

**STA. MESA SLIPWAYS & ENGINEERING COMPANY INC.,  
PETITIONER VS. THE COURT OF INDUSTRIAL RELATIONS, AND  
MACARIO TADINA, ET AL., RESPONDENTS.***G.R. No. L-4521. August 18, 1952*

Ponente: MONTEMAYOR, J.

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Petitioner Sta. Mesa Slipways & Engineering Co., Inc., later to be referred to as the Company, is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines mainly dedicated to the construction and repair of vessels and barges. The respondents Macario Tadina et al. were former laborers of the petitioner who had been employed as carpenters, some of them having worked for several years; under a verbal contract of employment for no fixed or definite period, with wages paid to them every end of the week. On April 26, 1949, a notice was posted at the gate of the compound of petitioner company to the effect that in order to make the proper inventory, all work would stop on Saturday, April 30, 1949; that the yard would be closed for a period of two weeks or more if necessary and that the laborers would be notified accordingly as to when normal work will be resumed. The notice was signed by the manager. The stoppage of work did not, however, apply to monthly personnel together with about forty-one laborers and fifteen watchmen who continued working in the compound. At the end of the two-week period inventory, respondents Tadina and his fellow laborers presented themselves to the petitioner to work, but were not allowed to do so. They then returned about the end of May, 1949, but were told that they would be called later. Tadina and his fellow laborers had all been paid their wages up to the time they were laid off.

Tadina and thirty-six fellow laborers filed an action with the Court of Industrial Relations alleging that they were not given by the company the one-month notice provided for in article 302 of the Code of Commerce and asking that the said company be ordered to pay them compensation for one month in lieu of said notice. The company asked for the dismissal of the case on the ground that the court lacked jurisdiction over it. It also contended that the claim of respondents for a one-month compensation in lieu of notice was not supported by law and had no legal basis because said petitioners (now respondents herein) were all paid on an hourly basis and only for the number of hours of actual work. Pending proceedings in the Court of Industrial Relations, ten of the thirty seven petitioning employees, or laborers withdrew from the petition because they had amicably settled their differences with the Company, thus reducing the number of petitioners from 37 to 27 which is less than the thirty-one (31) contemplated by Commonwealth Act 103. The motion for dismissal was denied and after due hearing and the submission of a partial stipulation of facts, the industrial court decided in favor of the petitioners and ordered the company to pay them (petitioners) the equivalent of their wages for one month, with legal interest. The company has now filed this petition for certiorari to review that decision of the lower court, presenting the following questions of law:

- Is article 302 of the Code of Commerce of the Philippines applicable in this particular case?
- Does the respondent Court of Industrial Relations have jurisdiction to decide and settle this case?

Article 302 of the Code of Commerce reads as follows:

"ART. 302. In cases in which the contract does not have a fixed Period, any of the parties may terminate it, advising the other thereof one month in advance.

The factor or shop clerk shall have a right, in this case, to the salary corresponding to said month."

Under the first question of the applicability of article 302 to the present case, petitioner contends that the employment of the laborers involved herein was not without a fixed period because they were paid at the end of every week and therefore they may be considered as having been hired by the week, and besides, the amount of payment was based on the number of hours of work performed. A similar question has heretofore been submitted for determination by this Court. In the case of *Sanchez vs. Harry Lyons Construction, Inc.*, (87 Phil., 532; (48 Off. Gaz., 605), where the laborers involved were paid some on a monthly basis, such as F250 a month while others were paid P5 a day, it was there contended that article 302 of the Code of Commerce did not apply inasmuch as some of the laborers invoking the provisions of said article were paid by the month and others by the day, and that therefore their employment was with a term, the term being temporary or on the monthly or daily basis. The Court there said:

"\* \* \* The stated computation or manner of payment, whether monthly or daily, does not represent nor determine a special time of employment. Thus, a commercial employee may be employed for one year and yet receive his salary on the daily or weekly or monthly or other basis.

"Appellants allege that the use of the word 'temporary' in the contracts of services of some of the plaintiffs shows that then employment was with a term, and the term was 'temporary, on a day to day basis.' The record discloses that this conclusion is unwarranted. The contracts simply say—'you are hereby employed as temporary guard with a compensation at the rate of P5 a day . . .' The word 'temporary' as used herein does not mean special time fixed in the contracts referred to in article 302 of Code of Commerce. The daily basis therein stipulated is for the computation of pay, and is not necessarily the period of employment. Hence, this Court holds that plaintiffs-appellants come within the purview of article 302 of the Code of Commerce."

In the present case, it may also be said that on the laborers were paid at the end of each week and an hourly basis, it does not mean that there was a term of employment. The basis of salary and period of payment is only for the purpose of computing the amount of wages earned and the time spent. They do not refer to the term or period of employment. Consequently, we hold that the contract of employment of Macario Tadina and his fellow laborers was without a fixed period, and so come within the purview of the first paragraph of article 302, Code of Commerce.

Petitioner says that the decision of the Industrial Court does not contain a finding that the respondent laborers were dismissed without just cause and so, their case does not come within the provisions of the second part of article 802. It is a fact, however, that through no fault of the laborers, they were laid off and separated from the petitioner's service. They offered to work after the termination of the inventory by reason of which their work was suspended, but they were not allowed to continue in their employment. They were for all practical purposes dismissed without just cause.

Lastly, petitioner contends that article 302 is not applicable here because the laborers were not commercial employees so as to warrant the application of the provisions of the Code of Commerce. It cites the case of *Juan Arribas vs. Hawaiian-Philippine Co.*, G. R. No. 37219, dated August 23, 1923, purporting to hold that before an employee can invoke the provisions of article 302 of the Code of Commerce he must show that he is a commercial employee. Unfortunately, we are unable to read said case because it does not appear to have been published in the Philippine Reports or in the Official Gazette and we are unable to find it among our records that

survived the last war. But granting that there was such a ruling by this Court, we also find that in the case of Philippine Trust Company vs. Smith Navigation Company, 66 Phil., 277 Promulgated much later on September 30, 1938, this Court held or rather stated in the course of the decision that the contract of repair of vessels entered into between the appellee Smith Navigation Company and the intervertor-appellant El Varadero de Manila which latter company by the way was also engaged in the building and repair of vessels, like the petitioner herein, was a commercial transaction and as such should be governed first by the provisions of the Code of Commerce. One possible implication from said holding might be that an employer like the petitioner, engaged in the work of building and repair of vessels, is a commercial company, and its employees and laborers, commercial employees. But regardless of whether the laborers in the present case are commercial or industrial or business employees, the employer should, we believe, pay them the equivalent of one month wages upon separation from service without just cause. In the first place, from the stand-point of the laborer or employee, one employed by an industrial or business concern is as much entitled to the benefits of the law and deserves this one month pay as one employed by a merchant. In the second place, regardless of the strict applicability or non-applicability of article 302, the Court of Industrial Relations by reason of its general jurisdiction and authority to decide labor disputes, the amount of salary or wages to be paid laborers and employees, to determine their living conditions, has been deciding not only the minimum that the employer should pay its employees but also granting them even sick and vacation leave with pay without any express legal provision. A month's pay upon separation from service without just cause and without notice may also in the discretion of the Industrial Court be granted provided that said discretion is not abused.

In the case of Sanchez et al. vs. Harry Lyons Construction Co., Inc., supra, while one of the companies therein appeared as defendants-appellants, namely, the Material Distributors Inc. was engaged in buying surplus property repairing and then selling them to the public for reason it might be readily considered a commercial company and its laborers commercial employees, the company Harry Lyons Construction Co., Inc. was engaged in the construction of roads and bridges, a business hardly to be regarded as commercial; still, the employees of both companies were all considered commercial employees, entitled to the equivalent of one month pay, because of separation from service without notice.

Again, in the case of Lopez vs. Roces, as Manager of the people's Homesite Corporation, 73 Phil. 605, the Supreme Court held that when the one month notice is not given, not only the factor or shop clerk, but any employee discharged without just cause is entitled to an indemnity which may be a month's salary, and that the Homesite Corporation being a business company, its chauffeur dismissed without notice may be considered as a commercial employee entitled to one month pay.

Going to the second question, that of jurisdiction of the Court of Industrial Relations, petitioner contends that in accordance with Chapter I, section 1 and Chapter II, section 4 of Commonwealth Act No. 103, in order that the CIR could acquire jurisdiction over a case, the following requisites or elements must exist:

- Dispute, industrial or agricultural;
- Said dispute is causing or likely to cause a strike or lockout;
- Said dispute arose from differences as regards wages, dismissals, lay-offs, etc. between employees and employers; and
- The number of employees or laborers must exceed thirty.

We agree with the respondent Court that all the four elements enumerated above were present. There was an industrial dispute between the petitioner and its laborers; said dispute arose from differences as regards dismissal and lay-off, and the number of employees affected—thirty-seven, was more than the minimum required by the law.

The only element which may be subject to doubt is whether or not the dispute is causing or is likely to cause strike or lockout. It is true that there was no strike but there a sort of lockout. When the 37 laborers returned Work after the inventory and when prevented from resuming work, there was to them, for all practical poses, a lockout.

"The 'lockout' alike with the 'strike' constitutes a suspension of employees' services, but the distinction is said to arise from the fact that the employer rather than his employees is the doer of the deed of suspension. In both cases, a labor Dept. controversy exists, which is deemed intolerable by one of the parties, but the lockout indicates that the employer rather than his employees have brought the matter to issue. Strikes are said statistically to be the rule, while lockouts constitute exceptions, but it is probably impossible to determine with any fair degree of conclusiveness whether the given dispute has been precipitated by a strike or a lockout because one, especially the latter, is many times set in motion in hurried anticipation of the other." (Teller, Labor Disputes and Collective Bargaining, Vol. I, p. 246).

"A 'lockout' is a term commonly used to express an employer's act of excluding from his plant union members hitherto employed by him. The act may affect all or less than all of the employee-union members. Lockout, in the sense in which it is universally used, is an act directed at the union itself rather than at the individual employer-members of the union.

"A 'shut-down' differs from a lockout in that in a lock-out the plant continues to operate. The employee-union members locked out are replaced by non-union substitutes and the plant continues to function. In a 'shut-down' the plant ceases to operate. A shutdown is the willful act of the employer himself, following a complete lock-out as contrasted to the compulsory stoppage of operations as a result of a strike and walkout. It can truly be said that all shut-downs are lock-outs, but not all lock-outs constitute or effect shut-downs." (Rethenberg, Labor Relations, pp. 58-59.)

Of course, ordinarily, a lockout refers to union members, and is used to discipline laborers for their union activities, or is directed at the union itself; and in the present case there is no evidence about the union affiliation of Tadina and his fellow laborers, or the real reason behind their ouster and execution from work. But whatever reason, to them there was stoppage of work, a lockout within the contemplation of the law warranting the extension of jurisdiction of the CIR and its intervention sought.

In the case of Yellow Taxi and Pasay Transportation Workers' Union (CLO) VS. Manila Yellow Taxi Cab Company, Inc., 45 Off. Gaz., 4856, this Court held that a laborer was deprived of his work without just cause on the occasion of stoppage of work or temporary cessation of operations (paro) has a right to be heard by the Court of Industrial Relations. It further held that said court should take cognizance of industrial disputes arising from strike or lockout or those that come thereafter because he claim or damage caused to the workers because of their dismissal or lay-off necessarily comes after and not before the strike or lockout.

As to the number of laborers involved in the present case, although during the proceedings in the court below, because of the amicable settlement of the dispute between the petitioner and some of the dismissed laborers, the number of said laborers was reduced to 27, this reduction as required by law did not affect the jurisdiction of the industrial court. In the case of Pepsicola, Inc. vs. National Labor Union, 81 Phil., 348; 46 Off. Gaz., (Supp.) to No. 1, p. 130 and Manila Hotel Employees Association vs. Manila Hotel, 73 Phil. 374, this Court laid down the doctrine to the effect that once the Court of Industrial Relations has acquired jurisdiction, it retains said jurisdiction until the case is completely decided, and that the reduction of the number of employees or laborers affected to a point below the number required by law, to invest the jurisdiction of the court at the beginning, or the amicable settlement of some of the demands originally made did not deprive said court of jurisdiction to continue hearing the case and decide it.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Bautista, Angelo, and Labrador, JJ., concur.

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