

## **SAN MIGUEL CORPORATION, PETITIONER, VS. ERNESTO JAVATE, JR., AND THE DEPARTMENT OF LABOR, RESPONDENTS.**

*G.R. No. 54244. January 27, 1992*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

This case involves the validity of the compulsory retirement of private respondent Ernesto Javate, Jr. for alleged exhaustion of his sick leave benefits and unfitness to return to work pursuant to petitioner's 1971 Health, Welfare and Retirement Plan.

The facts of the case, as revealed by the pleadings of the parties, are as follows:

Private respondent was a casual employee of the petitioner assigned to its B-Meg warehouse in San Miguel, Bulacan. On 21 June 1974, he figured in an accident and was initially confined at the Figueroa Emergency Hospital in Gapan, Nueva Ecija. The next day, he was transferred to the Makati Medical Center. Upon his discharge from the hospital on 16 August 1974, he was found by his attending physician to be fit for work and was given clearance to resume work the next day, 17 August 1974. Private respondent was on sick leave for a total of fifty six (56) days.

Upon his discharge from the hospital on 16 August 1974, private respondent was fetched by his immediate supervisor Severino Azcarraga to be brought to work that same day. However, they were unable to reach San Miguel, Bulacan, as the roads were rendered impassable by typhoon "Norming"; they only got as far as San Ildefonso, Bulacan. To prevent his being declared absent without leave, private respondent, with the assistance of his supervisor, filed an application for vacation leave for eleven (11) days with pay from 17 August 1974 to 27 August 1974. Since the application was not filed six (6) days prior to its effectivity, as required by petitioner's rules and regulations, the application was disapproved.

On 28 August 1974, private respondent reported for work, and was paid the amount of P3.20 as his salary for the day. He was informed that the nurse who prepared his certificate of leave authority, Miss Josie Desiderio, committed an error when she provided therein that as of 17 August 1974, he was still under treatment. This error was corrected to indicate his fitness to return to work on said date, 17 August 1974. Also, on 28 August 1974, private respondent filed for an additional fifteen (15) day vacation leave without pay from 29 August 1974 to 12 September 1974, to enable him to attend to the immediate repair of his house which was destroyed by the typhoon. This application was likewise disapproved for having violated the six (6) day requirement for the filing of leaves; hence, the absences of private respondent were charged to his sick leave benefits.

On 1 September 1974, before the lapse of private respondent's vacation leave, petitioner "compulsorily retired" the former for alleged exhaustion of sick leave benefits based on the company's Health, Welfare and Retirement Plan, the pertinent portion of which provides:

"ARTICLE VIII

## RETIREMENT BENEFITS

## Section 1. Eligibility:

x x x

(aa) Any permanent worker who, after using all the sick-leave-with-pay benefits to which he is entitled under Article V of these rules, is not certified by the Company physician to be capable of discharging his regular assigned duties without impairing his own health or endangering that of his fellow workers shall also be compulsorily retired, and the person so retired shall be entitled to 100% of the retirement benefits provided in Section 2 hereof, irrespective of the length of service."

On 25 September 1975, private respondent filed a complaint[1] against the petitioner with the Department of Labor (then Ministry of Labor), Regional Office No. III in San Fernando, Pampanga, challenging therein his illegal dismissal effected in the guise of a compulsory retirement. The complaint was docketed as NLRC Case No. RB-III, 269-75. After due hearing, a decision[2] in favor of private respondent was rendered on 18 June 1976 by Executive Labor Arbiter Benigno Vivar, Jr., the dispositive portion of which reads as follows:

"IN VIEW OF ALL THE FOREGOING, for lack of basis, and for its failure to secure the necessary clearance to terminate the services of complainant, respondent San Miguel Corporation is hereby directed to reinstate Ernesto Javate to his former position without loss of seniority and other privileges appertaining to him prior to his dismissal. But the award of back wages is hereby limited to one year, the guilt of respondent being commensurately mitigated by its evident good faith in terminating complainant's services on the basis of its 'Health, Welfare and Retirement Plan'.

SO ORDERED."

Not satisfied with the aforequoted decision, petitioner appealed[3] to the National Labor Relations Commission (NLRC) Manila which, however, affirmed in toto said decision in its resolution of 28 December 1976.[4] Undaunted, petitioner appealed from the resolution to the Office of the Secretary of Labor,[5] which likewise sustained the appealed resolution in an order dated 21 July 1978.[6] Its motion for a reconsideration[7] of this order having been denied on 5 January 1979,[8] petitioner filed the instant petition for certiorari[9] under Rule 65 of the Rules of Court, alleging therein that the Department of Labor committed:

"I

x x x GRAVE ABUSE OF DISCRETION IN DISREGARDING THE PROVISIONS OF THE COMPULSORY AND RETIREMENT PLAN OF THE PETITIONER WHICH RESPONDENT JAVATE ADMITS TO BE VALID AND THE RULE OF PETITIONER REQUIRING ALL EMPLOYEES APPLYING FOR VACATION LEAVE TO FILE THE SAME SIX (6) DAYS BEFORE THE EFFECTIVE DATE WHICH RULE RESPONDENT JAVATE NEVER IMPUGNED AND THEREFORE THE VALIDITY THEREOF IS DEEMED ADMITTED.

II

x x x GRAVE ABUSE OF DISCRETION IN CONSIDERING PETITIONER TO HAVE DISMISSED RESPONDENT WITHOUT PRIOR CLEARANCE IN TRUTH AND IN FACT RESPONDENT WAS RETIRED PURSUANT TO THE HEALTH, WELFARE AND RETIREMENT PLAN OF PETITIONER AND THEREFORE ONLY A REPORT AND NOT PRIOR CLEARANCE IS NECESSARY UNDER SECTION 7 OF RULE IV, BOOK V OF THE RULES AND REGULATIONS IMPLEMENTING THE LABOR CODE."[10]

In the resolution of 23 July 1980, this Court required the respondents to comment on the petition[11] which

private respondent complied with on 4 September 1980.[12] In a resolution dated 3 December 1980,[13] We gave due course to the petition and required the parties to submit their respective memoranda. All the parties subsequently filed their Memoranda.[14]

The first assigned error hinges on the application of Section 1, Article VIII of the Health, Welfare and Retirement Plan of the company which essentially provides that a permanent worker can be compulsorily retired only if: a) he has exhausted all the sick leave with pay benefits to which he is entitled; and b) is certified by the company physician to be incapable of discharging his regular assigned duties without impairing his own health or endangering that of his fellow workers. Petitioner alleges that the vacation leaves applied for by private respondent, namely: the periods covering 17 August 1974 to 27 August 1974, and 29 August 1974 to 12 September 1974, were never approved by petitioner as they violated the rule that the same must be submitted not less than six (6) days before the first day of the leave.[15] This being so, the absences incurred by private respondent during said period were charged to his remaining sick leave benefits with pay, thus fully exhausting them.

Petitioner further contends that private respondent was unfit to return to work as borne out by the certificate of sick leave authority which initially contained the remark "still under treatment" and "further check up required on September 2, 1974".[16] The correction made on said certificate changing the remark "still under treatment" to "resume work 8-17-74" is discredited by petitioner on the ground that the latter remark is not in harmony with the retained "further check up required".[17] The first remark "still under treatment" is more in consonance with the remark "further check up required" which, according to petitioner, indicates private respondent's unfitness to return to work. This, coupled with the alleged exhaustion of private respondent's sick leave with pay benefits, called for his compulsory retirement.[18]

We find no merit in petitioner's contention. The question of whether private respondent exhausted his sick leave benefits and is unfit to return to work, is a question of fact, which is for the public respondent, as a trier of fact, to determine. Well-settled is the rule that factual findings of quasi-judicial agencies like the National Labor Relations Commission, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence.[19] Their conclusions on these matters are binding on Us in the absence of any of the established exceptions calling for Our review.[20]

In the case at bar, the labor arbiter found that the evidence presented by private respondent sufficiently showed his fitness to resume his work thereby making his termination illegal. As found by the labor arbiter in its decision of 18 June 1976:[21]

"The aforementioned antecedent facts have never been rebutted by any piece of evidence to the contrary. They are therefore, conclusive and undoubtedly credible, reflecting the injustice committed against the complainant for having been dismissed on August 31, 1974, its lack of reasonable basis notwithstanding." (emphasis supplied).

This finding was further affirmed by both the National Labor Relations Commission and the Department of Labor on appeal.

Besides, since it was the petitioner who unilaterally "compulsorily retired" private respondent, it had the burden to prove that he is incapable of discharging his regular duties without impairing his own health or endangering that of his fellow workers. Petitioner miserably failed to discharge this burden.

Private respondent then was not retired within the meaning of the Health, Welfare and Retirement Plan of the company as petitioner alleges. Rather, he was dismissed, and such could not be validly done without the clearance

from the Department of Labor.

The second error is anchored on the argument that private respondent was compulsorily retired, thereby rendering inapplicable the requirement of a clearance to terminate from the Department of Labor. In view of the foregoing disquisition, it would no longer be necessary to discuss its merits.

There is likewise no merit to petitioner's contention that private respondent is estopped from assailing his retirement as he has accepted the benefits under the retirement plan.[22] Private respondent vehemently denied this contention, and the filing of the compliant for illegal dismissal indisputably strengthens such denial.

Furthermore, even assuming *arguendo* that private respondent indeed received his retirement benefits, it does not estop him from questioning the legality of his dismissal. As this Court stated in *De Leon vs. NLRC*: [23]

"The contention of respondents that petitioner is barred from contesting the illegality of his dismissal since he has already received his separation pay cannot be sustained. Since he was forced to retire, he suddenly found himself jobless with a family of eight (8) children to support. He had no alternative but to accept what was offered to him. x x x Employees who received their separation pay are not barred from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel as held in the leading case of *Mercury Drug Co. vs. CIR* (56 SCRA 694) as aptly cited in the decision of the Labor Arbiter." (emphasis supplied).

WHEREFORE, the petition for certiorari is DISMISSED for lack of merit. Costs against the petitioner. This Decision shall be immediately executory.

### **IT IS SO ORDERED.**

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

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[1] Annex "A" of Petition; Rollo, 15.

[2] Annex "C" of Petition; Id., 29-30.

[3] Annex "D" of Petition; Rollo, 31-41.

[4] Annex "E" of Petition; Id., 43.

[5] Annex "F" of Petition; Id., 44-45.

[6] Annex "H" of Petition; Id., 58.

[7] Annex "I" of Petition; Id., 59-67.

[8] Annex "J" of Petition; Id., 68.

[9] Id., 2.

[10] Rollo, 3.

[11] Id., 70.

[12] Id., 78.

[13] Id., 96.

[14] Id., 108, 128, 142.

[15] Rollo, 145-148.

[16] Id., 7.

[17] Id., 148.

[18] Id.

[19] GRF Shipping Agency, Inc. vs. NLRC, 190 SCRA 418; Dagupan Bus Co. vs. NLRC, 191 SCRA 328; Osias Academy vs. DOL, 192 SCRA 612; Pambusco Employees Union, Inc., vs. CIR, 68 Phil., 591 Manila Electric Co. vs. National Labor Union, 70 Phil. 617.

[20] Dagupan Bus Co. vs. NLRC, *supra.*; Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc., 97 SCRA 734; International Hardwood and Veneer Co. of the Philippines vs. Leogardo, 117 SCRA 967; Republic vs. Court of Appeals, 145 SCRA 100.

[21] Annex "C" of Petition; Rollo, 29.

[22] Rollo, 152.

**[23] 100 SCRA 691.**

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