

## **UNION CARBIDE PHIL., INC., PETITIONER, VS. HON. SECRETARY OF LABOR, NATIONAL LABOR RELATIONS COMMISSION, AND UNION CARBIDE LABOR UNION (NLU) RESPONDENTS.**

*G.R. No. L-39607. April 19, 1989*

Ponente: NARVASA, J.

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### **NARVASA, J.:**

What we are called upon to review in this proceeding on certiorari is an extra-legal direction by public respondents for the payment by petitioner Union Carbide to its dismissed employees (private respondents herein) of separation pay in an amount exceeding the maximum fixed by the Termination Pay Law then in force, Republic Act No. 1052, as amended by Republic Act No. 1787:[1] i.e., at the rate of 45 days per year of service, instead of one-half month, for every year of service.

The law contained the following pertinent provisions:[2]

"SECTION 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the case of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever, is longer, a fraction of at least six months being considered as one whole year.

" \* \* \* .

"The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice."

In January, 1973, Union Carbide applied with the Department of Labor and Employment for clearance to terminate the services of 21 of its employees, for economic reasons. Conciliation by officials of the Department resulted in an agreement for withdrawal of the application for clearance, and for the transfer instead of the employees concerned to lower positions at reduced wages. Implementation of the agreement followed; but it evidently did not relieve Union Carbide of the financial difficulties which had impelled it in the first place to apply for clearance to terminate some of its employees. Not long afterwards it renewed its application for clearance to separate the same 21 employees from work.

Understandably, the latter reacted by filing, with the assistance of their union, a complaint for unfair labor practice against Union Carbide, accusing it of bad faith for reneging on their agreement. The National Labor Relations Commission however found Union Carbide innocent of the charge, and that it was indeed in dire financial straits. The Commission sought to end the controversy through a "compromise settlement," by rendering what it no doubt deemed a Solomonic verdict: granting clearance for the dismissal of the 21 employees, on the one hand, pursuant to Section 1, Republic Act No. 1052 (as amended, *supra*), and, on the other, requiring payment to them as

aforestated of their salaries and wages, not at the rate of 15 days for every year of service, as prescribed by the law, but at 45 days for every year of service.

Union Carbide's response to this extraordinary disposition was to file a manifestation declaring that since the Commission had seen fit to award separation pay of 45 days for every year of service to the employees concerned "on the basis of a compromise settlement," despite the fact that it had never entered into any such compromise agreement with its dismissed workers, it was construing the decision as an order to give termination pay at the rate thus set as a compromise settlement unilaterally determined by the Commission itself, and as based on the current wage rates of the employees.

This prompted the workers affected to seek clarification. They of course took the position that the basis for their termination pay should be their salaries at the time of Union Carbide's first application for clearance to dismiss -- or prior to their acceptance of lower salaries -- and not those being received by them at the time of actual separation from employment.

The issue was decided in the latter's favor by the NLRC. It declared that "for purposes of ascertaining the amount of the separation pay of the complainants, the salary which they were receiving at the date of the application for clearance to dismiss shall be the basis."

Union Carbide's motion for reconsideration was adversely resolved by the Secretary of Labor. He said:

" \*\* (W)e affirm the Commission's Resolution for the reason that since the application for clearance was filed and granted by this Office, the effective date thereof retroacts from the date of its filing. Consequently, the salary of the employees concerned at the time of the filing of respondent Company's application for clearance to dismiss should correctly serve as the basis for computing their separation pay. In insisting on the dismissal of the employees concerned, respondent Company has to rely necessarily on its original application filed on January 5, 1973. If such is the case, then the employees concerned are justified in insisting that the basis for computing their separation pay should be their salary at the time the application for clearance was filed."

Hence, this petition for certiorari by Union Carbide, which seeks to make two (2) essential points:

- 1) the NLRC's formula for payment of separation pay at the rate of 45 working days for every year of service is "unprecedented or without basis in law or jurisprudence"; hence, payment at that rate on the basis of the salaries at the time of actual termination should be deemed to constitute full and final settlement of the case without, in the NLRC's words, "delving into the merits of this case"; and
- 2) in any event, the case had become moot by reason of the execution by the 21 employees of individual releases upon receipt of separation pay reckoned in accordance with Union Carbide's theory of the case.<sup>1</sup>

In vindication of the challenged decision, the Solicitor General points out that Union Carbide did renege on the "agreement" -- that instead of the employees being dismissed outright, they would be assigned to other positions at reduced pay -- for it later proceeded with the dismissal anyway; and while Union Carbide would hold its employees and their union bound by that portion of the agreement as to reduction in pay, it would consider itself free to disregard that part by which it undertook to discontinue its plan to dismiss the workers. The Solicitor General also suggested that while the practice was for separation pay to be computed on the basis of wages at time of termination of services,<sup>1</sup> the rule was not inflexible, and the present case should provide an occasion for this Court to apply the beneficent spirit of the labor laws and the constitutional exhortation on protection to labor. As to the alleged release papers executed by the employees, the Solicitor General dismissed them by the declaration that employees are usually at a gross disadvantage in their dealings with the employer and the State should step in to protect them.

The case is obviously *sui generis*. It treats of a judgment based on a compromise; but the compromise was never agreed upon by the parties, but unilaterally imposed on them by the NLRC. The judgment obliges the employer to give separation pay to his employees in accordance with the Termination Pay Law; but payment is required at a rate very much in excess -- 300% -- of that prescribed by the invoked statute.

The fact is that under the law then in force, Union Carbide, in common with any other employer, had the prerogative to terminate the services of an employee even without just cause, provided it gave the latter written notice of such termination "at least one month in advance or one-half month for every year of service \*\*, whichever was longer;" otherwise, the employer was bound to give to the employee "compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice."<sup>2</sup>

The fact is, moreover, that Union Carbide had been required to assume an obligation more burdensome than that fixed by law as a "compromise settlement" to which it had never consented; this, notwithstanding that it had not been found by the NLRC to have acted illegally at all but on the contrary that its decision to separate its employees from the service (despite an initial undertaking not to do so) was practically forced upon it by its continuing financial troubles.

The fact is, too, that Union Carbide had already given separation pay to the respondent employees, computed at the rate of 45 days' salary for every year of service based on their salary at the time of actual termination of their employment, inclusive of the value of their vacation and sick leave, as well as accrued salaries for eleven days. There is no dispute about this, nor about the further fact that the amounts thus received by the employees were considerably more than those due them at the rate laid down by the Termination Pay Law, i.e., one-half month for every year of service (about 300% more, on the average), as quite graphically demonstrated by the table annexed to the petitioner's "Compliance and Reply," found at pages 100 to 108 of the rollo.

These circumstances cannot be ignored. The Court cannot close its eyes to them, as the respondent officials did. They show that the NLRC and the Secretary of Labor had acted in excess of the power conferred on them by law, and had without rhyme or reason refused to take account of established actualities on record. Considerations of law and the extrication of the employer from the extremely onerous situation in which it had been improperly placed by the dispositions of the Labor officials.

WHEREFORE, the petition is granted, and the writ of certiorari prayed for issued, annulling and setting aside the resolution of the National Labor Relations Commission dated October 12, 1973 and the Decision of the Secretary of Labor dated September 12, 1974, dismissing the claims of the private respondents, and absolving the petitioner from any further liability to them. No costs.

### **SO ORDERED.**

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Eff. June 21, 1957: the law in force during the time material to the case at bar

[2] Italics supplied. N.B. The Termination Pay Law has since been superseded by the Labor Code (P.D. No. 442) eff. May 1, 1974

1 *Infra*, pp. 4-5

1 The law in fact declares the employee "entitled to compensation from the date of termination of his employment" (Sec. 1, RA 1052, as amended). Section 10, Rule 1, Book VI of the Implementing Rules and

Regulations of the Labor Code now in force, provides that the computation of the termination pay \*\* shall be based on his latest salary rate, unless the same was reduced by the employer to defeat the intention of the Code, in which case the basis of computation shall be the rate before its deduction." *Italics supplied.*

2 SEE footnote 1 and related text,, pp. 1-2, *supra*

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