

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**POLICARPIO CAPULE AND LUIS
MADORO,**

Petitioners,

-versus-

**G.R. No. 90653
November 12, 1990**

**NATIONAL LABOR RELATIONS
COMMISSION, YAKULT PHILIPPINES,
INC. AND SUETONI TAKASHI,**

Respondents.

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DECISION

GANCAYCO, J.:

The center of controversy in this Petition is whether or not casual or temporary employees may be dismissed by the employer before the expiration of the one-year period of employment.

Private respondent company is engaged in the manufacture of cultured milk which is sold under the brand name "Yakult."

Petitioners were hired to cut cogon grass and weeds at the back of the factory building used by private respondents. They were not required to work on fixed schedule and they worked on any day of the week on

their own discretion and convenience. The services of the petitioners were terminated by the private respondent on July 13, 1987.

Thus, petitioners filed a complaint for illegal dismissal with the National Labor Relations Commission (NLRC). After the position papers of the parties were filed, a decision was rendered by the labor arbiter on September 20, 1988 finding the dismissal of the petitioners to be illegal and requiring the private respondent to reinstate them immediately to their former position with full backwages and without loss of seniority rights. The private respondent appealed to the NLRC. On September 18, 1989, Commissioner Conrado B. Maglaya rendered a decision setting aside the appealed decision and issuing a new judgment ordering private respondent to pay petitioners one (1) month's pay each based on humanitarian considerations.

Hence, the herein petition for *certiorari* where petitioners allege that the public respondent NLRC committed a grave abuse of discretion in rendering the aforesaid decision. Petitioners invoke the provision of Article 4 of the Labor Code and of Article 1702 of the Civil Code wherein all doubts should be resolved in favor of labor.

The petition is devoid of merit.

Article 280 of the Labor Code provides as follows:

“Article 280. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who

has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.”

The Solicitor General opines that the cutting of the cogon grass at the back portion of the building of private respondents may be considered to be usually necessary or desirable in the usual business or trade of private respondent. The Court disagrees. The usual business or trade of private respondents is the manufacture of cultured milk. The cutting of the cogon grasses in the premises of its factory is hardly necessary or desirable in the usual business of the private respondents. Indeed, it is alien thereto.

Thus, petitioners are casual employees who cannot be considered regular employees under the aforesaid provision of the Labor Code. Nevertheless, they may be considered regular employees if they have rendered services for at least one (1) year. When, as in this case, they were dismissed from their employment before the expiration of the one-year period they cannot lawfully claim that their dismissal was illegal.

Indeed, private respondent had shown that the services of the petitioners were found to be unsatisfactory, so, their termination.

WHEREFORE, the Petition is **DISMISSED** for lack of merit without pronouncement as to costs.

SO ORDERED.

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