LABOR LAW

PILIPINA A. ARENAS *

The year 1956 marked a noticeable increase of Supreme Court decisions in the field of labor law. This was brought about by the application of the recently enacted Rep. Act No. 875,[1] otherwise known as the Industrial Peace Act or the Magna Charta of Labor. This trend in our jurisprudence is indeed significant in that law students and members of the bar will have more opportunity to study and comment on laws which most closely affect the ordinary citizens who compose the greater portion of our population. These cases therefore become more important as they lay down rulings which will be precedents to decisions of subsequent labor cases that may arise.

It is worthy to note that our Constitution recognizes the obligation of the State to afford protection to labor.[2] The current practice of the laborers to resort to courts in cases of conflicts between them and their employers may yet be a manifestation of what Dr. Jose P. Laurel calls "a global movement of the laboring classes to secure for themselves a place in the social, economic and political scheme commensurate with their numbers and their contribution to the progressive evolution of mankind."[3]

I. THE INDUSTRIAL PEACE ACT

PURPOSE.

Rep. Act No. 875 was approved on June 17, 1953. It took effect on the same date.[4] The intention of the Legislative Body in promulgating this statute is expressed in the Declaration of Policy,[5] from which provision it may safely be inferred that the principal aim of the Statute is to insure harmonious labor-management relations by means of collective bargaining with the least intervention by the State. As stated in *PAFLU v. Tan & REMA*,[6] "the policy of the

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* Recent Decisions Editor, Student Editorial Board, 1956-1957.

1 The Industrial Peace Act is an evidence of trend away from government control of labor-management relations and of the success of the movement towards a regime of unionism and free collective bargaining. This Act is mainly of American origin. See CARLOS AND FERNANDO, LABOR AND TENANCY 12 *et seq.* (1955).

2 Article XIV, §6 of the Constitution provides: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

3 Foreword to FRANCISCO, THE LAW GOVERNING LABOR DISPUTES IN THE PHILIPPINES (1956).

4 §30, Rep. Act No. 875.

5 §1, *id.*

6 G.R. No. L-9115, Aug. 31, 1956.

law is to advance the settlement of disputes through collective bargaining, recognizing that real industrial peace cannot be achieved by compulsion of law."

In the case of *Tolentino v. Angeles*,[7] the Court ruled that although the unfair labor practice complained of took place before June 17, 1953 or prior to the taking effect of Rep. Act 875 but was filed on July 16, the said Act nevertheless governs because the retroactivity of remedial laws is not prohibited. Moreover, taking into consideration the declared policy of the Act to eliminate causes of industrial unrest,[8] the Court held that there is no valid reason why the law could not be applied to acts which would cause or bring industrial unrest taking place before its enactment.

"COURT" DEFINED.

Definitions serve not only in the capacity of aids to interpretation of the particular statute, but more frequently they have force and effect equivalent to that of the operative provisions of the act.[9] Definitions of the terms used in the Industrial Peace Act are contained in Section 2. Thus, "Court" means the Court of Industrial Relations established by Commonwealth Act No. 103 as amended, unless another Court shall be specified.[10] However, *Scoty's Department Store v. Micaller*,[11] laid down the ruling that notwithstanding his definiion, he word "cour" as used in Secion 25[12] does not include the Court of Industrial Relations. The petitioner, in this case was found guilty of unfair labor practice in questioning[13] the unin membership and dismissing without cause the respondent. The CIR ordered the reintatement of the respondent and at the same time imposing on the manager and owners of the store the penalty of ₱100. The Supreme Court reversed that portion of the decision sentencing the petitioner the payment of fine, because the court's powr to impose fine under Section 25 does not refer to the CIR but to ordinary courts of law. Among other things, the rules of evidence prevailing in the

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[7] G.R. No. L-8150, May 30, 1956

[8] §1 (a) provides: "It is the policy of this Act: To eliminate the cause of industrial unrest by encouraging and protecting the exercise by employees of their right to self-organization for the purpose of collective bargaining and for the promotion of their moral, social, and economic well-being."

[9] ROTHBERG ON LABOR RELATIONS as cited in FRANCISCO, *supra* note 3 at 320.

[10] §2(a), Rep. Act No. 875.

[11] G.R. No. L-8116, Aug. 25, 1956.

[12] "Penalties:—Any person who violates the provisions of section three of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment of not less than one month nor more than one year, or by both such fine and imprisonment, in the discretion of the Court" (1st par.)

[13] §4(a) (1) provides: It shall be unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section three;"

courts of law or equity are not followed in the CIR which may avail itself of all other means such as (but not limited to) ocular inspections and questioning of well-informed persons which results must be made part of the record.[14] "All this means that the accused may be tried without the right to meet the witnesses 'face to face' and be convicted merely on preponderance of evidence and not beyond reasonable doubt; and therefore against the due process guaranteed by the constitution."

"LABOR DISPUTES," DEFINED.

The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, or changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.[15] The Court had the occasion to apply this provision in the case of *PAFLU v. Hon. Tan and REMA, Inc.*[16] The facts are: the petitioner labor union to which the Republic and Majestic Theaters Employees Association is affiliated had a collective bargaining contract with the Republic and Majestic Theater Enterprises. Subsequently, the two theaters were sold to Goodwill Trading Co., Inc. which in turn leased the said theaters to the respondent REMA, Inc. While the collective bargaining agreement previously entered into was in effect, the new lessee required the employees to apply for employment with the new management. The employee association filed a complaint for unfair labor practice before the CIR, alleging that a breach of the collective bargaining was committed as the transfer of ownership was fictitious and a mere ruse to evade its liability under the agreement. The respondents contended that the CIR had no jurisdiction over the case because there is no relation of employer and employees as the original owner had already sold the theaters. The Supreme Court ruled that as there is a vital issue concerning the validity of transfer of ownership, there is a labor dispute which under the Industrial Peace Act includes any controversy concerning terms, tenure or conditions of employment regardless of *whether the disputants stand in the proximate relation of employer and employee.*

To the petitioner's contention in the case of *Caltex (Phil.) Inc. v. Katipunan Labor Union,*[17] that the CIR had no jurisdiction to order the reinstatement of the dismissed employee because only one,

[14] §5(b), Rep. Act No. 875.
[15] §2(j), *id.*
[16] *Supra* note 6.
[17] G.R. No. L-7496, Jan. 31, 1956. See 31 PHIL. L.J. 608 (1956).

and not 31,[18] employee is concerned and that there is no dispute between the workers and the company, the Supreme Court ruled that the existing agreement between the union and the company was a condition or term of the employment agreement. It follows that there is a labor dispute because the enforcement of said agreement is the concern of the whole labor union to which an employee belongs.

EMPLOYEE; RIGHT TO STRIKE.

The intention of the Legislature to give the term "employee" a broad meaning is obvious in Section 2(d) which includes any individual whose work has ceased as a consequence of or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment. The declaration of a strike does not amount to any renunciation of the employment relation. Striking workers have a right to be reinstated if their strike is found to be valid. It is but logical that illegal strikers may be dismissed from their employment; heretofore, such is the prevailing view. The strike staged by the workers in the case of *National City Bank of New York v. National City Bank Employees Union*,[19] was declared illegal, but the company was ordered by the Court to reinstate some of the strikers. This case, however, does not warrant a conclusion that illegal strikers have a right to be reinstated, because the Court took into consideration the fact that the failure of the employees to return on the deadline set by the CIR was due to the picketing and threats made by the other workers.

So that so far, the valid ruling in our jurisdiction is that illegal strikers may be dismissed by the employer,[20] as ruled in *Interwood Employees Association v. International Hardwood & Veneer Company of the Philippines (Interwood)*,[21] where the petitioners declared a strike on the belief that the Union President was dismissed from employment because of union activities. It was proved, however, that he resigned from the respondent company when he was not assigned to the power house unit which at the time had no vacancy. The Court held the reason of the strike to be trivial, unreasonable and not sufficient to justify a general strike.[22] The contention of the petitioners that they believed in good faith that the Union President was unjusly dismissed and therefore their strike was legal was held

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[18] §4, Com. Act No. 104 requires at least 31 employees for the Court of Industrial Relations to exercise jurisdiction.

[19] G.R. No. L-6843, Jan. 31, 1956; 31 PHIL. L.J. 607 (1956).

[20] CARLOS AND FERNANDO, LABOR AND TENANCY 194-ddd *et seq.* (1955).

[21] G.R. No. L-7409, May 18, 1956.

[22] The same ruling was held in Luzon Marine Department Union v. Roldan, 47 O.G. Sup. to No. 12, 146 (1950).

by the Court to be unmeritorious because "the determination of whether a strike is legal or illegal does not depend upon the reason or motive the strikers had in mind, otherwise, there would be no need for the Court to pass upon that question as what the strikers had in mind can hardly be refuted, rebutted or disproved." The management was authorized to dismiss the strikers from their employment. Justice J. B. L. Reyes dissented from this portion of the decision and said that reinstatement without backpay would have been sufficient punishment for the petitioners: "Where unemployment is rife as at present, dismissal may mean risk or starvation for the laborers and their families."[23]

National Labor Union v. Dinglasan[24] illustrates another instance of the intention to give the term "employees" a broad meaning. The petitioners were drivers who had verbal contracts with the respondent; their day's earnings consisted of the amount exceeding ₱7.50. The respondent alleged that the CIR had no jurisdiction to entertain the complaint for unfair labor practice filed by the drivers because the relationship between them was that of lessor and lessee and not of employer-employee. The Court ruled that the fact that "there is supervision and sort of control that the owner exercises over the drivers" and the latter had no interest in the business, neither did they invest anything in the acquisition of the jeeps would establish employer-emoplyee relationship. That could not be considered a lessor-lessee relationship because in the lease of chattels, the lessor loses complete control over the chattel leased. In the instant case, the supervision of the respondent consisted in the inspection of the jeepneys.

REPRESENTATIVE.

In the same *Dinglasan* case, it was contended that the National Labor Union is not the real party in interest to bring the complaint; the Court retorted: "...suffice it to say that 'representative' includes a legitimate labor organization or any officer or agent of such organization, whether or not employed by the employer or employees whom he represents."[25] And whenever it is charged by an offended party or his representative that any person has engaged or is engag-

[23] According to Justice J. B. L. Reyes, "laws must be favorably construed for the laborers: 'not because of any doctrinarian prejudice but simply because management counts in its ranks the more educated and enlightened men expected to possess tolerance and vision; and higher education should shoulder heavier responsibility. Every member of society must contribute to the common welfare according to his abilities. Justice (and specially social justice) is not equality but proportion."

[24] G.R. No. L-7945, March 23, 1956.

[25] §2(h), Rep. Act No. 875.

ing in any unfair labor practice the CIR must investigate such charge."

SUPERVISOR.

Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision but may form separate organizations of their own,[26] so that supervisors may not be signatories to a petition for certification election to determine which union will have the right to bargain exclusively with the employer. *Buklod ng Saulog v. Casalla, et al.*,[27] is authority for the rule that inspectors in transportation business by the nature of their work do not fall within the category of supervisors as defined by law.

RIGHT TO SELF-ORGANIZATION.

One right granted to employees is the right to self-organization;[28] hence it shall be unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of that right.[29] It was natural therefore that when the employer was not able to prove that the dismissal of the employee was due to lack of technical skill but the employees satisfactorily proved that their dismissal was due to their affiliation with a labor union, the Court held the employer to be guilty of unfair labor practice.

CLOSED-SHOP AGREEMENT.

One innovation made by the Industrial Peace Act is the express recognition of the closed-shop agreement.[30] Prior to this Law, the validity and legality of closed-shop agreement has been very doubtful.[31] A closed-shop agreement imposes as a requisite for employment the membership in a particular union; so, there must be mutuality between the parties. It is one means by which a labor union may have sufficient strength in dealing with the management. Thus, in *Bacolod-Murcia Milling Co., Inc. v. National Employees-Workers Security Union*,[32] the Court upheld the right of the employer to dismiss from employment those who joined another labor union and who ceased to be members of the Union with whom the petitioner made a closed-shop agreement. The dismissal was pursuant to the

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[26] §3, *id.*
[27] G.R. No. L-8049, May 9, 1956.
[28] §3, Rep. Act No. 875.
[29] §4(a) (1), *id.*
[30] §4(a) (4), *id.*
[31] See for example, Pampanga Bus Co. v. Pambusco Employees Union, 68 Phil. 541 (1939).
[32] G.R. No. L-9003, Dec. 21, 1956.

covenant of the agreement that "during the life of the agreement, no member of the labor union (Allied Workers Association of the Philippines) shall join another labor organization and any member who violates this condition, or ceases to be member thereof, shall be dropped from the service of the employer." The dismissed employees violated this provision by joining the National Employees-Workers' Security Union.

Dismissal from the union must be based on valid and lawful ground. So that, in *Tolentino v. Angeles*,[33] where the two employees were dismissed from the Union by its officers because of an attempt to inquire into and inspect the books of accounts and other records relative to financial activities of the Union,[34] the dismissal from employment pursuant to the closed-shop agreement was held to be not valid. Although the closed-shop agreement was lawful, the dismissal from the Union was not. Neither party, should be allowed by virtue of the closed-shop agreement to undertake or promise to permit the commission of any of the unfair labor practices.

PROCEDURE IN UNFAIR LABOR CASES.

Section 5(b) lays down the pre-trial procedure in cases of complaints for unfair labor practice. Upon filing of the charge for unfair labor practice, the Court or any agency or agent designated by the Court must investigate such charge. *National Union of Printing Workers v. The Asia Printing*,[35] clarified the fact that conducting preliminary investigation may be delegated to any agency or agent designated by the Court of Industrial Relations.

JURISDICTION OF THE CIR; ISSUANCE OF INJUNCTION.

The leading case of *PAFLU v. Hon. Tan and REMA, Inc.*[36] produced one of the most significant and controversial rulings in the field of labor law. The two issues raised there were: (1) the jurisdiction of the CIR, and (2) the validity of the injunction issued by the CFI.

Although the case involves a labor dispute, the Supreme Court speaking through Justice Bautista Angelo, said that the CIR has no jurisdiction because it may exercise the same only in four instances, namely, (1) dispute which affects industry indispensable to national interest and so certified by the President of the Philippines[37]

[33] *Supra* note 7.
[34] These are the rights granted to members of a labor union under §4 of Com. Act No. 213.
[35] G.R. No. L-8750, July 20, 1956.
[36] See note 6 but see §§12 and 17, Rep. Act No. 875.
[37] §10, Rep. Act No. 875.

(2) when the controversy refers to minimum wage under the Minimum Wage Law[38] (3) controversy under the Eight-Hour Labor Law[38a] and (4) case which involves unfair labor practice.[39] Thus, the broad jurisdiction of the CIR as governed by the Com. Act No. 103 was curtailed by Rep. Act No. 875.

As to the second issue, the Court classified the activities of a labor union into (1) those that can be enjoined[40] and (2) that that cannot be enjoined.[41] In activities that may be enjoined, in order to ascertain what court has jurisdiction to issue the injunction, it is necessary to determine the nature of the controversy. "The CIR has jurisdiction in the four cases mentioned but the situation varies with regard to other acts where injunction is permissible, because of the ambiguity of the law. Section 9(d) begins with 'No court of the Philippines'; this implies that were it not for the prohibition any court may issue the injunction." The majority of the Justices also based this ruling on expediency, in that employers in places far from Manila will incur difficulty before an injunction may be obtained from the CIR which has its office here.

The Courts of First Instance, then, have jurisdiction to issue injunction. But in this particular case, the injunction issued was invalid because the procedure under Section 9(d)[42] was not followed. Injunction under the Industrial Peace Act may not be granted *ex parte* as allowed by the Rule 60 Section 6 of the Rules of Court.

Justice J. B. L. Reyes, in his dissenting and concurring opinion to which Chief Justice Paras and Justice Concepcion concurred, said that the court referred to in Section 9(d) refers to CIR, by virtue of the definition of "court" under Section 2. Furthermore, he expressed:

> "There is a tendency in the labor and social evolution to entrust solution of labor-management conflicts to specialized administrative organs. The situations in which injunctions will be sought under that section do not involve cases of actual violence or open breaches of public peace and order because peace officers are bound to intervene in such cases. The law specifically limits the injunctions to those cases where the public officers charged with the duty to protect complainant's property are *unable* or

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38 Rep. Act No. 602.
38a Com. Act No. 444.
39 §4, Rep. Act No. 875.
40 §§10 and 9 (d), *id.*
41 §9(d), *id.*
42 "No court of the Philippines shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after finding of fact by the Court,..."

unwilling to furnish adequate protection. They are rare cases as the police and constabulary are always willing to protect those who deserve protection".

The ruling in *PAFLU v. Tan* case was reiterated in *Reyes, et al. v. Judge Tan and Gonzalez,*[43] *PAFLU v. Judge Barot,*[44] and *PAFLU v. Caluag.*[45] In the *Caluag* case, the CFI was declared to be without jurisdiction because two unfair labor practice cases were already pending in the CIR, but "assuming that the CFI has jurisdiction, the injunction is nevertheless invalid because the procedure laid down by Section 9(d) was not followed."

When there exists employer-employee relationship as to some of the claimants for back pay, this claim for back wages is a potential source of dispute between management and labor and therefore the CIR has jurisdiction to pass upon and decide the demand.[46]

APPLICABILITY TO GOVERNMENT CORPORATIONS.

Employees of the Government are not allowed to strike for the purpose of securing changes or modifications in their terms of employment. This prohibition applies only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to governmental corporations.[47] So that in *Government Service Insurance System v. Hon. Castillo, et al.*[48] the contention of the petitioner that the CIR has no jurisdiction to hear dispute between the GSIS and its striking employees on the ground that the strikers being civil service employees are covered by the Civil Service Law was held to be untenable. The GSIS was created by virtue of Com. Act No. 186 as amended by Republic Act No. 66 as a non-stock corporation exercising the "usual corporate powers". Its business of insurance is not inherently or exclusively a governmental function; it is on the contrary, in essence and practice of a private nature and interest. CIR has jurisdiction over labor disputes affecting government-owned or controlled corporations;[49] furthermore, Com. Act No. 103 [50] does not exclude from its jurisdiction civil service employees.

The same ruling was rendered in *Bermoy, et. al. v. Philippine Normal College*[51] because the PNC is by virtue of Rep. Act No. 416

[43] G.R. No. L-9137, Aug. 31, 1956.
[44] G.R. No. L-9281, Sept. 28, 1956.
[45] G.R. No. L-9104, Sept. 10, 1956.
[46] Luzon Brokerage Company v. CIR and Luzon Labor Union, G.R. No. L-9446, Dec. 29, 1956.
[47] §11, Rep. Act No. 875.
[48] G.R. No. L-7175, April 27, 1956.
[49] Manila Hotel Employees Association v. Manila Hotel Co., 73 Phil. 374 (1941).
[50] The Act creating the Court of Industrial Relations.
[51] G.R. No. L-8670, May 18, 1956.

a corporation engaged in non-governmental function; and its board of directors is vested with powers similar to ordinary corporations.

CERTIFICATION ELECTIONS.

One of the reasons for the right to self-organization is collective bargaining. The labor organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.[52] A certification election may be ordered by the court in case there is doubt as to which is the freely chosen representative of the employees for the purpose of collective bargaining. It is mandatory on the Court to order a certification election when a petition is filed by at least ten per cent of the employees in the appropriate unit requesting an election.[53] Hence, in *Buklod Ng Saulog, v. Casalla, et. al.*[54] the certification election was ordered at the instance of 65 out of 583 employees to determine which of the two rival unions is the sole bargaining representative of the employees. As to the contention that due to some retractions, there are only 42 employees on the side of the respondent asking for the certification election and therefore less than 10%, Section 12 speaks of 10% at the time of the filing of the petition; retractions after the same cannot affect the number of petitioners. And where the previous collective bargaining agreement sought to establish merely grievance procedure and leaves out many matters in which parties should have stipulated, Section 13 par. 1 [55] does not bar a certification election.

The CIR may prescribe rules and regulations for the conduct of holding certification elections. One of the grounds for writ of certiorari in *15¢ & Up Employees Association v. Department Store and Bazaar Free Workers Union*,[56] is abuse of authority in suspending

[52] §12(a), Rep. Act No. 875.
[53] §12(c), Rep. Act No. 875.
[54] *Supra* note 27.
[55] "In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of an employer and the representative of his employees to bargain collectively in accordance with the provisions of this Act. Such duty to bargain collectively means the performance of the mutual obligation to meet and confer promptly and expeditiously and in good faith, for the purpose of negotiating an agreement with respect to wages, hours and/or other terms and conditions of employment, and of executing a written contract incorporating such agreement if requested by either party, or for the purpose of adjusting any grievances or question arising under such agreement, but such duty does not compel any party to agree to a proposal or to make concession."
[56] G.R. No. L-9168, Oct. 18, 1956.

the election at 11:40 A.M. in violation of the rules.[57] As the suspension was done by virtue of mutual agreement, there is no abuse of discretion as there is nothing which prohibits the parties in interest from waiving the rule and suspending the election by mutual agreement even before that time.

COMMONWEALTH ACT NO. 103.

The Court of Industrial Relations is governed by Com. Act No. 103, and the same was limited only by Rep. Act No. 875.[58] The CIR could only acquire jurisdiction over a petition filed by more than 30 employees who have some quarrel, grievance or dispute against their employers in connection with their labor condition.[59] So that, in *Cosmopolitan Workers Union v. Panciteria Moderna*[60] where only 17 out of 70 employees filed before the CIR a petition to secure vacation and sick leaves, increase in wages, payment of the minimum wage as fixed by law and for overtime, the dismissal of action by the Court for lack of jurisdiction was held to be proper. Otherwise, a single employee will have a right to file a petition against employer even against the will of his co-workers.

The CIR has authority to alter, modify, reopen and set aside even its final orders or judgments.[61] This found application in the case of *Connell Bros. Co. (Phil.) v. National Labor Union.*[62] The petitioner, there, asked the CIR to authorize the Company to dismiss the strikers who had been previously ordered to return to work; the ground was that due to import controls and exchange regulations, the value of the Company's imports had been considerably reduced, and therefore had to reduce the business. The CIR may authorize such dismissal notwithstanding previous final order by virtue of Section 17 of Com. Act No. 103.

II. WORKMEN'S COMPENSATION ACT

The Workmen's Compensation Act sought to provide security to the workmen and their dependents by making a reasonable compensa-

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[57] It is implied under section 12(e) that the Court has authority to prescribe rules and regulations for the conduct of certification election. In the instant case, both parties agreed to advance the time of closing the certification election.

[58] It is interesting to note that while the case of PAFLU v. Tan and REMA, Inc. supra note 6, limits to only four cases the jurisdiction of the CIR, a careful analysis of Rep. Act No. 875 reveals two other instances where the Court may exercise jurisdiction, thus: in representation cases under Section 12 and violations of rights and conditions of membership in labor organization under Section 17, the CIR is expressly given the jurisdiction to hear cases.

[59] §4, Com. Act No. 104.

[60] G.R. No. L-7326, May 11, 1956.

[61] §17, Com. Act No. 103.

[62] G.R. No. L-3631, June 30, 1956.

tion for such accidental calamities as are incidental to the employment.[63] This Act took effect on June 10, 1928, or six months after its enactment.[64] In order to cope with the changing needs of circumstances, amendments had been subsequently introduced to the Law, namely, Act No. 3812,[65] Com. Act No. 210,[66] Rep. Act No. 772,[67] and Rep. Act No. 889.[68]

"ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT."

The provision that the injury must arise out of and in the course of employment[69] is based on the theory that if the industry produces an injury, the cost of that injury shall be included in the cost of the product of the industry.[70] Although the phrase "arise out of and in the course of employment" has been the subject of varied and conflicting interpretations, the recent tendency seems to be that the same be construed liberally in favor of the employee.

The case of *Batangas Transportation Co. v. Rivera, et. al.*,[71] is an illustration of lack of definiteness of the meaning of this phrase. Six Justices of the Supreme Court voted in favor of the recovery of the compensation by the deceased; five Justices voted against.

The facts of the case are: Aurelio Rivera while driving one of the respondent's buses, was shot by an unknown passenger who boarded the bus purposely to kill him. The motive was not known, although according to the findings the incident seemed to have come from a personal grudge of the assailant against the deceased.

According to the majority opinion, there being no competent proof as to the cause of the assault, once it is proved that the employee died *in the course* of the employment, the legal presumption is that the claim comes within the provisions of the Compensation Law.[72] It was argued that the incident did not arise out of the employment because the deceased might have been killed even if not performing his task. To this, the Court said that rulings prevailing in the U.S. are being followed in our jurisdiction, so that an assault arises out of the employment if the employment increases or contributes to the risk of the assault even though the increase be small

63 For a thorough discussion of the concept of workmen's compensation, see Laureta, Jose C., Survey of 1955 Cases in Labor Law, 31 PHIL. L.J. 335 (1956).
64 This was enacted Dec. 10, 1927.
65 This took effect Dec. 8. 1930.
66 Nov. 20, 1936.
67 June 20, 1952.
68 Effective June 20, 1952 but approved June 19, 1953.
69 §2, Act No. 3428.
70 Mobile Oil Co. v. Industrial Commission of Illinois, 28 F. 2d 228 (1928).
71 G.R. No. L-7658, May 8, 1956.
72 §44, Act No. 3428. The Court leaned heavily on the ruling of Murillo v. Mendoza, 66 Phil. 689 (1938).

in degree. In the instant case, the fact that the deceased was driving the bus made it easier for the assailant to find him in such a situation where he could not defend himself.

The dissenting Justices, speaking through Justice Montemayor were of the view that it is necessary to establish a causal connection between the conditions under which the work is required to be performed and the resulting injury. Mere proof of an accident without other evidence does not create the presumption under Section 44 but only where some connection appears between the accident and the employment.[73]

The case of *Martha Lumber Mill, Inc. v. Lagradante*,[74] was decided in the same spirit as that of the *Batangas Transportation* case. The deceased, a concession guard, was murdered outside of his office hours and while sleeping in the quarters provided by the petitioner company. The Court, still, considered the death to be one arising out of and in the course of employment because he was compelled by the nature of his work to stay in his quarters, thereby making himself available regardless of time, for the protection of the rights and interests of the petitioner. Moreover, said the Court, it can not be overlooked that the mastermind confessed that he bore grudge against the deceased because he replaced the killer in his job and was responsible for his ousting.

The *Philippine Fiber Processing Co., Inc. v. Workmen's Compensation Commission*,[75] is another illustration of the liberality to the worker in the construction of labor laws. The employee in that case, was a diesel mechanic and power plant operator of the petitioner and at 5:15 A.M. while running to avoid the rain, slipped and fell into a ditch fronting main gate of the petitioner's factory. This resulted into his death the following day. The deceased was not under any shift routine. His assignment covered the entire working hours of the factory; the first working hour starts at 6 a.m. and it takes at least 30 minutes before machine operates at full speed or load. The spot where he fell was immediately proximate to his place of work. Under such facts, the Court held the injury as one arising out of and in the course of employment.

RIGHT TO ADDITIONAL COMPENSATION.

Section 4 of Rep. Act No. 772[76] amending Section 4 of the Workmen's Compensation Act requires the employers to install and maintain safety appliances or take other precautions for the preven-

[73] Daus v. Gunderman & Sons, Inc. 283 NY 459 (1940).
[74] G.R. No. L-7599, June 27, 1956.
[75] G.R. No. L-8130, June 30, 1956.
[76] See note 67.

tion of accident or occupational disease, otherwise he shall be liable to pay an additional compensation equal to fifty *per centum* of the compensation fixed in the Act. Whether or not precautionary measures are taken may be gathered from the facts. In *Sagun v. Philippine Diesel Service Corp. and the Workmen's Compensation Commission*,[77] the petitioner was a mechanic employed by the respondent corporation. While he was operating a stone grinder, a foreign body flew and entered his right eye and caused the loss of vision of said eye, for which injury he was awarded ₱2,643.54. He is now claiming for additional 50% of said sum as additional compensation. The respondent failed to provide a standard safety hood for its laborers but provided them with safety goggles and had posted notice regarding the use of such goggles when the nature of the work so required. The court denied the additional compensation asked for because the respondent had taken precautions which an ordinary prudent man would have taken and that the injury would have not occurred had the petitioner used the goggles provided for the kind of work he was doing.

EXCLUSIVE JURISDICTION OF THE WORKMEN'S COMPENSATION COMMISSIONER.

The Workmen's Compensation Commission was created in order to hear and decide claims for compensation under the Workmen's Compensation Act. The jurisdiction of the Commissioner over such claims is exclusive.[78] Thus, the Supreme Court, in the case of *Manalo v. Foster Wheeler Corporation*[79] upheld the CFI of Batangas in dismissing the action on the ground of lack of jurisdiction. The plaintiff while in the employ of the defendant as a steel man was accidentally struck by a steel plate thereby he suffered injuries. The Workmen's Compensation Commissioner has the exclusive jurisdiction over the plaintiff's claim. The damages could not be demanded and assessed under the Civil Code because under sec. 5, the rights and remedies granted by this Act shall exclude all other rights and remedies which may be granted under the Civil Code and other laws.[80]

WHERE A CO-EMPLOYEE IS LIABLE.

Where an employee has a right against a person other than his employer for injury suffered, the employee has the right to choose

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[77] G.R. No. L-8751, May 21, 1956.
[78] §5, Act No. 3428.
[79] G.R. No. L-8379, April 24, 1956.
[80] §5, par. 1 Act No. 3428 provides: "The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation shall exclude all other rights and remedies accruing to the employee, his personal representatives, dependents or nearest of kin against the employer under the Civil Code and other laws, because of said injury."

to claim compensation under this Act or to sue for damages the other person. In *Marinduque Iron Mines Agents v. Workmen's Compensation Commission*,[81] the Court laid down the rule that conviction in a criminal action sentencing the co-employee to indemnify the injured employees does not bar an action against the employer. The facts are: The deceased employee boarded one of the trucks of the petitioner. The driver also an employee, while trying to overtake another truck hit a coconut tree resulting in the death of said deceased employee. The driver was sentenced to indemnify the heirs but he has paid nothing to them, so the claimants brought an action against the employer. In ruling that the action was not barred notwithstanding section 6, the Court explained that the criminal case against the driver was not a suit for damages. The heirs did not intervene in said case and they have not received as yet the indemnity ordered by the Court. At any rate, indemnity granted the heirs in a criminal prosecution of the "other person" does not affect the liability of the employer to pay compensation.[82] It was further held that the letter of the widow "forgiving the driver for the wrong committed and promising not to bring him to the authorities for the prosecution" was not an election of the remedies against the third person so as to bar remedy against the employer. All the widow promised was to forego any criminal prosecution; she did not waive civil action for damages.

DEPENDENTS OF THE INJURED PERSON.

One of the persons considered as dependents and entitled to compensation under the provisions of the Workmen's Compensation Law is the parent or grandparent if totally or partly dependent upon the deceased.[83] *Malate Taxicabs & Garage, Inc. v. Villar*,[84] is authority for the view that when deceased extended help to the parents in maintaining the family by contributing to their expenses with varied sums, at times amounting to ₱20.00 a week or every ten days, even though such sum is not a fixed one, the parents may still be considered as dependents. 'Dependency' does not mean absolute dependence for the necessities of life but rather that the plaintiff looked to and relied on the contribution of the decedent in whole or in part as a mean sof supporting and maintaining oneself in accordance with his station in life.

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[81] G.R. No. L-8110, June 30, 1956.
[82] Nava v. Inchausti Co., 57 Phil. 751 (1932).
[83] §9, par. 5, Act No. 3428.
[84] G.R. No. L-7489, Feb. 29, 1956.

COMPENSATION OF WAGES.

The average weekly wages shall be computed in such manner that it shall be the best computation that can be made of the weekly earnings of the laborer during the twelve weeks next preceding his injury.[85] For this reason, the Court, in the case of *Bachrach Motor Co., Inc. v. The Workmen's Commission & Panaligan*,[86] held to be untenable the contention that the award should have been computed on the basis of the daily wage without including overtime pay and night service premium. Said the Court: "If commercial value is covered in 'wages'[87] there is more reason to include overtime pay and night service premium which at any rate may fall under 'other amounts' which the employees receive from the employer as part of his compensation".

NOTICE OF THE INJURY AND CLAIM FOR COMPENSATION.

An employee is under obligation to notify the employer of the injury or sickness as soon as possible and that claim for compensation shall be made not later than two months after the date of the injury or sickness.[88] It was held in *Martha Lumber*[89] case that substantial compliance with the requirement will be sufficient. A letter of the claimant to the Secretary of Labor appealing for help in securing any gratuity or benefit for the death of her husband was held sufficient notice as the claimant was apparently misled by the assumption that the deceased was an employee of the Bureau of Forestry.

NOTICE BY THE EMPLOYER CONTROVERTING THE CLAIM.

Section 37 imposes upon the employer certain duties which he should perform; one of them is the giving of notice to the Workmen's Compensation Commissioner of the occurence of an incident causing injury to anyone of his employees. So that in *Bachrach Motor Co., Inc. v. Workmen's Compensation Commission and Panaligan*,[90] the petitioner's failure to controvert the claim of its employee for physical injury, within 10 days after it had knowledge of the accident would amount to an agreement of the compensability of the injury. In that case, the petitioner failed to give notice that compensation was not being paid and the reasons therefor within the prescribed period; it admittedly paid respondent compensation by reason of the accident.

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85 §37, Act No. 3428.
86 G.R. No. L-8589, May 25, 1956.
87 §39(g), Act No. 3428.
88 §37, *id.*
89 See note 74.
90 See note 86.

WHAT CONSTITUTE "WAGES"

The petitioner, in the same case of *Bachrach Motor Co., Inc. v. Workmen's Compensation Commission*,[91] argued that the award given by the Commissioner should have been computed on the basis of the daily wage without including overtime pay and night service premium. The Court held this contention to be untenable because aside from the provision that computation shall be the best that can be made of the weekly earnings of the laborer during the 12 weeks next preceding the injury,[92] sec. 39(g) defines "wages" to include the commercial value of the board and lodging, subsistence, fuel and other amounts which the employer receive from the employer as part of the compensation.

LAW APPLICABLE TO SMALL INDUSTRIES.

One of the requisites for the applicability of the Workmen's Compensation Act is that the capital of the enterprise, industry or business must not be less than ten thousand pesos. The Court, in *Viana v. Al-lagaden and Piga*,[93] rendered the ruling that the non-applicability of the Act is a matter of defense which cannot be availed of *unless pleaded* in the employer's answer to the claim for compensation filed by the employee or his heirs. In this case the Court granted compensation to the heirs of the crew who disappeared while in the fishing sailboat "Magkapatid" owned by the petitioner Viana. The defense that Workmen's Compensation Act is not applicable because the capital is less than ₱10,000 was raised only in the Supreme Court for the first time when review of the decision of the Supreme Court is sought. That defense was held to be barred.

III. TENANCY LAW

The law governing the relationship between the landholders and tenants is Rep. Act No. 1199 otherwise known as the Agricultural Tenancy Act of the Philippines. This is of recent enactment. Prior to it Act No. 4054,[94] as amended governed tenancy.

APPLICABILITY OF R. A. 1199.

It is a recognized principle that a statute operates prospectively and never retroactively unless the legislative intent to the contrary is made manifest either by express terms of the statute or by necessary implication.

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91 *Id.*
92 §19, Act No. 3428.
93 G.R. No. L-8967, May 31, 1956.
94 Subsequently amended by Com. Act No. 461, on June 9, 1939.

One of the causes for the dispossession of a tenant from his holdings is the *bona fide* intention of the landholder to cultivate the land himself personally or through the employment of farm machinery and implements. However, under the new law,[95] one obligation imposed upon the landholder is that one year but not more two years prior to the date of his petition to dispossess the tenant, he must file notice with the Court and shall inform the tenant of his intention to cultivate the land himself either personally or through the employment of mechanical implements, together with a certification of the Secretary of Agriculture and Natural Resources that the land is suited for mechanization. This section was held in *Tolentino v. Alzate*[96] to be a substantive and not a procedural provision and therefore will not have a retroactive effect. The respondent as manager of an hacienda, filed on Aug. 12, 1954 a petition in the Court of Industrial Relations,[97] to be permitted to lay off 19 tenants to be able to introduce a mechanization program (the tenants however, alleged a different purpose of the ejectment). In the meantime or on Aug. 30, 1954, Rep. Act No. 1199 was enacted. The tenants contended that the respondent failed to comply with the procedural requirement set forth by section 50 of the New Law. The Court in ruling the provision inapplicable to the case said that although a statute which merely regulates court procedure may be given retroactive effect to the extent of applying it even to actions that are pending at the time of its passage,[98] the provision here in question does not merely partake of a court procedure but refers to a requirement. "Such provision is clearly substantive in nature and cannot be given retroactive effect unless so clearly expressed in the law."

SHARE TENANCY.

Section 8 of Act No. 4054 as amended by Rep. Act No. 34 provides that in the absence of any written agreement to the contrary and when the tenant furnishes the necessary implements and work animals and defrays all the expense for planting and cultivation of the land, the crop shall be divided 75% for the tenant and 25% for the landlord in case of land the average annual production of which is not more than 40 cavans of palay per one cavan of seeds. This was held to be applicable in the case of *Dahil v. Crispin*[99] where the land to which two cavans of seeds were planted produced 42 ca-

[95] §50(a).
[96] G.R. No. L-9267, April 11, 1956.
[97] With the enactment of Rep. Act No. 1267 creating the Court of Agrarian Relations, the CIR lost jurisdiction over tenancy cases.
[98] People v. Sumilang, 44 O.G. No. 3, p. 881 (1946).
[99] G.R. No. L-7103, May 16, 1956.

vans of palay. It was held there that the 50-50 basis could not be the share basis. Moreover, under Sec. 7 of the same Law the tenant should receive not less than 55% of the net produce.

COURT EXERCISING JURISDICTION.

The Court which formerly has jurisdiction over tenancy cases is the Court of Industrial Relations.[100] Tenancy dispute over a piece of land includes not only the land subject matter proper of the tenancy relationship but also the land provided by the landholder to the tenant for the latter to build his house. But where the case concerns forcible entry on the property separate from the one cultivated by the tenant, the CIR has no jurisdiction. This was the holding in *Timbaga v. Vasquez and Agoncillo* [101] because the tenant appears to be a mere intruder on a property which has not been turned over to him for cultivation. "While Section 26 requires provision for an area of land where the tenant may construct his dwelling it does not refer to another piece of land aside from the one cultivated."

By virtue of Rep. Act No. 1267,[102] the Court of Agrarian Relations was created to exercise jurisdiction over tenancy cases, *Napiza, et al. v. Milicio and CIR*[103] settled the doubt as to what court has jurisdiction over tenancy cases pending CIR at the enactment of Rep. Act No. 1267. As there is no provision withdrawing from CIR authority to dispose of tenancy cases pending at the time of passage of the Rep. Act No. 1267, the CIR will retain jurisdiction over it, on the principle that laws should be prospective.[104]

Furthermore on Sept. 9, 1955, Rep. Act No. 409 amended Section 7 of Rep. Act No. 1267 and same expressly provides that cases pending in CIR upon approval which are within the jurisdiction of the CAR shall be transferred to and proceedings therein continued in the latter court. This shows there was no such transfer of authority under Rep. Act No. 1267 as to pending cases.

IV. EIGHT HOURS LABOR LAW

The power to enact legislation limiting hours of labor is conferred by the Constitution in its broad principle of promotion of social justice and the protection to labor. It is also generally sought upon the theory that such laws constitute an exercise of the police

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[100] See note 97. Formerly provided in Com. Act No. 461 as amended by Com. Act No. 608 and Rep. Act No. 44.

[101] G.R. No. L-8719, July 17, 1956.

[102] As amended by Rep. Act No. 1409 to the effect that pending cases in the CIR, cognizable by the CAR are expressly ordered to be transferred to the CAR.

[103] G.R. No. L-9380, Oct. 31, 1956.

[104] Note 97.

power.[105] The reason of the limitation of hours of labor is that man's power being limited, daily labor must be so regulated that it may not be protracted during longer hours than what strength admits.[106] Com. Act No. 444,[108] otherwise known as the Eight Hours Labor Law contains the provision limiting the working hours for laborers or employees.

FARM LABORS.

The Eight Hours Labor Law expressly specifies the instances where the Act is not applicable.[108] Thus, the Law does not apply to farm laborers. The case of *Pampanga Sugar Mills v. Pasumil Workers Union*,[109] however, held the exception not to be applicable to highly mechanized farming concern, as the said laborers may be considered industrial workers. The tournahauler and truck drivers employed by the petitioner in transporting to the mill are industrial workers and therefore are entitled to an additional compensation for work done in excess of eight hours a day. According to the Court, if the petitioner were a small farmer using tractors and trucks on a small scale, its contention would perhaps merit serious, if not favorable consideration. But petitioner is a highly mechanized industrial concern with the work of planting and harvesting clearly distinct from that of transporting the cane from fields, first to a switch and later to the mill, so that all its workers are to be considered industrial workers, except those devoted to purely agricultural work.

OVERTIME WORK AND NIGHT DUTY.

Overtime compensation is additional pay for services or work rendered or performed in excess of eight hours a day by employees or laborers who are covered by the Eight Hours Labor Law and are not exempt its overtime requirements. It is the pay or amount obtained by multiplying the overtime hourly rate by the number of hours worked in excess of eight.[110]

The Eight Hours Labor Law contemplates of a daliy eight-hour working day. So that, night work is not an overtime work as long as it does not exceed eight hours. But as night work is more strenuous than work performed during the day and as it is attended by innumerable inconveniences for hygiene, medical, moral, cultural and

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105 45 LRA 603.
106 Encyclical Letter on the Condition of Labor by Pope Leo XIII on May 15, 1891, as cited in FRANCISCO, LABOR LAWS 526 (1956).
107 Enacted June 3, 1939.
108 §2, Com. Act No. 444.
109 G.R. No. L-7668, Feb. 29, 1956; 31 PHIL. L.J. 606 (1956).
110 Wage Administration Service Interpretative Bulletin No. 2, May 28, 1952.

sociological reasons, night workers should be entitled to additional compensation.[111] This ruling was reiterated in *Detective & Protective Bureau, Inc. v. United Employees Welfare Association.*[112]

That the employees rendered services for overtime work must be satisfactorily proved. Hence in *Luzon Marine Department Union v. Pineda,*[113] only those bargemen who were able to prove to have rendered overtime work were given additional compensation. The quantum of proof must be sufficient to pursuade the Court of the validity of the claims.

MAY BE SUBJECT OF AMICABLE SETTLEMENT.

Any agreement contrary to the provisions of the Eight Hours Labor Law is null and void.[114] But in *Mercader v. Manila Polo Club,*[115] it was ruled that the amount recoverable may be compromised by means of amicable settlement. So that, the petitioner, a bookkeeper and accountant in the employ of the defendant Club was deemed to have waived all his rights as to overtime pay, sick leave, etc. by virtue of an amicable settlement whereby he renounced such rights in consideration of ₱7,000.

WHAT COURT HAS JURISDICTION.

Cases arising under the Eight Hours Labor Law are under the jurisdiction of the CIR.[116] It is interesting to note that in *Carlos v. Kiener Construction Ltd.,*[117] where the right to recover was assigned by the employee to the plaintiff, the Court held the CFI to have jurisdiction.

V. MINIMUM WAGE LAW

Another step by Legislative Body for the upliftment of the conditions of the laboring classes is the Minimum Wage Law which took effect on Aug. 4, 1951.[118] Presently, the Philippine laws on wages are contained in this law, in the New Civil Code,[119] and in the recently-enacted Rep. Act No. 1052.[120]

111 Shell Co. v. National Labor Union, 46 O.G. Sup. No. 1 p. 97 (1948).
112 G.R. No. L-8175, Feb. 1956; *Recent Decision,* 31 PHIL. L.J. 606 (1956).
113 G.R. No. L-8681, May 25, 1956.
114 §6, Com. Act No. 444.
115 G.R. No. L-8373, Sept. 28, 1956.
116 See also PAFLU v. Tan and REMA, Inc. note 6.
117 G.R. No. L-9516, Sept. 29, 1956.
118 Rep. Act No. 602.
119 Articles 1705 to 1708.
120 An Act providing for the manner of terminating employment without a definite period in a commercial, industrial, or agricultural establishment or enterprise.

WAGE INVESTIGATION AND APPOINTMENT OF WAGE BOARD—A minimum wage law under which the wage standard—not the power to fix minimum undergoes, without any standards or limitations—is fixed by an administrative board or commission does not involve an unconstitutional delegation of legislative power.[121]

Under our Law, the Secretary of Labor is authorized to investigate the wages being paid to employees in any industry; and if after the investigation he is of the opinion that the employees are receiving wages which are less than sufficient to maintain them in health, efficiency and general well-being, he shall appoint a Wage Board to fix a minimum wage for such industry.[122]

The respondent in *Caltex, et al. v. Hon. Quitoriano*[123] exercised this power to create a Wage Board after the Chief of Wage Administration Service made a report of its preliminary investigation of conditions relevant to labor matters in local oil firms. The petitioners objected on the ground that no investigation was made prior to its creation. In overruling the objections, the Court said that the investigation made by the Chief of the Wage Administration Service that average minimum wage was below the estimated requirement of an adequate standard of living is sufficient as the law does not prescribe that the investigation be made by the Secretary himself. It is the Wage Board that will conduct the real inquiry in the facts and notify interested parties and hold public hearings thereon. The investigation preliminary to appointment of a Wage Board is not intended to be final. Furthermore, the interests of the petitioner as the employers are amply protected by the composition of the Board and by expression of Section 6(a)[124] on "due process".

DELEGATION OF POWER TO THE WAS; APPLICABILITY OF RES JUDICATA.

For reasons of expediency, the Secretary of Labor is authorized under Section 12(e) to delegate any or all of his powers in the administration or enforcement of the Act to the Chief of the Wage Administration Service who may act personally or through duly authorized representatives. If any of the parties in the case decided by the Wage Administration is not satisfied, he may appeal to the Supreme Court within the period prescribed,[125] otherwise, he will be barred under the principle of *res judicata* which "applies as well to

[121] 31 AM. JUR. §53.
[122] §4(a), Rep. Act No. 602.
[123] G.R. No. L-7152, March 21, 1956.
[124] It is required that the hearings be made public in consonance with due process and that rules of evidence be also followed.
[125] §7, Rep. Act No. 602.

the judicial and quasi-judicial acts of public executive, or administrative officers and boards acting within their jurisdiction as to judgments of courts having general judicial powers." This was the ruling in *Brillantes v. Castro*.[126] The petitioner herein filed before the WAS on December 1, 1953 a claim for the recovery of unpaid salary and overtime pay against the respondent. Both bound themselves to abide by whatever decision that may be rendered. Only the unpaid salary was awarded on May 31 by the WAS. On November 10, 1954, the petitioner filed an action on the same subject matter and cause of action before the CFI. The Court ruled that the action was barred by prior judgment of the WAS which exercised the power delegated by the Secretary of Labor pursuant to Section 12(e).

ONE MONTH'S PAY DUE UNDER REP. ACT NO. 1052.

Before an employer may terminate his relationship with his employee, he must serve on the latter at least one month notice in advance, otherwise the employee shall be entitled one month's compensation from the date of termination of his employment.[127] This provision of law was applied in *Malate Taxicab & Garage Co., Inc. v. CIR and National Labor Union*.[128] The petitioner, due to sale of its franchise to another taxicab operator dismissed 360 drivers who are members of the respondent union. The dismissed employees claimed for one month separation pay. The petitioner argued that under the *Lara*[129] case the drivers who are receiving certain percentage of their fare receipts as compensation are not entitled to separation pay upon dismissal. To this, the Court stated that Article 302 of the Code of Commerce[130] on which the decision of the case was based was already repealed by the new Civil Code.[131] For one thing, Rep. Act No. 1052 speaks of "compensation," a term broad enough to include all forms of remuneration.

The ruling in the *Malate Taxicab* case was modified by *Durable Shoe Factory v. CIR and National Labor Union*[132] and *Yu Ki Lam, et. al. v. Micaller*.[133] In the former, the Court explained that in appraising the back wages due to employees unjustly dismissed, his

[126] G.R. No. L-9223, June 30, 1956.
[127] Rep. Act No. 1052.
[128] G.R. No. L-8718, May 11, 1956.
[129] Lara v. Del Rosario, 50 O.G. 1975 (1954).
[130] It dealt with commercial commissions.
[131] The Court further said that even assuming that the article mentioned was still in force, nevertheless since it spoke of "salary corresponding to said month, commonly known as 'mesada', it would have no application to employees having no fixed salary either by the day, week, or the month since computation of the month's salary would be impossible."
[132] G.R. No. L-7783, May 31, 1956.
[133] G.R. No. L-9565, Sept. 14, 1956. This case is a sequence of previous case decided Aug. 25, 1956; *supra* note 11.

earning must be taken into account but the Court should also deduct from the amount of back wages awarded such wages as they may have earned elsewhere after their dismissal. This is to mitigate the liability of the employer under the principle that no one should be allowed to enrich himself at the expense of another. The employee discharged is under obligation to use reasonable diligence to obtain other suitable employment.

Republic Act No. 1052 grants the one month pay under the assumption that the cause of the dismissal is just; only, there is a failure to give one month notice prior to the dismissal. So that in the *Micaller* case, the Court ruled that Republic Act No. 1052 applies when the dismissal is not prohibited by Law. But when the employee is dismissed because of union activities, or in violation of express statutory provisions, the employer cannot take refuge in said Law to justify or legalize such dismissal.