LABOR RULINGS OF THE NLRC

Compiled by:

JUDY A. ESGUERRA, LL.B. '80

and

GAY S. VILLARUZ, LL.B. '80

ABANDONMENT

Where complainants charged illegal dismissal while respondents claimed abandonment, the NLRC deemed that the defense of abandonment has almost become classical whenever respondents are confronted with the charge of illegal dismissal. It held that the rule is well-settled that abandonment as a defense is generally considered weak vis-a-vis the positive categorical and definite allegation of illegal dismissal. Abandonment in order to prosper, must be established by clear and convincing evidence and supported by concrete facts so as to warrant an affirmative persuasion in an unprejudiced mind. (Atty. Pedro Rosetto and Forty Five Others vs. Dr. George Hooper, Mr. Raymundo S. Carabuena, Manager and Interlink Industrial Agro Development Corporation, NLRC Case No. 7-1574, August 6, 1979)

Abandonment of work cannot be shown by mere absence, but requires a deliberate refusal to resume employment or a clear showing in terms of specific circumstances that the worker does not intend to report for work. (Mario Franco vs. E & R Security Agency, January 29, 1979)

CESSATION OF OPERATIONS

If the suspension of business operations lasts for more than six months, it would be considered closure or cessation of operations. Since the respondent-appellant's mining operations have been suspended indefinitely for more than two years, it must be considered as having ceased operations. And since such cessation of operations was not for the purpose of circumventing the provisions of Book VI of the Labor Code, the oppositors were terminated for just cause. It is therefore clear that, based on legal considerations, oppositor-employees are not entitled to any affirmative relief arising from their termination. (In Re: Application for Prior Clearance to Terminate Services of 428 Employees, Inco Mining Co., Applicant-Appellant)

COLLECTIVE BARGAINING

The right of workers to collective bargaining presupposes certain lawful obligations and it is one of their obligations to honor and make alive and effective their collective bargaining agreement. For how would a worker become a strong and responsible partner in industry if he cannot accept and perform certain obligations relevant to productive labor, as the duty not to absent oneself unnecessarily. Thus, if any one party to said collective bargaining agreement violates its provisions, he should suffer the sanctions under the agreement if only to make it realistic and to uphold the principle of collective bargaining. (Wyeth-Suaco Laboratories Progressive Workers Union & Ruben Sulit vs. Wyeth-Suaco Laboratories, Inc., James A. Gump & Alfredo B. Mastelero, Jr., January 31, 1979)

DISMISSAL

To be considered as a just cause for dismissal, lack of competence must be substantially proven and supported by the evidence on record. Lack of competence cannot justify a dismissal unless based on sufficient evidence. Otherwise, an employee will always be at the mercy of the employer who by mere allegation of lack of competence will be at liberty to dismiss its employees. (Dra. Febe Magsayo vs. Mountain View College & Dr. Agripino C. Segovia, January 29, 1979)

If there is sufficient evidence to show that the employee has been guilty of a breach of trust or that the employer has ample reason to dismiss such employee, it is not necessary to find that an employee has been guilty of a crime beyond reasonable doubt in order to authorize his dismissal. Moreover, even if an employee is acquitted in a criminal case, such acquittal does not necessarily exculpate him for the cause or causes for which he may be dismissed. While the degree of proof required for conviction in a criminal case is guilt beyond reasonable doubt, this is not so in administrative proceeding where the proof required is only one of substantial evidence. (In Re: Application for Clearance to Terminate Employment ROVENPRA Stevedoring Enterprises vs. Ricardo Suan)

EMPLOYMENT CONTRACT

Limousine service provided by an employer for its employees can, by long practice, become part of the terms and conditions of employment. Such being the case, the same cannot be unilaterally withdrawn by the employer without violating Article 99 of the Labor Code. (Northwest Airlines Employees Association vs. Northwest Airlines, Inc., March 3, 1979)

LABOR-SAVING DEVICE

Respondent-employer installed modern accounting machines. As a result, four employees in the accounting department, complainants herein, were dismissed. The employer maintained that dismissal was due to retrenchment, hence, complainants were entitled only to a separation pay of 1/2 month for every year of service.

The Commission ruled that the real reason for dismissal was the installation of labor saving devices which entitled complainants to one full month pay for every year of service. (Nicolas Limpioso, et. al vs. St. Luke's Hospital, Inc., NLRC Case No. RB-IV-9730, January 30, 1979)

NON-TERMINATION OF EMPLOYMENT

Respondent, a marketing firm, concludes contracts with client manufacturing companies for definite periods. It temporarily lays off its employees, like the complainants, when the contracts expire and no new undertakings are inked. Article 287 of the Labor Code provides that the bona fide suspension of a business for a period not exceeding 6 months cannot terminate employment. Since complainants were not informed that their employment is dependent upon the existence of such promotional contracts and since, even after 6 months of idle time, respondent still failed to inform complainants of their status, then they are entitled to reinstatement and backwages. (Leoncro Dizon, et. al vs. Contrade Distributors, Inc., NLRC Case No. RB-IV-19748-78-T, July 30, 1979)

REGULAR CASUALS

Respondent is engaged in the manufacture of dessicated coconut. Because of the seasonal nature of the industry, it is not in full operation throughout the whole year. Respondent employs about 60-70 regular workers. During harvest seasons, however, extra shellers and parers are employed, such as complainants herein.

Complainants claim that they have acquired the status of permanent employees by virtue of the repetitive renewal of their employment during harvest seasons.

It was ruled that complainants have the dubious distinction of being "regular casuals". They are considered on leave without pay during off season. As such, they can not be considered dismissed and definitely not entitled to separation pay and other benefits. (Margarito Hernandez, et al. vs. Peter Paul Philippines Corporation, NLRC Case No. MCC-592-599/615-635 July 30, 1979)

STRIKE

The Commission opined that the concerted acts of the complainants in deliberately leaving their workplaces and assigned duties apparently to stop and paralyze respondent's normal operations constitute a strike within the context of P.D. 823, as amended. Although the strike cannot be considered illegal *per se*, as respondent is not a public utility in its true sense (and consequently not a vital industry), it was disclosed that the requirements for a valid and lawful strike were lacking since —

1) no notice was filed with the Bureau of Labor Relations at least 30 days before the intended strike; or
2) assuming there was a strike notice, the 30-day cooling off period was not observed before the complainants struck.

Respondents were able to show that complainants were advised that they were free to enter the premises and report for work.

The Commission dismissed the complaint for illegal termination and the corresponding claims for overtime and premium pays, and granted respondent's application to terminate complainants' employment. (Angelito Ambion, et. al. vs Manila Observatory, Inc. NLRC Case No. RB-IV21078-78, July 30, 1979)

13TH-MONTH PAY

Employer gives a monthly subsidy of one sack of rice. The union complained that employer refused to include the money value of the subsidy for purposes of the 13th-month pay under P.D. 851.

Held: Under P.D. 851, 13th-month pay is based only on the basic salary and does not include allowances and other benefits not part of the basic salary. The rice subsidy partakes of an incentive given in the form of an allowance. (Northern Motors Free Workers Union vs. Northern Motors, Inc., NLRC Case No. RB-IV-21722-78, April 24, 1979)