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SUPREME COURT
THIRD DIVISION

LLORA MOTORS, INC. and/or CONSTANTINO CARLOTA, JR.,
***Petitioners*,**

-versus-

G.R. No. 82895
November 7, 1989

HON. FRANKLIN DRILON in his capacity as the Secretary of the Department of Labor and Employment, HON. DANIEL M. LUCAS, DOMINGO H. ZAPANTA and OSCAR N. ABELLA, in their capacity as Commissioners of the National Labor Relations Commission (NLRC), Manila, Second Division, HON. RICARDO N. OLAIREZ, in his capacity as the Labor Arbiter of the Regional Arbitration Branch No. I, San Fernando, La Union and PRIMITIVO ALVIAR,
***Respondents*.**

x--x

D E C I S I O N

FELICIANO, *J.*:

The subject of the present Petition for Certiorari with Preliminary Injunction is the Resolution[1] dated 20 January 1988 of the public respondent National Labor Relations Commission ("NLRC"), in NLRC Case No. RAB-I-0096-85 (entitled "Primitivo V. Alviar, complainant, versus Llora Motors, Inc., and/or Constantino Carlota, respondents").

Sometime in September of 1968, private respondent Primitivo V. Alviar began his employment with petitioner Llora Motors, Inc. As a truck driver, Mr. Alviar rendered services to the company eight (8) hours a day (excluding overtime) seven days a week, and for his labor received a salary computed on a per trip basis plus emergency cost of living allowance (ECOLA). At the time he stopped working on 19 April 1985, Mr. Alviar was 65 years of age.

On 28 October 1985, private respondent Alviar filed with NLRC Regional Arbitration Branch No. 1 (San Fernando, La Union) a complaint[2] (docketed as NLRC Case No. RAB-I-0096-85) for "Separation Pay and Non-Payment of Daily Wages" against petitioners Llora Motors and Constantino Carlota, Jr., the company manager. In a Position Paper[3] he filed in support of his complaint, Mr. Alviar claimed entitlement to, among other things, ECOLA underpayments from November 1982 up to April 1985 in the amount of P4,709.54 as well as "retirement benefits," computed at one-half month's pay for every year of service.

The complaint was opposed by petitioners who, in their own Position Paper,[4] alleged that all of the employment benefits claimed by private respondent Alviar had already been fully paid. On the matter of retirement benefits, it was contended that Mr. Alviar had not been dismissed by Llora Motors, but that " sometime in the early part of 1985, Alviar showed utter lack of interest in his work and would be absent for no apparent reason;" that " in the meantime, Truck No. 802, assigned to complainant, laid idle and because of non-use for sometime, it deteriorated so seriously;" that in the last week of April of 1985, Mr. Alviar reported for work and was then informed that "while Truck 802 has not been rehabilitated as yet, he could act as relief driver;" that "complainant did not like to be a relief driver in the meantime for since then he did not report for work;" and that "it was complainant who abandoned his work since the last week of April

1985 and never reported since then." Neither had Mr. Alviar been retired, petitioners claimed, "for the simple reason that respondent corporation does not have any retirement plan or any collective bargaining agreement with the employees for no union exists within the company because the employees, drivers included, received more than the standard benefits for their labor." Petitioners contended further that "records will show that complainant had received retirement benefits from the Social Security System when he retired therefrom in 1983."

Mr. Alviar, in his pleadings submitted before the Labor Arbiter, did not controvert petitioner's allegations of abandonment and non-dismissal. Mr. Alviar there simply alleged that in April of 1985, he "retired from the service due to his old age of 65 years."

On 27 January 1987, the respondent Labor Arbiter rendered a Decision,[5] the dispositive portion of which read:

> "WHEREFORE, premises all considered, we hereby order the respondents to pay complainants Primitivo Alviar, as follows:
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> | | | | |
> |---|---|---|---|
> | 1. | P4,709.54 | — | Unpaid ECOLA differentials |
> | 2. | 9,985.80 | — | Retirement benefits (for 17 years) |
> | | ———— | | |
> | | P14,695.34 | | |
> | 3. | 1,469.53 | — | 010% attorney's fees |
> | | ——— | | |
> | | P16,164.87 | — | Total award |
>
> and to pay complainant legal interest on the total award to be compounded annually after ten (10) days from receipt of this decision.
>
> Respondents are finally ordered to pay complainant through this Regional Arbitration Branch Office or present proof of compliance with this order within ten (10) days from receipt hereof.
>
> SO ORDERED."

An appeal was subsequently interposed with public respondent NLRC, petitioners there claiming that they had been denied due process by the Labor Arbiter, who had rendered judgment in NLRC Case No. RAB-1-0096-85 without first conducting formal hearings therein. In addition, petitioners, reiterating that private respondent Alviar had neither been dismissed nor retired by the company, questioned the propriety of the P9,985.80 award of retirement benefits.

On 20 January 1988, public respondent NLRC issued the disputed Resolution, affirming the decision of the Labor Arbiter and ordering dismissal of the appeal. A Motion for Reconsideration was denied on 28 March 1988.[6]

The Petition at bar raises two (2) principal issues: (1) whether or not petitioners had been denied due process of law by the Labor Arbiter; and (2) whether or not private respondent Alviar is legally entitled to receive retirement benefits from petitioners, his former employers.

With respect to the first issue, petitioners allege that failure by the Labor Arbiter to conduct a formal hearing, prior to rendition of judgment, resulted in violation of their constitutional right to due process. We do not agree. This Court has held in the past that a formal or trial-type hearing is not at all times and in all instances essential to due process,[7] the requirements of which are satisfied where parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.[8] Such opportunity had not here been withheld from petitioners. The record shows that in response to private respondent Alviar's complaint below and before the Labor Arbiter rendered his decision of 27 January 1987, petitioners submitted on 21 January 1986 a Position Paper, complete with annexes,[9] where they had set out and argued the factual as well as the legal bases of their position. Petitioners do not claim that their submissions there were ignored or disregarded altogether by the Labor Arbiter. The record moreover shows that petitioners were given additional opportunity to argue their case on appeal before public respondent NLRC, in a Memorandum[10] and Motion for Reconsideration,[11] which pleadings were likewise considered by that labor agency in the course of resolving the case. All told, the due process argument put forward by petitioners must fail.

In respect of the second and principal issue, it is urged by petitioners that the award of retirement benefits to private respondent Alviar is improper, there being no contractual or statutory basis for such award.

Our Labor Code has only one article that deals with the subject of "retirement from the service." Article 287 of the Code reads as follows:

> "Article 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." (Italics supplied).
>
> Examination of Article 287 above shows that entitlement to retirement benefits may accrue either (a) under existing laws or (b) under a collective bargaining agreement or other employment contract. It is at once apparent that Article 287 does not itself purport to impose any obligation upon employers to set up a retirement scheme for their employees over and above that already established under existing laws. In other words, Article 287 recognizes that existing laws already provide for a scheme by which retirement benefits may be earned or accrue in favor of employees, as part of a broader social security system that provides not only for retirement benefits but also death and funeral benefits, permanent disability benefits, sickness benefits and maternity leave benefits.[12] As is commonplace knowledge, the Social Security Act provides for retirement benefits which essentially consist of the right to receive a monthly pension for the rest of the covered employee's life provided that: (1) such employee had paid at least one hundred twenty (120) monthly contributions prior to retirement; and (2) has reached the age of sixty (60) years (if his salary is less than P300.00 a month) or 65 years. The

> retirement scheme here established is compulsory and contributory in character on the part of both the employer and the employee, backed up by criminal sanctions and administered by a large and elaborate bureaucracy.
>
> Article 287 of the Labor Code also recognizes that employers and employees may, by a collective bargaining or other agreement, set up are retirement plan in addition to that established by the Social Security law, but prescribes at the same time that such consensual additional retirement plan cannot be substituted for or reduce the retirement benefits available under the compulsory scheme established by the Social Security law. Such is the thrust of the second paragraph of Article 287 which directs that the employee shall be entitled to receive retirement benefits earned "under existing laws and any collective bargaining or other agreement."

It is also important here to examine Sections 13 and 14 of Rule, I, Book VI of the Rules and Regulations Implementing the Labor Code (hereafter, "Implementing Rule I"). Implementing Rule I deals with both termination of services and retirement, being entitled "Termination of Employment and Retirement." But Sections 13 and 14 of Implementing Rule I are the only provisions which deal with retirement matters. Under Section 13 which provides as follows:

> "Sec. 13. Retirement. — In the absence of any collective bargaining 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." (Italics supplied).

where an additional retirement plan has been established by a collective bargaining agreement, or other applicable agreement (or, under Section 14, an "established employer policy"), but such plan fails to specify another, older, age of retirement, an employee may retire, and may in turn be retired by his employer, upon reaching age sixty (60).

That there was some confusion in the mind of the Labor Arbiter in the case at bar between "termination pay" and "retirement benefits" would seem entirely possible: private respondent Alviar initially asked for "separation pay" and the Labor Arbiter awarded him "retirement benefits." That confusion was perhaps due to the Labor Arbiter's citing Section 14 of Implementing Rule I, which reads as follows:

> "Sec. 14. Retirement benefits. — (a) An employee who is retired 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 at least one-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.
>
> (b) Where both the employer and the employee contribute to the retirement plan, agreement or policy, the employer's total contribution thereto shall not be less than the total termination pay to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the termination pay the employee is entitled to receive, the employer shall pay the deficiency upon the retirement of the employee.
>
> (c) This Section shall apply where the employee retires at the age of sixty (60) years or older." (Italics supplied).

Section 14 (a) refers to "termination pay equivalent to at least one-half (1/2) month for every year of service" while Section 14 (b) mentions "termination pay to which the employee would have been entitled had there been no such retirement fund" as well as "termination pay the employee is entitled to receive." It should be recalled that Sections 13 and 14 are found in Implementing Rule I which deals with both "termination of employment" and "retirement." It is important to keep the two (2) concepts of "termination pay" and "retirement benefits" separate and distinct from each other. Termination pay or separation pay is required to be paid by an employer in

> particular situations identified by the Labor Code itself or by Implementing Rule I.[13] Termination pay where properly due and payable under some applicable provision of the Labor Code or under Section 4 (b) of Implementing Rule I, must be paid whether or not an additional retirement plan has been set up under an agreement with the employer or under an "established employer policy."

What needs to be stressed, however, is that Section 14 of Implementing Rule I, like Article 287 of the Labor Code, does not purport to require "termination pay" to be paid to an employee who may want to retire but for whom no additional retirement plan had been set up by prior agreement with the employer. Thus, Section 14 itself speaks of an employee "who is retired pursuant to a bona-fide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy." What Section 14 of Implementing Rule I may be seen to be saying is that where termination pay is otherwise payable to an employee under an applicable provision of the Labor Code, and an additional or consensual retirement plan exists, then payments under such retirement plan may be credited against the termination pay that is due, subject, however, to certain conditions. These conditions are: (a) that payments under the additional retirement plan cannot have the effect of reducing the amount of termination pay due and payable to less than one-half (1/2) month's salary for every year of service; and (b) the employee cannot be made to contribute to the termination pay that he is entitled to receive under some provision of the Labor Code; in other words, the employee is entitled to the full amount of his termination pay plus at least the return of his own contributions to the additional retirement plan.

The respondents, in defending the award of retirement benefits granted by the Labor Arbiter and affirmed by the NLRC, invoke Allied Investigation Bureau, Inc. vs. Ople.[14] Examination, however, of Allied shows that respondents' reliance thereon is quite misplaced. In Allied, Victoriano Velasquez had been an employee of the Allied Investigation Bureau, Inc., a security guard agency, since 1953. In 1976, having reached the age of sixty (60) years, Velasquez submitted to Allied an application for retirement benefits, which application was subsequently approved by Allied, although there was then no

collective bargaining agreement or employer policy establishing an additional retirement plan for employees of the agency. A controversy arose in respect of the method adopted by Allied in computing the amount of retirement benefits it had undertaken to pay to Velasquez. Instead of basing that amount upon Velasquez's actual period of employment with the agency (i.e., from 1953 to 1976), Allied computed such amount as starting from the date of effectivity of the Labor Code (i.e., 1 November 1974 to 1976). Acting on the complaint for retirement benefits, the Labor Arbiter ordered Allied to pay Velasquez on amount computed on the basis of the latter's twenty-three (23) years of service with the agency. On a Petition for Certiorari, the Court upheld the Labor Arbiter's computation of retirement benefits in favor of Velasquez. The Court., speaking through then Mr. Justice Fernando, said:

> "1. There is no question that petitioner had agreed to grant retirement benefits to private respondent. It would, however, limit such retirement benefits only from the date of the effectivity of the Labor Code. That is its contention. The refutation given in the Comment of Solicitor General Estelito P. Mendoza is persuasive. As was pointed out, 'in the computation thereof public respondents acted judiciously in reckoning the retirement pay from the time private respondent started working with petitioner since respondent employee's application for retirement benefits and the company's approval of the same make express mention of Sections 13 and 14, Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code as the basis for retirement pay. Section 14 (a) of said rule provides that am employee who is retired 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-half month salary for every year of service, whichever is higher, a fraction of at least six (6) months being considered as one whole year.' Further it was stated: This position taken by public respondents squares with the principle that social legislation should be interpreted in favor of workers in the light of the Constitutional mandate that the State shall afford protection to labor.'"[15] (Emphasis supplied).

Because Allied had agreed to pay retirement benefits to Velasquez, the mode of computation adopted by the Labor Arbiter — which is the generally accepted mode of computation in retirement plans — could hardly be regarded as merely arbitrary or capricious. Thus, while Allied had no collective bargaining agreement or similar employment contract establishing a plan under which employees could retire, its approval of Velasquez's application, although unilateral and possibly ad hoc, supplied the necessary consensual basis. In the instant case, Llora Motors consistently resisted the demand for separation pay or retirement benefits by private respondent Alviar, precisely pointing to the fact that there was no collective bargaining agreement or other contractual basis or any "established employer policy" that contemplated the grant of such retirement benefits.

Clearly, there was in the instant case no consensual basis for the required payment of additional retirement benefits.[16] The Labor Arbiter and the NLRC had not declared private respondent Alviar to have been illegally dismissed by petitioners. Neither was there any pretense on the part of private respondent Alviar that labor-saving devices had been installed, or that redundancy or retrenchment or cessation of operations had occurred in Llora Motors or that he was afflicted by some disabling disease, or that, being entitled to reinstatement, he could not be reinstated to his old position. Under these circumstances, the portion of the Labor Arbiter's award which required petitioners to pay an amount equivalent to a half month's pay for every year of service of Mr. Alviar cannot be justified either as (additional) retirement benefits or as termination pay and hence constituted an act without or in excess of jurisdiction.

WHEREFORE, the Decision of the Labor Arbiter dated 27 January 1987 and the Resolution of the National Labor Relations Commission dated 20 January 1988 in NLRC Case No. RAB-I-0096-85 are hereby **SET ASIDE** and a new decision shall be entered **REQUIRING** petitioners to pay private respondent Primitivo Alviar the amount of P4,709.54 for unpaid ECOLA differentials, plus ten percent (10%) thereof as attorney's fees and to pay private respondent legal interest on the total award, compounded annually, from the date of petitioners' receipt of the original (now vacated) decision of the Labor

Arbiter, and until full payment of the amount here awarded. No pronouncement as to costs.

SO ORDERED.

Fernan, *C.J.*, Gutierrez, Jr., Bidin and Cortes, *JJ.*, concur.

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[1] Rollo, pp. 55-58.
[2] Id., p. 15.
[3] Id., pp. 31-40.
[4] Id., pp. 16-22.
[5] Id., pp. 42-46.
[6] Id., p. 67.
[7] Richards vs. Asoy, 152 SCRA 45 (1987).
[8] Tajonera vs. Lamaroza, 110 SCRA 438 (1981).
[9] Rollo, pp. 23-30.
[10] Id., pp. 47-53.
[11] Id. pp. 59-66.
[12] See Social Security Act, Republic Act No. 1161 (effective 18 June 1954), as amended by a whole series of Republic Acts, Presidential Decrees and Executive Orders: Section 12-B (Retirement Benefits); 13 (Death Benefits); 13-A (Permanent Disability Benefits); 13-B (Funeral Benefit); 14 (Sickness Benefit); and 14-A (Maternity Leave Benefit).
[13] See Article 283 of the Labor Code dealing with:
1. installation of labor saving devices;
2. redundancy;
3. retrenchment to prevent losses;
4. closing or cessation of operation of the company; and Article 284 referring to —
5. termination of services by reason of disease; and Section 4(b), Rule I, Book VI of the Implementing Rules and Regulations relating to situations —
6. where reinstatement of the employee to his former position is required but is not possible because the company has closed or ceased operations or his former position no longer exists at the time of reinstatement (for reasons not attributable to the fault of the employer).
[14] 91 SCRA 265 (1979).
[15] 91 SCRA at 268-269.
[16] That is, in addition to the retirement benefits provided by the Social Security Act.

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