SUPREME COURT
SECOND DIVISION

PANTRANCO NORTH EXPRESS, INC., and/or ABELARDO DE LEON,
***Petitioner*,**

-versus-

G.R. No. 106654
December 16, 1994

NATIONAL LABOR RELATIONS COMMISSION, Second Division, and RODOLFO PERONILA,
***Respondents*.**
x----------x

D E C I S I O N

REGALADO, *J.*:

This Special Civil Action for *Certiorari* assails and seeks the nullification of two Resolutions of the National Labor Relations Commission (NLRC) of the National Capital Region (NCR), dated July 2, 1992 and August 11, 1992,[1] holding that private respondent Rodolfo Peronila was illegally dismissed by petitioner corporation and imposing sanctions therefore.

It appears on the record that sometime in 1971, private respondent Peronila was employed as a driver of Pantranco North Express, Inc., a domestic corporation engaged in the public transportation business

as a common carrier, and of which its co-petitioner Abelardo de Leon is a manager.

In 1973, Peronila was administratively investigated by the corporation for his absence from work of more than two and one-half months without leave. According to an investigation report of petitioners' area manager, dated March 10, 1973, Peronila claimed that he went on absence without leave from his work from November 1, 1972 up to February 16, 1973 which was date of the investigation, or one hundred seven calendar days continuously, because "he went to Cotabato, Mindanao to visit his dead grandfather during the period of his unofficial absence."[2]

Finding the belated explanation of Peronila insufficient, the petitioner declared that private respondent had "grossly violated the provisions of (its) existing company policies, CVT Policy No. 71-102" and it consequently "dismissed the respondent from service upon receipt of the approved clearance from the NLRC."[3]

In an Order[4] dated March 20, 1973, Mediator-Factfinder Loreto V. Poblete of the National Relations Commission, Regional Office No. II in Tuguegarao, Cagayan, affirmed the dismissal made by petitioner for being duly supported by the evidence and made in accordance with law.

Fifteen years after such termination of his employment, Peronila reappeared in 1988 and implored petitioner to reconsider his dismissal, which plea was initially denied by petitioner. However, due to insistent appeals by Peronila, petitioner eventually acceded and hired him as a driver, but on a contractual basis for a fixed period of one month.[5]

The terms and conditions of that new employment on a contractual basis are contained in a letter, dated April 5, 1988, signed by the general manager of the company and voluntarily conformed to by Peronila, thus:

> "This will confirm your assignment as Driver-Baler Line on a contractual basis under the following terms and conditions:

1. EFFECTIVITY

   This assignment shall take effect on April 5, 1988 and shall be for a period of one month.

2. FEE

   You shall receive a compensation of P64.00/day.

3. HOURS OF WORK

   You shall work in accordance with the schedule given by your immediate supervisor.

4. TERMINATION

   This contract is automatically terminated after one (1) month or at the close of office hours on May 5, 1988.

5. MISCELLANEOUS

   There is no employer-employee relationship between us hence you are not entitled to any privilege of an employee viz.: sick leave, vacation leave, holiday pay, overtime pay and others."[6]

Barely fifteen days from such employment as a contractual driver, or on April 20, 1988, private respondent was involved in a vehicular mishap in Nueva Vizcaya wherein the bus he was driving hit another vehicle.[7] After an administrative investigation conducted by petitioner corporation, Peronila was found guilty thereof, hence his employment contract was terminated and was no longer renewed thereafter.

On January 18, 1989, private respondent filed a case for illegal dismissal against petitioner in the Arbitration Branch of the NLRC-NCR wherein he argued that he was refused assignment after May 5, 1988, which refusal was tantamount to constructive dismissal. Accordingly, he sought his reinstatement and the payment of his back wages.[8]

Labor Arbiter Patricio P. Libo-on dismissed the case on February 12, 1991, ruling that "(a)lthough as a driver, his services (are) usual and necessary to the business of the respondent, yet it is also true that complainant's case falls within one of the exceptions. When he was rehired, it was clear to him that he would be working only for one (1) month. Apparently, the reason for this is to fill or to stop-gap the requirements of the employe(r)/respondent during the period (when) he was rehired, and which it foresees to ease up in May 1988." The labor arbiter also upheld the aforestated contract signed by Peronila.[9]

On appeal, public respondent NLRC set aside the Decision of the labor arbiter declaring that the dismissal was illegal since there was no just cause, with the decretal portion of its resolution on appeal disposing as follows:

> "WHEREFORE, premises considered, the decision appealed from is hereby set aside and a new Order promulgated ordering the reinstatement of complainant with one (1) year backwages."[10]

The finding of the labor arbiter regarding the dismissal of Peronila was reversed by public respondent on these considerations:

> "However, we do not agree with the finding of the Labor Arbiter that complainant's re-employment was an exception to Article 280 of the Labor Code.
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> x x x
>
> "Suffice it to state that the Constitution recognizes the need to afford protection to labor and assures security of tenure to workers. In consonance thereto, the Labor Code was enacted to give special attention to the relationship between labor and management. Indeed, the Labor Code is a special law, and well settled in this jurisdiction is the rule that as between a special law and a general law, the former prevails. Without further belaboring their distinction, to equate and apply the present case to an ordinary contract with a fixed term and period destroys the spirit and intention of the labor laws to give special

> treatment to labor and management relationship. To uphold the findings a quo of the Labor Arbiter would put to naught the benefits that the State has intended for labor, since by the mere expedience of defining the terms and conditions of employment in a well prepared contract, no employee shall ever attain a regular employment."[11]

However, respondent commission rejected the argument of Peronila that he was not afforded the opportunity to adduce evidence before the labor arbiter. The NLRC maintained that there was no error in the procedure conducted by the labor arbiter because he is given ample discretion to determine whether there is a need to conduct further hearings after the parties have submitted their position papers and supporting proofs.[12]

On August 11, 1992,[13] petitioner's Motion for Reconsideration was denied for lack of merit, hence this petition alleging grave abuse of discretion on the part of the NLRC in ordering the reinstatement of private respondent and the payment to him of one year back wages.

We find adequate and compelling merit in the petition.

The determinative issue in this case is whether or not the employment contract which stipulates that there is no employer-employee relationship between petitioner and Peronila is valid. Relevant to this issue, we are persuaded to hold that the re-employment of Peronila as a contractual bus driver was merely an act of generosity on the part of petitioner.

Although we have ruled in a number of cases applying Article 280 of the Labor Code[14] that when the activities performed by the employee are usually necessary or desirable in the usual trade of the employer, the employment is deemed regular notwithstanding a contrary agreement,[15] there are exceptions to this rule especially if circumstances peculiar to the case warrant a departure therefrom.

What said Article 280 seeks to prevent is the practice of some unscrupulous and covetous employers who wish to circumvent the law that protects lowly workers from capricious dismissal from their employment. The aforesaid provision, however, should not be

interpreted in such a way as to deprive employers of the right and prerogative to chose their own workers if they have sufficient basis to refuse an employee a regular status. Management has rights which should also be protected.

The petitioner had validity dismissed Peronila long before he entered into the contested employment contract. It was Peronila who earnestly pleaded with petitioner to give him a second chance. The re-hiring of private respondent was out of compassion and not because the petitioner was impressed with the credentials of Peronila. Peronila's previous violations of company rules explains the reluctant attitude to the petitioner in re-hiring him. When the bus driven by Peronila figured in a road mishap, that incident finally prompted petitioner to sever any further relationship with said private respondent.

We have recently held in Philippine Village Hotel vs. National Labor Relations Commission, et al.[16] that the fact that the private respondents therein were required to render services necessary or desirable in the operation of the petitioner's business for a duration of the one month dry-run operation period did not in any way impair the validity of the contractual nature of private respondents' contracts of employment which specifically stipulated that their employment was only for one month.

In upholding the validity of a contract of employment with fixed or specific period in a number of cases, we explained therein that "the decisive determinant in term employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon the parties for the commencement and termination of their employment relationship, a day certain being understood to be that which must necessarily come, although it may not be known when. This ruling is only in consonance with Article 280 of the Labor Code."

As to whether or not the principle of security of tenure provided in Article 280 of the Labor Code has been violated, we have made the following pronouncements by way of guidelines:

"In Brent School, Inc., et al. vs. Ronaldo Zamora, etc., et al., the Court had occasion to examine in detail the question of whether employment for a fixed term has been outlawed under the above quoted provisions of the Labor Code. After an extensive examination of the history and development of Articles 280 and 281, the Court reached the conclusion that the contract providing for employment with a fixed period was not necessarily unlawful: 'There can of course be no quarrel with the proposition that where from the circumstances it is apparent that 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, morals, etc. But where no such intent to circumvent the law is shown, or stated otherwise, where the reason for the law does not exist, e.g., where it is indeed the employee himself who insists upon a period or where the nature of the engagement is such that, without being seasonal or for a specific project, a definite date of termination is a sine qua non, would an agreement fixing a period be essentially evil or illicit, therefore anathema? Would such an agreement come within the scope of Article 280 which admittedly was enacted 'to prevent the circumvention of the right of the employee to be secured in (his) employment?' As it is evident from even only the three examples already given that Article 280 of the Labor Code, under a narrow and literal interpretation, not only fails to exhaust the gamut of employment contracts to which the lack of a fixed period would be an anomaly but would also appear to restrict, without reasonable distinctions, the right of an employee to freely stipulate with his employer the duration of his engagement, it logically follows that such a literal interpretation should be eschewed or avoided. The law must be given reasonable interpretation, to preclude absurdity in its application. Outlawing the whole concept of term employment and subverting to boot the principle of freedom of contract to remedy the evil of employers' using it as a means to prevent their employees from obtaining security of tenure is like cutting off the nose to spite the face or, more relevantly, curing a headache by lopping off the head."[17]

In the case of Philippine National Oil Company-Energy Development Corporation vs. National Labor Relations Commission, et al.,[18] this Court set down two criteria under which fixed contracts of employments cannot be said to be in circumvention of security of tenure, to wit:

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

2. 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 on the latter.

In the present dispute, the services of respondent Peronila had been validly terminated by petitioner, when the latter absented himself without official leave, fifteen years before he was re-hired as a contractual driver for just one month. Definitely, his re-hiring cannot be construed to mean that Peronila reacquired his former permanents status.

Furthermore, as correctly pointed out by the Solicitor General, "there is no evidence on record that private respondent in fact held the position of a bus driver for nearly seventeen years, except his bare and unsupported allegations to that effect in his Position Paper. There is ample and unrebutted evidence that private respondent's employment by PNEI in 1971 was illegally terminated on March 20, 1973. The Order issued by the Mediator-Factfinder Loreto V. Poblete of the Regional Office No. II, National Labor Relations Commission, Tuguegarao, Cagayan in the case entitled, "Pantranco vs. Rodolfo Peronila" docketed as NLRC Case No. 85, attests to this fact.[19]

We once again reiterate that the findings of an administrative agency, to be conclusive and binding, must be supported by substantial evidence.[20] A conflict between the factual findings of the NLRC and the labor arbiter will necessitate a review of such factual findings. The impugned decision of respondent commission appears to have laid

too much stress on the conceptual principles of social justice in labor cases without the corresponding specifics to supports its conclusions.

It must not be overlooked that along with the inspirational passages on social justice in Calalang vs. Williams, et., al.,[21] there is this sobering caveat: "The promotion of social justice, however, it is to be achieved not through a mistaken sympathy towards any given group" since it "means the promotion of the welfare of all the people through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community," and "must be founded on the recognition of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life."

WHEREFORE, the instant Petition is **GRANTED**, the challenged Decision of respondent National Labor Relations is hereby **SET ASIDE**, and the complaint against petitioners is **DISMISSED.**

SO ORDERED.

Narvasa, *C.J.*, Puno and Mendoza, *JJ.*, concur.

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[1] Penned by Presiding Commissioner Edna Bonto-Perez, with the concurrence of Commissioner Domingo H. Zapanta, in NLRC NCR Case No. 00-01-00392-89.
[2] Original Record, 79.
[3] Loc. cit.
[4] Ibid., 80.
[5] Rollo, 15.
[6] Original Record, 81.
[7] Ibid., 19.
[8] Ibid., 86-87.
[9] Ibid., 67-68; corrections in parentheses supplied.
[10] Ibid., 38.
[11] Ibid., 35-37.
[12] Ibid., 34-35.
[13] Ibid., 9.
[14] 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 activity exists.

[15] Arms Taxi, etc., et al. vs. NLRC, et al., G.R. No. 104523, March 8, 1993, 219 SCRA 706; Capitol Industrial Construction Groups vs. NLRC, et al., G.R. No. 105359, April 22, 1993, 221 SCRA 469; Baguio Country Club Corporation vs. NLRC, et al., G.R. No. 71664, February 28, 1992, 206 SCRA 643; A.M. Oreta & Co., Inc. vs. NLRC et al., G.R. No. 74004, August 10, 1989, 176 SCRA 218.

[16] G.R. No. 105033, February 28, 1994.

[17] Pakistan International Airlines Corporation vs. Ople etc., et al G.R. No. 61594, September 28, 1990, 190 SCRA 90, citing Brent School, Inc. vs Zamora, etc., et al., L-48494, February 5, 1990, 181 SCRA 702. See also Biboso, et al. vs. Victorias Milling Company, Inc., et al., L-44360, March 31, 1977, 76 SCRA 250; Escareal vs. NLRC, et al., G.R. No. 99359, September 2, 1992, 213 SCRA 472; University of Sto. Tomas, et al., vs. NLRC, et al., G.R. No. 85519, February 15, 1990, 182 SCRA 371.

[18] G.R. No. 97747, March 31, 1993, 220 SCRA 695, 699.

[19] Rollo, 155.

[20] Golden Farms, Inc. vs. Bughao, et al., G.R. No. 82044, March 18, 1991, 195 SCRA 322.

[21] 70 Phil. 726 (1940).