

**REMEGIO CORTES, RAMON DILLONES, RAFAEL IMPROGO,
LIBERATO CABINBIN, ROSA MACAHILIG, SANTIAGO JAVISON,
LYDIO LUCEÑO, ROMUALDO OLIGO, PETITIONERS, VS. HON.
VICENTE O. FRIAS, PRESI...**

G.R. No. L-35412. January 31, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition to review the decision of the Court of First Instance of Iloilo, Branch II, then presided by Judge Vicente O. Frias, affirming the judgment of the City Court of Iloilo dismissing the complaint of the plaintiffs, petitioners herein.[1]

Remegio Cortes, Ramon Dillones, Rafael Improgo, Liberato Cabinbin, Rosa Macahilig, Santiago Javison, Lydio Luceño and Romualdo Oligo instituted in June 1967 Civil Case No. 8355 in the City Court of Iloilo City for the recovery of severance pay and unrealized salary against Dulalia, Incorporated and Daniel Justiniani.

The complaint stated that the defendant company, Dulalia, Inc., maintained and operated several cinema houses in the City of Iloilo namely, the Main, Midtown and several others and as such hired and employed several employees working in various capacities in said theaters; that the workers in the aforementioned theaters, excluding those exempted by law and those who were excluded in the bargaining contract, had organized themselves into an association and had become members of the Interisland Labor Organization (ILO) with Lydio Luceño as chapter head and, as a consequence thereof, a collective bargaining contract was executed between plaintiffs and defendants on June 22, 1965; that unknown to plaintiffs, the de-fendant Daniel Justiniani, even before the signing of the collective bargaining agreement, was already aware that defendants' lease contract on the building occupied by the Maya theater was to be terminated by its lessor on December 31, 1965 but defendant Justiniani, in evident bad faith, deliberately withheld such fact from plaintiffs and as a consequence, employees of the Maya theater were caught wholly unprepared to meet this situation and were dismissed without a 30 day notice; that during the pendency of the negotiations of the collective bargaining agreement, defendant Justiniani, for invalid reason, transferred Lydio Luceño from the Main theater to the Maya theater on May 10, 1965 although said Lydio Luceño had been continuously employed and made to work by defendants in the Main theater from April 1952 up to the transfer; that consequently on December 31, 1965, the defendants ceased to operate the Maya theater and all the workers were thrown out of work; that the collective bargaining agreement, in so far as the workers in the Maya theater were concerned, was rendered nugatory, which contract had yet to expire on June 22, 1967, to the damage and prejudice of the plaintiffs which may be assessed at P5,000.00; that according to the collective bargaining agreement, specifically Article IX, all members of the organization working in the Maya theater and covered by the contract, were entitled to severance pay equivalent to fifteen (15) days of salary for every year of service, but in violation of said provision and also the Termination Pay Act, the defendants did not pay the plaintiffs their severance pay when their services were terminated on December 31, 1965; that notwithstanding the demands made, the defendants failed and refused to pay the severance pay in the total sum of

P11,580.18, as specified in Annex "B" of the complaint; that from January 1, 1965 up to the expiration of the collective bargaining agreement on June 22, 1967, there still remained 561 days during which the plaintiffs had yet to work under the terms and conditions of said agreement, but because of the dismissal of plaintiffs, they were not able to get their respective salaries for the unexpired term of 561 days in the total amount of P29,801.90; that the dismissal of the plaintiffs from their work is not the fault of plaintiffs and therefore, they are entitled to the salaries which they had failed to receive because of acts attributable to defendants; and that because of the re-fusal of defendants to pay the aforestated sum, plaintiffs were forced to engage counsel for a contingent fee of P4,000.00.[2]

In its answer[3] dated June 20, 1967, the defendant Dulalia, Inc., alleged that it operates the Main and Midtown theaters only in the City of Iloilo; that a collective bargaining contract was signed between the Interisland Labor Organization and defendant corporation on June 22, 1965, but that said defendant corporation had employees in its theaters who are not members of the Interisland Labor Organization; that a 30-day notice was given to the plaintiffs and the union to which they are affiliated; that the transfer of Lydio Luceño was routinary and a standard practice of the defendant and this was done with the knowledge and consent of the union to which said plaintiff was affiliated; that the defendant corporation had no other alternative but to cease operation of the Maya theater beginning January 1, 1966 because its lease on the building occupied by the Maya theater was terminated by the lessor; that separation of the plaintiffs from the service had been caused by the termination of the lease on the building occupied by the Maya theater, therefore, they are not entitled to a separation pay; that it is not liable in any way to the plaintiffs as former employees for the unexpired term of the collective bargaining agreement; that while the closure of the business of the defendant is not the fault of the plaintiffs, neither was it its fault, and, in fact, the defendant corporation lost money by this closure of the business; and that the plaintiffs are not entitled to severance pay equivalent to fifteen (15) days pay for every year of service in accordance with the provision of law because their services were terminated due to a just and reasonable cause and after due notice. Defendant corporation interposed a counterclaim for damages and attorney's fees.

On motion of the defendant Daniel Justiniani, and without the objection of the plaintiffs, the lower court dismissed the case against said defendant, he being merely an agent of Dulalia, Inc..[4]

The City Court of Iloilo dismissed the case because it had been shown that the defendant, for just cause, terminated the services of the plaintiffs and had not violated any stipulation in the collective bargaining agreement.[5]

The plaintiffs appealed to the Court of First Instance of Iloilo where the action was docketed as Civil Case No. 8690.

On the basis of the evidence adduced in the City Court of Iloilo, the Court of First Instance of Iloilo rendered a decision dated July 20, 1972 affirming the judgment of the City Court dismissing the complaint.[6] According to the Court of First Instance of Iloilo, "This vital issue which is determinative of this appeal involves one of law, whether or not the dismissal of plaintiffs appellants as employees without a definite period of employment due to the termination of the lease on the building housing the Maya Theater by the lessor thereof and for reasons of economic loss was for a 'just cause' which would exempt defendant-appellee as employer from giving separation pay under the Termination Pay Law, R. A. 1787, which took effect on June 21, 1957 x x x".[7]

The record discloses that the petitioners were employees of the Dulalia, Inc. without a definite period of employment. When they were dismissed without notice on December 31, 1965, they had been employed for the following period and would be entitled to the following severance pay:

NAMES LENGTH OF SERVICE SEVERANCE PAY

1. Remegio Cortes 14 years 6 months 25 days P1,479.06
2. Ramon Dillones 14 years 6 months 25 days P1,479.06
3. Rafael Improgo 16 years 6 months 25 days P1,479.06
4. Liberato Cabinbin 16 years 7 months - P1,683.00
5. Rosa Macahilig 13 years 8 months 25 days P1,316.00
6. Santiago Javison 18 years - - P1,620.00
7. Lydio Luceño 13 years 8 months 29 days P1,212.00
8. Romualdo Oligo 14 years 6 months 25 days P1,302.00

The Maya theater was closed because the lease on the building in which it was housed was not renewed. The lessor was allegedly demanding a higher rental. The respondent corporation avers that the increased rental demanded by the lessor would affect adversely the operation of the other theaters. The income would be reduced. It is contended by the respondent that the petitioners were dismissed for just cause because the Maya theater where they worked was closed as of January 1, 1966. This contention has no merit.

It is a fact that the respondent corporation did not cease to operate its other theaters. The business enterprise of the respondent corporation was not closed.

In a recent case,[8] this Court has ruled that:

"The submission of the petitioner that termination of employment by reason of economy to prevent closure of business is analogous to 'closing or cessation of operation of the establishment or enterprise' provided in Section 1(a) of Republic Act No. 1787 has no merit. It is now settled that the just cause for terminating an employment without a definite period is the closing or cessation of the operation of the establishment or enterprise. Thus this Court has held that:

'True, appellant's film exchange business where appellees worked was closed as of February 28, 1962 but what the law considers as just cause for terminating an employment without a definite period is the closing or cessation of operation of the establishment or enterprise of the employer, and not merely the closing or cessation of operation of any particular division or department of the employer's business. To sustain appellant's contention in this regard would amount to reading this into the law - something which we are not ready to do, considering its adverse effects upon the rights of the employees. If it must be so, let the law say it clearly.' (Wenceslao, et al. vs. Zaragoza, Inc., G.R. No. L-22577, July 31, 1968, 24 SCRA 554, 558)"

The petitioners are, therefore, entitled to separation pay because they were dismissed without notice and without just cause as provided in Section 1 of Republic Act No. 1787. They are also entitled to attorney's fees in the amount of P2,000.00.

The collective bargaining agreement between the ILO and the respondent corporation did not fix a period of

employment for the members, among them the petitioners herein. Hence, the petitioners cannot demand unearned salary.

WHEREFORE, the decision appealed from is hereby set aside and the respondent corporation, Dulalia, Inc., is ordered to pay the petitioners the following severance pay:

- Remegio Cortes..... P1,479.06
- Ramon Dillones.....P1,479.06
- Rafael Improgo.....P1,479.06
- Liberato Cabinbin..... P1,683.00
- Rosa Macahilig..... P1,316.00
- Santiago Javison.....P1,620.00
- Lydio Luceño.....P1,212.00
- Romualdo Oligo..... P1,302.00

and attorney's fees in the amount of P2,000.00, with costs against the said respondent corporation.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Guerrero, JJ., concur.

[1] Annex "K", Rollo, pp. 58-79.

[2] Rollo, pp. 15-18.

[3] Rollo, pp. 25-28.

[4] Rollo, p. 31.

[5] Rollo, pp. 32-40.

[6] Rollo, pp. 58-79.

[7] Rollo, pp. 67-68.

[8] Insular Lumber Co. (Phil.), Inc. vs. Court of Appeals, et al., G.R. No. L-29769, October 28, 1977.

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