

**MINDANAO TERMINAL AND BROKERAGE SERVICE, INC.,
PETITIONER, VS. THE HONORABLE MINISTER OF LABOR AND
EMPLOYMENT AND PAULINO P. PEDRONIO, RESPONDENTS.**

G.R. No. 75374. November 14, 1994

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The special civil action at bench is one of several cases arising from the implementation of the government policy to rationalize and improve port administration and services enunciated in Presidential Decree No. 857,[1] otherwise known as the Revised Charter of the Philippine Ports Authority.

Pursuant to this Decree,[2] Customs Memorandum Order 2875 and later, the General Port Regulations of the Philippine Ports Authority (PPA) (which superseded it), implemented the policy of having only one cargo handling operator in each port in the country.

Petitioner Mindanao Terminal and Brokerage Service, Inc. (MINTERBRO) was among the arrastre and stevedoring operators then servicing the Port of Davao. The others were:

1. Allied Stevedoring Corporation
2. Davao Maritime & Forwarders Corporation
3. Davao Southern Stevedoring Corporation
4. Mt. Apo Stevedoring Corporation
5. United Stevedoring Corporation
6. Bay Integrated Stevedoring Corporation
7. Parada Stevedoring Corporation

In 1976, these arrastre operators, including herein petitioner, were integrated into a single, unified service. A new corporation was formed, known as the Davao Dockhandler, Inc., later renamed Filipinas Port Services, Inc. (FILPORT);[3] and pursuant to the PPA's Administrative Order No. 13-77, FILPORT drew into its labor force the employees from the merging operators. Private respondent Paulino Pedronio was one of the 281 employees of MINTERBRO absorbed by FILPORT, which started its operations on February 16, 1977.

On account of the cessation of operations of MINTERBRO and the resulting termination of Pedronio's employment therein, the latter filed a complaint for recovery of separation pay with the Labor Relations Division, Region XI, of then Ministry (now Department) of Labor and Employment. After conciliation proceedings failed, the Regional Director took over the case and by Order dated May 31, 1979,[4] ruled in favor of Pedronio, granting him separation pay equivalent to one-half month per year of service, or the total sum of P6,600 covering his twenty-two (22) years of service with MINTERBRO, computed on the basis of the last salary he received

therefrom at P600.00 per month. MINTERBRO appealed to the Office of the respondent Minister of Labor and Employment; but on March 6, 1986, the Deputy Minsiter affirmed the Order of the Regional Director.[5]

In this special civil action, petitioner imputes grave abuse of discretion to said Minister in holding it liable to Pedronio for separation pay. The Court now resolves the petition on the basis of the pleadings thus far filed, and after determining some months earlier that no further pleadings or documents are required to complete the record.

As above stated, the Court has had occasion to rule on the chief issue herein presented in other cases involving the same factual setting. One such case is Cezar Manzano, et al. v. National Labor Relations Commission, et al. In that case, in a minute resolution dated July 13, 1981,[6] this Court dismissed for lack of merit Manzano's petition for certiorari -- which impugned the NLRC's resolution affirming the Labor Arbiter's dismissal of his claim for separation pay against MINTERBRO (the same petitioner in the case at bench). A minute resolution of this Court dismissing a petition (like that in Manzano) being in truth an adjudication on the merits,[7] and the issues and factual millieu in Manzano and the case at bench being identical, it would seem inevitable that the latter be disposed of in the same manner.

Another case spawned by the merger of cargo handling operators in the Port of Davao is Filipinas Port Services, Inc. v. National Labor Relations Commission and Josefino Silva,[8] decided on August 31, 1989 also by the Court's First Division. In that case, Josefino Silva, a former employee of Davao Maritime Stevedoring Corporation (DAMASTICOR), was absorbed into FILPORT's staff. He thereafter retired in due course and was given retirement pay corresponding to the period that he actually worked with FILPORT, but no account was taken of his prior service with DAMASTICOR. On July 8, 1987, Silva filed a complaint against FILPORT and/or DAMASTICOR in effect for recovery of differential retirement pay, on the basis of his previous employment in DAMASTICOR. The Labor Arbiter ruled in favor of Silva and ordered FILPORT, as survivor-employer, to pay Silva's differential retirement pay. The complaint against DAMASTICOR was dismissed, said corporation no longer then existing. On appeal, the NLRC affirmed the Labor Arbiter's decision.

FILPORT then came up to this Court raising as the lone issue, "whether or not the successor-in-interest of an employer is liable for the differential retirement pay of an employee earned by him when he was still under the employment of the predecessor-in-interest." The Court resolved the issue in the negative, reversing the challenged NLRC decision and dismissing the complaint against FILPORT. Said the Court:

"In Fernando vs. Angat Labor Union,[9] this Court held that, unless expressly assumed, labor contracts are not enforceable against a transferee of an enterprise, labor contracts being in personam. On the other hand, a transferor in bad faith may be held responsible to employees discharged in violation of the Industrial Peace Act." [10]

"Petitioner cannot be held liable for the payment of the retirement pay of private respondent while in the employ of DAMASTICOR. It is the latter who is responsible for the same as the labor contract of private respondent with DAMASTICOR is in personam and cannot be passed on to the petitioner. The adverted memorandum of the PPA Assistant General Manager to this effect is well taken.[11]

At first blush, the Manzano and FILPORT rulings would appear to be contradictory; while in Manzano, the employer prior to the integration of arrastre operators was held not liable for separation pay, in FILPORT, such prior employer was pronounced liable. Hence, the need for a more definitive ruling on that matter, to reconcile the rulings, or declare which prevails, and thus avert further litigation on the same question.

In his Comment on the petition, the Solicitor General formulated the principal question as follows:

"Whether or not the private respondent is entitled to the payment of separation pay when petitioner ceased operation pursuant to PD 857 seeking to integrate arrastre and stevedoring services in the country."

Both the Solicitor General and petitioner agree that the closing or cessation of operations by a firm pursuant to law, i.e., P.D. 857, is a just cause for terminating employment, and does not give rise to a right to separation pay on the part of the employee.

As already stated, it was the policy -- that there be only one cargo handling operator per port -- laid down in the General Port Regulations of the Philippine Ports Authority,[12] issued pursuant to the mandate of P.D. 857, that caused the cessation of operations of petitioner MINTERBRO and the termination of its workers' employment. It was also another legitimate regulation, Section 118, Article X, of PPA Administrative Order No. 13-77,[13] that brought about the merger of the arrastre operators serving the Port of Davao, and the absorption of their employees into a new corporation, FILPORT. Said section reads as follows:[14]

"Section 118. Absorption of Labor - Subject to the provision of the immediate preceding section and consistent with the actual operational requirements of the new management, all labor force together with its necessary personnel complement, of the merging operators shall be absorbed by merged or integrated organization to constitute its labor force."

In amplification of the foregoing provision, PPA Memorandum was issued under date of November 21, 1978.[15] In accordance therewith, the integrated organization -- in this case, FILPORT -- was released from such liabilities, among others, as for (1) back salaries, (2) arrears on remittances to the SSS, and (3) medical bills or other benefits due, but not yet paid, the claimants concerned. The Memorandum also states that -

"* * *

"The new organizations liability shall be the payment of salaries, benefits and all other money due the employee as a result of his employment, starting on the date of his service in the newly integrated organization.

"* * * the absorption of an employee into a newly integrated organization does not include the carry over of his length of service."[16] (Underscoring supplied)

These administrative issuances of the Philippine Ports Authority, made pursuant to P.D. 857 in implementation and interpretation of the statute entrusted to it for enforcement, have the force and effect of law, and are entitled to great respect.[17]

Now, under the cited PPA Memorandum, MINTERBRO, as a previous employer, would be liable to its employees for unpaid obligations accruing prior to its merger with other arrastre or stevedoring operators, inclusive of separation pay. On the other hand, under the Labor Code (P.D. 442), as amended, prior to Batas Pambansa Blg. 130, MINTERBRO would be exempt from liability for such termination pay, in light of the circumstances obtaining in this case.

Admittedly, the claim for severance pay here involved was filed before B.P. 130 took effect on August 21, 1981;[18] and as just pointed out, before this date, the Labor Code, as amended,[19] provided that a bona fide closure or cessation of operations of an establishment was a just cause for termination of employment, absolving the employer from liability for payment of separation pay to his employees, the same rule as that under the original Termination Pay Law (R.A. 1052, as amended by R.A. 1787)[20]

MINTERBRO's cessation of operations took place by force of law, i.e., P.D. 857, at a time when such occurrence was deemed by statute a just cause for terminating employment;[21] hence, it gave rise to no right to severance pay in favor of any of its employees such as private respondent.[22] It was thus serious error amounting to grave abuse of discretion on the part of the respondent Minister of Labor, to affirm the Order of the Regional Director awarding termination pay to private respondent.

B.P. 130, however, subsequently reversed the rule. Under Section 15 thereof,[23] the bona fide closure or

cessation of operations ceased to be regarded as such just cause for termination of employment as would exempt an employer from liability for separation pay. On the contrary, payment thereof was expressly commanded where the closure of the employer's business was "not due to serious business losses or financial reverses." The rule is made plain by Article 284, Labor Code, as amended by Sec. 15, B.P. 130, viz.:^[24]

"Art. 284 - Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year."

This change in the state of the law -- from that upon which *Manzano* was decided to that which was the basis of the *FILPORT* ruling -- clearly shows that any perceived doctrinal conflict between the rulings is more apparent than real. In *Manzano*, the complaint for termination pay was filed prior to the effectivity of B.P. 130 on August 21, 1981; hence, the denial of the claim therefor by the NLRC was consistent with the provisions of the Labor Code then in force, as was this Court's dismissal of the petition challenging that decision. In *FILPORT*, on the other hand, the complaint for separation pay or retirement differential pay was filed when B.P. 130 was already in effect; hence, the ruling that the employer prior to the integration was liable for separation pay, was also in accord with the applicable law (requiring, to repeat, payment of separation pay in case of bona fide closure of an establishment not brought about by business reverses).

Prospective application of B.P. 130 is directed by Section 10 of the Rules promulgated in implementation thereof.^[25]

"Section 10. Transitory provision. Cases commenced on or after 21 August 1981 shall be heard and decided under Batas Pambansa Blg. 130 and its implementing rules. Those commenced before 21 August 1981, including appeals in such cases, shall be heard and decided under the former rules, subject to the procedure on certification of cases to Labor Arbiters.

Pending the organization of the docket offices of the arbitration branches of the Commission, all pleadings and motions may be filed with the Regional Office, subject to the provisions of the preceding paragraph."

The respondent Regional Director also acted in direct contravention of law in failing to endorse private respondent's complaint for separation pay to the Labor Arbiter. The law required such endorsement to the Arbiter for compulsory arbitration after failure of conciliation proceedings, considering that employer-employee relations between the parties no longer existed and the case involved a money claim within said Arbiter's jurisdiction.^[26] In taking cognizance of the case and summarily deciding the same, the Regional Director acted on a matter not properly falling within his jurisdiction. The Regional Director's Order dated May 31, 1979 granting separation pay to private respondent, as well as the Order of the respondent Minister of Labor dated March 6, 1986 affirming that of the Regional Director, are therefore null and void and without force and effect.^[27]

WHEREFORE, the petition is GRANTED and the assailed orders of the Regional Director and the respondent Minister of Labor dated May 31, 1979 and March 6, 1986, respectively, are hereby NULLIFIED and SET ASIDE.

IT IS SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.

[1] Entitled "Providing for the Reorganization of Port Administration and Operation Functions in the Philippines, Revising Presidential Decree No. 505 dated July 11, 1974 creating the Philippine Port Authority, by Substitution, and for Other Purposes"

[2] Art. II, Section 2 of P.D. 857 states that it is "declared to be the policy of the State to implement an integrated program for the planning, development, financing, construction, maintenance and operation of Ports, port facilities, port plants, all 11 equipment used in connection with the operation of a Port * * *."

[3] FILPORT's Articles of Incorporation were registered with the Securities and Exchange Commission on July 13, 1976; and it started business operations on February 16, 1977.

[4] Petition, Annex "A"; Rollo, pp. 12-13

[5] Petition, Annex "B"; Rollo, pp. 14-15

[6] Petition, Annex "E"; Rollo, p. 27

[7] *Sy v. Tuvera*, 152 SCRA 103 (1987) citing *Commercial Union Assurance Co. Ltd. v. Lepanto Consolidated Mining Company*, 86 SCRA 80 (1979)

[8] 177 SCRA 203 (1989)

[9] 5 SCRA 248, 251 (citing *Visayan Transportation v. Java, et al.*, 49 O.G. 4298)

[10] Citing *Majestic Employees Association v. Court of Industrial Relations*, G.R. L--12607, February 22, 1962

[11] At page 207

[12] Under Sec. 26, Art. VIII of P.D. 857, The PPA is empowered to make port regulations.

[13] General Guidelines on Integration of Arrastre/Stevedoring Services

[14] Italics supplied

[15] See Petition, page 7, citing Exhibit "B"; italics supplied

[16] See *Filipinas Port Services, Inc. v. NLRC*, 177, SCRA 203 at p. 207

[17] *Rizal Empire Insurance Group v. NLRC*, 150 SCRA 565 (1987) citing *Espanol v. Philippine Veterans Administration*, 137 SCRA 314 (1985)

[18] B.P. 130 amended, among others, Arts. 283 and 284 of the Labor Code

[19] Sec. 7, Rule 1 of the Omnibus Rules Implementing the Labor Code provides that: "The just causes for terminating the services of an employee shall be those provided in Art. 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, * *. See Arts. 283 and 284, Labor Code, as amended.

[20] *LVN Pictures Employees and Workers Association v. LVN Pictures, Inc.* (1970) citing *Phil. Refining Co. v. Garcia, et al.*, 18 SCRA 107 (1966); *Employees and Laborers Cooperative Association v. National Union of Restaurant Workers*, 7 SCRA 421, 424-425 (1965); *Insular Lumber Co. (Phil.), Inc. v. CA*, 80 SCRA 28 (1977);

Wenceslao, et al. v. Zaragoza, Inc., 24 SCRA 554

[21] Art. 283

[22] Sec. 7, Rule 1, Omnibus Implementing Rules, Labor Code

[23] This section amended Art. 283 of the Code by deleting closure or establishment from enumeration of the grounds for just causes for termination of employment by the employer. It likewise amended Art. 284 by including the same in the list of instances wherein payment of severance pay is required.

[24] Italics supplied

[25] Italics supplied

[26] Art. 217(a)[3], as amended by P.D. 1367, eff. May 1, 1978; Sec. 1 and 3, Rule XII, Book V, Rules and Regulations Implementing the Labor Code; Policy Instructions No. 6, (Distribution of Jurisdiction over labor cases) par. 6(1) in P.D. No. 1391, eff. Sept. 15, 1978

[27] See Ortaliz-Lamayo v. Baterbonia, 165 SCRA 94 (1988)

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