

MALATE TAXICAB & GARAGE, INC., PETITIONER, VS. THE COURT OP INDUSTRIAL RELATIONS AND NATIONAL LABOR UNION, RESPONDENTS.

G.R. No. L-8718. May 11, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

Following the dismissal of some 360 drivers of the Malate Taxicab & Garage, Inc., hereinafter referred to as Malate Taxicab, as a result of the sale of its franchise and taxicabs to another taxicab operator on September 10, 1954, the National Labor Union, on the 13th of that same month, filed a petition with the Court of Industrial Relations on behalf of the dismissed drivers, asking that they be paid one month's separation pay. Malate Taxicab moved for the dismissal of the petition on the grounds, among others, that it stated no cause of action and that the court had no jurisdiction over the subject matter. On a day set the motion was argued, but the court after hearing both sides announced that, to abbreviate proceedings, it would defer its resolution on the motion "until after the reception of the whole evidence in order to decide the case finally", whereupon the parties entered into a stipulation of facts and informed the court that with said stipulation they "were submitting their case for decision." The stipulation reads:

"That the petitioner is a commercial establishment; that it operates a fleet of taxicabs under franchise from the Public Service Commission; that to operate those taxicabs, it had hired drivers; that the drivers were paid on commission basis of 25 per cent of their gross earnings; that on September 10, 1954, these cars operated by the taxicab firm were sold to the Manila Yellow Taxicab Co.; that on the same date, the 360 drivers of the petitioner were dismissed; that there was no one month prior notice given to these drivers and neither were they paid one month salary in lieu of such notice."

In view of the above stipulation, the court denied the motion to dismiss and ordered Malate Taxicab to pay each of the 360 drivers "P120 as separation pay, based on 30 working days at P4 per day, which is the minimum wage fixedly law." Reconsideration of this order having been denied by the court in bane, Malate Taxicab brought the case here on a petition to review by certiorari.

The main question for determination is whether taxicab drivers "paid on commission basis of 25 per cent of their gross earnings", are entitled to a month's separation pay if 'dismissed without one month's prior notice.

Invoking our decision in the case of *Lara, et al. vs.. Del Rosario*, 50 Off. Gaz., 1975, Malate Taxicab maintains that the question should be answered in the negative. But to this we cannot agree.

The question presented in the case cited was whether taxicab drivers receiving by way of compensation certain percentage of their gross fare receipts were, on being dismissed without a month's advance notice, entitled to the *mesada*; or month's salary, mentioned in article 302 of the Code of Commerce, and we there held that the said article could no longer be applied because it had already been repealed by the new Civil Code. But by way of dictum it was also there said that even assuming that the article mentioned was still in force, nevertheless, since it

spoke of "salary corresponding to said month, commonly known as mesada", it would have no application to employees having "no fixed salary either by the day, week or the month", since computation of the month's salary payable in that case would be impossible.

It appears, however, that subsequent to this decision, and possibly as a consequence thereof, Republic Act No. 1052 was approved on June 12, 1954. The Act provides:

"Section 1. In cases of employment, without a definite period,, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.

"The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment.

"Sec. 2. Any contract or agreement contrary to the provisions, of section one of this Act shall be null and void."

Note must be taken of the fact that the new law no longer speaks of "salary" but of "compensation", a term broad enough to include all forms of remuneration. And we do not think it could be successfully argued that remuneration paid to taxi drivers on a percentage basis does not constitute compensation.

The point is made that the object of Republic Act No. 1052 is only to fill a void left by the repeal of article 302 of the Code of Commerce, or in other words, to revive the mesada mentioned in said article. This narrow interpretation is not in accord with the liberal spirit of our labor laws. As correctly contended by the labor union and sustained by the lower court, what was revived by the Act was the principle of giving aid to a laborer, who, suddenly deprived of his livelihood through dismissal without sufficient notice, would have no means of supporting himself and family until he had found another job. This aid is just as necessary in the case of a laborer earning compensation on a percentage basis as it is where he is paid a fixed salary. It is, therefore, our opinion that under the law as it now stands an employee who has been hired without a definite period and earning compensation, on a percentage basis is, upon being dismissed without a month's previous notice, entitled to the month's compensation therein provided for.

There is nothing to the claim that Malate Taxicab was deprived of its day in court because the lower court, instead of merely resolving the motion for dismissal, went further and decided the case on the merits. It is clear from the record that it was not the motion alone but the whole case that was submitted when, after stipulating on the facts, the parties, thru their respective attorneys, informed the court that with the said stipulation they were submitting the case for decision. It may be added that the stipulation of facts is comprehensive enough to be the basis for a decision on the merits so that the new trial asked for would really be unnecessary.

With respect to the claim that the award complained of is vague as to the number and identity of the awardees, suffice it to say that the number of drivers affected is fixed in the stipulation of facts, and surely Malate Taxicab cannot pretend not to know those who had been employed by, and worked for it as drivers. In any event, should any question arise as to the identity of any of those drivers, that matter may be taken up with the lower court when the time comes for implementing its decision.

The lower court awarded compensation equivalent in amount to the minimum wage authorized by law. In the absence of any showing that the awardees were, before their dismissal, earning more or less than that amount we see no jurisdiction for changing the award.

Wherefore, the order appealed from is affirmed with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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