

PHILIPPINE RABBIT BUS LINES, INC., PETITIONER, VS. JUAN CALMA, RESPONDENT.

G.R. No. L-33085. October 29, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

Petition for review of the decision dated November 16, 1970 of the Court of Industrial Relations in case 2328-V, ordering the herein petitioner Philippine Rabbit Bus Lines, Inc. (hereinafter referred to as the company) to reinstate the herein respondent Juan Calma to his former job as janitor of the company, with backwages.

To the relevant findings of fact reflected in the decision of the industrial court we give our approval; we find that they are supported by substantial evidence.

On March 3, 1953 the respondent Calma started work with the company (an entity engaged in the land transportation business) as a janitor on a daily-wage basis at the latter's main office in Tarlac, Tarlac. Calma's work extended up to Sundays and legal holidays, Good Fridays excepted. He was assigned mainly to the company's carpentry shop.

Sometime on August 19, 1964, the shop superintendent of the company, who had direct control and supervision over all its janitors, ordered Calma to clean the comfort room of the company's waiting station. Calma did as he was told; but the superintendent, apparently not satisfied with his performance, told him that he had better stop working until he could clean the comfort room in the manner the superintendent wanted it to be done. Calma protested what then appeared to him to be his outright dismissal, saying, "No, you cannot do that, I will report you to the manager."

After the incident, one of the employees of the company urged Calma to apologize to the shop superintendent, which Calma did. Nonetheless, after August 22, 1964, the company refused to admit him to work. His repeated requests that he be allowed to continue working proved unavailing. At this time, Calma was receiving a daily wage of P6.15.

Calma then brought suit against the company with the Court of Industrial Relations, alleging that he (a) had been illegally dismissed from his job; (b) was underpaid on his basic wage; and (c) was not accorded compensation for overtime work and premium pay for service done on Sundays and legal holidays.

The company squarely refuted the foregoing allegations. Calma, according to the company, had been dismissed for a valid reason; never worked more than 8 hours a day; and is not entitled to any extra pay for work done on Sundays and legal holidays because the company is a public utility corporation and is exempt from the statutory duty of making premium wage payments for work on those days.

On November 16, 1970, after due hearing, the industrial court handed down its questioned decision upholding the company's contention that Calma had not been underpaid and is not entitled to any overtime and premium pay. The court below, however, rejected the company's claim that Calma had been validly dismissed for failing to

clean the comfort room of the waiting station as ordered by the shop superintendent on August 19, 1964, and for failing to appear at the investigation of the incident which was subsequently conducted.

The court below, in overturning this contention of the company, laid stress upon the fact that -

"... Just because Lauro Pascual [the shop superintendent] did not like the manner the toilet of the waiting station was cleaned is not a cogent and valid reason to dismiss outright the petitioner [Calma] considering his more than ten (10) years of service to the company and his uncontroverted affirmative assertion that without investigating or inspecting his work performed in cleaning the said toilet he was just told by Pascual to stop working. The Court therefore finds the dismissal illegal."

Hence, in view of its findings on the dispute before it, the industrial court ordered the company -

"... to reinstate Juan Calma to his former position with back wages at the daily rate of P6.15, inclusive of Sundays and legal holidays except Good Friday, from the dismissal date on August 22, 1964 up to June 16, 1970 and at P8.00 a day on all days of the year also except Good Friday from June 17, 1970, when the new minimum wage law took effect, up to actual reinstatement without loss of seniority right and other privileges appurtenant to his employment."

On November 26, 1970 the company moved for reconsideration of the aforementioned portion of the decision a quo, arguing that granting Calma's dismissal from the service was illegal, he is nevertheless not entitled to reinstatement under the facts of the case at bar because under the provisions of the Termination Pay Law (R.A. 1052, as amended by R.A. 1787),^[1] when an employee, like Calma, has no definite period of employment, the employer may order the termination of his services even without just cause by giving him a written notice of termination of employment at least one (1) month in advance or one-half (1/2) month for every year of service, whichever is longer, or, in case no such notice of termination of employment without just cause is served, by paying the employee compensation in an amount equivalent to his salaries or wages corresponding to the required period of notice. Consequently, the company argued, Calma "is not entitled to reinstatement and the most that petitioner [Calma] could receive would be the equivalent of 1/2 month's salary for every year of service."

The court below denied the foregoing motion for reconsideration in a resolution in banc dated January 6, 1971.

Hence, the present petition for review.

We agree with the company that the provisions of the Termination Pay Law are applicable to the case at bar.

Calma's employment with the company was admittedly not for a definite period. Consequently, his employer had the legal right to terminate his services at any time even without just cause. As his dismissal on August 22, 1964 was not for a just cause, it having been found by the industrial court that Calma obeyed the orders of the shop superintendent to clean the comfort room of the waiting station, and the latter's disapproval of Calma's performance was patently not a valid reason to dismiss him outright, it was clearly the company's legal duty to serve on Calma the written notice required by the Termination Pay Law before separating him from its employ, or, absent such notice, to accord him the separation pay due him.

Considering that Calma started work with the company on March 3, 1953 and was dismissed on August 22, 1964 without just cause and without service of the required written notice, he is entitled to separation pay equivalent to five and one-half (5-1/2) months (or 168 days from August 23, 1964) of the wages he was supposed to receive for the said period, inclusive of Sundays and legal holidays, at the rate of P6.15 per day, or, P1,033.20, with legal interest thereon from December 16, 1966 (the date of the filing of the complaint with the court below) until the said amount is fully paid.

For reasons of justice and equity, this Court awards Calma attorney's fees in the sum of P400.

ACCORDINGLY, that portion of the decision of the Court of Industrial Relations of November 16, 1970 reinstating Calma is hereby reversed. The petitioner company is, however, ordered to pay Juan Calma (a) the sum of P1,033.20 by way of separation pay, with legal interest thereon from December 16, 1966 until fully paid; (b) the sum of P400 as attorney's fees; and (c) the costs of suit. Costs against the petitioner company.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Section 1 of R.A. 1052, as amended, provides: "In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at anytime the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the case of an employer by serving such notice to the employee at least one month in advance or one-half month for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year. . . .

"The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salary or wages corresponding to the required period of notice."

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