

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**MRR YARD CREW UNION, ANTONIO
VERCELES, ET AL.,**

Petitioners,

-versus-

**G.R. No. L-33621
July 26, 1976**

**PHILIPPINE NATIONAL RAILWAYS
and THE COURT OF INDUSTRIAL
RELATIONS,**

Respondents.

X-----X

DECISION

MAKASIAR, J.:

Appeal from the Order of respondent Court of Industrial Relations dated January 28, 1971, the dispositive portion of which reads:

“WHEREFORE, Premises considered, and without anymore passing upon the other claim of petitioner for a permanent appointment to the position in question and it appearing that Mr. Antonio Verceles was duly designated as Acting Chief of the Statistical Division (ORCS); had performed the duties as Chief of said office and by virtue of the provisions of Art. IX of the Collective Bargaining Agreement entered into between

respondent company and the petitioner union on December 23, 1964 on the principle of actual work, actual pay, the court finds for the petitioner and hereby state and direct:

- “1. That Antonio Verceles is entitled to salary differentials as claimed effective upon the signing of the Collective Bargaining Agreement above stated on December 23, 1964, up to the time of his retirement.
- “2. That respondent company, the Philippine National Railways, is hereby directed to pay said salary differentials.” (p. 13, CIR Decision, p. 36, rec.)

Two decisive issues are raised:

- (1) Whether or not Antonio Verceles should be awarded salary differentials for actual work performed effective October 25, 1962, the date of his designation as Acting Chief of the Statistical Division, Traffic Department of respondent company, pursuant to Office Order No. 2, and not effective December 23, 1964 as directed by respondent court; and
- (2) Whether or not respondent Court of Industrial Relations committed rank injustice when it refused to pass upon Antonio Verceles’ prayer that respondent company be compelled to grant him permanent appointment as chief of the Statistical Division, Traffic Department, of respondent company.

It appears that Antonio Verceles was In-charge of respondent company’s Freight and Passengers Statistics Office until his designation on October 25, 1962 as Acting Chief of said company’s Statistical Division (a position concededly higher in rank and salary), pursuant to Office Order No. 2, likewise dated October 25, 1962, which reads:

“OFFICE ORDER NO. 2

“Effective immediately, Mr. Antonio Verceles, Incharge of freight and Passengers Statistics, is hereby designated as Acting

Chief of the Statistical Division, Traffic Department without additional compensation vice Mr. Jose Yason who has been designated Asst. Traffic Manager for Freight and Express” (p. 27, rec., Emphasis supplied).

Before Verceles’ designation to the position in point — or on May 24, 1962, to be exact — respondent Philippine National Railways (formerly Manila Railroad Company), and the PNR Supervisors Association inked a collective bargaining agreement, Article X of which provides:

“ACTUAL WORK, ACTUAL PAY. —

“THE COMPANY and the ASSOCIATION hereby agree that whenever an employee or official with the category of Supervisor shall be assigned to a position of higher rank and salary, the COMPANY shall pay the corresponding salary attached to the position. It is understood, however, that this provision shall not apply to relief employees.”

On December 23, 1964, a new collective bargaining agreement renewed that of 1962, this time with the following provisions on actual work and pay:

“Article IX
“ACTUAL WORK, ACTUAL PAY

“The COMPANY and the ASSOCIATION agree that whenever an employee in the category of Supervisor will be assigned to position of higher rank and salary, whether by automatic assumption of duties or by designation in acting or temporary capacity, the COMPANY is under obligation to pay said employee the corresponding salary pertaining to that higher position and shall undertake all necessary steps to the end that the employee concerned shall be paid the salary corresponding to the higher position. It is understood, however, that this provision shall not be applicable to relief employees if the period of such relief will not exceed fifteen (15) days” (p. 3, Petitioners’ Brief, p. 87 rec.).

At the hearing, it was not impugned that during his tenure as Acting Chief, Statistical Division, Verceles discharged all the duties of chief of said division, with, however, a salary of only P3,720.00 per annum, instead of the P6,600.00 per annum attaching to a division chief.

On March 5, 1963, Verceles sent a memorandum to the Traffic Manager requesting that he be extended permanent appointment as Chief of the Statistical Division inasmuch as according to him, since his designation as acting chief of the same division, he has shown diligence and supervisory skill, or the competence demanded of a division chief.

On March 3, 1964, Verceles reiterated his request for a permanent status.

Then again on January 5, 1965, Verceles wrote a third letter to the Traffic Manager concerning his request and reminding the latter of his commitment to appoint Verceles as Chief of the Office. This third letter was with the request that if he is not qualified in spite of his 90% efficiency rating, he be returned to his former position as In-charge of Freight and Passengers Statistics.

Finally, on October 7, 1966, Verceles wrote a fourth letter requesting the General Manager to give him a permanent appointment.

With Verceles' communications unacted upon, the PNR Supervisors' Association — a union counting on the active membership of Verceles — entered the scene, and wrote a letter to the General Manager on January 19, 1967, invoking the provisions of the collective bargaining agreement on "Equal Work, Equal Pay", and requesting that: (a) Verceles be paid the salary of P6,600.00 per annum, or that corresponding to the position to which he was designated, and (b) that Verceles be accorded permanent appointment, taking into account the services he has rendered as Acting Chief, Statistical Division for some five (5) years. This communication was followed by two more letters dated January 27, 1967 and February 23, 1967.

When respondent company, however, remained indifferent, petitioner union finally lodged a petition with respondent Court of Industrial Relations on March 27, 1967, praying that Verceles be paid

salary differentials effective October 25, 1962, and that respondent company be directed to extend to Verceles a permanent appointment to the position of Chief, Statistical Division, Traffic Department, effective from the date Jose Yason's appointment as Assistant Traffic Manager became permanent.

On April 12, 1967, respondent Philippine National Railways filed its answer admitting some material allegations in the petition, but likewise averring, among others, that there is actually no such position as Chief, Statistical Division, in the company (although it admitted having designated Verceles as Acting Chief of said position).

On January 28, 1971, respondent industrial court issued the herein appealed order recognizing Verceles' right to pay differentials, but only effective December 23, 1964 up to the time of his retirement on June 13, 1967. However, respondent court refused to pass upon petitioners' prayer for Verceles' permanent appointment.

In a motion for reconsideration, petitioners prayed that the recoverable pay differentials should be computed from October 25, 1962 and urged that Verceles' prayer for a permanent status be resolved. Said motion was denied on April 21, 1971 for lack of merit.

On June 9, 1971, petitioners filed a notice of appeal.

On December 14, 1971, respondent Philippine National Railways filed its answer with this COURT, specifically denying Verceles' right to salary differentials "because it was very clear in the office order designating him Acting Chief of the Statistical Division, Traffic Department that it is without additional compensation" (p. 78, rec.), and maintaining that "the designations and/or appointment of employees in the PNR is a management right" (p. 79, rec.).

I

WE agree with respondent Court of Industrial Relations that Antonio Verceles should be paid salary differentials for his services as Acting chief of the Research, Control and Statistics Division (Statistical Division), Traffic Department of respondent company. A contrary view would be to blatantly disregard the provisions of the collective

bargaining agreements on “Actual Work, Actual Pay” entered into between petitioners and respondent company on May 24, 1962 and on December 23, 1964.

That the office of chief, Statistical Division, is inexistent, as claimed by respondent company, is a palpable lie. The office was existing previous to Verceles’ designation as Acting Chief of the same, and was headed by one Jose Yason with a salary of P6,600.00 per annum. Precisely, when Yason was promoted to the higher office of Assistant Traffic Manager, Verceles was designated to succeed him although in an acting capacity only. Office Order No. 2 itself specifies the position “Acting Chief of the Statistical Division.” Yason affirmed this on the witness stand, and the Court of Industrial Relations accorded him full faith and credit. The respondent firm already admitted the existence of the position when it alleged in its answer that the office was abolished in July, 1965 after Yason retired on February 8, 1965 (p. 79, rec.).

Respondent company’s further claim that upon the retirement of Jose Yason on February 8, 1965, the position of Assistant Traffic Manager was impliedly abolished in July, 1965 and that the duties of Chief, Statistical Division were, since then and up to the present, performed by the Traffic Manager, thereby rendering the office of Chief, Statistical Division not only an unwanted office but more so, inexistent, cannot be believed. In the first place, WE cannot countenance an abolition of office by implication (*Cuneta vs. Court of Appeals*, L-13264, February 28, 1961, 1 SCRA 663). In the second place, abolition of office should always be done in good faith. As WE held in the case of *Canonigo vs. Ramiro* (L-26316, January 30, 1970, 31 SCRA 278), the power to abolish an office is not absolute; it is subject to the limitation that the same be exercised in good faith, to be valid. In the present case, the want of notice to Verceles of the alleged abolition of the office of Assistant Traffic Manager immediately after the retirement of Jose Yason is a clear badge of bad faith, which nullifies the alleged abolition. And in the third instance, WE repeat the fact that Verceles assumed all the functions of chief of office during his tenure as Acting Chief of the Statistical Division was never refuted by respondent company at the trial.

True it is that Verceles' designation as Acting chief was expressly made "without additional compensation". This provision in Office Order No. 2 cannot, however, prevail over the provisions on "Actual Work, Actual Pay" contained in the collective bargaining agreements of 1962 and 1964 between petitioners and respondent company. Under said provisions, it is very clear that a company employee assigned or designated to discharge the duties of an officer of a higher rank is to receive the corresponding work pay attaching to such higher rank.

The fact that Verceles received the salary of P3,720.00 annually as former In-charge of the Freight and Passengers Statistics Office from October 25, 1962 until his union filed on March 27, 1967 the petition with respondent Court of Industrial Relations, does not militate against him.

Verceles' case is quite analogous to that of Franklin Baker Company of the Philippines versus Alillana (L-25245, December 11, 1967, 21 SCRA 1247), wherein WE held:

"That the employee has signed a satisfaction receipt does not result in waiver; the law does not consider as valid any agreement to receive less compensation than what a worker is entitled to recover."

In this petition with the Court of Industrial Relations, petitioners clearly seek that Verceles be paid his corresponding pay adjustment effective October 25, 1962. This is manifest from paragraphs 5 and 6 as well as prayer of the petition, which state:

"5. That, in the meantime, Jose Yason was retired on February 8, 1965, but in spite of such retirement and repeated demands, the respondent company has refused and/or failed to give permanent appointment to Antonio Verceles who took his place and who has been discharging his duties since October 25, 1962, in accordance with Office order No. 2 of the same date, notwithstanding the provisions of Article VI of the Collective Bargaining Agreement between the parties."

6. That in accordance with the Collective Bargaining Agreement between the parties as cited above, Antonio Verceles should have been paid the salary of P6,000.00 per annum attached to the position of Jose Yason upon his designation as Acting Chief of Statistical Division, Traffic Department, or at least from the execution of the Collective Bargaining Agreement on December 23, 1964.

“WHEREFORE, it is respectfully prayed that the respondent be ordered to pay Antonio Verceles salary differential, or the difference between the salary of P6,600.00 per annum attached to the position of Jose Yason to which he was designated on October 25, 1962, in acting capacity and his actual salary of P3,720.00 per annum.” (pp. 18, 19, rec., Emphasis supplied).

WE are of the opinion that Article X of the May 24, 1962 collective bargaining agreement governs the effectivity of the salary differentials due Antonio Verceles; because that was the collective bargaining agreement which was in force and operative when Verceles was designated on October 25, 1962 as Acting Chief of the office. Moreover, the December 23, 1964 collective bargaining agreement continued the stipulation by substantially reincorporating said Article X of the 1962 Collective bargaining agreement. To regard the 1962 collective bargaining agreement not applicable to Verceles' designation to, and the actual commencement of his performing the duties of, the position in question on October 25, 1962, would do violence to the following provisions of Section 13 of the Industrial Peace Act (R.A. 875) “that neither party shall terminate or modify an existing collective bargaining agreement, unless it has served a written notice upon the other party of the proposed termination or modification at least 30 days prior to the expiration date of the agreement, or in the absence of an express provision concerning the period of validity of such agreement prior to the time it is intended to have such termination or modification take effect.”

Moreover, to deny binding force to the May 24, 1962 collective bargaining agreement would place a premium on a refusal by respondent company to comply with the terms of said agreement — a gesture which, in the recent case of NDC vs. NDC Employees and

Workers' Union (L-32387, August 19, 1975), WE denounced as an unfair labor practice.

III

Verceles' prayer for permanent appointment has been rendered moot and academic by his retirement from office in 1967. Of relevance, is OUR ruling in Dirampaten vs. Alonto (L-25052, March 15, 1968, 22 SCRA 1083) wherein WE stressed that:

“The petition is dismissed where a supervening circumstance rendered the petition moot and academic for all practical purposes” (Emphasis supplied)

In the instant case, Verceles' retirement in 1967 was the supervening circumstance that makes his prayer for a permanent status moot and academic, in the absence of proof that his retirement was involuntary.

WHEREFORE, THE ORDER OF RESPONDENT COURT OF INDUSTRIAL RELATIONS DATED JANUARY 28, 1971 IS HEREBY MODIFIED TO THE EFFECT THAT ANTONIO VERCELES IS ENTITLED TO SALARY DIFFERENTIALS EFFECTIVE UPON HIS DESIGNATION AS ACTING CHIEF, STATISTICAL DIVISION, ON OCTOBER 25, 1962, UNTIL HIS RETIREMENT ON JUNE 13, 1967. SAID ORDER IS HEREBY AFFIRMED IN ALL OTHER RESPECTS. WITHOUT COSTS.

Teehankee, C.J., (Chairman), Muñoz Palma, Aquino and Martin, J.J., concur.

Aquino, J., was designated to sit in the First Division.