

PEDRO HORARIO, PETITIONER-APPELLANT, VS. HON. JOSE F. FERNANDEZ, IN HIS CAPACITY AS JUDGE, COURT OF FIRST INSTANCE OF NEGROS OCCIDENTAL, AND TALISAY-SILAY MILLING CO., INC. (TAS...

G.R. No. L-29882. May 26, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

This is a claim for separation pay. Claimant Pedro Horario worked for the Talisay-Silay Milling Co., Inc. from 1919 to 1922 as a train machinist. In 1922 he worked for the company as a locomotive fireman. He served continuously in that capacity up to 1960 (he was fifty-nine years old in 1960) when he was discharged due to total blindness of the left eye and progressive blindness of the right eye. He was then receiving a salary of P130 a month.

As a permanent employee, he worked during milling and off-seasons. When there was no milling, he repaired the locomotive or he used it to remove, by means of steam, the tall grasses growing along the railroad tracks (Exh. B).

Prior to April 30, 1960 Horario suffered pains in his eyes accompanied by severe headaches. The vision of his left eye became blurred. The company physician found that Horario was afflicted with "glaucoma, bilateral, chronic, total blindness of the left eye and progressive blindness of the right eye". That finding was confirmed by a private eye specialist.

Horario was allowed to continue working. He performed only light work. On October 1, 1960 he was dismissed due to his ailment or, as he testified, because he was blind or he had lost his sight (7, 20 tsn, March 15, 1968).

The company's version is that Horario was formerly a locomotive fireman; that, due to his age, he was transferred in 1956 to the job of locomotive watchman; that, upon the doctor's recommendation in 1960, Horario was temporarily laid off due to his weak eyesight, with the understanding that he would be allowed to work again if his ailment was cured, and that thereafter he did not report for work.

Horario sued the company on November 7, 1961 for workmen's compensation (WCC Case No. 6974). He won the case. The company paid him on October 4, 1965 the sum of P3,916.64 as workmen's compensation under section 15 of Act No. 3428. The company was ordered to provide Horario with the requisite medical and surgical attendance (Ibid, sec. 13).

On June 16, 1967 Horario, as a pauper litigant, sued the company in the Court of First Instance of Negros Occidental for separation pay and damages. He claimed that he worked for the company from 1919 to 1960, a period of about forty-two years, and that he was not given any notice before he was dismissed. He computed his separation pay in the amount of P2,730 or P65 for every year of his forty-two years of service. He demanded moral and exemplary damages of P25,000 and attorney's fees.

The company in its answer alleged that before the start of the 1960-61 milling season. Horario was examined by the company physician; that it was discovered that he was suffering from "glaucoma, bilateral, chronic"; that, for that reason, he was not allowed to work and he was advised to secure medical treatment; that in spite of continuous medication, he lost the vision of his left eye, and that Horario was not reinstated because he did not recover his vision. The lower court noted that during the trial Horario had to be guided by his wife in order to find his way.

The trial court denied Horario's claim for separation pay because of its finding that he was not dismissed within the meaning of the Termination Pay Law. It found Horario's case similar to that of an employee, who was killed accidentally while performing his work in the course of employment and whose heirs were paid death benefits but whose estate is not entitled to separation pay.

Horario appealed. The legal issue is whether a locomotive fireman of a sugar central who, by reason of defective eyesight, was paid workmen's compensation but who, for that same cause, was laid off, after having served his employer for forty-two years, is entitled to claim separation pay due to lack of advance written notice that his employment would be terminated.

We are of the opinion that Horario's claim for separation pay cannot be sustained because of the rule that "the rights and remedies granted by" the Workmen's Compensation Law to an employee "by reason of a personal injury entitling him to compensation" exclude all other rights and remedies accruing to the employee under the Civil Code and other laws, because of the said injury (Sec. 5, Act No. 3428).

It is true that he was not given any formal notice of dismissal, as required under section 1 of Republic Act No. 1052, as amended. But it is undeniable that he knew all along that he was to be laid off because of his defective eyesight.

The company doctor testified that Horario could not be allowed to continue working since he might meet an accident and that occurrence would be prejudicial to the company (4 tsn August 12, 1968).

The advance notice of dismissal is required in order to obviate abrupt and arbitrary dismissals and to enable the poor laborer or employee to survive while he is looking for another job. That reason does not exist in this case because Horario's layoff was not sudden and arbitrary.

It cannot be denied that Horario had become totally disabled for work. Therefore, he should have been paid the maximum workmen's compensation for total disability, or six thousand pesos, under section 14 of Act No. 3428, as amended.

Disregarding technicalities and to do justice in this case to a poor laborer, we hold that Horario should be paid an amount equal to the difference between P6,000 and P3,916.64, the sum already paid to him in 1965 (*Flores vs. Workmen's Compensation Commission*, L-41612, June 30, 1976, 71 SCRA 633). He is further entitled to an award of six hundred pesos for attorney's fees and litigation expenses because the company compelled him to litigate (Art. 2208, Civil Code).

The courts should be vigilant for the protection of the laborers and the other members of society who live a hand-to-mouth existence (Arts. 24 and 1700, Civil Code; secs. 6, 7 and 9, Art. II, Constitution). As has been well said, those who have less in life should have more in law.

Considering Horario's forty-two years of service, an enlightened employer, with a keen sense of social justice or with a social conscience, should have given him some gratuity, if, as in this case, it has apparently no pension, provident or retirement fund.

WHEREFORE, the trial court's judgment is reversed. Talisay-Silay Milling Co., Inc. is ordered to pay Pedro Horario the sum of P2,083.36, as the equivalent of the deficiency workmen's compensation not paid to him, with six percent interest per annum from the filing of the complaint, plus the sum of six hundred pesos (P600) for attorney's fees and litigation expenses. Costs against respondent Tasimico.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Martin, JJ., concur.
Concepcion, Jr., J., did not take part.

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