SUPREME COURT
SECOND DIVISION

EGYPTAIR and SAYED EZZAT,
***Petitioners*,**

-versus-

G.R. No. L-63185
February 27, 1987

NATIONAL LABOR RELATIONS COMMISSION and JOHN JOSEPH,
***Respondents*.**
x----------x

D E C I S I O N

FERNAN, *J.*:

In this Petition for *Certiorari*, Egyptair and Sayed Ezzat assail the affirmance by the National Labor Relations Commission of the labor arbiter's decision granting monetary awards to John Joseph for his illegal dismissal as Egyptair's marketing adviser.

The records show that on June 1, 1962, John Joseph was employed as sales promotion and press relations officer by the United Arab Airlines [UAA] which later became known as Egyptair. Thereafter, he was appointed by said company as acting sales manager. While holding said position from July, 1963 until December, 1967, Joseph concurrently acted as sales manager of Atlantic Pacific Corporation [ATPACO], the general sales agent of UAA.

Joseph's appointment as sales manager in the Philippines effective December 15, 1967, was confirmed by the general commercial manager of UAA, Mohamed S. El Hakim. In addition to a monthly salary of P1,750, Joseph was also given a commission corresponding to two percent [2%] of the "net revenue realized from sales wholly on UAA services [direct or interline], provided that the amount of sectors commissionable exceeded US $50.00."

On April 15, 1969, the district manager in the Philippines of Egyptair, Mr. Gamal El-Desouki, informed Joseph that effective April 1, 1969, his gross salary had been increased to P2,000 a month. Said district manager also informed Joseph of the amendment of his 2% commission, as follows: [1] sales on UAA routes, up to the amount of $500,000: one-half percent [1/2%] of the net amount excluding sectors amount of which is less than $50, and [2] sales on UAA routes over the amount of $500,000: one percent [1%] of the net amount. The records do not show whether the head office of UAA had approved said amendment.

On January 22, 1974, Joseph was appointed marketing adviser to Sayed Ezzat, Egyptair's manager in the Philippines. Four months later, he received a letter from Ezzat reading:

> "Since January 22, 1974 up to May 6, 1974 you have not reported to work in the office whereby we have no records to show that you are on an approved sick or vacation leave.
>
> Due to your above-mentioned continued unexcused absences, I wish to inform you that you are resigned from the company effective May 6, 1974."[1]

Two days after he received that letter or on May 22, 1974, Joseph filed with the National Labor Relations Commission [NLRC] a complaint against Egyptair and/or Sayed Ezzat for illegal dismissal, non-payment of wages, sick and vacation leave benefits, and commissions.

After the case was submitted for compulsory arbitration, the labor arbiter issued a monetary award in favor of Joseph consisting of his claims for unpaid wages, sick and vacation leave benefits,

commissions and separation pay. Alleging that the award was rendered without giving them a chance to present their evidence, respondents therein filed a motion for reconsideration. In due course, the NLRC set aside the award and remanded the case to the labor arbiter for final disposition.

The case was practically tried de novo and on August 22, 1977, the labor arbiter rendered a decision declaring that Joseph was not a managerial employee of Egyptair, and that it was Egyptair which considered Joseph resigned from the service, thus constructively dismissing him from the service without just cause. The dispositive portion of that decision states:

> "WHEREFORE, premises considered, an award is hereby rendered in favor of the complainant and against respondent ordering respondent to pay unto the complainant the sum of P280,521.00 broken down, as follows:
>
> (1) As backwages due to illegal dismissal, from the date of alleged termination, May 20, 1974 until July 20, 1977 at P2,815.00 a month or a total of P106,970.00;
>
> (2) As unpaid salary from May 1-20, 1974, in the amount of P1,976.00;
>
> (3) As cash commutation of the balance of earned vacation leave privileges, computed at fifteen [15] days for every year of service, as follows: P1,407.50 x 10 yrs. or a total of P14,075.00;
>
> (4) Unpaid 2% commission for the period covered by January 1971 to January, 1974, computed on the basis of net revenue on sales in the amount of US $600.00 per month or P4,500 per month for thirty-five [35] months or a total of P157,560.00.
>
> Respondent is hereby enjoined to pay the above-mentioned sums or a total of P280,521.00 within ten [10] days from receipt of this Decision.

> Counsel for complainant are hereby entitled to 10% as attorney's fees of the total claims of the complainant."[2]

Egyptair and Sayed Ezzat appealed to the NLRC. On January 13, 1983, the NLRC en banc affirmed the labor arbiter's decision with the modification that only the fifteen days vacation and fifteen days sick leave credits for 1974 should be commuted. Hence, the instant Petition for *Certiorari*, petitioners submitting to this Court the issues of the legality of the dismissal of John Joseph.[3] and the legality of the monetary awards granted to the latter.

Petitioners contend that since they "improved" Joseph's position from sales manager to marketing adviser, Joseph was holding a managerial position so that, his dismissal without a clearance from the Ministry of Labor was legal. They add that the employer-employee relationship between them and Joseph was converted into a "consultancy" or a principal-agent relationship when Joseph accepted the position of marketing adviser.[4]

The issue regarding the relationship between petitioners and private respondent is one involving a question of fact as it requires the presentation of evidence. Both the labor arbiter and the NLRC, before whom the issue was thoroughly ventilated found private respondent to be a non-managerial employee of petitioner Egyptair. Except where there is a grave abuse of discretion, which does not obtain in the case at bar, the findings of facts of the labor arbiter and the commission are binding upon this Court.[5]

Similarly, we are bound by the findings of both the labor arbiter and the NLRC that Joseph did not abandon his job from January 23, 1974 until May 6, 1974. The NLRC found that as marketing adviser, Joseph had to work outside his office in order to solicit passengers and cargoes for the petitioners' from the different airline agents and shippers.[6]

Besides, petitioners' allegation that Joseph abandoned his job is belied by the fact that two days after receiving Sayed Ezzat's letter terminating his services, he filed a complaint for illegal dismissal. It would be illogical for him to have left his job and later on, file said complaint.[7] Furthermore, petitioner airline's own actuation proves

that at least from January, 1974 to April 1974, it still considered Joseph as an employee because it paid him his salary for said months.[8]

Other than the alleged abandonment of work, petitioners failed to present convincing reasons for their precipitate dismissal of Joseph. As the burden of proof rests on the employer to show that the dismissal was for a just cause, petitioners' failure to do so necessarily meant that said dismissal was not justified.[9]

Another factor which made Joseph's dismissal illegal is that it was effected without prior clearance from the Ministry of Labor. The importance of said prior clearance cannot be over emphasized because without it, a dismissal is also conclusively presumed to be without just cause.[10]

The other matters presented by petitioners before this Court, like the actual date of employment of Joseph, his claim for the unpaid 2% commission on sales from January, 1971 to January, 1974, and his claim for the cash equivalent of his earned vacation and sick leave benefits for 1974, deserve scant consideration. They have been passed upon by the respondent commission and, in the absence of sufficient proof that the NLRC gravely abused its discretion, We see no reason to disturb its findings and conclusions.

But there is one more contention which, although unmeritorious, deserves consideration — petitioners' allegation that Joseph's claim for commissions has prescribed. They assert that the unpaid 2% commissions for January, 1971 to January, 1974 have prescribed because the claims "should have been filed within one [1] year from the date it accrued, that is, from year to year."[11] The basis of petitioners' argument is the second paragraph of Article 292 of the Labor Code which provides that:

> "All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities established under this Code within one [1] year from the date of effectivity, and shall be processed or determined in accordance with implementing rules and regulations of the Code; otherwise, they shall be forever barred."

It should be noted that the one-year prescriptive period is counted from the date of effectivity of the Labor Code. As Article 2 provides that the Labor Code "shall take effect six [6] months after its promulgation" on May 1, 1974, petitioners cannot validly insist that Joseph's monetary claims have prescribed, for they were filed on May 2, 1974, even before the effectivity of the Labor Code on November 1, 1974.

Petitioners' averment that the 1971 commissions should have been claimed within one year or in 1972 militates against the interest of the employee. If adopted, said interpretation of Article 292, paragraph 2, would run roughshod against Article 4 of the Labor Code which states that all doubts in the implementation and interpretation of the provisions of the Code should be resolved in favor of Labor. Moreover, it would be contrary to the very intent of Article 292 to allow the filing of money claims which had accrued prior to the effectivity of the Labor Code within a year from said date.

WHEREFORE, the Decision of the National Labor Relations Commission is hereby affirmed. Costs against the petitioners.

SO ORDERED.

Paras, Padilla, Bidin and Cortes, *JJ.*, concur.
Alampay and Gutierrez, Jr., *JJ.*, are on leave.

---

[1] Records, p. 345, Exh. A quoted in Public Respondent's comment and brief, Rollo, pp. 59 & 144, respectively.
[2] Rollo. pp. 18-19.
[3] Petitioner's reply brief, p. 2.
[4] Rollo, p. 13.
[5] RJL Martinez Fishing Corporation vs. NLRC, G.R. Nos. 63550-51, January 31, 1984, 127 SCRA 455; Reyes vs. Philippine Duplicators, G.R. No. 54996, November 27, 1981, 109 SCRA 489; Akay Printing Press vs. Minister of Labor and Employment, G.R. No. 59651, December 6, 1985, 140 SCRA 381.
[6] NLRC Decision, p. 8.
[7] See Judric Canning Corporation vs. Inciong, G.R. No. 51494, August 19, 1982, 115 SCRA 887; Flexo Manufacturing Corporation vs. NLRC, G.R. No. 55971, February 28, 1985, 135 SCRA 145: Remerco Garments Manufacturing

vs. Minister of Labor and Employment, G.R. Nos. 46176-77, February 28, 1985, 135 SCRA 167.

[8] NLRC Decision, pp. 8-9.

[9] Polymedic General Hospital vs. NLRC, G.R. No. 64190, January 31, 1985, 134 SCRA 420.

[10] Visperas vs. Inciong, G.R. No. 51299, December 29, 1982, 119 SCRA 476, 483.

[11] Petitioners' brief, p. 17.