SECOND DIVISION

[G.R. No. 101825. April 2, 1996]

TIERRA INTERNATIONAL CONSTRUCTION CORPORATION, PERINIJMONENCO, CHERRY LYNN S. RICAFRENTE and KENNETH BUTT, *petitioners, vs.* NATIONAL LABOR RELATIONS COMMISSION, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, MANUEL S. CRUZ, RAYMUNDO G. NEPA and ROLANDO F. CARINO, *respondents.*

SYLLABUS

LABOR LAW AND SOCIAL LEGISLATION; LABOR CODE; RIGHT OF EMPLOYER TO REGULATE ALL ASPECTS OF EMPLOYMENT; SHOULD BE EXERCISED IN KEEPING WITH GOOD FAITH. - The right of an employer to regulate all aspects of employment is recognized. Let there be no doubt about this. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment including work assignments, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work. But the exercise of this right must be in keeping with good faith and not be used as a pretext for defeating the rights of employees under the laws and applicable contracts.

APPEARANCES OF COUNSEL

Robles, Ricafrente & Aguirre Law Firm for petitioners.
Fausto C. Ignacio and Jaime Linsangan for private respondents.

D E C I S I O N

MENDOZA, *J.:*

This is a petition for certiorari to set aside the decision of the National Labor Relations Commission (Second Division) dated February 22, 1991, finding private respondents to have been illegally dismissed, reversing for this purpose the contrary decision of the Labor Arbiter, as well as the resolution of the NLRC denying reconsideration.

The facts are as follows:

Private respondents Manuel S. Cruz, Raymundo G. Nepa and Rolando F. Cario were recruited by petitioner Tierra International Construction Corporation to work as transit mixer, truck driver, and batch plant operator, respectively, in a construction project at Diego Garcia, British Indian Ocean Territory. The contract of employment was for a period of twelve months at the following rates of salary per month:

Name Salary Date Hired

Manuel S. Cruz US$375.00 12-01-88
Raymundo G. Nepa US$375.00 11-23-88
Rolando F. Cario US$500.00 11-20-88

Private respondents had barely started work in the foreign assignment when they had a disagreement with the plant supervisor, Engineer Terrance Filby. What exactly they had been

ordered to do which they refused to execute - whether to dig and excavate canals and to haul bags of cement, cement pipes, heavy plumbing equipments and large electric cables, as they claimed, or only to do household chores consisting of keeping the work place clean, as the company alleges - is the question in this case. The fact is that private respondents refused to work as ordered and for this, they were dismissed on January 28, 1989 and sent back to the Philippines.

The company offered to pay the final fees representing their salaries from December 26, 1988 to January 28, 1989, but private respondents demanded as well the payment of their salaries corresponding to the balance of their employment contracts. Private respondents made their formal demand on petitioners on February 27, 1989, claiming that, in violation of their contract of employment, they had been required to perform work not related to the jobs for which they had been hired. As their demand was denied, private respondents filed on March 20, 1989 a complaint for illegal dismissal with the POEA. They sought recovery of unpaid salaries and salaries corresponding to the unexpired portion of their employment contracts.

Private respondents alleged that they had been required by the company to dig and excavate canals and to haul bags of cement and cement pipes, heavy plumbing equipment and electric cables which was outside the work for which they had been recruited and that because they refused to carry out their supervisors order, they were dismissed and immediately sent back to the Philippines.

Petitioners denied the allegations of private respondents and claimed that the latters dismissal was for cause. Petitioners claimed that, on January 27, 1989, private respondents were merely requested by the plant supervisor, Terrance Filby, to do housekeeping job since they were idle for the rest of the day. Because private respondents did not do what they had been ordered to do, they were confronted by Filby. This led to an altercation between Filby and private respondents. When brought before the project manager, private respondents allegedly said that they refused to execute Filby s order because it involved doing the menial job of cleaning up the mess. They allegedly said in the vernacular, *Nakakahiya naman yatang magpulot kami ng basura.*[1] According to petitioners, because private respondents were unyielding, they were given three options: (1) apologize to their supervisors; (2) go back to work; or (3) repatriation.[2] Private respondents refused to go back to work and instead asked to be repatriated. Accordingly, they were sent home on January 28, 1989.

The POEA dismissed private respondents claim that they had been required to do work other than that for which they had been hired. The POEA said no evidence had been presented to support this allegation. But finding that private respondents had not been paid their salaries, it ordered petitioners as follows:

WHEREFORE, in view of the foregoing, respondents are hereby ordered, jointly and severally, to pay complainants the following, in Philippine Currency at the prevailing rate of exchange at the time of payment:

Manuel S. Cruz - FIVE HUNDRED FIFTY ONE & 34/ 100 (US$551.34) US DOLLARS - representing salaries for the period December 26, 1988 to January 28, 1989;

Raymundo G. Nepa - FIVE HUNDRED FIFTY NINE and 46/100 US DOLLARS (US$559.46) - representing salaries for the period December 26, 1988 to January 28, 1989;

Rolando F. Cario - SEVEN HUNDRED SIXTY SIX and 48/100 (US$766.48) US DOLLARS - representing salaries for the period December 26, 1988 to January 28, 1989.

Private respondents appealed to the NLRC. In its decision rendered on February 22, 1991, the NLRC found private respondents to have been illegally dismissed. Accordingly, it modified

the decision of the POEA and ordered petitioners to pay private respondents salaries corresponding to the unexpired portion of their contracts, in addition to the salaries ordered paid to them by the POEA.

Petitioners filed a motion for reconsideration but their motion was denied on April 19, 1991 for lack of merit. Hence this petition.

Petitioners contend that the NLRC gravely abused its discretion and/or acted in excess of its jurisdiction by (1) deciding the wrong issue of the case; (2) not considering the evidence presented; (3) rendering a decision which is not supported by substantial evidence; and (4) rendering a decision not based on the evidence presented at the hearing or at least contained in the record and disclosed to the parties.

The question in this case boils down to whether private respondents were dismissed because they had been required to dig canals and haul construction materials and they refused to do so, or whether they had simply been asked to do housekeeping chores which they refused to do because they thought it was menial work and beneath their dignity to do. Petitioners claim that the NLRC assumed that private respondents had been required to do work other than that for which they were hired, which was contrary to the finding of the POEA that the allegations that they [private respondents] were required, in addition to their regular jobs, to perform work which were not in any way connected with their jobs, was not supported even by a single evidence.

Petitioners argue that the decision of the POEA was not based on the provision of employment contract giving the company the power to assign any employee to some other type of work of which he is capable but on two documents submitted, (1) the letter-report of the companys Site Administration Officer and (2) the termination notices given to private respondents which they did not dispute.

As the Solicitor General states, the burden of proving that private respondents had been dismissed for cause was on petitioners, as employers. While it is true that in the letter-report dated January 27, 1989 of the Site Administration Officer it was stated that private respondents had been merely asked to do some housekeeping around their work area as they will not have something to do for the day, we think the NLRC correctly found that what they had actually been ordered to do was to dig canals and haul construction materials.

First, as private respondents stated in their Position Paper:

If it were mere HOUSEKEEPING CHORES, they would not have refused specially if they were not then performing their respective jobs. Everybody knows that it is difficult to secure a job in the Philippines for abroad and, if one has a job in the Philippines, one would find difficulty sustaining the needs of the family because the salary is insignificant compared to the high cost of living and prices. That is why the job with the respondents is welcome. Complainant Cruz stands to receive the equivalent of more than P8,000.00 a month, while complainant Cario stands to receive the equivalent of more than P 10,500.00 a month, excluding overtime pay. . . . They would have willingly performed the simple housekeeping chores, even if they know that this is not covered by their employment contracts, merely to keep their jobs. BUT SUCH WAS NOT THE CASE.

In addition to their regular jobs, they were required to perform different and completely foreign jobs not called for in their contract of employment. When they refused to do these heavy, grievous and oppressive works, their services were unlawfully terminated.

Second, petitioners own counsel, in denying respondents demand for the payment of salaries for the balance of their contracts, invoked paragraphs I (b) and XIII (b)(1) of the contracts which provided:

Paragraph 1(b):

EMPLOYEE shall be utilized by EMPLOYER to perform work in the classification above at the location of the project. There is no representation nor guarantee that the EMPLOYEE will be employed on any particular work or job, EMPLOYER having the right to assign EMPLOYEE to some other type of work for which he might be capable.

Paragraph XIII (b) (1):

Termination for cause:

(1) Notwithstanding any other terms and conditions of this Agreement, EMPLOYER may, at his sole discretion, terminate EMPLOYEES services for cause at any time. Termination for CAUSE shall include but not limited to the following: Lack of ability of EMPLOYEE to perform in the classification for which hired . . . failure or refusal to work or comply with EMPLOYERs working rules; .

The NLRCs mistake was in attributing to the POEA, rather than to petitioners the claim that the dismissal of private respondents was justified on the basis of these provisions of the employment contract. But the mistake may be overlooked because the fact is that the POEA sustained petitioners claim or allegation based on these provisions of the contract.

There is therefore basis for the finding of the NLRC that private respondents had been required to dig canals, make excavations, and haul construction materials. It is not disputed that to make them do this would be to require them to do work not connected to their employment as transit mixer, truck driver and batch operator. They were therefore fully justified in refusing to do the assignment.

The right of an employer to regulate all aspects of employment is recognized. Let there be no doubt about this. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment, including work assignments, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of work.[3] But the exercise of this right must be in keeping with good faith and not be used as a pretext for defeating the rights of employees under the laws and applicable contracts.[4]

Petitioners assert that private respondents were dismissed because they refused to go back to work and instead opted for repatriation. According to the report of the companys Site Administration Officer, private respondents were given three options: (1) to go back to work; (2) to apologize to their supervisor; and (3) to be repatriated. What private respondents were given were not really options. They were given the choice of apologizing for their refusal to work and then resume working as ordered, or else, resign and be sent back home. Under the circumstances they really had no choice but to resign. It was not pride or arrogance which made them refuse to work as ordered, but the assertion of their right not to be made to work Outside of what they had been hired to do. For asserting their right, private respondents should not be punished. We, therefore, hold that private respondents dismissal was illegal and that for this reason they are entitled to be paid their salaries corresponding to the unexpired portion of their employment contract,[5] in addition to their unpaid salaries prior to their dismissal, as found by both the POEA and the NLRC.

WHEREFORE, this petition is DISMISSED.

SO ORDERED.

Regalado (Chairman), Romero, and *Puno, JJ.,* concur.
Torres, Jr., is on leave.

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[1] Petition, p. 4, *Rollo,* p. 5.

[2] *Rollo,* p. 146.

[3] San Miguel Brewery v. Ople, 170 SCRA 25 (1989).

[4] National Sugar Refineries Corp. v. NLRC, 220 SCRA 452 (1993); Union Carbide Labor Union v. Union Carbide, Phils. Inc., 215 SCRA 554 (1992).

[5] *Western Shipping Agency, Inc. v. NLRC,* G.R. No. 109717, February 9, *1996; Anderson v. NLRC,* G.R. No. 111212, January 22, 1996.