

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**ESCO HALE SHOE COMPANY, INC. and
ELMER H. COBB,**

Petitioners,

-versus-

**G.R. No. 87051
February 7, 1991**

**THE NATIONAL LABOR RELATIONS
COMMISSION, CASIMIRA P.
PEDROSA, HON. NIEVES V. DE
CASTRO, DEPUTY SHERIFF RENE A.
MASILUNGAN and ALLIED BANKING
CORPORATION,**

Respondents.

X-----X

DECISION

PARAS, J.:

SEPARATE OPINION:

MELENCIO-HERRERA, J., concurring.:

This is a Petition for Review on *Certiorari* of a Decision of the respondent National Labor Relations Commission which affirmed the

respondent Labor Arbiter's decision ordering the petitioner Esco Hale Shoe Company, Inc. to pay private respondent Casimira B. Pedrosa the total amount of P23,534.83 representing retirement benefits, 13th month pay for 1986 and unpaid vacation/sick leave benefits.

It appears that private respondent had been employed by the petitioner for forty nine (49) years commencing in 1937 as a shoe box maker until 1986 as a heel pad attacher.

In 1982, having reached the age of sixty five (65), private respondent applied for retirement with the Social Security Commission and she received retirement benefits therefrom. Although she had already retired, private respondent continued working for the petitioner until November 1, 1986 when she was excluded by the petitioner from the regular work schedule. Private respondent, thereafter, demanded that she be retired from employment and/or be paid separation pay, but the petitioner refused despite repeated demands.

Thus, on February 12, 1987, private respondent filed a complaint against the petitioner for violation of PD 851 and for payment of retirement benefits and/or separation pay and other claims.

As defense, the petitioner argued that the only reason for the filing of the complaint is private respondent's baseless demand to be retired anew; that the petitioner has no separate retirement nor private benefit plan and all its employees, including the private respondent, are reported to the SSS for coverage; that private respondent had effectively retired from the petitioner in 1982 when she received retirement benefits from the SSS; and that all the other claims of private respondent, except vacation leave pay for the years 1985 and 1986 in the amount of P1,000.00, had been paid by the petitioner to her.

Finding the employer's obligation to pay retirement benefits to its retiring employee separate and distinct from that of the SSS, the respondent Labor Arbiter rendered a decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, respondent Esco Hale Shoe Company, Inc. and/or Elmer H. Cobb, as Owner and

President, are hereby ordered to pay complainant Casimira B. Pedrosa the total amount of TWENTY THREE THOUSAND FIVE HUNDRED THIRTY FOUR PESOS AND EIGHTY-THREE CENTAVOS (P23,534.83) which represents her 13th month pay for 1986, unpaid vacation/sick leave benefits and retirement benefits, by depositing the same with this Office within fifteen (15) days from receipt hereof. Failure to comply within the period herein prescribed, a writ of execution shall automatically issue to satisfy this Decision.

“SO ORDERED.” (pp. 43-44, Rollo)

In so ruling, said respondent Labor Arbiter relied on Sections 13 and 14 of Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, which provide:

“Section 13. Retirement. — In the absence of any collective 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.

“Section 14. Retirement benefits. — (a) An employee who is re-tired 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 to at least one month salary, or to one-half month salary for every year of service, whichever is higher, a fraction of at least (6) months being considered as one whole year.” (Emphasis ours)

Said decision was affirmed by the respondent Commission on appeal.

In this petition, the petitioner contends that there is no basis for twice granting retirement benefits to the private respondent, who is admittedly a retired employee and a pensioner of the SSS.

Considering that it is admitted by both parties that the petitioner has no collective bargaining agreement nor bona-fide retirement plan, the

aforementioned provisions of the Implementing Rules are inapplicable to the instant case. Said provisions merely recognize and qualify the retirement benefits a retiring employee is entitled to receive, in case there is a separate retirement or private benefit plan. In fact, Article 287, the law being implemented by the aforesaid sections states:

“Art. 287. 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.”
(Section 287, Labor Code, as amended)

However, since private respondent had worked with the petitioner for such a long time, We deem it just and equitable to grant her separation pay as she is retiring from the service of the petitioner ten (10) years beyond the statutory age of sixty(60).

We uphold the findings of the Labor Arbiter as affirmed by the respondent Commission with regard to the grant of separation pay, to wit:

“Anent the issue of 13th month pay, respondents, either in their position paper or in the affidavit of respondent Cobb, have been mum, an indication that complainant was not paid.

“As to the claim for vacation and sick leave benefits, since there is an admission by the respondents that complainant is entitled to the amount of P1,008.00 for the years 1985 and 1986 and are ready and willing to pay any time, the same need not have to be passed upon.

“In computing the separation or retirement benefits of complainants, we have to consider the period when the country was at war with Japan and also the occupation years which started in December, 1941 up to 1945. The separation benefits, therefore, have to be based on forty-five (45) years instead of

forty-nine years as claimed and computed on the basis of the minimum wage rate in 1986 at P37.00 a day when complainant was separated from work. And being a daily paid employee, the computation has to be computed at 13 days per year of service, as follows:

$$\begin{array}{rcl} P37.00 \times 13/\text{days} & = & P481.00/\text{mo.} \\ P481.00 \times 45 \text{ years} & = & P21,645.00 \end{array}$$

or a total of Twenty One Thousand Six Hundred Forty-Five Pesos(P21,645.00). In fine, the total benefits to be received by complainant is P23,534.83 representing her 13th month pay for 1986, the unpaid vacation/sick leave benefits and retirement pay.” (p. 72, Rollo)

PREMISES CONSIDERED, the Petition is hereby **DISMISSED**.

SO ORDERED.

Padilla, Sarmiento and Regalado, JJ., concur.

SEPARATE OPINION

MELENCIO-HERRERA, J., concurring:

I concur. Art. 173 of the Labor Code (as amended by PD 1921, June 1, 1984) expressly allows simultaneous recovery of benefits under the employees compensation program on the one hand, and other laws, among which is the Social Security Law (RA 1161).