

FIRST DIVISION

[G.R. No. 176717, March 17, 2010]

EVANGELINE C. COBARRUBIAS, PETITIONER, VS. SAINT LOUIS UNIVERSITY, INC., RESPONDENT.

DECISION

CARPIO MORALES, J.:

In 1982, Evangeline C. Cobarrubias (petitioner) was hired as a faculty member at St. Louis University, Inc. (respondent) in Baguio City.^[1]

By letter of May 23, 2003,^[2] respondent's President Rev. Fr. Paul Van Parijs informed petitioner that she had failed to meet the required minimum evaluation rating for faculty members during the 5-year period beginning school year 1998 until 2003 to thus place her on forced leave during the first semester of school year 2003-2004; and that while on forced leave, all benefits due her would be suspended following Section 7.7 of the existing Collective Bargaining Agreement (CBA) between respondent and the Union of Faculty and Employees of Saint Louis University.

In the same letter of May 23, 2003, petitioner was advised that "before the lapse of thirty (30) days prior to the end of the First Semester . . . or on or before 12 September 2003," she should "inform in writing . . . [her] readiness and availability to teach during the Second Semester . . ."

The above-cited CBA provision reads:

Section 7.7. For teaching employees in college who fail the yearly evaluation, the following provisions shall apply:

(a) Teaching employees who are *retained for three (3) cumulative years* in five (5) years, shall be on forced leave for one (1) regular semester during which period all benefits due them shall be suspended;

(b) Teaching employees who obtain evaluation ratings below 80 for three (3) cumulative years in five (5) years shall be terminated.^[3] (italics and underscoring supplied)

Under the guidelines for Faculty Promotion of respondent's Handbook,^[4] a faculty member is "retained in rank if he does not obtain the required rating for that particular rank." And under respondent's Evaluation Manual,^[5] a faculty member is evaluated on the basis of his rank.

Petitioner had the following performance record for the 5-year period preceding the

notice for her to go on forced leave:

School Year	Over-all Rating	Required Minimum Evaluation	Remarks	Faculty Rank
1998-99	85.50	86	Retained	Asst. Professor III+
1999-2000	85	86	Retained	Asst. Professor III+
2000-2001	87	86	Passed but maximum rank obtained	Asst. Professor III+
2001-2002	90.50	86	Passed but maximum rank obtained	Asst. Professor III+ and was later adjusted to Associate Professor I-1* owing to the passing of the BAR exam
2002-2003	85	87	Retained	Associate Professor I-2**

* Faculty rank effective 1 April 2002 until 31 May 2002

** Faculty rank for SY 2002-2003 due [for] having passed the evaluation of SY 2002-2002.^[6] (underscoring supplied)

Before the *first* semester of the 2003-2004 school year began or in June 2003, petitioner attempted to report for work, but as she was placed on forced leave, she was not given any teaching load.^[7]

Petitioner thereupon filed on June 5, 2003 a complaint for illegal dismissal with prayer for reinstatement, backwages, moral and exemplary damages, attorney's fees and payment of service incentive leave before the Regional Arbitration Branch, Cordillera Administrative Region of the National Labor Relations Commission.^[8] The Executive Labor Arbiter, for lack of jurisdiction, was later to refer the case to the National Conciliation and Mediation Board by Order of January 19, 2005.

By letter of October 13, 2003,^[9] respondent's Personnel Officer advised petitioner that a 24-unit load had been prepared for her for the *second* semester of the school year 2003-2004 "which starts on November 3, 2003," but that despite its letter of

May 23, 2003, it had not received any communication from her. She was thus required to signify in writing her intention to resume teaching duties "on or before the end of October 2003" failing which her teaching load would be assigned to "other qualified and available faculty."^[10]

As no word was received from petitioner, respondent sent her another letter of November 8, 2003^[11] the pertinent portions of which read:

x x x x

Despite all these efforts, you failed to report for work. We urge you to come. We shall give you up till Nov. 10, 2003. Otherwise we will be constrained to assign your load to other teachers.

Since your forced leave is finished, we ask you to come and continue your teaching function this Second Semester.

x x x x^[12] (underscoring supplied)

Still later, respondent sent petitioner another letter of November 12, 2003^[13] asking her to explain in writing within 48 hours why she should not be deemed to have abandoned her work, and a final letter dated November 28, 2003^[14] giving her an opportunity to report for work within five days from receipt and to explain in writing within the same period why she should not be terminated due to abandonment.

Petitioner never ever responded to respondent's letters, hence, she was, by letter of December 6, 2003,^[15] dismissed for abandonment.

Before the Voluntary Arbitrator designated to handle the case, the following issues were raised:

1. The legality of dismissal of complainant due to abandonment;
2. The validity of forced leave imposed upon complainant for one semester; and
3. . . . [Whether] due process [was] observed by Respondent.^[16]

The Arbiter, by Decision of July 11, 2005,^[17] declared the earlier-quoted Article 7, Section 7 of the CBA to be void, viz:

It is elementary that a contract that contravenes a policy, which confers a juridical relation to which it refers shall be void. The CBA may not interpret or expand the provisions of the Evaluation Manual that will make it prejudicial to the interests of the persons referred to in the evaluation manual...^[18] (underscoring supplied)

x x x x

The Evaluation Manual manifests the will of the University in its educational policy in the ranking and promoting members of its faculty. **The CBA as a labor contract may not contravene the policy of the University where it does not impose a penalty** other than what the University manifests in that the failure of a faculty member in his performance within a five year period of which he has failed to meet the minimum rating for three (3) cumulative years will **not be promoted but retained in rank** only. **The CBA states otherwise as it adds a penal provision** that said faculty member shall be on forced leave, for one regular semester and all his benefits suspended. **Such penalty constitutes undue and unreasonable restraint in the occupation of the faculty member and works hardship in his economic life** as he will be deprived of his only livelihood for one regular semester including any benefit owing to him during that period.^[19] (emphasis and underscoring supplied)

And he noted that petitioner was not afforded due process, there being no showing that the twin requirements of notice and hearing were complied with.^[20]

Respecting the issue of abandonment, the Arbiter ruled that petitioner's failure to report for work, despite repeated notices from respondent, did not constitute abandonment, citing *Samarca v. Arc-men Industries, Inc.*^[21] which held that to constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship^[22] which, to the Arbiter, was wanting in the case at bar. Hence, the Arbiter ordered the reinstatement of petitioner.

Thus the Arbiter disposed:

WHEREFORE, in the light of the foregoing, the clause in the CBA, Article 7, Section 7, Par. (a), imposing forced leave for one regular semester during which period all benefits due the, will be suspended is **declared void**, and Respondent is ordered **to reinstate Complainant to her former position** without loss of seniority rights and other privileges; to pay her backwages from the time it was withheld from her to the time of her actual reinstatement; to pay moral damages of P50,000.00; exemplary damages ay P25,000.00 and attorney's fees pf 10% of the total sum awarded to Complainant.^[23] (emphasis and underscoring supplied)

On respondent's Petition for Review,^[24] the Court of Appeals, by Decision of May 23, 2006,^[25] *reversed* the Arbiter's decision, holding that the Arbiter breached the bounds of his authority by nullifying Sec. 7.7 of the CBA.^[26] To the appellate court, the Arbiter's authority to settle labor disputes is confined only to the proper interpretation and implementation of the CBA provisions,^[27] citing Art. 261 of the