

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**TACLOBAN SAGKAHAN RICE and
CORN MILLS, CO., and/or TAN CHENG
PIAN (alias PIANA), Owner,
*Petitioners,***

-versus-

**G.R. No. 73806
March 21, 1990**

**THE HONORABLE NATIONAL LABOR
RELATIONS COMMISSION, SECOND
DIVISION, THE HONORABLE
EXECUTIVE LABOR ARBITER,
REGIONAL ARBITRATION BRANCH
NO. VIII, NATIONAL LABOR
RELATIONS COMMISSION,
TACLOBAN CITY, and CARLITO
CODILAN, MAXIMO DOCENA,
TEOFILO TRANGRIA, EUGENIO GO,
and, REYNALDO TULIN,
*Respondents.***

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DECISION

PARAS, J.:

Petitioners assail the Resolution dated December 28, 1984 of public respondent Commission in NLRC Case No. 0219-83 affirming in toto the Decision dated April 11, 1984 of Executive Labor Arbiter Armando Polintan, which latter decision directed petitioners to pay private respondents separation pay.

Petitioners submit these allegations:

It appears that private respondents, before their termination on July 25, 1983, were all regular employees of petitioners. Carlito Codilan and Maximo Docena started working in 1958; Eugenio Go in 1961; Teofilo Trangria in 1968; and Reynaldo Tulin in 1977. On July 25, 1983, petitioner Tan Cheng Pian alias "Piana" told private respondents "to look for another job" without giving any reason.

Private respondents thus filed their complaint for illegal dismissal with the Regional Office, NLRC at Tacloban City on August 23, 1983. At the hearing of September 28, 1983 private respondents, who had been employed elsewhere, demanded payment of separation pay instead of seeking reinstatement.

After submission of private respondents' joint affidavit and petitioners' position paper, Executive Labor Arbiter Armando Polintan rendered the Decision of April 11, 1984 ordering petitioners to pay private respondents their separation pay as specifically indicated in the said decision.

Petitioners appealed the above decision to the respondent Commission which dismissed the appeal and affirmed the decision in its Resolution of December 28, 1984. Petitioners moved for reconsideration of the aforesaid resolution which the NLRC denied in the questioned Resolution of September 20, 1985.

Hence, this petition for *certiorari*.

Petitioners submit these arguments.

1. The resolution is against the law and has no factual basis insofar as it holds that the decision of petitioner to temporarily stop the partnership's milling operation due to

lack of palay on July 25, 1983, and to temporarily lay-off and/or consider on leave of absence without pay herein private respondents, amounts to “illegal dismissal.”

The Labor Arbiter’s finding that petitioners became liable for the payment of termination pay is not justified because private respondents were orally advised by petitioner Tan Cheng Pian that the milling operation would be temporarily stopped for lack of palay to be milled for the season and such temporary stoppage of operation is a right which is perfectly within his management prerogative to preserve the existence of the company.

Petitioners also aver that private respondents are seasonal workers whose work with the mill solely depends on the availability of items or products to be worked upon in the mill and who could, therefore, be temporarily laid-off or considered on leave of absence without pay; and, that the operation of a rice and corn mill is inherently seasonal in nature so much so that in its normal operation, workers are either temporarily laid-off and/or deemed on leave of absence without pay during off-milling season and sometimes, even during on-milling season as was done in this case.

2. The resolution is against the law and proven facts insofar as it holds that the continued and deliberate refusal of private respondents to return to work despite petitioner’s offer in good faith, is tenable under the law, and not constitutive of voluntary abandonment of work.

Petitioners contend that private respondents continued and deliberate refusal to return to work (relative to the offer of petitioner to re-hire them) negates their stand that they were illegally dismissed; that by such refusal to return to work, private respondents are not only estopped from claiming separation pay but are also barred from seeking reinstatement; and that the concept of separation pay is based on the involuntary loss of work by a worker and not on the worker’s voluntary refusal to return to work.

3. The Resolution has no legal and factual basis insofar as it holds that petitioner is liable to pay separation pay to private respondents.

Public respondents failed to abide by the law and applicable jurisprudence when they ruled that petitioner Tan Cheng Pian was not acting within his management prerogatives when he notified private respondents that the partnership's milling operation would be temporarily stopped due to lack of palay, and that in the meantime, they would be considered on leave of absence without pay, and they would be recalled when the exigencies of the business would warrant such recall.

Petitioners thus pray for the setting aside of the subject resolution and the rendition of another decision declaring private respondents to have voluntarily abandoned their work with petitioners without benefits.

Respondents, however, argue along these lines:

1. Contrary to petitioner's assertion, private respondents' employment does not fall under any of the two (2) exceptions provided in Art. 281 of the Labor Code, to wit: (a) 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 engagement of the employee; or (b) where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
2. Private respondents were illegally dismissed because their termination was not done conformably with the provisions of Art. 283 of the Labor Code. Under said article, an employee may be lawfully terminated on account of the closure or cessation of operation of the establishment or due to retrenchment to prevent financial losses.

3. The refusal of private respondents to accept petitioner's offer of reinstatement does not constitute abandonment of work. The offer was an attempt to escape liability from illegally terminating the former.

We do not find merit in petitioners' position.

Before We go into the issue of whether or not private respondents were illegally dismissed by petitioners, We must first determine the real status of the former as employees.

The pertinent provision of the Labor Code reads:

“ART. 280. — Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement 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.

“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 actually exists.”

The evidence on record has established that private respondents Carlito Codilan and Maximo Docena had been working for petitioners for 25 years, respondent Eugenio Go for 22 years, respondent Teofilo Trangria for 15 years and respondent Reynaldo Tulin for 6 years. Aside from their lengthy service, it should be noted that private respondents' employment was not fixed for a specific project or

undertaking the completion or termination of which has been determined at the time of their appointment or hiring. Likewise, it must be borne in mind that petitioners never rebutted private respondents' claim that they performed activities usually necessary or desirable in the usual business of the former.

Furthermore, the services performed or to be performed by private respondents are not seasonal in nature. While it may be true that the harvest of palay is seasonal, the milling operations which is the main business of petitioners are not seasonal. The fact is that big rice mills such as the one owned by petitioners continue to operate and do business throughout the year even if there are only two or three harvest seasons within the year. It is a common practice among farmers and rice dealers to store their palay and to have the same milled as the need arises. Thus, the milling operations have no let-up.

Private respondents have justifiably argued thus:

“The contention of petitioner in saying that respondents/appellees belong to petitioner's pool of casual workers who work only when there is work to be done at the mills particularly during the milling season is indeed untenable for petitioner had been engaged in the rice and corn mill business way back in 1949 whose capitalization involves millions of pesos. The work done by the palay mill for the capitalization of petitioner is so much that it keeps its employees working the whole year round by buying the palay during harvest season for milling. Rice and corn milling business is not seasonal in nature, contemplated in the Labor Code. It is the planting and harvesting of rice that is seasonal.”

And finally, considering the number of years that they have worked for petitioners (the lowest is 6 years), private respondents have long attained the status of regular employees as defined under Art. 280 of the Labor Code.

We now face the question of whether or not private respondents were illegally dismissed by petitioners. We sustain private respondents' claim that they were dismissed illegally. For, their termination does

not fall under any of the just causes provided for in Arts. 282 and 283 of the Labor Code which read as follows:

“Art. 282. Termination of employer. — An employer may terminate an employment for any of the following just causes:

“(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

“(b) Gross and habitual neglect by the employee of his duties;

“(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

“(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

“(e) Other causes analogous to the foregoing. (As amended by Batas Pambansa Blg. 130.)”

“ART. 283. — Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereto. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or

undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (As amended by Batas Pambansa Blg. 130).”

Under Art. 283, an employer may terminate the employment of any employee by reason of the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closure or cessation of operation of the establishment or undertaking.

In the case at bar, it has not been established that petitioners’ rice mill has completely ceased operation. Neither has it been shown that petitioners’ business was losing or having financial reverses in its operations that necessitated reduction in the work force. The evidence on record thus reveals that private respondents were illegally terminated. This is evident from the fact that on July 25, 1983, private respondents were told by petitioner Tan Cheng Pian to stop working and look for other jobs without giving any valid reason for the termination.

Note that petitioners’ lame excuse that the mill’s operation had to stop “for lack of palay” was at once negated by the fact that petitioner Tan Cheng Pian offered to reinstate private respondents after the latter had filed their complaint for illegal dismissal. He would not have offered reinstatement had the rice mill been suffering from financial reverses which would necessitate retrenchment.

This Court ruled in the case of *Unitran Bachelor Express, Inc. vs. Olvis* citing the case of *Bachiller vs. NLRC*, 98 SCRA 393, (165 SCRA 267) that “while the right to dismiss or lay-off an employee is management’s prerogative, it must be done without abuse of discretion, for what is at stake is not only private respondents’ position but also their means of livelihood.”

The refusal of private respondents to return to work despite petitioners’ offer of reinstatement does not constitute voluntary abandonment of work.

It must be borne in mind that petitioners' offer to reinstate private respondents was obviously an attempt to escape liability from illegally terminating the latter. Note that petitioners' offer was made after private respondents had already filed their complaints for illegal dismissal. And besides, the latter were already gainfully employed when petitioners' offer was made, and hence, reinstatement was no longer the remedy. Having been dismissed without lawful cause, the only legal recourse is to obtain the payment of separation pay.

Thus, in the case of Santos vs. NLRC, et al. (No. 76991, 166 SCRA 759), this Court ruled that "respondent's allegation of abandonment is further belied by the fact that after learning that his services had been terminated, petitioner filed the complaint for illegal dismissal. Abandonment of work is inconsistent with the filing of said complaint."

Thus, too, in Flexo Manufacturing Corporation vs. NLRC (No. 55971, 135 SCRA 145) this Court declared that it is illogical to say that an employee who forthwith took steps to protest his lay-off has abandoned his work.

WHEREFORE, the Resolution dated December 28, 1987 of respondent NLRC is hereby **AFFIRMED** and this Petition is accordingly hereby **DISMISSED**.

SO ORDERED.

Melencio-Herrera, J., (Chairman), Padilla, Sarmiento and Regalado, JJ., concur.