SUPREME COURT
SECOND DIVISION

FILOMENO SOBERANO, CRISPILO MERCORIO, VEDAL ESPADILLA, JAIME PLANE, SABAS ORDILLA, EMELIANO RODRIGUEZ, PABIANO CALERO, FRANCISCO AMAR, CEPRIANO ZARAGOSA, AGUSTIN DONESA, CALIXTO GULMATICO, VICTORIO BERVISCO, ALEJANDRO LABRADOR, ZOILO FEBRANO, DOMINGO ABILLAR, BENJAMIN GARNICA, MIGUEL ARDIENTE, SALVADOR GERONCA, DANIEL HERRERO, MAGNO DELOVIO, SR., SALVADOR JAVA, VICENTE FERNANDEZ, SALVADOR GONZAGA, ANGEL GEANGA, EDUARDO CHOME, MAURO CUDO, GAUDENCIO DE LA CRUZ, JULIO TRUNIO, ERNESTO DUENA, FRUTO HERADA, BALTAZAR CASTOR, FIDEL MORONG, VICENTE LEDESMA, SR., FEDERICO ARNAEZ, SR., ZOILO DIAMONON, BERNABE PONELES, JORGE BAZAR, AGUSTIN GARSULA, DELFIN SABLA-ON, DOMINGO MENDOZA, FELICIANO BAZAR, ARCADIO PACHECO, CONSTANCIO DERLA, SR., FELIMON GEMENO, VALENTIN CANETE, MANUEL TOLBO, AURELIO DIONES, JOSE ABELLO, SR., ROQUE GERSABA, VICENTE CASTILLANO, MARIANO DE

OCA, EMILIANO HILARDE, SR., ESTEBAN OPSIMA, TRANQUILINO PEREZ, CORNELIO CABALES, CENON TUGAFF, FRANCISCO LEONARDO, ELEUTERIO SAYLO, JUAN CADELENA, JOSE VILLARENTE, FRANCISCO CANETE, JUAN ALVAREZ, TOMAS VISITACION, AURELIO VALDEZ, FELIPE DAULONG, JULIO ELENTORIO, MANUEL FIDEL, ROMOBONO MALACAD, and FELICISIMO ZARSUELO,

***Petitioners*,**

-versus-

G.R. Nos. L-43753-56
& L-50991
August 29, 1980

THE HONORABLE SECRETARY OF LABOR, TALISAY-SILAY MILLING CO., INC., and BACOLOD-MURCIA MILLING CO., INC.,

***Petitioner*,**

-versus-

THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES THRU PRESIDENTIAL EXECUTIVE ASSISTANT JACOBO C. CLAVE, & SERAFIN JIMENEZ, ET AL.,

***Respondents*.**

x----------x

D E C I S I O N

BARREDO, *J.*:

Two Petitions for Review, one (in G. R. No. L-47353-56) of the decision of the Secretary of Labor, which appears to be in conflict with that (in G. R. No. L-50991) of the Office of the President, thru Presidential Executive Assistant Jacobo J. Clave, although the said cases arose from practically identical or similar factual backgrounds.

The first Petition relates to four cases, N.L.R.C. Cases Nos. 1130-74, filed on August 5, 1974, and N.L.R.C. Cases Nos. MC-0951-74, MC-1292-74 and MC-11-55-74. The four cases involve 69 employees and laborers of the private respondents in G.R. No. L-43753-56, Talisay-Silay Milling Co. Inc. and the Bacolod-Murcia Milling Co. Inc.

The material facts of said cases are stated in general terms in the decision of the Secretary of Labor dated February 6, 1976 which We deem best to quote in full in order to show at once the legal grounds thereof which We will correspondingly dwell on anon:

> "Republic of the Philippines
> Department of Labor
>
> OFFICE OF THE SECRETARY
> Manila
> NLRC Case No. 1130-74
>
> "FILOMENO SOBERANO, ET AL., complainants, vs. TALISAY-SILAY MILLING CO., INC., respondents.
> NLRC Case No. MC-0951-74
>
> "ZOILO DIAMONON, ET AL., complainants, vs. BACOLOD-MURCIA MILLING CO., INC., respondent.
> NLRC Case No. MC-1292-74

ELEUTERIO SAYLO, ET AL., complainants, vs. BACOLOD-MURCIA MILLING CO., INC., respondent.
NLRC Case No. MC-1155-74

AURELIO VALDEZ, ET AL., complainants, vs. BACOLOD-MURCIA MILLING CO., INC., respondent.

"The above-captioned cases are herein consolidated for purposes of this Decision considering that the issues therein as well as the rulings of the ad hoc National Labor Relations Commission on these issues are analogous.

The ad hoc Commission ruled that complainants are not entitled to separation pay considering that they were not dismissed unjustifiably by respondent; that the termination of their services was on account of their retirement pursuant to their respective collective bargaining agreements.

"The record reveals that some of the complaints applied for voluntary retirement and the others were retired upon reaching the age of sixty. Under the parties' respective collective bargaining agreements, complaints were granted retirement benefits equivalent to one-half month salary for every year of service for the first 10 years and one month salary from the 11th year till retirement, but no exceeding 12 months. They all executed Deeds of Quit Claim.

"Complaints, however, question the validity of the retirement schemes in their respective collective bargaining agreements. They cited paragraph 3, Section 2 of the Termination Pay Law which provides:

> 'Any contract or agreement contrary to the provisions of section one of this Act shall be null and void.'

"Complainants further cited the opinion of the Secretary of Labor as expressed in his letter dated May 3, 1965 to Mr. Salvador N. Velasco, which reads:

> Retirement is not one of the just causes for termination of employment under the law. The retirement benefits afforded the employee under the retirement policy of the company are separate and distinct from the termination pay under the Termination Pay Law. Hence, an employee who is retired under such policy is entitled also to the termination benefits under said law.

"We cannot sustain the contention of complainants. It must be noted that the type of retirement being referred to by the Secretary of Labor in the above-quoted letter, is one which is imposed by an employer upon his employee in accordance with company policy. This kind of retirement is entirely different from one which is agreed upon by the employee and the employer in their collective bargaining agreement, as in the instant cases. The former is a unilateral act of the employer, which actually accounts to the dismissal of the employee without his consent. The latter is a bilateral act of both the employer and the employee. In the latter case, the employee actually agrees to be retired or terminated with benefits.

"Contrary to the allegation of complainants, the retirement plan in question does not contravene any provision of the Termination Pay Law. Needless to state, it is not contrary to law for an employee, as in this case, to agree to be retired at the age of 60 or at any age for that matter. What is prohibited by the Termination Pay Law is an agreement which would provide that even if the employee is dismissed without just cause, the employer will pay his separation pay less than what is provided in the Termination Pay Law. In the case at hand, however, there was actually no dismissal under the concept of the Termination Pay Law since complainant agreed to be retired. Hence, the Termination Pay Law would not apply. In the case of Adam Jimenez vs. H.E. Heacock, Inc., 62 O.G. No. 26, June 27, 1966, and in the case of Mariano Agcalud vs. Sta. Clara Lumber Co., et al., 71 O.G. No. 10, March 10, 1975, the Supreme Court ruled that a retired employee is not entitled to both statutory termination pay and retirement benefits.

"WHEREFORE, let complainants' appeals be, as they are hereby, dismissed for lack of merit. Accordingly, the NLRC decisions appealed from are affirmed.

"SO ORDERED.

"February 6, 1976, Manila, Philippines.

(Sgd.)
BLAS F. OPLE
Secretary"

In regard to the other petition, the decision of Presidential Executive Assistant Clave submitted to Us for review reads thus:

NLRC Case No. MC-1348-74

"SERAFIN JIMENEZ, ET AL., complainants-appellees, vs. TALISAY-SILAY MILLING CO., INC.,

"Respondent Talisay-Silay Milling Co., Inc. appeals from the order of the Acting Secretary (now Deputy Minister) of Labor dated June 9, 1977, the dispositive portion of which reads as follows:

'WHEREFORE, respondent's appeal from the Decision of the Commission, dated February 10, 1976, is hereby DISMISSED for lack of merit.'

"Records show that complainants were former employees of respondent company who were separated from their respective work assignments by reason of reaching the age of retirement as provided for in the Collective Bargaining Agreement (CBA) entered into by and between the respondent company and the Free Visayan Workers, Negros branch, (Tasimico Unit-FFW) and Federation of Free Workers, to which complainants belong. Pursuant to Article XIV of the Retirement Plan contained in the CBA:

'The Company and the Union agree to maintain the present Retirement Plan in all respect except No. VII thereof which is hereby modified to read as follows:

"'VII. Benefits — The benefit under this plan is the cash equivalent of fifteen (15) days salary for every year of service, but not exceeding twelve (12) months, to be paid in lump sum.

The pay referred to shall be construed to be the last rate of the employee upon retirement.

In case of death, however, the amount shall be less than P500.00."

"Contending that they are still entitled to separation pay under the Termination Pay Law, complainants filed the present complaint for differential in separation pay.

"Respondent company, on the other hand, contended that complainants were retired from the service in accordance with the aforequoted Retirement Plan under the CBA between the company and the union; that termination of employment by reason of age is not one of the just causes for termination provided for under Section 1 of RA 1787, hence, it should not be considered compensable; that complainants signed a waiver or quitclaim when they retired and that the National Labor Relations Commission has no jurisdiction to hear the case there being no employer-employee relationship with respect to the claims of complainants who retired before October 14, 1972.

"Ruling in favor of complainants, the Arbitrator on April 18, 1975 stated, among other things, that the provisions in the Retirement Plan in the CBA run counter to the beneficent provision of Section 1 of the Termination Pay Law which provision has been given teeth by the Supreme Court in the cases entitled 'Insular Lumber vs. Court of Appeals' and 'Catague, et al. vs. Hon. Emilia'; that the allegation that complainants have signed a waiver discharging respondent from any liability is rebutted by the provision of Section 2 of the aforesaid law which provides that any contract or agreement

entered into which is contrary to the provisions of section one of the act shall be null and void; and lastly, that the NLRC has jurisdiction over the case considering that the same arose out of complainant's previous employment with respondent. Consequently, the arbiter ordered respondent to pay complainants the amounts constituting the balance of their separation or retirement pay.

"From the adverse decision of the Arbiter, respondent appealed to the Commission which, in a decision dated February 10, 1976, modified that of the arbiter, to the effect that (1) the appellees who died or who voluntarily retired before reaching their retirement age are not entitled to the difference between the retirement pay and separation pay; and (2) those who were compulsorily retired according to the CBA retirement plan should be paid the difference between the retirement pay and the separation pay, whichever is higher, minus the amount corresponding to the period during which they worked with the Talisay-Silay Cooperative Association.

"The decision of the Commission was subsequently affirmed by the Acting Secretary of Labor in his Order of June 9, 1977. Hence, the instant appeal.

"After a careful and thorough review of the records, this Office finds that the present appeal merely reiterates the issues raised before the offices below, which issues have been judiciously resolved by said offices.

"WHEREFORE, the appealed order is hereby affirmed and the appeal dismissed for lack of merit.

"SO ORDERED.

"Manila, Philippines,
By authority of the President:

(Sgd.)
JACOBO C. CLAVE
Presidential Executive Assistant"

(Annex A in G.R. No. L-50991, pp. 23-25, Record.)

Now, in the decision of the National Labor Relations Commission which was affirmed by the Secretary of Labor whose decision is the subject review in G.R. Nos. L-43753-56, it is stated, among other things, that:

> "In the instant case, herein claimants are admittedly retirees and pursuant to the retirement plan of their collective bargaining agreement with the Company, the latter granted their retirement benefits.
>
> "The only issue, therefore, centered for consideration is whether or not complainants after availing of their retirement benefits could avail of the remedies provided for under the Termination Pay Law." (Page 29, Record, L-43753-56.)

On the other hand, as may be seen above, in Minister Clave's decision under review in G. R. No. L-50991, it is stated:

> "Records show that complainants were former employees of respondent company who were separated from their respective work assignments by reason of reaching the age of retirement as provided for in the Collective Bargaining Agreement (CBA) entered into by and between the respondent company and the Free Visayan Workers, Negros branch, (Tasimico Unit-FFW) and Federation of Free Workers, to which complainants belong Pursuant to Article XIV of the Retirement Plan contained in the CBA:
>
> 'The Company and the Union agree to maintain the present Retirement Plan in all respect except No. VII thereof which is hereby modified to read as follows:
>
> 'VII. Benefits — The benefit under this plan is the cash equivalent of fifteen (15) days salary for every year of service, but not exceeding twelve (12) months, to be paid in lump sum.
>
> The pay referred to shall be construed to be the last rate of the employee upon retirement.

> In case of death, however, the amount shall be less than P500.00.'
>
> "Contending that they are still entitled to separation pay under the Termination Pay Law, complainants filed the present complaint for differential in separation pay." (Pp. 23-24, Rec.)

Thus, the sole legal issue submitted for Our resolution is whether or not, in addition to the retirement benefits paid to the laborers and employees of Talisay-Silay Milling Co., Inc., private respondent in G. R. No. L-43753-56 and petitioner in G. R. No. L-50991, and private respondent Bacolod-Murcia Milling Co. who had retired between 1964 and 1974, (some of them died) and had already been fully paid such corresponding retirement pay under the terms of the collective bargaining agreement quoted above, they are furthermore entitled to separation pay.

In this connection, We consider the following position taken by the public respondents in their memorandum in G. R. No. L-43753-56 to be solidly cogent and indeed just and fair in the premises therein clearly explained:

> "The point must be stressed here that all of herein petitioners are retired employees of respondent Companies who have been paid their corresponding retirement benefits under the respective Labor Agreements then in force. They now seek to recover separation pay. However, neither their complaints nor the evidence presented disclose how and when they were retired such that there is absolutely no way of ascertaining who among them have voluntarily retired or resigned or have died while in the service or have been retired upon reaching the retirable age pursuant to their collective bargaining agreements. It goes without saying that those who have voluntarily retired or resigned from the service, as well as those who have died while in the service do not have any cause of action against their employers for separation pay. If only for this reason, the instant petition should be dismissed.
>
> Retirement entirely different from

Dismissal
———————————————

“Petitioners contend that their retirement from service may be considered as a dismissal without just cause reasoning out that, inasmuch as the Termination Pay Law enumerates the just causes for dismissal of an employee, all other causes, including retirement, are in effect dismissals without just cause. This contention is untenable.

“Retirement and dismissal are entirely different from each other. Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employees whereby the latter after reaching a certain age agrees and/or consents to severe his employment with the former. On the other hand, dismissal refers to the unilateral act of the employer in terminating services of an employee with or without cause. In fine, in the case of dismissal, it is only the employer who decides when to terminate the services of an employee. Such being the case, the Termination Pay Law was enacted to protect employees from arbitrary dismissals by their employers. Moreover, concomitant with the provisions on retirement in a Labor Agreement is a stipulation regarding retirement benefits pertaining to a retired employee. Here again, the retirement benefits are subject to stipulation by the parties unlike in dismissals where separation pay is fixed by law in cases of dismissals without just cause. Evident, therefore, from the foregoing is that retirements which are agreed upon by the employer and the employee in their collective bargaining agreement are not dismissals as contemplated under the Termination Pay Law. Hence, the Termination Pay Law does not apply to the cases at bar. To further fortify the aforesaid conclusion, it is noteworthy that even the New Labor Code recognizes this distinction when it treats retirement from service under a separate title from that of dismissal or termination of employment, aside from expressly recognizing the right of the employer to retire any employee who has reached the retirement age established in the collective bargaining agreement or other applicable employment contract

and the latter to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreement (Art. 277, New Labor Code).

"IN VIEW OF THE FOREGOING, it is respectfully prayed that the instant petition be dismissed for lack of merit." (Respondent's Memorandum, pp. 99-102, Rec.)

Such, as may be noted above, was in fact the position already taken by the National Labor Relations Board and the Minister of Labor in their respective decisions in the cases of Filomeno Soberano et al. And We are in full agreement therewith.

On the other hand, the reliance of respondents in G. R. No. L-50991 on the cases of Insular Lumber Co. vs. Court of Appeals, 29 SCRA 377 and Catague vs. Emilia, 53 SCRA 492 misses completely the true basis of said precedents. As clearly explained in the answer of respondent Talisay-Silay Milling Co. in G. R. No. L-43753-56:

"1. Reliance by Petitioners On The ILCO VS. COURT OF APPEALS, Et Al., and Catague vs. BISCOM, Et Al., Cases To Support Their Petition For Review Is Off-Tangent.

"To lay bare and expose to the Honorable Tribunal the gratuitous and unfounded assertions of the petitioners that the facts in the two (2) cited cases 'Are practically the same with the facts of the instant petition,' so as to justify their contention that the questioned decision of the Honorable Secretary of Labor is 'not in accord with law,' we shall proceed to quote hereunder a portion of the decision in the ILCO vs. Court of Appeals case (G.R. No. L-23857) bearing on the true facts as compared to the facts in the instant case where there is no dismissal as to warrant payment of separation pay and to show that the petitioners are off-tangent.

'The dominant issue raised in this Appeal is whether or not the dismissal of the employees without a definite period of employment in consequence of a retrenchment program for

reasons of economy and mechanization or modernization of operations — was for just cause' which would exempt the employer from giving separation pay under the Termination Pay Law, Rep. Act 1787, which took effect on June 21, 1957, Sec. 1, the pertinent portion of which reads:

'Private respondent herein were petitioner's employees without a definite term. A majority of them had worked for the Company for more than 20 years in its lumber factory in Barrio Fabrica, Sagay, Negros Occidental. They were union men, members of the Allied Workers Association of the Philippines, Fabrica Chapter. This labor union executed with petitioner on June 5, 1959 — or about two years after Rep. Act. 1787 became effective an agreement proving.

'Three months following the execution of the foregoing agreement or on September 29, 1959, petitioner caused the circulation of a mimeographed letter which informed the employees about the economic problem facing the company because of new taxes. In the month that followed, October 1959, the company commenced to execute a retrenchment program, dismissing employees one after another, among them being herein private respondents. The gratuity payments given them was based upon the agreed rates heretofore mentioned — not on Rep. Act 1787. (Emphasis supplied)

"On the other hand, in the Catague vs. Judge Emilia case (G.R. No. L-37414) the facts are as follows:

'The above-named twenty nine (29) petitioners at bar were among forty (40) original plaintiffs-members of the Fraternal Labor Organization-Alu (FLO-ALU) and old workers of respondent Binalbagan-Isabela Sugar Co., Inc. against whom they filed a complaint, a complaint dated February 29, 1972 before the Court of First Instance of Negros Occidental presided by respondent judge for the payment of termination pay in accordance with the Termination Pay Law, Rep. Act 1052, as amended by Rep. Act No. 1787, (upon their having been dismissed, laid-off or retired by respondent BISCOM in May 1971 without any termination or separation pay) and of

retirement and separation pay benefits as provided in the Collective Bargaining Agreement executed on June 3, 1971, between their union and said respondent right after their termination. . . .'

"Viewed from the light of the facts in the aforequoted decisions of this Honorable Tribunal, it is crystal clear that whereas, in said two cases, there were dismissals effected at the behest of the employer which brings said action under the Termination Pay Law, consequently the employer were ordered to pay the correct amount of separation pay and not just the lesser amount which they paid pursuant to their respective CBAs and compromise agreement. In the instant case, subject of this petition for review, there were no dismissals. As the Honorable Secretary of Labor correctly found out and declared in the questioned decision, 'In the case at hand, however, there was actually no dismissal under the concept of the Termination Pay Law since complainant agreed to be retired (p. 3, Decision of February 6, 1976).' (Answer of Talisay-Silay Milling Co. in G.R. No. L-47353-56, pp. 55-56, Rec.)

The same arguments are advanced in the answer of Bacolod-Murcia Milling Co. And We find such legal pose to be correct.

We hold that the Termination Pay Law, Republic Act 1787, does not apply to instances of retirement either voluntarily applied for or ordered by an employer pursuant to the terms of a collective bargaining agreement between the employees and the employer. Voluntary or compulsory retirement under such an agreement cannot in any sense be deemed a dismissal without cause to justify the application of Republic Act 1787.

With the foregoing conclusion We have arrived at, We deem it unnecessary to discuss the other issues raised by the parties.

IN VIEW OF ALL THE FOREGOING, Our judgment is that the Petition in G. R. No. L-43753-56 be as it is hereby dismissed for lack of merit, whereas the Petition in G.R. No. L-50991 is, on the other hand, granted and the Decision of Presidential Executive Assistant Jacobo Clave is hereby set aside and the complaint in the National

Labor Relations Commission of Serafin Jimenez et al. in N.L.R.C. Case No. MC-1348-74 is consequently ordered dismissed. No costs.

Aquino, Concepcion, Jr., Guerrero and De Castro, *JJ.*, concur.