

DANIEL SANCHEZ ET AL., PLAINTIFFS AND APPELLEES, VS. HARRY LYONS CONSTRUCTION, INC., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-2779. October 18, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

This case originated in the Municipal Court of Manila upon a complaint filed on March 9, 1948, by the herein appellees as plaintiffs, against the herein appellants as defendants, for the sum of P2,210 plus interest, which plaintiffs claimed as one month advance pay due them. On April 28, 1948, the parties entered into a stipulation of facts upon which said Municipal Court rendered judgment for the plaintiffs. Upon denial of their motion for reconsideration of this judgment, the defendants filed an appeal to the Court of First Instance of Manila, wherein the parties submitted the case upon the same facts agreed upon in the Municipal Court. On October 2, 1948, the Court of First Instance of Manila rendered its decision holding for plaintiffs, as follows:

"Wherefore, judgment is hereby rendered—

"1. Ordering defendant Material Distributors, inc. to pay plaintiff Enrique Ramirez the sum of P360 and plaintiff Juan Ramirez the sum of P250 with legal interest on each of the said sums from the date of the filing of the complaint in the Municipal Court of Manila until the date of full payment thereof; and

"2. Ordering defendant Harry Lyons Construction, Inc. to pay plaintiff Daniel Sanchez the sum of P250, and plaintiff Mariano Javier, Venancio Diaz, Esteban Bautista., Faustino Aquillo, Godofredo Diamante, Marcial Lazaro, Ambrosio dela Cruz and Marcelino Maceda the sum of P150 each, with legal interest on each of the said sums from the date of the filing of the complaint in the Municipal Court of Manila until the date of full payment thereof.

"One-half of the costs is to be paid by Material Distributors, Inc. and the other half by Harry Lyons Construction, Inc."

From this Judgment, defendants filed an appeal with this Court purely upon a question of law. The stipulation of facts entered into by the parties on April 28, 1948, is as follows:

"STIPULATION OF FACTS

"Come now the plaintiffs and the defendants, by their respective undersigned attorneys and to this Honorable Court, respectfully submit the following stipulation of facts:

"1. That the plaintiffs were respectively employed as follows:

Name

Date of
employment

Position

Salary

Enrique Ramirez

12/16/46

Warehouseman

P450 a mo.

Juan Ramirez

.....do.....

.....do.....

250 a mo.

Note.—The salary of Enrique Ramirez was later reduced to P360 per month. This was the amount he was receiving at the time of his dismissal.

Employed by Defendant Harry Lyons Construction, Inc.

Daniel Sanchez

7/1/47

Carpenter-
Foreman

P250 a mo.

Mariano Javier

.....do.....

Guard.....

5 a day

Venancio Diaz

.....do.....

do.....

5 a day

Esteban Bautista

.....do.....

do.....

5 a day

Faustino Aquillo

.....do.....

do.....

5 a day

Godofredo Diamante

.....do.....

do.....

5 a day

Marcial Lazaro

.....do.....

do.....

5 a day

Ambrosio de la Cruz

.....do.....

do.....

5 a day

Marcelino Maceda

.....do.....

do.....

5 a day

as per contracts of employment, copies of which are attached to defendants' answer marked Exhibits 1 to 11 inclusive.

"2. That in said contracts of employment the plaintiff agreed as follows:

'I accept the foregoing appointment, and in consideration thereof, I hereby agree that such employment may be terminated at any time, without previous notice, and I further agree that salary and wages, shall be computed and paid at the rate specified up to the date of such termination.

'Also in consideration of such employment I hereby expressly waive the benefit of Article 302 of the Code of Commerce and that of any other law, ruling, or custom which might require notice of discharge or payment of salary or wages after date of the termination of such employment.'

"3. That the plaintiffs were dismissed by the defendants on December 31, 1947 without one months' previous notice.

"4. That each of the plaintiffs demanded payment of one month's salary from the defendants and that the latter refused to pay the same.

Wherefore, it is respectfully prayed that judgment on the foregoing stipulation of facts be rendered by this Honorable Court."

The points in Issue herein are: first, whether plaintiffs, both those paid on a monthly and daily basis, are entitled

to the benefits granted in Article 302 of the Code of Commerce; and secondly, if they are so entitled, was their waiver of such benefits legal and valid?

Article 302 of the Code of Commerce reads as follows:

"Art. 302. In cases in which no special time is fixed in the contracts of service, any one of the parties thereto may cancel it, advising the other party thereof one month in advance.

"The factor or shop clerk shall be entitled, in such case, to the salary due for said month."

It is a clear doctrine, as gleaned from the provision of the law and settled jurisprudence,[1] that in a mercantile contract of service in which no special time is fixed, any one of the parties may cancel said contract upon the giving of a one-month notice, called a *mesada*, to the other party. The law gives an added proviso that in the case of factors or shop clerks, these shall be entitled to salary during this one month of standing notice. In any case, the one-month notice must be given to any employee, whether factor, shop clerk or otherwise, so long as the two conditions concur, namely, that no special time is fixed in the contract of service, and that said employee is a commercial employee. And when such notice is not given under these conditions, not only the factor or shop clerk but any employee discharged without cause, is entitled to indemnity which may be one month's salary.[2]

In the Instant case, there lies no doubt that plaintiffs are commercial employees of appellant corporations, rendering service as warehousemen, carpenter-foreman and guards. There is likewise no doubt as can be seen from the contracts of employment submitted as exhibits, that no special time has been fixed in the contracts of services between plaintiffs-appellees and defendants-appellants. The stated computation or manner of payment, whether monthly or daily, does not represent nor determine a special time of employment. Thus, a commercial employee may be employed for one year and yet receive his salary on the daily or weekly or monthly or other basis.

Appellants allege that the use of the word "temporary" in the contracts of services of some of the plaintiffs shows that their employment was with a term, and the term was "temporary, on a day to day basis." The record discloses that this conclusion is unwarranted. The contracts simply say—"You are hereby employed as temporary guard with a compensation at the rate of P5 a day * * *." The word "temporary" as used herein does not mean the special time fixed in the contracts referred to in Article 302 of the Code of Commerce. The daily basis therein stipulated is for the computation of pay, and is not necessarily the period of employment. Hence, this Court holds that plaintiffs-appellants come within the purview of article 302 of the Code of Commerce.

Now, as to the second question, namely, the validity of plaintiffs' waiver of the benefits given them by said Article 302. This Court holds that such a waiver, made in advance, is void as being contrary to public policy. Granting that the '*mesada*' given in Article 302 of the Code of Commerce, is for the bilateral benefit of both employer and employee, nevertheless, this does not preclude the finding that a waiver of such '*mesada*' in advance by the employee is contrary to public policy.

Public policy, with regard to Labor, is clearly stated in Article II, Section 5, of the Philippine Constitution, which reads—

"The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."

and Article XIV, section, which reads—

"The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. * * *."

Article 302 of the Code of Commerce must be applied in consonance with these provisions of our Constitution. In the matter of employment bargaining, there is no doubt that the employer stands on higher footing than the employee. First of all, there is greater supply than demand for labor. Secondly, the need for employment by labor comes from vital and even desperate, necessity. Consequently, the law must protect labor, at least, to the extent of raising him to equal footing in bargaining relations with capital and to shield him from abuses brought about by the necessity for survival. It is safe to presume therefore, that an employee or laborer who waives in advance any benefit granted him by law does so, certainly not in his interest or thru generosity but under the forceful intimidation of urgent need, and hence, he could not have so acted freely and voluntarily.

For all the foregoing, this Court hereby affirms the decision of the lower court, with costs against appellants.

Ozaeta, Paras, Feria, Pablo, Tuason, Bengzon, and Reyes, JJ., concur.

[1] *Collete vs. France & Collete, Inc.*, G.R.No.23927, November 5, 1925; *Lopez vs. Roces, et al.*, (S. C.), G.R.No. 47950, July 1, 1942. 1 Off. Gaz., 672.

[2] *Lopez vs. Roces et al.*, see footnote 1.

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