SUPREME COURT
FIRST DIVISION

ZOSIMO CIELO,
***Petitioner*,**

-versus-

G.R. No. 78693
January 28, 1991

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION, HENRY LEI and or HENRY LEI TRUCKING,
***Respondents*.**
x----------x

D E C I S I O N

CRUZ, *J.*:

The petitioner is a truck driver who claims he was illegally dismissed by the private respondent, the Henry Lei Trucking Company. The Labor Arbiter found for him and ordered his reinstatement with back wages.[1] On appeal, the Decision was reversed by the National Labor Relations Commission, which held that the petitioner's employment had expired under a valid contract.[2] The petitioner then came to us on *certiorari* under Rule 65 of the Rules of Court.

Required to submit a Comment (not to file a motion to dismiss), the private respondent nevertheless moved to dismiss on the ground that the petition was filed sixty-eight days after service of the challenged

decision on the petitioner, hence late. The motion was untenable, of course. Petitions for *Certiorari* under Rule 65 may be instituted within a reasonable period, which the Court has consistently reckoned at three months.[**]

In his own Comment, the Solicitor General defended the public respondent and agreed that the contract between the petitioner and the private respondent was a binding agreement not contrary to law, morals or public policy. The petitioner's services could be legally terminated upon the expiration of the period agreed upon, which was only six months. The petitioner could therefore not complain that he had been illegally dismissed.

As an examination of the claimed agreement was necessary to the resolution of this case, the Court required its production by the petitioner. But he could not comply because he said he had not been given a copy by the private respondent. A similar requirement proved fruitless when addressed to the private respondent, which explained it could not locate the folder of the case despite diligent search. It was only on October 15, 1990, that the records of the case, including the subject agreement, were finally received by the Court from the NLRC, which had obtained them from its Cagayan de Oro regional office.[3]

The said agreement reads in full as follows:

A G R E E M E N T

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and executed by and between:

HENRY LEI, of legal age, Filipino citizen, married, and a resident of Digos, Davao del Sur, now and hereinafter called the FIRST PARTY,

— and —

ZOSIMO CIELO, of legal age, married, Filipino citizen, and a resident of Agusan,

Canyon, Camp Philipps, now and hereinafter called the SECOND PARTY,

W I T N E S S E T H:

That the FIRST PARTY is an owner of some cargo trucks.

WHEREAS, the SECOND PARTY desires to operate one of the said cargo trucks which he himself shall drive for income;

NOW, THEREFORE, for the foregoing premises, the FIRST PARTY does hereby assign one cargo truck of his fleet to the SECOND PARTY under the following conditions and stipulations:

1. That the term of this Agreement is six (6) months from and after the execution hereof, unless otherwise earlier terminated at the option of either party;

2. That the net income of the said vehicle after fuel and oil shall be divided by and between them on ninety/ten percent (90/10%) basis in favor of the FIRST PARTY;

3. That there is no employer/employee relationship between the parties, the nature of this Agreement being contractual;

4. In the event the SECOND PARTY needs a helper the personnel so employed by him shall be to his personal account, who shall be considered his own employee;

5. That the loss of or damage to the said vehicle shall be to account of the SECOND PARTY; he shall return the unit upon the expiration or termination of this contract in the condition the same was received by him, fair wear and tear excepted.

IN WITNESS WHEREOF, the parties hereunto affixed their signature on this 30th day of June, 1984, at Digos, Davao del Sur, Philippines.

(Sgd.) HENRY LEI — First Party

(Sgd.) ZOSIMO CIELO — Second Party

SIGNED IN THE PRESENCE OF:

(Sgd.) VICTOR CHAN

(Sgd.) AMALFE M. NG

The agreement was supposed to have commenced on June 30, 1984, and to end on December 31, 1984. On December 22, 1984, however, the petitioner was formally notified by the private respondent of the termination of his services on the ground of expiration of their contract. Soon thereafter, on January 22, 1986, the petitioner filed his complaint with the Ministry of Labor and Employment.

In his position paper, the petitioner claimed he started working for the private respondent on June 16, 1984, and having done so for more than six months had acquired the status of a regular employee. As such, he could no longer be dismissed except for lawful cause. He also contended that he had been removed because of his refusal to sign, as required by the private respondent, an affidavit reading as follows:

A F F I D A V I T

That I, ZOSIMO CIELO, Filipino, of legal age, married single and a resident of Agusan Canyon, Camp Philipps, after having been duly sworn to in accordance with law, hereby depose and say:

That I am one of the drivers of the trucks of Mr. HENRY LEI whose hauling trucks are under contract with the Philippine Packing Corporation;

That I have received my salary and allowances from Mr. HENRY LEI the sum of P1,421.10 for the month of October 1984. That I have no more claim against the said Mr. Henry Lei.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 15th day of November 1984.

_____
Driver

The private respondent rests its case on the agreement and maintains that the labor laws are not applicable because the relations of the parties are governed by their voluntary stipulations. The contract having expired, it was the prerogative of the trucking company to renew it or not as it saw fit.

The writ will issue.

While insisting that it is the agreement that regulates its relations with the petitioner, the private respondent is ensnared by its own words. The agreement specifically declared that there was no employer-employee relationship between the parties. Yet the affidavit the private respondent prepared required the petitioner to acknowledge that "I have received my salary and allowances from Mr. Henry Lei," suggesting an employment relationship. According to its position paper, the petitioner's refusal to sign the affidavit constituted disrespect or insubordination, which had "some bearing on the renewal of his contract of employment with the respondent." Of this affidavit, the private respondent had this to say:

> Since October 1984, respondent adopted a new policy to require all their employees to sign an affidavit to the effect that they received their salaries. Copy of which is hereto attached as Annex "C," covering the months of October and November 1984. All other employees of the respondent signed the said affidavit, only herein complainant refused to do so for reasons known only to him.

It appears from the records that all the drivers of the private respondent have been hired on a fixed contract basis, as evidenced by the mimeographed form of the agreement and of the affidavit. The private respondent merely filled in the blanks with the corresponding data, such as the driver's name and address, the amount received by him, and the date of the document. Each driver was paid through individual vouchers[4] rather than a common payroll, as is usual in companies with numerous employees.

The private respondent's intention is obvious. It is remarkable that neither the NLRC nor the Solicitor General recognized it. There is no question that the purpose behind these individual contracts was to evade the application of the labor laws by making it appear that the drivers of the trucking company were not its regular employees.

Under these arrangements, the private respondent hoped to be able to terminate the services of the drivers without the inhibitions of the Labor Code. All it had to do was refuse to renew the agreements, which, significantly, were uniformly limited to a six-month period. No cause had to be established because such renewal was subject to the discretion of the parties. In fact, the private respondent did not even have to wait for the expiration of the contract as it was there provided that it could be "earlier terminated at the option of either party."

By this clever scheme, the private respondent could also prevent the drivers from becoming regular employees and thus be entitled to security of tenure and other benefits, such as a minimum wage, cost-of-living allowances, vacation and sick leaves, holiday pay, and other statutory requirements. The private respondent argues that there was nothing wrong with the affidavit because all the affiant acknowledged therein was full payment of the amount due him under the agreement. Viewed in this light, such acknowledgment was indeed not necessary at all because this was already embodied in the vouchers signed by the payee-driver. But the affidavit, for all its seeming innocuousness, imported more than that. What was insidious about the document was the waiver the affiant was unwarily making of the statutory rights due him as an employee of the trucking company.

And employee he was despite the innocent protestations of the private respondent. We accept the factual finding of the Labor Arbiter that the petitioner was a regular employee of the private respondent. The private respondent is engaged in the trucking business as a hauler of cattle, crops and other cargo for the Philippine Packing Corporation. This business requires the services of drivers, and continuously because the work is not seasonal, nor is it limited to a single undertaking or operation. Even if ostensibly hired for a fixed period, the petitioner should be considered a regular employee of the

private respondent, conformably to Article 280 of the Labor Code providing as follows:

> Art. 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. (Emphasis supplied)

In Brent School, Inc. vs. Zamora,[5] the Court affirmed the general principle that "where from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down or disregarded as contrary to public policy, morals, etc." Such circumstances have been sufficiently established in the case at bar and justify application of the following conclusions:

> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the

> substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure.
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> The agreement in question had such a purpose and so was null and void *ab initio*.

The private respondent's argument that the petitioner could at least be considered on probation basis only and therefore separable at will is self-defeating. The Labor Code clearly provides as follows:

> Art. 281. Probationary employment. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

There is no question that the petitioner was not engaged as an apprentice, being already an experienced truck driver when he began working for the private respondent. Neither has it been shown that he was informed at the time of his employment of the reasonable standards under which he could qualify as a regular employee. It is plain that the petitioner was hired at the outset as a regular employee. At any rate, even assuming that the original employment was probationary, the Labor Arbiter found that the petitioner had completed more than six month's service with the trucking company and so had acquired the status of a regular employee at the time of his dismissal.

Even if it be assumed that the six-month period had not yet been completed, it is settled that the probationary employee cannot be removed except also for cause as provided by law. It is not alleged that the petitioner was separated for poor performance; in fact, it is suggested by the private respondent that he was dismissed for disrespect and insubordination, more specifically his refusal to sign

the affidavit as required by company policy. Hence, even as a probationer, or more so as a regular employee, the petitioner could not be validly removed under Article 282 of the Labor Code, providing as follows:

> Art. 282. Termination of employer. — An employer may terminate an employment for any of the following causes:
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> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> (e) Other causes analogous to the foregoing.

In refusing to sign the affidavit as required by the private respondent, the petitioner was merely protecting his interests against an unguarded waiver of the benefits due him under the Labor Code. Such willful disobedience should commend rather than prejudice him for standing up to his rights, at great risk to his material security, against the very source of his livelihood.

The Court looks with stern disapproval at the contract entered into by the private respondent with the petitioner (and who knows with how many other drivers). The agreement was a clear attempt to exploit the unwitting employee and deprive him of the protection of the Labor Code by making it appear that the stipulations of the parties were governed by the Civil Code as in ordinary private transactions. They were not, to be sure. The agreement was in reality a contract of

employment into which were read the provisions of the Labor Code and the social justice policy mandated by the Constitution. It was a deceitful agreement cloaked in the habiliments of legality to conceal the selfish desire of the employer to reap undeserved profits at the expense of its employees. The fact that the drivers are on the whole practically unlettered only makes the imposition more censurable and the avarice more execrable.

WHEREFORE, the Petition is **GRANTED**. The Decision of the National Labor Relations Commission is **SET ASIDE** and that of the Labor Arbiter **REINSTATED**, with costs against the private respondents.

SO ORDERED.

Narvasa, Gancayco, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Rollo, pp. 28-32.
[2] Ibid., pp. 16-18.
[**] Save in the case of the Constitutional Commissions, where the period is fixed at 30 days.
[3] Id., pp. 100; 102.
[4] Records, pp. 31-41.
[5] G.R. No. L-48494, February 5, 1990, Narvasa, J., ponente.
