SUPREME COURT
SECOND DIVISION

JPL MARKETING PROMOTIONS,
***Petitioner*,**

-versus-

G.R. No. 151966
July 8, 2005

COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, NOEL GONZALES, RAMON ABESA III and FAUSTINO ANINIPOT,
***Respondents*.**

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D E C I S I O N

TINGA, *J.*:

This is a Petition for Review of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 62631 dated 03 October 2001 and its Resolution[2] dated 25 January 2002 denying petitioner's Motion for Reconsideration, affirming the Resolution of the National Labor Relations Commission (NLRC), Second Division, dated 27 July 2000, awarding separation pay, service incentive leave pay, and 13th month pay to private respondents.

JPL Marketing and Promotions (hereinafter referred to as "JPL") is a domestic corporation engaged in the business of recruitment and placement of workers. On the other hand, private respondents Noel Gonzales, Ramon Abesa III and Faustino Aninipot were employed by JPL as merchandisers on separate dates and assigned at different establishments in Naga City and Daet, Camarines Norte as attendants to the display of California Marketing Corporation (CMC), one of petitioner's clients.

On 13 August 1996, JPL notified private respondents that CMC would stop its direct merchandising activity in the Bicol Region, Isabela, and Cagayan Valley effective 15 August 1996.[3] They were advised to wait for further notice as they would be transferred to other clients. However, on 17 October 1996,[4] private respondents Abesa and Gonzales filed before the National Labor Relations Commission Regional Arbitration Branch (NLRC) Sub V complaints for illegal dismissal, praying for separation pay, 13th month pay, service incentive leave pay and payment for moral damages.[5] Aninipot filed a similar case thereafter.

After the submission of pertinent pleadings by all of the parties and after some clarificatory hearings, the complaints were consolidated and submitted for resolution. Executive Labor Arbiter Gelacio L. Rivera, Jr. dismissed the complaints for lack of merit.[6] The Labor Arbiter found that Gonzales and Abesa applied with and were employed by the store where they were originally assigned by JPL even before the lapse of the six (6)-month period given by law to JPL to provide private respondents a new assignment. Thus, they may be considered to have unilaterally severed their relation with JPL, and cannot charge JPL with illegal dismissal.[7] The Labor Arbiter held that it was incumbent upon private respondents to wait until they were reassigned by JPL, and if after six months they were not reassigned, they can file an action for separation pay but not for illegal dismissal.[8] The claims for 13th month pay and service incentive leave pay was also denied since private respondents were paid way above the applicable minimum wage during their employment.[9]

Private respondents appealed to the NLRC. In its Resolution,[10] the Second Division of the NLRC agreed with the Labor Arbiter's finding

that when private respondents filed their complaints, the six-month period had not yet expired, and that CMC's decision to stop its operations in the areas was beyond the control of JPL, thus, they were not illegally dismissed. However, it found that despite JPL's effort to look for clients to which private respondents may be reassigned it was unable to do so, and hence they are entitled to separation pay.[11] Setting aside the Labor Arbiter's decision, the NLRC ordered the payment of:

1. Separation pay, based on their last salary rate and counted from the first day of their employment with the respondent JPL up to the finality of this judgment;

2. Service Incentive Leave pay, and 13th month pay, computed as in No.1 hereof.[12]

Aggrieved, JPL filed a petition for certiorari under Rule 65 of the Rules of Court with the Court of Appeals, imputing grave abuse of discretion on the part of the NLRC. It claimed that private respondents are not by law entitled to separation pay, service incentive leave pay and 13th month pay.

The Court of Appeals dismissed the petition and affirmed in toto the NLRC resolution. While conceding that there was no illegal dismissal, it justified the award of separation pay on the grounds of equity and social justice.[13] The Court of Appeals rejected JPL's argument that the difference in the amounts of private respondents' salaries and the minimum wage in the region should be considered as payment for their service incentive leave and 13th month pay.[14] Notwithstanding the absence of a contractual agreement on the grant of 13th month pay, compliance with the same is mandatory under the law. Moreover, JPL failed to show that it was exempt from paying service incentive leave pay. JPL filed a motion for reconsideration of the said resolution, but the same was denied on 25 January 2002.[15]

In the instant petition for review, JPL claims that the Court of Appeals committed reversible error in rendering the assailed Decision and Resolution.[16] The instant case does not fall under any of the instances where separation pay is due, to wit: installation of labor-saving devices, redundancy, retrenchment or closing or cessation of

business operation,[17] or disease of an employee whose continued employment is prejudicial to him or co-employees,[18] or illegal dismissal of an employee but reinstatement is no longer feasible.[19] Meanwhile, an employee who voluntarily resigns is not entitled to separation unless stipulated in the employment contract, or the collective bargaining agreement, or is sanctioned by established practice or policy of the employer.[20] It argues that private respondents' good record and length of service, as well as the social justice precept, are not enough to warrant the award of separation pay. Gonzales and Aninipot were employed by JPL for more than four (4) years, while Abesa rendered his services for more than two (2) years, hence, JPL claims that such short period could not have shown their worth to JPL so as to reward them with payment of separation pay.[21]

In addition, even assuming arguendo that private respondents are entitled to the benefits awarded, the computation thereof should only be from their first day of employment with JPL up to 15 August 1996, the date of termination of CMC's contract, and not up to the finality of the 27 July 2000 resolution of the NLRC.[22] To compute separation pay, 13th month pay, and service incentive leave pay up to 27 July 2000 would negate the findings of both the Court of Appeals and the NLRC that private respondents were not unlawfully terminated.[23] Additionally, it would be erroneous to compute service incentive leave pay from the first day of their employment up to the finality of the NLRC resolution since an employee has to render at least one (1) year of service before he is entitled to the same. Thus, service incentive leave pay should be counted from the second year of service.[24]

On the other hand, private respondents maintain that they are entitled to the benefits being claimed as per the ruling of this Court in Serrano vs. NLRC, et al.[25] They claim that their dismissal, while not illegal, was tainted with bad faith.[26] They allege that they were deprived of due process because the notice of termination was sent to them only two (2) days before the actual termination.[27] Likewise, the most that JPL offered to them by way of settlement was the payment of separation pay of seven (7) days for every year of service.[28]

Replying to private respondents' allegations, JPL disagrees that the notice it sent to them was a notice of actual termination. The said memo merely notified them of the end of merchandising for CMC, and that they will be transferred to other clients.[29] Moreover, JPL is not bound to observe the thirty (30)-day notice rule as there was no dismissal to speak of. JPL counters that it was private respondents who acted in bad faith when they sought employment with another establishment, without even the courtesy of informing JPL that they were leaving for good, much less tender their resignation.[30] In addition, the offer of seven (7) days per year of service as separation pay was merely an act of magnanimity on its part, even if private respondents are not entitled to a single centavo of separation pay.[31]

The case thus presents two major issues, to wit: whether or not private respondents are entitled to separation pay, 13th month pay and service incentive leave pay, and granting that they are so entitled, what should be the reckoning point for computing said awards.

Under Arts. 283 and 284 of the Labor Code, separation pay is authorized only in cases of dismissals due to any of these reasons: (a) installation of labor saving devices; (b) redundancy; (c) retrenchment; (d) cessation of the employer's business; and (e) when the employee is suffering from a disease and his continued employment is prohibited by law or is prejudicial to his health and to the health of his co-employees. However, separation pay shall be allowed as a measure of social justice in those cases where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character, but only when he was illegally dismissed.[32] In addition, Sec. 4(b), Rule I, Book VI of the Implementing Rules to Implement the Labor Code provides for the payment of separation pay to an employee entitled to reinstatement but the establishment where he is to be reinstated has closed or has ceased operations or his present position no longer exists at the time of reinstatement for reasons not attributable to the employer.

The common denominator of the instances where payment of separation pay is warranted is that the employee was dismissed by the employer.[33] In the instant case, there was no dismissal to speak of. Private respondents were simply not dismissed at all, whether legally

or illegally. What they received from JPL was not a notice of termination of employment, but a memo informing them of the termination of CMC's contract with JPL. More importantly, they were advised that they were to be reassigned. At that time, there was no severance of employment to speak of.

Furthermore, Art. 286 of the Labor Code allows the bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, wherein an employee/employees are placed on the so-called "floating status." When that "floating status" of an employee lasts for more than six months, he may be considered to have been illegally dismissed from the service. Thus, he is entitled to the corresponding benefits for his separation, and this would apply to suspension either of the entire business or of a specific component thereof.[34]

As clearly borne out by the records of this case, private respondents sought employment from other establishments even before the expiration of the six (6)-month period provided by law. As they admitted in their comment, all three of them applied for and were employed by another establishment after they received the notice from JPL.[35] JPL did not terminate their employment; they themselves severed their relations with JPL. Thus, they are not entitled to separation pay.

The Court is not inclined in this case to award separation pay even on the ground of compassionate justice. The Court of Appeals relied on the cases[36] wherein the Court awarded separation pay to legally dismissed employees on the grounds of equity and social consideration. Said cases involved employees who were actually dismissed by their employers, whether for cause or not. Clearly, the principle applies only when the employee is dismissed by the employer, which is not the case in this instance. In seeking and obtaining employment elsewhere, private respondents effectively terminated their employment with JPL.

In addition, the doctrine enunciated in the case of Serrano[37] cited by private respondents has already been abandoned by our ruling in Agabon vs. National Labor Relations Commission.[38] There we ruled that an employer is liable to pay indemnity in the form of nominal

damages to a dismissed employee if, in effecting such dismissal, the employer failed to comply with the requirements of due process. However, private respondents are not entitled to the payment of damages considering that there was no violation of due process in this case. JPL's memo dated 13 August 1996 to private respondents is not a notice of termination, but a mere note informing private respondents of the termination of CMC's contract and their re-assignment to other clients. The thirty (30)-day notice rule does not apply.

Nonetheless, JPL cannot escape the payment of 13th month pay and service incentive leave pay to private respondents. Said benefits are mandated by law and should be given to employees as a matter of right.

Presidential Decree No. 851, as amended, requires an employer to pay its rank and file employees a 13th month pay not later than 24 December of every year. However, employers not paying their employees a 13th month pay or its equivalent are not covered by said law.[39] The term "its equivalent" was defined by the law's implementing guidelines as including Christmas bonus, mid-year bonus, cash bonuses and other payment amounting to not less than 1/12 of the basic salary but shall not include cash and stock dividends, cost-of-living-allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits.[40]

On the other hand, service incentive leave, as provided in Art. 95 of the Labor Code, is a yearly leave benefit of five (5) days with pay, enjoyed by an employee who has rendered at least one year of service. Unless specifically excepted, all establishments are required to grant service incentive leave to their employees. The term "at least one year of service" shall mean service within twelve (12) months, whether continuous or broken reckoned from the date the employee started working.[41] The Court has held in several instances that "service incentive leave is clearly demandable after one year of service."[42]

Admittedly, private respondents were not given their 13th month pay and service incentive leave pay while they were under the employ of JPL. Instead, JPL provided salaries which were over and above the minimum wage. The Court rules that the difference between the

minimum wage and the actual salary received by private respondents cannot be deemed as their 13th month pay and service incentive leave pay as such difference is not equivalent to or of the same import as the said benefits contemplated by law. Thus, as properly held by the Court of Appeals and by the NLRC, private respondents are entitled to the 13th month pay and service incentive leave pay.

However, the Court disagrees with the Court of Appeals' ruling that the 13th month pay and service incentive leave pay should be computed from the start of employment up to the finality of the NLRC resolution. While computation for the 13th month pay should properly begin from the first day of employment, the service incentive leave pay should start a year after commencement of service, for it is only then that the employee is entitled to said benefit. On the other hand, the computation for both benefits should only be up to 15 August 1996, or the last day that private respondents worked for JPL. To extend the period to the date of finality of the NLRC resolution would negate the absence of illegal dismissal, or to be more precise, the want of dismissal in this case. Besides, it would be unfair to require JPL to pay private respondents the said benefits beyond 15 August 1996 when they did not render any service to JPL beyond that date. These benefits are given by law on the basis of the service actually rendered by the employee, and in the particular case of the service incentive leave, is granted as a motivation for the employee to stay longer with the employer. There is no cause for granting said incentive to one who has already terminated his relationship with the employer.

The law in protecting the rights of the employees authorizes neither oppression nor self-destruction of the employer. It should be made clear that when the law tilts the scale of justice in favor of labor, it is but recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to the employer. Justitia nemini neganda est (Justice is to be denied to none).[43]

WHEREFORE, the petition is **GRANTED IN PART**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 62631 are hereby **MODIFIED**. The award of separation pay is deleted. Petitioner is ordered to pay private respondents their 13th month pay commencing from the date of employment up to 15 August 1996, as well as service incentive leave pay from the second year of employment up to 15 August 1996. No pronouncement as to costs.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, AUSTRIA-MARTINEZ, CALLEJO, SR., and CHICO-NAZARIO, *JJ.*, concur.

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[1] Seventh Division, penned by Associate Justice Eliezer R. De Los Santos, JJ. Godardo A. Jacinto and Bernardo P. Abesamis, concurring; Rollo, pp. 27-36.
[2] Rollo, pp. 38-40.
[3] Not 26 December 1997, as stated in the Court of Appeal's Decision.
[4] CA Rollo, p. 41.
[5] Id. at 63-64.
[6] Joint Decision dated 19 May 1999, id. at 48-51.
[7] Id. at 50.
[8] Ibid.
[9] Ibid.
[10] Rollo, pp. 13-18.
[11] Id. at 16.
[12] Id. at 17.
[13] CA Decision, Rollo, pp. 32-33.
[14] Id. at 35.
[15] CA Resolution, id. at 38-40.
[16] Rollo, p. 16.
[17] Art. 283, Labor Code.
[18] Art. 284, id.
[19] Sec. 4 (b), Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code.
[20] Citing Phimco Industries, Inc. vs. National Labor Relations Commission, 339 Phil. 477 (1997); Hinatuan Mining Corporation vs. National Labor Relations Commission, 268 SCRA 622 (1997).
[21] Rollo, p. 18.
[22] Id. at 19-20.
[23] Id. at 22.
[24] Id. at 23-24.
[25] 380 Phil. 416 (2000).
[26] Rollo, p. 48.

[27] Id. at 47.
[28] Id. at 48.
[29] Id. at 62-63.
[30] Id. at 64.
[31] Ibid.
[32] Capili vs. National Labor Relations Commission, 337 Phil. 210, 215 (1997).
[33] Ibid.
[34] Reynaldo Valdez vs. National Labor Relations Commission, 349 Phil. 760, 766 (1998), citing Agro Commercial Security Services Agency, Inc. vs. National Labor Relations Commission, 175 SCRA 790 (1989).
[35] Rollo, p. 48.
[36] Philippine National Construction Corporation vs. National Labor Relations Commission, 366 Phil. 678 (1999); United South Dockhandlers, Inc. vs. National Labor Relations Commission, et al., 267 SCRA 401 (1997); Firestone Tire and Rubber Co. of the Philippines vs. Lariosa, et al., 148 SCRA 186 (1987); Rollo, pp. 32-33.
[37] Supra note 25.
[38] G.R. No. 158693, 17 November 2004, 442 SCRA 573.
[39] Sec. 2, P.D. No. 851.
[40] Section 3(e), Rules and Regulations Implementing P.D. No. 851.
[41] Sec. 3, Rule V, Book III, Rules to Implement the Labor Code.
[42] Imbuido vs. National Labor Relations Commission, 385 Phil. 999, 1013 (2000), citing Fernandez vs. National Labor Relations Commission, 285 SCRA 149 (1998).
[43] Philippine Geothermal, Inc. vs. National Labor Relations Commission, 236 SCRA 371, 379 (1994).