

## **EIGHTH DIVISION**

**[ CA-G.R. SP NO. 129658, March 27, 2014 ]**

### **HOLCIM PHILIPPINES INC. AND ROLAND VAN WIJEN, PETITIONERS, VS. THE NATIONAL LABOR RELATIONS COMMISSION AND VIC RAMON A. BUENO, RESPONDENTS.**

#### **D E C I S I O N**

**REYES, JR., J.C., J.:**

This resolves the Petition for Certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure assailing the Decision (Rollo, pp. 36-45) dated November 21, 2012 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-002295-12 as well as its Resolution (Rollo, pp. 32-34) dated February 18, 2013, which denied petitioner's Motion for Reconsideration.

The instant case arose from a Complaint (Rollo, p. 86) filed by private respondent Vic Ramon Bueno against petitioner Holcim Philippines, Inc. for illegal dismissal and non-payment of monetary benefits with prayer for regularization.

In private respondent's position paper (Rollo, pp. 122-128) submitted with the Arbitration Branch of the NLRC, it was alleged that on October 1, 2010, private respondent was hired as a project-based Mobile Maintenance Planner for the Maintenance Department in the HOLCIM ready mix plant in Taguig, Metro, Manila. On February 16, 2011, he was designated in a concurrent capacity as Officer-in-Charge (OIC) for both Plant and Mobile Maintenance Departments, thereby increasing his scope of work not only as Planner but also as an OIC, until March 31, 2011.

Thereafter, on April 1, 2011, he was engaged as Maintenance Supervisor on a probationary basis for a period of six (6) months, within which his performance is to be evaluated by his immediate supervisor. Per HOLCIM'S policy of Probationary Employment, the immediate Supervisor is to conduct a Performance Appraisal on the fourth and fifth month. Unsatisfactory performance at the end of the fifth month will result on the termination of probationary employment. According to private respondent, on the fifth month, there was no such performance evaluation conducted. He was allegedly merely required to submit a Goal Setting Dialogue form on August 19, 2011.

On September 6, 2011 at 11:28 am, private respondent was verbally instructed to write a letter of intent for an extension of his probationary employment for two more months but he did not write said letter in the belief that it is HOLCIM's prerogative to extend his probationary employment even after the 6-month period.

On September 30, 2011, private respondent was finally handed with a notice of termination advising him not to report for work the following day and to return all

company-issued properties. The alleged ground cited for his termination is that "he failed to meet the standards for regularization". However, private respondent believed that his refusal to submit the letter of intent appeared to be one of the reasons for his termination.

Petitioners, on the other hand, admitted engaging the services of private respondent as Mobile Maintenance Planner on a contractual basis for a period of six months effective September 21, 2010. But before the expiration of her employment as Mobile Maintenance Planner on March 11, 2011, private respondent allegedly manifested his desire to apply for regular position in the petitioner company. Petitioners offered him (private respondent) the position of Maintenance Supervisor but on the condition that the latter will have to undergo probationary period before being extended with a regular status. To this condition, private respondent agreed.

Thus, on April 1, 2011, petitioners extended to private respondent a probationary appointment as Maintenance Supervisor for a period of six (6) months effective said date. However, due to the alleged failure of private respondent to meet the standards to qualify for a regular employment, his probationary employment was terminated pursuant to a termination letter dated September 30, 2011.

On November 25, 2011, private respondent filed a Complaint (Rollo, p. 86) with the Arbitration Branch of the NLRC for illegal dismissal and non-payment of monetary benefits. He also prays for regularization. However, in his position paper submitted with the Labor Arbiter, he only prayed for his reinstatement, payment of full backwages and moral and exemplary damages.

After examining the allegations, arguments and evidence of the parties, the Labor Arbiter issued a Decision dated June 29, 2012, the dispositive portion of which reads as follows:

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company, Holcim Philippines, Inc. to reinstate the complainant to his former position as Maintenance Supervisor, or to any substantially equivalent position, with all the right, benefits and privileges appertaining thereto, and to pay complainant his full backwages which as of April 29, 2012 already amount to P293,475.00.

Further, the respondents are ordered to comply immediately with the reinstatement order irrespective of their appeal and notwithstanding the posting of bond, and to submit a report of their compliance herewith within ten (10) days from receipt of this decision.

Finally, the complainant's monetary claims are dismissed for lack of merit.

SO ORDERED." (Rollo, p. 45).

Dissatisfied with the foregoing, petitioners filed an appeal with public respondent NLRC questioning the findings of the Labor Arbiter (See Memorandum of Appeal, Rollo, pp. 48-67). On November 21, 2012, public respondent NLRC issued the now assailed Decision (Rollo, pp. 23-31) dismissing the appeal and affirming the decision

of the Labor Arbiter. Petitioners' Motion for Reconsideration likewise proved futile as it was denied in another assailed Resolution (Rollo, pp. 32-34) dated February 18, 2013.

On April 29, 2013, petitioners filed the instant Petition for Certiorari with this Court, anchored on the following:

- I. PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION IN FAILING TO ADDRESS SQUARELY THE SUBSTANTIVE ISSUE OF WHETHER OR NOT THERE WERE VALID GROUNDS TO TERMINATE THE PROBATIONARY EMPLOYMENT OF PRIVATE RESPONDENT BUENO.
- II. PUBLIC RESPONDENT NLRC ACTED WITH GRAVE ABUSE OF DISCRETION IN COMPUTING THE PERIOD OF PRIVATE RESPONDENT'S PROBATIONARY EMPLOYMENT AS ONE HUNDRED EIGHTY (180) DAYS INSTEAD OF SIX (6) CONSECUTIVE CALENDAR MONTHS (Rollo, p. 9).

From the foregoing, petitioners set forth two main bones of contention:

*First*, there were indeed valid grounds to terminate private respondent, who himself admitted that throughout his probationary employment, his performance and conduct had been wholly unsatisfactory due to his multiple lapses and his inefficiencies. Petitioners showed as evidence private respondent's conforme signature on the Internal Quality Findings Summary Report (Rollo, pp. 74-75) indicating his admission to his deficiencies.

*Second*, at the time of private respondent's termination on September 30, 2011, he has not yet attained a regular status employment. Petitioners argued that the sixth month period provided by law, should be reckoned from the date the appointment took effect up to the same calendar date of the 6th month following (which is September 30, 2011) and should not be counted as 180 days (which is September 28, 2011).

Before delving on whether there were valid grounds for the dismissal of private respondent, We resolve first his employment status at the time when he was served a notice of termination.

It is undisputed that at the time private respondent was hired on April 1, 2011, he was a probationary employee. But what needs to be inquired into is whether at the time the notice of termination was sent to private respondent on September 30, 2011, he had already attained the status of a regular employee. In other words, whether at the time of his dismissal, he ceases to be a probationary employee. Under Article 281 of the Labor Code, probationary employment is described as follows:

"Art. 281. Probationary Employment. — Probationary employment *shall not exceed six (6) months from the date the employee started working*, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards