

**ALFREDO SORIANO (DECEASED), SUBSTITUTED BY HIS WIDOW,
FRANCISCA A. SORIANO, PLAINTIFFS-APPELLEES, VS. PHILIPPINE
NATIONAL RAILWAYS, DEFENDANT-APPELLANT.**

G.R. No. L-43224. August 23, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

We have here the case of a man who, after rendering eighteen years of service with the Manila Railroad Company, now the Philippine National Railways, found himself separated from the service by his employer on account of an alleged ailment contracted during and in the course of his employment.

Believing that his services were terminated without just cause, Alfredo Soriano filed on August 23, 1967 with the City Court of Dagupan a complaint against the Philippine National Railways for separation pay under R.A. 1787. The City Court of Dagupan rendered judgment in favor of Alfredo Soriano.

The PNR appealed to the Court of First Instance of Pangasinan. On January 25, 1969, while the case was still pending, plaintiff Alfredo Soriano died. He was substituted by his widow Francisca A. Soriano.

At the trial, parties submitted mainly documentary evidence on the basis of which the trial court rendered on February 11, 1970, its decision, the dispositive portion of which follows:

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiff and against the defendant ordering said defendant:

"1) to pay plaintiff the sum of P3, 150 . 00 as termination pay; and

"2) to pay plaintiff the sum of P300.00 as attorney' s fees, and the costs in both instances."

(pp. 20-21, record on appeal)

The PNR brought the case on appeal to the Court of Appeals on the following:

"ASSIGNMENT OF ERRORS

I

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE SOLE AND ONLY CAUSE OF THE LATE ALFREDO SORIANO'S SEPARATION FROM THE SERVICE OF THE DEFENDANT PNR WAS HIS OWN LETTER DATED MARCH 19, 1966, WHEREIN HE VOLUNTARILY APPLIED FOR RETIREMENT BY REASON OF TOTAL PHYSICAL DISABILITY, THE SAID RETIREMENT TO BE 'EFFECTIVE AS SOON AS POSSIBLE.'

II

"THE LOWER COURT ERRED IN HOLDING THAT THE LATE ALFREDO SORIANO WAS NOT RETIREABLE AT THE TIME THAT HE APPLIED FOR RETIREMENT.

III

"THE COURT A QUO FURTHER ERRED IN NOT HOLDING THAT THE LAW APPLICABLE TO THE CASE AT BAR IS COMMONWEALTH ACT NO. 186, AS AMENDED, WHICH PROVIDES FOR RETIREMENT BY REASON OF TOTAL PHYSICAL DISABILITY, NOTWITHSTANDING THE COURT'S OWN FINDING THAT ALFREDO SORIANO WAS 'SEPARATED FROM THE SERVICE BY REASON OF AILMENT.'

IV

"THE LOWER COURT LIKEWISE ERRED IN NOT HOLDING THAT THE TERMINATION PAY LAW (REP. ACT 1052, as amended by REP. ACT 1787) HAS NO APPLICATION AT ALL TO THE CASE OF THE LATE ALFREDO SORIANO.

V

"FINALLY, THE LOWER COURT ERRED IN RENDERING JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT ORDERING THE LATTER TO PAY THE FORMER TERMINATION PAY AND ATTORNEY' S FEES." (pp. 1-2, appellant' s brief)

The Court of Appeals certified the case to this Court by resolution dated February 17, 1976, as only questions of law are involved. We accepted and docketed the appeal.[1]

The following facts are uncontroverted:

The late Alfredo Soriano was employed by the Manila Railroad Company, now the Philippine National Railways, (PNR for short) as Route Agent, First Class, from 1939 to 1940, and from 1948 to March 31, 1966, receiving a monthly salary of P350.00.[2] On April 1, 1966, Soriano's services were terminated, and he received disability benefits from the Government Service Insurance System but did not receive any monetary compensation from the Philippine National Railways upon his separation from employment.[3]

Contesting Alfredo Soriano's claim for separation pay, the PNR raised two main defenses:

1) that "... defendant did not dismiss plaintiff but merely accepted his irrevocable letter of resignation addressed to the Superintendent of Transportation, dated March 19, 1966; and ,

2) "(T)hat the provisions of the Termination Pay Law (R.A. 1787) is not applicable to the herein plaintiff." (p. 7, record on appeal)

The above are the issues in this appeal now before Us.

1. Appellant PNR maintains that Alfredo Soriano was not discharged from the service but voluntarily retired for reasons of health, and in support thereof makes reference to the following documents:

"March 10, 1966

"MEMORANDUM FOR -

The Supt. of Transportation

"This is with reference to the case of Mr. Alfredo S. Soriano, Route Agent of that department.

"For your information, quoted hereunder is the memorandum of Dr. Julieta B. Francisco, Chief, Section of Medicine, to wit:

'On December 10, 1965, Mr. Alfredo S. Soriano who had an episode of Cerebral Thrombosis on Aug. 12, 1965, was allowed to resume his job as a Route Agent.

'On several occasions, he was seen at the OPS due to his complaints of forgetfulness (and) is non-responsive to medications given. Due to this, I believe that his condition may result in faulty judgment and/or inadequate performance of his duties so that continuance of services may be detrimental to the Company. He may be recommended for retirement.'

"In view of the above-cited findings and recommendations, it is respectfully recommended that said Mr. Soriano

be retired from the Company, in the interest of the service and for his own good.

"Your preferential attention is deemed necessary in this case in the hope that Mr. Soriano be retired as soon as possible as his further continuance in the service as Route Agent is prejudicial to the best interest of the company.

S /T BENJAMIN C. GARCIA, M.D.
Medical Director"
(pp. 9-11, appellant's brief)

"March 19, 1966

"The Supt. of Transportation
(Thru the Chief Conductor MA)

S i r :

In accordance (with) the Memorandum of the Medical Director dated March 10, 1966, that the continuance in the service as Route Agent of the Transportation Department is detrimental or prejudicial to the interest of the Company, I hereby apply for a total physical disability and to retire effective as soon as possible.

Respectfully yours,

S /T ALFREDO S . SORIANO
Route Agent"
(pp. 7-8, appellant' s brief)

As to the true and real cause of Soriano' s termination of service with the PNR, the trial Court made the following findings and ratiocination:

"Analyzing the evidence, the Court arrives at the inevitable conclusion that the plaintiff was separated from the service by reason of ailment but not by reason of gross and habitual negligence in the performance of his duties. The defendant company' s chief of section of medicine believed the condition of the plaintiff' may result in faulty judgment and inadequate performance of his duties so that the continuation of his services may be detrimental to the company.' Exhibit C-1 clearly shows the reason for the termination of plaintiff's services, i.e., 'Amnesia' (Forgetfulness) brought about by an 'episode of cerebral thrombosis' suffered by plaintiff on August 12, 1965 when he was in the employ of defendant company.

"There is no doubt that in the recommendation of the superintendent of transportation, though he mentioned retirement in his recommendation, Exhibit C, his purpose was for the employee's separation from the service as his continuance in the service would be detrimental to the company. Since at that time plaintiff was not yet retireable (his total number of years of service is only 18), he could not be retired yet. What was meant therefore, in said recommendation was for plaintiff to be separated from the service which is equivalent to terminating his employment without just cause." (pp. 17-18, record on appeal)

We concur with the above findings and conclusions of His Honor, Judge Manuel E. Castañeda, as they are supported by the following circumstances: (1) the fact that Alfredo Soriano suffered cerebral thrombosis in the course of his employment; (2) the urgency in the recommendation of the medical director that Alfredo Soriano "be retired as soon as possible"; (3) the letter dated March 19, 1966, of Alfredo Soriano applying for retirement "as soon as possible", "in accordance (with) the memorandum of the medical director dated March 10, 1966"; and (4) the "retirement" of Alfredo Soriano barely two weeks later.

The foregoing occurrences are sufficient to convince Us that it was the PNR's own initiative and decision that Alfredo Soriano be separated from the service because of his ailment, and that the supposed "letter of resignation" was written at the employer's prodding and insistence and not out of the free and voluntary action of the employee's will.

Section 1, R.A. 1787, The Termination Pay Law, specifies what constitute just causes for termination of an employment, to wit:

"a. The closing or cessation of operation of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of this law;

"b. Serious misconduct or wilful disobedience by the employee of the orders of his employer or representative in connection with his work;

"c. Gross and habitual neglect by the employee of his duties;

"d. Fraud or wilful breach by the employee of the trust reposed in him by his employer or representative;

"e. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family, or representative; and

"f. Other causes analogous to any of the foregoing."

In the case of *Nadura vs. Benguet Consolidated, Inc.*, 1962, this Court speaking through Justice Arsenio Dizon held inter alia that a cursory reading of Section 1, R.A. 1787, which enumerates the just causes for which an employer may terminate an employment with a definite period, is sufficient to convince anyone that illness cannot be included as an analogous cause "by any stretch of the imagination."^[4]

In *Labasano vs. So Han Shui*, 1971, the employee Labasano had worked with So for sixteen years. In 1963, in the

course of his employment, Labasano contracted a "congestive heart failure due to arteriosclerosis" and had to go on indefinite leave of absence for which he was awarded disability compensation in 1965 by the Workmen's Compensation Commission. Labasano applied for resumption of his work with So but the latter refused to re-admit him without a medical certificate on his physical fitness. Labasano then filed a claim for separation pay and damages with the City Court of Manila. The City Court decided against Labasano but that judgment was reversed by the Court of First Instance. So appealed to this Court. In deciding the case in favor of the employee Labasano, the Court stressed the rationale why the illness of an employee is not a just cause for termination of employment under Section 1, R.A. 1787. In the words of then Justice, now Chief Justice, Fred Ruiz Castro:

"It is, of course, quite understandable, from an entirely business viewpoint, that the physical condition of Labasano which, according to medical findings, was beyond repair, could be expected to give rise to no less than a rupture in employment relations between him and So; his ailing condition, after all, directly defeated the very purpose for which their relationship was established. But, conditions such as this were mainly what motivated the formulation of policies aimed at affording solicitous protection to the workingmen — policies in which the hard social and economic realities embraced within such terms as 'social justice' and 'social conscience' are accorded much more relevance and greater emphasis than the mere hills and peaks in production charts that result from maximum use of labor purely as a tool or element for the production of goods or the provision of services. Congress' acute awareness that the employment of capital entails a certain quantum of social responsibility toward those who have less in life, was a powerful pressure-factor which made it omit an employee's illness as one of the just causes for which an employee serving without any definite terms may be dismissed from employment without any written formal notice." (41 SCRA 81, 85-86; underline supplied)

Ergo, We hold that Alfredo Soriano, the claimant in this case now before Us, was discharged by his employer without just cause. To paraphrase Justice Dizon in the Nadura decision, the situation is one which betrays an oppressive behaviour, lacking of charity.[5]

2. The second point which appellant PNR asserts is that the case of the late Alfredo Soriano is covered by Commonwealth Act No. 186 as amended, which is the charter of the Government Service Insurance System establishing an insurance and retirement plan for all employees of the government and those of government-owned or controlled corporations including appellant PNR.

Particular reference is made to Section 11(c) which reads:

"(c) Disability benefit.— If he becomes permanently and totally disabled and his services are no longer desirable, he shall be discharged and paid his own contributions with interest of three per centum per annum, compounded monthly, if he has served less than five years; if he has served at least five years but less than fifteen years, he shall be paid also the corresponding employer's premiums, without interest, described in subsection five hereof: Provided, That if his disability is not due to his own misconduct, gross negligence, intemperate use of drugs or alcoholic liquor, or vicious or immoral habits, he shall be paid by the employer one month's salary for every year of service, based on the highest rate received. If he has served at least fifteen years he shall be retired and be entitled to the benefit provided under subsection (a) of this section, unless he is qualified to receive and choose the benefit provided for in the next preceding sentence."

According to the Government Corporate Counsel, with eighteen years of service in his favor, Alfredo Soriano was retireable and entitled to disability retirement benefits which the latter admittedly received from the GSIS, and inasmuch as Soriano's separation from the service was due to his "retirement", the Termination Pay Law is not

applicable to him, especially since "Alfredo Soriano claimed and was awarded disability compensation benefits under the Workmen's Compensation Law by the Workmen's Compensation Commission in the amount of P6,000.00." [6]

The weakness of appellant's argument lies in its insistence that Soriano's termination of service was due to his "voluntary retirement." As discussed above, We uphold the findings of the trial court that the supposed letter of retirement was not a voluntary act of the employee but was forced upon him by his employer which saw the "urgent necessity" of discharging Soriano from the service due to the latter's cerebral thrombosis.

It is significant that in the discussion of the issues in appellant's brief, there is no submittal that an employee who receives disability retirement benefits under the GSIS is no longer entitled to receive separation pay under Section 1, R.A. 1787, or that the former excludes the latter.

On this point, We really find no provision in the GSIS charter which excludes any other benefits made available under other laws to an employee, more particularly, of government-owned or controlled corporations.

In the absence of such an exclusionary provision, this Court shall not and will not supply one especially if we have to give life to the general principle that labor legislations are to be liberally construed in favor of the working man.

Apropos to this is the fact that at the time Alfredo Soriano was separated from the service of the PNR on April 1, 1966, the employees of that government-controlled entity were subject to the Civil Service Law [7], and in the case of Philippine Land-Air-Sea Labor Union (PLASLU) vs. CIR, et al., 1962, this Court had occasion to rule that "(T)he application of the Civil Service Law, rules and regulations to government-owned or controlled corporations does not infringe upon the Magna Charta of Labor (Republic Act No. 875) or the Termination of Employment Act (Republic Act No. 1787, amending Republic Act No. 1052) and that the Civil Service Law and the two labor laws can stand together. [8]

While the facts in the PLASLU case were different, the principle enunciated above can equally be made applicable to the instant situation of Alfredo Soriano. Thus, the Termination Pay Law, the GSIS Charter and the Civil Service Law can stand together where the welfare and interest of an employee of a government-owned corporation are at stake, and more so when the government-owned or controlled corporation exercises proprietary functions such as the Philippine National Railways.

In fact, in the case of Dominguez, et al. vs. Gov. W. Pascual, et al., 1967, where the petitioners were civil service employees whose positions were legally abolished by the Provincial Board, this Court, through Justice Marceliano R. Montemayor, held inter alia that "in justice to petitioners, We believe that they are entitled to separation pay for one month in lieu of the one month notice which they failed to receive", applying Republic Act No. 1052 which was the law in force at the time providing for payment of separation pay to laborers and employees, which privilege the Court ruled should likewise be extended to petitioners inasmuch as they were not given one month notice of the abolition of their positions. [9]

As expressed by Justice Sanchez in the case of Insular Lumber Co. vs. Court of Appeals, the purpose of the Termination Law is:

"to alleviate difficulties which confront a dismissed employee thrown into the streets to face the harsh necessities of life. It is for this reason that the said statute compels the employer to dole out money, reasonable under the circumstances, to cushion the adverse effects of sudden separation from employment. This gives the employee a leeway, commensurate to his years of service, to tide him and his family over in the meantime that

he goes job-hunting. To one who has been accustomed to a certain type of job in one company, adjustment to other job opportunities becomes a problem. Advanced age, too, may reduce him to a low priority in the labor market." (29 SCRA 371, 376)

We stress that it is the employer's failure to give advance notice of termination for the required period that renders him liable to grant separation pay to the discharged employee. In the absence of such prior notice the employee is entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice.[10]

Thus, inasmuch as Alfredo Soriano had served 18 years with the PNR he was entitled to an advance notice of termination of his service by reason of his ill health for at least nine months prior to the effective date of his discharge. What happened here was that Alfredo Soriano was informed that he had to leave the service because of his health only on March 10, 1966 and his discharge was made effective on April 1, 1966 or even less than a month thereafter, notwithstanding the fact that according to the findings of Dr. Julieta B. Francisco the employee Alfredo Soriano had an "episode of cerebral thrombosis" since August 12, 1965. Clearly, the employer had more than ample time to comply with the law and give proper notice to the employee that he could no longer be retained in the service due to his poor state of health. For having failed to give that notice, the employer must now suffer the legal consequences provided for in the law.

One last argument being presented by appellant under this second issue is that the employee was paid disability compensation in the amount of P6,000.00 under the Workmen's Compensation Act and, consequently, he can no longer receive any other benefits from the employer.

The foregoing argument is obviously without merit: first, because it is a defense which was never raised in the court below and therefore cannot be raised for the first time on appeal;[11] and second, not only is there no evidence submitted by appellant that it paid Soriano P6,000.00 under the Workmen's Compensation Act, but, more important is that it is in estoppel to make such a claim after it had failed to file any objection in writing to the employee's petition for admission of facts filed in the court below among which was:

"3. Alfredo Soriano did not receive any monetary benefit from defendant by reason of his separation from employment." (see pp. 10-11, 14-15, record on appeal)

Having failed to controvert the above request for admission, appellant PNR is deemed to have admitted that Alfredo Soriano did not receive any monetary benefit, which would include disability compensation, from his employer.

IN VIEW OF THE FOREGOING, We find no reversible error in the decision of the trial court and We affirm the same in toto. With costs against defendant-appellant.

SO ORDERED.

Makasiar, Fernandez, and Guerrero, JJ., concur.

Teehankee, J., (Chairman), concurs in a separate opinion.

[1] pp. 35-40, rollo

[2] p. 2, record on appeal

[3] (see plaintiff's request for admission to which there was no objection from the defendant) pp. 10-11, record on appeal.

[4] 5 SCRA 879, 881-882 underline supplied.

[5] Supra, p. 882

[6] p. 20, appellant's brief

[7] Section 11, Republic Act No. 4156, effective June 20, 1964; By amendment introduced by Section 6 of Republic Act No. 6366, effective August 16, 1971, the officers and employees of the PNR were placed under the exempt class of the civil service.

[8] 114 Phil. 643

[9] 101 Phil. 31, 36

[10] "SECTION 1. 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 any time 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 employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.

"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 salaries or wages corresponding to the required period of notice."

"xxx xxx xxx

(Republic Act No. 1787)

[11] See Sec. 18 of Rule 46, Revised Rules of Court; Gallar vs. Husain, 1967, 20 SCRA 186; Hautea vs. Magallon, 1964, 12 SCRA 514; Gonzales-Precilla, et al. vs. Rosario, et al., 1970, 33 SCRA 228; Jacqueline Industries vs. NLRC, et al., 1976, 69 SCR 242.

CONCURRING OPINION

TEEHANKEE, J.:

I concur in the judgment affirming the lower court's award of termination pay in the sum of P3, 150.00 in favor of plaintiff-appellee by virtue of defendant employer's failure to give advance notice of termination of employment for the period required by the Termination Pay Law. (Republic Act 1787).

On the issue raised by appellant-employer that plaintiff employee had been paid full disability compensation in the amount of P6, 000.00 under the Workmen's Compensation Act, the judgment correctly rejected appellant's contention since such defense was not raised in the court below and could not be raised for the first time on appeal and the same was furthermore barred by appellant's judicial admission that plaintiff employee had not received any such monetary benefit.

I wish to add, however, that if such defense had been properly raised in the case, the same should constitute, in my view, a valid defense. The employee's total disability to render work (as distinguished from mere illness) certainly constitutes a just cause for termination of his employment, analogous to the expressly mentioned in section 1 of the Termination Pay Law (e.g. that provided in paragraph e, viz, "gross and habitual neglect by the employee of his duties") since his total disability perforce renders him no longer able to report for work and perform his duties and thereby compels him to terminate his own employment which would dispense with the advance notice of termination of employment otherwise required from the employer. In lieu of the termination pay (e.g. of P3,150.00 for the required nine-months advance notice by virtue of his 18 years of employment in the case at bar), the employee is instead entitled to total disability compensation in the larger sum of P6,000. 00 under the old Workmen's Compensation Act (now increased P12,000.00 under the new Labor Code).

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