CASES NOTED

RIGHT TO DISMISS EMPLOYEES SHOULD NOT BE ABUSED OR EXERCISD CAPRICIOUSLY. FACTS: Labitag is a permanent employee of the Philippine Long Distance Telephone Co., petitioner herein. He had been working for several years for the Company as lineman helper, whose work mostly consisted in digging holes at the sides of the streets for posts. The company doctor made a physical examination of the employees of the Company. He found that Labitag was blind in the right eye and recommended his dismissal. The Company accordingly dismissed him. The Philippine Long Distance Telephone Workers' Union forthwith filed a petition with the Court of Industrial Relations praying that he be reinstated. Not satisfied with the order of Presiding Judge Roldan who heard the case, the Union filed a motion for reconsideration and the case was reconsidered by the Court *in banc*. The Court passed a resolution ordering the immediate reinstatement of Labitag to his former position or another position with the same pay. Hence this appeal by the Company.

HELD: That "when Labitag was hired for the first time he was already blind in one eye and that was a defect visible ('defecto manifiesto' within the meaning of Art. 1484 of the old Civil Code and Art. 1561 of the new Civil Code) to the officers of the Company who hired him. Consequently, if the defect of Labitag was 'manifesto' . . . the officers of the Company who employed him could not have failed to see it when they employed him."

"He was able to do the work above mentioned, without accident and without any complaint as to his efficiency." He was dismissed only when the doctor reported that his right eye was blind.

However, the Company claimed "that as Labitag was working in the streets the cars and other vehicles might strike him because he could not see them." The Court answered that "it is hard to see how this might happen anymore than with a worker with two sound eyes." Inasmuch as the laborer in digging the ditch stays in one place on the side of the street, there is no danger to his being run over by vehicles cruising along the street for the reason that it is the vehicles which avoid him and not he by running around. "Furthermore, when laborers are working in the street, there is a sign cautioning drivers of their presence."

Again, as to the argument that Labitag's defect renders him dangerous and inefficient in his work, the Court said that "when one eye is blind, the other becomes keener and the . . . other senses become more acute, on the generally admitted principle that nature makes compensations to a great extent.". And "the happy results of his experience of several years in the same kind of work (in which no accident has happened and no inefficiency noted) disprove the rather gloomy but unjustified anticipations of danger and inefficiency."

As to the contention of the petitioner that "it is its right to choose and fire employees without interference from the CIR, provided it is not done on account of union activities of the workers, the Court ruled that "that right should not be abused or exercised capriciously, without any reasonable ground, with reference to a worker who has worked faithfully and satisfactorily for a number of years and who was admitted with his alleged defect visible and known, for, otherwise, in future similar cases the exercise of such right might be used as a disguise for dismissing an employee for union adherence. Resolution appealed from affirmed. (THE PHILIPPINE LONG DISTANCE TELEPHONE CO. vs. THE PHILIPPINE LONG DISTANCE TELEPHONE WORKERS' UNION, et al., G.R. No L-4157, Prom. July 8, 1952.

NOTE: This decision was penned by Mr. Justice Jugo with four other Justices concurring. While Mr. Justice Tuason concurs in the result of Mr. Justice Jugo's opinion, he does not, however, agree with some of the latter's reasonings.

Mr. Justice Tuason is of the opinion that "ability to do properly the work entrusted to Labitag is the sole criterion by which the controversy should be judged." Possibilities of accident are unimportant. He is also of the belief that "from the common

observations and experience, a worker blind in one eye but otherwise physically fit can be as good a ditch digger as one having the use of both eyes." And, if the general rule be that a worker with two eyes renders better service in this kind of work than a worker with one eye, there are undoubtedly exceptions. "As the efficiency of Labitag...is not questioned, this laborer must be one of the exceptions to the general rule."

Mr. Justice Montemayor, with the concurrence of four other Justices, dissents. The dissenting opinion is substantially as follows:

(1) The statement that the blindness of Labitag was known to his employer at the time that he was first employed is not well founded because:

(a) The company denies knowledge of such defect;
(b) Presiding Judge Roldan who first heard the case said that nothing in the record indicates that the company had knowledge of the actual condition of Labitag's right eye before the physical examination above mentioned.

The statement that Labitag's blindness was a defect visible to the officers of the Company is also not well-founded because it was premised on the resolution of the majority which resolution was the result of a motion for reconsideration. No rehearing was held and the said resolution was based on the record. Only Judge Roldan saw and heard Labitag. Therefore, he alone was qualified to say if the defect of Labitag was so manifest as to be visible to the officers of the Company. But, Judge Roldan says that there is nothing in the record to indicate that the Company had knowledge of the general physical condition of Labitag's right eye before he was examined by the Company doctor.

(2) The majority opinion says that the laborer in digging the ditch stays in one place on the side of the street. Everybody knows that said laborer crosses the street very often, in going to and from work, to answer the call of nature, to buy cigarettes or to take a drink, etc. Even while working he has to walk along a part of the street. Now, in doing all this he must accurately determine the distance between himself and the passing vehicles.

(3) Labitag's defect renders him dangerous. A ditch digger, in the company of fellow workers, must appreciate and determine with precision the space and distance between himself and the path of his heavy tool on the one hand and his fellow workers on the other, otherwise he might hit his fellow workers or he might be hit by them. To gauge and determine these distances requires the use of both eyes. Again, Labitag, being right-handed, swings his pick over his right shoulder and then brings it down with force to the ground. While doing so, being blind in the right eye, he cannot see what is near to his right, and thus might injure somebody. In the same way, a fellow worker on Labitag's right side, swinging a heavy tool, could not be seen by Labitag and because of this failure of sight, Labitag might come dangerously or too near the path of said tool and be hit by it.

(4) While it might be true to a certain extent that nature compensates every loss of an organ of sense by making the remaining organs keener, no member of this Tribunal would employ as a chauffeur to drive the family car a man blind in one eye on the dubious theory that the man's remaining eye could see just as well.

(5) The theory of the majority that Labitag's defect is no handicap or hazard because during the period that he worked on his job no accident has happened is the same philosophy adhered to by some property owners who refuse to insure against fire their buildings of inflamable materials, just because for several years they had not burned down.

Bienvenido Gorospe

DISMISSAL OF PROSPECTIVE DEMANDS ON ACCOUNT OF THE TERMINATION OF THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE.

Appealed by the petitioner, Manila Terminal Relief and Mutual Aid Association, from a decision of the Court of Industrial Relations dismissing certain demands of the petitioner against the respondent, Manila Terminal Co., Inc. The dismissal is principally based on the ground that said demands have become academic. The dismissed demands are substantially as follows:

(c) 100% increase of the basic wages or salaries;
(d) Compensation for work to be performed beyond eight hours and on Sundays and legal holidays at the rate of the regular wages, plus 50%;

(e) That respondent furnish the members of the petitioner organization firearms free of charge;
(f) Life and accident insurance policies for each member of the petitioner organization, 50% of the premium to be paid by the respondent;
(g) Thirty days' vacation leave with pay;
(h) Two days' off duty each month with pay;
(i) Free medical care and hospitalization with pay;
(j) Dismissal of any member of the petitioner organization only for cause and after due hearing;
(n) Recognition of the petitioner as the sole bargaining agency.

The respondent Company contends that the above-mentioned demands are academic, because since January 1, 1951, the Delgado Bros., Inc., has taken over the arrastre service for the Port of Manila, in which the members of the petitioner were employed by the respondent Company as watchmen.

However, the petitioner argues that said demands "were first made by the petitioner on June 19, 1947, date of filing of petitioner's petition with the CIR" while "it was only on January 1, 1951, that respondent Company ceased to be the arrastre contractor for Manila's port area" and that "a judgment granting the demands of petitioner. . .may properly govern the relation of the parties from June 19, 1947 until December 31, 1950." The petitioner especially calls the attention of the Court to its demands for 100% increase of the basic wages and for compensation for work to be performed beyond eight hours and on Sundays and legal holidays which may be granted effective from June 19, 1947, date of the filing of its petition with the CIR, to December 31, 1950.

HELD: That "the demands thus dismissed by the CIR are prospective in nature and may therefore be enforced, if granted, only while the members of the petitioning Association remain in the employ of the respondent Company. It being admitted that the latter had ceased to employ said members of the petitioning Association, as a result of the fact that Delgado Bros., Inc., has since January 1, 1951, taken over the arrastre service for the Port of Manila, said demands have become purely academic."

With reference to the demand for 100% increase in wages or salaries, the Supreme Court held that "as there is no statute or contractual obligation on which to base the raise demanded, the granting thereof must necessarily be founded only on the decision

of the CIR or of this Court. In the present case, we have found no sufficient ground for granting the demand for 100% increase in wages or salaries, much less to be effective from the filing of the petition in the CIR."

With reference to the demand for compensation for work to be performed beyond eight hours and on Sundays and legal holidays, the Supreme Court held that "it is sufficient to recall that the CIR found as a fact that the members of the petitioning Association worked more than eight hours a day only until May 24, 1947, or before the filing of the petition on June 17, 1947.

Decision affirmed. (MANILA TERMINAL RELIEF AND MUTUAL AID ASSOCIATION vs. MANILA TERMINAL COMPANY, INC., et al., G.R. No. L-4150, Promulgated July 19, 1952.)

Bienvenido Gorospe

THE NULLITY OR INVALIDITY OF THE EMPLOYMENT CONTRACT DOES NOT PRECLUDE LABORERS TO RECOVER OVERTIME PAY; LABORERS CANNOT WAIVE THEIR RIGHT TO EXTRA COMPENSATION UNDER EIGHT-HOUR LABOR LAW; CIR HAS JURISDICTION TO AWARD MONEY JUDGMENT. FACTS: The Manila Terminal Co., Inc., petitioner, undertook the arrastre service in some of the piers in Manila's Port Area on Sept. 1, 1945 at the request and under the control of the U.S. Army for which some 30 men were hired as watchmen on a twelve-hour shift with a compensation of ₱3.00 per day shift and ₱6.00 per day for the night shift. The Petitioner began the postwar arrastre operation on Feb. 1, 1946 at the request and under the control of the Bureau of Customs by virtue of a contract entered into with the government. The watchmen of the petitioner were members of the respondent association, Manila Terminal Relief and Mutual Aid Association which was organized for the first time on July 16, 1947 having been granted Certificate No. 375 by the Department of Labor. The watchmen of the petitioner continued in the service with a number of substitutions and additions, their salaries having been raised during the month of Feb. to ₱4.00 per day for the day shift and ₱6.25 per day for the night shift. On Mar. 28, 1947 and on April 29, 1947, respectively, some members of the respondent association filed a petition with the Department of Labor to investigate the matter of overtime pay and on the latter date, a 5 point demand, but nothing was done by the Department of Labor. On July 19, 1947, the Manila Port Terminal Police Asso-

ciation, not registered in accordance with the provisions of Com. Act 213, filed a petition with the CIR. On July 28, 1947, the Manila Terminal Relief and Mutual Aid Association filed an amended petition with the CIR praying among others, that the petitioner be ordered to pay to its watchmen or police force overtime pay from the commencement of their employment. On May 9, 1949, by virtue of Customs Administrative Order No. 81 and Ex. Order No. 228 of the President of the Phil., the entire police force of the Petitioner was consolidated with the Manila Harbor Police, under the exclusive control of the Com. of Customs and the Sec. of Finance.

The CIR ordered the Manila Terminal Co. Inc., the herein petitioner, to pay to its watchmen a regular or base pay plus additional overtime compensation corresponding to different periods.

With reference to the pay for overtime service after the watchmen had been integrated into the Manila Harbor Police, Judge Yanson ruled that the court has no jurisdiction because it affects the Bureau of Customs, an instrumentality of the governmnt, having no independent personality and which cannot be sued without the consent of the State. (*Metran vs. Paredes,* 45 *OG* 2835)

The petitioner filed a motion for reconsideration. The respondent also filed a motion for reconsideration in so far as its other demands were dismissed. Judge Yanson concurred in by Judge S. Bautista, denied both motions for reconsideration.

Hence, this petition for certiorari. Petitioner contends that: (1) The CIR has no jurisdiction to render a money judgment involving obligation in arrears. (2) The agreement under which its police force were paid certain specific wages for 12-hour shifts included overtime compensation. (3) The association, resp., is barred from recovery by estoppel and laches. (4) The nullity or invalidity of the employment contract precludes any recovery by the Association (5) Com. Act 444 does not authorize recovery of back overtime pay.

RULING:

(1) The contention that the CIR has no jurisdiction to award a money judgement was already overruled by this court in Detective & Protective Bureau Inc. vs. CIR and United Welfare Association, decided Dec. 29, 1951, in which cases it was argued that the respondent Court has no jurisdiction to award overtime pay, which is a money judgment. We believe that under Com. Act 103 the court is empowered to make the order for the purpose of settling disputes between employer and employee.

(2) The case at bar stands on all fours with the case of Detective

& Protective Bureau, Inc., vs. CIR & United Employees Welfare Association. It appears that the Bureau had been granting the members of the Association, every month, "two days off" in which they rendered no service, although they received salary for the whole month. Said Bureau contended below that the pay corresponding to said 2 day vacation corresponded to the wages for extra work. The court rejected the contention, quite properly we believe, because in the contract there was no agreement to that effect and such agreement, if any, would probably be contrary to the provisions of the eight-hour labor law and would be null and void.

(3) The principle of estoppel and laches cannot well be invoked against the association. In the first place, it would be contrary to the spirit of the Eight-Hour labor law, under which, the laborers cannot waive their right to extra compensation. In the second place, the law principally obligates the employer to observe it, so much so that it punishes the employer for its violation and leaves the employee or laborer free and blameless. In the third place, the employee or laborer is in such a disadvantageous position as to be naturally reluctant or even apprehensive in asserting any claim which may cause the employer to devise a way for exercising his right to terminate the employment.

(4) The argument that the nullity or invalidity of the employment contract precludes recovery by the respondent of any overtime pay is also untenable. Several decisions of this court are involved. But those decisions were based on the reasoning that as both the laborer and employer were duty bound to secure the permit from the Department of Labor, both were in pari delicto. However, the present law in effect imposed the duty upon the employer (Com. Act No. 444). Such employer may not therefore be heard to plead his own neglect as exemption or defense. Moreover, Com. Act 444 Sec. 6, in providing that "any agreement or contract between the employer and the laborer or employee contrary to the provisions of this Act shall be null and void Ab initio", obviously intended said provision for the benefit of the laborers or employees.

(5) Petitioner also contends that Com. Act No. 444 does not provide for recovery of back overtime pay and to support his contention it makes reference to the Fair Labor Standards Act of the United States. This provision is not incorporated in our Labor Law Com. Act 444. Sections 3 and 5 of Com. Act 444 expressly provides for the payment of extra compensation in cases where overtime services are required, with the result that the employees or laborers are entitled to collect such extra compensation for past

overtime work. To hold otherwise would be to allow an employ... to violate the law by simply, as in this case, failing to provide ... and pay overtime compensation.

Wherefore, the appealed decision, in the form voted by Jud... Lanting, is affirmed, it being understood that the petitioners wat... men will be entitletd to extra compensation only from the da... they respectively entered the service of the petitioner, hereafter ... be duly determined by the Court of Industrial Relations. So ordered ... without costs. (MANILA TERMINAL Co., Inc., vs. THE COUR... OF INDUSTRIAL RELATIONS and MANILA TERMINAL RE... LIEF AND MUTUAL AID ASSOCIATION, G.R. No. L-4148...

Rafael Abiera

CIR HAS JURISDICTION TO COMPEL EMPLOYER TO PRACTICE CHECK-OFF UNDER CERTAIN CONDITIONS. FACTS: On September 15, 1950, the Under-Secretary of Labor certified to the CIR ... dispute between the ALATCO [1] and 308 workers affiliated to the BITEMA [2], a legitimate labor organization registered with the De... partment of Labor, upon failure to settle amicably the ALATCO ... employees' strike of September 14, 1950. Included as one of the ... demands of the BITEMA and granted by the CIR in its decision ... was "To continue its (ALATCO) former practice of allowing ... check-off to petitioning union whose affiliates have already file... with the management of the respondent company (ALATCO) the ... corresponding authority to make the necessary deductions from their ... monthly earnings."

ISSUE: The ALATCO filed a petition to set aside that portion ... of the decision of the CIR ordering the continuation of its ... (ALATCO) former practice of allowing check-off to petitioning ... union on the ground that the CIR acted in excess of jurisdiction ... and contrary to law in that "there is no law in the Philippines which ... authorizes the CIR to compel an employee to practice check-off ... against his will" and that the practice is expensive on the part of the ... employer.

RULING: Section 4 of C. A. No. 103 provides that "The Cou... shall take cognizance for purposes of prevention, arbitration, d...

[1] Alatco—A. L. Ammen Transportation Co., Inc.
[2] Bitema—Bicol Transportation Employees Mutual Association.

...ion and settlement, of any industrial or agricultural dispute causing ... likely to cause a strike or lockout, arising from differences as ...gards wages, shares or compensation, hours of labor or conditions ...tenancy of employment, etc." Section 13 provides that "In making ... award, order or decision, under the provisions of Section four ... this Act, the Court shall not be restricted to the specific relief ...laimed or demands made by the parties to the industrial or agri-...cultural dispute, but may include in the award, order or decision ...ny matted or determination which may be deemed necessary or ...expedient for the purpose of settling the dispute or of preventing ...further industrial or agricultural disputes." And by Section 20 ...the Court shall act according to justice and equity and substantial ...merits of the case, without regard to technicalities or legal forms ...and shall not be bound by any technical rules of legal evidence ...but may inform its mind in such manner as it may deem just and ...equitable." It will be seen at once that these powers are com-...prehensive. While Section 4 specifically speaks of wages, shares or ...compensation, and while these are the principal sources of industrial ...and agricultural conflicts, the Court's authority is by no means ...confined to them. "Conditions of tenancy or employment" (Sec. 4) ...and contingencies too numerous to be conveniently detailed in a ...statute or thought of in advance had to be met and settled. To ...settle disputes and prevent crippling strikes and lockouts, besides ...the improvement of labor standards, are the paramount objectives of ...the law, and such conditions and contingencies are the matters ...envisaged by the all-embracing provisions of the aforequoted sections.

Moreover, Republic Act No. 602, otherwise known as Minimum ...Wage Law, was approved on April 6, 1951 which confirms in a ...more explicit fashion the idea that check-off is a legitimate dispute ...for arbitration. The law makes the practice of check-off compulsory ...on the part of the employer under certain conditions [See subpar. ...(3), par. (b), Sec. 10, Minimum Wage Law].

On the economic and practical side, petitioner complains that ...the practice imposes an extra burden on the employer. This alone ...is no reason for opposing the arrangement. Wage increases, reduction ...of working hours, sick leave, hospitalization and other privileges ...granted to the employed entail diminution of profits and additional ...duties and obligations to an extent much greater than the incon-...venience and additional expense involved in the adoption of the ...check-off system. The petitoner operates in four provinces and the ...majority of its employees are affiliates of the respondent labor union ...who are scattered in these provinces. It is not difficult to see how

much easier and less expensive it is for the company to handle the collection of membership dues than it would be for individual members to make remittances to their union's office, or for the union to send out collectors in so wide a territory. The extra work and expense incurred by the company in deducting from its employee's salaries the amounts the employees owe their union are small in comparison with the savings in time and money by the union and the employees, savings which can not fail to affect increased efficiency and redound to the benefit of the employer itself in the long run. In the adjustment of industrial conflicts concessions have to be made and some rights have to be surrendered, not enforced if necessary in the interest of conciliation and peace.

The system of check-off is avowedly primarily for the benefit of the union and only indirectly of the individual laborers. However, the welfare of the laborers depends directly upon the preservation and welfare of the union. Since, without the union, laborers are impotent to protect themselves against "the reaction of conflicting economic changes" and maintain and improve their lot, to protect the interests of unions ought therefore to be the concern of arbitration as much as to help the individual laborers. (*A. L. AMMEN TRANSPORTATION CO., INC. versus BICOL TRANSPORTATION EMPLOYEES MUTUAL ASSOCIATION and COURT OF INDUSTRIAL RELATIONS, G.R. No. L-4941, promulgated July* 25, 1952).

Oscar Herrera

BOOK REVIEWS

THE CHALLENGE OF INDUSTRIAL RELATIONS. Sumner H. Slichter. Cornell University Press. Ithaca, New York. Leather-bound.

In the whole fertile field of labor and management relations few writers have successfully brought their books to flourish, and most of the yield that we reap consists of dried academic seeds. Professor Slichter's book, The Challenge of Industrial Relations, certainly, is not a barren product of this field. It is one of the most challenging book ever written on this field. It offers a truly practical solution to our labor disputes and problems.

Sumner Slichter is a Lamont University professor at Harvard who has been teaching and writing on American economic conditions for nearly thirty years. This long experience in the labor field has enabled him to accumulate facts and figures with which to fortify his assertions and theories and has earned him the distinction of being an authority on labor-management relations.

The author observes that today, the United States has the

largest, most powerful and most aggressive labor movement the world has ever seen. The 190-odd national unions recently had nearly fifteen million members. "This," he pointed out, "is due to the encouragement trade unions are getting from the government. The United States Supreme Court has abandoned antiquated views concerning both the scope of governmental authority to regulate commerce and the extent to which private rights may be restricted. The passage of the Norris-La Guardia Act in 1932, the National Industrial Recovery Act in 1933, the Wagner Act in 1935, the Social Security Act in 1935 and the Fair Labor Standards Act in 1938, have helped trade to spread rapidly. The result is that, trade unions under the leadership of professional labor leaders now control all national industrial enterprises. Unions have, therefore, become more powerful and more aggresive than anyone ever dreamed they would be."

This development of strong labor unions Professor Slichter states, "are obviously bound to be a great influence either for good or for harm. Such organizations are the most powerful economic organizations in the country." What should the government propose to do to control the enormous power of unions and to realize the great constructive potentialities of labor unions? What should the government do about mammoth strikes called in order to compel violations of the law, to force changes in public policy, to force trade unionists to shift their union affiliations, or in order to punish them for joinning the wrong union? The author suggests these methods: regulation, conciliation, mediation, government cooperative policies and arbitration.

This book should be beneficial not only to sociology students and labor leaders but also to those who are interested in the legal aspect of labor-management relations. The doctrines enunciated in this book could well serve as a basis for the enactment of badly needed reforms of Philippine labor laws calculated to govern and foster harmonious relations between management and labor. The solutions the author has proposed could if adapted to our existing conditions solve many of our labor problems. Certainly, his thirty years of experience in the labor field cannot but be productive of good results. However, care should be observed in the consideration of his ideas. We must adopt only such as are suited to our prevailing conditions.

This book is truly a challenge to all those in a position to meet that challenge to join hands in order to bring about harmony and peace in the field of labor-management relations.

Francisco Manabat

PARTNERS IN PRODUCTION. The Labor Committee of the Twentieth Century Fund. The Twentieth Century Fund New York, 1944.

In theory we have often regarded our workers as industrious