

[WITH RESOLUTION OF FEBRUARY 27, 1961]*G.R. Nos. L-14785 and L-14923. November 29, 1960*

Ponente: BARRERA, J.

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In a complaint, twice amended and. supplemented, filed against Foster Wheeler Corporation and Caltex (Phil.) Inc., in the Municipal Court of Manila (Civil Case No. 40789), Felix Abe and 393 others (pp. 97-111; 118-120, Record on Appeal) claiming to have been employed by the named defendants on various occasions from 1952 to 1954 in the "Batangas Refinery Construction Project" at Danglaya, Bauan, Batangas, and discharged from employment in 1954 without notice, each demanded recovery of separation pay, value of sick and vacation leaves, and overtime compensation, allegedly due them, computed at the rate ranging from P4.00 to P16.80 daily, with interest thereon.

Defendant Foster Wheeler Corporation, in its answer, alleged among others, that the action was improper for a class suit, the claim of each plaintiff being separate and distinct from the others; that under their written contract of employment, plaintiffs could be separated from the service without notice or separation pay; that plaintiffs were, fully compensated for any overtime service rendered; and that it was not obliged, under the law, to grant vacation and sick leave privileges to its employees. As counterclaim, defendant demanded from each of them the sum of at least P100.00 for attorney's fees and costs. For its part, Caltex (Phil.) Inc., disclaimed having anything to do with the employment of any worker in said project, although it also advanced the same defenses as those set up by its co-defendant.

Thereafter, defendants moved for the dismissal of the complaint for lack of cause of action, it being claimed that plaintiffs were employed after Article 302 of the Code of Commerce on "mesada" was repealed, and they were separated from the service before Republic Act 1052,[1] reviving the said privilege, went into effect. It was thus contended that for the duration of plaintiffs' employment, there was no law imposing on the employer the duty to give 1-month advance notice or payment of the separation pay before terminating the services of an employee. Defendants also cited the opinion of the Chief of the Wage Administration Service, dated June 21, 1954, issued in answer to their query, to the effect that Republic Act 1052 is not applicable to construction workers as the ones involved herein. These motions were opposed by plaintiffs.

Allegedly for failure to prove their respective allegations, the Municipal Court dismissed plaintiffs' complaint as well as defendants' counterclaim. Plaintiffs appealed to the Court of First Instance of Manila (Civil Case No. 34601), wherein both parties reiterated their respective allegations presented in the inferior court.

In its decision of September 11, 1958, copy of which was received by counsel for plaintiffs on September 15, 1958, the court said.

"* * * What the Court has found very difficult to resolve is the debate on the termination pay. All the contracts were executed prior to June 12, 1954, when Republic Act 1052 was approved; and by decision of the Supreme Court in the case of *Lara vs. Del Rosario*, 94 Phil., 778; 50 Off., Gaz., 1975, which was promulgated less than

two months before the approval of that law, it was held that the right of employees to the Mesada provided by Article 302 of the Code of Commerce had been repealed by the New Civil Code; and as the New Civil Code became effective on August 30, 1950, technically from August 30, 1950, up to June 12, 1954, there was no law on mesada existing in the Philippines; * * *. It is contended for the defendants that since all the contracts entered into with plaintiffs were executed before June 12, 1954, when Republic Act 1052 became effective, said Act cannot be given such effect as to make it applicable even to contracts already existing upon its approval as were the contracts here for if that were the case, the law would become unconstitutional under the rule prohibiting impairment of contract. The trouble, however, is that the law, Republic Act 1052, makes it clearly effective beginning June 12, 1954; that was an indication of the Legislative will that it was to be made effective even as to contracts executed before but not yet terminated at the time of its approval; and the presumption is always in favor of constitutionality."

And holding that plaintiffs' employment was not for a definite period, the court declared them[2] entitled to separation pay on the basis of their daily salaries, computed at 26 working days a month, plus interest thereon from the date of the filing of the complaint, and costs. Defendants Foster Wheeler Corporation and Caltex (Phil) Inc. perfected an appeal to this Court, docketed as G.R. No. L-14785. On the other hand, the twenty (20) plaintiffs excluded from the decision for having, according to the trial judge, been already paid their "mesada", likewise, interposed an appeal docketed as G. R. No. L-14923.

Prior to August 30, 1950[3] the workers' right to separation pay or "mesada" was secured by Article 302 of the Code of Commerce. However, in a decision promulgated on April 20, 1954, this Court declared:

"As to the month's pay (mesada) under Article 302 of the Code of Commerce, Article 2270 of the new Civil Code (Republic Act 386) appears to have repealed said Code of Commerce governing Agency. This repeal took place on August 30, 1950, when the new Civil Code went into effect, that is, one year after its publication in the Official Gazette."

As a consequence thereof,[4] the legislature enacted Republic Act 1052 which, in full, reads:

"AN ACT TO PROVIDE FOR THE MANNER OF TERMINATING EMPLOYMENT WITHOUT A DEFINITE PERIOD IN A COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL ESTABLISHMENT OR ENTERPRISE.

* * * * *

"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.

"Sec. 3. This Act shall take effect upon its approval.

"Approved, June 12, 1954."

There is no controversy as to the fact that herein appellees were employed after the repeal of Article 302 of the Code of Commerce and before the effectivity of Republic Act 1052. But, it is not also denied that they were separated from the service (with the exception of a few) "after said Act went into operation. Appellants, however, in contesting the decision of the lower court ordering them to give the employees separation pay, contend that as the contracts of employment were entered into at a time when there was no law granting the workers said right,

the application as to them of the subsequent enactment restoring the same right constitutes an impairment of their contractual obligations. We incline to the contrary view.

The freedom of contract, under our system of government, is not meant to be absolute.[5] The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, moral, safety and welfare[6]. In other words, the constitutional guaranty of non-impairment of obligations of contract is limited by the exercise of the police power of the State, in the interest of public health, safety, moral and general welfare.

By its very nature, Republic Act 1052 is a measure intended to provide protection to the workingmen, and, in a way, the employers as well, specifically in cases of employments with indefinite period or duration, by requiring the employer or employee, as the case may be, before terminating the employment, to give unto the other notice thereof 30 days in advance, non-observance of which by the employer, subjects him to payment (to the employee concerned) of a sum equivalent to the latter's compensation for one month. The logical question that may be raised concerns the nature of Republic Act 1052, i.e., whether it is a regulatory measure, not a substantive law so that its enactment may properly be considered a valid exercise of the police power of the State. The answer is in the affirmative.

It may be observed that the Act prescribes the manner of terminating employment without a fixed or definite period, by requiring the employer or employee, before terminating such employment, to notify the other party of such fact. Evidently, the purpose of the regulation is to give the other party opportunity to find replacement or substitute, in the case of the employer, and other place of employment or source of livelihood, in the case of the employee. The right to be thus notified can hardly be considered substantive, nor does the provision requiring the employer to give the employee, dismissed without such advance notification, the equivalent salary of the latter for 1 month, bestow upon said employee any substantive right or interest immediately upon execution of the contract of employment. Actually, the enactment of the law merely makes an employment subject to the requirement that the same would not be terminated without notifying the other party of the impending termination, 30 days in advance. And, in case of non-compliance therewith, the employer shall be liable for payment to the employee of an amount Equivalent to the latter's compensation for 1 month. It is clear therefrom that this provision on payment may only be availed of in case of failure to comply with the regulation on the giving of 30 day advance notice; that it partakes more of a penalty for violation of the requirement which is within the power of the legislature to impose (See *Thorpe vs. Rutland & Burlington R.R. Co.*, 27 Vt. 140). The application, therefore, of Republic Act 1052, which was enacted in the exercise of the police power of the State, to dismissal effected after June 12, 1954, is with legal sanction.

Neither can it be successfully argued that ine herein involved workers do not fall within the ambit of operation of the law (Rep. Act 1052) in view of the condition contained in their contract, thus worded:

"2. The refinery construction is a project of temporary duration and, hence your employment term shall also be temporary dependent upon the needs and requirements, as determined by this Company, of the particular phase of the construction work to which you may presently or hereafter be assigned. The necessary consequences of your temporary employment term are:

"(a) Your employment may be terminated at any time without obligation to the Company, upon-payment of wages earned through the date of such termination."

As observed by the trial court, it appears from the stipulation of facts entered into between the parties that almost all of the employees hired under the uniform contract containing the above condition, were employed in 1952 and worked continuously until their dismissal in 1954. The work can not thus be considered of temporary duration, but more or less permanent. It would not then be difficult for the employers (herein appellants) to know the

approximate date when the services of the employees would no longer be necessary for the purpose of giving them the necessary 30 day advance notice of dismissal. Under the circumstances, the aforementioned condition in the contract, while probably proper when the contract was executed, became, nevertheless, inoperative upon the enactment of Republic Act 1052.

Defendants-appellants similarly raise the jurisdictional question regarding the sufficiency of the allegations of the complaint to vest original jurisdiction in the Municipal Court and appellate jurisdiction in the Court of First Instance. The pertinent part of the second amended complaint (R. A. p. 55) states:

"3-a. That a substantial compliance with the desire of this Honorable Court, as can be gleaned from the order of dismissal, plaintiffs hereby attached Annex 'A'; and made an Integral part of this second amended complaint, showing the dates plaintiffs were hired, the dates they were discharged without previous notice, the agreed salary computed so much daily; and that the separation pay, amounting to one month or thirty-days at least together with the claims for vacation and sick leaves and overtime as the case may be, of each, and every one mentioned in Annex 'A', and which each and every one claims, will not exceed ranging from P120.00 to P1500.00, * * *." (Italics supplied.)

There is no question that a complaint must contain the ultimate facts constituting plaintiff's cause or causes of action (Sec. 1, Rule 6, Rules of Court). For purposes of said Rule, however, it was said that a complaint would be sufficient if it contains sufficient notice of the cause of action even though the allegations may be vague or indefinite, or in the form of conclusions, in which event, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars.[7] In the case at bar, the allegations of the complaint, taken with Annex "A", to our mind, give the necessary information sufficient enough to enable defendants to plead and prepare for trial, considering that they are the ones keeping record of the facts of the appellees' employment and are in the best position to know the extent of the latter's claims. And, even assuming that they have no such records, defendants should have moved for a bill of particulars. Failing to do so, they can not now be heard to complain against the alleged insufficiency or ambiguity of the complaint.

G.R. No. L-14923

With respect to the appeal of the twenty (20) employees who were excluded from the judgment, it is contended that the lower court gravely abused its discretion in disapproving their record on appeal and denying their motion for relief. The facts regarding this incident are not disputed.

Herein appellants received copy of the decision on September 15, 1958. Their motion for partial reconsideration of the decision, praying for their inclusion therein and filed on October 9, was denied on October 18, of which counsel for plaintiffs was notified on October 21. From September 15 to October 9, 24 days had elapsed. The remaining 6 days started to run again from October 21 and would end on October 27, when the decision should become final.

On October 24, counsel for plaintiffs filed a motion for extension of time within which to perfect an appeal, mentioning therein the fact that they were still trying to raise the necessary amount to cover the appeal bond and incidental expenses. By order of October 25, 1958, copy of which was received by plaintiffs on October 31 (after the 30-day period had already expired on October 27), the court granted them up to November 8, 1958, within which to file the record on appeal only, but denied the extension with respect to the filing of the bond. Although the said record on appeal as well as the bond were actually filed on November 7, the lower court, nonetheless, disapproved the appeal in its order of November 12, 1958, by reason of their alleged failure to pay the appeal bond on time. Plaintiffs did not appeal from this order of denial. However, on November 25, 1958, counsel for plaintiff's filed a motion for relief from the judgment, under Rule 38, which was denied. It is this order, as well as

that disapproving their appeal, that plaintiffs-appellants want us to nullify and set aside.

We see nothing abusive or irregular in the actions taken by the lower court. It is true that the motion for extension of time to perfect the appeal was filed before the expiration of the reglementary period, and that, although the order extending the period to file the record on appeal was issued on October 25, copy thereof was received by counsel for the plaintiffs only on October 31, or after the original period had already lapsed. However, we can not subscribe to the proposition that the payment of the appeal bond on November 7 constitutes substantial compliance with the Rules.

Admittedly, the granting or denial of a motion for extension of time is discretionary on the court. Counsel for the plaintiffs, therefore, should not have presumed that his motion for extension of the period to file the record on appeal and pay the appeal bond would be granted, but should have taken upon himself the duty to inquire, before the original period has lapsed, what action the court took on his said motion. In this case, the order partly denying the-requested extension was issued on October 25, or the day after the motion was filed. Counsel could have easily informed himself of such fact, had he only tried to do so, considering that his office (in the Dona Mercedes building, Plaza Miranda, Quiapo, Manila) is practically only a few blocks away from where the court is housed. This he could have done before the deadline, October 27. Instead, he waited for the delivery of the notice to him on October 31, which is too late. Even then, it took him another seven (7) days before he filed his appeal bond on November 7.

There is, similarly, no basis for the granting of the relief prayed for by the plaintiffs-appellants. The motion for relief was based on the alleged excusable negligence of counsel, consisting of the latter's failure to know of the existence of the Opinion of the Secretary of Justice, dated July 28, 1958 (Op. No. 149, series of 1958), interpreting the 1-month salary provided under Republic Act 1052 to mean 30 working days. The finding of the aforesaid Opinion by chance, to our mind, does not partake of the nature of "discovery" of evidence as contemplated under Rule 38 of the Rules of Court. It must be remembered that aside from the acknowledged doctrine that the Opinion of the Secretary of Justice is not binding upon the Courts, the matters expressed therein are not evidentiary facts, but dissertations or discussion of the nature, extent and effect of a given legal issue.

Wherefore, the main decision, insofar as it relates to those of the plaintiffs-employees who were dismissed after June 12, 1954, is hereby affirmed, as well as the orders of November 12, and 27, 1958, appealed from. Costs are taxed in G.R. No. L-14785 against appellants Foster Wheeler Corporation and Caltex (Phil.) Inc., and in G.R. No. L—14923, against appellants Felix Abe, et al. So ordered.

Paras, C.J., Bengzon, Labrador, Reyes, J.B.L., Paredes, and Dizon, JJ., concur.

Judgment affirmed.

[1] Approved on June 12, 1954.

[2] With the exception of the employees, numbering 20, who, the Court found, have already been given their corresponding 1-month separation pay.

[3] Date of effectivity of the New Civil Code.

[4] In the language of the sponsor of Senate Bill No. 17, series of 1954, that ultimately became Republic Act 1052, the same was proposed to "fill the void left by the enforcement of the aforesaid (Civil) Code."

[5] "Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. * * *." (New Civil Code)

[6] *St. Louis, etc. R. Co. vs. Paul*, 173 US 404, 43 L ed 746; 19 Sup Ct Rep 419, and others, cited in *II Cooley's Constitutional Limitations*, p. 1236.

[7] *I Moran*, *Comments on the Rules of Court*, 1957 Ed., p. 111.

RESOLUTION

February 27, 1961

BARRERA, J.:

In case G.R. No. L-14785 (*Felix Abe, et al vs. Foster Wheeler Corp., et al.*), defendants-appellants filed separate motions for reconsiderations of the decision herein rendered, on the ground that (1) the employment of the workers involved in this case was for a definite period, and (2) Republic Act No. 1052 should not be given retroactive effect.

There is no question that the Batangas Refinery Project is for a specific duration, which is, until it is completed. Too, the different phases of the construction work, e.g., masonry, painting, plumbing, etc., may also be considered with definite duration, which is, until they are finished. Still under the terms of the contract entered into by the workers, the period or duration of their employment was indefinite. As far as pertinent, the contract provides:

"2. The refinery construction is a project of temporary duration and hence, your employment terms shall also be temporary dependent upon the needs and requirements, as determined by this Company, of the particular phase of the construction work to which you may be presently or hereafter be assigned . . ."

Under the aforequoted provision of the contract, the worker's term of employment is made subject to two conditions: (1) upon the needs and requirements (not duration) of the particular work to which he (the worker) is assigned and (2) that such needs and requirements are to be as so determined by the employer. In other words, the duration of the employment of a worker assigned to a particular kind of work is not necessarily co-existent with the duration of such work, because the employer could, at any stage of the work, determine whether his services are needed or not. Likewise, the employer could, even after the termination of a particular work, assign the employee to another phase of the construction work, if the employer determines that the needs of the work so require. Clearly, the worker is without any means to know when his services would be considered by his employer still necessary or not.

As to the other ground relied upon in the motion, the same was already fully discussed in the decision.

Plaintiffs-appellants in case G. R. No. L-14923 (*Abe, et al. vs. Foster Wheeler Corp., et al.*) also filed a motion for reconsideration raising issues which are already fully considered in the decision.

The motions filed in both cases are, therefore, denied for lack of merit.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes and Dizon, JJ., concur.

Motions denied.

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