SUPREME COURT
FIRST DIVISION

FILIPINAS PORT SERVICES, INC. DAMASTICOR,
***Petitioner*,**

-versus-

G.R. No. 86026
August 31, 1989

NATIONAL LABOR RELATIONS COMMISSION AND JOSEFINO SILVA,
***Respondents*.**
x----------x

D E C I S I O N

GANCAYCO, *J.*:

The lone issue in this case is whether or not the successor-in-interest of an employer is liable for the differential retirement pay of an employee earned by him when he was still under the employment of the predecessor-in-interest.

The uncontroverted factual and legal antecedents are as follows:

> "1. Prior to February 16, 1977, stevedoring and arrastre services for coastwise or domestic cargoes loaded at the Sta. Ana Pier and Sasa Wharf of the Port of Davao were handled

by several cargo handling operators, among whom were the following:

A. Allied Stevedoring Corporation

B. Davao Maritime Stevedoring Corporation (DAMASTICOR)

C. Davao Southern Stevedoring Corporation

D. Mt. Apo Stevedoring Corporation

E. United Stevedoring Corporation

F. Mindanao Terminal Brokerage Services, Inc.

G. Bay United Stevedoring Corporation.

During the existence of DAMASTICOR, private respondent Josefino Silva was employed by said company.

2. Subsequently, the government adopted a policy that there should be only one cargo handling operator in every port. This policy was approved in Customs Memorandum Order 28075 which was later superseded by the General Port Regulations of the Philippine Ports Authority (PPA) which fully implemented the policy. Accordingly, all the existing arrastre and stevedoring firms which were then operating individually in the Port of Davao were integrated into a single and unified service which resulted in the formation of a new corporation known as the Davao Dockhandlers, Inc. The name was later changed to Filipinas Port Services, Inc. (FILPORT), petitioner herein.

3. Petitioner started its operation on February 16, 1977. By mandate, however, of the PPA's Administrative Order No. 13-77, petitioner drew its necessary labor force, together with its personnel complement, from the merging operators. Of the employees absorbed, private respondent

was among them. He continued to work until his retirement on June 29, 1987.

4. Upon his retirement, private respondent was paid his retirement pay corresponding only to the period that he actually worked with petitioner. His length of service with DAMASTICOR was not included in the computation of his retirement pay.

5. On July 8, 1987, private respondent lodged a complaint against petitioner and/or DAMASTICOR with the Department of Labor and Employment (DOLE) demanding payment of separation pay covering the period of his employ with DAMASTICOR.

   After the submission by the parties of their respective position papers, the case was submitted for decision.

6. In its Position Paper, petitioner denied owing any monetary liability to private respondent, claiming that it could not be held liable for the payment of private respondent's separation pay corresponding to the period of the latter's employment with DAMASTICOR since it is not the successor-employer of the latter.

On the other hand, private respondent's Position Paper will show that while his complaint prayed for the payment of his separation pay, he was actually demanding payment of his differential retirement pay.

7. On January 19, 1988, the Labor Arbiter rendered a Decision, the dispositive part of which reads as follows:

   > 'WHEREFORE, premises considered, judgment is hereby rendered ordering respondent FILPORT as the survivor-employer to pay retirement pay to complainant computed from 1960 until his retirement on June 29, 1987 at thereto of one-half month pay for every year of service a fraction of at least six months being considered as one year; less payment made.

'The complaint against DAMASTICOR is ordered Dismissed inasmuch as said corporation no longer exists.'

8. Petitioner appealed the above Decision to the NLRC which was opposed by private respondent.

9. On August 16, 1988, the NLRC promulgated its Decision affirming the labor arbiter's Decision."[1]

Hence, the herein petition questioning said decision of the Fourth Division of respondent NLRC, in NLRC Case No. RABII-07-00354-87, dismissing the appeal and affirming the decision of the labor arbiter with costs against appellant.[2]

In said decision, public respondent NLRC held in effect that a succession of employment rights and obligations took place between petitioner and DAMASTICOR. Petitioner now claims the NLRC committed a grave abuse of discretion.

The petition is impressed with merit.

Petitioner's main contention is that the period of private respondent's employment with DAMASTICOR should not be considered in the computation of his retirement pay because petitioner is not the successor-employer of private respondent after DAMASTICOR.

A close scrutiny of the record of this case inevitably and clearly shows that petitioner came into existence as a juridical person only as a direct result of the merger among different cargo handling operators. With that merger, Section 118, Article X of the General Guidelines on the Integration of Arrastre/Stevedoring Services issued by the PPA mandated petitioner to draw its personnel complement from the merging operators to constitute its labor force, thus:

"Sec. 118. Absorption of labor. — Subject to the provisions of the immediate preceding section, and consistent with the actual operational requirements of the new management, all labor force together with its necessary personnel complement, of the

> merging operators shall be absorbed by the merged or integrated organization to constitute its labor force."[3]

Petitioner claims that it cannot be considered a successor-in-interest of the merged operators because of the memorandum of the PPA Assistant General Manager dated November 21, 1978, which was supposed to be a clarification of Section 116 of PPA Administrative Order No. 13-77, to wit:

> "x x x
>
> The new organization's liability shall be the payment of salaries, benefits and all other money due the employee as a result of his employment, starting on the date of his service in the newly integrated organization.
>
> x x x the absorption of an employee into a (the) newly integrated organization does not include the carry over of his length of service."[4]

In Fernando vs. Angat Labor Union,[5] this Court held that, unless expressly assumed, labor contracts are not enforceable against a transferee of an enterprise, labor contracts being in personam. On the other hand, a transferor in bad faith may be held responsible to employees discharged in violation of the Industrial Peace Act.[6]

Petitioner cannot be held liable for the payment of the retirement pay of private respondent while in the employ of DAMASTICOR. It is the latter who is responsible for the same as the labor contract of private respondent with DAMASTICOR is in personam and cannot be passed on to the petitioner. The adverted memorandum of the PPA Assistant General Manager to this effect is well taken.

WHEREFORE, the Petition is **GRANTED** and the Decision of public respondent National Labor Relations Commission of August 16, 1988 is hereby **REVERSED AND SET ASIDE** and another judgment is hereby rendered **DISMISSING** the complaint against petitioner.

SO ORDERED.

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

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[1] Pages 2 to 4, and 5 Public Respondent's Comment.
[2] Commissioner Musib M. Buat, ponente; concurred in by Commissioner Ernesto G. Ladrido, III and Braulio S. Dayday.
[3] Page 6, Comment; italics supplied.
[4] Pages 25 to 36, Rollo.
[5] 5 SCRA 248, 251 (1962) citing Visayan Transportation vs. Java, et al., 49 O.G. 4298.
[6] Majestic Employees Association vs. Court of Industrial Relations, G.R. L-12607, February 22, 1962.
