

RICARDO GUTIERREZ, PLAINTIFF AND APPELLEE, VS. THE BACHRAGH MOTOR CO., INC. DEFENDANT AND APPELLANT.*G. R. No. L11298. January 19, 1959*

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/bc630bd2823c/>**MONTEMAYOR, J.:**

These three cases arose from the same suit in the Court of First Instance of Manila, Civil Case No. 23848. Ricardo Gutierrez was employed lay the Rural Transit Company, owned and operated by the Bachrach Motor Co., Inc., on August 1, 1949 under a probation appointment of six months at P6 a day. On. July 13, 1951, Gutierrez was dismissed for "grave insubordination and insult against the management". He commenced the present suit in the trial court on August 28, 1954 for reinstatement, with backpay, and for moral and exemplary damages, plus attorney's fees. After trial, the lower court rendered judgment in favor of plaintiff Gutierrez, ordering the defendant company to reinstate him to his old position as assistant mechanic, "effective from the date this decision becomes final, with compensation of P6 a day, and sentencing said defendant to pay said plaintiff P1,000.00 as moral damages and P800 as attorney's fees, and costs." According to the decision, the P1,000.00 moral damages were for plaintiff's "physical suffering and mental anguish and wounded feelings" due to his supposed unjust dismissal. From this judgment, plaintiff Gutierrez appealed directly to this Tribunal, raising only questions of law and claiming that the trial court erred in not ordering defendant to pay him back wages from the date of his separation until reinstatement, and in awarding only P1,000.00 as moral damages, and without exemplary damages. Said appeal is recorded here as G. R. No. L11603. Defendant Bachrach Motor Co., Inc. perfected a similar appeal to us, also raising only questions of law and contending that the trial court erred in not holding that plaintiff was dismissed for a just and valid cause; in holding that defendant company can be compelled, to rein state "plaintiff to his previous employment and in awarding him moral damages and attorney's fees. This appeal is recorded here as G. R. No. L-11586.

Before expiration of the period for appeal, plaintiff filed a petition for partial execution of the decision, asking that defendant Company be ordered to reinstate him to his former position, with the same remuneration. Over the objection of the defendant, respondent Judge granted said petition in his order of September 17, 1956, at the same time denying and overruling defendant's motion for reconsideration of the decision, On September 24, 1956, plaintiff filed another petition, this time, for full execution of the judgment, that is to say, including the payment to him of P1,000.00 as moral damages and P800.00 as attorney's fees as awarded in the decision. This was opposed by defendant Company on September 29, 1956. On September 28, 1956, defendant Company filed an urgent petition to stay execution and for approval of a supersedeas bond in any amount to be fixed by the trial court. On September 29, 1956, respondent Judge issued an order granting plaintiff's petition for full execution. of the judgment upon his filing a bond in the amount of P1,800.00. On October 4, 1956, defendant Company filed an urgent motion to stay execution and for the approval of a supersedeas bond in such amount as the court may deem sufficient. This petition of defendant company was denied by respondent Judge by order of October 6, 1956. In the meantime, on October 2, 1956, the present petition for certiorari with preliminary injunction (G. R. No. L-11238) was filed by defendant Company as petitioner.

On October 10, 1956, plaintiff-respondent Ricardo Gutierrez filed with the trial court a petition for issuance of the writ of execution of that portion of the decision regarding the payment of P1,800.00, offering to file the corresponding bond in the same amount. By order of October 13, 1956, respondent Judge suspended execution with respect to the civil indemnity awarded until after the Supreme Court shall have granted or denied the petition of preliminary injunction in the certiorari case to be filed by the defendant in the Supreme Court, referring to G. R. No. L-11298.

Because of the intimate relation among these three cases, referring as they do to the same original suit, we have decided to render one single decision.

The facts in the case are not disputed. They are narrated in detail in the decision of the trial court, the pertinent portion of which we reproduce below:

"From the evidence it appears that on August 1, 1949, plaintiff Ricardo Gutierrez was employed as temporary mechanic in the Rural Transit Company, owned and operated by the defendant, at Blumentritt Parada, Rizal Avenue Extension, Manila, with compensation at P6 a day, under a probation appointment for six months, with the understanding that, if he would show efficient and satisfactory service during that period, he would be appointed as a regular employee. These conditions are clearly recited in the appointment, Exhibit A, which bears the signature of Mr. J. Kaplin, manager of the Rural Transit, and mechanic Ricardo M. Gutierrez. Pursuant to that contract of employment, Exhibit A, plaintiff started working for the defendant on August 1, 1949, until January 1, 1951, or a period of 1 year, 5 months and 11 days, without interruption. On January 11, 1951, manager Kaplin issued Special Order No. 14, marked Exhibit B, giving plaintiff 15 days vacation leave effective January 12, 1951, for the reasons set forth therein, which, on account of its importance, is hereby quoted in full:

"Assistant mechanic Ricardo Gutierrez, upon fluoroscopic examination this date by the Anti-Tuberculosis Society, has been found to be suffering from some kind of lung disease and upon certificate issued by Dr. Vasquez, the said diagnosis has been confirmed and he has to undergo medical treatment for a period of at least 15 days.

"In view of the above, he is hereby given 15 days vacation effective January 12, 1951, to undergo the necessary medical treatment, with the understanding that he will not be allowed to return to work unless the fluoroscopic examination of his lungs will show that they are absolutely cleared as required by the company regulation."

Thereafter, since he felt himself sufficiently recovered, he reported for work, but the defendant refused to allow him to resume his old job on the ground that the company's physician has not issued any certification that his lungs had been cleared, for on February 2, 1951, manager Kaplin received from Dr. Antonio Vasquez Clinic, Inc., defendant company's physician, a letter, Exhibit 5, which states that the plaintiff had been X-rayed on that date (February 2, 1951) and that the plate showed that his right lung suffered from minimal fibroid lesions at the level of the second anterior interspace and his left lung disclosed minimal pinhead size fibroids at the level of the second interspace, second rib anteriorly. On February 6, 1951, the company's physician sent another communication to manager Kaplin, marked Exhibit 6, wherein he stated that plaintiff 'has lung lesions which appeared to be tuberculous in nature,' although he did not seem to be in need of hospitalization, and thereby recommended that plaintiff be allowed to take rest and treatments until those pulmonary conditions clear up.

"Unable to convince himself that he was suffering from tuberculosis, plaintiff had a X-ray taken of his lungs by the National Chest Center on May 8, 1951, his film Exhibit E, having been identified as bearing No. 145365, and the result shows that there is 'increased density of the hilum shadow' which, according to Dr. Andres Y. Cruz, of the Division of Tuberculosis, Department of Health, who testified in this case in lieu of Dr. Fidel X. Nepomuceno, Chief of the National Chest Center, means that he has no TB, causing them to issue certificate

Exhibit F. As interpreted by the National Chest Center, there is no doubt that plaintiff has had previous infection when he was young but he has no tuberculosis as ordinarily understood, not even an incipient one, and there is, therefore, nothing by which he could prove to be contagious to other people. By reason of his conviction that he was not suffering from that dreaded disease, it appears that Ricardo Gutierrez, who had an insurance policy with the Philippine-American Life Insurance Company, requested that he be X-rayed at the X-ray laboratory of that company on February 1, 1951, as shown by the film, Exhibit C, which was identified by Miss Adelaida Deang, nurse-technician of the Philippine-American Life Insurance Company, who testified in this case; and the authenticity of the X-ray film Exhibit C, as referring to plaintiff Ricardo Gutierrez, is further corroborated by the record of the Philippine-American Life Insurance Company marked Exhibit G, wherein his signature appears on the book of the company. On account of the refusal of the defendant to reinstate him despite the findings of the National Chest Center, plaintiff complained to the Bureau of Labor about his case and what the Bureau of Labor did was to refer the matter to Dr. Godofredo R. Hebron, a TB specialist employed by the National Chest Center and at present the Assistant Chief of the TB Section of the Veterans Hospital, who had specialized in the United States from November, 1942, up to November, 1946, and who testified in this Court. It is hardly necessary to state, at this juncture, that the Court was greatly impressed not only by the qualifications of Dr. Hebron but also by his knowledge of TB. On March 19, 1951, it appears that he prepared letter, Exhibit 3, addressed to Dr. Antonio G. Hernandez, Chief of the Medical Division, Bureau of Labor, wherein, after making an interpretation of X-ray film Exhibit C taken at the Philippine American Life Insurance Company, he reached the conclusion that both lungs of the plaintiff Ricardo Gutierrez are essentially normal and that there is no evidence of active pulmonary tuberculosis anywhere in the lung field. He further stated that the only finding worth mentioning is the blunting of the left costophrenic sinus which is possibly due to a previous pleurisy. Associating the findings of Dr. Fidel R. Nepomuceno, Medical Officer-Röntgenologist of the Division of Tuberculosis, Department of Health, appearing in Exhibit F with the findings of Dr. Godofredo R. Hebron, TB specialist of the National Chest Center, marked Exhibit D, the increased density of the hilum shadow was possibly due to a previous pleurisy. Having, therefore, secured what might have been termed as clearances from two renowned physicians of the National Chest Center, plaintiff repaired back to manager Kaplin for reinstatement to his old position as assistant mechanic, but his request was again turned down, and, according to him, he reported for six times for reinstatement 'but his efforts were of no avail. This allegation is undoubtedly true for the evidence of defendant marked Exhibit 4, which is a letter by manager 'Kaplin to the herein plaintiff dated July 7, 1951, shows that manager Kaplin again reiterated the findings of the company's physician already alluded to elsewhere in this decision, and so exasperated and chagrined was plaintiff Ricardo Gutierrez that he wrote on the face of Mr. Kaplin's letter Exhibit 4, an annotation in his own handwriting to the effect that he does not believe in the company's physician's recommendation. (See Exhibit 4-A written on the face of Exhibit 4). Sometime on July 13, 1951, apparently unable to control himself by reason of the rebuffs received by him at the hands of defendant's management, plaintiff wrote a letter marked Exhibit 2, which Mr. Kaplin considered very offensive in its language. For the purpose of this decision, it might be necessary to quote it:

""Kaplin:

'I have received your letter dated on July 7 1951 I believed this letter is the one that you are giving when I report to you. Did you not remember that I threw that letter in your table because I don't want to read, it.

'In this packing letter you write the finding result of my X-ray result taken on May 9-51 it means that your Doctor Vasquez is telling again you that I have more sickness or lung disease. Remember Kaplin that I don't believe your best doctor I don't believe him any more because to me they are not a good doctor.

'And tell them that I don't to spend more money for their recommendation that I have lung sickness like what I do before.

(SGD.) RICARDO R. GUTIERREZ

P.S.

"Don't send me any letter from your best doctors."

Stung by the language of plaintiff's letter Exhibit 2, Manager Kaplin issued Special Order No. 216 on that same date, July 13, 1951, dismissing Ricardo Gutierrez from the service for grave insubordination and insult against the management. However, plaintiff did not immediately institute the necessary action except on August 28, 1954, and the present complain was brought to by him as a pauper.

"In the course of his testimony, Dr. Luis Vasquez, defendant company's physician, conceded that the X-ray film does not indicate positiveness or certainty that plaintiff was suffering from TB, but he claimed that he was working on the theory that plaintiff's pulmonary condition." could be tuberculosis, and, consequently, contagious, thereby causing him to recommend that plaintiff be required to take a rest. Having found, he said, shadows which should not be there, he had the impression that there were lung lesions, the exact nature of which he was not prepared to answer, and on the basis of his impression, his office prepared letters Exhibits 5 and 6. In the mind of this Tribunal, all the misunderstanding could have been avoided if Manager Kaplin had taken, serious efforts to reconcile the report of the government physicians with the report of the company's physician, considering the insistence with which plaintiff had demanded for reinstatement. In the company physician's letter of February 6, 1951, marked Exhibit 6, he had not recommended that the plaintiff be laid off but simply suggested that he be allowed to take a rest, until his pulmonary condition cleared up, but, since the plaintiff had been insisting that he had not tuberculosis, he having even gone to the extent of referring the matter to the Bureau of Labor, Manager Kaplin should have taken diligent efforts to ascertain where the divergence lies. But nothing has been done to determine the rest cause of this disagreement, while the plaintiff, on the other hand, was becoming desperate in his predicament, not knowing what to do, and his need for employment becoming a desperate necessity for survival, * * *"

In our opinion, there are three important questions for determination: First, whether plaintiff was dismissed from his employment for a valid cause; second, whether without any valid cause, plaintiff could be dismissed. by the defendant; and third, whether assuming that the plaintiff's dismissal was unjustified and illegal, he has filed a suit for reinstatement and for damages within a reasonable time after dismissal.

It will be noticed from the portion of the appealed decision abovequoted that the trial court gave more credit and reliance upon the opinion of the doctors of the chest center than the opinion of Dr. Vasquez, the company's physician; and that the plaintiff was not really suffering from any lung ailment and consequently, he should be allowed to resume work with defendant company, and that his dismissal inspite of his disrespectful behaviour and tone of his letter, Exhibit 2, was not wholly justified.

It may be that plaintiff was not really suffering from any disease or ailment of the lungs as to incapacitate him for work or to infect his fellow workers. However, defendant company was not bound by the opinion of outside doctors. It had its own company physician on whose opinion it had a right to rely for its own protection. Whether said company physician's opinion was right or wrong, from the point of view of the company's interest as an employer, is not immediately important. There is no evidence, not even a hint, that Dr. Vasquez acted dishonestly, or even with bias and bad faith, in rendering his opinion to the effect that plaintiff was suffering from a lung ailment. Evidently, his medical and expert opinion based on his analysis and observation was an honest one and there was no reason for the company to doubt him. Besides, according to paragraph 4 of the plaintiff's complaint that initiated this case in the trial court, he admitted and alleged that "he coughed every now and then and had a slight fever at the time contracted in the course of his employment". These are symptoms of tuberculosis and those symptoms may have influenced Dr. Vasquez in rendering his medical opinion. Furthermore, according to the very medical examination made by the outside doctors, plaintiff had had previous infection (tuberculosis) when he was young, and that their finding of the blunting of the left costophrenic sinus and the increased density

of hilum shadow was probably due to a previous pleurisy. In this connection, it should also be borne in mind that under the Workmen's Compensation Law, as interpreted by the courts, if any ailment of an employee is aggravated by his work and results in disability, the employer is liable for compensations which may amount to a considerable sum if the disability is important and permanent. Under these considerations, an employer may not well be blamed for taking extreme precautions and being strict in hiring its laborers and employees or in continuing them in their employment as regards their health and general physical condition. This, aside from the consideration that if an employee is suffering from an infectious disease like tuberculosis, and he is allowed to continue working, he may infect his fellow workers, to the prejudice not only of said, innocent and unsuspecting fellow workers, but to the management as well, which eventually would have to shoulder the financial responsibility.

He should also remember that on the basis of the opinion of the company physician about the health of the plaintiff, the company did not dismiss but merely asked him to rest and undergo medical treatment and even made available to him the facilities of the company's clinic. It was only when the plaintiff, exasperated at the continued refusal of the company to allow him to resume work, committed the alleged act of disrespect and insubordination for which he was dismissed. Was said behaviour of the plaintiff sufficient ground for dismissal? Considering the relation between the plaintiff and Mr. Kaplin, the manager of the company at whom the disrespectful acts were directed, we are inclined to believe and we do find that it was sufficient ground for dismissal. According to the finding of the trial court, it would appear that while plaintiff was in the office of the manager, Mr. Kaplin, either because he was called or he went there on his own initiative, Kaplin personally delivered to him the letter, presumably informing him that the company could not yet allow him to resume work because of the opinion of the company physician that he was still sick. The plaintiff on receiving the letter, instead of reading it, hurled and threw it on the table of the manager. As to his attitude and behaviour on that occasion, we can only imagine. Then this was followed by his letter, Exhibit Z, couched in insolent language, and twice addressing the manager as plain "Kaplin" without the "Mr.", and Gutierrez a mere assistant mechanic. An employer and its high officials, such as the manager, are entitled to more respect than what the plaintiff, displayed at the time. The Company has a right to maintain discipline among its employees and expect a certain degree of decorum and respect from them.

But assuming for a moment that as a matter of fact, plaintiff was really free from any lung ailment and assuming further that his act of disrespect and insubordination was not sufficient ground for dismissal, was the company justified in dismissing him without cause? For the reason that the contract of employment of plaintiff was not for any period or term, the answer must have to be in the affirmative, as to be demonstrated below.

Counsel for the defendant-appellant has chosen to cite and invoke the opinion rendered by the writer of the present opinion in the case of National Labor Union vs. Berg Department Store, G. R. No. L-6953, March 31, 1955. True said opinion was in part a dissent, but it merited the votes of three members Justices Bengzon, Padilla and A. Reyes, and was even concurred in by a member of the majority in that case, Justice Bautista. And the undersigned has reason to hope, even to believe, that the other members of the majority in that case, still in the Tribunal, or some of them would not disagree to the considerations made in that minority opinion, this for the reason that the majority opinion in said case was based on another ground, namely, that the dismissal of the employees was contrary to the terms of the collective bargaining agreement between the management and the Union, For this reason, it is deemed convenient, and to avoid repetition, to reproduce and make part of this opinion, the said considerations made by the undersigned in that case, with the assurance that these considerations do not in any manner affect nor conflict with the majority opinion in said case:

"I realize that there is a belief, more or less prevalent, that an employer may not dismiss its employee or laborer except for cause, and this belief is entertained not only by the laymen but also by a portion, of the bench and bar as well. This belief, to me erroneous, is due in part to certain rulings and declarations of some

courts ordering the reinstatement of some dismissed industrial employees on the ground that they had been dismissed or suspended without cause, and also awarding backpay corresponding to the period of suspension or dismissal. They overlook the fact that such suspensions or dismissals, not infrequently, were made after a dispute had been submitted to the Court of Industrial Relations for settlement, or that the employees were suspended or dismissed because of union activities, this, all in violation of express statutory provisions. It is high time in my opinion that all doubts on this point be cleared and that the relation between employer and employee and the rights and obligations of each be clearly ascertained and defined. What ever the courts, including this Tribunal may, in the past have said about the validity or impropriety of dismissals of employees by their employers, the law or rule is and has always been that in the absence of a contract of employment for a specific period, just as an employee in a commercial or industrial establishment may quit at any time, singly or collectively, with or without cause, so the employer can dismiss any employee at any time and without cause. This right of the employer is commonly referred to as his right to hire and fire his employee in the same way that the employee can stop working by himself or go on strike with his fellow employees. Authorities in support of this assertion are hardly necessary, but I shall quote some of them:

"'Traditionally, employers have enjoyed' the right to employ and discharge workers at pleasure. They have insisted upon the unfettered exercise of that right. The Supreme Court asserts that the right of employers to employ and discharge workers has not been impaired by the National Labor Relations Act. (Associated Press vs. National Labor Relations Board, 301 U.S. 103 [19327].) To the degree, however, that the Federal Act, and state acts patterned after it, forbid discrimination because of union connections or activities, they restrict the right of employers to hire and discharge at will. The Federal Act justifies these restrictions imposed upon employers, because the denial by employers of the right of employees to organize and bargain collectively leads to strikes which obstruct commerce. The employee, too, possesses the nominal right to withdraw his services but, like his employer, is restrained from doing so if it can be shown, that public safety or welfare is jeopardised by his act. A number of state laws have set forth unfair labor practices prohibited to both employers and employees. Thus, while both our legislative and judicial branches of government affirm the venerated right of employment under free contracts the freedom of the part of the employer to employ or to discharge, and, on the part of the employee., to sever his connections with his employer at will these governmental agencies have qualified that right in so far as its exercise seems to conflict with public interests.' (Dr. Albion Guilford Taylor on Labor Problems and Labor Law, 2nd Ed., 1950, pp. 399-400)

"'Although the attitude of the court towards social legislation affecting the right of an employer to discharge employees at will has undergone some change in recent years, it may still be said that ordinarily, any act which undertakes to impose upon any employer the obligation to keep in his service one whom he does not desire is unconstitutional. In the present era of social change and widespread labor legislation, the constitutionality of a law prohibiting the discharge of an employer because of his membership in a labor union has been upheld.' (National Labor Relations Board vs. Jones & L. Steel Corp., 301 U.S. 1, 81 L. ed. 8;3, 108 A.L.R. 1352). (Francisco Labor Laws, Sec. 54, p.26).

" 'A general contract of hiring is ordinarily deemed a contract terminable at the will of either the employer or the employee.

"' In the absence of something in the contract of employment to fix a definite term of service, or other contractual provision to restrict the right of the employer to discharge, or some statutory restriction upon this right, an employer may lawfully discharge an employee at what time he pleases and for what cause he chooses, without there by becoming liable to an action against him.' (35 Am.Jut., Sec. 34, pp. 469470. Anno. 34 A.L.R. 824). (Francisco, Labor Laws, p.673).

"This right of the employer, in the absence of a contract fixing a period of employment, to dismiss its employee has always been recognized in this jurisdiction. Art. 302 of the Code of Commerce provides that where the contract does not have a fixed period, anyone of the parties (employer and employee) may terminate it upon giving one month advance notice thereof to the other. Under this codal provision the courts, including

the Court of Industrial Relations had been awarding a month's pay or mesada not only to commercial employees as contemplated by the Code of Commerce but even to industrial employees or laborers. This means that in the absence of a contract fixing the period of employment, the employee may quit at any time and the employer may dismiss him at any time, in either case even without cause, by giving one month notice in advance; in the absence of such notice the employee laid off or dismissed is entitled to one month pay.

"This traditional right of the employer to dismiss his employee without cause is properly recognized, nay, taken for granted in the new law (Republic Act No. 1052) entitled "AN ACT TO PROVIDE FOR THE MANNER OF TERMINATING EMPLOYMENT WITHOUT A DEFINITE PERIOD IN COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL ESTABLISHMENT OR ENTERPRISE. "The Congress of the Philippines thru this Act unequivocally acknowledges and recognizes the right of, the employer to dismiss his employee without cause. Because of the repeal of Art. 302 of the Code of Commerce by the new Civil Code, and because of said repeal, Congress felt that in the absence of a contract. of employment for a fixed period, employees and laborers dismissed without cause, were no longer entitled to the mesada, even in the absence of notice of dismissal or layoff, said Republic Act was passed.

"To dissipate any lingering doubt about the recognition by Republic Act No. 1052, of this right of the employer to dismiss an employee without cause, we may refer to the legislative proceedings in both Houses of Congress when the Act in the form of a bill was discussed. The bill sponsored by Senator Primicias had the following explanatory note:

"In repealing the provisions of the Code of Commerce on agency, including Article 302 thereof governing the payment of one month's salary to dismissed employees, the new Civil Code provides In Article 1710 that the "dismissal of laborers shall be subject to the super vision 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.' (Italics supplied)

"The same bill was sponsored in the lower houseby Congressman Tolentino who made the following brief remarks:

" 'Mr. Speaker, this is a bill providing that employees shall be given a previous notice at least one month before the termination of their employment where there is no fixed period. ' (Italics supplied)

"The discussion of the bill in the Senate by Senators Primicias and Sumulong is enlightening. Senator Sumulong made the following remarks;

""* * * Mr. President, when a con tract or employment contains a definite period, that is when the employment Is for a fixed period of time, it is well established that upon the expiration of the period agreed upon, the employment is terminated without need of notice and without showing any cause. Now under Article 302 .of the Code 'of Commerce, whose repeal motivated the presentation of the original bill on the subject matter, there is a provision that when the contract for employment does not provide for a definite period of time either party may terminate the employment advance notice, in which case the employee would be entitled to compensation for that month. That provision in Article 302 of the Code of Commerce, I understand, is based on the experience of ages and establishes a very sound rule that when the employment does not provide for a definite period of time, it is only fair that before it is terminated the employer should be notified by the employee or, vice-versa, the employee should be notified by the employer before the employment is terminated. That is only reason able because when there is no definite period agreed upon you have to give the employee a reasonable time to look for another employment before terminating the contract.' (Congressional Record, Senate, Vol. 1, No. 24, p. 317; under scoring supplied) Senator Sumulong continuing, said:

"I have no objection that the employee should be given one month notice by the employer to terminate employment without fixed period, as provided for in the amendment by substitution, but I am only suggesting; is it not also reasonable that the same consideration be extended to the employer (Congressional Record, Senate, Vol. 1, Ho. 24, p. 319)

"With due respect to the opinion of the Majority Floor Leader, I wish to call the attention of the Senate that we have before us here a bill in which the subject is how can a contract of employment without a fixed period be terminated? Now, why should we not provide how it can be terminated by the employer? Why don't we make it clear as to how it can be terminated by the employer? I have made a little study of this and the general principle is that when a contract of employment is without a fixed period, in the absence of a statute regarding how it can be terminated by either side, the contract can be terminated at any time without need of showing cause. That is the general principle, and that is the necessity for this bill, so that the employee can be safeguarded and protected, that his employment cannot be terminated without being given one month's notice, I am for that. (Id., p. 320; underscoring supplied).

"* * *. In case of a contract where there is a definite period agreed upon, there is no need of notice because both parties are notified that upon a certain date the employment will terminate. That is the reason why no notice is required because the employee before the expiration date can prepare to look for another employment and the employer also, before the arrival of the expiration date, can look for other employees to take the place of those whose employment will be terminated. But when the contract does not specify a definite period of employment, there is where the necessity of notice arises, because neither side knows when the employment will terminate. That is why it is fair to the employee that before his services are dispensed with, he should be told one month in advance, one month from today your services will no longer be required. You can look for other places where you can enjoy yourself.. That is entirely fair. That is the provision of the amendment by substitution with which I heartily concur. But in the case of the employer also, when he does not know when the employment will terminate, I think that he should also be notified by the employee: "Mr. Employer, unfortunately I cannot continue until that date, so that one month from now you can look for others to take my place." That is reasonable. We are protecting labor and, at the same time, we are being reasonable with management and capital, and being fair and reassuring the industrial and commercial progress of this country. But when we become one sided, when we become myopic in our philosophy, when we think only of pleasing labor, and I am for pleasing labor, we are in fact committing a disservice, because labor cannot exist unless there is management and capital to cooperate with it. If we kill the man who has the capital and the management who build all industrial establishments in this country, then I am afraid that we are defeating the very purpose of this bill because in the end labor also will suffer from our injustices to the employer. (Id., pp. 321-322; underscoring supplied).

Senator Primicias had the following to say:

"* * * This bill is presented in the sense that there are many laborers laid-off now without protection. When I was yet the humble chairman of the Committee on Labor, I received many complaints of laborers being laid off without being paid the proper indemnity. I know there are many establishments, many factories which are dignified and law abiding and because of the lack of the provisions of law, are not paying their laborers whenever they leave their employment. But on the other hand, there are also many establishments, especially those controlled by aliens, which dismiss laborers without notice. This is urgent. We should protect them. (Congressional Record, Senate, Vol. I, pp. 319-320; underscoring supplied)."

"From all the foregoing, it is quite clear that the bill was passed in both houses of Congress with the understanding that the employer in the absence of a contract of employment for a certain period and unless prohibited by statutory provision, always had the right to dismiss his employee at any time and without cause and because of this right, and because many laborers and employees had been dismissed, without cause. To give them the protection or benefit, the bill was passed and is now Republic Act No. 1052,

"I repeat that Republic Act No. 1052 never meant or intended to give the employer a new right, which he never had before, that of dismissing an employee without cause, because the employer all along and always had that traditional right. Republic Act 1052 did nothing more than recognize and take that right for granted, at the same time, saving to the employee the right of the "mesada" which he lost by repeal of Art. 302 of the Code of Commerce.

"We may not say as does Mr. Justice Pablo in his opinion concurring in that of the majority that Republic Act No. 1052 is a reactionary legislation because in his opinion said act destroys the conquests of labor, one of which was the stability of his employment, which the Chief Justice calls the security of employment. As already demonstrated, there has never been such stability or security of employment except when provided for in statutory provision, like those acts I shall later enumerate. Republic Act 1052 could not have destroyed what had never existed. All it did was, as already stated, to recognize the instability and insecurity of employment, and to extend partial protection of the laborer against the same.

"The same concurring opinion of Justice Pablo places the supposed security of a laborer or employee in a private establishment on the same level or footing of that of a Government employee. He apparently overlooked the fact that not only the law (Sec. 694, Rev. Adm. Code) but the Constitution itself (Art. XII, Sec. 4) expressly prohibits the removal or suspension of a civil service employee except for cause provided by law. A private employee or laborer unfortunately, is not included in that prohibition.

"Of course, this clear right of dismissal or suspension of an employee is subject to the paramount police power of the State, and under said police power, the Legislature in most jurisdictions including ours has from time to time promulgated laws regulating and restricting this right of an employer to dismiss his employee without cause, forbidding it in cases where the dismissal would affect public interests. And it is interesting to note that even the right of an employee or laborer to quit work or to strike is similarly regulated and limited. I may mention some of our laws on this point that readily come to mind. Section 19 of Commonwealth Act 103 provides that in every contract of employment or tenancy, it is an implied condition that when any dispute between the employer or landlord and the employee, tenant or laborer has been submitted to the Court of Industrial Relations for settlement or arbitration or when the President of the Philippines had ordered an investigation in accordance with section 5 of the Act with a view to determining the necessity and fairness of fixing and adopting a minimum wage or share of laborers or tenants, and pending award, or decision by the Court of such dispute or during the pendency of the investigation above referred to, the employee, tenant, or laborer shall not strike or walk out of his employment, when so enjoined by the Court after hearing and when the public interest so requires, and if he has already done so that he shall forthwith return to it and that pending such dispute or investigation the employer or landlord shall refrain from accepting other employees, tenants, or laborers, unless with express authority of the Court; that no employer or landlord shall suspend, lay-off or dismiss any employee, laborer, from the time a labor association, or organization or group of laborers, or tenants or farm to an employer or land a petition or complaint regarding any matter likely to cause a strike or lockout or while an industrial or agricultural dispute is pending before the court; and that if it is proved that during the said period an employee or laborer, tenant, or farm-laborer has been suspended or dismissed without just cause, the court may direct his reinstatement and the payment of his salary or wage during the suspension or dismissal.

"Section 21 of the same law (Com. Act 103) provides that it shall be unlawful for any employer to discharge or to threaten to discharge, or in any other manner discriminate against, any laborer or employee because such employer believes that he may testify in any investigation, proceeding or public hearing conducted by the Court.

"Commonwealth Act 213 provides that any person, landlord, corporation or their agents who intimidate or coerce any employee or laborer or tenant under their employ with intent of preventing such employee or laborer or tenant from joining any registered legitimate labor organization of his own choosing, or, who dismiss or threaten, to dismiss such employee or laborer or tenant from his employment for having joined, or

for being a member of any registered legitimate labor organization shall be guilty of a felony.

"Republic Act 679 provides that' it shall be unlawful for any employer to discharge any woman employed by him who may be pregnant for the purpose of preventing such woman from enjoying the benefits of section. 7 of the Act or to discharge such woman while on leave on account of her pregnancy or confinement; also that it shall be unlawful for any employer to discharge any woman or child employed by him for having filed a complaint under this Act or to discharge such woman and child or any other employee who has given testimony or is about to give testimony under this Act.

"Republic Act 602 known as the Minimum Wage Law in its section 13 provides that after the effective date of the Act, it shall be unlawful for any person to discharge or in any manner to discriminate against because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on a Wage Board.

"Republic Act 875 known as the Magna Charta of Labor, in its section 14, paragraph(a)5, provides that it shall be unfair labor practice for an employer to dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under this Act.

"From all the foregoing, we may safely conclude that unless regulated or restricted by express statutory provision such as those above enumerated, an employer may freely dismiss his employee or laborer provided that under Republic Act 1052 like Art. 302 of the Code of Commerce, he gives one month notice in advance or gives one month pay in lieu thereof. In other words, the traditional and age old right of an employee or laborer to quit singly or collectively at any time and without cause and the right of the employer to dismiss his employee or laborer at any time without cause, still exist although qualified and restricted by statutory provisions."

We now come to the third important question for determination, namely, whether or not plaintiff-appellee has filed the present suit for reinstatement and for backpay within a reasonable time after dismissal. In a long line of decisions, this Tribunal has held that a government official or employee even under the protection of the Constitution and the Civil Service Law that secure him against dismissal without cause, however meritorious his claim, must file his petition for reinstatement within one year from the date of dismissal, otherwise, it would be barred by laches. In the present case, Gutierrez, was dismissed on July 13, 1951. He filed the present action for reinstatement only on August 28, 1954, that is to say, after more than three years. Although we find this to be neither the time nor the occasion for applying the doctrine laid down with respect to government officials and employees illegally and improperly dismissed, nevertheless we find that the plaintiff appellee was guilty of laches, and that he filed his action too late.

"IV. LACHES, STALE DEMANDS, AND LIMITATIONS

"Section 112. Definitions .

"Laches is such delay in enforcing one's rights as works disadvantage to another.

"Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. More specifically, it is inexcusable delay in asserting a right; an unexcused delay in asserting rights, during a period of time in which adverse rights have been acquired under circumstances that make it inequitable to displace such adverse rights for the benefit of those who are bound by the delay; such delay in enforcing one's rights as works disadvantage to another; such neglect to assert a right as, taken in conjunction with lapse of time more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity; an implied waiver arising from knowledge of existing conditions and an acquiescence in them; acquiescence in the

assertion of adverse rights and undue delay on complainant's part in asserting his own, to the prejudice of the adverse party." (30 C.J.S. p.5202-1).

The reason for the rule as to laches is clearly explained in the above definition. When, an employee or laborer is illegally and unjustifiably separated from the service by his employer, in justice to said employer, the petition or suit for reinstatement, including backpay, should be instituted within a reasonable time, this to allow the management to conduct its business and affairs, considering the dismissal and the possibility or probability of the dismissed employee resorting to court action to vindicate his right to continue in his employment. 'Within a reasonable time, say, one year, the management may keep the post either vacant by not filling it or cover it with a temporary employee, giving the latter to understand that should the management be later ordered to make the reinstatement, the temporary employee should vacate the post. But this period of uncertainty should not be allowed to continue indefinitely. We find that the more than three year period which plaintiff-appellee had allowed to elapse, without a valid excuse or explanation after his dismissal, is unreasonable. Consequently, assuming that he had a valid right to be reinstated, he slept too long on said right and had forfeited the same.

Lastly, we come to the question of the legality and propriety of the order of execution issued by the trial court and made subject of certiorari proceedings in G. R. No. L-11298. Considering the conclusion we have arrived at, namely, that plaintiff-appellee was legally dismissed, and that even if it were otherwise, he has lost his right to reinstatement, the question of the legality and propriety of the order of execution pending appeal has become moot. In connection therewith, however, we may say that the very decision, of the trial court orders reinstatement only when its decision shall have become final. The decision having been appealed, it is clear that it was not yet final. Consequently, the trial court clearly erred in ordering reinstatement of plaintiff pending appeal, specially when the defendant had offered a supersedeas bond to stay execution.

In view of the foregoing, the appealed decision, is hereby reversed and the petition for certiorari is denied.

No costs.

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

DISSENTING

REYES, J. B. L.,

As I view the case, the basic question seems to be whether or not the appellee Ricardo Gutierrez (engaged beyond his period of probation) was dismissed for a just and valid cause.

It is well to recall, at this juncture, that the dismissal occurred in 1951. At the time, the new Civil Code had operated to repeal the provisions of the Code of Commerce authorizing unconditional dismissals of employees engaged for an indefinite period, upon 30 days notice or payment of a *mesada* (one month's salary) (*Lara vs. Del Rosario*, 50 O.G. 1975). And only the enactment of Republic Acts Nos. 1082 (1954) and 1787 (1957) restored such power to dismiss even without just cause, provided notice or indemnity was given to the employee whose services were terminated.

Did the law between 1950 and 1954 empower the employers to dismiss employees, contracted for an indefinite term, without just cause and without notice or indemnity? I see no reason to change the stand that I expressed in my concurrence in *National Labor Union vs. Berg Department Store*, 51 O. G. (No. 4) 1866, that the law did not so authorize, and that during that period dismissals had to be for a justifiable cause.

Was any such cause shown in this instance? The fluoroscopic examinations performed by impartial observers clearly preponderate in favor of the contention that Gutierrez was not sick with tuberculosis when he was dismissed, contrary to the opinion of the company physician. Disease can therefore be ruled out to justify the dismissal.

I do not deny that the manager had the right to believe his doctor's report. But we are dealing with a period when the law required the actual existence of a cause, and the condition is not satisfied with mere belief or suspicion.

The second cause, the one averred in the court below, was that Gutierrez was guilty of insubordination and disrespect because of the rough language employed by him in addressing the manager of defendant company, Mr. Kaplin, orally and in writing where the latter insisted in denying him work. I submit that to qualify disrespect and insubordination we should not lose sight of the psychological condition of the plaintiff Gutierrez. Only by ignoring the distress and fear that oppress a laborer facing loss of work and possible starvation, not only for himself but also for his wife and children, may we demand that at all times plaintiff should have behaved as a gentleman; but such insistence would be entirely unrealistic. Distracted by the spectre of hunger hovering over his spouse and children; resenting the open bias of Mr. Kaplin, who would not even bother to refer to the company doctor the favorable reports of the National Chest Center and of the Department of Health clinicians; and not enjoying the benefits or prolonged education and training that can confer self-restraint, is it any wonder that Gutierrez should have exploded into violent language? A mechanic can not be expected to act like an engineer or a scientist; nor a butcher to behave like a surgeon.

Disrespect and insubordination presuppose deliberate intent to flaunt authority. But the plaintiff's emotional stress precluded deliberate action. Kaplin's conduct, on the other hand, showed a mind provocatively intent upon dismissing plaintiff at all costs. A fair and open mind would have considered the possibility of error on the part of the company's physician, and that he might be willing to reconsider a previous opinion in view of the later findings. Unless, of course, Mr. Kaplin was thoroughly convinced that his doctor would never look beyond the company's interest, being a mere enslaved, money grubbing hack, totally devoid of scientific spirit. Was not manager Kaplin legally bound to understand that only fair conduct and thoughtfulness for a fellowman can breed true respect; that it must be deserved and can not be commanded?

As to the lateness in filing the action, I think the rule for public officials should not be applied to private disputes. In the case of the former, the overriding need for prompt dispatch of government business justifies the requirement that claims for restoration to office should be speedily presented and resolved. But as between private parties, it is the statute of limitations that fixes the period during which the courts will be willing to entertain the complaints of one against the other, except under extraordinary circumstances that are not shown to exist. Altogether too often poverty explains the late submission of lawful claims. Anyway, this point was not debated in the trial court.

Therefore, submit that the judgment below should be affirmed.

Concepcion and Endencia, JJ., concur.

[1] Mesias vs. Jover, et al. G. R. Mo. L8548, Nov. 22, 1955; Unabia vs. City Mayor of Cebu, et al. 99 Phil., 258; Florentino Jose, Jr. vs. Arsenio Lacson, G. R. No. 10477, May 17, 1957; Eraudia vs. Vicente S. del Rosario, 103 Phil., 489.

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