

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. CRISPIN JETURIAN, ET AL., RESPONDENTS.

G.R. No. L-7756. July 30, 1955

Ponente: REYES, J.B.L., J.

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Respondents Crispin Jeturian and others, numbering about sixty, filed in 1951 a petition in the Court of Industrial Relations against the respondent Philippine Long Distance Telephone Co. (case No. 639-V) claiming, as prewar employees of the said company, (1) monetary benefits allegedly due them under a pension plan established on September 18, 1923, by the petitioner company's predecessor, Philippine Telephone and Telegraph Co., later adopted by the Philippine Long Distance Telephone Co., and (2) salaries allegedly due them from January 1946.

It is not controverted that on September 18, 1923, a "Plan for Employees Pensions" was adopted by the original company, under which

"(b) All male employees (Natives of Philippine Islands or other brown skinned race) who have reached the age of fifty years and whose term of employment has been twenty or more years and all female employees (Natives of Philippine Islands or other brown skinned race) who have reached the age of forty-five years and whose term of employment has been twenty or more years may, at their own request, or at the discretion of the directors, be retired from active service and become eligible to pensions."

(Petition p. 9)

the pension to be 1-1/2% of the average annual pay during the last five years preceding retirement (or in the discretion of the Directors, the average of five years' highest wages) for each year of the term of employment, to be paid from date of retirement to the death of the pensioner. Provision was also made for disability pensions which are not here involved. Section 5 of the plan contained also the following conditions:

"SECTION 5. General I revisions.

(1) Neither the action of the Board of Directors in establishing this plan for employees' pensions, nor any action hereafter taken by the Board shall be construed as giving to any officer, agent or employee a right to be retained in the service of the Company or any right or claim to any pension or other benefits or allowance after discharge from the "service of the Company, unless the right to such pensions or benefits has accrued prior to such discharge.

(2) Assignment of pension will not be permitted or recognized.

(3) Pensions may be suspended or terminated, in the discretion of the Directors, in case of gross misconduct or of any conduct prejudicial to the interest of the Company,

xx xx xx xx

(5) Any absence from the service without pay, other than leave of absence or temporary lay-off as defined in paragraphs six and seven of this Section, shall be considered as a break in the continuity of services, unless the Directors specifically determine such absence as a leave of absence, and if any person is re-employed after such a break in the continuity of his service, his term of employment shall be reckoned from the date of such re-employment,

xx xx xx xx

(7) Temporary lay-off on account of reduction of force shall not be considered a break in the continuity of the service, but when the period of absence from such cause exceeds four months in any twelve consecutive months, the entire period of the absence shall be deducted in computing as temporary, unless the employee is re-employed within such period as the rules "of the Company as adopted from time to time, may require, not in any case exceeding one year. If the employee is not thus re-employed the continuity of his service shall be deemed to have been broken."

(Petition pp. 11-12).

The Court below also found that in pursuance of the pension plan, the Company set up in its books a "Provident Reserve" that as of October 31, 1941, stood at P221,074.14, and which the Court estimated to be P224,074.14, by December 31, 1941. On November 6, 1945, however, the Board of Directors of the Company adopted a resolution discontinuing the Employees' Pension plan and all payments thereunder, effective retroactively as of January 1, 1942,—

"in view of the fact that almost 4 years have elapsed during which the operations of the Company have been outside the jurisdiction of the elected Management, and since no revenue has been received by the Company during that period."

None of the petitioners has satisfied the conditions of the plan on January 1, 1942, when the World War broke out; but the Court of Industrial Relations found as a fact that the then Manager of the Telephone Company, Major Stevenot, instructed the employees to stay with the Company even during the Japanese Administration, for he would come back and, pursuant thereto, the employees worked with the company during the occupation. The petitioners, however, were not recalled to service when the Company resumed control of operations in 1946.

The Company filed at first a motion to dismiss on the ground that the war had terminated the relations of Jeturian and his fellow petitioners and the Company, and hence, no relation of employer and employee existed between them. This motion to dismiss having been disallowed, it petitioned for a writ of certiorari from this Court (G.R. L-5697). The petition was dismissed for lack of merit on June 10, 1952.

Then, after trial on the merits and consideration of the evidence and the relevant facts, and "that an unforeseen and uncontrollable event had set in to make its compliance impossible" for which no one should be penalized, the Court below concluded that equity demanded that the Pension plan be liquidated in favor of those who served the company up to 1941, and ordered pension payments to them to be made in proportion to their respective age and length of service, as of October 31, 1941. And as the Company had not served termination notice of severance pay to its employees not reemployed, it ordered one month's salary to be paid as severance pay, except for those who died, held other employment, or refused to reenter the Company's service.

Against the final decision on the merits, the present petition for review was taken and ordered to be given due course.

It is first submitted by the petitioner Telephone Company that the establishment of the pension plan did not constitute a binding contract but was a mere offer of a gratuity to its employees; that the latter acquired no vested right under the plan unless they complied with the conditions established therein and, therefore, before any of the respondent employees did so, the Company was at liberty to cancel and discontinue the pension plan.

We can not subscribe to this view. The pension plan was not a mere offer of gratuity by the company, inspired by no other purpose than to benefit its employees. In reality, the plan sought to induce the employees to continue indefinitely in the service of the company, and to spur them to greater efforts in its service and increase zeal in its behalf. While the funds for the plan were wholly to be contributed by the Telephone company, it does not necessarily follow that the latter would not derive material benefit from the plan's operation: the company undoubtedly stood to benefit from diminished turnover of skilled labor, the avoidance of long and costly training of apprentices, and the reduced cost of operation and equipment, because the goodwill of the laborers tended to make them husband the company's physical resources to the limit of their ability and control.

"c) Las participaciones que suelen dar los comerciantes a sus factores o dependientes en los productos de sus Empresas mercantiles o de alguna determinada (dice en su primer Considerando la sentencia de 16 de febrero de 1899) no constituye donacion, en la acepcion legal de la palabra, porque no tiene su causa en una leberalidad, sino que, antes bien, obedecen a un movil interesado, cual es el de recabar por el estimulo de la ganancia una cooperacion mas activa e inteligente que la que humanamente puede esperarse de la retribucion fija, no acompañada de futuras, aunque aleatorias, ventajas."

(V Manresa, Com., 6th Ed. p. 102).

In our opinion, the plan ripened into a binding contract upon its implied acceptance of the employees. Not being a donation, there is no statutory requirement that acceptance of the plan should be express. The assent or acceptance of the employees is inferable from their entering the employ of the company, or their stay therein after the plan was made known.

"It is plain that the pension plan was an integral part of the program for his employment. To say that it constituted merely a nebulous inducement, unsupported by an intent to be bound by the provisions mentioned, is to charge the employer with grossest fraud. This provision constituted a continuing part consideration for the services rendered by the employee. It was a daily inducement to continuation of service and to exertion to satisfy, which was successful for more than twenty- five years."

(Wilson vs. Wurlitzer Co. 194 NE. 441).

"A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise" (Am. Law Inst., Restatement on Contracts, sec. 90).

And in *Zwolanek vs. Baker Manufacturing Co.*, 44 LRA (NS) 1214, the Court cited numerous authorities in support of its rule that:

"It is not necessary that the person performing the service for which a reward is offered should give notice to the offerer that he accepts the offer; for in such case the party making the offer impliedly dispenses with actual notice, and the doing of the act completes the contract."

That the right of the beneficiaries to the pension should be subjected to a condition suspensive or precedent (attainment of age 50 and 20 years of service) and are not fully vested until the conditions are fulfilled, does not authorize the conclusion that the Company may disregard the plan at will, as if it had never been contracted, on the ground that until the conditions are met, it has no duties whatever toward the employees., Under car law, even before the fulfillment of the conditions established by the plan, the employees acquire an expectancy that is

valuable, and one which the law protects. Thus, they may take such action as may be appropriate to preserve their conditional right (old Civ. C. Art, 1121; new Code, Art, 1188); and if the promisor should voluntarily prevent the fulfillment of the condition, the same shall be deemed fulfilled (Art. 1186, new Civil Code; Art. 119. old Civil Code). The conditional obligation to pay the pension is one thing, and the contract or bargain producing such conditional obligation is quite another; that the former should not arise until the condition is fulfilled, does not mean that the second is non-existent. Neither does the fact that the effects of the contract are unilateral mean that one party may repudiate it at will (Cf. *Liebenow vs. Philippine Vegetable Oil Co.*, 39 Phil. 60, 64).

"If a promise within the terms of sections 86-90 is in terms conditional or performable at a future time the promisor is bound thereby, but performance becomes due only upon the happening of the condition or upon the arrival of the specified time."

(*Amer. Law. Inst. Restatement on Contracts*, sees. 90, 91,) (Emphasis supplied).

"It tends to induce employees to remain continuously in the employ of the same master, and to render efficient services so as to minimize the probability of discharge, It also tends to relieve the employer of the annoyance of hiring and breaking in new men to take the place of those who might otherwise voluntarily quit, and to insure a full working force at times when jobs are plentiful and labor is scarce. . . . To allow the employer in such case to repudiate liability on the ground stated would come perilously near conniving at the perpetration of fraud, and no court should say that in such case the by-law merely affected the corporation, and not third parties. . . . If corporation desire to have their so-called 'by-laws' affect only the corporation and its shareholders, then they should refrain from exploiting them to third persons for the purpose of inducing such persons to act in reliance thereon."

(*Zwolanek vs. Baker Mfg. Co.* 44 LRANS. 1214).

"To construe the contract as allowing the defendant then (before the close of the term) to terminate it without sufficient cause, and thereby to deprive the plaintiff of the extra compensation, which was being held back as a guaranty against his Quitting, would be to give the contract an oppressive and unnatural effect, which can hardly be said to have been within the fair contemplation of the parties."

(*Haag vs. Rogers.* 72 S.E. 46)

The case at bar is clearly distinguishable from *Hughes vs. Encyclopaedia Britannica*, 199 Fed. (2d) 295; in that there is no reservation of the employer's right to alter or amend the plan at any time,, a privilege expressly provided for in the case cited.

The situation confronting the Court of Industrial Relations was as follows: On the one hand, the employer (Telephone Company) professed inability to proceed with the pension plan because of financial losses incurred during the war, and had in fact decided to discontinue it as of 1942. On the other hand, the Company's action disappointed legitimate expectations that the employees had built upon the permanence of the pension plan; their faithfulness and loyalty in the past, resulting in benefits to the company(as shown earlier in this opinion), demanded "adequate compensation. The Court below concluded that the equitable solution to this conflict of interest was to provide for the proportional distribution of the value of the pension rights that would have accrued to the employees had the plan been carried out as originally intended. It therefore decreed that the prewar employees of the company be paid according to the "proportion of the length of service rendered and the age of petitioners concerned as of October 31, 1941, to the service and age limit retirements of the Pension Plan".

We find no reversible error in this conclusion. Actually, the award complained of grants an indemnity to the employees for the Company's repudiation of a contract upon which the employees had a right to rely.

"And it has been held that where the claimant has performed part of the service, and is prevented by the offerer, or by these for whose acts he is responsible, from completing the work, he is entitled to the whole reward or at least to compensation on quantum meruit. 34 Cys. 1750."

(Zwolanek v. Baker Mfg. Co., ante).

The petitioner Company argues that it can not be made liable except upon fulfillment of the condition expressly set in the pension plan (age 50 and 20 service). But the Company that violated the contract with its employees, by discontinuing the plan without their consent, is not in a position now to insist upon the terms of the very contract it has bleached (cf. *Bosque vs. Yu Chipeo*, 14 Phil. 95).

In Justice to the Company, however, it must be understood that those of its prewar employees who voluntarily severed their connections and left the service of the company before the outbreak of the war, should be excluded from the ratable distribution ordered by the Court below. Likewise, those prewar employees who died before the outbreak of the war? while the plan was in operation, must be regarded as having forfeited pension privileges, it being apparent that they could not possibly fulfill the established conditions and earn a pension even if the plan had continued in force, it is worthy of note that the plan, as originally adopted, did not provide for death benefits of any sort; and even the pensions earned by those who attained 50 years of age and 20 years of service ceased upon the death of the pensioner, and the right to pension was not transmitted to their heirs (Sec. 4, par. 4).

The last issue tendered by the appellant Company, to the effect that the outbreak of the war terminated or dissolved its employer-employee relationship with the respondent workers, has already been resolved against it by this Court in Case G.R.No. L-5697, *Philippine Long Distance Co. vs. Crispin Jeturian, et al.*, dismissing for lack of merit the Company's petition for certiorari against the order of the Court of Industrial Relations, holding that the war produced no such dissolution of employer-employee relations, but merely suspended the same.

Similarly, excuse that its war losses extinguished the Company's obligation to proceed with the pension plan is not meritorious. Its obligation was a generic one (to pay money) and such obligations are not extinguished by loss or inability to raise funds (new Civil Code, Art. 1263; *Reyes vs. Caltex (Philippines) Inc.*, 47 Off. Gaz. pp. 1193, 1200-1201).

With the sole modification that those prewar employees of the Philippine Long Distance Telephone Co. who died or voluntarily left its service before the outbreak of the last war should be excluded from the distribution of pension benefits, the decision of the Court of Industrial Relations is affirmed. Costs against petitioner-appellant Philippine Long Distance Telephone Company, Inc.

Bengzon, Padilla, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

Paras, C.J. and Pablo, J., did not take part.

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