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

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

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

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

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

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

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

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

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

Bienvenido Gorospe

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

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

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

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

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

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

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

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

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

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

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

Bienvenido Gorospe

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