SUPREME COURT
SECOND DIVISION

PHILIPS SEMICONDUCTORS (PHILS.), INC.,
***Petitioner*,**

-versus-

G.R. No. 141717
April 14, 2004

ELOISA FADRIQUELA,
***Respondent*.**
x----------x

D E C I S I O N

CALLEJO, SR., *J.*:

Before us is a Petition for Review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52149 and its Resolution dated January 26, 2000 denying the motion for reconsideration therefrom.

The Case for the Petitioner

The petitioner Philips Semiconductors (Phils.), Inc. is a domestic corporation engaged in the production and assembly of semiconductors such as power devices, RF modules, CATV modules, RF and metal transistors and glass diodes. It caters to domestic and foreign corporations that manufacture computers, telecommunications equipment and cars.

Aside from contractual employees, the petitioner employed 1,029 regular workers. The employees were subjected to periodic performance appraisal based on output, quality, attendance and work attitude.[2] One was required to obtain a performance rating of at least 3.0 for the period covered by the performance appraisal to maintain good standing as an employee.

On May 8, 1992, respondent Eloisa Fadriquela executed a Contract of Employment with the petitioner in which she was hired as a production operator with a daily salary of P118. Her initial contract was for a period of three months up to August 8, 1992,[3] but was extended for two months when she garnered a performance rating of 3.15.[4] Her contract was again renewed for two months or up to December 16, 1992,[5] when she received a performance rating of 3.8.[6] After the expiration of her third contract, it was extended anew, for three months,[7] that is, from January 4, 1993 to April 4, 1993.

After garnering a performance rating of 3.4,[8] the respondent's contract was extended for another three months, that is, from April 5, 1993 to June 4, 1993.[9] She, however, incurred five absences in the month of April, three absences in the month of May and four absences in the month of June.[10] Line supervisor Shirley F. Velayo asked the respondent why she incurred the said absences, but the latter failed to explain her side. The respondent was warned that if she offered no valid justification for her absences, Velayo would have no other recourse but to recommend the non-renewal of her contract. The respondent still failed to respond, as a consequence of which her performance rating declined to 2.8. Velayo recommended to the petitioner that the respondent's employment be terminated due to habitual absenteeism,[11] in accordance with the Company Rules and Regulations.[12] Thus, the respondent's contract of employment was no longer renewed.

The Complaint of the Respondent

The respondent filed a complaint before the National Capital Region Arbitration Branch of the National Labor Relations Commission (NLRC) for illegal dismissal against the petitioner, docketed as NLRC Case No. NCR-07-04263-93. She alleged, inter alia, that she was

illegally dismissed, as there was no valid cause for the termination of her employment. She was not notified of any infractions she allegedly committed; neither was she accorded a chance to be heard. According to the respondent, the petitioner did not conduct any formal investigation before her employment was terminated. Furthermore, considering that she had rendered more than six months of service to the petitioner, she was already a regular employee and could not be terminated without any justifiable cause. Moreover, her absences were covered by the proper authorizations.[13]

On the other hand, the petitioner contended that the respondent had not been dismissed, but that her contract of employment for the period of April 4, 1993 to June 4, 1993 merely expired and was no longer renewed because of her low performance rating. Hence, there was no need for a notice or investigation. Furthermore, the respondent had already accumulated five unauthorized absences which led to the deterioration of her performance, and ultimately caused the non-renewal of her contract.[14]

The Ruling of the Labor Arbiter and the NLRC

On June 26, 1997, the Labor Arbiter rendered a decision dismissing the complaint for lack of merit, thus:

> IN THE LIGHT OF ALL THE FOREGOING, the complaint is hereby dismissed for lack of merit. The respondent is, however, ordered to extend to the complainant a send off award or financial assistance in the amount equivalent to one-month salary on ground of equity.[15]

The Labor Arbiter declared that the respondent, who had rendered less than seventeen months of service to the petitioner, cannot be said to have acquired regular status. The petitioner and the Philips Semiconductor Phils., Inc., Workers Union had agreed in their Collective Bargaining Agreement (CBA) that a contractual employee would acquire a regular employment status only upon completion of seventeen months of service. This was also reflected in the minutes of the meeting of April 6, 1993 between the petitioner and the union. Further, a contractual employee was required to receive a performance rating of at least 3.0, based on output, quality of work,

attendance and work attitude, to qualify for contract renewal. In the respondent's case, she had worked for the petitioner for only twelve months. In the last extension of her employment contract, she garnered only 2.8 points, below the 3.0 required average, which disqualified her for contract renewal, and regularization of employment. The Labor Arbiter also ruled that the respondent cannot justifiably complain that she was deprived of her right to notice and hearing because her line supervisor had asked her to explain her unauthorized absences. Accordingly, these dialogues between the respondent and her line supervisor can be deemed as substantial compliance of the required notice and investigation.

The Labor Arbiter declared, however, that the respondent had rendered satisfactory service for a period of one year, and since her infraction did not involve moral turpitude, she was entitled to one month's salary.

Aggrieved, the respondent appealed to the NLRC, which, on September 16, 1998, issued a Resolution affirming the decision of the Labor Arbiter and dismissing the appeal. The NLRC explained that the respondent was a contractual employee whose period of employment was fixed in the successive contracts of employment she had executed with the petitioner. Thus, upon the expiration of her contract, the respondent's employment automatically ceased. The respondent's employment was not terminated; neither was she dismissed.

The NLRC further ruled that as a contractual employee, the respondent was bound by the stipulations in her contract of employment which, among others, was to maintain a performance rating of at least 3.0 as a condition for her continued employment. Since she failed to meet the said requirement, the petitioner was justified in not renewing her contract.

The respondent filed a motion for reconsideration of the resolution, but on January 12, 1999, the NLRC resolved to deny the same.

The Case Before the Court of Appeals

Dissatisfied, the respondent filed a petition for certiorari under Rule 65 before the Court of Appeals, docketed as CA-G.R. SP No. 52149, for the reversal of the resolutions of the NLRC.

On October 11, 1999, the appellate court rendered a decision reversing the decisions of the NLRC and the Labor Arbiter and granting the respondent's petition. The CA ratiocinated that the bases upon which the NLRC and the Labor Arbiter founded their decisions were inappropriate because the CBA and the Minutes of the Meeting between the union and the management showed that the CBA did not cover contractual employees like the respondent. Thus, the seventeenth-month probationary period under the CBA did not apply to her. The CA ruled that under Article 280 of the Labor Code, regardless of the written and oral agreements between an employee and her employer, an employee shall be deemed to have attained regular status when engaged to perform activities which are necessary and desirable in the usual trade or business of the employer. Even casual employees shall be deemed regular employees if they had rendered at least one year of service to the employer, whether broken or continuous.

The CA noted that the respondent had been performing activities that were usually necessary and desirable to the petitioner's business, and that she had rendered thirteen months of service. It concluded that the respondent had attained regular status and cannot, thus, be dismissed except for just cause and only after due hearing. The appellate court further declared that the task of the respondent was hardly specific or seasonal. The periods fixed in the contracts of employment executed by the respondent were designed by the petitioner to preclude the respondent from acquiring regular employment status. The strict application of the contract of employment against the respondent placed her at the mercy of the petitioner, whose employees crafted the said contract.

According to the appellate court, the petitioner's contention that the respondent's employment on "as the need arises" basis was illogical. If such stance were sustained, the court ruled, then no employee would attain regular status even if employed by the petitioner for

seventeen months or more. The CA held that the respondent's sporadic absences upon which her dismissal was premised did not constitute valid justifiable grounds for the termination of her employment. The tribunal also ruled that a less punitive penalty would suffice for missteps such as absenteeism, especially considering that the respondent had performed satisfactorily for the past twelve months.

The CA further held that, contrary to the ruling of the Labor Arbiter, the dialogues between the respondent and the line supervisor cannot be considered substantial compliance with the requirement of notice and investigation. Thus, the respondent was not only dismissed without justifiable cause; she was also deprived of her right to due process.

The petitioner filed a motion for reconsideration of the decision but on January 26, 2000, the CA issued a resolution denying the same.

The Case Before the Court

The petitioner filed the instant petition and raised the following issues for the court's resolution: (a) whether or not the respondent was still a contractual employee of the petitioner as of June 4, 1993; (b) whether or not the petitioner dismissed the respondent from her employment; (c) if so, whether or not she was accorded the requisite notice and investigation prior to her dismissal; and, (d) whether or not the respondent is entitled to reinstatement and full payment of backwages as well as attorney's fees.

On the first issue, the petitioner contends that the policy of hiring workers for a specific and limited period on an "as needed basis," as adopted by the petitioner, is not new; neither is it prohibited. In fact, according to the petitioner, the hiring of workers for a specific and limited period is a valid exercise of management prerogative. It does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual course of business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. Hence, there is nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.

According to the petitioner, it had to resort to hiring contractual employees for definite periods because it is a semiconductor company and its business is cyclical in nature. Its operation, production rate and manpower requirements are dictated by the volume of business from its clients and the availability of the basic materials. It produces the products upon order of its clients and does not allow such products to be stockpiled. Peak loads due to cyclical demands increase the need for additional manpower for short duration. Thus, the petitioner often experiences short-term surges in labor requirements. The hiring of workers for a definite period to supplement the regular work force during the unpredictable peak loads was the most efficient, just and practical solution to the petitioner's operating needs.

The petitioner contends that the CA misapplied the law when it insisted that the respondent should be deemed a regular employee for having been employed for more than one year. The CA ignored the exception to this rule, that the parties to an employment contract may agree otherwise, particularly when the same is established by company policy or required by the nature of work to be performed. The employer has the prerogative to set reasonable standards to qualify for regular employment, as well as to set a reasonable period within which to determine such fitness for the job.

According to the petitioner, the conclusion of the CA that the policy adopted by it was intended to circumvent the respondent's security of tenure is without basis. The petitioner merely exercised a right granted to it by law and, in the absence of any evidence of a wrongful act or omission, no wrongful intent may be attributed to it. Neither may the petitioner be penalized for agreeing to consider workers who have rendered more than seventeen months of service as regular employees, notwithstanding the fact that by the nature of its business, the petitioner may enter into specific limited contracts only for the duration of its clients' peak demands. After all, the petitioner asserts, the union recognized the need to establish such training and probationary period for at least six months for a worker to qualify as a regular employee. Thus, under their CBA, the petitioner and the union agreed that contractual workers be hired as of December 31, 1992.

The petitioner stresses that the operation of its business as a semiconductor company requires the use of highly technical equipment which, in turn, calls for certain special skills for their use. Consequently, the petitioner, in the exercise of its best technical and business judgment, has set a standard of performance for workers as well as the level of skill, efficiency, competence and production which the workers must pass to qualify as a regular employee. In rating the performance of the worker, the following appraisal factors are considered by the respondent company as essential: (1) output (40%), (2) quality (30%), (3) attendance (15%), and (4) work attitude (15%). The rate of 3.0 was set as the passing grade. As testified to by the petitioner's Head of Personnel Services, Ms. Cecilia C. Mallari:

> A worker's efficiency and productivity can be established only after he has rendered service using Philips' equipment over a period of time. A worker has to undergo training, during which time the worker is taught the manufacturing process and quality control. After instructions, the worker is subjected to written and oral examinations to determine his fitness to continue with the training. The orientation and initial training lasts from three to four weeks before the worker is assigned to a specific work station. Thereafter, the worker's efficiency and skill are monitored.
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> x x x
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> Among the factors considered (before a contractual employee becomes a regular employee) are output, quality, attendance, and work attitude, which includes cooperation, discipline, housekeeping and inter-office employee relationship. These factors determine the worker's efficiency and productivity.[16]

The Court's Ruling

In ruling for the respondent, the appellate court applied Article 280 of the Labor Code of the Philippines, as amended, which reads:

> Art. 280. Regular and Casual Employment. – The provisions of written agreement to the contrary notwithstanding and

> regardless of the oral argument 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.
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> 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 activity exists.

The appellate court held that, in light of the factual milieu, the respondent was already a regular employee on June 4, 1993. Thus:

> It is apparent from the factual circumstances of this case that the period of employment has been imposed to preclude acquisition of tenurial security by petitioner. It bears stressing that petitioner's original contract of employment, dated May 8, 1992 to August 8, 1992, had been extended through several contracts – one from October 13, 1992 to December 16, 1992, another from January 7, 1993 to April 4, 1993, and, lastly, from April 5, 1993 to June 4, 1993.
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> The fact that the petitioner had rendered more than one year of service at the time of his (sic) dismissal only shows that she is performing an activity which is usually necessary and desirable in private respondent's business or trade. The work of petitioner is hardly "specific" or "seasonal." The petitioner is, therefore, a regular employee of private respondent, the provisions of their contract of employment notwithstanding. The private respondent's prepared employment contracts placed petitioner at the mercy of those who crafted the said contract.[17]

We agree with the appellate court.

Article 280 of the Labor Code of the Philippines was emplaced in our statute books to prevent the circumvention by unscrupulous employers of the employee's right to be secure in his tenure by indiscriminately and completely ruling out all written and oral agreements inconsistent with the concept of regular employment defined therein. The language of the law manifests the intent to protect the tenurial interest of the worker who may be denied the rights and benefits due a regular employee because of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual or temporary status for as long as it is convenient to it.[18] In tandem with Article 281 of the Labor Code, Article 280 was designed to put an end to the pernicious practice of making permanent casuals of our lowly employees by the simple expedient of extending to them temporary or probationary appointments, ad infinitum.[19]

The two kinds of regular employees under the law are (1) those engaged to perform activities which are necessary or desirable in the usual business or trade of the employer; and (2) those casual employees who have rendered at least one year of service, whether continuous or broken, with respect to the activities in which they are employed.[20] The primary standard to determine a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer.[21] If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business of the employer. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.[22] The law does not provide the qualification that the employee must first be issued a regular appointment or must be declared as such before he can acquire a regular employee status.[23]

In this case, the respondent was employed by the petitioner on May 8, 1992 as production operator. She was assigned to wirebuilding at the transistor division. There is no dispute that the work of the respondent was necessary or desirable in the business or trade of the petitioner.[24] She remained under the employ of the petitioner without any interruption since May 8, 1992 to June 4, 1993 or for one (1) year and twenty-eight (28) days. The original contract of employment had been extended or renewed for four times, to the same position, with the same chores. Such a continuing need for the services of the respondent is sufficient evidence of the necessity and indispensability of her services to the petitioner's business.[25] By operation of law, then, the respondent had attained the regular status of her employment with the petitioner, and is thus entitled to security of tenure as provided for in Article 279 of the Labor Code which reads:

> Art. 279. Security of Tenure. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The respondent's re-employment under contracts ranging from two to three months over a period of one year and twenty-eight days, with an express statement that she may be reassigned at the discretion of the petitioner and that her employment may be terminated at any time upon notice, was but a catch-all excuse to prevent her regularization. Such statement is contrary to the letter and spirit of Articles 279 and 280 of the Labor Code. We reiterate our ruling in Romares vs. NLRC:[26]

> Succinctly put, in rehiring petitioner, employment contracts ranging from two (2) to three (3) months with an express statement that his temporary job/service as mason shall be terminated at the end of the said period or upon completion of the project was obtrusively a convenient subterfuge utilized to

> prevent his regularization. It was a clear circumvention of the employee's right to security of tenure and to other benefits. It, likewise, evidenced bad faith on the part of PILMICO.
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> The limited period specified in petitioner's employment contract having been imposed precisely to circumvent the constitutional guarantee on security of tenure should, therefore, be struck down or disregarded as contrary to public policy or morals. To uphold the contractual arrangement between PILMICO and petitioner would, in effect, permit the former to avoid hiring permanent or regular employees by simply hiring them on a temporary or casual basis, thereby violating the employee's security of tenure in their jobs.[27]

Under Section 3, Article XVI of the Constitution, it is the policy of the State to assure the workers of security of tenure and free them from the bondage of uncertainty of tenure woven by some employers into their contracts of employment. The guarantee is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood and those of his dependents. When a person loses his job, his dependents suffer as well. The worker should therefor be protected and insulated against any arbitrary deprivation of his job.[28]

We reject the petitioner's general and catch-all submission that its policy for a specific and limited period on an "as the need arises" basis is not prohibited by law or abhorred by the Constitution; and that there is nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.

The petitioner's reliance on our ruling in Brent School, Inc. vs. Zamora[29] and reaffirmed in subsequent rulings is misplaced, precisely in light of the factual milieu of this case. In the Brent School, Inc. case, we ruled that the Labor Code does not outlaw employment contracts on fixed terms or for specific period. We also ruled that the decisive determinant in "term employment" should not be the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of their employment relationship. However, we also emphasized in the same case that where from the circumstances it is

apparent that the 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 and morals. In the Romares vs. NLRC case, we cited the criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
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> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[30]

None of these criteria has been met in this case. Indeed, in Pure Foods Corporation vs. NLRC,[31] we sustained the private respondents' averments therein, thus:

> It could not be supposed that private respondents and all other so-called "casual" workers of the petitioner KNOWINGLY and VOLUNTARILY agreed to the 5-month employment contract. Cannery workers are never on equal terms with their employers. Almost always, they agree to any terms of an employment contract just to get employed considering that it is difficult to find work given their ordinary qualifications. Their freedom to contract is empty and hollow because theirs is the freedom to starve if they refuse to work as casual or contractual workers. Indeed, to the unemployed, security of tenure has no value. It could not then be said that petitioner and private respondents "dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.[32]

We reject the petitioner's submission that it resorted to hiring employees for fixed terms to augment or supplement its regular employment "for the duration of peak loads" during short-term

surges to respond to cyclical demands; hence, it may hire and retire workers on fixed terms, ad infinitum, depending upon the needs of its customers, domestic and international. Under the petitioner's submission, any worker hired by it for fixed terms of months or years can never attain regular employment status. However, the petitioner, through Ms. Cecilia C. Mallari, the Head of Personnel Services of the petitioner, deposed that as agreed upon by the Philips Semiconductor (Phils.), Inc. Workers Union and the petitioner in their CBA, contractual employees hired before December 12, 1993 shall acquire regular employment status after seventeen (17) months of satisfactory service, continuous or broken:

> 5. Q: What was the response of Philips' regular employees to your hiring of contractual workers in the event of peak loads?
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> A: Philip's regular rank-and-file employees, through their exclusive bargaining agent, the Philips Semiconductors (Phils.), Inc. Workers Union ("Union"), duly recognized the right of Philips, in its best business judgment, to hire contractual workers, and excluded these workers from the bargaining unit of regular rank-and-file employees.

Thus, it is provided under the Collective Bargaining Agreement, dated May 16, 1993, between Philips and the Union that:

> ARTICLE I
> UNION RECOGNITION
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> "Section 1. Employees Covered: The Company hereby recognizes the Union as the exclusive bargaining representative of the following regular employees in the Factory at Las Piñas, Metro Manila: Janitors, Material Handlers, Store helpers, Packers, Operators, QA Inspectors, Technicians, Storekeepers, Production Controllers, Inventory Controllers, Draftsmen, Machinists, Sr. Technician, Sr. QA Inspectors, Controllers, Sr. Draftsmen, and Servicemen, except probationary and Casual/Contractual Employees, all of whom do not belong to the bargaining unit."

A copy of the CBA, dated May 16, 1993, was attached as Annex "1" to Philip's Position Paper, dated August 30, 1993.

> 6. Q: May a contractual employee become a regular employee of the Philips?
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> A: Yes. Under the agreement, dated April 6, 1993, between the Union and Philips, contractual workers hired before 12 December 1993, who have rendered seventeen months of satisfactory service, whether continuous or broken, shall be given regular status. The service rendered by a contractual employee may be broken depending on production needs of Philips as explained earlier.
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> A copy of the Minutes of the Meeting ("Minutes," for brevity), dated April 6, 1993, evidencing the agreement between Philips and the Union has been submitted as Annex "2" of Philips' Position Paper.[33]

In fine, under the CBA, the regularization of a contractual or even a casual employee is based solely on a satisfactory service of the employee/worker for seventeen (17) months and not on an "as needed basis" on the fluctuation of the customers' demands for its products. The illogic of the petitioner's incongruent submissions was exposed by the appellate court in its assailed decision, thus:

> The contention of private respondent that petitioner was employed on "as needed basis" because its operations and manpower requirements are dictated by the volume of business from its client and the availability of the basic materials, such that when the need ceases, private respondent, at its option, may terminate the contract, is certainly untenable. If such is the case, then we see no reason for private respondent to allow the contractual employees to attain their regular status after they rendered service for seventeen months. Indubitably, even after the lapse of seventeen months, the operation of private respondent would still be dependent on the volume of business from its client and the availability of basic materials. The point is, the operation of every business establishment naturally depends on the law of supply and demand. It cannot be

> invoked as a reason why a person performing an activity, which is usually desirable and necessary in the usual business, should be placed in a wobbly status. In reiteration, the relation between capital and labor is not merely contractual. It is so impressed with public interest that labor contracts must yield to the common good.
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> While at the start, petitioner was just a mere contractual employee, she became a regular employee as soon as she had completed one year of service. It is not difficult to see that to uphold the contractual arrangement between private respondent and petitioner would, in effect, be to permit employers to avoid the necessity of hiring regular or permanent employees. By hiring employees indefinitely on a temporary or casual status, employers deny their right to security of tenure. This is not sanctioned by law.[34]

Even then, the petitioner's reliance on the CBA is misplaced. For, as ratiocinated by the appellate court in its assailed decision:

> Obviously, it is the express mandate of the CBA not to include contractual employees within its coverage. Such being the case, we see no reason why an agreement between the representative union and private respondent, delaying the regularization of contractual employees, should bind petitioner as well as other contractual employees. Indeed, nothing could be more unjust than to exclude contractual employees from the benefits of the CBA on the premise that the same contains an exclusionary clause while at the same time invoke a collateral agreement entered into between the parties to the CBA to prevent a contractual employee from attaining the status of a regular employee.
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> This cannot be allowed.
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> The CBA, during its lifetime, constitutes the law between the parties. Such being the rule, the aforementioned CBA should be binding only upon private respondent and its regular employees who were duly represented by the bargaining union. The agreement embodied in the "Minutes of Meeting" between the

> representative union and private respondent, providing that contractual employees shall become regular employees only after seventeen months of employment, cannot bind petitioner. Such a provision runs contrary to law not only because contractual employees do not form part of the collective bargaining unit which entered into the CBA with private respondent but also because of the Labor Code provision on regularization. The law explicitly states that an employee who had rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee. The period set by law is one year. The seventeen months provided by the "Minutes of Meeting" is obviously much longer. The principle is well settled that the law forms part of and is read into every contract without the need for the parties expressly making reference to it.[35]

On the second and third issues, we agree with the appellate court that the respondent was dismissed by the petitioner without the requisite notice and without any formal investigation. Given the factual milieu in this case, the respondent's dismissal from employment for incurring five (5) absences in April 1993, three (3) absences in May 1993 and four (4) absences in June 1993, even if true, is too harsh a penalty. We do agree that an employee may be dismissed for violation of reasonable regulations/rules promulgated by the employer. However, we emphasized in PLDT vs. NLRC[36] that:

> Dismissal is the ultimate penalty that can be meted to an employee. Where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not to be visited with a consequence so severe such as dismissal from employment. For, the Constitution guarantees the right of workers to "security of tenure." The misery and pain attendant to the loss of jobs then could be avoided if there be acceptance of the view that under certain circumstances of the case the workers should not be deprived of their means of livelihood.[37]

Neither can the conferences purportedly held between the respondent and the line supervisor be deemed substantial compliance with the requirements of notice and investigation. We are in full accord with

the following ratiocinations of the appellate court in its assailed decision:

> As to the alleged absences, we are convinced that the same do not constitute sufficient ground for dismissal. Dismissal is just too stern a penalty. No less than the Supreme Court mandates that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. (Meracap vs. International Ceramics Manufacturing Co., Inc., 92 SCRA 412 [1979]). Besides, the fact that petitioner was repeatedly given a contract shows that she was an efficient worker and, therefore, should be retained despite occasional lapses in attendance. Perfection cannot, after all, be demanded. (Azucena, The Labor Code, Vol. II, 1996 ed., [p.] 680)

Finally, we are convinced that it is erroneous for the Commission to uphold the following findings of the Labor Arbiter, thus:

> "Those dialogues of the complainant with the Line Supervisor, substantially, stand for the notice and investigation required to comply with due process. The complainant did not avail of the opportunity to explain her side to justify her shortcomings, especially, on absences. She cannot now complain about deprivation of due process."

Of course, the power to dismiss is a formal prerogative of the employer. However, this is not without limitations. The employer is bound to exercise caution in terminating the services of his employees. Dismissals must not be arbitrary and capricious. Due process must be observed in dismissing an employee because it affects not only his position but also his means of livelihood. Employers should respect and protect the rights of their employees which include the right to labor. (Liberty Cotton Mills Workers Union vs. Liberty Cotton Mills, Inc., 90 SCRA 391 [1979])

To rule that the mere dialogue between private respondent and petitioner sufficiently complied with the demands of due process is to disregard the strict mandate of the law. A conference is not a substitute for the actual observance of notice and hearing. (Pepsi

Cola Bottling Co., Inc. vs. National Labor Relations Commission, 210 SCRA 277 [1992]) The failure of private respondent to give petitioner the benefit of a hearing before she was dismissed constitutes an infringement on her constitutional right to due process of law and not to be denied the equal protection of the laws. The right of a person to his labor is deemed to be his property within the meaning of the constitutional guarantee. This is his means of livelihood. He cannot be deprived of his labor or work without due process of law. (Batangas Laguna Tayabas Bus Co. vs. Court of Appeals, 71 SCRA 470 [1976])

All told, the court concludes that petitioner's dismissal is illegal because, first, she was dismissed in the absence of a just cause, and second, she was not afforded procedural due process. In pursuance of Article 279 of the Labor Code, we deem it proper to order the reinstatement of petitioner to her former job and the payment of her full backwages. Also, having been compelled to come to court to protect her rights, we grant petitioner's prayer for attorney's fees.[38]

IN LIGHT OF ALL THE FOREGOING, the assailed decision of the appellate court in CA-G.R. SP No. 52149 is **AFFIRMED**. The petition at bar is **DENIED**. Costs against the petitioner.

SO ORDERED.

Puno, *J.*, *(Chairman)*, Quisumbing, Austria-Martinez, and Tinga, *JJ.*, concur.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili with Associate Justices Renato C. Dacudao and Andres B. Reyes, Jr. concurring; promulgated on October 11, 1999; Rollo, pp. 40-54.
[2] Rollo, p. 83.
[3] Id. at 140.
[4] Id. at 82.
[5] Id. at 141.
[6] Id. at 84.
[7] Id. at 142.
[8] Id. at 86.
[9] Id. at 142.
[10] Id. at 100.

[11] Id. at 88.
[12] Exhibit "9-A."

DESCRIPTION OF OFFENSES	SCHEDULE OF PENALTIES				
	1st	2nd	3rd	4th	5th
3.6 a) *Habitual tardiness* – an employee is tardy or late if he punches in his time-card after the start of his work hours. Tardiness is habitual if an employee is late four (4) times or more in one month. For the purpose of counting violations under Section 9, Rule V, habitual tardiness shall be considered as one offense.	Warning	2 days susp.	3 days susp.	1 mo. susp.	DM
b) *Absenteeism (AWOL)* – Each day of AWOL shall be considered as one separate offense.	Warning	2 days susp.	3 days susp.	1 mo. susp.	DM

[13] Rollo, pp. 143-149.
[14] Id. at 108-122.
[15] Id. at 157.
[16] Id. at 60-61.
[17] Id. at 48-49.
[18] Romares vs. National Labor Relations Commission, 294 SCRA 411 (1998).
[19] Bernardo vs. NLRC, 310 SCRA 186 (1999).
[20] Pure Foods Corporation vs. NLRC, 283 SCRA 133 (1997).
[21] Leon vs. NLRC, 176 SCRA 615 (1989).
[22] Ibid.
[23] Id.
[24] Aurora Land Projects Corporation vs. NLRC, 266 SCRA 48 (1997).
[25] Romares vs. NLRC, supra.
[26] Supra at note 18.
[27] Id. at 420.
[28] Philippine Geothermal, Inc. vs. NLRC, 189 SCRA 211 (1990).
[29] 181 SCRA 702 (1990).
[30] Supra at note 18.
[31] Supra at note 20.
[32] Id. at 142.
[33] Rollo, pp. 59-60.
[34] Id. at 49-50.
[35] Id. at 46-47.
[36] 303 SCRA 9 (1999).
[37] Id. at 15.
[38] Rollo, pp. 51-53.