SUPREME COURT
EN BANC

RUBEN SERRANO,
***Petitioner*,**

-versus-

G.R. No. 117040
May 4, 2000

NATIONAL LABOR RELATIONS COMMISSION and ISETANN DEPARTMENT STORE,
***Respondents*.**
x----------x

R E S O L U T I O N

MENDOZA, *J.*:

Respondent Isetann Department Store Moves for Reconsideration of the Decision in this case insofar as it is ordered to pay petitioner full backwages from the time the latter's employment was terminated on October 11, 1991 up to the time it is determined that the termination of employment is for an authorized cause. The motion is opposed by petitioner. The decision is based on private respondent's failure to give petitioner a written notice of termination at least thirty (30) days before the termination of his employment as required by Art. 283 the Labor Code.

In support of its motion, private respondent puts forth three principal arguments, to wit: (1) that its failure to give a written notice to petitioner at least thirty (30) days in advance in accordance with Art. 283 of the Labor Code is not in issue in this case because, as a matter of fact, it gave its employees in the affected security section thirty (30) days pay which effectively gave them thirty (30) days notice, and petitioner accepted this form of notice although he did not receive payment; (2) that payment of thirty (30) days pay in lieu of the thirty (30) days prior formal notice is more advantageous to an employee because instead of being required to work for thirty (30) days, the employee can look for another job while being paid by the company; and (3) that in any event the new ruling announced in this case should only be applied prospectively.

Private respondent's contentions have no merit.

First. Private respondent states that in September 1991, its employees in the security section were called to a meeting during which they were informed that a security agency would take over their work and that the employees would be paid "their last salaries, one month pay for every year of service and proportionate 13th month pay"; that all affected personnel, numbering around fifty (50), accepted the company's offer and stopped working by October 1, 1991, although they were paid their salaries up to October 31, 1991; that petitioner Ruben Serrano said he was reserving the right to take advantage of the offer but after several months brought this case before the Labor Arbiter's office. Private respondent claims that "petitioner accepted the mode of notice in this case [and] never questioned it" and that "not having been raised as an issue in the petition the said notice requirement 'lies outside the issues raised by the pleadings of the parties' and should not be passed upon by this Honorable Court."

It is not true that the validity of private respondent's offer to pay thirty (30) days salary in lieu of the thirty (30) days written notice required under Art. 283 of the Labor Code was not raised in issue in this case. Private respondent itself raised the issue in its position paper before the Labor Arbiter's office, thus:

> Respondent was, from the time of petitioner's separation, offering to pay his last salary and proportionate 13th month pay less payment of his loan but he unreasonably refused to accept it.
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> On October 11, 1991, petitioner together with all other employees holding the position of Security Checker were formally terminated by the Respondent Company on the ground of the adoption of cost saving devices. Accordingly, all the security checkers were duly paid one month for every year of service plus their last salaries and proportionate 13th month pay less payments for loans obtained from the Respondent Company and other dues deductible from their last salary. All the security checkers with the sole exception of petitioner herein, gladly accepted the offer and readily got what was due to them and in turn, executed an "Affidavit of Quitclaim" manifesting their utter satisfaction to the offer of Respondent and expressed their waiver and quitclaim for any claims from the company. Respondent reserves the right to present such affidavits of quitclaim at the right opportune time. After a few months, petitioner did not manifest his reaction to the company's offer after he failed to appear on the day the Respondent scheduled the giving of the separation pay and other amounts due to them. The next time, Respondent received a word from petitioner was when it received this summons.[1]

Joining issue with private respondent with respect to the validity of the latter's scheme for terminating the services of its security employees, petitioner contended before the Labor Arbiter:

> 2. Petitioner's dismissal is patently illegal. The constitutional duty of the state to protect the right of the laborers to security of tenure demands that an employer may be permitted to terminate the services of an employee only under conditions allowed by and with due process of law (Cebu Stevedoring Co., Inc., vs. Regional Director/Minister of Labor, 168 SCRA 315).

3. This doctrinal pronouncement of the Highest Tribunal was wantonly disregarded by respondent in the instant case [a]s purely narrated by [petitioner] in his affidavit Annex "A." He performed his work faithfully and efficiently and he never transgressed the rules and regulations of company during the entire period of his employment. The commendation of the Company with regard to petitioner's exemplary performance are attached and marked as Annex "G" to "G-27" respectively. However, he was verbally told and notified by respondent's Human Resource Division Manager Teresita A. Villanueva that his employment was terminated on October 11, 1991.

Indeed, it is mandatory for an employer to accord to the supposed errant or unwanted worker the legal requirements of written notice of the specific reason for the retrenchment and eventual termination of complainant and he should have been given a chance to present his side, otherwise, the worker's security of tenure would be at the pleasure of the employer.[2]

Ruling on this issue as thus defined by the parties' pleadings, the Labor Arbiter held that petitioner "was not afforded due process. Respondent merely issued to him a dismissal letter stating retrenchment as the sole ground for his dismissal."[3] But, as the Labor Arbiter found, private respondent failed to prove that it was laying off employees in order to prevent or minimize losses. Accordingly, he ruled that petitioner had been illegally dismissed and ordered him to be reinstated and paid full backwages and other monetary benefits to which he was entitled.

Private respondent appealed to the NLRC. Maintaining that it had complied with the notice requirement of the law, it said in its Memorandum on Appeal:

> POINT SIX. — When the [Labor Arbiter's] decision finds that petitioner was not afforded due process, the Hon. Labor Arbiter failed to make distinction between termination by reason of "just causes" (Arts. 282, Labor Code) and termination for "authorized causes" (Art. 283 and 284, Labor Code). Due Process which is to afford an employee to explain why he should

> not be terminated is only required if termination is for just cause under Art. 282 but not in termination for authorized causes under Arts. 283 and 284 of the Labor Code. Termination for authorized causes requires notice of 30 days before the intended termination date or in lieu of notice, payment of wages for 30 days which respondent, in the case at bar, was willing to pay the complainant.[4]

The NLRC reversed the Labor Arbiter's decision not because it found that private respondent had complied with the notice requirement but only that petitioner's employment had been terminated for a cause authorized by law, i.e., redundancy. Accordingly, the NLRC ordered petitioner to be given separation pay in addition to the other monetary benefits to which he is entitled.

Indeed, the NLRC failed to address the question of whether the notice requirement in Art. 283 had been complied with. Because of this gap in the NLRC decision, this Court, in affirming the decision, ordered the payment of full backwages to petitioner from October 11, 1991 — when his employment was terminated without the requisite thirty (30) days written notice — until the decision finding the termination to be for an authorized cause had become final.

There is thus no basis for private respondent's allegation that its failure to give a written notice of termination to petitioner was never in issue and that, in awarding full backwages to petitioner for its failure to comply with the notice requirement of Art. 283 of the Labor Code, this court dealt "almost entirely" with a "non-issue."

In any event, this Court has authority to inquire into any question necessary in arriving at a just decision of a case before it.[5]

Second. It is contended that payment of petitioner's salary for thirty (30) days, "even when [he is] no longer working, is effective notice and is much better than 30 days formal notice but working until the end of the 30 day period."[6] Private respondent's letter of October 11, 1991, so it is claimed, was a mere reiteration of the oral notice previously given to petitioner in September that effective October 1, 1991, he and his fellow security checkers would no longer be required to work because they would be replaced by a security agency,

although they would be given their salary for the month of October 1991.

Private respondent's position has no basis in the law. The requirement to give a written notice of termination at least thirty (30) days in advance is a requirement of the Labor Code. Art. 283 provides:

> Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof . In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis added)

As pointed out in Sebuguero vs. National Labor Relations Commission:[7]

> What the law requires is a written notice to the employees concerned and that requirement is mandatory. The notice must also be given at least one month in advance of the intended date of retrenchment to enable the employees to look for other means of employment and therefore to ease the impact of the loss of their jobs and the corresponding income.

> Nothing in the law gives private respondent the option to substitute the required prior written notice with payment of thirty (30) days salary. It is not for private respondent to make substitutions for a right that a worker is legally entitled to. For instance, as held in Farmanlis Farms, Inc. vs. Minister of Labor,[8] under the law, benefits in the form of food or free electricity, assuming they were given, were not a proper substitute for the 13th month pay required by law.
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> Indeed, a job is more than the salary that it carries. Payment of thirty (30) days salary cannot compensate for the psychological effect or the stigma of immediately finding one's self laid off from work. It cannot be a fully effective substitute for the thirty (30) days written notice required by law especially when, as in this case, the fact is that no notice was given to the Department of Labor and Employment (DOLE).
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> Besides, as we held in our decision in this case,[9] the purpose of such previous notice is to give the employee some time to prepare for the eventual loss of his job as well as the DOLE the opportunity to ascertain the verity of the alleged authorized cause of termination. Such purpose would not be served by the simple expedient of paying thirty (30) days salary in lieu of notice of an employee's impending dismissal, as by then the loss of employment would have been a fait accompli.
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> Private respondent nevertheless claims that payment of thirty (30) days salary in lieu of written notice given thirty (30) days before the termination of employment is in accordance with our ruling in Associated Labor Unions-VIMCONTU vs. NLRC.[10]

This claim will not bear analysis. In that case, the employees and the then Ministry of Labor and Employment (MOLE) were notified in writing on August 5, 1983 that the employees' services would cease on August 31, 1983 but that they would be paid their salaries and other benefits until September 5, 1983. It was held that such written notice was "more than substantial compliance" with the notice requirement of the Labor Code.

Indeed, there was "more than substantial compliance" with the law in that case because, in addition to the advance written notice required under Art. 284 (now Art. 283) of the Labor Code, the employees were paid for five days, from September 1 to 5, 1993, even if they rendered no service for the period. But, in the case at bar, there was no written notice given to petitioner at least thirty (30) days before the termination of his employment. Had private respondent given a written notice to petitioner on October 1, 1991, at the latest, that effective October 31, 1991 his employment would cease although from October 1 he would no longer be required to work, there would be basis for private respondent's boast that "payment of this salary even if he is no longer working is effective notice and is much better than 30 days formal notice but working until the end of the 30 days period." This is not the case here, however. What happened here was that on October 11, 1991, petitioner was given a memorandum terminating his employment effective on the same day on the ground of retrenchment (actually redundancy).

Third. It is contended that private respondent's non-observance of the notice requirement should not be visited with a severe consequence in accordance with Art. III, §19(1) of the Constitution. The contention is without merit. In the first place, Art. III, §19(1) of the Constitution, prohibiting the imposition of excessive fines, applies only to criminal prosecutions. In the second place, the decision in this case, providing for the payment of full backwages for failure of an employer to give notice, seeks to vindicate the employee's right to notice before he is dismissed or laid off, while recognizing the right of the employer to dismiss for any of the just causes enumerated in Art. 282 or to terminate employment for any of the authorized causes mentioned in Arts. 283-284.[11] The order to pay full backwages is a consequence of the employer's action in dismissing an employee without notice which makes said dismissal ineffectual.[12] The employee is considered not to have been terminated from his employment until it is finally determined that his dismissal/termination of employment was for cause and, therefore, he should be paid his salaries in the interim. This eliminates guesswork in determining the degree of prejudice suffered by an employee dismissed with cause but without notice since the penalty is measured by the salary he failed to earn on account of his dismissal/termination of employment.

Fourth. Private respondent finally contends that, in any event, the new doctrine announced in this case should only be applied prospectively. Private respondent invokes the ruling in Columbia Pictures, Inc. vs. Court of Appeals[13] that —

> While a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.

It is apparent that private respondent misconceived the import of the ruling. The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.

Indeed, when the Court formulated the Wenphil doctrine,[14] which we reverse in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there. For that matter, in 20th Century Fox Film Corp. vs. Court of Appeals[15] the Court laid down the rule that in determining the existence of probable cause for the issuance of a search warrant in copyright infringement cases, the court must require the production of the master tapes of copyrighted films in order to compare them with the "pirated" copies. The new rule was applied in opinion of the Court written by Justice Hugo E. Gutierrez, Jr. in the very same case of 20th Century Fox in which

> the new requirement was laid down. Where the new rule was held to be prospective in application was in Columbia Pictures and that was because at the time the search warrant in that case was issued, the new standard had not yet been announced so it would be unreasonable to expect the judge issuing the search warrant to apply a rule that had not been announced at the time.
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> A good illustration of the scope of overruling decisions is People vs. Mapa,[16] where the accused was charged with illegal possession of firearms. The accused invoked the ruling in an earlier case[17] that appointment as a secret agent of a provincial governor to assist in the maintenance of peace and order sufficiently put the appointee in the category of a "peace officer" equal to a member of the municipal police authorized under §879 of the Administrative Code of 1917 to carry firearms. The Court rejected the accused's contention and overruled the prior decision in People vs. Macarandang on the ground that §879 of the Administrative Code of 1917 was explicit and only those expressly mentioned therein were entitled to possess firearms. Since secret agents were not among those mentioned, they were not authorized to possess firearms.

Although in People vs. Jabinal[18] the Court refused to give retroactive effect to its decision in Mapa, because the new doctrine "should not apply to parties who had relied on the old doctrine and acted in good faith thereon" and, for this reason, it acquitted the accused of illegal possession of firearms, nonetheless it applied the new ruling (that secret agents of provincial governors were not authorized to possess firearms) in the very case in which the new rule was announced and convicted the accused.

In the case at bar, since private respondent does not even claim that it has relied in good faith on the former doctrine of Wenphil and its progeny Sebuguero vs. NLRC, there is no reason not to apply the new standard to this case.

WHEREFORE, private respondent's motion for reconsideration is **DENIED** with finality for lack of merit.

SO ORDERED.

Davide, Jr., *C.J.*, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., *JJ.*, concur.

Bellosillo, Vitug and Panganiban, *JJ.*, reiterated their separate opinion in the main decision.

Puno, *J.*, reiterated his dissenting opinion in the main decision.

Melo, Kapunan and Purisima, *JJ.*, are on leave.

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[1] Private Respondent's position Paper, pp. 2-3; Records, pp. 53-54. (Emphasis added)
[2] Petitioner's Position Paper, pp. 5-7; id., 13-18. (Emphasis added)
[3] Petition, Annex A, p. 6; Rollo, p. 32.
[4] Private Respondent's Memorandum on Appeal, p. 8; Records, p. 263. (Emphasis added)
[5] Korean Airline Co., Ltd. vs. Court of Appeals, 234 SCRA 717 (1994); Vda. De Javellana vs. Court of Appeals, 123 SCRA 799 (1983).
[6] Private Respondent's Motion for Partial Reconsideration, p. 4; Rollo, p. 335.
[7] 248 SCRA 532, 545 (1995).
[8] 171 SCRA 87 (1989).
[9] Decision, p. 15; Rollo, p. 228. See also International Hardware, Inc. vs. NLRC, 176 SCRA 256 (1989).
[10] 204 SCRA 913 (1991).
[11] Decision, p. 13; Rollo, p. 226.
[12] Id., p. 19; id., p. 232.
[13] 261 SCRA 144, 168 (1996).
[14] Wenphil Corp. vs. NLRC, 170 SCRA 69 (1989).
[15] 164 SCRA 655 (1988).
[16] 20 SCRA 1164 (1967).
[17] People vs. Macarandang, 106 Phil. 713 (1959).
[18] 55 SCRA 607 (1974).
