LABOR

CASE: The term "private agricultural lands" mentioned in Justice Ministry Circular No. 14 dated March 15, 1979, includes only lands planted to rice and corn. Circular No. 14 enjoins all Register of Deeds to require every registrant of a voluntary deed or instrument to present, in addition to the affidavit of non-tenancy, a certification from the Ministry of Agrarian Reform to the effect that the land subject of the transaction is not covered by Operation Land Transfer pursuant to Presidential Decree No. 27. The additional requirement imposed by Circular No. 14 is intended as a check against unlawful dealings in private agricultural lands covered by Presidential Decree No. 27. Since Presidential Decree No. 27 applies only to rice and corn lands, the requirements in the circular should only apply when the private agricultural lands involved are ricelands or cornlands as shown by the corresponding tax declaration (Opinion 149, 7 November 1979).

TAXATION

CASE: The "tax exemption privileges" granted under the 1947 Base Agreement were not repealed by the 1979 Agreement. Although the later agreement completely recognized Philippine Sovereignty over the bases, this fact does not act as an implied repeal of certain "tax exempt privileges". The exercise of Philippine Sovereignty over the bases is not incompatible with the grant of tax exemptions to certain persons or transactions. The power to exempt from transaction, like the power to tax, is itself an attribute of sovereignty (Opinion 125, 4 October 1979).

LABOR RULINGS OF THE NLRC

Compiled by:

GAY S. VILLARUZ, LI. B, '80

JUDY A. ESGUERRA, LI. B., '80

ABANDONMENT

Abandonment is considered a just cause for dismissal. There is abandonment where the employee absents himself from work over a substantial period of time without previous notice to and permission of the employer. In many companies, abandonment is covered by specific regulations. The standard provision is that an employee is deemed to have abandoned his position, or to have resigned from the same, whenever, he has been absent therefrom without previous permission of the employer for three consecutive days or more. The justification is the obvious harm to the employer's interest, resulting from non-availability of the worker's services. (DAVAO PORT & GENERAL TRANSPORT WORKERS UNION &/OR RODRIGO CAGUMBAY vs. BACHELOR EXPRESS INC. &/OR SAMSON YSAY, NLRC Case No. 569-MC-XI 76, October 16, 1979)

ABSENCE AS GROUND FOR DISMISSAL:

In order that absenteeism may be considered sufficient cause for termination of employment, it must be shown to have been habitual in a sense as to form a conviction that the erring employee has been grossly neglectful of his work. In other words, mere absence without proof of habituality could hardly be considered adequate ground for dismissal of employee's services. (LEONARDO DONES vs. IMPERIAL CARPENTRY SHOP, NLRC Case No. RB-W-21655-78-T, November 29, 1979)

APPEAL AND/OR MOTION FOR NEW TRIAL

A complaint for unfair labor practice, illegal demotion, illegal transfer and illegal rotation was dismissed for lack of merit. Complainants filed a motion for new trial on the ground of newly discovered evidence. In case of denial, they also sought an extension of time within which to file their memorandum on appeal.

Both motions denied.

The motion for new trial is a pro forma motion for failure to mention: a) the alleged newly discovered evidence and, b) that such evidence could not have been discovered and presented at the hearing.

The memorandum on appeal required under Section 3, Rule IX of the Rules was never filed. (TRADE UNION OF THE PHILIPPINES AND ALLIED SERVICES vs. PHILIPPINE VILLAGE HOTEL, NLRC Case No. RB-IV-22-187-78, November 5, 1979)

ASSEMBLY OR WAITING TIME

Respondent provides personnel services cars to transport complainants (about 150 regular irrigation machine operators) to their respective distantly located working areas. Pick up time, which was originally set one-half before change shifting, was advanced another half hour or a full hour before shift.

Complainants contend that the one-half hour waiting time at assembly area is an "integral part" of their work, hence, under Sec. 5, Rule I, Book III of the Rules and Regulations, is compensable.

Findings disclosed that the individual complainants were not obliged to ride the service cars in reporting to their work areas.

The NLRC held - the "test" is whether waiting time spent in idleness is so spent predominantly for the employer's benefit or for the employees. The waiting time in this case "was not primarily intended for the interests of respondent but for the complainants" and therefore not compensable. (OSCAR FABINO, ET AL. vs. STANDARD PHIL FRUIT CORP., NLRC Case No. 122 - ULP-XI-78, July 20, 1979)

COMPANY RULES & REGULATIONS

There is no question that an employer has the prerogative to promulgate rules and regulations for compliance of his employees "to attain the utmost efficiency & effect of a more profitable operation." But in the exercise of this power, he should also see to it that the rights of his employees granted to them by law are not curtailed. In the instant case, there are ample circumstances negating the alleged legitimate purposes of the applicant in issuing the questioned order of rotation. In this case the respondent came out with the memo on its new policy on rotation and/or transfer of sales personnel at a time when the workers in the company were organizing themselves into a union; hence, the real purpose and objective of the promotion and transfer of the complainant became doubtful and questionable. (ERLINDA DARAUG ET. AL vs. RIVERSIDE MARKETING CORP., NLRC Case No. RB-IV-8387-76, October 16, 1979)

COMPENSABILITY OF WAITING TIME

It is recognized in this jurisdiction that in determining the compensability of waiting time, one of the controlling factors is whether waiting time spent in idleness is so spent predominantly for the employer's benefit or for the employee's. In the case at bar, both parties agreed that the assembly area is a waiting station from which point individual complainants would be brought to their places of work, and that their places of work are distantly located from the assembly area. Consequently, it is imperative to set aside a definite time which is sufficient enough to insure that in negotiating the distance from the waiting station to the field the individual complainants would be on time for departure. In one sense, therefore, the waiting time may be considered as part of the time consumed by the individual complainants in going to work and not an integral part of his work. In another sense, the waiting time would also ensure the individual complainants reaching their places of work on time for duty, hence the scheme was not primarily for the interest of respondent but for complainants. (OSCAR RABINO & OTHERS vs. STANDARD PHIL. FRUIT CORP., NLRC Case No. 122-UCF-XI-70, November 6, 1979)

CONTINUOUS SERVICE

Under respondent's retirement plan made effective in 1975 complainants received retirement benefits for services rendered after World War II.

Complainants claim additional benefits corresponding to pre-war years.

Retirement plan defines —

1) continuous service — most recent unbroken period of service. If an employee is rehired after a break in service, continuous service is to commence on date of last re-hiring; and

2) break in service — deemed to have occurred when an employee voluntarily resigns, is discharged or fails to return to work within 30 days after an approved leave.

Respondent contends that complainants did not render service during the Japanese occupation and therefore there was a break.

Commission opined that under the plan, break in service is based either on employee's own acts or through his own fault. The supposed break during the war was beyond complainants' control.

Hence, complainants are entitled to additional retirement pay. (DARWIN TOBIAGON, ET. AL. vs. BENGUET CONSOLIDATED, INC., NLRC Case No. RB-I-C-1135-78, July 20, 1979)

CORPORATIONS EXCLUDED FROM OPERATION OF LABOR LAWS

The government-owned and controlled corporations that are excluded from the application of labor laws include only those that have special charters and not mere subsidiaries or offsprings of the mother corporations. The respondent herein was created under the corporation law, derives its right by the terms herein, with a corporate name of its own and retains its principal nature of being

purely engaged in business. The mere fact that the corporation had been bought later by Phil. Ltd. Oil Co., a supposedly government-owned and controlled corporation does not divest it of its main charter and purpose or automatically make it a government-owned and controlled corporation. (ADLC & ITS MEMBER CRESENCIO B. DE GUZMAN vs. BS CARAMOAN & OR CONSOLIDATED TERMINAL INC., NLRC Case No. RE-III-598-76, October 19, 1979)

DEGREE OF PENALTY

Guided by the case of Huntington Chair Corp., 24 LA 490, 491 which defined two general classes of offenses —

1) those extremely serious such as stealing, striking a foreman, etc., which justify summary discharge; and

2) those less serious such as tardiness, absence without permission, etc., which call for some milder penalty aimed at correction,

the Commission ruled that unauthorized but justified absences without proof of past infractions, constitute misfeasance covered by the second type of offenses. Mere suspension, not dismissal is the penalty commensurate to such an offense. (SANTIAGO PARAYNO, JR. vs. MALLEABLE METAL INDUSTRIES, INC., NLRC Case No. RB-IV-21395-78-T, October 12, 1979)

DELAYED OPPOSITION — CLEARANCE APPLICATION

A truck driver was suspended for 5 days for alleged dishonesty. At the expiration of the suspension, he was reassigned. Instead of reporting to his new assignment, he took a leave of absence without pay to earn a living somewhere.

The employer filed a clearance application to dismiss him.

Two years thereafter, the truck driver filed a complaint for reinstatement and backwages.

Under Sec. 5, Rule XIV, Book V, of the Implementing Rules and Regulations, opposition to a clearance application for dismissal must be filed within 10 days.

"While it cannot be said that complainants case has prescribed or that he slept too long on his rights, his said unexplained delay in opposing the clearance application indeed negatively affected the merits of his allegations."

Case dismissed. (RAMON TAÑEDO vs. PHILIPPINE AMERICAN TIMBER CO., INC., NLRC Case No. 7-1688. October 4, 1979)

DISMISSAL

It is evident from the records that the failure of the complainants to secure medical clearance from the medical department of the respondent prevented them from returning to work. Had they reported for medical examination and were certified by the company physician to be fit for work, respondent would have no reason to prevent complainants from returning to work. If the company physician, after medical examination, found them to be physically unfit to return to work, their rights and benefits under other existing laws is unimpaired, thus, their dismissal cannot be considered illegal. (ASSOCIATED WORKERS UNION vs. N. RAZON, INC., NLRC Case No. RE-IV-19183-78-P, October 19, 1979)

DISMISSAL

While we have time and again held that the employees' rights are safeguarded, we have also to respect the rights of the employer to dismiss his employees for cause to maintain a proper balance between the rights and duties of the two factors of production. In this case, complainant Sajese has wantonly and repeatedly disregarded and violated the company rules on unexcused absences, and as a consequence, the doctrine enunciated by the Supreme Court that every right ends where abuse begins applies with vigor to him. (REYNOLDS PHIL. CORP. FREE WORKERS UNION — TUPAS & PABLITO SAJESE vs. REYNOLDS PHIL. CORP., NLRC Case No. RE-IVO 20849-78 T, November 16, 1979)

FIELD PERSONNEL:

Field personnel refers to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

We do not think that drivers and conductors can be classified as field personnel; it is quite easy to monitor their hours of work because the time of their departure and arrival are recorded. (CAMILO R. LAFORTEZA vs. PHIL. RABBIT BUS LINE INC., NLRC Case No. RB-IV-10765-77, December 28, 1979)

FRINGE BENEFITS — ILLEGAL DISMISSAL

Complainant, a permanent employee of respondent, was dismissed from the service for alleged gross dishonesty.

Commission affirmed Labor Arbiter's decision of —

1) illegal dismissal — clearance application to dismiss was filed one day after dismissal while Sec 3 Rule XIV, Book V, Rules and Regulations provides for a 10-day prior clearance requirement;

2) reinstatement of complainant with backwages;

3) payment of money claims in claims involving fringe benefits mandated by law, employer has the burden to prove compliance which respondent failed to prove. (MARIO PAOAY vs. MANDARIN RESTAURANT, NLRC Case No. RB-9-1018-78, October 23, 1979).

HOUSEHOLD HELP:

Even if one is considered as a household helper or a person in the service of another, if she is assigned to perform work necessary and desirable to the pawnshop which is a commercial enterprise, she is entitled to receive the wage of an industrial worker. (MA. LOURDES BASO vs. BELEN PAWNSHOP, NLRC Case No. 951-MC-XI-78, November 16, 1979)

INDEPENDENT CONTRACTOR

Not being an employee, an independent contractor's compensation is generally a fixed amount for the whole task contracted by him, and of course, he is not entitled to overtime pay. (MANUEL SALCEDO vs. AMALGAMATED ELECTRONICS/DANIEL QUERUBUIN, NLRC Case No. RB-IV-10163-77, October 1979)

LEAVE OF ABSENCE

The workers, in the exercise of their political rights and in the fulfillment of their legitimate support to a political party or candidate of their choice, should be given the utmost respect and concern by the employer. However, it is not mandatory on the part of management to grant a request for leave simply because its employees would want to campaign during office hours. (ARSENIO JUNTILLA vs. STA. INES MELALE FOREST PRODUCTS CORP., NLRC Case No. RBX 386-78, October 16, 1979)

PAYMENT OF BACKWAGES

An employee's services were terminated when he was convicted by a Municipal Court to 4 months imprisonment for serious physical injuries. Upon reinstatement, he claimed for backwages.

The NLRC said that the employer is under no obligation and cannot be compelled to wait and keep a job open for an employee who because of his own acts is criminally convicted and sentenced to a prison term. And even if reinstated, the employee is not entitled to backwages as he has unduly deprived his employer of valuable services during his period of detention. (EMERSON GRAFILON vs. ANTONIO PEREZ, NLRC Case No. 296-LR-XI-78, October 26, 1979)

SOLIDARY LIABILITY OF INDEPENDENT CONTRACTOR AND AN INDIRECT EMPLOYER IN THE PAYMENT OF WAGES

An indirect employer under Art. 107 of the Labor Code, is solidarily liable with his independent contractor for the payment of the latter's workers' wages. But while this is the law, we believe that as a matter of sound procedure and for a more just disposition of a labor dispute in which an indirect employer is involved, the contractor, who is the direct or principal employer, should be impleaded as a necessary if not indispensable party, especially if the latter has been identified and the indirect employer, as in this case, shifts the liability to him. (JUAN PINERA vs. ANTONIO PAREDES, NLRC Case No. RB-IV-21204-78, October 18, 1979)

TEMPORARY WORK STOPPAGE

All the finished products of respondent's finishing department go directly to the cutting section. A fire caused temporary stoppage in the finishing and cutting departments' operations. Complainant, a cutter, was therefore temporarily laid-off.

Issue: Does the lay off amount to illegal dismissal?

Ruling: Negative. The nature of respondent's business operations mean that no work done in the finishing department results in no or less work in the cutting section.

As the suspension of operations went beyond 6 months and respondent failed to file an application for clearance to reduce its work force or reinstate complainant, the NLRC said that complainant is entitled to separation pay. (JESUS RAMONES vs. PHILIPPINE KNITTING MILLS, INC., NLRC Case No. RB-IV-22263-78, October 26, 1979)

WAGES:

While profit, in any form whatsoever, is subject to contingencies, an employee's compensation for his work cannot be made to depend upon the progress of his employer's business. In other words, he must be paid his wages upon rendition of his service. (BASILIO GUIDANCEN vs. BENGUET CONSOLIDATED, INC., NLRC Case No. BR-1-354-76, RD-16-BC)

TAX RULINGS OF THE BIR

Compiled by:

EDGARDO M. DE VERA, LL.B. '81

DANILO A. MACATANGAY, LL.B. '81

ADVANCE SALES TAX

1. Flavoring essential oils and extracts for food and drink under P.D. No. 1358 are classified for tariff duty and tax purposes as ordinary articles subject to 10% sales tax based on landed cost plus mark-up of 25%. They are not to be considered non-essential like those for perfumery, cosmetics and toiletries. (BIR Unnumbered Ruling dated October 23, 1979)

Note: This appears to be the exception to the previous ruling issued by the BIR to the effect that essential oils and extracts are subject to 50% tax based on landed cost plus 100% mark-up. (BIR Ruling No. 012-79 dated March 27, 1979)

2. Imported articles which are only for the personal use of the importers and not for sale, barter or exchange, nor for use as raw materials in the manufacture of the finished product by the importer, are subject only to compensating tax without the corresponding mark-up. If the said articles are, however, to be used by the importer as raw materials in his own manufacturing business or for sale, barter or exchange, the same would be subject to advance sales tax with the corresponding mark-up, the rate of tax and mark-up depending on the classification of the imported article. (BIR Unnumbered Ruling dated June 25, 1979)