

ROSITA ARCAS DE MARCAIDA, PLAINTIFF AND APPELLEE, VS. THE PHILIPPINE EDUCATION CO., DEFENDANT AND APPELLANT.

G. R. No. L-9960. May 29, 1957

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an action to recover the sum of P165, by way of separation pay under Republic Act No. 1052. After due trial, the Municipal Court of Manila rendered judgment for the plaintiff. Defendant, Philippine Education Co., appealed to the Court of First Instance of Manila, with the same result. Hence, said defendant has brought the case before Us for review on a question purely of law.

The case had been submitted, by both parties, for decision upon a stipulation of facts. They agreed:

- That plaintiff employed the defendant as a sales clerk in its store in 1947 and she was continuously in the service until the close of business on August 7, 1954, her salary at that time being P165.00 a month.
- That due to absences of several employees in the store of the defendant on August 7, 1954, Catalino de la Cruz, Assistant Manager of the Retail Department, and after him, Harold B. Mannings, Manager of the said department, asked the plaintiff to help in another section of the store which at that time was shorthanded due to several absences;
- That the plaintiff claimed that she should not be pushed around and refused to go to the section where she was being assigned temporarily;
- That in view of plaintiff's refusal to follow the order of the defendant as above indicated, said defendant thru its paymaster Laureano Fernandez delivered to plaintiff a memorandum signed by defendant which reads as follows:

'MEMO TO:

ROSITA A. MAECAIDA

It is with regret that we notify that your services with this company are terminated as of this date.

'This drastic action is of your own making.

Many of our people are out sick which of course necessitates close cooperation on the part of all employees.

You were asked this morning by Mr. Catalino de la Cruz to assist in another section. You refused. You were again asked by Mr. Manning and you again refused.

We cannot permit an employee to defy the authority of the management thereby destroying the factor of control.

Your pay will terminate as of 5:30 P.M. today and you are free to draw your salary from the pay clerk at your own convenience.

(Sgd.) David &. Gunnel

General Manager'

- That by virtue of the above memorandum, plaintiff's employment was terminated as of August 7, 1954, that very

day she was notified of her separation from the service; "6. That plaintiff was not paid a month's salary in lieu of a month's notice as provided for in Republic Act No. 1052, known as the Termination Pay Law."

The only issue is whether an employee dismissed, without one-month advance notice, for a just cause imputable to his or her fault, such as insubordination, is entitled to the separation pay provided in Republic Act No. 1052, reading;

"AN ACT TO PROVIDE FOR THE MANNER OF TERMINATING EMPLOYMENT WITHOUT A DEFINITE PERIOD IN A COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL, ESTABLISHMENT OR ENTERPRISE,

"Section 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving' notice on the other at least one month in advance.

"The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of termination of his employment.

"Sec. 2, Any contract or agreement contrary to the provisions of section one of this Act shall be null and void.

"Sec. 3. This Act shall take effect upon its approval."

The lower court decided said issue in the affirmative, upon the authority of *Dee C. Chuan vs. Nahag et al.*,[*] G. R. Nos. L-7201 and 7211 (September 22, 1954), in which we upheld the right of employees separated from the service, on account of the closing of the employer's business, to the aforementioned separation pay. Said decision is not controlling, however, in the case at bar, for plaintiff herein was dismissed due to her fault, namely, insubordination, whereas, the employees in the *Dee C. Chuan* case were separated for a cause beyond their control. It is true that, in disposing of the *Dee C. Chuan* case, we declared that "whether the cause of the termination of the employment is the closing of business or other justifiable cause, a laborer is entitled to separation pay if the requisite notice is not given him." Pursuant to the principle of *ejusdem generis*, the phrase "or other justifiable cause" must be construed, however, to refer, not to any justifiable cause, but only to such justifiable causes as are analogous, similar or akin to the "closing of business." (*Murphy, Morris & Co. vs. Coll. of Customs*, 11 Phil., 456; *Go Tiaoco y Hermanos vs. Union Ins. Society of Canton*, 40 Phil., 40; *Chartered Bank vs. Imperial & National Bank*, 48 Phil., 931; *Director of Public*

Works vs. Sing Juco, 53 Phil., 205; *Co Kim Cham vs. Valdez Tan Peh*, 75 Phil., 371.) Inasmuch as the employee is not responsible for this cause, it follows that the authority of the *Dee C. Chuan* case, as a precedent, must be deemed limited to cases in which the employee is separated for causes independent of his will.

The question varies materially when the separation is due to malfeasance, misfeasance or negligence equivalent thereto. Thus, for instance, if the employment is terminated on account of embezzlement committed by the employee or serious physical injuries illegally inflicted by him upon the employer, would the latter be bound, either to retain him for another month, with notice that his service would be dispensed with at the end thereof, or to give him one month separation pay? Common sense readily suggests a negative answer.

Plaintiff-appellee maintains, however, that said question must be settled in the affirmative in the light of the legislative history of Republic Act No. 1052. In this connection, it appears that Senate Bill No. 17,[1] a with which this legislation was initiated, provided for said advance notice or separation pay when the employment was terminated by the employer "for any just cause not attributable to the fault of the employee concerned." The bill further specified the "just causes for dismissing an employee". Subsequently, Senator Primicias, the original author of said, bill, and Senator Tañada, introduced an amendment by substitution the main feature of which were

the amendment of the title, which stated specifically that the measure referred to the termination of services "for causes not attributable to the fault of the employees"; a provision excluding from the operation of the Act those cases in which the employees are granted better or more advantages under other laws; and the elimination of the section enumerating the just causes for dismissal.

Still later, Senator Sumulong introduced an amendment to the amendment by substitution, which, eventually, became Republic Act No. 1052. Inasmuch as the latter does not require that the separation be "for any just cause not attributable to the fault of the employee" or "through no fault of his own" plaintiff concludes that the lawmaker intended to give the employee the benefits of the advance notice and separation pay provided in Republic Act No. 1052, regardless of whether or not he is to blame for the termination of his employment.

The force of this argument cannot be denied. However, a careful review of the legislative proceedings relative to said statute fails to reveal anything tangible—apart from the omission above mentioned—in support of plaintiff's pretense. On the other hand, several members of Congress expressly favored the limitation of the benefits in question to employees separated without any fault on their part. Thus, Senator Montano said:

"I think that every senator will agree with me when I say that any employee of this country who is separated from his employment should at least be given a one month compensation, if the separation was not due to any fault of the employee and without any advance notice given to him by the employer. I think on this general principle all the members of the Senate can agree." (Italics ours.) (Congressional Record for the Senate—Vol. I, p. 268.)

Senator Tañada and Senator Primicias even amended the original bill so that its very title may specify the limitation above referred to.

More significant, still, is the fact that none of the members of Congress objected to the aforementioned qualification. Thus, the lawmakers indicated their conformity therewith. Indeed, the introduction—and adoption—of the Sumulong Amendment was due exclusively to the need of "making reciprocal the requirement of notice by the employer or by the employee, in case the contract of employment" is not for a definite period.¹³ (Congressional Record for the Senate, Vol. I, pp. 394-395.) Said amendment did not explicitly declare that the separation must be due to causes not attributable to the fault of the employee, because no such requirement appears in Article 302 of the Code of Commerce,^[3] and Republic Act No. 1052 was passed to fill the "void" or "gap"^[4] resulting from the repeal of said provision by the Civil Code of the Philippines.^[5] In the words of Senator Primicias, the bill, which became Republic Act No. 1052, had merely the purpose of "restoring the sense and spirit of Article 302 of the Code of Commerce," which, although silent on the cause of the termination of the employment, has been repeatedly held to apply only to employees separated without any fault on their part (*Lopez vs. Roces*, 73 Phil., 605, 1 Off. Gaz. [October 1942] 672; *Sanchez vs. Harry Lyons Construction Inc.*, 87 Phil., 532, 48 Off. Gaz., 605-607; *F. del Puerto vs. Gregg Car Co. Inc.*, 40 Off. Gaz., 12th Supp. [No. 18], pp. 103, 105-106).

The intention of Congress to exclude from the benefits of Republic Act 1052 those employees removed for good cause, imputable to them, becomes more manifest when we consider that the original Senate Bill No. 17 referred, in its title, to "dismissed employees," and that the term "dismissed" was substituted, in the amendment by substitution, introduced by Senators Primicias and Tanada, by the verb "terminated," which was, also, used in the Sumulong amendment to said amendment. Referring to the word "dismissed", Senator Montano explained that it "gave an idea that the separation of the employee was" due to a "misdemeanor committed by" him whereas the word "separated" is "more descriptive of the intention of the bill under consideration." Senator Sumulong, in turn, stressed the "distinction between termination of employment, dismissal for cause and lay-off." He said:

"* * * Those are three different matters which, are treated by our laws differently because they cover different situations In the case of dismissal * * * even if the employment is not yet terminated, even if the employment is in force, the employer can dismiss for just cause. * * * But when an employment is terminated you do not need to show cause because that is the agreement of the parties, that upon a certain date the employment will terminate and you do not need to show cause. * * * I believe the provision of section 1 of the amendment by substitution covers more precisely the situation of a lay-off, rather than termination of employment. Suppose an employee and an employer enter into a contract for a definite period of one year. But, then when they began the business, somehow circumstances supervened which made it impossible for the employer to produce as much as he was expecting to produce. * * * the demand became less, or * * * raw material that he was expecting * * * could not be gotten because he could not get an import control license. So it became necessary for him to reduce personnel because his output became less due to the reduction in demand and in the raw materials coming from the United States to the Philippines. That would be a good case covered by Section 1, because in case of a lay-off, the employer should show that it has been made for a good cause and that the employee was without fault. It is not the fault of the employee that business lagged, and yet under such a situation our courts by constant jurisprudence has always given the employer the right of lay-off a certain number of personnel in order to be able to continue business. * * *." (Cong. Rec. for the Senate, Vol. 1, pp. 322-323; Italics ours.)

Thus, Republic Act No. 1052 makes reference to termination of employment, instead of dismissal, precisely to exclude employees separated from the services for causes attributable to their own fault.

Again, Republic Act No. 1052 is limited, in its operation, to cases of employment without a definite period. When the employment is for a fixed duration, the employer may terminate it, even before the expiration of the stipulated period, should there be a substantial breach of his obligations by the employee (Articles 1169, 3191 and 1198, Civil Code of the Philippines; *Pabalan vs. Velez*, 22 Phil., 29; *Gonzales vs. Haleerer*, 47 Phil., 380; *Hodges vs. Granada*, 59 Phil., 429; *De la Cruz vs. Legaspi*, 98 Phil., 43, 51 Off. Gaz., 6212), in which event the latter as not entitled to advance notice or separation pay. It would patently, be absurd to grant a right thereto to an employee guilty of the same breach of obligation, when the employment is without a definite period, as if he were entitled to greater protection than employees engaged for a fixed duration.

Lastly, in the words of the Secretary of Justice:

"The right to dismiss an employee for cause is inherent in every employer. As announced in the leading case of *Manila, Trading . Company vs. Zulueta*, 40 Off. Gaz., 6th Supp., .1, 183, Sept. 6, 1941, an employer cannot be legally compelled to continue with the employment of a person guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests. The law, in protecting the right of the laborer, authorizes neither oppression nor self-destruction of the employer,[1] And in line with the above doctrine, it was further held in *Philippine! Sheet Metal Workers Union vs. Court of Industrial Relations*, G.K. No. L-2028, 46 Off. Gaz., No. 11, p. 5462, that the right to dismiss cannot be denied when it is shown that the laborers are not discharging their duties in a manner consistent with good discipline and the efficient operation of the industrial enterprise. (See also: *Manila Chauffeur's League vs. Baehrach Motor Co.*, 40 Off. Gaz., 7th Supp., p. 159; *Jacinto vs. Standard Vacuum Oil Co.*, 40 Off. Gaz., 9th Supp. p. 20; *Batangas Transportation Co. vs. Bagong Pagkakaisa*, 40 Off. Gaz., 10th Supp. p. 51; and *Cy Pac. vs. Katipunan*, 40 Off. Gaz., 13th Supp., p. 82).

"It could not have been the intention of Congress in enacting the aforesaid Act to curtail that right by requiring an a condition precedent to its exercise that notice be served one month in advance, or a month's compensation be paid in lieu of notice, to the erring employee. Such a requirement would be manifestly an reasonable and oppressive upon the employer." (Italics ours.)

To put it differently, it is doubtful whether Congress could validly require the employer to give the separation pay in question, if the employment were terminated due

to the fault of the employee. Indeed, the imposition of said obligation, under such conditions, would open Republic Act No. 1052 to the charge that it constitutes an unreasonable restraint upon the liberty of the employer, and a deprivation of his property, without due process of law.

Wherefore, the decision appealed from is hereby reversed, and another one shall be entered, dismissing the complaint, with costs against the plaintiff. It is so ordered.

Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

[*]95 Phil., 837.

[1] Said Senate Bill No. 17 provided: "AN ACT TO PROVIDE ONE MONTH'S COMPENSATION TO DISMISSED EMPLOYEES AND LABORERS.

"Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

"Section 1, The employment, without a term or period, of any person in a commercial, industrial, or agricultural establishment or enterprise may be terminated at the will of the employer for any just cause not attributable to the fault of the employee concerned by serving notice on him at least thirty days in advance.

Sec. 2. Any employee or laborer of a commercial, industrial, or agricultural establishment or enterprise, who is employed without a term or period and who voluntarily leaves the service of his employer, shall be entitled to compensation up to the last day of service rendered.

"Sec. 3. Any employee or laborer of a commercial, industrial, or agricultural establishment or enterprise, who is employed without a term or period, shall be entitled to one month's salary or wage, if he is dismissed from his employment for any just cause through no fault of his own, and without advance notice of at least thirty days. Any contract or agreement renouncing this right shall be null and void.

"Sec. 4. The following are just causes for dismissing an employee or laborer:

"a. Fraud or willful breach of duty in the course of his employment.

"b. Gross and habitual neglect of his duties.

"c. Continued incapacity to perform his work.

"(d. Any other just cause.) "Sec. 5. This Act shall take effect upon its approval."

[2] The substitute bill was of the following tenor:

"AN ACT TO REQUIRE EMPLOYEES TO PAY ONE MONTH'S COMPENSATION TO EMPLOYEES AND LABORERS EMPLOYED WITHOUT A TERM WHOSE SERVICES HAVE BEEN TERMINATED FOR CAUSES NOT ATTRIBUTABLE TO THE FAULT OF THE EMPLOYEES OR LABORERS CONCERNED.

"Be it enacted by the Senate and House of Representatives of the Philippines in Congress Assembled:

"Section 1. All employers who shall terminate the employment of persons employed without a term or period in commercial, industrial or agricultural establishments or enterprises for any cause now allowed by law, but not attributable to the fault of the employees or laborers concerned, shall be required to serve notice on the latter at least thirty days in advance, otherwise they shall pay the said laborers and employees one month's salary or wage from the date of the actual termination of their services.

"Sec. 2. The provisions of this Act shall apply when the employees or laborers concerned are not granted better or

more advantageous rights and privileges under other existing laws of the Philippines.

"Sec. 3. This Act shall take effect upon its approval."

[3] Article 302 of the Code of Commerce provides:

"In cases in which the contract does not have a fixed period, anyone of the parties may terminate it upon giving one month. advance notice thereof to the other,

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

[4] The explanatory note to Senate Bill No. 17 stated:

"In repealing the provisions of the Code of Commerce on agency, including Article 302 thereof governing the payment of one month's salary to dismiss employees, the new Civil Code provides in Article 1710 that the 'dismissal' of laborers shall be subject to the supervision of the government, under special laws.' But, when the said Civil Code took effect, no special law was enacted to protect the rights of many workers who, since then, have been dismissed from their employment without the benefit of one month's compensation.

"To fill the void left by the enforcement of the aforesaid Code, immediate approval of the attached bill is, therefore, strongly recommended."

In his sponsorship speech on said bill, Senator i.lontano declared that it was "intended to fill a gap in our legislation, because of the repeal of that provision of the Code of Commerce"—referring to section 302 thereof—"giving- one month's compensation for laborers who have been separated from their employment." (Congressional Record for the Senate, Vol. I, p. 269.)

Senator Primielas, author of said bill, and Senator Sumulong author of the amendment to the amendment by substitution, which because Republic Act No. 1052, confirmed said statement of Senator Montano (Cong', liec. for the Senate, Vol. I, pp. 317 and 318).

[5] Indeed, in *Lara vs. Canlas*, (94 Phil., 778) we held:

"As to the month pay (mesada) under Art. 302 of the Code of Commerce, Article 2-270 of the new Civil Code (Republic Act 386) appears to have repealed said Article 302 when it repealed the provisions of the Code of Commerce governing Agency. This repeal took place on August 30, 1950, when the new Civil Code went into effect, that is one year after its publication in the Official Gazette."

[1] In his opinion No. 33, dated . September 3, 1954.

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