

**ABAQUIN SECURITY AND DETECTIVE AGENCY, INC., PETITIONER,
VS. HON. DIEGO P. ATIENZA, HON. CLETO T. VILLATUYA, HON.
GERONIMO Q. CUADRA, NATIONAL LABOR RELATIONS
COMMISSION AND ANT...**

G.R. No. 72971. October 15, 1990

Ponente: FERNAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-72971/>

FERNAN, C.J.:

The instant petition for certiorari raises primarily the issue of whether or not a security agency may be required to pay retirement or termination benefits in favor of its security guard who voluntarily resigned, in the absence of an agreement, contract or management policy regarding such benefits.

Petitioner security agency employed private respondent Antonio B. Jose as a security guard on August 29, 1959. Almost twenty-five (25) years later or on April 12, 1984, Jose voluntarily resigned in view of his failing health and his desire to withdraw his cash deposits with petitioner. He was then sixty-one (61) years old. After Jose had executed a certificate of discharge acknowledging full payment of his services as well as a quitclaim of all demands against petitioner, the latter, relying on the absence of any management policy or agreement between them regarding retirement or termination benefits, paid Jose only his cash deposits. Feeling aggrieved, Jose filed before the Arbitration Branch of the National Labor Relations Commission (NLRC) a complaint against petitioner for separation pay, or in lieu thereof, gratuity benefits equal to one-half month salary for every year of service and other benefits provided for by law.

Labor Arbiter Domingo V. del Rosario dismissed Jose's complaint on the following grounds: (a) an employee's enjoyment of retirement benefits or separation pay under Article 288 of the Labor Code and Sections 13 and 14 (a), Rule I, Book VI of the Rules and Regulations Implementing the Labor Code is subject to the existence of a retirement plan, individual or collective agreement or established management policy; (b) Jose cannot claim under said implementing rules benefits which are not granted by the Code, otherwise the then Ministry of Labor would be guilty of legislative usurpation; and (c) Jose was put in estoppel when he executed the certificate of discharge and when he voluntarily resigned.[1]

On appeal, the NLRC in its decision of September 30, 1985, set aside the labor arbiter's decision, disposing, thus:

"WHEREFORE, premises considered, the appealed decision is hereby SET ASIDE and another one entered ordering respondent-appellee to pay complainant-appellant (herein private respondent Jose) his retirement or termination pay as provided for under existing laws and rules in an amount equivalent to 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.

"Consequently, respondent-appellee (herein petitioner) is directed to show proof of immediate compliance to (sic) the mandate of this Decision after ten (10) days from receipt hereof.

SO ORDERED."[2]

The NLRC construed Section 14 (a) of Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code in relation to the second paragraph of Article 288 as entitling a retiring employee to termination pay of one-half (1/2) month for every year of service in the absence of any agreement or employer policy on retirement pay. It ruled that said Section 14 (a) was intended "to give full effect and application to Article 288 of the Labor Code (which) covers all retiring employees, regardless of the existence of any agreement, company policy or otherwise." [3] It added that under the principle of equity, it is only just and fair to reward retiring employees for their long years of faithful service to their employer. Moreover, the NLRC said that Jose's execution of the certificate of discharge "never implied (his) abdication" or waiver of the benefits due him under existing laws on account of the principle that labor standards are not subject to waiver or any agreement which would deprive the workingman of said benefits.

Hence, the instant petition for certiorari raising the issues of whether or not a 61-year-old security guard who voluntarily resigned is entitled to retirement benefits under Article 288 of the Labor Code and whether or not Sections 13 and 14 (a), Rule I, Book VI of the Rules and Regulations Implementing the Labor Code can alter, repeal or modify said Article 288.

The Court dismissed the instant petition for lack of merit on December 16, 1985. [4] Expectedly, petitioner filed a motion for reconsideration reiterating as grounds therefor the two issues it had raised in the petition and, in addition, the grounds that the aforesaid sections of the implementing rules may not be the sources of a privilege in favor of private respondent and that equity demands that it "be not unduly burdened in paying retirement benefits to a former employee." [5]

Respondents having filed their comments on the motion for reconsideration, the Court reconsidered the dismissal resolution in view of the fact that this case requires the interpretation of Article 288 of the Labor Code and said Sections 13 and 14 (a) of Implementing Rule I. [6]

The legal provisions involved in this petition provide as follows:

"Art. 288.* 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 or other agreement. (Labor Code)

"Sec. 13. Retirement. - In the absence of any collective bargaining agreement or other applicable agreement concerning terms and conditions of employment which provides for retirement at an older age, an employee may be retired upon reaching the age of sixty (60) years.

"Sec. 14. Retirement benefits. - (a) An employee who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy shall be entitled to all the retirement benefits provided therein or to termination pay equivalent at least to one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year." [7]

Construing these provisions in relation to the same issue presented in this petition, this Court in the case of *Llora Motors, Inc., and/or Constantino Carlota, Jr. vs. Hon. Franklin Drilon, et al.*, [8] clarified that Article 288 (now 287) "does not itself purport to impose any obligation upon employers to set up a retirement scheme for their employees over and above that already established under existing laws. In other words, Article 287 recognizes that existing laws already provide for a scheme by which retirement benefits may be earned or accrue in favor of employees, as part of a broader social security system that provides not only for retirement benefits but also death and funeral benefits, permanent disability benefits, sickness benefits and maternity leave benefits. [9]

Llora went further to elucidate on the import of Sections 13 and 14 of Implementing Rule I to end the confusion between the concepts "retirement benefits" and "termination pay" inadvertently engendered by the phraseology of Section 14, which deals with both. Thus:

"x x x It is important to keep the two (2) concepts of 'termination pay' and 'retirement benefits' separate and distinct from each other. Termination pay or separation pay is required to be paid by an employer in particular situations identified by the Labor Code itself or by Implementing Rule I. Termination pay where properly due and payable under some applicable provision of the Labor Code or under Section 4 (b) of Implementing Rule I, must be paid whether or not an additional retirement plan has been set up under an agreement with the employer or under an 'established employer policy.'

What needs to be stressed, however, is that Section 14 of Implementing Rule I, like Article 287 of the Labor Code, does not purport to require 'termination pay' to be paid to an employee who may want to retire but for whom no additional retirement plan had been set up by prior agreement with the employer. x x x What Section 14 of Implementing Rule I may be seen to be saying is that where termination pay is otherwise payable to an employee under an applicable provision of the Labor Code, and an additional or consensual retirement plan exists, then payments under such retirement plan may be credited against the termination pay that is due, subject, however to certain conditions. x x x"[10]

Based on the foregoing, there being no individual or collective agreement between the parties or established employer's policy regarding retirement benefits, petitioner's resistance to private respondent's claim therefor is legally defensible.

However, it must be noted that the complaint filed by private respondent prayed primarily for termination benefits and only in the alternative for gratuity benefits. In fact, the dispositive portion of the decision under review ordered petitioner to pay private respondent "retirement or termination pay". In so ordering, the NLRC reasoned:

"x x x The implementing rule particularly applicable to paragraph No. 2 Art. 288 is Section 14 (a) of Rule I, Book VI, of the Implementing Rules and Regulations of the Labor Code. This rule provides retirement benefits to employees who have reached the retirement age, in an amount equivalent either to a bona-fide retirement plan, a CBA or individual agreement, an established employer policy, or in the absence of the preceeding three practices, a termination pay of 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. x x x"[11]

Taken in the light of our pronouncements in Llora, the incorrectness of the interpretation given by the NLRC to Article 288 in relation to Section 14 (a) of Implementing Rule I is at once apparent. "While it is true that the contemporaneous construction placed upon a statute by executive officers whose duty is to enforce it should be given great weight by the courts, still if such construction is so erroneous, as in the instant case, the same must be declared as null and void. It is the role of the Judiciary to refine and, when necessary, correct constitutional (and/or statutory) interpretation, in the context of the interactions of the three branches of the government, almost always in situations where some agency of the State has engaged in action that stems ultimately from some legitimate area of governmental power (The Supreme Court in Modern Role, C. B. Swisher, 1958, p. 36)."[12] We hasten to add, lest a misimpression is created, that we are here setting aside as null and void merely the interpretation given in the instant case by the NLRC to Section 14(a) of Implementing Rule I in relation to Article 288 of the Labor Code, and not Section 14(a) itself which had been given by this Court in Llora supra a construction that is in harmony and consistent with Article 288 of the Labor Code.

Be that as it may, we are not prepared to altogether set aside the award of termination pay, considering that there exists another legal basis therefor. As keenly observed by the Solicitor General:

"It may not be improper to state that respondent Jose should be paid termination pay for reasons analogous to

those contemplated under Article 285 of the Labor Code, which provides:

‘Art. 285. Disease as ground for termination. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.’

"It is true that respondent Jose voluntarily resigned but he resigned because, among others, he suffered from ill health. When petitioner accepted his resignation, it terminated his services partly for that reason." [13]

Under Article 245 of the Labor Code, "(s)ecurity guards and other personnel employed for the protection and security of the person, properties and premises of the employer shall not be eligible for membership in any labor organization." As such, they are a special class of employees in that they are deprived of the right to ventilate demands collectively. They are subject to terms and conditions of employment circumscribed by employment contracts imposed on them by their employer. While they may make particular individual demands in said contracts, more often than not, they fail to do so at the time of hiring. Hence, their only refuge is the liberality of the law. Private respondent, who was in the employ of petitioner for almost a quarter of a century and whose reason for terminating his employment was his failing health, deserves the full measure of the law's benevolence.

WHEREFORE, the petition is DISMISSED. The monetary award in favor of private respondent Antonio B. Jose is understood to be in the concept of termination pay, rather than retirement benefits.

This decision is immediately executory.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

Feliciano, J., on leave.

[1] Rollo, pp. 18-21.

[2] Rollo, pp. 16-17.

[3] Rollo, p. 16.

[4] Rollo, p. 22.

[5] Rollo, p. 29.

[6] Rollo, p. 115.

* Renumbered Art. 287 in subsequent amendments.

[7] Rule I, Book VI, Rules and Regulations Implementing the Labor Code.

[8] G.R. No. 82895, November 7, 1989.

[9] p. 7, Decision, underscoring in the original.

[10] pp. 10-11, Decision, emphasis in the original.

[11] Rollo, p. 15.

[12] *Insular Bank of Asia and America Employees' Union (IBAAEU) vs. Inciong*, G.R. No. 52415, October 23, 1984, 132 SCRA 663.

[13] *Rollo*, p. 107.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.