

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. PHILIPPINE LONG DISTANCE TELEPHONE WORKERS UNION
(CLO) AND JUAN L. LANTING, JOSE S. BAUTISTA, AND V. JIMENEZ
YAMSON, ...**

G.R. No. L-4157. July 08, 1952

Ponente: JUGO, J.

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JUGO, J.:

Pedro Labitag had been working for several years for the petitioner Philippine Long Distance Telephone Company, which hereinafter, for the sake of brevity, will be called the Company, as lineman helper, whose work mostly consisted in digging holes at the sides of the streets for posts. The Company doctor made a physical examination of the employees and the workers of the Company. He found that Labitag was blind in the right eye and recommended his dismissal. The Company accordingly dismissed him. The Philippine Long Distance Telephone Workers' Union, which hereinafter will be called the Union, filed an urgent petition with the Court of Industrial Relations, praying that he be reinstated. Presiding Judge Arsenio C. Roldan of said court issued an order dated July 1, 1950, to the effect that Labitag should be transferred to another position or, if no other position was available for him, that he be dismissed with the privileges to which he is entitled under the Code of Commerce as a regular worker, and that in the future, should there be another available position for him, he be appointed to it.

The Union filed a motion for reconsideration and the case was reconsidered by the Court in banc. The Court through Associate Judge Jose S. Bautista, with the concurrence of Judges Juan L. Lanting and V. Jimenez Yanzon, passed a resolution declaring the motion for reconsideration well founded, and ordering the immediate reinstatement of Pedro Labitag to his former position or another similar position with the same pay, and the payment of his wages from the time he was dismissed until his reinstatement. Presiding Judge Roldan dissented with the concurrence of Judge Modesto Castillo.

Labitag was a permanent employee according to the findings of the Court of Industrial Relations. When he was hired for the first time he was already blind in one eye and that was a defect visible to the officers of the Company who hired him. The majority resolution of the Court of Industrial Relations, from which the appeal is taken and not from the minority opinion of Judge Roldan of the same court, qualifies the physical defect of Labitag as "defecto manifiesto" within the meaning of article of the old Civil Code, undoubtedly in its Spanish text, and article 1561 of the new Civil Code. In the Spanish text of article 1484 "defecto manifiesto" is considered as equivalent to "que estuviere a la vista" in contrast to those defects which are not so. Consequently, if the defect of Labitag was "manifiesto" or "estuviere a la vista", the officers of the Company who employed him could not have failed to see it when they employed him. This reference to said articles should not be taken to mean that we are applying them here, but is only to show the meaning of the word "manifiesto" as used by the majority opinion of the Court of Industrial Relations. He was able to do the work above mentioned, without any accident and without any complaint as to his efficiency. It was only when the doctor made a physical examination and reported that Labitag's right eye was blind that the Company dismissed him.

It is claimed by the Company that as Labitag was working in the streets the cars and other vehicles might strike him because he could not see them. It is hard to see how this might happen any more than with a worker with two sound eyes. If Labitag is occupying a small part of the side of a street in his work, the drivers who have normal eyesight would not run him down but would avoid him. A two-eyed man working in a small part of a street would not be running from one part of the street to the other whenever a vehicle is coming, for that would greatly hamper his work and even mislead the drivers, who as a rule, assume that the worker will stay where he is, to be avoided by the drivers. So many vehicles pass on the street that a two-eyed worker would be continually jumping from one point to another if it were their duty to avoid the Vehicles and not the vehicles to avoid them. Furthermore, as a general rule, when laborers are working in the street, there is a sign cautioning drivers of their presence.

Moreover, when one eye is blind the other becomes keener and the sense of hearing and other senses become more acute, on the generally admitted principle that nature makes compensations to a great extent. There is no reason, therefore, why the defective one eye would diminish the efficiency of Labitag, or endanger his life or limb to the prejudice of the company which would have to pay him indemnity under the Workmen's Compensation Act in case of accident.

If his blindness in one eye is a great handicap to Labitag why is it that during the several years that he has worked at said job no accident has happened and no inefficiency has been noted? Natural science is necessarily experimental and all a priori reasoning gives way to a posteriori results. All the arguments to show that Labitag's defect renders him dangerous and inefficient in his work fall before the happy results of his experience of several years in the same kind of work, results which disprove the rather gloomy but unjustified anticipations of danger and inefficiency. An imagined anticipation cannot overcome the clear and tangible evidence of actual experience.

The petitioner contends that it is its right to choose and fire employees without interference from the Court of Industrial Relations, provided it is not done on account of union activities of the workers. That right should not be abused or exercised capriciously, without any reasonable ground, with reference to a worker who has worked faithfully and satisfactorily for a number of years and who was admitted with his alleged defect visible and known, for, otherwise, in future similar cases the exercise of such right might be used as a disguise for dismissing an employee for union adherence.

In view of the foregoing, the resolution appealed from is affirmed, with costs against the petitioner.

It is so ordered.

Paras, C. J., Feria, Pablo, and Bengzon, JJ., concur.

CONCURRING

TUASON, J.:

I concur in the result of Mr. Justice Jugo's opinion. I do not quite agree with some of his Honor's reasonings, which are eloquently and convincingly answered in Mr. Justice Montemayor's well-written dissent.

But I believe from common observations and experience that a worker blind in one eye but otherwise healthy and physically fit can be as good a hole or ditch digger as one having the use of both eyes. If for this kind of job a worker with two eyes, as a general rule, renders better service than one who has only one good eye, there are undoubtedly exceptions. As the efficiency of Labitag, who has done the same job for several years, is not questioned, this laborer must be one of the exceptions to the general rule.

Ability to do properly the work entrusted to Labitag is the sole criterion by which the present controversy should be judged. Possibilities of accidents are, in my opinion, unimportant and secondary. A laborer who handles, and for seven years has been handling, heavy tools well can be trusted, I think, to take care of himself and not to cause injuries to fellow workers or strangers. One-eyed people do not run much, if any, greater hazards in public thoroughfares than pedestrians with two normal eyes.

DISSENTING

MONTEMAYOR, J:

I regret to dissent in the present case; and because of the importance and far-reaching effect of the ruling laid down in the majority opinion, namely, that an employer may be compelled to continue in its employ a laborer with a serious defect, which is, blindness in one eye, whose work is digging holes and ditches on the sides of city streets, with the consequent hazard to life and limb, not only to said laborer due to his failure and inability to fully realize and avoid danger, but also to his fellow employees and to the public in general whom said laborer, with defective vision may involuntarily injure while performing his work, all with the resulting risk to and liability of his employer for payment of damages for all injuries caused, I feel that I should state the reasons for my dissent.

The statement of facts made by the majority is correct, with the exception of the assertion that the blindness or defective vision of Pedro Labitag was known to his employer, the Philippine Long Distance Telephone Company, at the time that he was first employed in 1946. The company in its opposition to the petition for reinstatement, Annex B, in paragraph 5 thereof, emphatically denies such knowledge of the blindness of Labitag and claims that it became aware of said defect only after examination made by the company physician in December, 1949. Not only this, but Presiding Judge Arsenio C. Roldan who took cognizance of this case and issued the order of July 1, 1950, authorizing the Telephone Company to dismiss Labitag should it find it hard to shift him to another position where his blindness in one eye would not be a source of inefficiency and potential danger, said the following: "In fact there is nothing in the record to indicate that the company had knowledge of the general physical condition nor of the actual condition of the right eye of Labitag prior to December 15, 1949." Besides, when a physical examination by a physician was necessary to determine that Labitag's right eye was blind, there is every reason to believe that the ordinary layman would not know or be aware of such defect by merely looking at him.

But the majority opinion states that when Labitag was hired for the first time, his blindness in one eye was a defect visible to the officers of the company who hired him. This statement is premised on the majority resolution of the Court of Industrial Relations penned by Judge Bautista which qualifies the physical defect of Labitag as "defecto manifiesto" within the meaning of article 1484 of the old Civil Code and article 1561 of the new Civil Code. Then, the majority of this Tribunal proceeds to expound the meaning of this "defecto manifiesto" and ends with the conclusion that the defect of Labitag being visible, the officers of the company who first employed him could not have failed to see and note it when they first employed him. The weight and foundation of this finding in the resolution of the Industrial Court is open to question and bears discussion. It will be remembered that the resolution was the result of a motion for reconsideration of the order originally entered by Judge Roldan. The hearing was held before Judge Roldan and it was only he among the Judges of the Court of Industrial Relations who saw and heard the witnesses among them, Labitag. No rehearing was held. The order of Judge Roldan was merely reconsidered by the lower court in banc and the resolution of the majority of the lower court was based on the record of the first and only hearing where Labitag appeared as a witness. Therefore, only Judge Roldan who saw him is qualified to say if the defect of Labitag was so manifest that it must have been visible to the

officers of the Company who hired him. It is to be presumed that the statement contained in the resolution of the majority that the defect or blindness of Labitag was a "defecto manifiesto", is a mere conclusion, for the reason that the members of the trial court who signed the majority resolution were not present at the hearing and did not see Labitag, and there is nothing in the record to show that his blindness was a manifest defect. On the contrary, as already stated, Judge Roldan says that there is nothing in the record to indicate that the Telephone Company had knowledge of the general physical condition of Labitag's eye before he was examined by the Company doctor. The condition and appearance of Labitag's right eye does not appear in the record. If the said eye was entirely closed or its color and appearance was such that anyone could readily see that it was sightless, then the company might well be found to have known or been aware of Labitag's blindness. However, there are many cases where a man's one eye or even both eyes may present a normal appearance, both in color and luster so that the defect in vision can be determined only by actual test or optical examination. That might well and probably have been the case with Labitag, for it is unreasonable to believe that with so many unemployed laborers with normal vision to choose from, the Telephone Company should precisely select one who is blind in one eye, and for a position involving no mental ability or educational attainments where defective vision is of little import, but a job requiring manual labor with heavy tools, in the streets and in the company of other fellow laborers, when and where complete use of the senses, especially that of sight is indispensable.

As the majority opinion states, the work of Labitag in the company was that of digging ditches or holes in the sides of streets for the erection of telephone poles and the laying of telephone cables. The majority in support of its theory that blindness in one eye is neither a handicap nor a hazard in the performance of said work, says that inasmuch as the laborer in digging the ditch stays in one place on the side of the street, there is no danger to his being run over by vehicles cruising along the street for the reason that it is the vehicles which avoid him and not he running around to avoid them. We all know that a laborer performing that kind of work does not stay stationary, fixed and rigid in one spot like a post or a statue. In the course of the day when first he comes to work and later when he quits work and goes home, he must needs cross the street. Again, while at work by the side of the street, to answer the call of nature, or to take a drink or buy cigarettes at the corner or sari-sari store, said laborer crosses the street not once but oftener; and at noon when he stops working and takes his lunch, most probably he again crosses the street, even while working, digging a hole or a ditch, removing the earth from it, helping put up the telephone post or lay the telephone cables, carrying the tools from one place to another, or carrying out the orders of his foreman, he has to walk along a part of the street. Now, in doing all this he must actually and accurately determine the distance between himself and the vehicles running near and past him. A mistake in this regard would spell injury to him, even a fatal accident. The majority of motor vehicle drivers take for granted that people on the streets enjoy the full use of their senses, especially that of sight and that they are able to take care of themselves.

Again, a laborer digging a hole with heavy implements like a shovel, a crowbar or iron pick, in the company of fellow workers engaged in digging the same hole or ditch, must appreciate and determine with precision the space and distance between himself and the path of his heavy tool on the one hand and his fellow workers and their tools, on the other, otherwise he might hit his fellow workers or he might be hit by them. To gauge and determine these distances requires the use of both eyes. To prove this is quite simple. With one eye closed or blind-folded, look at an object a few meters away. While you can see it more or less distinctly, you cannot determine accurately how far or how near that object is from you. Use both eyes and you feel that your sense or appreciation of distance is greatly increased and fully restored. From all this, one may gather that to more or less accurately determine the distance of an object from him, the use of both eyes is necessary, even indispensable.

It is of common knowledge that people walking along or across the streets not infrequently, out of curiosity, stop to see excavations in it, especially when the holes are deep, and this curiosity or urge is stronger and more

common among children who sometimes loiter or even play around said excavations, watching the people at work. As the petitioner Telephone Company well observed, in digging a hole, Labitag being right handed, swings his pick overhead and over his right shoulder and then brings it down with force to the ground. While doing so, being blind in the right eye he cannot see what is near him to his right, be he a fellow worker or merely a curious onlooker, such as a child. Due to his failure to see in this direction he might injure said person. In the same way, a fellow worker on Labitag's right side, swinging a heavy tool like a pick, could not be seen by Labitag and because of this failure of sight, he (Labitag) might come dangerously or too near the path of said tool and be hit by it.

Both the Civil Code and Penal Code hold the employer civilly liable for the tortious or Criminal acts of his employee. Under the Civil Code, the employer's liability is direct and primary, while under the Penal Code, it is subsidiary. It is therefore important and advisable for its protection that an employer should minimize its liability by selecting as its employees those who are careful and with normal senses so that no acts causing damage through negligence or defect in the senses be committed unnecessarily, to the detriment of the employer.

Under the Civil Code (article 1903), the civil liability of the employer may be avoided should it prove that it employed the diligence of a good father of a family to prevent the damages, such as careful and wise selection of its employees or supervision of their work. In the present case, the employer, the Telephone Company, earnestly pleads with and explains to this Court as it has done with the Court of Industrial Relations that the employment of Pedro Labitag was a source of continuous hazard not only to Labitag himself who by his defective vision may be unable to avoid being hit by vehicles running along the street wherein he habitually works or by his own companions working with or near him, but also to these same fellow workers whom he might hit because of their proximity to him, or to the public in general.

For any injury received by Labitag in the course of his employment, his employer is liable under the Workmen's Compensation Act. The same thing is true for any injury that may be inflicted by Labitag upon his fellow workers. The company would be liable to said fellow servants. And, as we have already said, under other laws the employer is civilly liable to outsiders for injuries inflicted by Labitag because of his defective vision. Because of all this, Labitag's employer desires and vehemently asks us to permit it to avoid as much as possible, this hazard and responsibility hanging over its head, by approving his being laid off, with all the rights and privileges accorded him by law, but this Court through the majority opinion curtly and, in my opinion, unwisely dismisses its plea and compels it in disregard of all prudent measures of precaution to continue employing a laborer with defective vision, with all the potential danger to his fellow workers and to the public, and what is worse, at the same time assume civil liability for everything. To me that is not fair.

Even assuming that the Telephone Company, with the exercise of care and diligence should have known of this blindness of Labitag in one eye when it first employed him, and that because of its negligence it committed an error in so employing him, why may not said employer now be allowed to correct its error instead of being compelled to persist in and perpetuate said error and continue and abet a potential danger and a menace to his fellow workers and to the public?

Supposing that in the course of Labitag's continued employment ordered by the Court of Industrial Relations and by this Court, because of his defective vision he injures a fellow worker or an outsider, seriously, even fatally. The injured party or his heirs would immediately point the finger of accusation and condemnation at the Telephone Company for continuing to employ a laborer who in the performance of his assigned task was a potential danger and menace to those around him. The company in its turn could equally and justly point its finger at the courts of the land, not excluding this High Tribunal and say that after realizing the danger, it wanted to stop Labitag from working and in fact separated him from its service, but that it was judicially compelled against its will to continue Labitag in its employ. In such case, we might find it difficult and embarrassing to explain our

position and action.

The majority suggests that if one organ only like one eye is lost, the loss is compensated by the other eye being better developed and rendered more efficient so that in fact the defect is cured. This might be true to a certain extent but surely, no member of this Tribunal even if the law were to allow it, would employ as a chauffeur to drive the family car a man blind in one eye on the dubious theory that the man's remaining eye could see just as well. And despite this theory, we see no one-eyed persons being employed to act as chauffeurs, locomotive engineers, airplane pilots and other analogous occupations requiring good and normal sight.

To support its theory that blindness in one eye is not a great handicap to Labitag in the performance of his work and that said blindness was no hazard either to himself or to people around him, the majority confidently cites the fact that during the period from 1946 to 1949 that he worked on his job, no accident has happened or injury been caused. I am afraid that the majority is banking heavily, even dangerously, on chance. Its theory is the same philosophy adhered to by some property owners who refuse or neglect to insure against fire their buildings of inflammable materials, just because for several years they had not burned down. They are lulled to sleep by this sense of false security until one day when least expected they are rudely awakened, just in time to see their property razed and burned to the ground.

The present case as being decided by the majority may well be likened to a businessman wanting to insure his factory and warehouse against fire for the reason that they are of inflammable materials and also because they are surrounded by other buildings of similar materials. He wants to deduct the premium on the corresponding insurance policy as a valid expense, on his income tax return, but the Government refuses to allow the deduction, telling the taxpayer that there is no need for fire insurance because for several years since the construction of the buildings there had been no fire. Will the taxpayer wait until his properties are destroyed by fire, and will the Philippine Long distance Telephone Company wait until Labitag is injured or killed or has injured or killed someone while working all because of his defective vision before they can convince the Government and the Courts that there really is a hazard and that precautionary measures should be taken? It is unnecessary to point out the flaw in the reasoning and the fallacy of the philosophy that underlie the majority opinion.

There is no question that an employer in the hiring of its laborers, is given the right to select, to accept some and to reject others. But the theory of the majority of this Court and of the Court of Industrial Relations seems to be that once it has made its selection, however erroneous and unwise, even dangerous, it has to go on with it regardless of the consequences. In other words, according to a common expression, the employer is stuck with the laborer it selected, for good. To bolster this theory, the writer of the majority opinion in the Court of industrial Relations cited the example of one buying a horse with known defects, saying that under article 1484 of the old Civil Code such buyer is precluded from later backing out of or rescinding the contract of sale. The lack of analogy and parity between the said case and the present one is obvious. His Honor overlooked some slight differences. In the case of the purchase of the horse, the buyer buys the animal itself including its services. The buyer becomes the owner of the horse bought. The example would be good and proper in the old days of slavery when a slave was bought and sold as a chattel. A slave owner buying a slave with a known defect became the owner of the slave and may not return him to the former owner and seller. However, the days of slavery, happily, are no longer with us and trafficking in human beings is no longer practised or allowed. Now, when a man is employed he merely leases out his services. He does not sell himself. The employer does not buy him so as to become his owner; the employer merely uses his services and pays only for them. So, if in the course of the employment or lease of services just as during the lease of property, the services or the use of the property rented become or are found to be inadequate and undesirable, or when said services or the property constitute a menace to the public and to the lessee or tenant, to say nothing of the civil liability of said lessee for damages which may

be caused because of said defect, said lessee should be allowed to terminate the lease of services or of the property rented. However, the majority opinion of this Tribunal and of the lower court say that the employment or the lease of services is for always and for keeps. Naturally, to this theory, I cannot agree.

That the laborer has rights to be protected, there is no doubt. But the employer also has rights to be protected. Both rights are entitled to protection under the law and by the courts. But in our commendable endeavor to protect the rights of the laborer we should not lean so far backward, if by doing so, we overlook, and trample upon, the unwittingly, the rights of the employer who now invokes our protection.

Padilla, Reyes, Bautista Angelo, and Labrador, JJ., concur.

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