

THIRD DIVISION

[G.R. No. 126888, April 14, 1999]

**J.V. ANGELES CONSTRUCTION CORPORATION, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER
ARIEL CADIENTE SANTOS AND PEDRO SANTOS, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

In this special civil action for *certiorari* with prayer for Temporary Restraining Order, petitioner seeks to set aside and reverse the Decision^[1] promulgated on May 31, 1996 and the Resolution issued on July 10, 1996 by the National Labor Relation Commission (NLRC), denying petitioner's Partial Motion for Reconsideration in a case, entitled "Pedro Santos, et al., vs. J.V. Angeles Construction Corporation, et al.", on the ground that the NLRC acted with grave abuse of discretion and/or in excess of jurisdiction.

The facts that matter are, as follows:

Private respondent Pedro Santos was employed in 1969, as a carpenter, by the petitioner, J.V. Angeles Construction Corporation (Corporation). In 1973, he was promoted to the position of foreman which he held until his retirement in February 1992 when he was sixty-two (62) years old.

On October 25, 1993, he brought a complaint for retirement benefits and service incentive leave pay before the NLRC, National Capital Region Arbitration Branch, against the corporation. After the parties failed to reach an amicable settlement during the conciliatory proceedings of the case, they were required to submit their respective position papers. On July 25, 1995, Labor Arbiter Ariel Cadiente Santos came out with a decision for private respondent, disposing thus:

"WHEREFORE, premises considered, respondents are hereby directed to pay complainant Pedro Santos his retirement pay equivalent to 1/2 month pay for every year of service including the five (5) days service incentive leave pay three (3) years prior to the filing of this case and 1/2 of the 13th month pay.

x x x"^[2]

Petitioner's appeal filed with the NLRC on August 14, 1995, assailed the said ruling of the Labor Arbiter granting retirement benefits to the herein private respondent, by giving Rep. Act. No. 7641 (Retirement Pay Law) a retroactive application although respondent Pedro Santos had retired almost a year prior to the effectivity of said law on January 7, 1993. It is petitioner's submission that what is applicable is the ruling laid down in *Llora Motors, Inc. v. Drilon*^[3] wherein the Court held that

in the absence of a collective bargaining agreement or other employment contract, there is no obligation on the part of the employer to set up a retirement scheme over and above that already established under existing laws. Since Santos has been receiving his retirement benefits from the Social Security System (SSS), he cannot anymore ask for additional benefits from his employer in the absence of company practice, policy or contract granting such benefits.

On May 31, 1996, the Third Division of the NLRC came out with the questioned decision, upholding the labor Arbiter's grant of retirement benefits to Pedro Santos, and disposing thus:

*"We sustain the award of the retirement benefits to Santos. Respondents objection thereto is premised on the fact that complainant retired almost a year before the effectivity of R.A. 7641. In the case of **Oro Enterprises vs. NLRC**. G.R. No. 110861. Nov 14, 1994, the Supreme Court ruled in favor of retroactive application of law considering that claim for benefits was filed when law already took effect. We apply said ruling to instant claim. xxx"^[4]*

Dissatisfied with the aforesaid decision below, petitioner found its way to this Court via the petition under consideration, contending that the NLRC gravely abused its discretion in affirming the decision of the Labor Arbiter awarding retirement benefits to private respondent Pedro Santos, by giving retroactive application to the provisions of R.A. 7641.

The petition is impressed with merit.

The pertinent law is Article 287 of the Labor Code, as amended by R.A. 7641:

"Article 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

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