

ERNESTO E. MARTINEZ, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, GMCR, INC. (FORMERLY GLOBE MACKAY CABLE & RADIO CORP.), AND MARK ANTHONY JAVIER, RESPONDENTS.

G.R. No. 118743. October 12, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the decision of the National Labor Relations Commission in NLRC NCR Case No. 005452-93 on the ground that it was rendered with grave abuse of its discretion. The dispositive portion of the assailed decision reads as follows:

WHEREFORE, the decision appealed from is hereby MODIFIED. The awards of merit increase, retirement pay differential and fringe benefits are hereby REDUCED, respectively, to P29,515.50, P63,247.50 and P6,826.82. The awards of unpaid salaries and other fringe benefits are hereby SET ASIDE.

SO ORDERED.[1]

It appears that on June 10, 1977, respondent GMCR, Inc. employed petitioner as assistant credit and collection manager. At the inception of petitioner's employment, respondent company made it clear that employees who were not eligible for membership in the bargaining unit and, therefore, not entitled to the benefits under the collective bargaining agreement, would be paid benefits which were at least equivalent to, if not higher than, those provided in the collective bargaining agreement.[2]

On September 22, 1981, respondent company promoted petitioner to credit and collection manager, a position he held until the day of his retirement.

In the course of his employment, petitioner received annual salary increases based on merit and/or performance. Although the annual salary increases were not given on the exact due dates, they were retroactively applied to the start of the evaluation period.

However, much to his surprise, petitioner received no salary increase for the period immediately prior to his retirement. While two (2) of his subordinates were given salary increases of twenty-two percent (22%) and twenty-one percent (21%) for the period from September 16, 1990 to September 16, 1991, he was not given a performance evaluation and consequently not granted any salary increase.

Petitioner was examined by Dr. Florencio A. Chavez, the company physician and a pulmonary and cardiology specialist, and found to be suffering from a "severe restrictive and obstructive pulmonary defect with no reversible component." [3] He was advised to rest for 120 days. Petitioner took the physician's advice and went on sick leave from March 1 until July 15, 1992.

In a letter, dated April 10, 1992, to respondent Mark Anthony Javier, president of respondent company, petitioner

applied for optional retirement benefits under the collective bargaining agreement. He stated that since he would have been in the service of the company for fifteen years on June 10, 1992, he wished to retire effective July 16, 1992, on which date "the long term sick leave availment as per advice by the company's physician shall have expired." [4]

On April 22, 1992, petitioner asked for the advance payment of his salary for the period April 16, 1992 to July 15, 1992. On April 24, 1992, he asked Flaviano L. Ramos, Senior Vice President and Treasurer, for an advance payment of his retirement benefits in the amount of P100,000.00.

On April 27, 1992, Flaviano L. Ramos informed petitioner that respondent company was having financial difficulties and could only grant petitioner's request if he changed the effective date of his retirement from July 16, 1992 to April 30, 1992. Being in urgent financial need, petitioner agreed and thus crossed out the date, July 16, 1992, on a photocopy of his letter, changing it to April 30, 1992.

Respondent company issued to petitioner four (4) checks in the aggregate amount of P351,375.00, broken down as follows: P13,260.20 as salary advance; P21,994.91 as salary advance; P100,000.00 as partial advance payment of retirement benefits; and P216,119.89 as full payment for the outstanding balance of his retirement benefits. Dissatisfied, petitioner filed a complaint seeking payment of the following:

WHEREFORE, it is respectfully prayed that after hearing, respondents be condemned to pay jointly and severally to the Complainant:

- a) P425,663.42 as actual damages;
- b) P400,000.00 as moral damages;
- c) P200,000.00 as exemplary damages;
- d) P150,000.00 as attorney's fees; [5]

On July 26, 1993, Labor Arbiter Arthur L. Amansec rendered a decision ordering respondent company as follows:

WHEREFORE, Judgment is hereby rendered ordering the respondents company (sic) to pay to the complainant the following:

- A. P425,663.42 in unpaid salaries; underpayment of retirement benefits; other fringe benefits and additional economic benefits;
- B. P25,000.00 as moral damages;
- C. Ten percent (10%) attorney's fees.

SO ORDERED. [6]

Respondent company appealed to the NLRC which, on November 23, 1994, rendered a decision, the dispositive portion of which is set forth at the beginning of this opinion.

First. Petitioner contends that under the collective bargaining agreement, the option to retire is granted to retiring employees and not to the company and, therefore, private respondents cannot vary the effective date of his retirement. On the other hand, private respondents deny that petitioner can claim the benefits of the collective bargaining agreement considering that he is a managerial employee.

Thus, the question is whether petitioner, who is a managerial employee, can claim retirement benefits under the collective bargaining agreement, Art. XXIX of which provides:

Section 1. An employee shall be entitled to a retirement benefit plan under the following conditions:

- (a) an employee may retire at his option any time after such employee shall have attained the age of Fifty Years (50) and whose term of service is ten (10) years or more; and an employee may retire at his option upon

completing twenty-five (25) years of service.

(b) The employee must retire under this plan at the time such employee attains the age of Sixty-Five (65).[7]

The Labor Code provides:

Art. 245. Ineligibility of managerial employees to join any labor organization; right of supervisory employees.
- Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in a labor organization of the rank-and-file employees but may join, assist or form separate labor organizations of their own.[8]

As we recently held in *United Pepsi-Cola Supervisory Union (UPSU) v. Laguesma*:^[9]

. . . [T]here is a rational basis for prohibiting managerial employees from forming or joining labor organizations. As Justice Davide, Jr., himself a constitutional commissioner, said in his ponencia in *Philips Industrial Development, Inc. v. NLRC*:

In the first place, all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees. Their classification as such is not seriously disputed by PEO-FFW; the five (5) previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations. As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them.

In *Bulletin Publishing Co., Inc. v. Hon. Augusto Sanchez*, this Court elaborated on this rationale, thus:

"x x x The rationale for this inhibition has been stated to be, because if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership."

To be sure, the Court in *Philips Industrial* was dealing with the right of confidential employees to organize. But the same reason for denying them the right to organize justifies even more the ban on managerial employees from forming unions. After all, those who qualify as top or middle managers are executives who receive from their employers information that not only is confidential but also is not generally available to the public, or to their competitors, or to other employees. It is hardly necessary to point out that to say that the first sentence of Art. 245 is unconstitutional would be to contradict the decision in that case.^[10]

Accordingly, managerial employees cannot, in the absence of an agreement to the contrary, be allowed to share in the concessions obtained by the labor union through collective negotiation. Otherwise, they would be exposed to the temptation of colluding with the union during the negotiations to the detriment of the employer.

However, there is nothing to prevent the employer from granting benefits to managerial employees equal to or higher than those afforded to union members. There can be no conflict of interest where the employer himself voluntarily agrees to grant such benefits to managerial employees. In the case at bar, at the beginning of petitioner's employment, he was told that those who are not covered by the CBA would nevertheless be entitled to benefits which would be, if not higher, at least equivalent to those provided in the CBA.^[11] That private respondents made such a promise to petitioner is not denied by them.

Now Art. 287 of the Labor Code, as amended by R.A. No. 7641,^[12] provides:

Art. 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned

under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefit under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

Thus, respondent company's agreement to extend the benefits of the CBA to petitioner constitutes the "applicable employment contract" under this provision of the Labor Code, pursuant to which petitioner may claim retirement benefits.

Second. The next question to be resolved is when petitioner should be deemed to have retired from respondent company. In ruling that respondent company could vary the effective date of petitioner's retirement, the labor commission explained:

[T]he respondent company had a right to insist that the effectivity date of his retirement be, not July 16, 1992, which was advantageous for him, but April 30, 1992, which was more advantageous for it. The fact that it imposed, as a condition for the advance partial payment of the complainant's retirement benefit, that the effectivity date of his retirement be changed to April 30, 1992, and that the complainant agreed to the condition because of his urgent need for money, does not affect the validity of their agreement in the absence of mistake, violence, intimidation, undue influence or fraud (Article 1330, Civil Code). The mere fact that an agreement was disadvantageous to one of the parties does not avoid it. Moreover, the release to the complainant, of the check for P13,260.92 in response to his request for the advance payment of his salaries from May 1, 1992 to July 16, 1992 does not signify the approval of his request because, as stated in the note of FL Ramos to "Susan", such request was still subject to "certain approvals". Thus, the complainant is not entitled to salaries and fringe benefits from May 1, 1992 to July 16, 1992.[13]

We agree with this ruling. Petitioner assented to change the date of his retirement from July 16, 1992 to April 30, 1992 in consideration of obtaining an advance payment of P100,000.00 on his retirement pay. Such agreement is valid. As has been held:

Not all waiver and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.[14]

The fact that respondent company still paid petitioner salaries after July 16, 1992 does not detract from the fact

that petitioner voluntarily agreed to advance the date of his retirement. Neither is petitioner's entitlement to a long term sick leave which he claims was yet to expire on July 16, 1992 a reason for holding the new date of his retirement invalid. By changing the date of his retirement from July 16, 1992 to April 30, 1992 in exchange for an advance of P100,000.00 on his retirement pay, petitioner waived his right to insist on July 16, 1992 as the effective date of his retirement.

Third. Private respondents argue that petitioner is barred from instituting this action on the ground of estoppel, having signed a document entitled "Release, Waiver and Quitclaim" in favor of respondent company. This document states that in consideration of the release of retirement benefits to petitioner, he was discharging the company, its stockholders, directors, agents, or employees from liability for any sum of money or other obligations.

This document is an invalid waiver and cannot bar petitioner from bringing the present action. Unlike petitioner's waiver of the original date of his retirement, the consideration for which is the advance on his retirement benefits, the "Release, Waiver and Quitclaim" does not purport to have been made by petitioner for valuable consideration. Petitioner was, as a matter of right, entitled to his retirement benefits. Private respondents cannot condition their release to a quitclaim executed by petitioner. For this reason, we affirm the general rule against quitclaims of laborers' benefits:

Even if voluntarily executed, agreements are invalid if they are contrary to public policy. This is elementary. The protection of labor is one of the policies laid down by the Constitution not only by specific provision but also as part of social justice. . . .

The subordinate position of the individual employees vis-à-vis management renders him especially vulnerable to its blandishments and importunings, and even intimidations, that may result in his improvidently if reluctantly signing over benefits to which he is clearly entitled. Recognizing this danger, we have consistently held that quitclaims of the workers' benefits will not estop them from asserting them just the same on the ground that public policy prohibits such waivers.[15]

Fourth. With regard to petitioner's claim for salary increase, the NLRC held:

The complainant's allegations relative to his right to a salary or merit increase from 1991 to 1992 were not successfully refuted by the respondents, whose contention that his performance during the year in question was evaluated and that he was found undeserving of a salary or merit increase is not supported by any evidence. Thus, it appears that there was unlawful discrimination on the part of the respondents in not giving the complainant a salary or merit increase in the year in question, which justifies the award of salary or merit increase. However, the award of merit increase should be, not 20%, but 18%, which is the average of the merit increases the complainant received from 1988 to 1990, or the amount of P4,216.50 monthly.[16]

We agree with this ruling. The amount of P4,216.50 should, however, be multiplied by seven and one-half months considering that the period covered is from September 16, 1991 to April 30, 1992. This would entitle petitioner to the amount of P31,623.75 as merit increase, and not P29,515.50, as computed by the NLRC.

We likewise affirm the ruling of the NLRC denying petitioner's claim for P168,660.00 representing salaries which he would have allegedly earned had he been rehired by respondent company as a contractual employee. There is no evidence to show that respondent promised to rehire petitioner. The mere fact that another employee was rehired by respondent company after he had retired due to physical disability is not proof that petitioner was likewise given the same offer.

As for petitioner's claim for moral damages, we find no basis for such an award.

. . . [W]hile no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount

of indemnity being left to the discretion of the court (Art. 2216), it is, nevertheless, essential that the claimant satisfactorily prove the existence of the factual basis of the damage (Art. 2217) and its causal relation to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.[17]

Petitioner's allegations of "sleepless nights" and "serious mental anxieties" due to the "unlawful, malicious and fraudulent actuations of the respondents" in his complaint[18] have not been duly proven.

Nor has it been shown that respondent company acted in gross and evident bad faith so as to entitle petitioner to an award of attorney's fees under Art. 2208(5) of the Civil Code.

WHEREFORE, the decision of the National Labor Relations Commission is **AFFIRMED** with the **MODIFICATION** that the award of merit increase should be increased to P31,623.75.

SO ORDERED.

Regalado, (Acting C.J.) (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Rollo, p. 231.

[2] Id., p. 44.

[3] Id., p. 37.

[4] Id., p. 28.

[5] Id., p. 26.

[6] Id., pp. 179-180.

[7] Id., p. 61.

[8] LABOR CODE OF THE PHILIPPINES, Art. 245.

[9] G.R. No. 122226, March 25, 1998.

[10] Id., at 27-28.

[11] Supra note 2.

[12] Herrera-Veloso Law, approved on December 9, 1992.

[13] Rollo, pp. 227-228.

[14] Periquet v. NLRC, 186 SCRA 724, 730-731 (1990).

[15] Carmelcraft Corporation v. NLRC, 186 SCRA 393, 397-398 (1990).

[16] Rollo, pp. 228-229.

[17] Malonzo v. Galang, 109 Phil. 16, 20-21 (1960).

[18] Rollo, p. 25.

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