

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ENGINEERING EQUIPMENT, INC.,
*Petitioner,***

-versus-

**G.R. No. 59221
December 26, 1984**

**NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER JOSE
T. COLLADO, AND RICARDO PILI,
*Respondents.***

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DECISION

GUTIERREZ, JR., J.:

This is a Petition for *Certiorari* to set aside the Resolutions of respondent National Labor Relations Commission (NLRC) which affirmed the decision of the respondent Labor Arbiter declaring the private respondent's dismissal illegal and directing his reinstatement to his former position with full backwages.

Respondent Ricardo Pili was an employee of petitioner Engineering Equipment, Inc. beginning December 11, 1973 until July 18, 1976 when his services were terminated. At that time, he was assigned as foreman in the Central Bank building construction project of the petitioner at Diliman, Quezon City. As a result of the termination of

his services, Pili filed a complaint for illegal dismissal against the petitioner before the Manila Labor Regional Office.

No amicable settlement could be reached at the conciliation level, hence the case docketed as NLRC Case No. RB-IV-11874-77 entitled “Ricardo Pili vs. Engineering Equipment Inc.” was certified for compulsory arbitration and assigned to the respondent Labor Arbiter.

During the arbitration proceedings, the parties tried to establish the following facts:

“Complainant alleged that he was first employed by respondent on 11 December 1973; that his last salary was P650.00 a month; that he was assigned at the respondent’s construction project of Central Bank Building in Quezon City as a field foreman; that on 16 July 1976, he received a letter from the respondent dated 18 July 1976 terminating his services; that he admits having been verbally informed by the Project Field Engineer that some workers around 40 of them protested against him, but said Field Engineer did not show him any written protest despite his request but was asked only as to the truth of whether he brought inside the job site a jungle bolo which complainant denied and that he was told that the other charges or protest are small and minor and not to mind about them and that he was just told not to report for work for one month until things cooled off; that on 8 July 1976, he was told to see the Company legal counsel who also informed him of some complaints by some workers but again he was not shown the names nor the complaint itself despite his request, specially to confront those allegedly protesting against him; that said legal counsel merely asked him about the jungle bolo which he allegedly brought inside the job site which he denied saying that the same was impossible because of the strict security service at the job site; that he was not given any opportunity to explain in writing his side on the alleged protest of some workers; nor was he investigated formally on the same; that he was never the subject of any disciplinary measure for any infraction of company rules prior to his dismissal; that as a matter of fact he was the recipient of a merit increase for his good performance three months prior to his dismissal.

For the Respondent —

“On the other hand, the respondent alleged that respondent received on 24 June 1976 a letter protest (Exh. “4”) containing 8 charges by some 40 workers against the complainant; that upon receipt of said protest-letter, the Labor Relations Supervisor immediately investigated the matter by asking the alleged signatories thereof; that the said Labor Relations Officer also talked to the complainant and assured him that he would give opportunity to explain his side in a formal investigation; that the complainant, in an act of reprisal, allegedly threatened the signatories to the protest-letter so that the complainant had to be dismissed before he could be formally investigated and given the opportunity to explain in writing his side of the charges made by the workers; that the charges made by the workers against the complainant constituted gross and habitual neglect of duties; that the immediate cause of complainant’s dismissal was his inefficiency and incompetence.”

After a review of the conflicting evidence for both parties, the respondent Labor Arbiter issued the questioned decision which was in favor of the complainant. The dispositive portion reads:

“WHEREFORE, in view of all the foregoing considerations, we find the respondent Engineering Equipment, Inc., guilty of illegal dismissal as charged, Resultancy, the complainant should be entitled to reinstatement without loss of seniority rights and to his back wages computed from June 28, 1978 up to the time of his actual reinstatement.”

As earlier stated, the Labor Arbiter’s decision was affirmed by the NLRC and a motion for reconsideration was denied. Hence, the instance petition.

In a resolution dated January 6, 1982, we issued a temporary restraining order enjoining the respondents from enforcing the Labor Arbiter’s decision and the NLRC resolution.

The records show that the petitioner company received a letter-protest on June 24, 1976 from forty (40) of its construction workers complaining against respondent Ricardo Pili. The workers had eight (8) charges against Pili but four were considered minor or were ignored by the petitioner, so it investigated only four charges, to wit:

- “(a) Interfering with the conduct of work properly within the competence of other foremen to supervise.
- “(b) Ordering specific jobs to be done in a ‘hit-or-miss’ fashion to such extent that such jobs had to be later repaired and or completely redone.
- “(c) Unauthorized establishment of a canteen inside the project premises, where he spent more time than what he devoted to supervision and direction of the workers under him.
- “(d) Unauthorized possession of a deadly weapon (jungle bolo) on the project premises. (Exh. “4”).”

Respondent NLRC decided in favor of the private respondent on the following grounds:

“It is very clear from respondent’s own assertion that the grounds upon which it anchors its quest for terminating the services of complainant herein, are that contained in the petition/complaint allegedly signed by forty (40) of its rank-and-file employees against complainant herein. Parenthetically, complainant’s separation from his employment must necessarily likewise rest upon the truth and veracity of the charges leveled therein against complainant, and ancillary, the observance of the tenural due process in effecting his dismissal.

“A close examination of the records of this case reveals that respondent miserably failed to establish and support its claim that complainant’s separation from the service is for cause. It will be observed that while respondent insists that forty (40) of its rank-and-file employees signed a petition/complaint against complainant herein, for various offense, not one ever testified to

establish, much more corroborate, the due execution of such a petition/complaint, if it was really executed.”

The petitioner was ordered to reinstate the respondent with full backwages and without loss of seniority rights because the NLRC considered the evidence submitted by the petitioner inadequate to support just cause for dismissal.

We are constrained to grant the petition.

The petitioner terminated the services of respondent Pili not only for the reasons stated in the complaint of the forty (40) workers but also because he instigated labor unrest when he took reprisal action against its signatories. This is clearly stated in the petitioner’s position paper filed with the public respondents.

The records show that when respondent Pili learned of the letter-complaint and the on-the-spot investigation being conducted by the labor relations manager of the firm, he threatened the signatories and told them they would be the ones separated from employment. The workers trooped to the petitioner’s personnel department and threatened to file complaints against the firm with the Ministry of Labor. The unrest was averted when the workers were assured that the investigation of Pili would continue and that their having written a formal complaint would not be taken against them.

The respondents are correct in stating that the best evidence to support the four charges would have been the presentation of some of the 40 worker-complainants as witnesses before the Ministry of Labor and Employment. However, the labor unrest caused by the respondent is supported by substantial evidence. Messrs. Romeo Cabrera and Normandie B. Pizarro testified on matters within their personal knowledge and about which they were the most qualified to testify. There is furthermore the admission of respondent Pili that he took a leave of absence for one month to let the heated atmosphere cool down. There was no need to go on leave if there was no charged atmosphere in the workplace.

The petitioner may have been remiss in introducing as witnesses before the labor arbiter only the labor relations manager and the

supervisor who conducted the investigation. There is one important point, however, which the public respondents ignored. Whether or not foreman Pili had a jungle bolo strapped to his side while supervising construction workers in the Central Bank project, whether or not he interfered with the conduct of work assigned to other foremen, and whether or not he ordered jobs to be done in a hit-or-miss fashion that these had to be redone, the fact remains that no less than forty (40) construction workers felt sufficiently aggrieved at his improper behavior or conduct as to sign a formal letter of protest against him. And after he was investigated these same workers were threatened by the respondent, thus aggravating an already difficult situation. Under the circumstances, it would be expecting too much from the employer for the public respondents or this Court to order the reinstatement of Mr. Pili.

The operation of the canteen by the respondent and his wife at the Central Bank project is admitted. The respondent's defense is that he was given permission by his superior to operate it and it had been in operation for some months before the petitioner investigated him about it. The records show that the private respondent was disciplined on the basis of the charge about the canteen not only because of its operation but also because he used some of his subordinates to maintain it. There was conflict of interest, not only as regards the time that he spent on this private business but also the use of services of workmen who should devote full-time to the company.

Respondent NLRC also blamed the petitioner for not giving the private respondent an opportunity to meet his accusers face to face. The petitioner answered this alleged lack of due process by stating that it conducted a formal investigation but the respondent "after one or two questions did not appear anymore." He took a one month leave of absence of cool off the tense situation. Moreover, the petitioner states that confrontation was unwise at the start because emotions were running high and, moreover, the respondent himself pre-empted it when he took reprisal action against the signatories.

We also note that the respondent NLRC did not categorically rule on whether or not Mr. Pili was a managerial employee and, therefore,

whether or not the requirement of prior clearance to terminate was necessary.

The petitioner's explanation reads:

“It should also be added that even private respondent himself has not denied that he exercised supervision and control over around fifty (50) project workers. Foremen like private respondent are outside the rank-and-file unit and are in fact excluded therefrom by contractual stipulation and legal mandate. They do not maintain time cards and are exempt from the hours-of-work provision of the Labor Code, which private respondent conveniently understood to mean that he could sleep during working hours. They also have the power of ‘direct hires’ (TSN, Aug. 12, 1977, p. 43). They exercise discretionary powers in distinguishing the skills of workers’ under the supervision for the purpose of determining wages (Ibid., p. 46).

“In a company with around three thousand (3,000) workers such as petitioner, it is, of course, logical to expect a departmentalization of functions for efficient operations. Thus, the ‘formulation of policies in the hiring of personnel is within the scope of the Personnel Department’ (TSN, August 12, 1977, p. 42). The ‘job evaluation program’ is within the competence of the Wage and Salary Administration Section (Ibid., p. 48). Petitioner even has an Employee Relations Office which approves or disapproves applications to operate canteens within project premises (TSN, October 28, 1977, p. 48). In brief, it is unnatural to expect foremen in a giant construction firm to actually perform executive managerial status. In point of law, there could not be any serious dispute that petitioner's foremen cannot and are not in fact unionized because they are managerial employees under the law.”

It is the nature of an employee's functions and not the nomenclature or title given to his job which determines whether he has rank-and-file or managerial status. Among the characteristics of managerial rank are: (1) He is not subject to the rigid observance of regular office hours; (2) His work requires the consistent exercise of discretion and judgment in its performance; (3) the output produced or the result

accomplished cannot be standardized in relation to a given period of time; (4) He manages a customarily recognized department or subdivision of the establishment, customarily and regularly directing the work of other employees therein; (5) He either has the authority to hire or discharge other employees or his suggestions and recommendations as to hiring and discharging, advancement and promotion or other change of status of other employees are given particular weight; and (6) As a rule, he is not paid hourly wages nor subjected to maximum hours of work. (See National Waterworks and Sewerage Authority vs. NWSA Consolidated Unions, 11 SCRA 766).

The petitioner has made out a satisfactory case as to why it did not seek prior clearance but limited itself to making a belated report.

At any rate, the employer has a right to dismiss an employee whose continuance in the service is inimical to the employer's interest. The law protects the rights of workers but it cannot authorize the oppression or self-destruction of the employer. (Manila Trading and Supply Co. vs. Philippine Labor Union, 71 Phil. 124; El Hogar Filipino Mutual Bldg. and Loan Association, et al. vs. Building Employees Inc, et al., 107 Phil. 473; Philippine Air Lines Inc. vs. Philippine Air Lines Employees Association, 57 SCRA 489). The step taken by the employer in this case was a measure of self-protection.

Under the facts of the case, we rule that the petitioner had valid grounds to terminate the services of the private respondent. However, we also take into account some equities of the case. The respondent had worked for almost three years with the petitioner. Top management should have become aware of the problem earlier instead of awaiting an explosive situation where forty (40) construction workers prepare a formal protest against their foreman and question his competence and conduct. Considering the boundary line nature of the respondent's job — whether or not it is managerial, it would have been more prudent for the firm, which has very competent counsel, to have asked for a prior clearance. In the light of the foregoing, we hold that the private respondent is entitled to full separation pay but not reinstatement with back wages.

WHEREFORE, the petition is hereby **GRANTED**. The decisions of the respondent National Labor Relations Commission and the

respondent Labor Arbiter are **REVERSED** and **SET ASIDE**. Our restraining order dated January 6, 1982 is made **PERMANENT**. The petitioner is ordered to grant full separation pay to the private respondent.

SO ORDERED.

**Melencio-Herrera, Plana and De la Fuente, JJ., concur.
Teehankee, J., concurs in the result.
Relova,^[*] J., took no part.**

[*] On leave.