 (1980); Mercury Drug *v.* CIR, 56 SCRA 694 (1974).

[5] Omnibus Rules Implementing the Labor Code, Rule XIV, 1.

[6] LABOR CODE, 279.

[7] Anderson *v.* NLRC, G.R. No. 111212, January 22, 1996; Hellenic *v.* Siete, 195 SCRA 179 (1991).

[8] Wenphil Corp. *v.* NLRC, 170 SCRA 69(1989); Rubberworld (Phil.) Inc. *v.* NLRC, 183 SCRA 421 (1990); Kwikway Engg Work *v.* NLRC, 195 SCRA 526(1991).

[9] Kingsize Manufacturing *v.* NLRC, 238 SCRA 349 (1994).

[10] Anderson *v.* NLRC, *supra* note 7.