

## **ARCADIO DUAY, SOLEDAD MAPA, ET AL., PETITIONERS, VS. COURT OF INDUSTRIAL RELATIONS AND INSULAR LUMBER CO. (PHILS.) INC., RESPONDENTS.**

*G.R. No. L-40103. June 24, 1983*

Ponente: GUTIERREZ, JR., J.

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### **GUTIERREZ, JR., J.:**

This is a petition to review on certiorari a resolution of the respondent court which ruled that the termination of employment of the petitioners was due to the necessity for retrenchment arising from the private respondent's economic difficulties. The court stated that the lay offs were not due to any unfair labor practice but nonetheless ordered the respondent company to pay the petitioners separation gratuities in accordance with Republic Act 1787, otherwise known as the Termination Pay Law.

The instant case was commenced by the Acting Prosecutor of the Iloilo branch of the respondent court who, on behalf of the one hundred seventy-six (176) petitioners, filed a complaint charging respondents Insular Lumber Company (ILCO) and Allied Workers Association of the Philippines (AWA) with unfair labor practice.

The respondents allegedly committed an unfair labor practice when ILCO, after having entered into a collective bargaining agreement with AWA containing terms and conditions onerous to labor and causing disadvantage to the petitioners, dismissed the latter when they refused to continue their membership with AWA which they described as a company union. The petitioners vigorously objected to various provisions in the collective bargaining agreement, among them, the reduced gratuity payments upon separation, the provisions on hospitalization and other benefits which the petitioners described as paltry and unreasonable. The petitioners claimed that when they resigned from the respondent AWA and stopped paying union dues to the latter, ILCO countered by dismissing them.

Respondents, on the other hand, denied that the dismissal was due to the petitioners' refusal to continue with their AWA membership. According to the respondents, the petitioners remained members of the said union up to the last days of their employment and continued to pay union dues through check off up to the time they last received salaries and compensation from ILCO. The company alleged that the termination of the petitioners employment was "not due to the motives alleged but to the fact that the respondent Company, upon consultation with the AWA, had embarked upon a policy of retrenchment and streamlining in order to forestall its closing shop and going out of business because of economic difficulties which were brought about by economic factors such as the exhaustion of its forest concession, the stiff competition from Japan in the foreign markets, high taxes and other factors which compelled the management to adopt measures which would save the jobs of at least several hundred employees who otherwise would have been out of work if the company had gone out of business."

The respondent court held in its decision:

"Therefore, it is clear now, and this is borne by the recorded evidence, that the plan to eliminate certain positions in the respondent company came about as early as 1959 in view of difficulties encountered by the

company since 1958. The separation of the herein complainants occurred on different dates, the earliest being on January 18, 1960, and successively thereafter by chronological order until April 3, 1961, or a period of about one and a half years.

"We can not go along with the contention of the complainants that the latter were separated because they refused to continue with their membership with the AWA because it is a fact, and this is supported by documentary evidence, that the plan to lay off personnel was broached to the workers since September, 1959, in view of economic difficulties caused by economic factors such as the exhaustion of the company's timber resources, stiff competition from Japan in the foreign markets, high taxes and the like which forced management to adopt remedies that would save the jobs of the majority of the employees who, otherwise, would have been out of work had the company gone out of business. (Exhs. '179-Co.' and '180-Co.'). If it is true that the 176 herein complainants were separated due to their refusal to continue their membership with the AWA, we can not see any reason why the other 600 or so AWA members affected by the dismissal or lay-off did not file a similar case as this is on the same ground where they were similarly situated. This gives the lie to the stand of the complainants and strengthens that of the company that the gradual lay-off of the workers was due to economic hardships. One other reason in favor of the respondents herein is that those affected by the dismissal or separation were reemployed as circumstances warrant their reinstatement, or, members of their families or dependents were taken in employment if qualified. This is evidenced by Exhibit '178-Co.', which is a list of names of complainants who have been reemployed in the respondent company and are still employed. Likewise, the recorded evidence reveals that laid-off workers and their dependents are given priority in employment in case of vacancies or additional openings, and that in the case of dependents of laid-off workers, there are, more or less, 100 of them who had been given jobs or taken in in vacancies which were gradually created after the lay-off program in 1960-1961. This further shows that the dismissal of the complainants was not due to unfair labor practice."

Based on the foregoing findings, the court dismissed the case pursuant to the provisions of Section 5 of Republic Act No. 875.

Acting on a motion for reconsideration filed by the petitioners, the respondent court en banc modified the earlier decision and ordered ILCO to pay the petitioners termination pay in accordance with Republic Act 1052, as amended, otherwise known as the Termination Pay Law. However, the separation gratuities already received by the petitioners under the collective bargaining agreement were ordered deducted from the amounts due the affected employees.

The petitioners assigned the following errors in this petition for review:

I

The respondent court erred in not declaring that Insular Lumber Co. (ILCO) and the Allied Workers Association of the Philippines (AWA) have committed unfair labor practices against the petitioners.

II

The respondent court erred in not ordering the reinstatement of the petitioners to their former jobs plus payment of back wages during their suspension.

The petitioners have failed to adequately support their contention that the resolution of the respondent court should not be upheld. Republic Act 875, section 4 provides:

a) It shall be unfair labor practice for an employer:

.....

4.) To discriminate in regard to hire or tenure of employment or any term or condition of employment to

encourage or discourage membership in any labor organization . . .

Whether or not the private respondent terminated the petitioners' employment due to their union activities and whether or not the employer is suffering from economic difficulties calling for retrenchment are factual issues. Section 6 of Republic Act No. 875 provides that, in unfair labor practice cases, the factual findings of the Court of Industrial Relations are conclusive on the Supreme Court, if supported by substantial evidence. In *Dy Keh Beng v. International Labor and Marine Union* (90 SCRA 161), we stated that the above provision has been implemented in a long line of decisions, and among them, citing only a few are *Philippine Newspapers' Guild v. Evening News, Inc.* (86 Phil. 303); *G.P.T.C. Employees Union v. Court of Industrial Relations, et al.*, 102 Phil. 538; *Community Sawmill Company v. Court of Industrial Relations and Community Effort Labor Union*, L-24347, March 27, 1979; *Gonzalo Puyat & Sons, Inc. v. Labayo*, 62 SCRA 488; *De Leon, et al. v. Pampanga Development Co., Inc.*, L-26844, September 30, 1969, 29 SCRA 628; *Castillo, et al. v. Court of Industrial Relations*, L-26124, May 29, 1971, 39 SCRA 75.

The "substantial evidence" test is more than adequately met by the private respondent. We are satisfied from the records that the petitioners were terminated in their employment not because of union activities but because of streamlining, modernization, and mechanization of operations brought about by necessary retrenchment and that the findings of the respondent court cited above are correct. The petitioners' membership or non-membership in AWA was not the determining factor. The records show that the company in determining who were to be laid off, observed the following conditions: 1) ability to perform the work; 2) physical fitness; 3) old age; 4) disablement; 5) seniority in work; and 6) financial hardship for certain workers. The last factor was decided by a committee of three members: one representing management, one representing the AWA; and one representing the medical department. It is, therefore, quite evident that there was no unfair labor practice committed by ILCO.

The second assignment of error has no merit. It is premised on unfair labor practice which the records show is non-existent. However, the lower court correctly ruled that ILCO should pay separation gratuities to the petitioners in accordance with the provisions of the Termination Pay Law which was the governing law on dismissal compensation before the effectivity of the new Labor Code.

Under the Termination Pay Law, if an employee is dismissed on the basis of just cause, the employer is not required to serve the advance written notice based on the number of years the employee has served the employer. Neither is the employer required to grant termination pay. If the termination is without just cause, the employer must serve timely notice on the employee, otherwise the employer is obliged to pay the required termination compensation, except where other applicable statutes provide a different remedy as in cases involving unfair labor practice. (*Pepito v. Secretary of Labor*, 96 SCRA 454)

One point should, however, be made clear. There may have been no unfair labor practice by ILCO as would have called for reinstatement with backwages. It does not necessarily follow that the terminations of employment were for "just cause" as provided under Republic Act No. 1787, the Termination Pay Law.

In one case involving the same employer, *Insular Lumber Co. v. Court of Appeals* (29 SCRA 371), we ruled:

"It is in the light of the principles just expressed that we examine the reasons advanced by petitioner to bring it within the 'just causes' for dismissal area set forth in Republic Act 1787 and thus excuse it from giving termination pay to its dismissed laborers. A reference to Section 1, Republic Act 1787, transcribed at the start of this opinion, will readily show that, if at all, the position taken by petitioner must have to be gauged by the terms of paragraphs (a) and (f) of said Section 1, which give as just causes for terminating an employment without a definite period: 'a. The closing or cessation of operation of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of this law; . . . ; f. Other causes analogous to any of the foregoing.'

"A retrenchment program, we believe, does not fit into the statutory scheme. To be underscored here is that we are not called upon to apply the phrase 'just causes' in connection with the issue of propriety of dismissal of an employee who seeks reinstatement and backpay upon the charge of unlawful dismissal. Under Republic Act 1787, the element of reinstatement with consequent backpay is beside the point. The just causes enumerated in the Termination Pay Law have relevance only to the issue of whether or not the employer is liable to the employee for separation pay. The employee does not thereunder seek reinstatement to his former position. In other words, the just causes under Republic Act 1787 merely determine the liability or non-liability on the part of the employer to give out severance pay; while just causes under the general concept of the law are decisive of the issue as to the propriety or impropriety of the dismissal and the propriety or impropriety of the employee's action for reinstatement."

.....

"It bears repetition to say that retrenchment policy for reasons of economy stops short of the 'closing or cessation of operation of the establishment or enterprise.' The strictness with which the Termination Pay Law is interpreted against the employer finds expression in the recent decision of this Court in *Wenceslao vs. Carmen Zaragoza, Inc.* (1968), 24 SCRA 554, 558. Mr. Justice Arsenio P. Dizon, speaking for this Court, there said:

"'True, appellant's film exchange business where appellees worked was closed as of February 28, 1962, but what the law considers as just cause for terminating an employment without a definite period is the closing or cessation of operation of the establishment or enterprise of the employer, and not merely the closing or cessation of operation of any particular division or department of the employer's business. To sustain appellant's contention in this regard would amount to reading this into the law—something which we are not ready to do, considering its adverse effects upon the rights of the employees. If it must be so, let the law say it clearly.'

"We find no difficulty in stating that the position here of private respondents is well above that of the laborers involved in the *Wenceslao* case. The retrenchment here may not be analogized with the 'closing or cessation of operation of any particular division or department of the employer's business' in that case. Retrenchment could be temporary; closing or cessation is final."

In still another case also involving *ILCO, Insular Lumber Co (Phil.) Inc. v. Court of Appeals* (80 SCRA 28), we reiterated that termination of employment by reason of economy to prevent closure of business is not analogous to "closing or cessation of operation of the establishment or enterprise." The separated employees are still entitled to termination pay.

WHEREFORE, the petition for review is hereby DISMISSED for lack of merit. The questioned resolution of the Court of Industrial Relations is AFFIRMED.

**SO ORDERED.**

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

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