SUPREME COURT
SECOND DIVISION

JAIME D. VIERNES, CARLOS R. GARCIA, BERNARD BUSTILLO, DANILO C. BALANAG, FERDINAND DELLA, EDWARD A. ABELLERA, ALEXANDER ABANAG, DOMINGO ASIA, FRANCISCO BAYUGA, ARTHUR M. ORIBELLO, BUENAVENTURA DE GUZMAN, JR., ROBERT A. ORDOÑO, BERNARD V. JULARBAL, IGNACIO C. ALINGBAS and LEODEL N. SORIANO,
***Petitioners*,**

-versus-

G.R. No. 108405
April 4, 2003

NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), and BENGUET ELECTRIC COOPERATIVE, INC. (BENECO),
***Respondents*.**
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D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before us is a Petition for *Certiorari* seeking to annul the decision promulgated by the National Labor Relations Commission (NLRC) on July 2, 1992 in NLRC CA No. L-000384-92,[1] and its resolution dated September 24, 1992 denying petitioners' motion for reconsideration.

The factual background of this case, as summarized by the Labor Arbiter, is as follows:

> Fifteen (15) in all, these are consolidated cases for illegal dismissal, underpayment of wages and claim for indemnity pay against a common respondent, the Benguet Electric Cooperative, Inc., (BENECO for short) represented by its Acting General Manager, Gerardo P. Versoza.

Complainants' services as meter readers were contracted for hardly a month's duration, or from October 8 to 31, 1990. Their employment contracts, couched in identical terms, read:

> You are hereby appointed as METER READER (APPRENTICE) under BENECO-NEA Management with compensation at the rate of SIXTY-SIX PESOS AND SEVENTY-FIVE CENTAVOS (P66.75) per day from October 08 to 31, 1990. (Annex 'B', Complainants' Joint Position Paper)

The said term notwithstanding, the complainants were allowed to work beyond October 31, 1990, or until January 2, 1991. On January 3, 1991, they were each served their identical notices of termination dated December 29, 1990. The same read:

> Please be informed that effective at the close of office hours of December 31, 1990, your services with the BENECO will be terminated. Your termination has nothing to do with your performance. Rather, it is because we have to retrench on personnel as we are already overstaffed.
>
> X x x. (Annex 'C', CJPP)

On the same date, the complainants filed separate complaints for illegal dismissal. And following the amendment of said complaints, they submitted their joint position paper on April 4, 1991. Respondent filed its position paper on April 2, 1991.

It is the contention of the complainants that they were not apprentices but regular employees whose services were illegally and unjustly terminated in a manner that was whimsical and capricious. On the other hand, the respondent invokes Article 283 of the Labor Code in defense of the questioned dismissal.[2]

On October 18, 1991, the Labor Arbiter rendered a decision, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Dismissing the complaints for illegal dismissal filed by the complainants for lack of merit. However in view of the offer of the respondent to enter into another temporary employment contract with the complainants, the respondent is directed to so extend such contract to each complainant, with the exception of Jaime Viernes, and to pay each the amount of P2,590.50, which represents a month's salary, as indemnity for its failure to give complainants the 30-day notice mandated under Article 283 of the Labor Code; or, at the option of the complainants, to pay each financial assistance in the amount of P5,000.00 and the P2,590.50 above-mentioned.
>
> 2. Respondent is also ordered:
>
> A. To pay complainants the amount representing underpayment of their wages:
>
> a) Jaime Viernes, Carlos Garcia, Danilo Balanag, Edward Abellera, Francisco Bayuga, Arthur Oribello, Buenaventura de Guzman, Jr., Robert Ordoño, Bernard

Jularbal and Leodel Soriano, P1,994.25 each;

b) Bernard Bustillo and Domingo Asia, P1,838.50 each; and

c) Ferdinand Delta, Alexander Abanag and Ignacio Alingbas, P1,816.25 each.

B. To extend to complainant Jaime Viernes an appointment as regular employee for the position of meter reader, the job he held prior to his termination, and to pay him P2,590.50 as indemnity, plus the underpayment of his wages as above stated.

C. To pay P7,000.00 as and for attorney's fees.

No damages.

SO ORDERED.[3]

Aggrieved by the Labor Arbiter's decision, the complainants and the respondent filed their respective appeals to the NLRC.

On July 2, 1992, the NLRC modified its judgment, to wit:

WHEREFORE, premises considered, judgment is hereby rendered modifying the appealed decision by declaring complainants' dismissal illegal, thus ordering their reinstatement to their former position as meter readers or to any equivalent position with payment of backwages limited to one year and deleting the award of indemnity and attorney's fees. The award of underpayment of wages is hereby AFFIRMED.

SO ORDERED.[4]

On August 27, 1992, complainants filed a Motion for Clarification and Partial Reconsideration.[5] On September 24, 1992, the NLRC issued a resolution denying the complainants' motion for reconsideration.[6]

Hence, complainants filed herein petition.

Private respondent BENECO filed its Comment; the Office of the Solicitor General (OSG) filed a Manifestation and Motion in Lieu of Comment; public respondent NLRC filed its own Comment; and petitioners filed their Manifestation and Motion In Lieu of Consolidated Reply. Public respondent NLRC, herein petitioners, and private respondent filed their respective memoranda, and the OSG, its Manifestation in 1994.

Pursuant to our ruling in Rural Bank of Alaminos Employees Union vs. NLRC,[7] to wit:

> in the decision in the case of St. Martin Funeral Homes vs. National Labor Relations Commission, G.R. No. 130866, promulgated on September 16, 1998, this Court pronounced that petitions for certiorari relating to NLRC decisions must be filed directly with the Court of Appeals, and labor cases pending before this Court should be referred to the appellate court for proper disposition. However, in cases where the Memoranda of both parties have been filed with this Court prior to the promulgation of the St. Martin decision, the Court generally opts to take the case itself for its final disposition.[8]

and considering that the parties have filed their respective memoranda as of 1994, we opt to resolve the issues raised in the present petition.

The parties raised the following issues:

1. Whether the respondent NLRC committed grave abuse of discretion in ordering the reinstatement of petitioners to their former position as meter readers on probationary status in spite of its finding that they are regular employees under Article 280 of the Labor Code.

2. Whether the respondent NLRC committed grave abuse of discretion in limiting the backwages of petitioners to one year only in spite of its finding that they were illegally dismissed, which is contrary to the mandate of full backwages until actual reinstatement but not to exceed three years.

3. Whether the respondent NLRC committed grave abuse of discretion in deleting the award of indemnity pay which had become final because it was not appealed and in deleting the award of attorney's fees because of the absence of a trial-type hearing.

4. Whether the mandate of immediately executory on the reinstatement aspect even pending appeal as provided in the decision of Labor Arbiters equally applies in the decision of the National Labor Relations Commission even pending appeal, by means of a motion for reconsideration of the order reinstating a dismissed employee or pending appeal because the case is elevated on certiorari before the Supreme Court.[9]

We find the petition partly meritorious.

As to the first issue: We sustain petitioners' claim that they should be reinstated to their former position as meter readers, not on a probationary status, but as regular employees.

Reinstatement means restoration to a state or condition from which one had been removed or separated.[10] In case of probationary employment, Article 281 of the Labor Code requires the employer to make known to his employee at the time of the latter's engagement of the reasonable standards under which he may qualify as a regular employee.

A review of the records shows that petitioners have never been probationary employees. There is nothing in the letter of appointment, to indicate that their employment as meter readers was on a probationary basis. It was not shown that petitioners were informed by the private respondent, at the time of the latter's

employment, of the reasonable standards under which they could qualify as regular employees. Instead, petitioners were initially engaged to perform their job for a limited duration, their employment being fixed for a definite period, from October 8 to 31, 1990.

Private respondent's reliance on the case of Brent School, Inc. vs. Zamora,[11] wherein we held as follows:

> Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily 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 where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.[12] is misplaced.

> The principle we have enunciated in Brent applies only with respect to fixed term employments. While it is true that petitioners were initially employed on a fixed term basis as their employment contracts were only for October 8 to 31, 1990, after October 31, 1990, they were allowed to continue working in the same capacity as meter readers without the benefit of a new contract or agreement or without the term of their employment being fixed anew. After October 31, 1990, the employment of petitioners is no longer on a fixed term basis. The complexion of the employment relationship of petitioners and private respondent is thereby totally changed. Petitioners have attained the status of regular employees.

> Under Article 280 of the Labor Code, a regular employee is one who is engaged to perform activities which are necessary or desirable in the usual business or trade of the employer, or a casual employee who has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

In De Leon vs. NLRC,[13] and Abasolo vs. NLRC,[14] we laid down the test in determining regular employment, to wit:

> The primary standard, therefore, of determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also if the employee has been performing the job for at least a year, even if the performance is not continuous and merely intermittent, the law deems repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is considered regular, but only with respect to such activity and while such activity exists.[15]

Clearly therefrom, there are two separate instances whereby it can be determined that an employment is regular: (1) The particular activity performed by the employee is necessary or desirable in the usual business or trade of the employer; or (2) if the employee has been performing the job for at least a year.

Herein petitioners fall under the first category. They were engaged to perform activities that are necessary to the usual business of private respondent. We agree with the labor arbiter's pronouncement that the job of a meter reader is necessary to the business of private respondent because unless a meter reader records the electric consumption of the subscribing public, there could not be a valid basis for billing the customers of private respondent. The fact that the petitioners were allowed to continue working after the expiration of

their employment contract is evidence of the necessity and desirability of their service to private respondent's business. In addition, during the preliminary hearing of the case on February 4, 1991, private respondent even offered to enter into another temporary employment contract with petitioners. This only proves private respondent's need for the services of herein petitioners. With the continuation of their employment beyond the original term, petitioners have become full-fledged regular employees. The fact alone that petitioners have rendered service for a period of less than six months does not make their employment status as probationary.

Since petitioners are already regular employees at the time of their illegal dismissal from employment, they are entitled to be reinstated to their former position as regular employees, not merely probationary.

As to the second issue, Article 279 of the Labor Code, as amended by R.A. No. 6715, which took effect on March 21, 1989, provides that an illegally dismissed employee is entitled to 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. Since petitioners were employed on October 8, 1990, the amended provisions of Article 279 of the Labor Code shall apply to the present case. Hence, it was patently erroneous, tantamount to grave abuse of discretion on the part of the public respondent in limiting to one year the backwages awarded to petitioners.

With respect to the third issue, an employer becomes liable to pay indemnity to an employee who has been dismissed if, in effecting such dismissal, the employer fails to comply with the requirements of due process.[16] The indemnity is in the form of nominal damages intended not to penalize the employer but to vindicate or recognize the employee's right to procedural due process which was violated by the employer.[17] Under Article 2221 of the Civil Code, nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

We do not agree with the ruling of the NLRC that indemnity is incompatible with the award of backwages. These two awards are based on different considerations. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work.[18] On the other hand, the award of indemnity, as we have earlier held, is meant to vindicate or recognize the right of an employee to due process which has been violated by the employer.

In the present case, the private respondent, in effecting the dismissal of petitioners from their employment, failed to comply with the provisions of Article 283 of the Labor Code which requires an employer to serve a notice of dismissal upon the employees sought to be terminated and to the Department of Labor, at least one month before the intended date of termination. Petitioners were served notice on January 3, 1991 terminating their services, effective December 29, 1990, or retroactively, in contravention of Article 283. This renders the private respondent liable to pay indemnity to petitioners.

Thus, we find that the NLRC committed grave abuse of discretion in deleting the award of indemnity. In Del Val vs. NLRC,[19] we held that the award of indemnity ranges from P1,000.00 to P10,000.00 depending on the particular circumstances of each case. In the present case, the amount of indemnity awarded by the labor arbiter is P2,590.50, which is equivalent to petitioners' one-month salary. We find no cogent reason to modify said award, for being just and reasonable.

As to the award of attorney's fees, the same is justified by the provisions of Article 111 of the Labor Code, to wit:

> Art. 111. Attorney's fees — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.
>
> (b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

As to the last issue, Article 223 of the Labor Code is plain and clear that the decision of the NLRC shall be final and executory after ten (10) calendar days from receipt thereof by the parties. In addition, Section 2(b), Rule VIII of the New Rules of Procedure of the NLRC provides that "should there be a motion for reconsideration entertained pursuant to Section 14, Rule VII of these Rules, the decision shall be executory after ten calendar days from receipt of the resolution on such motion."

We find nothing inconsistent or contradictory between Article 223 of the Labor Code and Section 2(b), Rule VIII, of the NLRC Rules of Procedure. The aforecited provision of the NLRC Rules of Procedure merely provides for situations where a motion for reconsideration is filed. Since the Rules allow the filing of a motion for reconsideration of a decision of the NLRC, it simply follows that the ten-day period provided under Article 223 of the Labor Code should be reckoned from the date of receipt by the parties of the resolution on such motion. In the case at bar, petitioners received the resolution of the NLRC denying their motion for reconsideration on October 22, 1992. Hence, it is on November 2, 1992 that the questioned decision became executory.

WHEREFORE, the petition is partially **GRANTED**. The decision of the National Labor Relations Commission dated July 2, 1992 is **MODIFIED**. Private respondent Benguet Electric Cooperative, Inc. (BENECO) is hereby ordered to reinstate petitioners to their former or substantially equivalent position as regular employees, without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time of their dismissal until they are actually reinstated. The amount of P2,590.50 awarded by the labor arbiter as indemnity to petitioners is **REINSTATED**. Private respondent is also ordered to pay attorney's fees in the amount of ten percent (10%) of the total monetary award due to the petitioners. In all other respects the assailed decision and resolution are **AFFIRMED**.

Costs against private respondent BENECO.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing and Callejo, Sr., *JJ.*, concur.

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[1] Entitled, "Jaime D. Viernes, et al., Complainants-Appellants, versus Benguet Electric Cooperative, Inc. represented by Gerardo P. Verzosa, Acting General Manager, Respondent-Appellant."
[2] NLRC Records, p. 110.
[3] Ibid.
[4] NLRC Records, p. 325.
[5] Id., at p. 328.
[6] Id., at p. 371.
[7] 317 SCRA 669 (1999).
[8] Id., at p. 678.
[9] Petition, Rollo, p. 26.
[10] Judy Philippines, Inc. vs. NLRC, 289 SCRA 755, 767 (1998); De Guzman vs. NLRC, 312 SCRA 266, 274 (1999).
[11] 181 SCRA 702 (1990).
[12] Id., at p. 716.
[13] 176 SCRA 615 (1989).
[14] 346 SCRA 293 (2000).
[15] Id., at p. 304.
[16] Kwikway Engineering Works vs. NLRC, 195 SCRA 526, 532 (1991); Aurelio vs. NLRC, 221 SCRA 432, 443 (1993); Sampaguita Garments Corporation vs. NLRC, 233 SCRA 260, 265 (1994).
[17] Better Buildings, Inc. vs. NLRC, 283 SCRA 242, 251 (1997); Iran vs. NLRC (Fourth Division), 289 SCRA 433, 442 (1998).
[18] Paguio vs. PLDT, G.R. No. 154072, December 3, 2002.
[19] 296 SCRA 283, 290 (1998).
