

NATIONAL LABOR UNION, PETITIONER, VS. BERG DEPARTMENT STORE, INC., RESPONDENT.

G.R. No. L-6953. March 31, 1955

Ponente: PARAS, C.J.

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PARAS, C.J.:

On February 12, 1952, the petitioner, and the respondent entered into a collective bargaining agreement which, insofar as it affects this case, provides as follows:

"(c) The contracting parties agree that in furtherance of such discipline, the following grounds shall be considered as just causes for dismissal without notice:

- Culpable violation of the law, rules, and regulations applicable to labor;
- Voluntary injury to any fellow employee or officer of the Company;
- Willful damage to merchandise, machinery, furniture or equipment of the Company;
- Smoking in prohibited areas which will endanger the security of the establishment;
- Drunken and/or disorderly conduct;
- Dishonesty;
- Punching somebody else's card;
- Unauthorized possession of firearms or other deadly weapons;
- Inefficiency or reiterated lack of courtesy and service;
- Lack of respect or courtesy to customers;
- Habitual lateness.

" 'd. In obedience of economic principles, closing of a department or recession, of the business shall also serve as ground for the dismissal of employees.

" 'e. In cases of dismissal of permanent, regular or full-time employees, not governed by clauses C, the Company agrees to give 30 days notice or 30 days pay in lieu thereof."

The dismissal by the respondent of two of its employees, Emilia David and Miguel Pañganiban, caused the petitioner, National Labor Union, to file in the Court of Industrial Relations on March 14, 1953, a petition, alleging that said dismissal was without any just cause, and praying that the respondent be ordered to reinstate them with back pay from January 31, 1953. The respondent filed an answer, alleging that the grounds for the dismissal were immorality, inefficiency, disorderly conduct and culpable violation of existing rules and regulations of the company, and praying that the petition be denied and the petitioner ordered to pay P500 under the counterclaim set up by the respondent. Associate Judge Juan L. Lanting rendered a decision dated June 12,

1953, finding that the "respondent has failed to prove by preponderance of evidence the charges or offenses attributed to Emilia David and Miguel Pañganiban, but denying the petition on the ground that their dismissal was justified under clause (c) of the collective bargaining agreement which allows the respondent to dismiss any employee even without cause provided that it gives him 30 days' notice or 30 days' pay in lieu of such notice. Judge Lanting denied the respondent's counter-claim. The motion for reconsideration filed by the petitioner was denied by the Court of Industrial Relations in banc in its resolution of July 13, 1953, by a vote of three to two. The case is now before us on appeal by certiorari taken by the petitioner.

The collective bargaining agreement entered into between the petitioner and respondent enumerates in clauses (c) and (d) specific grounds for dismissal of respondent's employees, and the Court of Industrial Relations found as a fact that the employees herein involved were not dismissed on any of said grounds. The only question that arises is whether clause (e) of the agreement providing that "in cases of dismissal of permanent, regular or fulltime employees, not governed by clause (c), the Company agrees to give 30 days notice or 30 day pay in lieu thereof," authorizes the respondent to dismiss any employee even without cause, on condition that it gives 30 days' notice or 30 days' pay in lieu thereof. Our answer has, without any hesitancy, to be in the negative. It is significant that the petitioner and the respondent, in their collective bargaining agreement, had undertaken to limit the grounds for dismissal to those listed in clauses (c) and (d), and we do not think that clause (e) was added to serve as a blanket authority for the respondent to dismiss on any ground other than those already specified, or even without cause. The more logical construction is that clause (e) was inserted in the agreement for the benefit of respondent's employees who may be dismissed by the respondent, not on any ground under clause (c), but for causes pointed out in clause (d), namely, closing of a department or recession of business. We say this is logical, because if an employee is dismissed for any cause enumerated in clause (c), it is fair that the company should not be required to give 30 days' notice or 30 days' pay in lieu thereof; whereas if any employee is separated due to the closing of a department or recession of the business of the respondent, it is also fair that the innocent employee be at least entitled to a 30-day notice or 30 days' pay in lieu thereof. This construction is also borne out by the very term of clause (e) which expressly mentions dismissals not governed by clause (c) necessarily restricting its application only to separations under clause (d). It is difficult to believe that the petitioner, in entering into the collective bargaining agreement, could have bartered the right of its members to feel secure in their employment, for a month's pay.

The contention of counsel for respondent that the latter should be allowed to dismiss the employees herein involved, for the reason that they had already lost its confidence, can not be sustained since the alleged loss of confidence must necessarily have resulted from the grounds which prompted the respondent to dismiss them; and inasmuch as the Court of Industrial Relations has found said grounds to be unsubstantiated, there can be no valid reason for said loss of confidence.

Wherefore, the appealed decision is hereby reversed and the respondent ordered to reinstate Emilia David and Miguel Panganiban with back pay from January 31, 1953. So ordered with costs against the respondent.

Jugo and Labrador, JJ., concur.

CONCURRING OPINION

PABLO, M. concurrente:

En 12 de febrero de 1952 la Berg Department Store, Inc. y la National Labor Union entraron en un convenio (Exhibito A) sobre las condiciones de empleo y establecieron las causas por las cuales un empleado podia ser

despedido. En 31 de enero de 1953 la Berg Department Store, Inc. despidió a Emilia David y Miguel Pañganiban, cada uno de los cuales percibía, como empleados de la primera, un sueldo mensual de P130 y de P160, respectivamente. En 3 de febrero del mismo año la National Labor Union, de la que son miembros dichos empleados, pidió la reposición de los mismos, pero la petición no fue atendida. Como había más de treinta miembros de la recurrente que trabajaban en dicho establecimiento comercial y era inminente que se declarasen en huelga a menos que se resolviera la reclamación, la recurrente presentó su solicitud en la presente causa, pidiendo que el Tribunal de Relaciones Industriales ordenase la reposición de Emilia David y Miguel Panganiban y el pago de sus sueldos devengados a contar del 31 de enero de 1953 hasta su reposición.

En contestación, la recurrida alegó que Emilia David y Miguel Panganiban fueron despedidos por inmoralidad, ineficiencia, conducta desordenada y culpable infracción de los reglamentos de la compañía. Vista la causa, el Tribunal sobreseyó la solicitud. Una parte de la decisión dice así:

"Upon the whole, the court finds that respondent has failed to prove preponderance of evidence the charges or offenses attributed to Emilia David and Miguel Pañganiban.

"However, the dismissal of Emilia David and Miguel Panganiban is justified under the provisions of the collective bargaining agreement marked as Exhibit "A" for petitioner and Exhibit "3" for respondent."

El artículo V del convenio es del tenor siguiente:

"(c) The contracting parties agree that in furtherance of each discipline, the following ground shall be considered as just causes for dismissal without notice:

- Culpable violation of the law, rules and regulation applicable to labor;
- Voluntary injury to any fellow employee or officer of the Company;
- Willful damages to merchandise, machinery, furniture, or equipment of the Company;
- Smoking in prohibited areas which will endanger the security of the establishment;
- Drunken and/or disorderly conduct;
- Dishonesty;
- Punching somebody else's time card; or doctoring one's own time card;
- Unauthorized possession of firearms or other deadly weapons;
- Inefficiency or reiterated lack of courtesy and service;
- Lack of respect or courtesy to customers;
- Habitual lateness.

(d) In obedience to economic principles, closing of a department or recession of the business shall also serve as ground for the dismissal of employees.

"(e) In cases of dismissal of permanent, regular or full-time employees, not governed by clause C, the Company agrees to give 30 days notice or 30 days pay in lieu thereof."

Después de discutir los términos del convenio, el Tribunal concluyó: "* * * the company could dismiss any employee for any cause not enumerated in clause (C) or even without cause, provided that the company gives 30 days' notice or 30 days' pay in lieu of such notice."

La mocion de reconsideracion fue denegada, con la disidencia de dos miembros del Tribunal. En sintesis, el Tribunal Industrial concluyo que no se han probado las acusaciones de inmoralidad, ineficiencia, conducta desordenada y culpable infraccion de los reglamentos contra Emilia David y Miguel Pafiganiban; pero que la compania tenia derecho a despedirles, aiin sin justo motivo, dandoles una mesada.

En recurso de certiorari, la National Labor Union contiene que el Tribunal Industrial erro al declarar que el patrono puede despachar a los empleados sin justa causa.

Segun el convenio transcrito, el patrono puede despachar sin aviso a los que comotieren las faltas enumeradas en el parafo (C); como Emilia y Miguel no han cometido falta alguna, entonces fueron indebidamente despachados: deben, pues, continuar en su empleo.

De acuerdo con el parrafo (D), el cierre del establecimiento por exigencias economicas es otro motivo para el despido de un empleado; pero como en dicho caso el empleado no comete ninguna falta, justo es que se le de un aviso previo de 30 dias o sueldo de un mes.

La contencion de la Berg Department Store, Inc., fundada en la clausula (E) de que puede despachar a sus empleados aun sin justa causa, carece de fundamento. Di cha clausula es equivalente al articulo 303 delCodigo de Comercio; bajo dicho codigo podia el patrono despachar a su empleado si le daba un aviso de 30 dias o el sueldo de un mes. Este articulo ya fue derogado por el articulo 2270 delCodigo Civil de Filipinas en 30 de agosto de 1950, un ario y meao antes del otorgamiento del convenio Exhibit A. ¿Es exigible este convenio? Creemos que no. Un contrato que revive una disposicion legal expresamente derogaaa no tiene razon de ser: no puede prevalecer la voluntad de las partes a la del Congreso. Dicho contrato es nulo porque es contrario a la politica justicialista del articuo 19 de la Ley del Commonwealth No. 103, tal como fue enmendada por la Ley No. 355 e interpretada por este Tribunal en The Manila Electric Co. contra la National Labor Union:

"The Court of Industrial Relations has the right and authority, under section 19 of Commonwealth Act No. 103, to order tha readmission of the three laborers concerned for the reasons in the resolution complained of. The right of an employer to freely select or discharge his employees is subject to regulation by the State basically in the exercise of its paramount police power (Commonwealth Acts Nos. 103 and 213) * * * and in cases where the sus- pension or dismissal of an employee in whimsical or unjustified or its otherwise illegal, the employee will be protected. Manila Trading & Supply Co. vs. Zulueta, G. R. No. 46853). In the present case, the Court of Industrial Relations has found that there is no justifiable cause for the dismissal of laborers Sta. A., B, and F. These laborers had not been guilty of any illegal act against the petitioner." (40 Off. Gaz., (Supp. No. 13), 132.)

Lo transcrito establece la doctrina de proporcionar a los empleados, obreros o apareceros de las empresas comerciales, industriales y agrjcolas la misma estabilidad de que gozan los funcionarios y empleados del gobierno, o sea, que no se les puede privar de su empleo sin justa causa.

ElCodigo de Comercio fue aprobado bajo el regimen capitalista en que la voluntad del patrono e inclusive su capricho era ley y se concedia al empleado despedido un mes de sueldo; pero en el decurso de loa tiempos las reformas sociales han ido concretandose en leyes positivas y pronunciamientos judiciales, y una de las conquistas de la clase laboral es la de que no se puede despachar al empleado sin motivo justificado. La clase obrera es debil, no esta en condiciones de luchar frajo las condiciones economicas actuates y necesita ser protegida por el Estado,

A medida que progresa la industria con la ayuda de maquinarias se multiplican los obreros sin trabajo; con menos trabajadores el patrono puede producir m&s. Es que la maquina desplaza al obrero. Si no se limitara el poder del patrono de despachar a sus empleados, imponiendo como condicion una justa causa, muchos serian despedidos para ser sustituidos por otros con menos compensation. Cada vez que el patrono observare que algiin empleado

intenta solicitar el mejoramiento de las condiciones del trabajo se le podria despachar dandole un mes de sueldo o avisandole el despido con un mes de anticipation. Para el obrero o empleado que vive al dia, una mesada es un mes de vida; pero para el patrono es una limosna, y nada mas. El mes de aviso de la destitution del empleado trae consigo la preocupacion—en donde hallar trabajo—pues, segun la prensa, hay mas de dos millones de hombres sin trabajo. No es necesario estar en lugar del obrero que recibe el aviso para tener idea de lo que sentiria o podria sufrir mientras no encuentra trabajo: un calvario . . .

Con este procedimiento las agrupaciones obreras quedarian despojadas de los medios que las leyes obreras las han proporcionado; una simple intention de pedir un aumento de sueldo o cualquier otra cosa, la mas baladi, o ya porque el amo quiere aumentar sus rendimientos podria ser motivo de despido y, a cambio de tres, cuatro o cien obreros despachados, habria mil solicitantes. Siguiendo la ley economica de oferta y demanda, el crecido numero de parados abarataria la mano de obra, el patrono podria despedir a sus obreros y admitir otros con sueldos ridiculamente bajos, en perjuicio de la salud de estos y del publico en general.

El trabajo ya no es una simple mercancia que esta sujeta al flujo y reflujo de la demanda del mercado: hoy se tiene en cuenta un factor importante, la dignidad del obrero. El trabajo humano no puede equipararse a una libra de patatas que se vende en el mercado publico: el trabajo del hombre se arrienda bajo la ley del jornal mfmimo. Por imperativos del bien publico el Estado vela por los que viven con el sudor de su frente. Al trabajador de hoy se le una razonable participation en el producto de su trabajo. No se tienen solo en cuenta las ganancias del capital, sino que se vigila tambien por el Estado que al jornal que se de al obrero le sea suficiente para vivir. Con esta nueva doctrina social se dignifica el trabaja y se humaniza el capital; para que surta su efecto bienhechor, es necesario fortificarla con otras decisiones; es indispensable asegurar a los obreros y empleados cierta estabilidad en su trabajo para que no sean presas del descontento. No debemos olvidar que el descontento es el germeh que corros a las masas desheredadas. Es necesario darles oportunidad de ganar el pan de cada dia, oportunidad de tener albergue y descanso, oportunidad de concebir alguna esperanza de mejorar de condicion social. Entonces se sentiran contentas y no caeran facilmente victiraas del comunismo.

Se podria arguir que en 12 del junio de 1954 se aprobo la Ley de la Republics No. J052 que viene a revivir el articulo 303 delCodigo de Comercio. Esta ley no puede afectar el presente asunto que tuvo lugar en 12 de febrero de 1952; no puede perjudicar a los empleados Emilia David y Miguel Panganiban; solamente tiene aplicacion a hechos que han de ocurrir desde su aprobacion para en adelante. Pero cuando se percate la Legislatura de que esta medida reaccionaria echa por el suelo todas las conquistas logradaa For la clase laboral, siendo una de ellas la estabilidad en el trabajo como la de los empleados del gobierno, tal vez dara los pasos necesarios para poner las cosas en su jus to lugar. La cacareada magna Carta de los obreros se convertiria en triunfo inutil si, despues de todo, un empleado o un obrero puede ser despedido por el patrono con darle un mes de sueldo o avisandole de su despido con un mes de anticipation.

En conclusion, bajo el Codigo Civil nuevo y la legislation y jurisprudencia social, el patrono no tiene derecho a des- pedir a un empleado pagandole un mes de sueldo; solamente se le puede despachar por justa causa.

Voto por la reposition de los empleados Emilia David y Miguel Paiiganiban y que se les pague todos sus sueldos desde el l.o de febrero de 1953.

BAUTISTA ANGELO, J., concurring:

The learned dissenter predicates his opinion on the theory that "in the absence of a contract of employment for a specific period, just as an employee in a commercial or industrial establishment may quit at any time, singly or collectively, with or without cause, so the employer can dismiss an employee at any time without cause. This right of the employer is commonly referred to as his right to hire and fire his employee in the same way that the

employee can stop working by himself or go on strike with Jhis fellow employees." And he cites American authorities in support thereof.

I fully agree with this theory, but, as already stated, this only holds in the absence of a contract of employment entered into between the employer and the employee regulating the mode by which the employment may be terminated. This is also the theory on which Article 302 of the Code of Commerce, now repealed, is predicated: one month pay should be given to an employee who is separated when there is no express contract of employment.

The situation here obtaining does not call for the application of such theory because the parties had concluded a written contract of employment specifying the mode by which it may be terminated. The only issue here involved is one of interpretation. In my opinion, that contract is all-inclusive in the sense that an employee can only be separated from the service for any of the grounds specified in clauses c and d. This is in view of the principle *expressio unius est exclusio alterius*. It is for this reason that I concur in the opinion of the Chief Justice.

REYES, J. B. L., J., concurring:

A careful consideration of the opinions of the Chief Justice and Justices Pablo and Montemayor, leads me to agree with the first two, at least in the result.

The main reason that moves me to believe that clause (e) of the collective bargaining agreement in question should not be construed as reserving to the employer a right to dismiss his employees engaged without specified period upon one month's notice, or upon payment of one month's wages, is this: that at the time that the bargaining agreement was entered into (February 12, 1955), it was the common opinion that such right of the employer did not exist, because it had been abrogated since 1950 by the new Civil Code. The doctrine of this very Supreme Court in *Lara vs. del Rosario*, 50 Off. Gaz., (No. 5), 1975; the enactment of Republic Act No. 1052, undertaking to restore that power to the employer; as well as the excerpts from the Congressional Record set forth in the dissenting opinion of Mr. Justice Montemayor, are conclusive to the effect that the legislature, in enacting the new Civil Code, had in fact repealed and taken away the right formerly granted to employers by Art. 302 of the Code of Commerce.

So that when the collective agreement was made in 1952, and before Republic Act No. 1052 was enacted in 1954, it was at least doubtful if the employer, in the absence of express law or stipulation, retained the right of uncontrolled dismissal of employees and laborers engaged without fixed periods of employment; and, as previously stated, to settle the doubt and to render uncontrovertible that the employer could dismiss them at his pleasure, the collective bargaining agreement must have expressly conferred the power upon him.

Can it be held that the repeal of article 302 of the Code of Commerce simply meant that every employer became authorized to terminate einployment contracts for which no term was expressly fixed, and dismiss his laborers at will, without benefit of notice or *mesada*? I think not. *Obsta principiis*; for our law is fundamentally averse to allowing one party to control exclusively the validity and effectiveness of his contracts, specially those involving labor. Witness Article 1308, the first portion of Article 1182, and Article 1710 of our Civil Code:

Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."

"Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation, shall be void." * * *

"Art. 1710. Dismissal of laborers shall be subject to the supervision of the Government, under special laws."

Attention may also be called to the provisions of Article 1698 of the new Civil Code, requiring notice of dismissal for household helpers engaged for undetermined periods. The spirit of this article is certainly incompatible with the position that industrial or commercial employees could under the same code, be dismissed at will and without notice or indemnity.

But even granting that in 1952 the power existed in the employer to dismiss at will, and without cause, those of his laborers and employees that were engaged without specified period, the absence of any express mention of that power in the collective bargaining agreement should, in my opinion, be interpreted in the sense that such power is denied the employer. One of the basic purposes of laborers in entering into these agreements is precisely to obtain stability in their employment and security in their tenure, in order to free themselves of the haunting fear of sudden unemployment without fault on their part. The enumeration of causes of dismissal in the contract, must be, therefore, regarded as strictly limitative.

The ultimate question, therefore, is not whether the collective agreement divested the employer of the right to dismiss employees at any time upon 30 days notice or upon payment of *mesada*; but whether the collective agreement granted that power. It is obvious from the letter and the spirit of the agreement that no such power was given to the employer.

Paragraph (e) of the collective agreement before us does not attempt on its face to establish causes of severance of relations, but merely to prescribe the manner or method of severance, and, therefore, cannot be interpreted as adding to the causes specified in clauses (e) and (d). It may be that clause (e) does not meet our own standards of clarity and definiteness, or that it could have been made much clearer than it is; but any doubt should be resolved in favor of the employees and laborers, as expressly prescribed by Articles 24 and 1702 of the new Civil Code.

"Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

"Art. 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer."

"Safety and decent living" are broad enough to include stability and security of employment.

CONCEPCION, J., concurring:

I concur in the foregoing concurring opinion of Mr. Justice Reyes (J.B.L.).

MONTEMAYOR, J. dissenting:

As stated in the majority opinion, the National Labor Union hereafter referred to as the Union and Berg Department Store, Inc., a commercial establishment, hereafter referred to as the Department Store, entered into a collective bargaining agreement in 1952. For purposes or reference we reproduce the pertinent sections of said agreement, to wit:

"(c) The contracting parties agree that in furtherance of such discipline the following grounds shall be considered as just cause for dismissal without notice;

- Culpable violation of the law, rules, and regulations applicable to labor;
- Voluntary injury to any fellow employee or officer of the Company;
- Willful damage to merchandise, machinery, furniture or equipment of the Company;
- Smoking in prohibited areas which will endanger the security of the establishment;

- Drunken and/or disorderly conduct;
- Dishonesty;
- Punching somebody else's card;
- Unauthorized possession of firearms or other deadly weapons;
- Inefficiency or reiterated lack of courtesy and service;
- Lack of respect or courtesy to customers;
- Habitual lateness.

""(d) In obedience to economic principles, closing of a department or recession of the business shall also serve as ground for the dismissal of employees.

""(e) In cases of dismissal of permanent, regular or full-time employees, not governed by clause C, the Company agrees to give 30 days notice or 30 days pay in lieu thereof.""

In 1953 two of the employees of the Department Store belonging to the Union were dismissed despite the fact that the charges against them for alleged immorality, inefficiency and disorderly conduct and violations of existing rules and regulations of the company had not been fully substantiated as found by the Court of Industrial Relations. Said court, however, through Judge Lanting denied the petition of said two employees for reinstatement and for backpay on the ground that under paragraph (e) the Department Store may dismiss its employees even without cause provided they are paid one month salary as was done. The motion for reconsideration was denied by Judge Lanting and two of his colleagues while Judge Bautista dissented in which dissent one of his colleagues concurred. The case is now here on appeal.

The question involved is the proper interpretation of the bargaining agreement between the Union and the Department Store, particularly paragraph (e). The majority upholds the theory of the Union that paragraph (e) refers only and exclusively to those employees dismissed under paragraph (d) and to no other dismissals. In other words, according to the majority, the Department Store under the agreement can dismiss only on the grounds enumerated in paragraph (c) such as culpable violation of the law, rules, and regulations, willful damage to merchandise, machinery, etc., dishonesty, etc., which dismissal required neither notice nor one month pay, and those included in paragraph (d) relative to the closing of the store or recession of the business which required either 30 days notice or 30 days pay in lieu thereof. This theory was rejected by the majority opinion of the Court of Industrial Relations.

I quote with approval that portion of the decision penned by Judge Lanting on this point. He says:

""* * *. It is in the interpretation of clause (e) that the contending parties differ. It is the contention of petitioner that said clause (e) refers solely and exclusively to dismissals under clause (d) While respondent contends that it refers to all dismissals not governed by clause (c).

"After studying the provision in question, the Court believes that the interpretation given by respondent is the true and correct one. If the intention of the contracting parties is what the petitioner claims to be, the requirement that the company should give 30 days notice or 30 days pay in lieu thereof should have been incorporated in clause (d) instead of being embodied in a separate clause or else clause (e) should have been worded as follows:

"In cases of dismissal of permanent, regular or full-time employees, governed by clause (d), the Company agrees to give 30 days notice or 30 days pay in lieu thereof."

Instead, however, of using the underlined words, the parties used the words not governed by clause "c". This being the case, there seems to be no doubt that the company could dismiss any employee for any cause not enumerated in clause (c) or even without cause, provided that the company gives 30 days notice or 30 days' pay in lieu of such notice."

I am in entire accord with the reasoning and conclusion contained in the above quotation. If the parties in their agreement really intended the provisions of clause (e) to apply exclusively to dismissals under clause (d), said provision on notice or payment of the mesada should have been incorporated in clause (d) itself saying that the closing of a department or the recession of the business in obedience to economic principles shall also serve as ground for dismissal of employees and that those thus dismissed shall be given 30 days' notice or 30 days' pay in lieu thereof; or, if the parties insisted in embodying the notice and the 30 days' pay in a separate clause, said separate clause should have referred particularly and exclusively to dismissals under clause (d) instead of making it general with the exception of clause (c). In other words, we believe that the parties meant to extend the benefits of the 30 days' notice or pay to all other dismissals except those governed by paragraph (c) due to the fault of the employees themselves.

The theory of the majority of this Tribunal is that the collective bargaining agreement limits the grounds for all dismissals to those listed in clauses (c) and (d), and that outside of those grounds the Department Store may not dismiss any employee. This theory is based, apparently, on the belief of said majority, which I venture to say, I consider erroneous, that the employer, generally, has no right to dismiss his employee without just cause; stated conversely, that the employee has an absolute right to feel secure in his employment unless he himself gave cause for lawful dismissal. This may be gathered from the statement in the decision of the Chief Justice that clause (e) may not "serve as a blanket authority for the respondent (Department Store) to dismiss on any ground other than those already specified, or even without cause," the majority decision adding that "it is difficult to believe that the petitioner (Labor Union), in entering into the collective bargaining agreement, could have bartered the right of its members to feel secure in their employment, for a month's pay." And, Justice Pablo in his concurring opinion dubs Republic Act No. 1052, reactionary legislation because it clearly admits the right of an employer to dismiss an employee even without cause provided that one month notice or one month pay is given; and he feels that laborers and employees in private establishments should be given the same security as civil service employees of the Government.

I realize that there is a belief, more or less prevalent, that an employer may not dismiss its employees or laborer except for cause, and this belief is entertained not only by the layman but also by a portion of the bench and bar as well. This belief, to me erroneous, is due in part to certain rulings and declarations of some courts ordering the reinstatement of some dismissed industrial employees on the ground that they had been dismissed or suspended without cause, and also awarding backpay corresponding to the period of suspension or dismissal. They overlook the fact that such suspensions or dismissals, not infrequently, were made after a dispute had been submitted to the Court of Industrial Relations for settlement, or that the employees were suspended or dismissed because of union activities, this, all in violation of express statutory provisions. It is high time in my opinion that all doubts on this point be cleared and that the relation between employer and employees and the rights and obligations of each be clearly ascertained and defined. Whatever the courts, including this Tribunal may, in the past have said about the validity or impropriety of dismissals of employees by their employers, the law or the rule is and has always been that in the absence of a contract of employment for a specific period, just as an employee in a commercial or industrial establishments may quit at any time, singly or collectively, with or without cause, so the employer can dismiss any employee at any time and without cause. This right of the employer is commonly referred to as his right to hire and fire his employee in the same way that the employee can stop working by himself or go on strike with his fellow employees. Authorities in support of this assertion as hardly necessary, but I shall quote some of

them:

"Traditionally, employers have enjoyed the right to employ and discharge workers at pleasure. They have insisted upon the unfettered exercise of that right. The Supreme Court asserts that the right of employers to employ and discharge workers has not been impaired by the National Labor Relations Act. (Associated Press vs. National Labor Relations Board, 301 U. S. 103 [1937.]) To the degree, however, that the Federal Act, and state acts patterned after it, forbid discrimination because of union connections or activities, they restrict the right of employers to hire and discharge at will. The Federal Act justifies these restrictions imposed upon employers because the denial by employers of the right of employees to organize and bargain collectively leads to strikes which obstruct commerce. The employee, too, possesses the nominal right to withdraw his services, but like his employer, is restrained from doing so if it can be shown that public safety or welfare is jeopardized by his act. A number of state laws have set forth unfair labor practices prohibited to both employers and employees. Thus, while both our legislative and judicial branches of government affirm the venerated right of employment under free contracts—the freedom on the part of the employer to employ or to discharge, and, on the part of the employee, to sever his connections with his employer at will—these governmental agencies have qualified that right in so far as its exercise seems to conflict with public interests." (Dr. Albion Guilford Taylor on Labor Problems and Labor Law, 2nd Ed., 1950, pp. 399-400).

"Although the attitude of the court towards social legislation affecting the right of an employer to discharge employees at will has undergone some change in recent years, it may still be said that ordinarily, any act which undertakes to impose upon any employer the obligation to keep in his service one whom he does not desire is unconstitutional. In the present era of social change and widespread labor legislation, the constitutionality of a law prohibiting the discharge of an employer because of his membership in a labor union has been upheld." (National Labor Relations Board vs. Jones & L. Steel Corp., 301 U. S. 1, 81 L. ed. 893, 108 A. L. R. 1352). (Francisco Labor Laws, Sec. 54, p. 26).

"A general contract of hiring is ordinarily deemed a contract terminable at the will of either the employer or the employee.

"In the absence of something in the contract of employment to fix a definite term of service, or other contractual provision to restrict the right of the employer to discharge, or some statutory restriction upon this right, an employer may lawfully discharge an employee at what time he pleases and for what cause he chooses, without thereby becoming liable to an action against him." (35 Am. Jur., (sec. 34, pp. 469-470. Anno. 34 A. L. R. 824). (Francisco, Labor Laws, p. 673).

This right of the employer, in the absence of a contract fixing a period of employment, to dismiss its employee has always been recognized in this jurisdiction. Article 302 of the Code of Commerce provides that where the contract does not have a fixed period, anyone of the parties (employer and employee) may terminate it upon giving one month advance notice thereof to the other. Under this codal provision the courts, including the Court of Industrial Relations had been awarding a month's pay or *mesada* not only to commercial employees as contemplated by the Code of Commerce but even to industrial employees or laborers. This means that in the absence of a contract fixing the period of employment, the employees may quit at any time and the employer may dismiss him at any time, in either case even without cause, by giving one month notice in advance; in the absence of such notice the employee laid-off or dismissed is entitled to one month pay.

This traditional right of the employer to dismiss his employee without cause is properly recognized, may, taken for granted in the new law (Republic Act No. 1052) entitled "An Act to provide for the manner of terminating employment without a definite period in commercial, industrial, or agricultural establishment or enterprise." The Congress of the Philippines thru this Act unequivocally acknowledges and recognizes the right of the employer to dismiss his employee without cause. Because of the repeal of Article 302 of the Code of Commerce by the new Civil Code, and because of said repeal, Congress felt that in the absence of a contract of employment for fixed

period, employees and laborers dismissed without cause, were no longer entitled to the mesada, even in the absence of notice of dismissal or lay-off, said Republic Act was passed.

To dissipate any lingering doubt about the recognition by Republic Act No. 1052, of this right of the employer to dismiss an employee without cause, we may refer to the legislative proceedings in both Houses of Congress when the Act in the form of a bill was discussed. The bill sponsored by Senator Primicias had the following explanatory note:

"In repealing the provisions of the Code of Commerce on agency, including Article 302 thereof governing the payment of one month's salary to dismissed employees, the new Civil Code provides in Article 1710 that the 'dismissal of laborers shall be subject to the supervision of the government, under special laws.' But, when the said Civil Code took effect, no special law was enacted to protect rights of many workers who, since then, have been dismissed from their employment without the benefit of one month's compensation.

"To fill the void left by the enforcement of the aforesaid Code, immediate approval of the attached bill is, therefore strongly recommended." (Italics supplied)

The same bill was sponsored in the lower house by Congressman Tolentino who made the following brief remarks:

"Mr. Speaker, this is a bill providing that employees shall be given a previous notice at least one month before the termination of their employment, where there is no fixed period." (Italics supplied)

The discussion of the bill in the Senate by senators Primicias and Sumulong is enlightening. Senator Sumulong made the following remarks:

"* * *. Mr. President, when a contract of employment contains a definite period, that is when the employment is for a fixed period of time, it is well established that upon the expiration of the period agreed upon, the employment is terminated without heed of notice and without showing any cause. Now, under Article 302 of the Code of Commerce, whose repeal motivated the presentation of the original bill on the subject matter, there is a provision that when the contract for employment does not provide for a definite period of time either party may terminate the employment upon one month's advance notice, in which case the employee would be entitled to compensation for that month. That provision in Article 302 of the Code of Commerce, I understand, is based on the experience of ages and establishes a very sound rule that when the employment does not provide for a definite period of time, it is only fair that before it is terminated the employer should be notified by the employee or, vice-versa, the employee should be notified by the employer before the employment is terminated. That is only reasonable because when there is no definite period agreed upon you have to give the employee a reasonable time to look another employment before terminating the contract." (Congressional Record, Senate, Vol. I, No. 24, p. 317; italics supplied)

Senator Sumulong continuing, said:

"I have no objection that the employee should be given one month notice by the employer to terminate employment without fixed period, as provided for in the amendment by substitution, but I am only suggesting; is it not also reasonable that the same consideration be extended to the employer?" (Congressional Record, Senate, Vol. I, No. 24, p. 319)

"With due respect to the opinion of the Majority Floor Leader, I wish to call the attention of the Senate that we have before us here a bill in which the subject is how can a contract of employment without a fixed period be terminated? Now, why should we not provide how it can be terminated by the employer? Why don't we make it clear as to how it can be terminated by the employer? I have made a little study of this and the general principle is that when a contract of employment is without a fixed period, in the absence of a statute regarding how it can, be terminated by either side, the contract can be terminated at any time without need of throwing

cause—That is the general principle, and that is the necessity for this bill, so that the employee can be safeguarded and protected, that his employment cannot be terminated without being given one month's notice. I am for that." (Id., p. 320; italics supplied).

"* * *. In case of a contract where there is a definite period agreed upon, there is no need of notice because both parties are notified that upon a certain date the employment will terminate. That is the reason why no notice is required because the employee before the expiration date can prepare to look for another employment and the employer also, before the arrival of the expiration date, can look for other employees to take the place of those whose employment will be terminated. But when the contract does not specify a definite period of employment, there is where the necessity of notice arises, because neither side knows when the employment will terminate. That is why it is fair to the employees that before his services are dispensed, with, he should be told one month in advance. 'Mr. Employee, one month from today your services will no longer be required. You can look for other places where you can employ yourself.' That is entirely fair. That is the provision of the amendment by substitution with which I heartily concur. But in the case of the employer also, when he does not know when the employment will terminate, I think that he should also be notified by the employee: 'Mr. Employer, unfortunately I cannot continue until the date, so that one month from now you can look for others to take my place/ That is reasonable. We are protecting labor and, at the same time, we are being reasonable with management and capital, and being fair and reasonable to both labor and capital, we are insuring the industrial and commercial progress of this country. But when we become one sided, when we become myopic in our philosophy, when we think only of pleasing labor, and I am pleasing labor, we are in fact committing a disservice, because labor cannot exist unless there is management and capital to cooperate with it. If we kill the man who has the capital and the management who build all industrial establishments in this country, then I am afraid that we are defeating the very purpose of this bill because in the end labor also will suffer from our injustices to the employer.'" (Id., pp. 321-322; italics supplied).

Senator Primicias had the following to say:

"* * *. This bill is presented in the sense that there are many laborers laid-off now without protection. When I was yet the humble chairman of the Committee on Labor, I received many complaints of laborers being laid-off without being paid the proper indemnity. I know there are many establishments, many factories which are dignified and law-abiding and because of the lack of the provisions of law, are not paying their laborers whenever they leave their employment. But on the other hand, there are also many establishments, especially those controlled by aliens, which dismiss laborers without notice. This is urgent. We should protect them. (Congressional Record, Senate, Vol. I, pp. 319-320 italics supplied).

From all the foregoing; it is quite clear that the bill was passed in both houses of Congress with the understanding that the employer in the absence of a contract of employment for a certain period and unless prohibited by statutory provision, always had the right to dismiss his employee at any time and without cause and because of this right, and because many laborers and employees had been dismissed without cause, to give them the protection or benefit, the bill was passed and is now Republic Act No. 1052.

I repeat that Republic Act No. 1052 never meant or intended to give the employer a new right, which he never had before,—that of dismissing an employee without cause, because the employer all along and always had that traditional right. Republic Act No. 1052 did nothing more than recognize and take that right for granted, at the same time, saving to the employee the right of the "mesada" which he lost by repeal of Article 302 of the Code of Commerce.

We may not say as does Mr. Justice Pablo in his opinion concurring in that of the majority that Republic Act No. 1052 is a reactionary legislation because in his opinion said act destroys the conquest of labor, one of which was the stability of his employment, which the Chief Justice calls the security of employment. As already demonstrated, there has never been such stability or security of employment except when provided for in statutory

provision, like these acts I shall later enumerate. Republic Act 1052 could not have destroyed what had never existed. All it did was, as already stated, to recognize the instability and insecurity of employment, and to extend partial protection of the laborer against the same.

The same concurring opinion of Justice Pablo places the supposed security of a laborer or employee in a private establishment on the same level or footing of that of a Government employee. He apparently overlooked that fact that not only the law (Sec. 694, Rev. Adm. Code) but the Constitution itself (Art. XII, Sec. 4) expressly prohibits the removal or suspension of a civil service employee except for cause provided by law. A private employee or laborer unfortunately, is not included in that prohibition.

Of course, this clear right of dismissal or suspension of an employee is subject to the paramount police power of the State, and under said police power, the Legislatures in most jurisdiction including ours have from time to time promulgated laws regulating and restricting this right of an employer to dismiss his employee without cause, forbidding it in cases where the dismissal would affect public interests. And it is interesting to note that even the right of an employee or laborer to quit work or to strike is similarly regulated and limited. I may mention some of our laws on this point that readily come to mind. Section 19 of Commonwealth Act 103 provides that in every contract of employment or tenancy, it is an implied condition that when any dispute between the employer or landlord and the employee, tenant or laborer has been submitted to the Court of Industrial Relations for settlement or arbitration or when the President of the Philippines has ordered an investigation in accordance with section 5 of the Act with a view to determining the necessity and fairness or fixing and adopting a minimum wage or share of laborers or tenants, and pending award, or decision by the Court of such dispute or during the pendency of the investigation above referred to, the employee, tenant, or laborer shall not strike or walk out of his employment when so enjoined by the Court after hearing and when the public interest so requires, and if he has already done so that he shall forthwith return to it and that pending such dispute or investigation the employer or landlord shall refrain from accepting other employees, tenants, or laborers, unless with express authority of the court; that no employer or landlord shall suspend, lay-off, or dismiss any employee, laborer, tenant, or farm-laborer without just cause from the time a labor association or organization or group of laborers or tenants or farm-laborers has presented to an employer or landlord a petition or complaint regarding any matter likely to cause a strike or lockout or while an industrial or agricultural dispute is pending before the court; and that if it is proved that during the said period an employee or laborer, tenant, or farm-laborer has been suspended or dismissed without just cause, the court may direct his reinstatement and the payment of his salary or wage during the suspension or dismissal.

Section 21 of the same law (Commonwealth Act 103) provides that it shall be unlawful for any employer to discharge or to threaten to discharge, or in any other manner discriminate against, any laborer or employee because such employer believes that he may testify in any investigation, proceeding or public hearing conducted by the court.

Commonwealth Act 213 provides that any person, landlord, corporation or their agents who intimidate or coerce any employee or laborer or tenant under their employ with intent of preventing such employee or laborer or tenant from joining any registered legitimate labor organization of his own choosing, or, who dismiss or threaten to dismiss such employee or laborer or tenant from his employment for having joined, or for being a member of any registered legitimate labor organization shall be guilty of a felony.

Republic Act 679 provides that it shall be unlawful for any employer to discharge any woman employed by him who may be pregnant for the purpose of preventing such woman from enjoying the benefits of Section 7 of the Act or to discharge such woman while on leave on account of her pregnancy or confinement; also that it shall be unlawful for any employer to discharge any woman or child employed by him for having filed a complaint under

this Act or to discharge such woman and child or any other employee who has given testimony or is about to give testimony under this Act.

Republic Act No. 602 known as the Minimum Wage Law in its section 13 provides that after the effective date of the Act, it shall be unlawful for any person to discharge or in any manner to discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on a Wage Board.

Republic Act No. 875 known as the Magna Carta of Labor, in its section 14, paragraph (a)-5, provides that it shall be unfair labor practice for an employer to dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under this Act.

From all the foregoing, we may safely conclude that unless regulated or restricted by express statutory provision such as those above enumerated, an employer may freely dismiss his employee or laborer provided that under Republic Act No. 1052 like Article 302 of the Code of Commerce, he gives one month notice in advance or gives one month pay in lieu thereof. In other words, the traditional and age-old right of an employee or laborer to quit singly or collectively at any time and without cause and the right of the employer to dismiss his employee or laborer at any time and without cause, still exist although qualified and restricted by statutory provisions.

At the time the two employees in question were dismissed by the Department Store there was no such dispute pending investigation, hearing or decision by the Court of Industrial Relations. Neither were they dismissed because of their membership in any labor union or for any union activities or that they had filed any complaint against the Department Store or because they have testified or were about to testify against the Department Store. The Department Store under the conditions and circumstances obtaining at the time of the dismissal had the right to dismiss the two employees, unless of course, the bargaining agreement clearly prohibited such dismissal. Bearing in mind this right of an employer to dismiss an employee even without cause, enjoyed by the Department Store at the time the bargaining agreement was entered into, the scope of clause (e) becomes clear. I maintain as does the majority of the Court of Industrial Relations that the provisions of the bargaining agreement particularly sections (c), (d) and (e) are clear; that clause (e) referred not only to dismissals under section (d) but also to other dismissals even without cause.

The majority opinion thru the Chief Justice says that clause (e) could not serve as a blanket authority for the Department Store to dismiss on any ground other than those specified, or even without cause. But such blanket authority was not needed by the Department Store because it already and always possessed that right as I have endeavored to show. The same majority opinion says that the petitioning union in entering into a collective bargaining could not have bartered the right of its members to feel secure in their employment, for a month's pay. I am afraid this assertion is based on a misconception of the supposed right of the employee. Barter implies the possession or ownership of something,—a right or property, to be given in exchange for another. The members of the union at the time of the bargaining agreement was entered into, did not have the right to feel secure in their employment for the simple reason that because there was no contract of employment for a fixed period, said employment could be terminated at any time and without cause. Consequently, the members of the union had nothing to barter or exchange for a month's pay.

I wish to make it clear that in showing or in trying to show that an employer in the absence of an agreed period of employment, and unless prohibited by express provision of law has the right to dismiss employees and laborers at any time and without cause, I am not advocating nor am I unconditionally in favor of such right of the employer. I am merely stating a fact and a rule. Whether such right of an employer should further be restricted or qualified is

not for the judiciary to determine. That belongs to the Legislative Department.

In view of the foregoing, I agree with the majority of the Judges of the Industrial Court that under clause (e) of the bargaining agreement the Department Store was authorized to dismiss the two employees in question even without cause, provided that it paid them one month salary which it did; consequently, the decision appealed from should be affirmed.

Bengzon, Padilla and Reyes, A., JJ., concur in this dissent.

Decision reversed.

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