

THIRD DIVISION

[G.R. No. 95940, July 24, 1996]

**PANTRANCO NORTH EXPRESS, INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND URBANO SUÑIGA,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Is a Collective Bargaining Agreement provision allowing compulsory retirement before age 60 but after twenty five years of service legal and enforceable? Who has jurisdiction over a case involving such a question -- the labor arbiter or arbitrators authorized by such CBA?

The foregoing questions are presented in the instant petition for Certiorari seeking the nullification of the Resolution^[1] promulgated September 28, 1990 by the National Labor Relations Commission^[2] in an illegal dismissal case brought by private respondent. In its assailed Resolution, the public respondent affirmed the decision of Labor Arbiter Ricardo N. Olarez dated March 26, 1990^[3] declaring that the compulsory retirement of private respondent constituted illegal dismissal, ordering his reinstatement and granting him backwages.

The Antecedent Facts

Private respondent was hired by petitioner in 1964 as a bus conductor. He eventually joined the Pantranco Employees Association-PTGWO. He continued in petitioner's employ until August 12, 1989, when he was retired at the age of fifty-two (52) after having rendered twenty five years' service. The basis of his retirement was the compulsory retirement provision of the collective bargaining agreement between the petitioner and the aforementioned union. Private respondent received P49,300.00 as retirement pay.

On February 15, 1990, private respondent filed a complaint^[4] for illegal dismissal against petitioner with the Sub-Regional Arbitration Branch of the respondent Commission in Dagupan City. The complaint was consolidated with two other cases of illegal dismissal^[5] having similar facts and issues, filed by other employees, non-union members.

After hearings were held and position papers submitted, on March 26, 1990, Labor Arbiter Olarez rendered his decision, the dispositive portion of which reads:

"WHEREFORE, with all the foregoing considerations, we find the three complainants illegally and unjustly dismissed and we hereby order the respondent to reinstate them to their former or substantially equivalent positions without loss of seniority rights with full backwages and other

benefits, computed as follows:

xxx xxx xxx

3. Urbano Suñiga

27,375.00 - Backwages Aug. 16/89 to March 31/90 (P3,650.00 x 7.5 mos.)

1,368.75 - 13th month pay for 1989 (P16,425.00 over 12)

P28,743.75

2,874.37 - 10% attorney's fees

P31,618.12 - Total as of March 31/90 plus additional backwages and other benefits but not to exceed 3 years and the corresponding attorney's fees.

The amounts already received by complainants shall be considered as advanced payment of their retirement pay which shall be deducted when they shall actually retire or (be) separated from the service.

The order of reinstatement is immediately executory even pending appeal."

Petitioner appealed to public respondent, which issued the questioned Resolution affirming the labor arbiter's decision in toto. Hence, this petition.

The Issues

Petitioner raises the following issues for decision:

"I. The National Labor Relations Commission gravely abused its discretion in holding that the Labor Arbiter has jurisdiction over the case.

II. Assuming that the Labor Arbiter has jurisdiction over the case, the National Labor Relations Commission gravely abused its discretion in affirming the Labor Arbiter's decision that private respondent Urbano Zuñiga (sic) was illegally dismissed."

Of course, it is obvious that the underlying and pivotal issue is whether the CBA stipulation on compulsory retirement after twenty-five years of service is legal and enforceable. If it is, private respondent has been validly retired. Otherwise, petitioner is guilty of illegal dismissal. The answer to said question will settle the issue of the validity of the questioned resolution of the public respondent.

The Court's Ruling

On the key issue, the Court finds the petition meritorious, thus warranting reversal of the questioned Resolution.

First Issue: Jurisdiction of Labor Arbiter

Petitioner contends that the labor arbiter had no jurisdiction because the dispute concerns a provision of the CBA and its interpretation. It claims that the case falls under the jurisdiction of the voluntary arbitrator or panel of arbitrators under Article 261 of the Labor Code, which provides:

"Article 261. Jurisdiction of Voluntary Arbitrators or Panel of Voluntary Arbitrators. -- The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding Article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this Article, gross violations of a Collective Bargaining agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the Voluntary Arbitrator or panel of Voluntary Arbitrators and shall immediately dispose and refer the same to the Grievance Machinery or Voluntary Arbitration provided in the Collective Bargaining Agreement."

The Labor Arbiter believed otherwise. In his decision^[6], he stated:

"In our honest opinion we have Jurisdiction over the complaint on the following grounds:

First, this is a complaint of illegal dismissal of which original and exclusive jurisdiction under Article 217 has been conferred to the Labor Arbiters. The interpretation of the CBA or enforcement of the company policy is only corollary to the complaint of illegal dismissal. Otherwise, an employee who was on AWOL, or who committed offenses contrary to the personnel policies (sic) can no longer file a case of illegal dismissal because the discharge is premised on the interpretation or enforcement of the company policies (sic).

Second. Respondent voluntarily submitted the case to the jurisdiction of this labor tribunal. It adduced arguments to the legality of its act, whether such act may be retirement and/or dismissal, and prayed for reliefs on the merits of the case. A litigant cannot pray for reliefs on the merits and at the same time attacks (sic) the jurisdiction of the tribunal. A person cannot have one's cake and eat it too. x x x."

The Court agrees with the public respondent's affirmance of the arbiter's decision in respect of the question of jurisdiction.

In *Sanyo Philippines Workers Union - PSSLU vs. Cañizares*,^[7] a case cited by the petitioner, this Court ruled:

"x x x Hence, only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators.

In the instant case, both the union and the company are united or have come to an agreement regarding the dismissal of private respondents. No grievance between them exists which could be brought to a grievance machinery. The problem or dispute in the present case is between the union and the company on the one hand and some union and non-union members who were dismissed, on the other hand. The dispute has to be settled before an impartial body. The grievance machinery with members designated by the union and the company cannot be expected to be impartial against the dismissed employees. Due process demands that the dismissed workers' grievances be ventilated before an impartial body. Since there has already been an actual termination, the matter falls within the jurisdiction of the Labor Arbiter."

Applying the same rationale to the case at bar, it cannot be said that the "dispute" is between the union and petitioner company because both have previously agreed upon the provision on "compulsory retirement" as embodied in the CBA. Also, it was only private respondent on his own who questioned the compulsory retirement. Thus, the case is properly denominated as a "termination dispute" which comes under the jurisdiction of labor arbiters.

Therefore, public respondent did not commit a grave abuse of discretion in upholding the jurisdiction of the labor arbiter over this case.

Second Issue: Private Respondent's Compulsory Retirement Is Not Illegal Dismissal

The bone of contention in this case is the provision on compulsory retirement after 25 years of service. Article XI, Section 1 (e) (5) of the May 2, 1989 Collective Bargaining Agreement^[8] between petitioner company and the union states:

"Section 1. The COMPANY shall formulate a retirement plan with the following main features:

xxx xxx xxx

(e) The COMPANY agrees to grant the retirement benefits herein provided to regular employees who may be separated from the COMPANY for any of the following reasons:

xxx xxx xxx

(5) Upon reaching the age of sixty (60) years or upon completing twenty-five (25) years of service to the COMPANY, whichever comes first, and the employee shall be compulsory retired and paid the retirement benefits herein provided."

Petitioner contends that the aforequoted provision is valid and in consonance with Article 287 of the Labor Code. The respondent Commission holds otherwise.

The said Code provides: