

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**OCEANIC BIC DIVISION (FFW),
PABLITO ORDANOSO,**
Petitioners,

-versus-

**G.R. No. L-43890
July 16, 1984**

**FLERIDA RUTH P. ROMERO AS
VOLUNTARY ARBITRATOR, OCEANIC
BIC MANUFACTURING, and GLICERIO
LEDESMA,**
Respondents.

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DECISION

GUTIERREZ, JR., J.:

SEPARATE OPINIONS:

TEEHANKEE, J., concurring:

In this Petition for Review on *Certiorari*, we are asked to interpret Section 11 of Presidential Decree No. 21, ("Creating A National Labor Relations Commission And For Other Purposes") in relation to

Sections 1, 3, and 10 of the Implementing Instructions No. 1 dated November 9, 1972 issued by the then ad hoc National Labor Relations Commission. The provisions refer to the clearance requirements for the dismissal, lay-off, or termination from employment of an employee by his employer.

The facts of the case are not in dispute. Petitioner Pablito Ordanos entered into a contract of temporary employment for the period of six (6) months beginning from October 3, 1973 to April 3, 1974 with the respondent corporation. Incorporated in the contract is a stipulation that "it is understood that the company has the right to separate you from its employ at anytime within the above period should your services not be satisfactory." When the contract expired on April 3, 1974, Ordanos entered into another 6-month contract of employment, this time as probationary worker with the respondent company, from April 4, 1974 to October 4, 1974. A note to the effect that "this extension of your employment contract is being given with formal advice that you improve on your performance" was added to the stipulation which formed part of the first contract.

The respondent company through "group leaders" conducts periodic performance ratings on the workers. The results are considered for the workers' conversion from probationary to regular permanent employment. The criteria for performance ratings were cooperation, attendance, quality of work, skill, initiative and interest in work, leadership, obedience and intelligence.

In the case of Ordanos, Mr. Glicerio Ledesma, production manager, explained that the aforestated note attached to his contract of employment shows that Ordanos's performance rating during his first six months employment in the company was "just passing." Subsequent performance ratings of Ordanos by his group leaders submitted to Mr. Ledesma showed that his work performance was not satisfactory. Hence, in the memorandum prepared by Ledesma on workers' performance ratings which he sent to K. Bachmann, Jr., general manager, Ordanos's name was included among those with below average performance. On the following day, Ledesma sent a memorandum to Ordanos, telling him to improve his performance as he only attained a 2.75 rating.

On September 10, 1974, a memorandum was issued by Ledesma to some workers, among them Ordanoso, warning them of their low average performance with the advice to perform on the average performance level.

On October 3, 1974, Ledesma terminated Ordanoso's services in the company because of his below average performance rating.

Thereafter, the following events transpired:

“On October 4, 1974, complainant union (FFW Oceanic BIC Manufacturing Chapter), through its union president, Alfonso Leonido sent a letter dated October 3, 1974, to the Management of the respondent company wherein the union asked the company for a grievance conference in order to discuss the dismissal of complainant Pablito Ordanoso effective October 4, 1974. Apparently, the parties failed to reach an amicable settlement in the grievance conference. On October 25, 1974, the complainants (the local union and Pablito Ordanoso) filed a complaint with the NLRC, Dept. of Labor, docketed as NLRC Case No. Lr-6538. In the said complaint, the complainants charged the respondents company and Ledesma for:

- “1. Unfair Labor Practice;
- “2. Unjust and illegal dismissal of complainant Pablito Ordanoso;
- “3. Violation of the CBA;
- “4. Violation of P.D. No. 21 and its Implementing Rules.

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“The afore-mentioned complaint (bearing another case no. Lr-431-74) was finally disposed of by the conciliator of the Dept. of Labor, Regional Office No. IV, on January 16, 1975, by referring

back the case to the parties for exhaustion of the grievance procedure in accordance with the CBA.

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On January 20, 1975, the Federation of Free Workers, the mother federation of complainant union, sent a letter to the management of respondent company wherein the Federation suggested three (3) names to select from, as voluntary arbitrator. The parties failed to mutually select any of the three named in said letter but later selected Atty. Florida Ruth P. Romero of the U.P. Law Center, Diliman, Quezon City.” (Petition, Rollo, pp. 5-6).

After due hearing, the voluntary arbitrator issued her decision dated April 30, 1976 upholding the company’s actions. The dispositive portion of the decision reads:

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“Ipinapasya ng Tagahatol na ang pagtitiwalag kay Ordanoso ay hindi unfair labor practice, hindi labag sa collective bargaining contract at sa P.D. No. 21 o sa alituntunin nito, sapagkat hindi nauukol sa kanya ang pangangailangan ng written clearance bago magtanggap ng isang manggagawa.

“Isinagawa sa siyudad ng Quezon nitong ika-30 ng Abril, 1976.”

The respondents raise a jurisdictional issue. They contend that this Court does not have the power to review the voluntary arbitrator’s award on the ground that: 1) Presidential Decree No. 442, (Labor Code) precludes this Court from reviewing voluntary arbitration awards save on special circumstances which are not present in the instant case; and 2) the nature of voluntary arbitration awards should be considered final.

Petitioner Ordanoso was dismissed on October 4, 1974. He filed the complaint for illegal dismissal with the Department of Labor on October 25, 1974. Article 294 of the Labor Code, as amended provides: “All actions or claims accruing prior to the effectivity of this

Code shall be determined in accordance with the laws in force at the time of their accrual.” The law applicable in the instant case is Presidential Decree No. 21. In fact, the voluntary arbitrator herself admits this fact in her decision when she said: “Noong itiniwalag si Ordanoso noong ika-4 ng Oktubre, 1974, ang batas na umiral ukol sa pagtatanggal ng mga tauhan ng mga bahay-kalakal ay ang Presidential Decree No. 21 at mga alituntunin nito.”

Anent the proposition that voluntary arbitration awards should be considered final, the respondents cite American precedents:

The nature of an arbitrator’s award is that it is equivalent to the first law of the parties. It is so because the disputants have willingly and contractually consented that the will of the arbitrator shall be substituted in place of theirs. For, after all, the parties have mutually reposed their trust and confidence in the honesty, integrity, competence and capability of the arbitrator.

Such being the case, the role of the reviewer of a voluntary arbitration award is very limited. It merely acts as a guardian to see to it that no serious miscarriage of justice may be perpetuated or that public order or public policy might be subverted.

The refusal of courts to review the merits of an arbitration award is the proper approach to an arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards. (*Margetta vs. Pam Pam Corporation*, 354 F. Supp. 158, 1973), p. 160; cited in *Fernandez, Labor Arbitration* [1975], p. 355.

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Columbia Typographical Union No. 101, 353 F. Supp. 1348); (1973), p. 1349; cited in Fernandez, *Ibid.*, pp. 355-356.

We hold that the District Court misconstrued its mandate. The duty of the courts is not to determine whether a prima facie case on the merits has been put forth by the party seeking arbitration. It is not the province of the court to look into the facts of the case. (*Chambers vs. Beaunit Corp.*, 404 F. 2d 128, *Sanitary Corp. vs. Local 7, International Brotherhood of Operative Potters*, 358 F. 2d 455, 458 (6th Cir. 1966). The arbitrator is not to be viewed as a special master who will be called in after a prima facie case on the merits has been made out. (*Local No. 6, M. & P. Int. U. of Am. vs. Boyd G. Heminger, Inc.*, 483 F. 2d 129); (1973), p. 131.

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It is particularly understood that the arbitral process in collective bargaining presupposes that the parties wanted the informed judgment of an arbitrator, precisely for the reason that judges cannot provide it. Therefore, a court asked to enforce a promise to arbitrate should ordinarily refrain from involving itself in the interpretation of the substantive provisions of the contract. (*Morris vs. Werner-Continental, Inc.*, 466 F. 2d (1185); (1972), pp. 1190-1191, *Ibid.*).

We agree with the petitioner that the decisions of voluntary arbitrators must be given the highest respect and as a general rule must be accorded a certain measure of finality. This is especially true where the arbitrator chosen by the parties enjoys the first rate credentials of Professor Florida Ruth Pineda Romero, Director of the U.P. Law Center and an academician of unquestioned expertise in the field of Labor Law. It is not correct, however, that this respect precludes the exercise of judicial review over their decisions. Article 262 of the Labor Code making voluntary arbitration awards final, inappealable, and executory except where the money claims exceed P100,000.00 or 40% of paid-up capital of the employer or where there is abuse of discretion or gross incompetence refers to appeals to the National Labor Relations Commission and not to judicial review.

In spite of statutory provisions making “final” the decisions of certain administrative agencies, we have taken cognizance of petitions questioning these decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law were brought to our attention. There is no provision for appeal in the statute creating the Sandiganbayan but this has not precluded us from examining decisions of this special court brought to us in proper petitions. Thus, we have ruled:

“Yanglay raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor ‘under the principle of separation of powers’ and that judicial review is not provided for in Presidential Decree No. 21.

“That contention is a flagrant error. ‘It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute’ (73 C.J.S. 506, note 56).

“The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions’ (73 C.J.S. 507, Sec. 165). It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications.

“Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion (Timbancaya vs. Vicente, 62 O.G. 9424; Macatangay vs. Secretary of Public Works and Communications, 63 O.G. 11236; Ortua vs. Singson Encarnacion, 59 Phil. 440).

“The courts may declare an action or resolution of an administrative authority to be illegal (1) because it violates or fails to comply with some mandatory provision of the law or (2)

because it is corrupt, arbitrary or capricious' (Borromeo vs. City of Manila and Rodriguez Lanuza, 62 Phil. 512, 516; Villegas vs. Auditor General, L-21352, November 29, 1966, 18 SCRA 877, 891). [San Miguel Corporation vs. Secretary of Labor, 64 SCRA 60].

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“It is now settled rule that under the present Labor Code, (Presidential Decree No. 442, as amended [1974] if lack of power or arbitrary or improvident exercise of authority be shown, thus giving rise to a jurisdictional question, this Court may, in appropriate *certiorari* proceedings, pass upon the validity of the decisions reached by officials or administrative agencies in labor controversies. So it was assumed in Maglasang vs. Ople, (L-38813, April 29, 1975, 63 SCRA 508). It was explicitly announced in San Miguel Corporation vs. Secretary of Labor, (L-39195, May 16, 1975, 64 SCRA 56) the opinion being penned by Justice Aquino. Accordingly, cases of that character continue to find a place in our docket. (Cf. United Employees Union of Gelmart Industries vs. Noriel, L-40810, Oct. 3, 1975, 67 SCRA 267) The present suit is of that category. [Kapisanan ng mga Manggagawa sa La Suerte-Foita vs. Noriel, 77 SCRA 415-416].

A voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity. There is no reason why her decisions involving interpretation of law should be beyond this Court's review. Administrative officials are presumed to act in accordance with law and yet we do not hesitate to pass upon their work where a question of law is involved or where a showing of abuse of authority or discretion in their official acts is properly raised in petitions for *certiorari*.

On the merits of the petition, the petitioner questions the voluntary arbitrator's decision that under Presidential Decree No. 21, petitioner Ordanoso was properly dismissed by the respondent company without a written clearance from the Secretary of Labor, to wit:

“Nang itiniwalag si Ordanoso noong ika-4 ng Oktubre, 1974, ang batas na umiiral ukol sa pagtatanggal ng mga tauhan sa mga bahay-kalakal ay ang Presidential Decree No. 21 at mga alituntunin nito. Ayon sa ikalabing-isang talata ng nasabing batas, walang pangasiwaan na maaring magtanggap ng kanilang mga regular na empleado na nakapanungkulan na nang isang taon nang walang written clearance ng Kalihim ng Paggawa.

“Ano naman ang pakahulugan ng batas sa taguring regular na empleado? Ayon sa Implementing Instructions No. 1 na nagpapaliwanag sa nasabing ikalabing-isang talata ng P.D. No. 21, ang regular na empleado ay yaong manggagawa na nakapaglingkod na nang hindi kukulangin sa labingdalawang buwan sa loob ng nakaraang magkasunod na dalawang taon bago natanggal ang nasabing manggagawa, kahit anupaman ang taguri ng pangasiwaan sa kaniyang pagkakahirang. Alalaong baga, upang mataguriang regular na empleado, kailangan ay, una, ang manggagawa ay kawani na ng bahay-kalakal nang hindi kukulangin sa dalawang taon nang nakararaan, at ikalawa, siya ay nakapaglingkod na nang hindi kukulangin sa kabuuang labindalawang buwan na hindi kailangang magkakasunod sa loob noong nasabing dalawang taon bago naganap ang pagtitiwalag. Kapag mapatunayan ng isang manggagawa na ang dalawang pangangailangang iyan ay nasa kanya, siya ay masasabing regular na empleado at hindi siya kagyat na matatanggal nang walang written clearance ng Kagawaran ng Paggawa. Kung ang manggagawang itiniwalag ay kulang sa isang pangangailangang iyan, siya’y hindi regular na empleado at hindi na kailangan ang written clearance upang siya ay matanggal. Mapapansin na ang manggagawang higit na matagal ang panunungkulan ang siyang tinatangkilik ng batas.

“Matapos ang paliwanag na iyan, mamamalas na si Ordanoso ay hindi regular na empleado, sapagkat isang taon pa lamang siyang naglilingkod sa bahay-kalakal ng Oceanic commercial, Inc. Kung gayon, hindi kailangan ang written clearance upang siya ay matanggal ng pangasiwaan. Hindi nalalabag sa batas

ang gayong pagtitiwalag sa kanya nang walang written clearance.”

The petitioner takes exception to the voluntary arbitrator’s conclusions on the interpretation to be given Section 3 of Implementing Instruction No. 1 —

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“Pag-ukulan naman natin ng pansin ang isa pang matwid ng manananggol ng nag-uusig. Ayon raw sa Seksiyon 1(d) ng Alituntunin, kailangn rin ng ‘clearance’ lahat ng mga pagtanggap ng manggagawa na hindi nasasaklaw ng Seksiyon 3 nito. Ang Seksiyon 3 naman ay nililista ang mga pangyayari na kailangan lamang magharap ng ulat ang kompanya at hindi ‘clearance’. Isa na rito ay ang pagtiwalag ng empleado na kulang ng isang taon ang panunungkulan. Kung gayon raw, mapaghuhulo na kapag isang taon o higit nang isang taon ang paninilbihan, hindi nga ulat lamang ang kailangan kung hindi ‘clearance’ na.

“Ipinalabas na si Ordanoso ay nasasakop sa kalagayang iyan — na ang paglilingkod niya ay hindi kulang ng isang taon kaya’t hindi ulat lamang ang kailangan kung hindi ‘clearance’ na sapagkat isang taon o mahigit na siyang naglilingkod.

“Hindi naman tumpak ang pakahulugan ng kabilang panig sa batas na pinag-uukulan ng pansin. Malinaw at tiyak ang pangungusap ng Seksiyon 1 ng Alituntunin na ‘clearance’ ang kailangan kapag ang ititiwalag ay regular na empleyado na nanilbihan na ng isa man lamang taon. Kung paghambingin ang hulo lamang (implication) ng manananggol ng nag-uusig at ang tiyak na salita ng batas na ‘regular na empleado,’ ang lalong matimbang ay ang tiyak at tahas na pananalita. Hindi kailangan ng ‘clearance’ sa pagtanggap ng kahi’t sino na lamang na empleado na nakapaglingkod nang higit sa isang taon. Kailangang siya ay ‘regular na empleado’, lalu’t lalo na kapag ang empleado ay pangsamantala lamang o dili kaya’y ‘probationary.’ Siya ay dagling sinusubok pa lamang kaya’t kung sa panahon ng pagsusubok ay mapatunayang hindi sila mahusay, maaari silang tanggalin kaagad nang walang

‘clearance’ kapag humantong na sa katapusan ng napagkasunduang panahon. Ganyan na nga mismo ang ginawa ng bahay-kalakal na Oceanic Bic Manufacturing nang humantong na ang katapusan ng pangalawang anim na buwan at hindi sila nasiyahan sa paglilingkod ni Ordanoso.” (Emphasis supplied).

In ascertaining the mandatory nature and the ambit of the clearance requirements before termination of employees may be effected, we start with the statutory provision. found in Section 11 of Presidential Decree No. 21 which provides:

“No employers may shut down his establishment or dismiss or terminate the services of regular employees with at least one year of service without the written clearance of the Secretary of Labor.”

The pertinent provisions of the Implementing Instructions No. 1 are as follows:

“SECTION 1. When Clearance Required. — Every employer shall secure a written prior clearance from the Secretary of Labor for any of the following cases irrespective of whether the employer complies with the requirements of existing laws on the service of notice terminating the services of an employee and the payment of severance pay:

“(a) All dismissals, with or without just cause, of regular employees with at least one (1) year of service;

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“(d) Any termination of employment, suspension or lay-off not otherwise covered by Section 3 of these instructions.

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“SECTION 3. When Reports Required. — Every employer shall submit a report in the form and manner prescribed by this

issuance on the following termination of employment, suspension, lay-off or shutdown which may be effected by the employer without the prior clearance of the Secretary of Labor.

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“(b) All dismissals, suspensions, or lay-offs of employees with less than one (1) year of service;” (Emphasis supplied).

Under the definition in Section 1 of the Implementing Instructions, a regular employee is one with an aggregate service of at least twelve months for the last two consecutive years prior to the proposed termination. Ordanoso was not a regular employee but a probationary employee when his services were terminated. It appears clear from the law that he was not covered by the requirement of a written prior clearance from the Secretary of Labor. Neither was he covered by Section 3 of the implementing rules which requires a report, not a prior clearance, whenever an employee with less than one year of service is dismissed, suspended, or laid-off, Ordanoso had slightly more than one year of service.

There is a hiatus or gap in the clearance and reporting requirements provided by the administrative regulations. As a general rule, such a gap should be resolved in favor of the dismissed worker. For an employee who has served one year and one day not to have the minimal protection of at least a report on the cause of his dismissal while those who have served less than a year are entitled to such a report also appears incongruous. In this particular case, however, the poor job performance of Ordanoso is documented. The hearings before the respondent arbitrator establish that the respondent employer did not act arbitrarily or even wrongly in declaring Ordanoso's work performance as below the required ratings. During his first six months as a temporary employee when he should have exerted extra efforts to prove his capability for permanent employment, he was at the bottom or barely passing ratings of the required performance. He had to be placed on another six months' trial period as a probationary worker. During this second period, he dearly failed to make the grade. Ordanoso was given sufficient

warnings each time that his job performance was unsatisfactory. There is no issue of due process violations.

The petitioners concentrated on the failure of the employer to get a prior clearance from the Secretary of Labor and did not discuss the significance of the reporting requirements at all. Under the facts of this case and the applicable law, such a prior clearance was not necessary. It would also be most unfair to the employer to compel it to keep a below average worker simply because ambiguity in administrative requirements for clearances or reports depending on the length of service and employment status of a worker results in its not being instructed clearly to either report a dismissal already effected or seek prior clearance before the dismissal.

Considering the foregoing, we affirm the findings of the respondent voluntary arbitrator.

WHEREFORE, the instant Petition is **DISMISSED** for lack of merit. The Kapasiyahan of the Voluntary Arbitrator is **AFFIRMED**.

SO ORDERED.

Relova and De la Fuente, JJ., concur.
Melencio-Herrera, J., is on official leave.
Plana, J., concurs in the result.

SEPARATE OPINIONS

TEEHANKEE, J ., concurring:

I concur on the ground that petitioner Pablito Ordanoso was not a regular employee but a probationary employee and there was manifestly valid cause for his dismissal or separation as such. He had been given sufficient warnings about his unsatisfactory job performance and therefore his dismissal at the end of the second six

months trial period was for just cause in accordance with the terms of his probationary employment.

On the question, however, of whether his dismissal falls under section 3 of the Implementing Instructions quoted in the main opinion, whereby the employer is required to submit a report of his dismissal which may be affected without prior clearance, it is my view that the gap or hiatus in the clearance and reporting requirements should be resolved in his favor and those similarly circumstanced. In other words, the fact that he and other such probationary workers may have slightly more than one year of service would not mean that the employer would not have to file the corresponding report of their dismissal. As is aptly stated in the main opinion, “for an employee who has served one year and one day not to have the minimal protection of at least a report on the cause of his dismissal while those who have served less than a year are entitled to such a report (also) appears incongruous.” The employer’s failure to file such report would not, however, make his dismissal for just cause illegal in view of the vagueness or ambiguity of the Administrative Instructions. But the employer who fails to file such report may be subjected to such administrative penalties or sanctions as may be duly provided.