

## SECOND DIVISION

[ G.R. No. 141717, April 14, 2004 ]

**PHILIPS SEMICONDUCTORS (PHILS.), INC., PETITIONER, VS.  
ELOISA FADRIQUELA, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 52149 and its Resolution dated January 26, 2000 denying the motion for reconsideration therefrom.

#### The Case for the Petitioner

The petitioner Philips Semiconductors (Phils.), Inc. is a domestic corporation engaged in the production and assembly of semiconductors such as power devices, RF modules, CATV modules, RF and metal transistors and glass diodes. It caters to domestic and foreign corporations that manufacture computers, telecommunications equipment and cars.

Aside from contractual employees, the petitioner employed 1,029 regular workers. The employees were subjected to periodic performance appraisal based on output, quality, attendance and work attitude.<sup>[2]</sup> One was required to obtain a performance rating of at least 3.0 for the period covered by the performance appraisal to maintain good standing as an employee.

On May 8, 1992, respondent Eloisa Fadriquela executed a Contract of Employment with the petitioner in which she was hired as a production operator with a daily salary of P118. Her initial contract was for a period of three months up to August 8, 1992,<sup>[3]</sup> but was extended for two months when she garnered a performance rating of 3.15.<sup>[4]</sup> Her contract was again renewed for two months or up to December 16, 1992,<sup>[5]</sup> when she received a performance rating of 3.8.<sup>[6]</sup> After the expiration of her third contract, it was extended anew, for three months,<sup>[7]</sup> that is, from January 4, 1993 to April 4, 1993.

After garnering a performance rating of 3.4,<sup>[8]</sup> the respondent's contract was extended for another three months, that is, from April 5, 1993 to June 4, 1993.<sup>[9]</sup> She, however, incurred five absences in the month of April, three absences in the month of May and four absences in the month of June.<sup>[10]</sup> Line supervisor Shirley F. Velayo asked the respondent why she incurred the said absences, but the latter failed to explain her side. The respondent was warned that if she offered no valid justification for her absences, Velayo would have no other recourse but to recommend the non-renewal of her contract. The respondent still failed to respond, as a consequence of which her performance rating declined to 2.8. Velayo

recommended to the petitioner that the respondent's employment be terminated due to habitual absenteeism,<sup>[11]</sup> in accordance with the Company Rules and Regulations.<sup>[12]</sup> Thus, the respondent's contract of employment was no longer renewed.

### The Complaint of the Respondent

The respondent filed a complaint before the National Capital Region Arbitration Branch of the National Labor Relations Commission (NLRC) for illegal dismissal against the petitioner, docketed as NLRC Case No. NCR-07-04263-93. She alleged, *inter alia*, that she was illegally dismissed, as there was no valid cause for the termination of her employment. She was not notified of any infractions she allegedly committed; neither was she accorded a chance to be heard. According to the respondent, the petitioner did not conduct any formal investigation before her employment was terminated. Furthermore, considering that she had rendered more than six months of service to the petitioner, she was already a regular employee and could not be terminated without any justifiable cause. Moreover, her absences were covered by the proper authorizations.<sup>[13]</sup>

On the other hand, the petitioner contended that the respondent had not been dismissed, but that her contract of employment for the period of April 4, 1993 to June 4, 1993 merely expired and was no longer renewed because of her low performance rating. Hence, there was no need for a notice or investigation. Furthermore, the respondent had already accumulated five unauthorized absences which led to the deterioration of her performance, and ultimately caused the non-renewal of her contract.<sup>[14]</sup>

### The Ruling of the Labor Arbiter and the NLRC

On June 26, 1997, the Labor Arbiter rendered a decision dismissing the complaint for lack of merit, thus:

IN THE LIGHT OF ALL THE FOREGOING, the complaint is hereby dismissed for lack of merit. The respondent is, however, ordered to extend to the complainant a send off award or financial assistance in the amount equivalent to one-month salary on ground of equity.<sup>[15]</sup>

The Labor Arbiter declared that the respondent, who had rendered less than seventeen months of service to the petitioner, cannot be said to have acquired regular status. The petitioner and the Philips Semiconductor Phils., Inc., Workers Union had agreed in their Collective Bargaining Agreement (CBA) that a contractual employee would acquire a regular employment status only upon completion of seventeen months of service. This was also reflected in the minutes of the meeting of April 6, 1993 between the petitioner and the union. Further, a contractual employee was required to receive a performance rating of at least 3.0, based on output, quality of work, attendance and work attitude, to qualify for contract renewal. In the respondent's case, she had worked for the petitioner for only twelve months. In the last extension of her employment contract, she garnered only 2.8 points, below the 3.0 required average, which disqualified her for contract renewal, and regularization of employment. The Labor Arbiter also ruled that the respondent cannot justifiably complain that she was deprived of her right to notice and hearing

because her line supervisor had asked her to explain her unauthorized absences. Accordingly, these dialogues between the respondent and her line supervisor can be deemed as substantial compliance of the required notice and investigation.

The Labor Arbiter declared, however, that the respondent had rendered satisfactory service for a period of one year, and since her infraction did not involve moral turpitude, she was entitled to one month's salary.

Aggrieved, the respondent appealed to the NLRC, which, on September 16, 1998, issued a Resolution affirming the decision of the Labor Arbiter and dismissing the appeal. The NLRC explained that the respondent was a contractual employee whose period of employment was fixed in the successive contracts of employment she had executed with the petitioner. Thus, upon the expiration of her contract, the respondent's employment automatically ceased. The respondent's employment was not terminated; neither was she dismissed.

The NLRC further ruled that as a contractual employee, the respondent was bound by the stipulations in her contract of employment which, among others, was to maintain a performance rating of at least 3.0 as a condition for her continued employment. Since she failed to meet the said requirement, the petitioner was justified in not renewing her contract.

The respondent filed a motion for reconsideration of the resolution, but on January 12, 1999, the NLRC resolved to deny the same.

#### The Case Before the Court of Appeals

Dissatisfied, the respondent filed a petition for certiorari under Rule 65 before the Court of Appeals, docketed as CA-G.R. SP No. 52149, for the reversal of the resolutions of the NLRC.

On October 11, 1999, the appellate court rendered a decision reversing the decisions of the NLRC and the Labor Arbiter and granting the respondent's petition. The CA ratiocinated that the bases upon which the NLRC and the Labor Arbiter founded their decisions were inappropriate because the CBA and the Minutes of the Meeting between the union and the management showed that the CBA did not cover contractual employees like the respondent. Thus, the seventeenth-month probationary period under the CBA did not apply to her. The CA ruled that under Article 280 of the Labor Code, regardless of the written and oral agreements between an employee and her employer, an employee shall be deemed to have attained regular status when engaged to perform activities which are necessary and desirable in the usual trade or business of the employer. Even casual employees shall be deemed regular employees if they had rendered at least one year of service to the employer, whether broken or continuous.

The CA noted that the respondent had been performing activities that were usually necessary and desirable to the petitioner's business, and that she had rendered thirteen months of service. It concluded that the respondent had attained regular status and cannot, thus, be dismissed except for just cause and only after due hearing. The appellate court further declared that the task of the respondent was hardly specific or seasonal. The periods fixed in the contracts of employment executed by the respondent were designed by the petitioner to preclude the

respondent from acquiring regular employment status. The strict application of the contract of employment against the respondent placed her at the mercy of the petitioner, whose employees crafted the said contract.

According to the appellate court, the petitioner's contention that the respondent's employment on "as the need arises" basis was illogical. If such stance were sustained, the court ruled, then no employee would attain regular status even if employed by the petitioner for seventeen months or more. The CA held that the respondent's sporadic absences upon which her dismissal was premised did not constitute valid justifiable grounds for the termination of her employment. The tribunal also ruled that a less punitive penalty would suffice for missteps such as absenteeism, especially considering that the respondent had performed satisfactorily for the past twelve months.

The CA further held that, contrary to the ruling of the Labor Arbiter, the dialogues between the respondent and the line supervisor cannot be considered substantial compliance with the requirement of notice and investigation. Thus, the respondent was not only dismissed without justifiable cause; she was also deprived of her right to due process.

The petitioner filed a motion for reconsideration of the decision but on January 26, 2000, the CA issued a resolution denying the same.

### The Case Before the Court

The petitioner filed the instant petition and raised the following issues for the court's resolution: (a) whether or not the respondent was still a contractual employee of the petitioner as of June 4, 1993; (b) whether or not the petitioner dismissed the respondent from her employment; (c) if so, whether or not she was accorded the requisite notice and investigation prior to her dismissal; and, (d) whether or not the respondent is entitled to reinstatement and full payment of backwages as well as attorney's fees.

On the first issue, the petitioner contends that the policy of hiring workers for a specific and limited period on an "as needed basis," as adopted by the petitioner, is not new; neither is it prohibited. In fact, according to the petitioner, the hiring of workers for a specific and limited period is a valid exercise of management prerogative. It does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual course of business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. Hence, there is nothing essentially contradictory between a definite period of employment and the nature of the employee's duties.

According to the petitioner, it had to resort to hiring contractual employees for definite periods because it is a semiconductor company and its business is cyclical in nature. Its operation, production rate and manpower requirements are dictated by the volume of business from its clients and the availability of the basic materials. It produces the products upon order of its clients and does not allow such products to be stockpiled. Peak loads due to cyclical demands increase the need for additional manpower for short duration. Thus, the petitioner often experiences short-term surges in labor requirements. The hiring of workers for a definite period to supplement the regular work force during the unpredictable peak loads was the

most efficient, just and practical solution to the petitioner's operating needs.

The petitioner contends that the CA misapplied the law when it insisted that the respondent should be deemed a regular employee for having been employed for more than one year. The CA ignored the exception to this rule, that the parties to an employment contract may agree otherwise, particularly when the same is established by company policy or required by the nature of work to be performed. The employer has the prerogative to set reasonable standards to qualify for regular employment, as well as to set a reasonable period within which to determine such fitness for the job.

According to the petitioner, the conclusion of the CA that the policy adopted by it was intended to circumvent the respondent's security of tenure is without basis. The petitioner merely exercised a right granted to it by law and, in the absence of any evidence of a wrongful act or omission, no wrongful intent may be attributed to it. Neither may the petitioner be penalized for agreeing to consider workers who have rendered more than seventeen months of service as regular employees, notwithstanding the fact that by the nature of its business, the petitioner may enter into specific limited contracts only for the duration of its clients' peak demands. After all, the petitioner asserts, the union recognized the need to establish such training and probationary period for at least six months for a worker to qualify as a regular employee. Thus, under their CBA, the petitioner and the union agreed that contractual workers be hired as of December 31, 1992.

The petitioner stresses that the operation of its business as a semiconductor company requires the use of highly technical equipment which, in turn, calls for certain special skills for their use. Consequently, the petitioner, in the exercise of its best technical and business judgment, has set a standard of performance for workers as well as the level of skill, efficiency, competence and production which the workers must pass to qualify as a regular employee. In rating the performance of the worker, the following appraisal factors are considered by the respondent company as essential: (1) output (40%), (2) quality (30%), (3) attendance (15%), and (4) work attitude (15%). The rate of 3.0 was set as the passing grade. As testified to by the petitioner's Head of Personnel Services, Ms. Cecilia C. Mallari:

A worker's efficiency and productivity can be established only after he has rendered service using Philips' equipment over a period of time. A worker has to undergo training, during which time the worker is taught the manufacturing process and quality control. After instructions, the worker is subjected to written and oral examinations to determine his fitness to continue with the training. The orientation and initial training lasts from three to four weeks before the worker is assigned to a specific work station. Thereafter, the worker's efficiency and skill are monitored.

...

Among the factors considered (before a contractual employee becomes a regular employee) are output, quality, attendance, and work attitude, which includes cooperation, discipline, housekeeping and inter-office employee relationship. These factors determine the worker's efficiency and productivity.<sup>[16]</sup>