

94 Phil. 325

[G.R. No. L-6409. February 05, 1954]

LEOPOLDO GONZALES, PETITIONER, VS. HONORABLE SECRETARY OF LABOR, ATTY. CECILIO I. LIM, AS WAS AIJSISTAHT; ATTY. ROGELIO L. CRUZ, AS CHIEF CLAIMS AND INVESTIGATION SECTION, WAS, AND SY KOT, RESPONDENTS.

D E C I S I O N

REYES, J.:

On June 23, 1952, the petitioner Leopoldo Gonzales filed with the Wage Administration Service a claim for overtime pay in the total sum of P13,212.59 against his employer, the respondent Sy Kot. Upon the case being submitted to the WAS (Wage Administration Service) for investigation and arbitration, the claimant, to establish his claim, had Sy Kot summoned to the witness stand and put under oath. But before any question could be propounded to him, Sy Kot invoked his constitutional right not to be compelled to be a witness against himself, calling attention to the fact that the law on overtime pay provides a penalty for its violation. Considering the point well taken, the investigator ordered Sy Kot's withdrawal from the witness stand. The ruling was, upon appeal, sustained by the Secretary of Labor in his decision of November 17, 1952.

Suing for a writ of certiorari, petitioner asks that the ruling be annulled, contending that the same is illegal and arbitrary and made with grave abuse of discretion,

Except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as a witness. As a matter of fact, section 83 of Rule 123, Rules of Court, expressly authorizes a party to call an adverse party to the witness stand and interrogate him. This rule is, of course, subject to the constitutional injunction

not to compel any person to testify against himself. But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed."

The point raised by the Solicitor General on behalf of the respondent Secretary of Labor that petitioner's remedy is to appeal to the President of the Philippines is not well taken. Section 7 of the law creating the WAS (Rep. Act No. 602) expressly authorizes any person aggrieved by an order of the Secretary of Labor to obtain a review of such order in the Supreme Court.

Wherefore, the petition is granted and the ruling or order complained of annulled and set aside. Without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.