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**FIRST DIVISION**

[G.R. Nos. 69205-06. September 26, 1988]

**NATIONAL UNION OF WORKERS IN HOTEL RESTAURANT AND ALLIED INDUSTRIES - BONANZA RESTAURANT CHAPTER, LEON VILLAGRACIA, JR., NORBERTO SAVARIZ, and RAMON BENDIJO,** *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION and BONANZA RESTAURANT, INC.,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT, A JUST CAUSE.** — Article 283 of the Labor Code then prevailing, *inter alia*, provides as one of the just causes of termination of employment: "(a) The closing or cessation of operation of the establishment or enterprise, or where the employer has to reduce his or where the employer has to reduce his workforce by more than one-half (½) due to serious business reverses, unless the closing is for the purpose of circumventing the provisions of this Chapter."

**2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FINDINGS BY THE NATIONAL LABOR RELATIONS COMMISSION BASED SOLELY ON THE EVIDENCE ADDUCED BY ONE PARTY CONSTITUTES GRAVE ABUSE OF DISCRETION.** — The respondent Commission, without affording the petitioners an opportunity to refute in a hearing or pleading the evidence presented by the private respondents for the first time on appeal, made a finding based solely on the evidence thus adduced by private respondents. Respondent Commission failed to consider the evidence adduced by the petitioners before the Labor Arbiter that (1) Petitioners were regular waiters of private respondents with a period of 4 years employment; (2) The dismissal of the petitioners due to an alleged retrenchment was made without any charge whatsoever having been filed against them during their employment; and (3) Private respondents retained the services of casuals and other

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temporary employees and had been continuously hiring new employees to take over the work of the regular employees. With the conclusions thus reached, the respondent Commission obviously acted with grave abuse of discretion amounting to lack of jurisdiction in having promulgated the decision which is the subject of the instant petition.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYER HAS NO ABSOLUTE AND UNILATERAL POWER TO TERMINATE EMPLOYMENT.** — An employer cannot with impunity be allowed the absolute and unilateral power to terminate without valid cause a contract of employment with a definite period it voluntarily entered into merely on the basis of its whim or caprice and under false pretense of financial distress.

4. **ID.; ID.; ID.; ILLEGAL DISMISSAL; RECEIPT OF SEPARATION PAY NOT A WAIVER OF RIGHT NOR A BAR TO CONTEST ILLEGAL DISMISSAL.** — The petitioners' acceptance of the amount of ₱2,783.32 under that agreement entered into on May 5, 1982, which private respondents referred to as their separation gratuity pay, should not in any manner prejudice their claim that they were illegally dismissed. The Court held that receipt of termination pay does not constitute waiver of the right to contest an illegal dismissal. Similarly, receipt of separation pay is no bar to contesting legality of dismissal from employment.

**APPEARANCES OF COUNSEL**

*Ferdinand M. Casis* for petitioners.
*The Solicitor General* for public respondent.
*Condenuevo, Buensuceso & Partners* for private respondent.

## DECISION

**MEDIALDEA, *J.*:**

This is a petition for *certiorari* to annul and/or set aside the decision of the National Labor Relations Commission dated December 29, 1983, as well as its resolutions dated April 3, 1984 and September 4, 1984, in Case No. NLRC-NCR-3-2577-82 entitled. "*NUWHRAIN-Bonanza Restaurant Chapter, Leon*

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*Villagracia, Jr. and Norberto Savariz, Complainants, versus Bonanza Restaurant, Inc., Ofelia Datu Amiri and Efren S. Quesada, Respondents*" and in Case No. NLRC - NCR-3-2686-82 entitled, "*NUWHRAIN-Bonanza Restaurant Chapter and Ramon B. Bendijo, Complainants, versus Bonanza Restaurant, Inc., Ofelia Datu Amiri and Efren S. Quesada, Respondents*," for having been promulgated with grave abuse of discretion amounting to lack of jurisdiction.

The petitioners, Villagracia, Savariz and Bendijo, were waiters and regular employees of the Bonanza Restaurant. They were also members of the National Union of Workers in Hotel Restaurants and Allied Industries (NUWHRAIN) — Bonanza Restaurant Chapter. On February 28, 1982, their employer dismissed them summarily for the alleged reason of retrenchment.

On March 1, 1982, the NUWHRAIN and the petitioners, Villagracia and Savariz, filed a complaint (pp. 14 and 15, *Rollo*) for unfair labor practice and illegal dismissal with the Ministry of Labor and Employment against the private respondents herein. A similar complaint (p. 13, *Rollo*) was filed on March 4, 1982, by the NUWHRAIN and the petitioner, Bendijo, against the same respondents. The two complaints were heard jointly by Labor Arbiter Ceferina J. Diosana.

At the initial hearing of the cases on May 5, 1982, the petitioners and the private respondents entered into a compromise agreement wherein the former agreed to be paid in the total amount of ₱6,000.00. The private respondents' counsel made a partial payment in the amount of ₱2,783.32 and promised to pay the balance at the next hearing of the cases which was set on May 20, 1982.

At the hearing on May 20, 1982, the private respondents' counsel appeared and informed the Labor Arbiter that the voucher for the unpaid balance was already prepared but he failed to bring the amount with him. He promised to bring the amount at the next hearing of the cases which was set on May 4, 1982.

On May 24, 1982, neither the private respondents nor their counsel appeared at the hearing. The Labor Arbiter ordered

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the resetting of the same to June 11, 1982, and requested the private respondents to submit their position paper two days before the scheduled hearing. The Labor Arbiter further warned the private respondents that their failure to file their position paper would mean a waiver of their right to file the same.

On June 11, 1982, the private respondents and their counsel again failed to appear but a motion was filed by them asking that the hearing be reset to June 17, 1982. The Labor Arbiter granted the motion with an order to the private respondents to file their position paper on the same date if they have not decided to continue with the compromise agreement.

At the hearing on June 17, 1982, the private respondents and their counsel again failed to appear. However, a motion was later filed by them on June 18, 1982, asking for a period of five days from the same date within which to file their position paper. No such paper was ever filed so that the Labor Arbiter considered the case submitted for decision with the observation that "respondent and counsel were given all the opportunities to effect and completely implement the compromise agreement and/or submit its position paper, *etc.*, to defend their position on the complainant's claim, but was not availed of by them."

In their position paper (pp. 17 to 23, *Rollo*), the petitioners alleged that they did not believe that the reason given for their dismissal exists because in March, 1982, the Bonanza Restaurant held a sportsfest for its employees and spent more than ₱60,000.00 for the parade, athletic equipment, refreshments, trophies, cash prizes, *etc.*; that there was no excess in personnel, and if there was an excess, it consisted of the casuals, helpers, extra and temporary employees who are retained despite the alleged retrenchment; and that the retrenchment was effected without observing the "First in — Last out" rule, in violation of their collective bargaining agreement.

On July 30, 1982, the Labor Arbiter rendered her decision (pp. 24 to 28, *Rollo*), the dispositive portion of which reads:

"WHEREFORE, premises well considered, the respondents, Bonanza Restaurant Inc., Ofelia Datu Amiri and Efren S. Quesada

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are hereby ordered to reinstate Leon Villagracia, Jr., Norberto Savariz and Ramon Bendijo to their former positions without loss of seniority rights and other benefits which should have accrued to them as regular employees had they not been illegally dismissed, and with full backwages, all for the period from February 28, 1982 up to actual reinstatement.

The money in the amount of ₱2,783.34 advanced to the complainants as above stated shall be deducted from the backwages supposed to be due or to be received by them.

For lack of merit, the charge of unfair labor practice filed against the respondents is hereby ordered dismissed.

SO ORDERED."

On August 24, 1982, the private respondents appealed to the respondent Commission on grounds of abuse of discretion and errors of facts. The private respondents justified the retrenchment by attaching to their Memorandum on Appeal (pp. 30 to 35, *Rollo*) xerox copies of their Income Tax Returns for 1980 and 1981. They also contended that the alleged sports festival was actually sponsored by the Kentucky Fried Chicken for its employees and some of the employees of the Bonanza Restaurant were only invited to participate. They also blamed their failure to file a position paper on the Labor Arbiter who allegedly refused extensions of private respondent's counsel for more time for the purpose.

On December 29, 1983, the respondent Commission rendered a decision (pp. 36 to 39, *Rollo*) setting aside the decision of the Labor Arbiter, the dispositive portion of which reads:

"WHEREFORE, the appealed decision is set aside and a new judgment is entered, ordering respondents to pay to the complainants the balances due to them under the compromise agreement.

SO ORDERED."

The petitioners moved for a reconsideration of the respondent Commission's decision on the ground of abuse of discretion in not deciding the appeal on the issues raised therein, namely, petitioners' constitutional rights to security of tenure, and in

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deciding the appeal on the basis merely of evidence submitted by the private respondents in their memorandum on appeal, copy of which was not furnished petitioners, hence denying petitioners due process. The respondent Commission denied the motion and after a second denial of a similar motion, the petitioners filed the instant petition for *certiorari*.

The petitioners based their petition on the following grounds:

1. The National Labor Relations Commission acted without or in excess of jurisdiction in setting aside the Decision of the Labor Arbiter, and in upholding the compromise agreement;

2. The National Labor Relations Commission acted without or in excess of jurisdiction in admitting evidence for the first time on appeal to the prejudice of the petitioners who were denied their right to administrative due process; and

3. The National Labor Relations Commission's decision is contrary to law and not supported by the facts of the case.

On just causes of termination of employment, Article 283 of the Labor Code then prevailing, *inter alia*, provides:

"(a) The closing or cessation of operation of the establishment or enterprise, or where the employer has to reduce his or where the employer has to reduce his workforce by more than one-half (½) due to serious business reverses, unless the closing is for the purpose of circumventing the provisions of this Chapter;"

The record is clear to the effect that private respondents failed to prove satisfactorily a just cause for the dismissal of the petitioners. Private respondents did not file any position paper despite the several opportunities given to them to do so. And although a motion for extension to file its position paper was filed with the Labor Arbiter, private respondents never filed the same. Thus, private respondents did not present either evidence or a position paper before the Labor Arbiter despite the charges filed against them by petitioners.

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As a "Background of the Case," private respondents in their Memorandum on Appeal (p. 31, *Rollo*) alleged:

"For the past two (2) years, the respondent restaurant has been losing heavily as could be seen from the xerox copies of the Income Tax Returns and its Annexes it filed for 1980 and 1981, hereto attached as Annex "1" and "2" of this memorandum. Several times management had considered closing the said restaurant, but due to its social obligation to its employees, this was deferred, not to mention the great number of employees that will go jobless and the effects on their defendants (sic). Yet, the respondent could not continue any longer on this humanitarian act, something drastic had to be done, which is the retrenchment of several of its employees and the payment of their separation pay."

The private respondents also denied having sponsored the Sports Festival claiming that it was the Kentucky Fried Chicken, a sister company, that sponsored the same and that some of the employees of Bonanza Restaurant who participated were only invited.

The petitioner, in their present petition, claimed that they were not furnished with copies of the Income Tax Returns submitted by private respondents to the respondent Commission.

The respondent Commission, without affording the petitioners an opportunity to refute in a hearing or pleading the evidence presented by the private respondents for the first time on appeal, made a finding based solely on the evidence thus adduced by private respondents (pp. 37 and 38, *Rollo*) as follows:

"In its appeal, respondents stress that respondent restaurant has been losing heavily during the years 1980 and 1981, and submitted the financial statements of the said restaurant. It appears that for the years 1980 and 1981 the restaurant incurred net losses from its operation in the amounts of ₱361,715.84 and ₱20,611.71, respectively."

"Respondents likewise denied that the sports festival was held in the company as mentioned by the Labor Arbiter in her decision. The truth was that the event was sponsored by the Kentucky Fried Chicken for its employees, and that the employees of the respondent restaurant were only invited to participate in the affair, stressing further that the two entities are sister companies and not the same

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organization. Since the respondent restaurant was losing, we are inclined to believe such assertion by the respondent that the sports festival was financed by its sister organization and this can not be taken to negate respondents' claim of losses."

An employer cannot with impunity be allowed the absolute and unilateral power to terminate without valid cause a contract of employment with a definite period it voluntarily entered into merely on the basis of its whim or caprice and under false pretense of financial distress (*Lirag Textile Mills, Inc. vs. CA*, No. L-30736, April 14, 1975, 63 SCRA 374). Indeed, if the private respondents were suffering from serious business reverses, such must be proved (*Garcia vs. NLRC*, No. 67825, September 4, 1987, 153 SCRA 639, citing *National Federation of Labor Unions (NAFLU) vs. Ople*, No. 68661, July 22, 1986, 143 SCRA 124). This jurisprudential rule was not observed by the respondent Commission in arriving at its decision on the basis merely of documents submitted by the private respondents *ex-parte*, denying due process to the petitioners. Respondent Commission failed to consider the evidence adduced by the petitioners before the Labor Arbiter that (1) Petitioners were regular waiters of private respondents with a period of 4 years employment; (2) The dismissal of the petitioners due to an alleged retrenchment was made without any charge whatsoever having been filed against them during their employment; and (3) Private respondents retained the services of casuals and other temporary employees and had been continuously hiring new employees to take over the work of the regular employees.

In its questioned decision, the respondent Commission ordered private respondents to pay to the petitioners the balance due the latter under the compromise agreement. Obviously, it overlooked the fact that the petitioners already repudiated that agreement entered into on May 5, 1982, as early as when the case was still pending before the Labor Arbiter, when they decided to continue with the prosecution of their cases after the private respondents' counsel failed to pay the unpaid balance under the same agreement as promised. It is also clear that private respondents did not consider the agreement as still subsisting at the time their appeal was taken. They never made

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mention of such agreement in their Memorandum on Appeal. On the contrary, the private respondents prayed that the petitioners' complaints be dismissed because their separation gratuity pay were already paid to them, clearly showing that private respondents did not recognize the existence of the agreement.

The petitioners' acceptance of the amount of ₱2,783.32 under that agreement entered into on May 5, 1982, which private respondents referred to as their separation gratuity pay, should not in any manner prejudice their claim that they were illegally dismissed. In *L.R. Aguinaldo & Co., Inc. vs. CIR*, No. L-31909, April 5, 1978, 82 SCRA 309, We held that receipt of termination pay does not constitute waiver of the right to contest an illegal dismissal. Similarly, receipt of separation pay is no bar to contesting legality of dismissal from employment (*De Leon vs. NLRC*, No. 52056, October 30, 1980, 100 SCRA 691).

With the conclusions thus reached, the respondent Commission obviously acted with grave abuse of discretion amounting to lack of jurisdiction in having promulgated the decision which is the subject of the instant petition.

**ACCORDINGLY,** the petition is hereby GRANTED. The Decision of the respondent Commission dated December 29, 1983, as well as its Resolutions dated April 3, 1984 and September 4, 1984 are ANNULLED. The Decision of the Labor Arbiter dated July 30, 1982 is AFFIRMED, but with the MODIFICATION that the backwages should be equivalent to three (3) years without qualification or deduction.

**SO ORDERED.**

*Narvasa, Cruz, Gancayco,* and *Griño-Aquino, JJ.*, concur.