WELFARE LEGISLATION

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This survey is limited to the 1968 decisions of the Supreme Court involving the Workmen's Compensation Act,[1] the Social Security Act,[2] and statutes on fair labor standards such as the Minimum Wage Law,[3] the Eight Hour Labor Law,[4] and the Termination Pay Law,[5] among others.

WORKMEN'S COMPENSATION

The 1968 compensation cases indicate no departure from the trend of liberality in favor of the working class. In some of the cases, the Supreme Court did not hesitate to invoke, not necessarily as a last recourse, the constitutional mandate that the State shall afford protection to labor,[6] or the beneficent provisions of the Civil Code directing that in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the workingman.[7] In only two of a score of cases was compensability denied on the ground of lack of work-connection.[8]

In the course of employment; off-the-premises injuries

Compensability under the Act requires an injury suffered by the employee from an accident "arising out of and in the course of his employment."[9] Jurisprudence has evolved some basic propositions regarding this litigiously prolific phrase. The words "arising out of" refer to the origin or cause of the accident, and are descriptive of its character, while the words "in the course of" refer to the time, place and circumstances under which the accident takes place.[10] As a general rule, therefore, an employee is not entitled to recover compensation for injuries sustained outside the compound or premises of his employer for the reason that the relationship of employer and employee is ordinarily and temporarily sus-

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[1] Act No. 3428 (1928), as amended by Act No. 3812 (1930). Com. Act No. 210 (1936), Rep. Act Nos. 772 (1952), 889 (1952), and 4119 (1964).

[2] Rep. Act No. 1161 (1954), as amended.

[3] Rep. Act No. 602 (1951), as amended by Rep. Act Nos. 812 (1952), 4180 (1965), and 4707 (1966).

[4] Com. Act No. 444 (1939), as amended by Rep. Act Nos. 1993 (1957), and 2377 (1959).

[5] Rep. Act No. 1052 (1954), as amended by Rep. Act No. 1787 (1957).

[6] CONST., Art. XIII, sec. 6.

[7] Art. 1702.

[8] See Layag v. Republic, G.R. No. 23640, May 22, 1968 and Bungkas v. NAWASA, G.R. No. 25572, June 22, 1968.

[9] Act No. 3428 (1928), as amended, sec. 2.

[10] See Afable v. Singer Sewing Machine, 58 Phil. 39 (1933).

pended from the time the employee leaves his work to go home until he resumes the same,[11] and during the time he is going to or coming from work — a situation covered by the so-called "coming and going rule."[12] Courts, however, have relaxed somewhat this rule on off-the-premises injuries and have recognized exceptions thereto. One of these exceptions is the "proximity rule" under which injuries, though sustained outside the premises of the employer but in close proximity thereto and while the employee was using a customary means of egress or ingress are deemed compensable as to have been sustained "in the course of" the employment.[13]

Last year, the Supreme Court had occasion to examine, once more, this "proximity rule" in *Iloilo Dock and Engineering Company v. Workmen's Compensation Commission* (hereinafter referred to as WCC).[14] In this case, a mechanic of the company, while working on his way home, barely two minutes after his dismissal, was shot to death in front of, and about twenty meters away from the main gate of the company, on a private road commonly called the IDECO road. The Supreme Court addressed itself mainly to the issue of whether the accident was "in the course of" the employment.[15]

It may be recalled that as early as 1956, in *Philippine Fiber Processing Company v. Ampil,*[16] the Supreme Court already applied the "proximity rule" and granted compensation to the dependent widow of an employee who, while proceeding to his place of work at about 5:15 in the morning, and running to avoid the rain, slipped and fell into a ditch fronting the main gate of the factory, as a result of which he died the next day. The ruling enunciated in this case received some qualification in the 1966 case of *Pampanga Sugar Development Company v. Quiroz,*[17] where the employee, soon after his dismissal from work, while standing about 2½ meters from the gate of the company near the shoulder of the highway, waiting for a ride home, was bumped by a jeepney as a result of which he suffered injuries. The Supreme Court, in *denying* compensation, ruled that proximity alone is not enough but that the place of accident must have contained a special hazard or risk to the employee to which the general public is not exposed. The Court, however, explained that there was no deviation from the *Ampil* ruling as the ditch in the latter case was itself an obvious hazard contributing, in a special way, to the occurrence of the accident. In the *Quiroz* case, however, no special danger appeared to exist as it was not shown that the accident took place

[11] *Ibid.*
[12] See 8 SCHNEIDER, WORKMEN'S COMPENSATION, 3 ff (Perm. ed., 1951).
[13] *Ibid.*, at p. 117.
[14] G.R. No. 26341, November 27, 1968.
[15] See discussion on "assaults," *infra.*
[16] 99 Phil. 1050 (1956).
[17] G.R. No. 22117, April 29, 1966, 63 O.G. 11443 (Dec., 1967).

at the usual waiting place of employees or that place was particularly unsafe.

In the case under review, the Court observed that while the company denied ownership of the private road leading directly to its main gate and where the accident took place, it could not be denied that the company was using the same as the principal means of ingress and egress, and that such right to use must have been a legal one (easement) or a contractual one (lease) in either of which case the company should logically and properly be charged with security control of the road. Applying the Ampil ruling, the Court held that the company in the case at bar should have seen to it not only that the road was properly paved and did not have holes or ditches, but should also have instituted measures for the proper policing of the immediate area.

The precise limits of the "proximity rule" are still to be delineated. The extensive citations made by the Court in the *Ideco* case of American cases and authorities may, perhaps, mitigate the apprehension of employers regarding the implications of the case.[18]

Arising out of; assaults

In the same *Ideco* case, the Supreme Court did not deem it significant that the motive for the killing was not (and could not have been) established.[19] While the general rule is that for assaults to be covered by the Act, there must be some showing of work-connection,[20] the Court, in the case at bar, having concluded that the accident occurred in the course of the employment, made use of the presumption that the accident arose out of the employment.[21]

Illness or disease

As discussed above, a personal injury is compensable if it arises out of and in the course of the employment. Illness, on the other hand, is

[18] Aware that questions may logically be asked regarding the precise limits of the rule, more specifically whether the rule would have applied had the employee been killed three minutes after and thirty meters away, or five minutes after and fifty meters away, the Court cites an answer to a similar question raise in Jean v. Chrysler Corporation, 140 N.W. 2d 756, Court of Appeals of Michigan (March 22, 1966), as follows:

> "We could, of course, say 'this is not the case before us' and utilize the old saw, 'that which is not before us we do not decide.' Instead, we prefer to utilize the considerably older saw: 'Sufficient unto the day is the evil thereof' (Matthew 1:34), appending, however, this admonition: no statute is static; it must remain constantly viable to meet new challenges placed to it. Recovery in a proper case should not be suppressed because of a conjectural posture which may never arise and which if it does, will be decided in the light of then existing law."

[19] The assailant was himself killed before he could be tried for the employee's death.

[20] See Taller Vda. de Nava v. Ynchausti Steamship Co., 57 Phil. 751 (1933).

[21] *Cf.* Batangas Trans. Company v. Rivera, G.R. No. 7658, May 8, 1956.

compensable if it is directly caused by the employment, or is aggravated by or is the result of the nature of the employment.[22] The Supreme Court did not seem to have any difficulty in sustaining a finding or conclusion of work-connection of the type of illness or disease that the Court had occasion to pass upon in 1968. The Court considered sufficient a demonstration of "reasonable connection" even though there could have been contributing factors independent of the nature or conditions of the work in which the employee was engaged.[23]

Aside from pulmonary tuberculosis which was involved in the majority of the cases, the Court had occasion to pass upon the compensability of the following: heart attack, peptic ulcers, Pott's disease, hypertension causing cerebral infraction, nephritis, and *thrombocytopanic purpura.*

Thus, in *Abana v. Quisumbing,*[24] the heart attack suffered *at home* by a taxicab driver upon arrival from work was held compensable. The Court observed that driving a taxicab for long hours, including all its incidents, causes severe strain and tension and does aggravate a heart condition, even assuming that the driver already had one.

In *Seven-Up Bottling Company v. Rimerata*[25] a laboratory helper, whose work consisted of tasting syrup preparation and mixtures of 7-Up ingredients, was awarded compensation for his peptic ulcers. The Court said that the ingredients probably irritated the linings of the employee's stomach and produced or, at least, aggravated the peptic ulcer he was found suffering from.

In those cases involving pulmonary tuberculosis, the nature and/or conditions of the work of the employee were found to produce debilitating effect on the body's resistance, facilitated the activation of dormant tuberculosis germs, or produced unfavorable effects on the respiratory organs.[26]

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[22] Act No. 3428, Sec. 2, (1928). See Batangas Trans. Company v. Perez, G.R. No. 19522, August 31, 1964, 63 O.G. 5714 (July, 1967).

[23] See, specifically, C. A. Chiong Shipping Co. v. Madula, G.R. No. 24202, September 23, 1968; Abana v. Quisumbing, G.R. No. 23489, March 27, 1968; and, Isberto v. Republic, G.R. No. 22769, August 30, 1968.

[24] *Supra,* see Note 23. In Vda. de Forteza v. Philippine Charity Sweepstakes Office, G.R. No. 21718, January 29, 1968, 64 O.G. 9538 (Sept., 1968) the employee similarly died of hypertension. The Court brushed aside the contention of the PCSO that on the basis of the etiology of hypertension, it can not be considered an occupational disease. Aside from attributing the cause of death to the nature of the work of the deceased, the Court applied the presumption in Section 44(1) of the Act.

[25] G.R. No. 24349, December 24, 1968.

[26] See, e.g., Victorias Milling Co., Inc. v. WCC and Del Rosario, G.R. No. 25640, March 21, 1968; C. A. Chiong Shipping Co. v. Madula, *supra,* note 23; Central Azucarera Don Pedro v. WCC and Villanueva, G.R. No. 24987, July 31, 1968; A. D. Santos, Inc. v. Vasquez, G.R. No. 23586, March 20, 1968; Manila Pest Control, Inc. v. WCC, G.R. No. 27662, October 29, 1968; REBAR Buildings, Inc. v. WCC and Lucero, G.R. No. 27486, April 30, 1968; Manila Railroad Co. v. Rivera, G.R. No. 23021, May 29, 1968.

In any event, once the illness or disease is shown to have arisen in the course of the employment, the Supreme Court has relieved the employee of the burden of proving causation and has extended in his favor the legal presumption of compensability.[27]

It is some surprise, therefore, that in *Vda. de Bungkas v. NAWASA*,[28] the Supreme Court denied compensation to an employee who died, while in the employ or respondent, of "acute nephritis, due to uremia and acute cardiac dilatation." There was a time that the deceased employee was a pipe-fitter for the respondent although at the time of his death he was assigned as a security guard. The Court observed that while nephritis could be caused by factors of "cold and wet" due to submersion in water, the symptoms thereof would have manifested itself during the time that the deceased was working as a pipe-fitter and not four years later. The Court made no mention of the legal presumption regarding compensability, the disease of which the employee died having arisen in the course of the employment, nor does the decision make mention of substantial evidence to rebut such presumption.

Distinguishable from the *Bungkas* case is the case of *Vda. de Layag v. Republic*[29] where the deceased employee died of *thrombocytopanic purpura*, a disorder of the blood, an illness that the Court found to be foreign to the nature of the work of the deceased, a finding supported by substantial evidence for which reason the presumption in section 43 of the Act was not applied.

Claims and controversion

Once an accident, injury or illness befalls an employee, both the employee and the employer have to comply with certain procedural requirements in order that the benefits under, or the inapplicability of, the Act may be invoked by one or the other, as the case may be.

On the part of the employee, a notice of injury or sickness should be given to the employer "as soon as possible" and a claim for compensation should be made not later than two months (three months in case of death) after the date of the injury.[30] It seems to be fairly settled that the giving of such notice or the filing of the claim are non-jurisdictional matters, delay or failure being excused in many instances.[31]

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[27] See Section 44(1), Act No. 3428 (1928). On the meaning and extent of the presumption, see discussion in the *REBAR* case, *supra*, note 26.

[28] See note 8, *supra*.

[29] *Ibid.*

[30] Act No. 3428 (1928) as amended, sec. 24.

[31] Century Insurance Co. v. Fuentes, G.R. No. 16039, August 31, 1961, 59 O.G. 1063 (Feb., 1963); National Development Co. v. WCC, G.R. No. 19863, April 29, 1964; Manila Railroad Co. v. Manalang, G.R. No. 20845, November 29, 1965 — cases cited in Central Azucarera Don Pedro v. WCC, *supra*, note 26.

Thus, in *Surigao Consolidated Mining Co. v. WCC*,[32] the claim for compensation was filed more than six years after the date of the accident which resulted in claimant's impaired hearing. In the *REBAR* case,[33] the claim was filed more than four years after the employee's dismissal. In *Vda. de Forteza v. WCC*,[34] the claim was filed almost six years after the death of the employee. In *Victorias Milling Company, Inc. v. WCC*,[35] the claim was filed four and a half years after the employee was separated due to pulmonary tuberculosis. The delays, however, in all these cases, and in the other 1968 cases involving lesser periods,[36] were considered excused mainly on the ground that the employer failed to make a report of the accident or injury or to file a notice of intention to controvert the claim, or both, within the periods required by the Act.[37] It will, thus, be seen that in contrast to the leniency shown to claimants, in the enforcement of the statutory requirements of notice and claim, those required of the employer are strictly enforced so much so that any failure or delay in the giving of the report or of the filing of the notice of intention to controvert is certain to produce adverse consequences.[38] Not only is the delay on the part of the employee excused but the delay on failure on the part of the employer to make the report and notice has been construed as a waiver of the right to present evidence on his behalf.[39] In fact, as held in the case of *Apolega v. Hizon*,[40] the Hearing Officer could even make an award without any formal hearing and treat the claim as uncontested.[41]

The usual justification for this apparent imbalance is the argument that the employee and the employer are not on an equal footing, considering the resources of the employer which are usually made to bear upon the "poor" and "unlettered" employees to the prejudice of the latter. It is hoped that the force of these arguments regarding the strict requirements demanded of employers will not be carried to extremes. Otherwise, it may come to a point where the employer, just to be safe, has to make a report of "injury" where an employee absents himself from work for unknown reasons!

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[32] G.R. No. 26077, May 27, 1968.
[33] *Supra*, note 26.
[34] See note 24.
[35] See note 26.
[36] MRR v. Rivera, *supra*, note 26; A. D. Santos, Inc. v. Vasquez, *supra*, note 26; Pampanga Sugar Mills v. Espeleta, G.R. No. 24073, January 30, 1968; San Miguel Brewery v. Joves, G.R. No. 24258, June 26, 1968; Isberto v. Republic, *supra*, note 23; and Abana v. Quisumbing, *supra*, note 23, among others.
[37] Act No. 3428 (1928) as amended, secs. 37 and 45.
[38] See cases covered in Notes 32 to 36.
[39] See REBAR case, *supra*, note 26 and cases cited therein.
[40] G.R. No. 23832, September 28, 1968.
[41] *Cf.* Iloilo Dock and Engineering Company v. WCC, G.R. No. 17283, July 31, 1965, 62 O.G. 854 (Feb., 1966).

Social Security

Coverage

The social security system, a relatively new concept in our jurisdiction, aims at universal coverage to the end that the benefits of the system may be enjoyed by the greatest number of the working class.[42] Understandably, business and industrial concerns have tried various techniques to avoid coverage which necessarily entails additional financial, not to mention administrative, burdens. As the application of welfare laws depends upon the existence of an employment relation, the efforts of management are directed mainly to a demonstration of absence of such relationship than that of employer-employee, such as lease, partnership or joint venture. Where the status of the employee as such is not in question, the defense of independent contractorship is resorted to pass off the obligations of the principal employer. Under the Social Security Act, employees of an independent contractor are not to be deemed employees of the employer employing the services of such independent contractor.[43]

The case of *Social Security System v. Court of Appeals*[44] saw the Supreme Court closely scrutinizing a cleverly drawn contract between the Central and a labor union of longshoremen, containing provisions which, at first blush, indicated a bona fide independent contractor arrangement. Thus, under the contract in question, the Union, designated as "Contractor," agreed to perform all the arrastre and stevedoring work connected with the loading of the Central's sugar at the wharf, for which the Union would be remunerated on the basis of so much centavos per picul of sugar loaded. The Union undertook "to comply for its own account" such longshoremen as it may deem necessary to carry out the work, and "to pay the latter in accordance with the Minimum Wage Law and such other applicable statutes." There is even an express disclaimer of any employer-employee relationship between the union and the longshoremen, on the one hand, and the Central on the other. The union was to have "entire charge, control and supervision of the work," subject only to the direction and control of the Central "merely as to the result to be accomplished . . . and not as to the means and methods for accomplishing such results." Ordinarily, these allocations of functions and responsibilities would satisfy the "control test" requirements in the identification of the real employer.[45] The contract was, indeed, so cleverly worded that

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[42] See declaration of policy in Section 2, Rep. Act No. 1161 (1954), as amended.

[43] Section 8(j)(10) of the Act.

[44] G.R. No. 25406, December 24, 1968. *Cf.* Talisay-Silay Milling Co. v. SSS, CA-G.R. No. 31720-R, December 29, 1964, 62 O.G. 4198 (June, 1966).

[45] See Investment Planning Company v. SSS, G.R. No. 19124, November 18, 1967, and cases cited therein.

both the Court of Industrial Relations[46] and the Court of Appeals[47] concluded that the Union was an independent contractor. A petition for review of the CIR resolution was dismissed by the Supreme Court "for lack of merit,"[48] which dismissal the Court of Appeals considered "conclusive and binding" on the issue of independent contractorship. The Supreme Court, however, explained its minute resolution as called for by the defective petition for review of the earlier CIR resolution.

Going into the merits of the case, the Court pointed to some harmless-looking provisions in the contract which gave the scheme away. Thus, the Court found that the Union was to employ only such number of longshoremen "taking into consideration the amount to be paid by the *[Central]* to the *[Union]* for the work performed under this Contract." Also, the Union warranted that it will perform the work "in such manner as will be consistent with the achievement of the result herein contracted for." Another provision of the Contract entitled the longshoremen to free meals and medical and hospitalization benefits from the Central. Other bases for the conclusion of the Supreme Court that the longshoremen were in fact employees of the Central were the following: that the Union was simply a juridical association representing its members, which means that the longshoremen were not "employees" of the Union; that the Union was not engaged in any activity for profit; that there was no change in the nature of the work performed by the members for the Central from that which they did when they were actually employees before the present contract was drawn up; that the contract was simply to change the manner of compensation from "actual-time-and-work-basis" to a piecework basis.[49]

Private benefit plans

Where the employer has integrated its private retirement and/or insurance plan with the system, the employer has the right to deduct its contribution to the system from the benefits accruing to its employees under the private plan.[50] As held by the Supreme Court in *Rivera v. San Miguel Brewery Corporation, Inc.*,[51] such right of the employee is but an application of section 9 of the Social Security Act. The deductions made do not contravene the provisions of the Act which prohibit the employer from deducting from the employees' *compensation*

[46] PLUM Federation of Industrial and Agrarian Workers (UCCLA-PLUM) v. Central Azucarera de Bais, CIR Case No. 2887-ULP, September 18, 1963.
[47] CA-G.R. No. 32895-R, September 22, 1965.
[48] G.R. No. 22741, July 6, 1964.
[49] *Cf.* SSS Res. No. 796 (1962) on coverage of "pakiao" workers in sugar centrals.
[50] Social Security Act, sec. 9.
[51] G.R. No. 26197, July 20, 1968.

the employer's contribution to the System with respect to such employee.[52] The Court held the retirement pay of appellant under the company's plan not in the category of a *compensation* but merely as a fringe benefit. While this conclusion may appear contrary to the rulings in *NAWASA v. NWSA Consolidated Unions*,[53] and in *NDC v. Unlicensed Crew Members of 3 Doña Vessels (PMIU)*,[54] which held that gratuities and bonuses partake the nature of regular compensation, the Supreme Court, resolving a motion for reconsideration[55] filed in the case under review, stated that private benefit plans should be distinguished (without clearly stating how) from gratuities and bonuses. The Court weakly added that even on the assumption that retirement pay partakes the nature of "compensation," the employer in the case under review merely exercised a right recognized under the Social Security Act.

Jurisdiction and administration

The issue of jurisdiction to pass upon the propriety or legality of circulars issued by the Administrator of the System came up, once more, in the case of *Insular Life Assurance Co. v. Social Security Commission*.[56] It will be recalled that in a 1967 case,[57] the Supreme Court ruled that the Court of First Instance of Manila may not issue a writ of injunction and prohibition against the Social Security Commission in connection with the implementation of Circular No. 34 requring all insurance firms to report their agents or coverage. The Court called for an exhaustion of administrative remedies, specifically, a "decision" of the Commission before resort can be had of juridical review. In the case at bar, the same circular is being questioned, this time through a petition for declaratory relief. The Supreme Court ruled that there is no reason to except petitions for declaratory relief from the application of section 5(b) of the Act simply because in such petitions the Court of First Instance is not asked to exercise any appellate or review power.[58] Otherwise, said the Court, it would be very easy for parties to circumvent said provision on appeals from decisions of the

[52] See Secs. 18 and 19, Rep. Act No. 1161 (1954), as amended by Rep. Act Nos. 1792 (1957), 2658 (1960), and 3839 (1963).

[53] G.R. No. 18938, August 31, 1964.

[54] G.R. No. 25390, June 27, 1968.

[55] *Supra*, August 30, 1968.

[56] G.R. No. 23565, March 21, 1968.

[57] Phil.-Am. Life Insurance Co. v. Social Security Commission, G.R. No. 20383, May 24, 1967, 64 O.G. 9777 (Sept., 1968).

[58] Section 5(b) of the Act provides: "Appeal to courts — Any decision of the Commission, in the absence of an appeal therefrom as herein provided, shall become final fifteen days after the date of notification, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission. The Commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented by an attorney employed by the Commission, or when requested by the Commission, by the Solicitor General or any fiscal."

Social Security Commission, and it would practically strip the Commission of its quasi-judicial powers.

FAIR LABOR STANDARDS

The Eight-Hour Labor Law

Coverage

In *Carlos v. Villegas,*[59] the Supreme Court reiterated its earlier pronouncements that the Eight-Hour Labor Law was not intended to apply to civil service employees. The claim for overtime pay by firemen of the City of Manila was denied by the Court on the ground that claimants were under the civil service, being employees of the City in its governmental capacity.[60]

Jurisdiction over claims

Where a claim under the Eight-Hour Labor Law is a mere money claim, jurisdiction is lodged with ordinary courts. However, by well-entrenched jurisprudence, the Court of Industrial Relations has jurisdiction for claims arising under said law where the claimant seeks reinstatement or the re-establishment of the employer-employee relationship.[61] In *Puyat & Sons, Inc. v. Labayo,*[62] an alternative prayer for separation pay, plus overtime compensation in a complaint for reinstatement based on an alleged illegal dismissal did not, according to the Supreme Court, divest the Court of Industrial Relations of jurisdiction to pass upon the demands included in the alternative prayer.

More on procedural due process is the case of *Gracilla v. CIR,*[63] which involves a complaint for reinstatement with claims arising under the Eight-Hour Labor Law. The Court of Industrial Relations dismissed the complaint on the ground that the claimant's dismissal was for cause, but did not pass upon nor consider the monetary claims. The Supreme Court held that there was a denial of procedural due process, citing *Ang Tibay v. CIR.*[64]

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[59] G.R. No. 24394, August 30, 1968.

[60] Cf. Dept. of Public Service Labor Union v. CIR, G.R. No. 15458, January 28, 1961, where garbage collectors were held not entitled to the Forty-Hour-A-Week Work Law. See also, Ramos v. CIR, G.R. No. 22753, December 18, 1967.

[61] See Campos v. Manila Railroad Co., G.R. No. 17905, May 25, 1962; National Shipyards and Steel Corp. v. CIR, G.R. No. 21675, May 23, 1967; Philippine Engineers' Syndicate, Inc. v. Bautista, G.R. No. 16440, February 29, 1964; Moncada Bijon Factory v. CIR, G.R. No. 16037, April 29, 1964; and Serrano v. Serrano, G.R. No. 19562, May 23, 1964.

[62] G.R. No. 22215, January 30, 1968.

[63] G.R. No. 24489, September 28, 1968.

[64] 69 Phil. 635 (1940).

The Termination Pay Law

The case of *Wenceslao v. Carmen Zaragosa, Inc.*[65] shows how zealously the Supreme Court guards the rights of employees under fair labor laws. Respondent's film exchange business where claimants worked was closed resulting in the dismissal of the claimants. Respondent contended that as the dismissal was for cause, the Termination Pay Law did not apply to claimants, there being no showing that the closing was for the purpose of defeating the intention of the law. The Court brushed aside this contention and held that what the law considers as just cause for terminating an employment without a definite period is the closing or cessation of the *establishment or enterprise* of the employer, not merely that of any particular division or department. It is significant to note that the dismissal was practically a formality as the claimants were immediately employed under a new employment found for them by the employer in the latter's complex business enterprise. The Court observed that from this immediate re-employment may not be inferred an abandonment of the "previous" one. Claimants had no reasonable alternative but to accept the new employment *found for them.* To uphold the contention of abandonment, would be highly prejudicial to the claimants because under the "new employer," they would be starting from scratch which would, in due time, affect their right to bigger separation pay and other privileges.

In *Luzon Stevedoring Corporation v. Celorio,*[66] the Supreme Court considered the plight of seamen signing shipping articles which make it appear that their employment was for a definite period, on a trip basis, which would preclude the application of the Termination Pay Law. The Court sustained the findings of the Court of Industrial Relations that notwithstanding these shipping articles, there was actually a continuity of employment, without a definite period, which entitled the claimant in the case at bar to severance pay.[67]

Where the employer, however, has provided for a private benefit plan and the employee is given the option to choose between said plan or the severance pay under the law, "whichever is the greater amount," the employee may, certainly, not claim both.[68]

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[65] G.R. No. 22577, July 31, 1968.

[66] G.R. No. 22542, July 31, 1968.

[67] A parallel case in the United States is the case of *Southern Steamship Co. v. NLRB,* 316 U.S. 31, 62 S. Ct. 886 86 L.Ed. 1246 (1942), where it was ruled that the seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of the shipping articles. *Cf. NLRB v. Waterman S.S. Corp.,* 309 U.S. 206, 84 L.Ed. 704 60 S. Ct. 493 (1940).

[68] Section 2 of Rep. Act No. 1052 (1954), as amended, provides, *inter alia,* "That nothing herein contained shall prevent an employer and his employees or their representatives to enter into a collective bargaining agreement with terms more liberal than those provided for in this Act in favor of the employees."