

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

BABY BUS, INC.,
Petitioner,

-versus-

G.R. No. L-54223
February 26, 1988

**THE HON. MINISTER OF LABOR and
JACINTO MANGALINO,**
Respondents.

X-----X

DECISION

GUTIERREZ, JR., J.:

This is a Petition to Review on *Certiorari* the Order of the Minister of Labor affirming the decision of the National Labor Relations Commission which ordered petitioner Baby Bus Inc. to pay respondent Jacinto Mangalino: (1) his separation pay equal to one and 1/2 months pay; (2) an emergency living allowance of P30.00 a month from August 1974 up to the time he ceased working; and (3) his claims for overtime services equivalent to five hours a day, six days a week during the entire period of employment that he actually worked.

Respondent Jacinto Mangalino filed a complaint against petitioner Baby Bus Inc. with Regional Office No. IV of the Department of Labor

for illegal dismissal, non-payment of overtime pay, violation of P.D. 525, and unpaid wages.

When the case was set for compulsory arbitration, the parties were asked to submit their respective position papers and affidavits in support of their causes.

Herein respondent submitted his affidavit and the affidavit of one Gandencio Serrano. On the other hand, the petitioner company submitted a position paper alleging that the complainant was never dismissed by the petitioner.

The petitioner's counsel then proceeded to cross-examine Mangalino on his affidavit. After which, Mangalino submitted his case without further evidence other than the two affidavits (Exhs. "A" and "C") and some documentary evidence (Exhs. "B" and "D" series).

The petitioner company for its part failed to present any evidence due to the non-appearance despite due notice of its counsel in three scheduled hearings for the reception of its evidence.

The case was then considered submitted for decision on the basis of the evidence on record.

The petitioner filed a motion for reconsideration praying that it be given a last chance to present its evidence. This motion was denied for lack of merit.

The facts established from the records as found by the Labor Arbiter are as follows:

- "1. Complainant worked with respondent company since June 1972 as an over-all inspector earning P8.00 a day;
- "2. Sometime in April 1975, complainant suffered a stroke due to high blood pressure for which he was confined at the hospital;
- "3. Complainant, subsequently, suffered several strokes which rendered him unfit to report for work in May 1975;

- “4. Complainant was not granted emergency allowances as provided for by P.D. No. 525;
- “5. On September 13, 1976, complainant filed a complaint with Regional Office No. IV, Department of Labor for illegal dismissal, overtime pay, unpaid wages and violation of P.D. No. 525. (Rollo, p. 16).

The Labor Arbiter rendered judgment ordering petitioner Baby Bus Inc. to pay Mangalino separation pay at the rate of one month salary for every year of service, from June 1972 to May 1975, and emergency allowances at P30.00 a month from August 1, 1974 to May 1975.

On appeal, the National Labor Relations Commission modified the Decision as earlier stated.

Baby Bus Inc. then appealed to the respondent Minister of Labor who affirmed the NLRC Decision in his Order dated May 23, 1980.

Hence, this present petition.

On August 21, 1980, the petitioner company filed before this Court a motion for resolution of prayer for temporary restraining order.

The Court, in its resolution dated August 27, 1980, issued a temporary restraining order enjoining the National Labor Relations Commission and the then Ministry of Labor and Employment from enforcing and/or executing the latter's order dated May 23, 1980.

The lone assignment of error raised by the petitioner is that the Minister of Labor acted with grave abuse of discretion in affirming the decision of the National Labor Relations Commission which is totally contrary to law and evidence.

The petitioner questions the award for separation pay on two grounds, namely: (1) there was a finding by the Labor Arbiter and concurred in by the National Labor Relations Commission that there was no illegal dismissal; and (2) the private respondent did not

adduce evidence that his illness is one that falls within the ambit of Art. 285 of the Labor Code.

Art. 285 of the Labor Code 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 (½) 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 does not necessarily follow that if there is no illegal dismissal, then no award for separation pay may be made.

The petitioner, in effect, concedes the merits of its first argument by adopting Art. 285 in its second argument. The findings in the second argument determine the answer to the first. In the second argument, the petitioner recognizes that a disease may be a ground for termination; however, it contends that petitioner failed to show that his illness falls within the scope of the said provision.

The contention is without merit. Respondent Mangalino’s continued employment was clearly prejudicial to his health.

As pointed out by the Solicitor General in his Comment:

“On the contrary, the record eloquently shows that the continued employment of private respondent would be prejudicial to his health. Petitioner does not dispute the fact that private respondent, despite suffering a stroke and being hospitalized sometime in April, 1975, still returned to work after his hospitalization only to suffer another stroke in May, 1975. Obviously, while private respondent’s desire to earn a living as an employee of petitioner was there, he cannot pursue the same without risk to his life.” (Rollo, pp. 57-58).

The petitioner also questions the award for emergency allowances and overtime pay. It submits that herein respondent Mangalino miserably failed to adduce any evidence to meet the quantum of proof required.

It is well-settled in our jurisdiction 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. (Manila Mandarin Employees Union vs. NLRC, et al., G.R. No. 76989, September 28, 1987).

In the case at bar, the NLRC noted that no evidence is on hand which rebuts respondent Mangalino's evidence. Thus, it stated, "of course, caution was exercised by us in granting these claims in view of the fatal failure of appellant to present its evidence. (NLRC decision, p. 3).

As discussed by the Solicitor General in his memorandum for public respondent:

- “1. It is not disputed by the petitioner that under Presidential Decree No. 525, an employee who is receiving less than P600.00 a month is entitled to an emergency allowance of P50.00 a month if the capitalization is more than 100 thousand pesos but does not exceed 1 million pesos; and P15.00 if its capitalization is 100 thousand pesos or less, effective August 1, 1974. There is no allegation on the part of the petitioner that it is a severely distressed industry so as to exempt itself from the payment of the emergency allowance. In fact, the only issue raised by the petitioner insofar as the grant of emergency allowance is concerned is the alleged failure of Jacinto Mangalino, in view of the graduated scale of the emergency allowance, to prove that he falls within the scale of P30,00 a month.

“It is unfortunate that petitioner, who could have easily supplied this data insofar as its capitalization is concerned, failed to produce evidence in its behalf despite the repeated

opportunities given to it, Nonetheless, the absence of a definite information as to the amount of capitalization of petitioner would not preclude the grant of emergency allowance. It is of common knowledge that the operation of a transportation business would require a capitalization of more than 100 thousand pesos. Under the circumstances, the grant of monthly emergency allowance of P30.00 is justifiable.

2. Petitioner assails the award of overtime pay equivalent to five hours a day, six days a week claiming that this “in effect establish that the private respondent did not incur any absences during his whole time of employment which clearly is physical impossibility and is contrary to established limitations of human physical capacity.” (p. 8, Petition, p. 3, Reply).

“The petitioner has misread the decision of the National Labor Relations Commission, thus, to quote the dispositive portion of the decision to wit”

“IN VIEW OF THE FOREGOING, the Decision appealed should be, as it is hereby modified. Appellant is hereby ordered to pay Appellee his separation pay equal to one and 1/2 months pay, to pay Appellee the emergency living allowance of P30.00 a month from August 1974 up to the time he ceased working; pay Appellee his claims for overtime services equivalent to five hours a day, six days a week during the entire period of employment that he actually worked.” (Italics supplied)

“It is clear from the above-quoted decision, that the overtime pay awarded to the private respondent shall exclude days when he failed to report for work.” (Rollo, pp. 73-75)

WHEREFORE, the Petition is **DISMISSED** and the Temporary Restraining Order issued on August 27, 1980 is **LIFTED**. The Decision of the public respondent is **AFFIRMED**.

SO ORDERED.

Fernan, Feliciano, Bidin and Cortes, *JJ.*, concur.

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