

NATIONAL LABOR UNION, PETITIONER, VS. THE HONORABLE SECRETARY OF LABOR AND PACIFIC MILLS, INC., RESPONDENTS.

G.R. No. L-41459. December 18, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This is a petition to review on certiorari the decision of the Secretary of Labor dated January 15, 1975 which sustained the NLRC's decision and ordered private respondent Pacific Mills, Inc. to pay Juan Tamondong the sum of P2,340.00 as separation pay.

Juan Tamondong was employed by respondent Company on August 8, 1960 as its general production overseer with a basic monthly pay of P360.00. On August 10, 1973, respondent Company filed with the Department of Labor an application for clearance to terminate the services of Tamondong on the grounds of falsification of company records, smoking inside prohibited area, dereliction of duty and inefficiency resulting in loss of confidence. In the meantime, he was placed under preventive suspension.

Being a member of petitioner Union [as well as the Pacific Mills, Inc. Supervisors' Union],[1] said petitioner took up the cudgels for Tamondong and opposed respondent Company's application.

On August 18, 1973, respondent Company lifted the preventive suspension of Tamondong and allowed him to report back for work. He did but only for one day. From August 22 to 30, 1973, he was absent without leave. Respondent Company considered such action as tantamount to abandonment, for which reason it issued a memorandum on August 31, 1973 placing Tamondong back on suspension.

Meanwhile, acting on respondent Company's application for clearance, the compulsory arbitrator found that Tamondong's suspension was illegal for being in violation of Presidential Decree No. 21 and its Implementing Instructions, as well as of Republic Act No. 1052 [Termination Pay Law]. Accordingly, he ordered respondent Company to reinstate Tamondong with full backwages up to the date of actual reinstatement.

Respondent Company appealed to the National Labor Relations Commission [NLRC]. Said tribunal found that during the hearings on the case, respondent Company failed to prove the grounds adduced to justify the removal of Tamondong and concluded that said employee was dismissed without just cause. There being no proof that the mandatory advance notice of termination was ever served on Tamondong within the statutory time frame, respondent Company was held liable for separation pay in the amount of P2,340.00.

Upon the Union's appeal to the Secretary of Labor, the NLRC's grant of termination pay to Tamondong, instead of reinstatement, was sustained. Petitioner Union then came directly to this Court contending that the adverse rulings of the NLRC and the Secretary of Labor are contrary to the Labor Code and the constitutional guarantee on security of tenure, and that the Termination Pay Law is no longer applicable in view of the new Constitution.

In dismissing the instant petition for review, we find decisive the fact that at the time of Tamondong's re-suspension on August 31, 1973, which amounted to a constructive separation from work, the applicable law on

dismissals was the Termination Pay Law [Republic Act No. 1052, as amended]. Said statute was deemed repealed only on November 1, 1974 when Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, took effect.[2]

The pertinent provision of the Termination Pay Law states:

"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 employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.

"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.

" x x x".

The above-quoted provision has been consistently construed by this Court as granting to the employer the right to terminate the employment of an employee with or without just cause. The only condition imposed was that if the dismissal is without just cause, the employer should serve notice on the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer. It was the failure to serve such notice that rendered the employer liable for separation pay and not the fact that the employment was severed without just cause.[3]

It has also been held that under the Termination Pay Law, even if the manner of the employee's dismissal has been found to be without just cause, without due notice, and abusive on the part of the employer, said employer may only be liable for separation pay and moral damages, and the dismissed employee cannot demand reinstatement.[4]

Thus, in the case at bar, it becomes unnecessary for Us to determine whether or not Tamondong's dismissal was for cause. Furthermore, reinstatement is out of the question. The only issue is whether or not Tamondong was served with the notice required by law. The NLRC found that he has not been so served, which finding is deemed admitted by the respondent company in failing to appeal from the decision of the NLRC. Hence, instead of reinstatement, the award of separation pay to Tamondong corresponding to one-half month pay for every year of service (P180.00 x 13 years of service), for having been dismissed without the required advance notice, was, at that time, consistent with the prevailing laws.

Finally, the records show that petitioner Union failed to exhaust the available administrative remedies provided for in Article 222 of the Labor Code.[5] From the January 15, 1975 decision of the Secretary of Labor, petitioner Union should have appealed to the President. Instead, it elevated its case to this Court. The rule in our jurisdiction is that when an administrative remedy is provided by law, relief must be sought by first exhausting that remedy before seeking judicial intervention. Failure to do so is fatal.[6]

WHEREFORE, the petition is hereby DENIED. The questioned decisions of the Secretary of Labor and the NLRC are affirmed, with costs against the petitioner.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 168

[2] See Section 1[q], Rule III, Book VII of the Rules and Regulations Implementing P.D. No.442, as amended

[3] Monteverde vs. Casino Espanol de Manila, G.R. No. L-11365, April 18, 1958, 103 Phil. 377; Gutierrez vs. Bachrach Motor Co., Inc., G.R. Nos. L-11298, L-11386 and L-11603, January 19, 1959, 105 Phil. 9; Altomonte vs. Philippine American Drug Co., G.R. Nos. L-11872 and L-14922, August 31, 1959, 106 Phil. 137; Capiral vs. Manila Electric Co., et al., G.R. No. L-15721, December 27, 1963, 9 SCRA 804; Philippine Refining Co., Inc. vs. Garcia, 18 SCRA 107

[4] Philippine Refining Co., Inc. vs. Garcia, Ibid

[5] "Article 222.?

"x x x

"Decisions of the Secretary of Labor may be appealed to the President of the Philippines subject to such conditions or limitations as the President may direct".

[6] Llarena vs. Lacson, 108 Phil. 510

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