

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**NATIONAL LABOR UNION and/or
MARCELO DOMINGO,**
Petitioner-Appellee,

-versus-

**G.R. No. L-61500
August 21, 1987**

**THE NATIONAL LABOR RELATIONS
COMMISSION and PEPSI-COLA
BOTTLING COMPANY OF THE
PHILIPPINES,**
Respondents-Appellants.

X-----X

DECISION

YAP, J.:

Petitioner seeks to Annul the Decision of the National Labor Relations Commission (NLRC for short) dated November 23, 1978, reversing the decision of Labor Arbiter Angel G. Ronquillo and dismissing the petitioner's complaint for illegal dismissal against Pepsi-Cola Bottling Company of the Philippines, Inc. (Pepsi-Cola for short).

This case arose from the allegedly illegal dismissal of petitioner Marcelo Domingo on January 21, 1971 by Pepsi-Cola. He was a

regular employee of Pepsi-Cola since July 15, 1963 as driver-salesman. In his complaint filed on March 31, 1976, docketed as NLRC Case No. RB-III-555-76, Domingo alleged that the grounds for his dismissal, namely, violations of company rules and regulations regarding customer relations, honesty and proper accounting of funds, were fabricated and without factual basis. He claimed that the charges were trumped-up in order to ease him out of the company on account of his role, as president of the union (National Labor Union, NATU), in staging a strike against the company. In its answer, the respondent Pepsi-Cola alleged that the termination of Domingo's employment was for just cause, and it moved for the dismissal of the complaint on the ground that the petitioner's cause of action was barred by a prior judgment. It appears that on June 4, 1974, Pepsi-Cola was granted clearance by the Ministry of Labor and Employment, as required then under the Labor Code, to terminate the services of Domingo in a decision rendered by Labor Arbiter Luciano Aquino in NLRC Cases Nos. 283 and 283-A.

Petitioner's complaint for illegal dismissal was heard on the merits, and on May 2, 1978, Labor Arbiter Angel Ronquillo rendered a decision declaring the dismissal illegal and ordering Pepsi-Cola to reinstate him without loss of seniority rights and to pay backwages from January 21, 1974 until reinstated.

From the above decision, Pepsi-Cola appealed to the National Labor Relations Commission, invoking the doctrine of res judicata in that the legality of the dismissal of Domingo was a matter already adjudicated by Labor Arbiter Luciano P. Aquino in NLRC Cases Nos. 283 and 283-A on June 4, 1974, wherein Pepsi-Cola was given clearance to terminate Domingo's services.

On November 23, 1978, the NLRC promulgated its decision reversing the appealed decision of Arbiter Ronquillo on the ground that the decision of Arbiter Luciano Aquino, dated June 4, 1974, constituted a bar to the cause of action in the instant case.

Petitioner's motion for reconsideration was denied by the NLRC in its resolution of June 28, 1982. Hence, the present petition for *certiorari*.

On September 15, 1982, this Court gave due course to the petition and required respondents to answer. Subsequently, both parties were required to file their respective memoranda.

The pivotal issue in the instant case is whether the NLRC committed grave abuse of discretion in holding that Domingo's complaint for illegal dismissal was barred by the decision of Labor Arbiter Luciano Aquino, dated June 4, 1974, granting clearance to Pepsi-Cola to terminate the services of Domingo.

We find merit in the petition. It was a grave abuse of discretion for the NLRC to dismiss petitioner's complaint on the ground of res judicata. The NLRC wrongly assumed that petitioner was a party to the proceedings before Labor Arbiter Luciano Aquino and since the cause of action raised in said case was "squarely identical" with that of the petitioner's present complaint, the decision in the former case constitutes res judicata or the law of the case between the parties.

An examination of the record, however, shows that petitioner was not a party to the former case. The application for clearance to terminate, docketed as NLRC Case No. 283, was entitled "Pepsi-Cola Bottling Co., Petitioner, versus Union of Pepsi-Cola Bottling Company Employees Union, NATU, Respondent". The application was contested by the union in a counter-petition, which was docketed as NLRC Case No. 283-A, entitled "Pepsi-Cola Bottling Company Employees Union, NATU, Petitioner, versus Pepsi-Cola Bottling Company, Respondent". Both petition and counter-petition were heard jointly by Labor Arbiter Luciano Aquino. It is clear that in both cases, the petitioner was not involved as a party. The NLRC, in its questioned decision, made the mistaken assumption that petitioner was a party to the proceedings before Labor Arbiter Luciano Aquino and that what he should have done was to appeal from the latter's decision, and not to file a new case as he did in the case at bar. But how could petitioner have appealed the decision of Arbiter Aquino when he was not included as a party thereto? In fact, the union under its new president had naturally no desire or inclination to appeal the decision, since with the suspension and subsequent removal of the petitioner, who was the incumbent union president when the case was filed by Pepsi-Cola, would redound to the benefit of the new union president who succeeded him. The counter-petition supposedly

contesting the application for clearance to terminate was filed by the union and verified by its new president, not by the petitioner. In the proceedings before Arbiter Aquino, the union was represented by its counsel and its position paper and memorandum were filed by said counsel, acting for and in behalf of the union and not as counsel for petitioner Marcelo Domingo, as erroneously assumed by the NLRC in its questioned decision.

The law applicable at the time of petitioner's dismissal in 1974 required that notice of the application for clearance to dismiss an employee must be served on the employee concerned.^[1] This requirement is part of due process which apparently was denied the petitioner. The record does not disclose that notice of the application was given to petitioner.

It should be noted that the application for clearance to dismiss an employee under existing law at that time was by its nature a speedy and summary process, in contrast to proceedings in a complaint for illegal dismissal which afford the employee concerned greater opportunity to ventilate his claim, present evidence and cross-examine witnesses. In this sense, the decision of Labor Arbiter Angel Ronquillo, who heard the petitioner's complaint for illegal dismissal against Pepsi-Cola gave the parties more ample opportunity to present their respective sides. On the other hand, the proceedings in an application for clearance to dismiss an employee obtaining at the time of the petitioner's dismissal were more of a conciliation, rather than adversarial process, and any clearance thus granted was without prejudice to the right of the employee concerned to seek redress of his grievances, if any, under existing laws and decrees.^[2] Under these circumstances, there can be no *res judicata*.

WHEREFORE, the Petition for *Certiorari* is **GRANTED** and the Decision of the National Labor Relations Commission, dated November 23, 1978, is **SET ASIDE**. The Decision of Labor Arbiter Angel Ronquillo, dated May 2, 1978, is hereby reinstated, with the modification that payment of backwages shall be limited to three (3) years.

SO ORDERED.

**Paras, Padilla and Sarmiento, *JJ.*, concur.
Melencio-Herrera, *J.*, is on leave.**

[1] Rule XIV, Book V, Rules and Regulations.
[2] Ibid.

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