

## [SYLLABUS]

[ G.R. No. 112678, March 29, 1996 ]

### **EDUARDO M. ESPEJO, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND COOPERATIVE INSURANCE SYSTEM OF THE PHILIPPINES, RESPONDENTS.**

#### **D E C I S I O N**

##### **BELLOSILLO, J.:**

This is a petition for certiorari seeking to set aside the decision of the National Labor Relations Commission (NLRC) which affirmed in part the decision of the Labor Arbiter holding as illegal the dismissal of petitioner and modifying it in all other respects by setting aside the directive for his reinstatement and limiting the award of backwages to eighteen (18) months with ten percent (10%) thereof as attorney's fees.

On 1 August 1987 Cooperative Insurance System of the Philippines (CISP) hired petitioner as General Manager with a monthly salary of P9,000.00 plus privileges one of which was the use of a company car with driver. On 11 September 1989 the Board of Directors of CISP held a special meeting to discuss the "cease and desist order" issued by the Office of the Insurance Commission against CISP on grounds of "capital impairment and margin of solvency deficiency." In order to put up the needed capital requirements set by the Insurance Commission the Board passed Resolution No. 04 (S-1989) authorizing the sale of some CISP properties, including the company car assigned to petitioner for his personal use. Petitioner objected to such sale as he agreed with the Treasurer's view that the contributed surplus should come from the member-cooperatives and that such action would deprive management of the means of solving the problem. However, the Board overruled petitioner's opposition prompting the latter to tender his resignation addressed to the Chairman of CISP worded thus -

I regret to tender my resignation as General Manager of CISP effective October 11, 1989.

I thank the board for giving me the opportunity to serve CISP.<sup>[1]</sup>

On 22 September 1989 the Board held another special meeting. Once more petitioner sought to have Resolution No. 04 reconsidered otherwise his resignation would be irrevocable. But his plea was not heeded; instead, the Board approved the following resolutions: (1) Resolution No. 06 (S-1989) affirming the sale of CISP's properties including the car assigned to petitioner; (2) Resolution No. 07 (S-1989) authorizing the Chairman to inform petitioner of the Board's decision and to act on the resignation of petitioner at the proper time; and, (3) Resolution No. 08 (S-1989) creating an Ad-Hoc Management Committee to assist and coordinate the acts of the

Board with those of the Acting General Manager and Officer-in-Charge to be appointed later.

Pursuant to Resolution No. 07 (S-1989) the Chairman met on 26 September 1989 with petitioner who manifested that he had changed his mind about resigning and that he would continue as General Manager despite the sale of the company car. This prompted the Chairman to write a Memorandum to the Board on 3 October 1989 informing the latter of petitioner's oral revocation of his resignation and seeking advice on the matter.

On 9 October 1989 petitioner received a letter from the Chairman relaying the acceptance by the Board of his resignation effective 11 October 1989. Forthwith, petitioner wrote the Chairman stating that he was surprised about the action of the Board as he had verbally withdrawn his resignation. He asked that he be given an opportunity to speak before the members of the Board to explain and clarify matters. However on 14 November 1989 CISP paid petitioner a total of P14,839.00 representing the cash value of his unused vacation leave and transportation expenses. On 28 February 1990 petitioner filed a case against CISP for illegal dismissal and damages.

On 12 October 1990 the Labor Arbiter rendered a decision ordering CISP to (1) reinstate petitioner to his former position as General Manager without loss of seniority rights; and, (2) pay him full back wages from 12 October 1990 until finally reinstated but limited to three (3) years or the amount of P108,000.00 plus P5,000.00 as attorney's fees provided that the backwages shall be subject to further computation until actual reinstatement of petitioner, again limited to only three (3) years.<sup>[2]</sup>

Both petitioner and CISP appealed to NLRC. On 17 September 1993 NLRC promulgated its decision affirming the finding of illegal dismissal by the Labor Arbiter but modifying the rest thereof by deleting the reinstatement of petitioner for having become moot and academic considering that he (petitioner) was already 60 years old, and limiting the award of backwages to eighteen (18) months.<sup>[3]</sup> Hence, this petition by Espejo ascribing to NLRC grave abuse of discretion in modifying the decision of the Labor Arbiter and praying for reinstatement and full back wages up to three (3) years, and if reinstatement be not feasible, that he be granted separation or retirement pay. Additionally, he repleads his argument before NLRC that he should be awarded damages for the bad faith shown by CISP in terminating his employment notwithstanding the oral revocation of his resignation.

We sustain the challenged decision insofar as it disallowed reinstatement. The law recognizes as valid any retirement plan, agreement or management policy regarding retirement at an earlier or older age. In the case of petitioner, CISP did not have any retirement plan for its employees. In such situation, Sec. 13, Book IV, of the *Omnibus Rules Implementing the Labor Code* provides that in the absence of a retirement plan, agreement or policy an employee may be retired upon reaching the age of sixty (60) years. Construing this provision, we held that an employee may retire, or may be retired by his employer, upon reaching sixty (60).<sup>[4]</sup> Thus, an employee held to be illegally dismissed cannot be reinstated if he had already reached the age of sixty (60) years at the time of his second complaint (pressing for reinstatement) before the Labor Arbiter's Office.<sup>[5]</sup> NLRC therefore did not err in