

NICANOR BALTAZAR, PLAINTIFF AND APPELLEE, VS. SAN MIGUEL BREWERY, INC., DEFENDANT AND APPELLANT.

G.R. No. L-23076. February 27, 1969

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by San Miguel Brewery, Inc. to reverse the decision of the Court of First Instance of Manila in Civil Case No. 32478 ordering it to pay appellee Nicanor M. Baltazar the total amount of P1,680.00 representing his separation pay of one (1) month and the money value - at the rate of P240.00 monthly - of six months accumulated sick leave he was entitled to.

It appears that Baltazar was appointed salesman-in--charge of appellant's Dagupan warehouse on October 1, 1955 with a basic monthly pay of P240.00, P5.00 per diem and a commission of P.075 per case sold.

On October 9, 1956 sixteen regular workers at appellant's Dagupan warehouse went on a strike. For the purpose of relieving the tension prevailing at the place - because it was alleged that the unfair treatment dispensed to the employees by Baltazar was the cause of the strike - Baltazar was recalled to appellants Manila office on October 13 of the same year upon recommendation of its sales supervisor and industrial relations officer, who found out, after a personal investigation, that the employees' grievance was well founded. The day following Baltazar's recall to Manila the strikers returned to work voluntarily.

When Baltazar reported at appellant's main office in Manila on October 15, 1956, the latter's sales supervisor informed him that he was not to return to Dagupan anymore. Thereafter, he reported for work at the main office afore-said from October 16, 1956 until November 2 of the same year, apparently without being given any specific work or assignment. From November 3, 1956 up to December 19 of the same year, or a period of more than one end one-half month, he absented himself from work without prior authority from his superiors and without advising them or anybody else of the reason for his prolonged absence. For this reason, pursuant firstly, to existing rules and regulations considering ten unexcused or unauthorized absences within a calendar year as sufficient ground for an outright dismissal from employment, and secondly, the provisions of appellant's health, welfare and retirement plan requiring that sick leave, to be considered authorized or excusable, must be certified to by the company physician, appellant, by a letter dated December 31, 1956, informed Baltazar that he was dismissed for cause effective November 30 of the same year.

Four months later, or more specifically on May 2, 1957, Baltazar commenced the present action. After trial upon the issues arising from the parties' pleadings, the trial court ruled that Baltazar's dismissal was justified, and, as a consequence, dismissed his complaint. For insufficiency of evidence, the court also dismissed appellant's counterclaim. But despite the dismissal of Baltazar's complaint and the finding that his dismissal from employment was for cause, the trial court ordered appellant to pay him one month separation pay, plus the cash value of six months accumulated sick leave. So We are now urged to reverse this portion of the decision upon the following grounds:

"I. The trial court erred in requiring the defendant-appellant to pay separation pay after having found and declared as an established fact that the dismissal of plaintiff-appellee was fully justified.

"II. The trial court erred in awarding plaintiff-appellee the money equivalent of an 'accumulated sick leave of six (6) months as terminal leave' despite its express findings to the effect that (1) sick leave benefits under defendant-appellant's health, welfare and retirement plan may be enjoyed only if and when the sickness is certified to by the company physician - a requirement which was admittedly not complied with, and (2) said benefits are 'non-commutative and may not therefore be commuted to cash'."

The trial court found that appellee's absence for forty-eight successive days was without permission or authority of his superiors and, as a result, ruled that it was sufficient cause for his dismissal in accordance with the rules and regulations of his employer. This must be deemed final, because Baltazar did not appeal.

It is settled in this jurisdiction that one not employed for a definite period is not entitled to one month notice or to one month salary in lieu thereof if his dismissal was for cause (Republic Act No. 1052; *Marcaida vs. Philippine Education Company*, 53 O.G. No. 23, p. 8559). In the *Marcaida* case this Court, speaking through the now Chief Justice Roberto Concepcion, said the following:

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

"Again, Republic Act No. 1052 is limited in its operation, to cases of employment without 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, 1191 and 1198, Civil Code of the Philippines; *Pabalan vs. Velez*, 22 Phil. 29; *Gonzales vs. Haberer*, 47 Phil. 380; *Hodges vs. Granada*, 59 Phil. 429; *De la Cruz vs. Legaspi*, 51 Off. Gaz. 6212) in which event the latter is 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. x x x. 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 expose Republic Act No. 1052 to the charge that it would constitute an unreasonable restraint upon the liberty of the employer, and a deprivation of his property without due process of law."

We rule therefore that appellee is not entitled to one month separation pay.

In connection with the question of whether or not appellee is entitled to the cash value of six months accumulated sick leave, it appears that while under the last paragraph of Article 5 of appellant's Rules and Regulations of the Health, Welfare and Retirement Plan (Exhibit 3), unused sick leave may be accumulated up to a maximum of six months, the same is not commutable or payable in cash upon the employee's option.

In our view, the only meaning and import of said rule and regulation is that if an employee does not choose to enjoy his yearly sick leave of thirty days, he may accumulate such sick leave up to a maximum of six months and enjoy this six months sick leave at the end of the sixth year but may not commute it to cash.

WHEREFORE, the appealed decision is hereby reversed, without special pronouncement as to costs.

It is so ordered.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, and Barredo, JJ., concur.

Sanchez and Fernando, JJ., reserve their vote.

Capistrano, J., did not take part.

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