

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**E. RAZON. INC. [Formerly known as
Metro Port Services, Inc.],**
Petitioner,

-versus-

**G.R. No. 85867
May 13, 1993**

**THE HONORABLE SECRETARY OF
LABOR AND EMPLOYMENT (DOLE)
and MARINA PORT SERVICES, INC.
(MARINA),**
Respondents.

X-----X

DECISION

MELO, J.:

The Petition for *Certiorari* before us seeks to annul and set aside: (a) the Order of May 31, 1988 of the then Secretary of the Department of Labor and Employment directing the Metro Port Services, Inc., now

known as E. Razon, Inc., to satisfy fully the separation pay of its employees at the rate agreed upon in the Agreement of November 3, 1987, and (b) the order of November 21, 1988, denying the motion for the reconsideration Of the said earlier order (BLR-NS-10-499-87).

Petitioner E. Razon, Inc. (ERI) is a corporation organized in 1962 principally to bid for the right to operate arrastre services in Manila. Through public bidding on January 18, 1974, ERI and the government, through the Philippine Ports Authority (PPA), executed a management contract covering all the piers in South Harbor, Manila for a term of five years renewable for another five years (p. 127, Rollo; Decision of June 22, 1987 in G.R. No. 75197, “E. Razon, Inc., et al. vs. Philippines Ports Authority, et al.”).

ERI became Metro Port Services, Inc. (MPSI) in 1978 when parties close to then President Marcos, specifically his brother-in-law, Alfredo “Bejo” Romualdez, allegedly coerced Enrique Razon, who owned 93% of ERI’s equity, into endorsing in blank stock certificates covering 60% of such equity. Upon the expiration of the management contract in 1978, it was extended to June 30, 1980. The PPA then executed a new contract with ERI/MPSI for a term of eight (8) years beginning July 1, 1980 (p. 129, Rollo).

On July 19, 1986 or two years before the expiration of the eight-year term, the PPA cancelled the management contract for alleged violations thereof. PPA took over the cargo-handling operations as well as all the equipment of MPSI (p. 138, Rollo).

Two days later or on July 21, 1986, the PPA issued Permit No. 104286 for cargo-handling services to Marina Port Services, Inc. (MARINA) (p. 78, Rollo). The permit, which was to take effect for a one-year period or until July 20, 1987,^[1] contained the following pertinent paragraph as part of the additional terms and conditions appended as Annex B to the permit:

7. Labor and personnel of previous operator, except those positions of trust and confidence, shall be absorbed by grantee. Labor or employees benefits provided for under existing CBA shall likewise be honored. (p. 79, Rollo.)

Thus, MARINA began operating the arrastre services and required all workers of ERI/MPSI to accomplish individual information sheets. Weeks later, the bulk of the 2,700 employees concerned discovered that they had been hired by MARINA as new employees effective July 21, 1986. Hence, they clamored for the payment of their separation pay but both the MARINA and ERI/MPSI refused to be liable therefor. In a bid to prevent disruption of work, PPA authorized MARINA to deduct P2,000,000.00 from the amount due the MPSI as MARINA's rentals for MPSI equipment, as partial payment of the employees' separation pay (p. 138, Rollo).

Still dissatisfied, the employees who were members of the Associated Workers Union (AWU) filed a notice of strike on October 12, 1987. This move prompted the PPA, MARINA, ERI, and representatives of the AWU, Associated Port Checkers Workers Union (APCWU), Associated Skilled and Technical Employees Union (ASTEU), and Marina Management Employees (MARINE ME) to meet and forge an Agreement on November 3, 1987 for the "immediate and reasonable resolution of the long standing claim of separation benefits which resulted in impending labor strikes." (p. 51, Rollo.) The Agreement provided that the separation benefits would be computed at "one (1) month for every year of service." (pp. 51 and 192, Rollo.) Another provision of the Agreement stated:

4. That Metro Port Services, Inc. and MARINA without admitting liability of the labor claims of the workers agreed that PPA through MARINA shall disburse the amount of P5 million directly to the workers. Said amount partakes of the nature of rental subject to the determination of the fair and reasonable rental of equipment from the date of take-over of MARINA and of the fair market value thereof by independent appraiser mutually agreed by PPA, MARINA, and Metro Port Services, Inc. (p. 192, Rollo.)

Although the Agreement specifically stated that the remaining balance of the separation benefits shall be paid in full before December 24, 1987, the workers went on strike on December 22, 1987 because they were apprehensive that the said benefits would not be paid as the appraisal of the pieces of equipment and machinery of MPSI had not been completed. The members of the AWU were joined

by the APCWU, the ASTEU, and the MARINA ME (p. 139, Rollo).

The MPSI then requested the Secretary of Labor and Employment to immediately assume jurisdiction over the dispute to prevent paralyzation of the vital operations of the Port of Manila. Invoking Article 263(g) of the Labor Code, then Secretary of Labor Franklin M. Drilon issued the order of December 23, 1987 holding that the labor dispute was “imbued with national interest” and ordering the striking workers to return to work within 24 hours and the management to accept them back. He also directed the parties to comply faithfully with the Agreement of November 3, 1987 and, pending the appraisal of the reasonable rental and market value of the MPSI equipment, the amount of P5 million which the Presidential Commission on Good Government (PCGG) had committed to unfreeze from the account of MPSI was made available. He also directed the National Conciliation and Mediation Board to form a committee to monitor and assist in the implementation of the November 3, 1987 Agreement (Annex “A” to Petition; pp. 51-55, Rollo).

The separation pay of the workers was later taken from the proceeds of the sale to PPA of ERI cargo-handling equipment and the rentals from July 21, 1986 to January 29, 1988 of MARINA for the said equipment (Petition, pp. 6-7, pp. 24-25, Rollo).

On May 31, 1988, Secretary Drilon issued the herein assailed order answering in the negative the question of whether or not MARINA assumed liability for the separation pay under Paragraph 7 of the Additional Terms and Conditions annexed to PPA Permit No. 104286. Proceeding from the general rule laid out in *Fernando vs. Angat Labor Union* (5 SCRA 248 [1962]), that a collective bargaining agreement is a contract in personam and, therefore, not enforceable against the successor-employer, Secretary Drilon brushed aside MPSI’s contention that MARINA assumed the obligation to pay MPSI’s workers their separation pay when, upon the termination of MPSI’s contract with PPA, MARINA took over the arrastre operations. He emphasized a “seemingly minor but rather crucial point” thus: “The present dispute crystallized not from a normal business take-over, i.e., through sale or merger of a business enterprise, but from cancellation of contract which was subsequently upheld valid by the Supreme Court. The Agreement which now binds

MARINA to assume obligations to the workers is not between the two business enterprises but arose from the Permit to Operate issued by the PPA to MARINA.”

Secretary Drilon rationalized that Paragraph 7 would only have been perceived by the parties as applicable prospectively since “MARINA had then yet to start its operations” and because Paragraph 14 of the same permit states that MARINA shall be responsible for “all obligations, liabilities or claims arising out of any transaction or undertakings in connection with their cargo handling operations as of the actual date of transfer thereof.” Accordingly, he opined that “the satisfaction of any workers’ claims is an undertaking connected with “MARINA’s actual cargo handling operations” and, therefore, its obligations should commence only “as of the actual takeover.” Corollarily, he stated that “compensation for loss of employment from the entity to whom past services have been rendered should be forthcoming.” He disposed of the case thus:

WHEREFORE, IN VIEW OF THE FOREGOING, this Office hereby directs the Metro Port Services, Inc. to pay the remaining balance due to the workers in full satisfaction of their separation pay at the rate earlier agreed upon by the parties as embodied in the Agreement of November 3, 1987.

SO ORDERED. (pp. 140-141, Rollo.)

MPSI and AWU moved for the reconsideration of said order on the ground that certain vital facts on record had not been considered. On November 21, 1988, however, Secretary Drilon denied said motions (p. 159, Rollo). Hence, the instant petition for certiorari filed by E. Razon, Inc. which had apparently renounced the use of the name MPSI.

Claiming that it is a sequestered corporation as ownership of 60% of its shares of stock is still in litigation at the Sandiganbayan and that, should said court rule that the shares of stock mentioned belong to the government, “it would not be the petitioner that would lose the millions of pesos paid to the workers” (p. 20, Rollo), petitioner charges the then Secretary of Labor and Employment with grave abuse of discretion amounting to excess of jurisdiction in: (a) refusing

to hold that MARINA became its successor-employer on July 20, 1986 and, therefore, bound itself to honor the workers' rights to security of tenure and seniority privileges, despite the provision of Paragraph 7 of the permit to operate; (b) making a "strained interpretation" of said permit to absolve MARINA from paying separation pay; (c) refusing to hold that MARINA discontinued and, therefore, terminated the employment of the workers when it absorbed them as new employees; (d) holding petitioner liable for separation pay notwithstanding the fact that it never dismissed or separated said workers, and (e) failing to hold MARINA liable for separation pay and to order MARINA to reimburse petitioner the amounts paid from its assets and funds (pp. 12-13, Petition; pp. 31-32, Rollo).

There appears to be no quarrel over the issue of whether or not separation pay should be paid to the workers of ERI/MPSI. The controversy actually is: which of the contending corporations, petitioner ERI/MPSI or private respondent MARINA, should pay such benefit to the employees concerned.

Separation or severance pay is an allowance usually based on length of service that is payable to an employee on severance except usually in case of disciplinary discharge, or as compensation due an employee upon the severance of his employment status with the employer (*Marcopper Mining Corporation vs. NLRC*, 200 SCRA 167 [1991]). Under Article 283 of the Labor Code, separation pay is required where the termination of employment relationship is occasioned by the "cessation of operations" of an establishment. The said article, therefore, puts the burden of paying separation pay on ERI/MPSI, the employer for whom services had been rendered by the employees who were separated from employment in view of the cessation of its business operations by the cancellation of its management contract with the PPA. Petitioner, however, argues otherwise and would shift liability for separation pay to MARINA on the strength of Paragraph 7 of the additional terms and conditions appended to the permit to operate granted to MARINA.

Paragraph 7 aforequoted provides that the employees of the "previous operator", meaning ERI/MPSI, shall be "absorbed" by the permit "grantee", meaning MARINA, and the benefits given the same

employees under the “existing CBA” shall be “honored”. A key in the interpretation of this paragraph is the word “absorb” which is synonymous with the words “assimilate” or “incorporate” and which, in business parlance, means “to take over” (Webster’s Third New International Dictionary, 1966 Ed., p. 7). As such, it appears at first blush, that an “absorbing” employer shall be responsible for all the benefits accruing to the “absorbed” employees.

The circumstances of this case, however, do not warrant the conclusion that, by “absorbing” the ERI/MPSI employees, MARINA took the place of the ERI/MPSI as an employer as if there had been no interruption in the employer-employee relationship between ERI/MPSI and its employees and, therefore, MARINA should assume all responsibilities of ERI/MPSI. For, while in *Marina Port Services, Inc. vs. NLRC* (193 SCRA 420 [1991]), the Court opined that by virtue of Paragraph 7, security guards of the MPSI did become employees of MARINA, the undeniable fact is that, by the termination of its management contract with the PPA, ERI/MPSI ceased to be an employer. Admittedly, the consequent separation from the employment of its employees was not of the ERI/MPSI’s own making. However, it may not validly lay such consequence on the lap of MARINA which, like itself, had no hand in the termination of the management contract by the PPA. The fact that a couple of days later, the PPA, without public bidding, issued to MARINA, a permit to operate, does not imply that MARINA stepped into the shoes of ERI/MPSI as if there were absolute identity between them. Parenthetically, the issue of the legality of the cancellation of MPSI’s permit to operate was laid to rest in *E. Razon, Inc. vs. Philippine Ports Authority* (151 SCRA 233 [1987]).

By absorbing ERI/MPSI employees and honoring the terms and conditions in the collective bargaining agreement between, ERI/MPSI and the employees, MARINA did not assume the responsibility of ERI/MPSI to pay separation pay to its employees. As correctly put by public respondent, Paragraph 7, insofar as it refers to employees’ benefits, should be applied prospectively with respect to MARINA. This conclusion is supported by Paragraph 14 of Permit No. 104286 granted to MARINA which states:

14. Grantee shall be responsible for all obligations, liabilities or claims arising out of any transactions or undertakings in connection with their cargo handling operations as of the actual date of transfer thereof to grantee.” (Emphasis supplied.)

MARINA might have been impelled not only by compassion for the employees but also by their tested skills in hiring them back upon their separation from the employment of ERI/MPSI. It should be recalled, however, there is no law that requires the purchaser to absorb the employees of the selling corporation (San Felipe Neri School of Mandaluyong, Inc. vs. NLRC, 201 SCRA 478 [1991], citing MDII Supervisors and Confidential Employees Association (FFW) vs. Presidential Assistant on Legal Affairs, 79 SCRA 40 [1977]). As such, when MARINA rehired the ERI/MPSI employees, it had all the right to consider them as new ones. On the other hand, ERI/MPSI, to whom years of service had been rendered by its suddenly jobless employees, had the corresponding obligation to grant them what is theirs under the law and the collective bargaining agreement. After all, a collective bargaining agreement is the law between the parties (Plastic Town Center Corporation vs. NLRC, 172 SCRA 580 [1989]; Roche [Phil.] vs. NLRC, 178 SCRA 386 [1989]), and compliance therewith is mandated by the express policy of the law (Meycauayan College vs. Drilon, 185 SCRA 50 [1990]).

The situation in this case is completely different from that obtaining in Filipinas Port Services, Inc. vs. NLRC (200 SCRA 773 [1991]), where the petitioner was obligated “not only to absorb the workers of the dissolved companies but also to include the length of service earned by the absorbed employees with their former employers as well” because said case involved a merger of different companies into a single company as a result of the PPA’s integration of stevedoring/arrastre services. On the other hand, in the case at bar, there is no privity of contract between ERI/MPSI and MARINA so as to make the latter a common or even substitute employer that it should be burdened with the obligations of the former.

WHEREFORE, the Petition is hereby **DISMISSED** and the assailed Orders **AFFIRMED**, with costs against petitioner.

SO ORDERED.

Feliciano, Bidin, Davide, Jr. and Romero, *JJ.*, concur.

[1] The contract was renewed on March 10, 1987 and was to last for eight years (p. 153, Rollo).

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