

RAFAEL LABASANO, PLAINTIFF-APPELLEE, VS. SO HAN SHUI, DEFENDANT-APPELLANT.

G.R. No. L-26710. September 30, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal on pure questions of law from the decision dated May 26, 1966 of the Court of First Instance of Manila, in its civil case 63258, awarding separation pay and damages to the plain-tiff-appellee Rafael Labasano, to be paid by the defendant-appellant So Han Shui.[1]

Prior to 1963 Labasano was an employee of So for 16 years, receiving a daily wage of P8.55.

Sometime in 1963 Labasano was found to be suffering from "congestive heart failure due to arteriosclerosis" and was advised by physicians to take a complete rest for 3 to 5 years, and, if pos-sible, to get himself hospitalized, as he could have a heart attack even while resting or sleeping. He was also warned that a resumption of his job as a driver could gravely endanger his life. Labasano was thus compelled to go on indefinite leave of absence.

On June 5, 1963 he filed with the Workmen's Compensation Commission a claim against So, on the basis of which he was awarded in 1965 the amount of P4,180. For total and permanent disability, he was paid the amount of P2,332.61 under the Social Security Act. In connection with his claim for SSS benefits, So, writing sometime in 1964 to the SSS claims division, in reply to a query about the em-ployment status of Labasano, stated that the latter "has never been separated from the service although he has not returned for work since he took a leave of absence due to sickness and received from us on July 30, 1964, the last day of his SSS sickness benefits." So likewise stated in his reply that Labasano had not tendered his resig-nation and was not guilty of any act which would justify his dismissal.

Sometime in 1964 Labasano expressed to So his desire to resume work, but, as stated in the stipulation of facts tendered by the parties in the court below, So "refused to act on plaintiff's request for reins-tatement unless he could present a medical certificate is used by a Government physician or hospital stating that said plaintiff was already cured of his aforesaid ailment."

On May 22, 1964 the president of the labor union with which Labasano was affiliated sent a letter informing So that inasmuch as the latter had refused to give Labasano any separation pay on the ground that his employment had not been terminated, Labasano had decided to report for work. To this letter, the counsel of So made the following reply:

"Sir:

"In reply to your letter to my client Mr. So Han Shui, Proprietor & General Manager of the United Commercial Press, dated May 22, 1964, about the alleged decision of the said Rafael Laba-sano to return to his former job in the United Commercial Press, I regret to inform you that said establishment can not allow him to return because he is suffering from a very delicate and dangerous ailment which can cause his sudden death, and

should that happen, God forbid, while working with the establishment, the latter can be subjected to so much inconveniences, trouble, and liability.

"The apprehension of Mr. So as stated above is well-founded because according to Dr. Enrique Villarosa, Labasano's Physician, Labasano is suffering from Cardiac Asthma; and after he was sent by Dr. Villarosa to Dr. Lourdes Zarsadias, a heart specialist, for further diagnosis, the latter doctor diagnosed Labasano's ailment as Congestive Heart Failure due to Arteriosclerosis which, in the laymen's terms is the hardening of the arteries - a slow process that grows with the age of the individual and that with this condition, he can have an attack even while resting or sleeping. (Taken from the decision rendered by the Workmen's Compensation Commission dated February 27, 1964, RO4-WC Case No. 2859, Rafael Labasano vs. United Commercial Press).

"Due to his above-mentioned delicate and dangerous ailment, the aforesaid Dr. Villarosa has recommended his continued confinement including convalescing or recuperation for a period of 3-5 years from April 26, 1963; and the Social Security System has considered him as 'totally and permanently disabled on April 27, 1963' and because of which, has already refunded/ paid to the United Commercial Press 'the balance of sickness benefits paid after date of disability in favor of Rafael Labasano.'

"In view of all the foregoing medical findings and other facts and circumstances, Mr. So believes and feels that it is inhuman and risky to allow Rafael Labasano to work again for the United Commercial Press after the former has been found to be suffering from a delicate and dangerous ailment, and declared to be 'totally and permanently disabled.'"

Labasano then filed suit with the City Court of Manila for separation pay and other damages. His claim was decided adversely against him; on appeal to the Court of First Instance of Manila, however, he obtained a judgment in his favor on May 26, 1966, thus:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff the sum of P1,778.40 plus P500.00 for and as attorney's fees, and another P500.00 for exemplary damages, and costs of the suit."

In the appeal at bar, So maintains that (a) R.A. 1052, as amended by R. A. 1787, otherwise known as the Termination Pay Law, was erroneously applied by the trial court because Labasano's employment with him has not been terminated as there was a mere temporary cessation in the performance of his work due to his disability; (b) only P1,444.50 (not P1,778.40) should have been awarded as separation pay as that is the amount claimed in Labasano's complaint; and (c) attorney's fees and exemplary damages should not have been awarded as So's refusal to pay Labasano is based upon a well-grounded and honest belief that the latter is not entitled to such pay.

We affirm the judgment a quo for the reasons stated below.

1. The reply of So's counsel to the union president, adverted to above, indubitably demonstrates that insofar as So is concerned, re-summption by Labasano of his work was an impossibility. Thus, the first paragraph of the said reply described So's nagging apprehension that Labasano was "suffering from a very delicate and dangerous ailment which can cause his sudden death" which, should it occur while Labasano was in So's employ, could subject the latter "to so much inconveniences, trouble, and liability." This apprehension was, in fact, stressed in the last paragraph of the said reply, thus:

"In view of all the foregoing medical findings and other facts and circumstances, Mr. So believes and feels that it is inhuman and risky to allow Rafael Labasano to work again for the United Commercial Press after the former has been found to be suffering from a delicate and dangerous ailment, and declared to be 'totally and permanently disabled.'"

For all practical purposes, therefore, Labasano was effectively laid off from work.

Still, even in the face of his demonstrated adamant refusal to allow Labasano to resume work because of the latter's "total and per-manent disability," So failed to comply with the law, that is, not at any time has he served on Labasano a categorical written formal notice of termination of employment, as required by law, nor, in the alter-native, has he paid Labasano severance benefits.

It is, of course, quite understandable, from an entirely business viewpoint, that the physical condition of Labasano which, according to medical findings, was beyond repair, could be expected to give rise to no less than a rupture in employment relations between him and So; his ailing condition, after all, directly defeated the very purpose for which their relationship was established. But, conditions such as this were mainly what motivated the formulation of policies aimed at afford-ing solicitous protection to the workingmen - policies in which the hard social and economic realities embraced within such terms as "social justice" and "social conscience" are accorded much more relevance and greater emphasis than the mere hills and peaks in production charts that result from maximum use of labor purely as a tool or element for the production of goods or the provision of services. Congress' acute awareness that the employment of capital entails a certain quantum of social responsibility toward those who have less in life, was a powerful pressure-factor which made it omit an em-ployee's illness as one of the just causes for which an employee serving without any definite term may be dismissed from employment without any written formal notice.[2] As so aptly stated by this Court in *Nadura vs. Benguet Consolidated, Inc.*:[3]

"Even a cursory reading of the legal pro-vision under consideration [section 1, R.A. 1052, as amended by R.A. 1787] is sufficient to convince anyone that, as the trial court said, 'illness cannot be included as an analogous cause by any stretch of the imagination.'"

2. The contention that only P1,444.50, and not P1,778.40, should have been awarded to Labasano, is completely devoid of merit. The only possible relevant question relative to the said adjudication is whether the court a quo, in applying the law, made a wrong computation of the total termination pay which Labasano is legally entitled to receive on the basis of his daily salary of P8.55 and the length of his service. The allegations and prayer in his complaint do not here control because the court must inescapably adjudge that which the law ordains as Labasano's full entitlement.

Examining the decision a quo, we are of the view that the court did not commit any error in its computation. Thus:

"On the basis of P8.55 daily salary, the monthly wage of the plaintiff would be P222.30, computed on the basis of 26 days, the average number of working days in a month. One-half of P222.30 is P111.15 which should be multiplied by 16 years, the length of service of the plaintiff with the defendant, or a total of P1,778.40....."

3. The award of attorney's fees and exemplary damages should likewise be affirmed. The reasoning of this Court in *Nadura*, supra, with reference to the award there of these two items of damages applies squarely to the case at bar.

This Court in that case, on the basis of facts essentially similar to those here obtaining, said:

"The lower court declined to make an award of ... attorney's fees in favor of *Nadura* on the ground that *Benguet* contested the latter's claim in good faith.

"... Article 2208 of the new Civil Code provides..... that attorney's fees may be awarded where the court deems it just and equitable..... *Nadura* is entitled to recover attorney's fees be-cause *Benguet's* refusal to pay him severance pay he was entitled to receive forced him to go to court to enforce his right

"We also believe that *Nadura* is entitled to exemplary or corrective damages which, as well known, are imposed by way of example or correction for the public good. These damages are required by public policy, because wanton acts must be suppressed and discouraged. From what we have said heretofore, the conclusion is inevitable that *Benguet* had no plausi-ble reason to resist *Nadura's* claim for severance pay It was in

duty bound to give him either one month's notice in advance or pay the corresponding severance pay. Instead of complying with its obligation in this respect, it resisted Nadura's claim and forced him to litigate these many years. We are, therefore, of the opinion, and so hold, that Benguet must pay exemplary damages."

ACCORDINGLY, the judgment a quo is affirmed in toto, at defendant-appellant's cost.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur. Teehankee, J., reserves his vote.

[1] The motion for reconsideration filed by So Han Shui on June 28, 1966 was denied on July 9, 1966.

[2] The just causes for the termination of employment are:

"a. The closing or cessation of operation of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of this law;

"b. Serious misconduct or wilful disobedience by the employee of the orders of his employer or representative in connection with his work;

"c. Gross and habitual neglect by the employee of his duties;

"d. Fraud or wilful breach by the employee of the trust reposed in him by his employer or representative;

"e. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family, or representative; and

"f. Other causes analogous to any of the foregoing." (section 1, Rep. Act 1052, as amended by Rep. Act 1787).

[3] L-17780, Aug. 24, 1962, 5 SCRA 879 (per Dizon, J.)

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