SUPREME COURT
FIRST DIVISION

BATANGAS LAGUNA TAYABAS BUS COMPANY,
***Petitioner*,**

-versus-

G.R. No. L-38482
June 18, 1976

HONORABLE COURT OF APPEALS and TEOTIMO DE MESA,
***Respondents*.**
x----------x

D E C I S I O N

MARTIN, *J.*:

The issue in this Petition is whether an employee who has already received his separation pay can still recover retirement benefits from his employer.

Private respondent was first employed as a bus conductor by the Batangas Laguna Tayabas Bus Company, the herein petitioner, on July 1, 1933 and worked with it until December 31, 1941 when it ceased operation in its transportation business due to the outbreak of World War II. When the petitioner resumed its business after the war, the private respondent rejoined the company on May 22, 1945. From a mere bus conductor, the private respondent rose to the

position of administrative officer of the petitioner with a basic salary of P1,000.00 a month. His total length of service was for 30 years, 9 months and 17 days which under Republic Act No. 1787 amounts to 31 years. Sometime in the month of September, 1967, the private respondent drew two cash advances or "vales" of P100.00 each or a total of P200.00 from the company's station at Infanta, Quezon where he was then on vacation without the prior approval of the petitioner, in violation of a memorandum restricting cash advances of confidential employees to P100.00 each payroll period. Due to this infraction, the services of private respondent were terminated in a Special Order issued by the petitioner's Acting General Manager effective September 9, 1967. As a result of his dismissal, the private respondent was constrained to file a complaint before the Court of First Instance of Laguna (Branch III) against the petitioner to recover the sums of P19,987.56 as separation pay; P17,050.00 as retirement benefits; P35,018.53 as "would be earnings" had he not been separated and reached the compulsory retirement age; P13,720.50 for loss of Social Security benefits; P200,000.00 as moral damages; P100,000.00 as exemplary damages; P10,000.00 for attorney's fees and P2,000.00 as expenses for litigation.

In answer, the petitioner denies the claim of private respondent that he was unceremoniously and without any valid cause or investigation summarily dismissed from the service by its Acting Manager. According to the petitioner, the private respondent's act of obtaining from the company's dispatcher in Infanta, Quezon, two cash advances or "vales" in the total amount of P200.00 without the previous approval of the petitioner, was a violation of the company's memorandum restricting cash advances of confidential employees to P100.00 each payroll period, and constituted an abuse of trust and confidence reposed upon him. Petitioner belied the charge of the private respondent that his dismissal was arbitrary as he was fully aware of the strict policy of the company restricting the cash advances or "vales" of its confidential employees and that he even signed a promissory note that if found to be abusing the same he was willing to receive severe punishment from the company. However, in spite of his promise the private respondent still obtained cash advances for the payroll period ending May 31, 1967 (Exhibit D-18,), and June 5, 1967 (Exhibit D-19) in excess of P100.00 limit allowed for each payroll period without the approval of the petitioner. Then again on

September 1 and 6, 1967 despite his promissory note the private respondent drew the unauthorized cash advances of P200.00 in violation of the existing memorandum of the company.

After trial, the Court of First Instance of Laguna (Branch III) found that the dismissal of the private respondent was for just cause and that he was therefore not entitled to separation pay and that since it has not been shown that the petitioner had violated the law or contract or had committed any act of quasi-delict, said court also ruled that the private respondent has no cause of action against the petitioner for unearned income, Social Security benefits and damages. However, it ordered the petitioner to pay the private respondent the sum of P17,050.00 as his retirement pay with interest thereon at the legal rate from filing of the case until fully paid, plus attorney's fees of P2,000.00 and the cost of the suit and dismissed all other claims of the private respondent.

From said decision, both the petitioner and the private respondent appealed to the Court of Appeals, with the private respondent pressing upon the following errors:

1. That the lower court erred in not holding that plaintiff-appellant's dismissal was unlawful and or arbitrary.

2. That the lower court erred in dismissing all of plaintiff-appellant's claim with the exception of retirement pay.

and with petitioner alleging the following errors:

1. That while the lower court correctly found that the dismissal of plaintiff was for just cause, nevertheless the lower court erred in directing defendant to pay P17,050.00 as retirement benefits to the plaintiff, with interest thereon at the legal rate from the date of filing of the case until fully paid, plus attorney's fees and the cost of the suit.

2. That the lower court erred in failing to order plaintiff to pay his indebtedness to defendant in the sum of P13,087.86 with legal interest thereon from the date of demand, as embodied

in the Special Order dated September 9, 1967, as well as to pay a reasonable sum as attorney's fees and the costs.

3. That the lower court erred in not rendering judgment for the defendant in all respects and in not completely absolving defendant from all liability.

On February 28, 1974, the Court of Appeals thru a Special Division of Five Justices modified the decision of the trial court by ordering the petitioner to pay the private respondent, in addition to the retirement benefit of P17,050.00 with interest thereon at the legal rate from the date of the filing of this case until fully paid, plus attorney's fees of P2,000.00, the sum of P19,987.56 as separation pay, also with legal interest from the date of the filing of the complaint until fully paid minus the indebtedness of private respondent in the amount of P13,087.88 with legal interest from September 9, 1967 until paid with costs against the petitioner. Justice Ameurfina Melencio-Herrera of the respondent Court of Appeals, however, dissented from the majority opinion. A motion for reconsideration of the decision was denied.

Hence this instant Petition to Review on *Certiorari* the Decision of the respondent Court.

There is no dispute that at the time of his dismissal on September 9, 1967, private respondent had an outstanding account of P13,087.86 with the petitioner. Due to the abuse of the "vale" privilege, specially by the confidential employees, the petitioner issued on July 21, 1965, a Memorandum (Exhibit 26) prohibiting the employees from drawing cash advances excess of P100.00 every payroll period. Then on May 25, 1967, the Finance Manager of the petitioner issued a Circular in the following tenor:

> "To all Employees Concerned:
>
> In view of the increase on the payroll shortages, the Management is planning to transfer your payroll shortage to Due from Officer & Employees, provided that you sign the promissory note below that you will not get short again.

Remember, this will definitely be the last time.

(Sgd.)
R.Z. NAVARRO
Finance Officer"

At the bottom of one of the copies of the Circular, the private respondent signed a promissory note (Exhibit I) which reads:

"Promissory Note

I promise that from now on, I will never abuse my vale privilege should I be found abusing my vale privilege and get short again, the Management will have the right to impose severe disciplinary action against me.

(Sgd.)
TEOTIMO DE MESA
(Signature of Employee P R No.)"

In total disregard of the foregoing promissory note, the private respondent again obtained cash advances for the payroll period ending May 31,1967 (Exhibit D-18) and June 15, 1967 (Exhibit D-19), without the approval of the management, thus exceeding the limit allowed in the petitioner's memorandum of July 21, 1965 (Exhibit 26). As the abuse of the "vale" privilege remained unabated, the company issued again another memorandum on June 2, 1967 limiting the cash advances of confidential employees to P100.00 for every payroll period, any excess of which shall be approved by the President, General Manager or Finance Officer (Exhibit 23). Thereafter, came the memorandum of July 1, 1967 which again restricted the cash advances of confidential employees to P100.00 per payroll period. Despite the last memorandum of July 1, 1967 and his promissory note on May 25, 1967, the private respondent drew cash advances in the amount of P200.00 between September 1 and 6, 1967. This precipitated the action of the petitioner to dismiss the private respondent on September 9, 1967.

The main contention of private respondent is that his dismissal was unlawful and or arbitrary because (a) he was not given a hearing on

the alleged cause of his dismissal; (b) petitioner disregarded his Service Manual and (c) the petitioner violated the "Schedule of Penalties" (Exhibit K) which had been agreed upon between the petitioner and its employees. One of the fundamental duties of the employee is to yield obedience to all reasonable rules, orders and instructions of the employer and willful or intentional disobedience thereof, as a general rule justifies rescission of the contract of service and the peremptory dismissal of the employee. However, in order to constitute disobedience, the employee's conduct must have been willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.[1] The rules, instructions or commands in order to be a ground for discharge on the score of disobedience, must be reasonable and lawful, must be known to the employee, and must pertain to the duties which the employees have been engaged to discharge.[2] There can be no doubt that the private respondent here has repeatedly abused the "vale" privilege and therefore in this respect can be considered willful. He cannot claim that he is ignorant of the memoranda and the circulars limiting the cash advances of employees to not more than P100.00 each payroll period. But the rules, instructions or commands limiting the cash advances of confidential employees, do not pertain to the duties which the petitioner has been engaged to discharge. Said rules, instructions or commands are primarily intended for the benefit of the company itself and have nothing to do with the duties of its employees and therefore cannot be a valid ground for their discharge on the score of disobedience.

But even granting that a willful disobedience of said rules, instructions or commands limiting the cash advances of the employees is a valid cause for his discharge, yet his dismissal was arbitrary because he was not given a hearing on the alleged cause of his dismissal in total disregard of the Service Manual of 1962 of the joint management of the Laguna Tayabas Company and Batangas Transportation Company (Exhibit I) which among others provides:

> "2. In all cases where punishment of any sort is imposed, the penalty shall be commensurate with the nature and gravity of the offenses charged, taking into consideration the varying circumstances surrounding each particular case;

the offender shall, however be given the benefit of all doubts that may exist as to his responsibility for the offense charged.

3. No employee shall be summarily punished for any offense or dereliction alleged to have been committed without having been given an opportunity to be heard and defend himself. Unless otherwise decided by the Management, the Legal Department is designated to investigate all complaints against employees and to take such statement or hear such defenses as the erring employee may wish to make. Upon termination of the investigation, the Legal Department will submit its findings to the Management for decision. No penalty involving a fine, suspension or dismissal will take effect until finally approved by the General Manager. (Chapter X, pars. 2 and 3, Exh. I-1; Emphasis supplied.)"

They also violate the following Table of Penalties (Exhibit K):

OFFENSES	1st	2nd	3rd	4th	5th
x x x					
Abusing Vale Privilege	Warn	Warn	Disc	Disc	Disc
	7th Disc.	8th Disc.	9th Disc.	10th Disc.	MAX Disc.

(Exhibit K-1)

It is explicitly provided in the Service Manual of 1962 that the petitioner cannot summarily be punished for any offense or dereliction alleged to have been committed without having been given an opportunity to be heard and defend himself. The records do not show that private respondent was ever given any hearing for the alleged violation of the memorandum of July 1, 1967. He was not given a chance to give his side. Besides the memorandum of petitioner of July 1, 1967 is inconsistent with the Table of Penalties which fixes the penalty for violation of the "vale" privilege was indicated in the above table. The table does not provide for dismissal. It simply mentions warning for the first and second offense and

discipline for the third, fourth, fifth, sixth offense, etc. The word "discipline" is by itself vague. It is doubtful if it includes outright dismissal and in case of such doubt, the doubt should be resolved in favor of the employee. Besides, the memorandum allegedly violated by the private respondent cannot prevail over the Table of Penalties which is the result of the mutual agreement of the petitioner and its employees, unlike the memorandum which is only prepared by the petitioner. The fact that the private respondent obtained two cash advances in the total amount of P200.00 without previous approval of the petitioner does not warrant his summary dismissal considering his length of service and considering further the fact that had he not been dismissed summarily, the salary which he expected to receive for the quincena of September 1967 would be more than enough to cover the advance of P200.00 to private respondent. Likewise in Article X of the Labor Agreement entered into by and between the petitioner and the Batangas Transportation Company Employees Association of Batangas on August 27, 1967 which also appears in the Labor Agreement entered into by the petitioner with its Laguna side employees in its Article X thereof, it is so provided that:

> "1. Considering the nature of the business of the COMPANY and its obligations to the public, the right to discipline all employees is hereby vested solely in the COMPANY. The management, operation of the business and the supervision of the working forces and also hereby vested exclusively in the COMPANY, including but not limited to, the right to hire, suspend, lay off, transfer, promote, demote, reprimand, fine, or discharged an employee for lack of work or other just cause. It is understood that no employee shall be suspended or discharged from the service without cause and without proper hearing and investigation: PROVIDED HOWEVER, that the parties hereto recognize as sufficient for this purpose the current practice a procedure of the COMPANY with respect to hearing and investigation of erring employees: PROVIDED, HOWEVER, that in case of grave offenses the penalty for which is vested in the discretion of the management, the employee may be allowed to be confronted with witnesses against him. Any employee not satisfied with the action taken against him after said investigation shall have the right to appeal, by himself directly or through the President of the ASSOCIATION, to the

> President of the COMPANY or his authorized representative. The decision rendered in such appeal shall be respected by the ASSOCIATION and the employees concerned; HOWEVER, the ASSOCIATION and/or the employees are not precluded from resorting to the mediation procedure hereinafter provided or from bringing the case to the proper agency of the Government if they are not satisfied with the decision. (emphasis supplied.)"

Obviously under the foregoing provisions of the Labor Agreement, the petitioner cannot arbitrarily and summarily dismiss the private respondent for alleged violation of the memorandum of July 1, 1967 and of his promissory note dated May 25, 1967 without giving him the opportunity to be heard and defend himself. Having promulgated the Service Manual itself, the petitioner is bound by its provisions. So with the labor agreement it had signed with the Batangas Transportation Employees Association of which private respondent is a member. It must be noted that the terms and conditions of a collective bargaining contract constitute the law between the parties.[3] Those who are entitled to its benefits can invoke its provisions. In the event that an obligation prescribed therein is not fulfilled, the aggrieved party can go to court for redress.[4] Undoubtedly, the act of the petitioner in dismissing private respondent without the benefit of a hearing is in violation of the Service Manual of the petitioner and the Labor Agreement it has with its employees. Besides, the failure of petitioner to give the private respondent the benefit of a hearing before he was dismissed constitutes an infringement on his constitutional right to due process of law and not to be denied the equal protection of the laws.[5] The right of a person to his labor is deemed to be his property within the meaning of the constitutional guarantee. This is his means of livelihood. He cannot be deprived of his labor or work without due process of law.[6] Since the right of private respondent to his labor is in itself a property and that the labor agreement between him and petitioner is the law between the parties, his summary and arbitrary dismissal amounted to a deprivation of his property without due process. For such unlawful dismissal, the private respondent is entitled to separation pay. Section 1, Republic Act No. 1052, as amended by Republic Act No. 1787, provides:

> "SEC. 1. In cases of employment without a definite period. in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in the case of an employer, by serving such notice to the employee at least one month in advance or one-half month for every year of notice of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.
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> The employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.
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> The employee, upon whom no such notice was served in case of termination of employment without just cause shall be entitled to compensation from the date of termination of his employment in an amount equivalent to his salaries or wages corresponding to the required period of notice. (Emphasis supplied.)"

Pursuant to the foregoing provision, since private respondent was dismissed without cause, he is entitled to compensation from the date of termination of his employment equivalent to his wages or salaries corresponding to the required period of notice. Private respondent worked with the petitioner from July 1, 1933 up to December 31, 1941, covering a period of 8 years and 6 months and then after the war he re-entered the service of petitioner on May 22, 1945 until he was separated on September 9, 1967 or a period of 22 years, 8 months and 21 days. His total length of service is 30 years, 9 months and 17 days which under Republic Act No. 1787 is equivalent to 31 years and his basic salary was P1,000.00 a month. Since his dismissal was without cause he is entitled under the law to one half (½) month salary for every year of service, so for 31 years of service he is entitled to 15-½ months salary or the amount of P19,957.56 as his separation pay with legal interest from the filing of the complaint until fully paid.

After finding private respondent's dismissal from the service to be without cause and arbitrary and upholding his right to separation

pay, is he also entitled to retirement benefits pursuant to the Labor Agreement entered by petitioner with its employees under Section 5, Article XVI thereof which reads:

> "A member or his designated beneficiary shall be entitled to receive the benefits established under this Plan should he retire or is separated from the company for any cause provided for in Section 4. The benefits which a member or his beneficiary is entitled to receive shall be paid by the COMPANY in lump sum within a period of thirty (30) days, if possible, but in no case beyond sixty (60) days, from the ate of accrual."

One of the grounds for retirement provided for in Section 4(b) is "upon attainment of his optional retirement." And according to Section 1, paragraph (g), Article XVI, of the Labor Agreement "by optional retirement is meant retirement of an employee after his 8 years in the service at which date an employee may elect to retire subject to conditions herein below established." Considering that private respondent has already served the petitioner 31 years he has more than reached the optional retirement age under the agreement. According to his Certificate of Baptism, private respondent (Exh. C) was born on December 9, 1909 so that when his services were terminated on September 9, 1967, he was exactly 58 years, 9 months and 10 days old. Under Section 6, Article XVI of the same Labor Agreement, "an employee shall receive one-half (½) month's salary for every year of service as defined in Sections 1(a) and 2(a) above, and therefore the same excludes overtime pay, bonuses and other supplements from the time an employee entered the service up to his retirement or separation from the service of the company." And under Section 7, thereof, "an employee who has rendered at least eight (8) years of continuous service may, at its option, retire and enjoy the benefits prescribed in the Plan:"

But petitioner contents that private respondent can only avail himself of either separation pay or retirement benefits but not both, citing in support thereof, the ruling of this Court in the case of Cipriano vs. San Miguel Corporation.[7] The foregoing ruling cannot be made to apply to the present suit because in said case it is so expressly provided in the Labor Agreement that:

> "Regular employees who are separated from the service of the company for any reason other than misconduct or voluntary resignation shall be entitled to either 100% of the benefits provided in Section 2, Article VIII hereof regardless of their length of service in the company or to the severance pay provided by law, whichever is the greater again."

This in said case the employee was entitled to either the amount prescribed in the plan or the severance pay provided by law whichever is the greater amount. In the present case, there is nothing in the labor agreement entered into by petitioner with the Batangas Transportation Employees Association of which private respondent is a member barring the latter from recovering whatever benefits he is entitled to under the law in addition to the gratuity benefits under the labor agreement between him and his employer. Neither is there any provision in the Termination Pay Law (Republic Act No. 1052, as amended by Republic Act No. 1787) that an employee who receives his termination pay upon separation from the service without cause is precluded from recovering any other benefits agreed upon by him and his employer. In the absence of any such prohibition, both in the aforesaid Labor Agreement and the Termination Pay Law the private respondent has the right to recover from the petitioner whatever benefits he is entitled to under the Termination Pay Law in addition to other benefits conferred upon him by the aforesaid labor agreement.

WHEREFORE, the instant Petition is hereby dismissed with costs against the petitioner.

SO ORDERED.

Teehankee, *C.J.*, *(Chairman)*, Makasiar, Esguerra and Muñoz Palma, *JJ.*, concur.

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[1] 35 Am. Jur., p. 478.
[2] Am. Jur., p. 479.
[3] Mactan Workers vs. Aboitiz, 45 SCRA 577.
[4] Citing Art. 1159 and Art. 1700-1702 of the Civil Code, also Shell Workers Union vs. Shell Co. of the Phil., 39 SCRA 276.

[5] Art. IV, Sec. 1(1), Constitution.
[6] Phil. Movie Workers Association vs. Premier Production, Inc., 92 Phil. 843, citing 11 Am. Jur., Section 344, pp. 1168-1171.
[7] 24 SCRA 703.