Department of Labor and Employment
National Labor Relations Commission
RESEARCH, INFORMATION & PUBLICATION DIVISION
Quezon City

No. I **N L R C L A W R E P O R T** **January 2013**

POSTING OF APPEAL BOND: JOINT DECLARATION UNDER OATH; RESIGNATION

Cervantes vs. PAL Maritime Corporation
G.R. No. 175209, January 16, 2013

Facts:

Petitioner was hired as Master on board the vessel by respondent for a 10-month period. On July 31, 1995, a telex message was sent to petitioner enumerating the complaints received from Colonial Shipping, the owner of the vessel, which includes among others, poor communications exist among key personnel and vessel's certifications and company procedures were disorganized. On the following day, petitioner sent a telex message and imputed ill motive on the part of the foreign inspectors who were making false accusations against Filipino crew members. In the same message, petitioner addressed all the complaints raised against him. On August 2, 1995, petitioner sent another telex message informing the company of the unbearable situation on board. He ended his message with these words: "*ANYHOW TO AVOID REPETITION [ON] MORE HARSH REPORTS TO COME. BETTER ARRANGE MY RELIEVER [AND] C/O BUSTILLO RELIEVER ALSO. UPON ARR NEXT USA LOADING PORT FOR THEIR SATISFACTION".* In response to said message, on September 20, 1995, the company sent a letter informing petitioner that: *"OWNERS HAVE DECIDED TO RELIEVE YOU UPON PASSING PANAMA CANAL OR NEXT CONVENIENT PORT. WE TRUST THIS PRE-MATURED ENDING OF CONTRACT IS MUTUALLY AGREED AND FOR THE BENEFITS OF ALL PARTIES CONCERNED. Petitioner replied in this wise: HV NO CHOICE BUT TO ACCEPT YR DECISION. TKS ANYHOW FOR RELIEVING ME IN NEXT CONVENIENT PORT WILL EASE THE BURDEN THAT I HV FELT ONBOARD. REST ASSURE VSL WILL BE TURNED OVER PROPERLY TO INCOMING MASTER*". On October 13, 1995, petitioner was repatriated to Manila. Thus, a Complaint for illegal dismissal was filed. The LA ruled for illegal dismissal. On appeal, the NLRC reversed the LA. Petitioner points out that the failure of respondent to file the required Joint Declaration Under Oath on appeal bond warrants the dismissal of the appeal for non-perfection.

Issues:

(a) May an appeal without joint declaration under oath be considered perfected?
(b) Was the petitioner illegally dismissed?

Ruling:

(a) Yes. Section 4, Rule VI of NLRC Rules enumerates the following requisites for perfection of appeal: (1) the appeal shall be filed within the reglementary period; (2) it shall be under oath with proof of

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payment of the required appeal fee and the posting of a cash or surety bond; and (3) it shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, order or award and proof of service on the other party of such appeal. In relation to the posting of the appeal bond, Section 6 further requires the submission by petitioner and his counsel of a Joint Declaration Under Oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case. While the Rule mandates the submission of a joint declaration, this may be liberally construed especially in cases where there is substantial compliance with the Rule. When the NLRC issued an order directing respondents to file their Joint Declaration, the latter immediately complied. Thus, there was only a late submission of the Joint Declaration. There was substantial compliance when respondents manifested their willingness to comply, and in fact complied with, the directive of the NLRC. The appeal may have been treated differently had respondents failed to post the appeal bond itself. It bears mention that this Court had in numerous cases granted even the late posting of the appeal bond. In ***University Plans Incorporated v. Solano, G.R. No. 170416, June 22, 2011***, the Court ratiocinated: *After all, the present case falls under those cases where the bond requirement on appeal may be relaxed considering that (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; and (3) the petitioner, at the very least, exhibited its willingness and/or good faith by posting a partial bond during the reglementary period. Also, such a procedure would be in keeping with the Labor Code's mandate to 'use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.'* As correctly pointed out by the Court of Appeals, respondents had posted a surety bond equivalent to the monetary award and had filed the notice of appeal and appeal memorandum, all within the reglementary period. All these show substantial compliance with the appeal requirement, considered as they must be, together with late submission of the Joint Declaration. Further, no less than the Labor Code directs labor officials to use reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities and Rule VII, Section 10 of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules or procedure may be relaxed in labor cases to serve the demand of substantial justice.

(b) No. In this case, the petitioner resigned. Resignation is the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, such that he has no other choice but to disassociate himself from his employment ***(Hilton Heavy Equipment Corp. vs. Dy, G.R. No. 164860, February 2, 2010; Bilbao vs. Saudi Arabian Airlines, G.R. No. 183915, December 14, 2011)***. This is precisely what obtained in this case. The tenor of petitioner's telex message was an unmistakeable demand that he be relieved of his assignment. Respondents met the challenge and accepted petitioner's resignation. Petitioner even appeared resigned to his fate by his statements. The statements of petitioner were simple and straightforward. There is no merit to his claim that he was forced to resign due to extreme pressure. Only two (2) days had elapsed from the time petitioner received a copy of the complaint from the owners of the vessel until his letter demanding his relief. The telex message outlining numerous complaints against petitioner probably bruised his ego, causing petitioner to react impulsively by resigning. Petitioner failed to substantiate his claim that he and the Filipino crew members were being subjected to racial discrimination on board. The rule that filing of a complaint for illegal dismissal is inconsistent with resignation does not hold true in this case. The filing of the complaint one year after his alleged termination, coupled with the clear tenor or his resignation letter should be taken to mean that petitioner's filing or the illegal dismissal case was a mere afterthought.

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DISEASE; RETIREMENT

Padillo vs. Rural Bank of Nabunturan, Inc.
G.R. No. 199338, January 21, 2013

Facts:

Petitioner was employed by respondent as its SA Bookkeeper. Due to liquidity problems, the Bank took out retirement/insurance plans with Philam Life for all its employees in anticipation of its possible closure and the concomitant severance of its personnel. In this regard, the Bank procured Philam Plan Certificate of Full Payment in favor of petitioner. Thereafter, the President of respondent bought majority shares of stock in the Bank and took over its management which brought about its gradual rehabilitation. The Bank's finances improved and eventually, its liquidity was regained. Petitioner then suffered a mild stroke due to hypertension which consequently impaired his ability to effectively pursue his work. Petitioner wrote a letter addressed to respondent expressing his intention to avail of an early retirement package. Despite several follow-ups, his request remained unheeded. Sometime in 2007, petitioner was separated from employment due to his poor and failing health as reflected in a Certification issued by the Bank. Not having received his claimed retirement benefits, petitioner filed a complaint for the recovery of unpaid retirement benefits. He asserted, among others, that the Bank had adopted a policy of granting its aging employees early retirement packages, pointing out that one of his co-employees was accorded retirement benefits when she retired at the age of only 53. The LA dismissed the complaint on the ground that he is not qualified for optional retirement benefits. On appeal, the NLRC reversed the LA and awarded separation pay on the ground of disease.

Issue:

Should separation pay on the ground of disease be given to petitioner?

Ruling:

No. At the outset, it must be maintained that the Labor Code provision on termination on the ground of disease under Article 297 does not apply in this case, considering that it was the petitioner and not the Bank who severed the employment relations. As borne from the records, the clear import of petitioner's letter and the fact that he stopped working before the foregoing date and never reported for work even thereafter show that it was petitioner who voluntarily retired and that he was not terminated by the Bank.

As held in ***Villaruel vs. Yeo Han Guan, G.R. No. 169191, June 1, 2011***, Article 297 of the Labor Code contemplates a situation where the employer, and not the employee, initiates the termination of employment on the ground of the latter's disease or sickness, *viz*: "*A plain reading clearly presupposes that it is the employer who terminates the services of the employee 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. It does not contemplate a situation where it is the employee who severs his or her employment ties. This is precisely the reason why Section 8, Rule 1, Book VI of the Omnibus Rules Implementing the Labor Code, directs that an employer shall not terminate the services of the employee unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment"*. Thus, given the inapplicability of Article 297 of the Labor Code to the case at bar, it necessarily follows that petitioners' claim for separation pay anchored on such provision must be denied.

Further, it is noteworthy to point out that the NLRC's application of *Abaquin case* was gravely misplaced considering its dissimilar factual milieu with the present case. To elucidate, a careful reading of *Abaquin* shows that the Court merely awarded termination pay on the ground of disease in favor of security guard because he belonged to a "special class of employees *x x x* deprived of the right to ventilate demands collectively." Thus, notwithstanding the fact that it was the security guard who voluntarily resigned because of his sickness and it was not the security agency which terminated his employment, the

Court held that he "deserved the full measure of the law's benevolence" and still granted him separation pay because of his situation, particularly, the fact that he could not have organized with other employees belonging to the same class for the purpose of bargaining with their employer for greater benefits on account of the prohibition under the old law.

In this case, it cannot be said that petitioner belonged to the same class of employees prohibited to self-organize which, at present, consist of: managerial employees and confidential employees who assist persons who formulate, determine, and effectuate management policies in the field of labor relations. Therefore, absent this equitable peculiarity, termination pay on the ground of disease under Article 297 of the Labor Code and the Court's ruling in *Abaquin* should not be applied. What remains applicable, however, is the Labor Code provision on retirement. In particular, Article 300 of the Labor Code as amended partly provides: *"Art. 300. Retirement.— x x x. In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year. Unless the parties provide for broader inclusions, the term one half (1/2) month salary shall mean fifteen (15) days plus one twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves."* Simply stated, in the absence of any applicable agreement, an employee must (1) retire when he is at least sixty (60) years of age and (2) serve at least (5) years in the company to entitle him/her to a retirement benefit of at least one-half (1/2) month salary for every year of service, with a fraction of at least six (6) months being considered as one whole year. Notably, these age and tenure requirements are cumulative and noncompliance with one negates the employee's entitlement to the retirement benefits under Article 300 of the Labor Code altogether.

Here, it is undisputed that there exists no retirement plan, collective bargaining agreement or any other equivalent contract between the parties which set out the terms and condition for the retirement of employees, with the sole exception of the Philam Life Plan which premiums had already been paid by the Bank. Neither was it proven that there exists an established company policy of giving early retirement packages to the Bank's aging employees. In the case of ***Metropolitan Bank and Trust Company v. National Labor Relations Commission, G.R. No. 152928, June 18, 2009***, it has been pronounced that to be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. In this relation, petitioners' bare allegation of the solitary case of co-employee cannot–assuming such fact to be true–sufficiently establish that the Bank's grant of an early retirement package to her (co-employee) evolved into an established company practice precisely because of the palpable lack of the element of consistency. As such, petitioners' reliance on the co-employee incident cannot bolster their claim. All told, in the absence of any applicable contract or any evolved company policy, petitioner should have met the age and tenure requirements set forth under Article 300 of the Labor Code to be entitled to the retirement benefits provided therein. Unfortunately, while petitioner was able to comply with the five (5) year tenure requirement – as he served for twenty-nine (29) years – he, however, fell short with respect to the sixty (60) year age requirement given that he was only fifty-five (55) years old when he retired. Therefore, without prejudice to the proceeds due under the Philam Life Plan, claim for retirement benefits must be denied.

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REDUNDANCY

General Milling Corporation vs. Viajar
G.R. No. 181738, January 30, 2013

Article 283 of the Labor Code provides that redundancy is one of the authorized causes for dismissal. It reads: *"Article 283. Closure of establishment and reduction of personnel.–The employer may also terminate the employment of any employee due to x x x x 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 worker and the Ministry 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 his 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 closures or cessation of operations of establishment or undertaking not due to serious business losses or 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"*. From the above provision, it is imperative that the employer must comply with the requirements for a valid implementation of the company's redundancy program, to wit: (a) the employer must serve a written notice to the affected employees and the DOLE at least one (1) month before the intended date of retrenchment; (b) the employer must pay the employees a separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (c) the employer must abolish the redundant positions in good faith; and (d) the employer must set fair and reasonable criteria in ascertaining which positions are redundant and may be abolished.

In ***Smart Communications, Inc., v. Astorga, G.R. No. 148132, January 28, 2008***, the Court held that: *The nature of redundancy as an authorized cause for dismissal is explained in the leading case of Wiltshire File Co., Inc. v. National Labor Relations Commission, viz: "redundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to termination of his services does not show that his position had not become redundant. Indeed, in any well organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy, for purposes of the Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise." The characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer. The wisdom and soundness of such characterization or decision is not subject to discretionary review provided, of course, that a violation of law or arbitrary or malicious action is not shown."* While it is true that the "characterization of an employee's services as superfluous or no longer necessary and, therefore, properly terminable, is an exercise of business judgment on the part of the employer," the exercise of such judgment, however, must not be in violation of the law, and must not be arbitrary or malicious. The Court has always stressed that a company cannot simply declare redundancy without basis. To exhibit its good faith and that there was a fair and reasonable criteria in ascertaining redundant positions, a company claiming to be over manned must produce adequate proof of the same. *x x x x.*

In ***Quevedo v. Benguet Electric Cooperative, Incorporated, G.R. No. 168927, September 11, 2009***, the Court explained the difference between retirement and termination due to redundancy, to wit: *"While termination of employment and retirement from service are common modes of ending employment, they*

are mutually exclusive, with varying juridical bases and resulting benefits. Retirement from service is contractual (i.e. based on the bilateral agreement of the employer and employee), while termination of employment is statutory (i.e. governed by the Labor Code and other related laws as to its grounds, benefits and procedure). The benefits resulting from termination vary, depending on the cause. For retirement, Article 287 of the Labor Code gives leeway to the parties to stipulate above a floor of benefits. x x x. The line between voluntary and involuntary retirement is thin but it is one which this Court has drawn. Voluntary retirement cuts employment ties leaving no residual employer liability; involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is the focal point of analysis. In determining such intent, the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion are relevant parameters."

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