CHANROBLES PUBLISHING COMPANY

SUPREME COURT
SECOND DIVISION

SAN MIGUEL CORPORATION,
***Petitioner-Appellee*,**

-versus-

G.R. No. L-55062
February 26, 1988

THE NATIONAL LABOR RELATIONS COMMISSION, THE ARBITRATION BRANCH OF REGION NO. IV and ALFONSO GARCIA, JR.,
***Respondents-Appellants*.**
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D E C I S I O N

YAP, *J.*:

In this Petition for *Certiorari*, petitioner seeks to annul the decision dated August 22,1980 of the National Labor Relations Commission in NLRC Case No. RB-IV-2113-78-T, entitled "Alfonso Garcia, Jr. vs. San Miguel Corporation," affirming the decision of the Labor Arbiter Teodorico L. Rogelio, dated August 23, 1978, which ordered petitioner to extend financial assistance to herein complainant, equivalent to separation pay of one-half (½) month for every year of service, or a total of Five Thousand Eight Hundred Pesos (P5,800.00).

On September 29, 1980, this Court issued a temporary restraining order enjoining respondents from executing the decisions dated August 23, 1978 and August 22, 1980.

After public and private respondents filed their comments on the petition, and the petitioner filed its reply thereto, this Court, on February 13, 1981, gave due course to the petition. Petitioner filed its memorandum on March 26, 1981, and the public respondent on April 10, 1981. The private respondent filed a Manifestation and Motion adopting the memorandum of public respondent, and praying that instead of P5,800.00, he should be awarded the amount of P13,050.00, which was the amount he would be entitled under petitioner's Health, Welfare and Retirement Plan.

The facts of the case are as follows:

Respondent Alfonso Garcia, Jr. was employed on April 16, 1968 as checker at petitioner's brewery in Polo, Bulacan. After around nine (9) years of service, he was promoted on March 1, 1977 as Shift Head, Container Section, with a salary of P940.00 a month, which was later increased to P1,600.00.

After his promotion, Garcia started to incur several unauthorized absences or absences without permission on account of chronic ailments. He was absent on March 10,14, 15, 18 and 30, 1977; October 24, 1977; November 25, 1977; December 9, 12, 14, 20, 21 and 28, 1977, or a total of fourteen (14) days. It was established that during the period of his absences, Garcia was suffering from "hypertension," "cramps," "palpitation," "anal fissures" and "hemorrhoids. "In fact, he was hospitalized at the Makati Medical Center on August 24 to 27, 1977, and again, on December 22 to 24, 1977, because of said ailments. Also, there were instances when, while driving his car to and from the office, he would suffer dizzy spells. In December 1977, he even collapsed while at work.

On December 12, 1977, Garcia formally submitted leave application to cover his absences on October 24, 1977, November 28, 1977 and December 8, 9 and 12, 1977. He likewise filed on December 29, 1977 leave application for his absences on December 20 and 21, 1977. The same, however, were all disapproved by the company. Thus, upon

advice of petitioner's personnel officer, Garcia was constrained to file on January 10, 1978 his application for voluntary retirement. In said application, he stated that whatever amount he would receive as retirement benefit would be used by him for his much needed medical treatment and for the education of his children. However, instead of acting on Garcia's retirement application, the company filed on January 27, 1978 an application for clearance to terminate his services, invoking company rules which provide that nine (9) unauthorized absences in a calendar year is a ground for dismissal.

Garcia opposed the application of petitioner to terminate his services. Hence, it was certified to the Labor Arbiter for hearing. Position papers and documentary evidence were submitted. On the basis thereof, the Labor Arbiter ruled:

> "WHEREFORE, in view of all the foregoing, while herein complaint/opposition is hereby dismissed for lack of merit, respondent is hereby ordered to extend financial assistance to herein complainant, equivalent to separation pay of one-half (½) month for every year of service, or a total of Five Thousand Eight Hundred Pesos (P5,800.00).
>
> SO ORDERED."

Dissatisfied with the decision, both petitioner and private respondent appealed to the National Labor Relations Commission (NLRC). In a decision dated August 22, 1980, the NLRC affirmed the foregoing judgment. Still not satisfied, the company filed the instant petition questioning the propriety of the award of P5,800.00 as financial assistance.

Petitioner contends that it was grave abuse of discretion on the part of respondent NLRC to award P5,800.00 to Garcia on grounds of equity, inspite of the finding that his termination was for cause. An employee who is terminated for cause is no longer entitled to separation pay. To sanction the giving of monetary awards at the virtual discretion of the adjucative body on the afore-quoted reason of "compassionate society", when no such discretion is lodged by law, would violate an equally important precept that employers have also rights which must be respected and likewise protected. Article 2085

of the Labor Code which is being used to justify the grant of financial award is inapplicable to the instant case, as it applies to employees found suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health and that of his co-employees.

Petitioner has misread the purport of the respondent NLRC's decision. The NLRC did not seek to justify the award of financial assistance to Garcia on the basis of Article 285 of the Labor Code. The NLRC did not consider the dismissal of Garcia justified under the circumstances, and was for a liberal implementation of the rules and regulations of the company. Said the respondent NLRC:

> "It is true that in certain cases, and as circumstances warrant, the Commission awards financial assistance to certain separated employees. Such pronouncements, however, had been anchored upon the premise that an implementation of the strict letter of the company rules would not serve the ends of labor justice especially so if the subject employee is visited by circumstances not wholly attributable to his fault.
>
> It will be observed that while complainants had in fact committed several absences which were violative of respondent's rules and regulations, such were committed due to illness which is beyond the control of complainant herein. To show that complainant acknowledges his shortcomings, he filed an application on January 10, 1978, for voluntary retirement due to illness.
>
> However, instead of acting on the application, respondent proceeded to file an application for clearance to terminate complainant's services on January 27, 1978, for gross and habitual neglect of duties (unauthorized absences).

From the foregoing, we opine that respondent's rules and regulations should have been liberalized in its implementation. Otherwise respondent could have opted to act favorably on complainant's application for retirement with the attendant privileges thereto or to separate herein complainant from the service on grounds of sickness under Article 285 of the Labor Code which provides that:

> "Disease as ground for termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one half (½) monthly salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered at one (1) whole year."
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> "Under such circumstances, there would have been no need to quibble as to the propriety of the grant of financial assistance, as indeed the monetary award so granted is sustainable on other equitable grounds as earlier adverted to."

We find that public respondent has not committed a grave abuse of discretion in sustaining the award of P5,800.00 to private respondent Garcia. There is nothing in the decision of the NLRC which indicates that Garcia's dismissal was justified. In fact, the respondent NLRC was for a liberal implementation of petitioner's rules and regulation, considering that the equities of the case do not justify the dismissal of Garcia. The public respondent suggested in the decision that the company could have opted to act favorably on Garcia's application for retirement or to separate him on the ground of sickness under Article 285 are inapplicable, that does not preclude other options open to the parties or the court in resolving the matter in consonance with justice and equity.

On the private respondent's request that the award of P5,800.00 be increased to P13,050.00, because under the petitioner's Health, Welfare and Retirement Plan, any permanent employee who is separated from the service for a cause other than his misconduct or voluntary resignation, is entitled to retirement benefits equivalent to one month salary for every year of service, regardless of length of service (Article IX, Collective Bargaining Agreement), we find the claim for modification of the award meritorious.

WHEREFORE, the Petition is **DISMISSED** for lack of merit and the Temporary Restraining Order issued on September 29, 1980 is

hereby lifted. The decision of public respondent in NLRC Case No. RB-IV-21113-78, dated August 22, 1980 is hereby affirmed, with the modification that the award to private respondent Garcia is increased from P5,800.00 to P13.050.00 No costs. This decision is final and immediately executory.

SO ORDERED.

Melencio-Herrera, Paras and Sarmiento, *JJ.*, concur.
Padilla, *J.*, took no part in deliberation.

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