CHANROBLES PUBLISHING COMPANY

SUPREME COURT
FIRST DIVISION

INTERNATIONAL HARDWARE, INC.,
***Petitioner*,**

-versus-

G.R. No. 80770
August 10, 1989

NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) and BONIFACIO PEDROSO,
***Respondents*.**

x---x

D E C I S I O N

GANCAYCO, *J*.:

The singular issue in this case is whether or not an employee who had been retrenched or otherwise separated from the service of an employer who, in turn, suffered financial losses and revenues is entitled to separation pay.

Private respondent Bonifacio Pedroso was employed by petitioner first, as a truck helper, and later as a delivery truck driver with a monthly salary of P900.00 starting from 1966 until December 1984 when the number of working days of private respondent was reduced to just two days a week due to the financial losses suffered by the business of petitioner. Thus, private respondent filed a complaint for

illegal dismissal and the payment of separation pay in the Department of Labor and Employment (DOLE).

In a decision dated September 12, 1985, the labor arbiter ruled that inasmuch as the working arrangement of private respondent was rotated in such a way that the number of his working days had been substantially reduced for more than six(6) months since December, 1984 and considering that the financial crisis of petitioner has not eased, private respondent is entitled to the payment of separation pay as if he was actually retrenched, in the amount of P8,100.00.

Petitioner brought an appeal to the respondent National Labor Relations Commission (NLRC). In a decision dated July 3, 1987, the NLRC affirmed the said decision of the labor arbiter. The NLRC held that there was in effect a "constructive dismissal" of private respondent considering that his rotation of work was not with his consent and that the same was not reported to the DOLE, and considering further that more than six (6) months have already lapsed but the financial crisis of petitioner had not been adverted to.

Petitioner now filed this petition for review which should have been be a petition for *certiorari* under Rule 65 of the Rules of Court, wherein it is alleged that the NLRC committed a grave abuse of discretion in affirming the payment of separation pay to private respondent when he had not been actually dismissed from the service.

Article 283 of the Labor Code provides as follows:

> "ART. 283. 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 under taking 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 to at least one (1) month pay for every year of service, which ever 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 (½) 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."

Under the foregoing provision of law, an employer may terminate the employment of any employee due to the following causes: (1) installation of labor-saving devices; (2) redundancy;(3) retrenchment to prevent losses; and (4) the closing or cessation of operation of the establishment or undertaking, unless the closing is for the purpose of circumventing the provisions of law. It is required that to effect such termination of any employee, the employer must serve a written notice on the workers and the DOLE at least one (1) month before the intended date thereof. The purpose of such previous notice to DOLE must be to enable it to ascertain the verity of the cause for termination of employment.

In case of termination due to the installation of labor-saving devices or redundancy the worker affected thereby shall be entitled to separation pay equivalent to at least one (1) month pay or to at least one month pay for every year of service, whichever is higher. However, in case of retrenchment to prevent losses and in cases of closure or cessation of operations of the 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 (½) month pay for every year of service, whichever is higher.

In this case, it is admitted that private respondent had not been terminated or retrenched by petitioner but that due to financial crisis the number of working days of private respondent was reduced to just two days a week. Petitioner could not have been expected to notify DOLE of the retrenchment of private respondent under the circumstances for there was no intention to do so on the part: of petitioner.

By the same token, if an employee consented to his retrenchment or voluntarily applied for retrenchment with the employer due to the installation of labor-serving devices, redundancy, closure or cessation of operation or to prevent financial losses to the business of the employer, the required previous notice to the DOLE is not necessary as the employee thereby acknowledged the existence of a valid cause for termination of his employment.

Nevertheless, considering that private respondent had been rotated by petitioner for over six (6) months due to the serious losses in the business so that private respondent had been effectively deprived a gainful occupation thereby, and considering further that the business of petitioner was ultimately closed and sold off, the Court finds, and so holds that the NLRC correctly ruled that private respondent was thereby constructively dismissed or retrenched from employment.

Under Article 286 of the Labor Code, it is provided as follows:

> "ART. 286. When employment not deemed terminated. — The bonafide suspension of the operation of a business or undertaking for a period not exceeding six months, or the fulfillment by the employee of a military or civic duty shall not terminate employment in all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one month from the resumption of operations of his employer or from his relief from the military or civic duty."

From the foregoing it is clear that when the bonafide suspension of the operation of a business or undertaking exceeds six (6) months then the employment of the employee shall be deemed terminated.

Thus, private respondent is entitled to one (1) month pay or at least (½) month pay for every year of service, whichever is higher. The Court assumes that the award of P8,1 00.00 separation pay in favor of the private respondent was computed in accordance with the foregoing formula as provided by law.

Otherwise, it should be recomputed accordingly.

WHEREFORE, the Petition is **DISMISSED** for lack of merit, without pronouncement as to costs. This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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