99 Phil. 893

[G.R. No. L-9182. September 12, 1956]

OPERATORS, INCORPORATED, APPELLANT, VS, JOSE PELAGIO AND VICENTE LAGMAN, APPELLEE.

D E C I S I O N

REYES, J.B.L., J.:

Appeal by certiorari from the decision of the Court of Industrial Relations in its Case No. 192-ULP, ordering appellant Operators, Ink. to cease and desist from dismissing its laborers because of union activities, and to reinstate petitioners Jose Pelagio and Vicente Lagman to their former or equivalent positions, with the same privileges as they had before dismissal and with the payment of back wages.

It appears that on February 24, 1954, petitioners Jose Pelagio and Vicente Lagman filed with the Industrial Court a petition charging the Operators, Inc. and the American Biscuit Co. with unfair labor practice, for having dismissed them because of their membership in the National Labor Union. Operators, Inc. answered denying the allegations of the petition and claiming that petitioners were dismissed because they had misrepresented that they had technical knowledge in the manufacture of candy and chewing gum and were found, after three months of trial, to be inexperienced and inefficient in said technical work. The American Biscuit Co., on the other hand, disclaimed liability on the ground that it had ceased operations since July, 1953 and that as of October 1, 1953, it had turned over its business operations to the Operators, Inc. In the course of the proceedings, the charges against the American Biscuit Co. were, upon petitioners' motion, dismissed.

After trial, the Court of Industrial Relations found the following facts to have been established:

> "Based on the records of this case and the evidence adduced by the parties, the Court found that Jose Pelagio was employed in the American Biscuit Co., Inc.

from 1935 to 1941, before the war, and then from July 16, 1951 to September, 1953; that when the Operators, Inc. took over the management of the American Biscuit Co., Inc. on October 1, 1953, Pelagio was taken in its employment until he was separated from the service on December 12, 1953.' It was also found out that Pelagio and Lagman taught the employees who were hired by respondent, American Biscuit Company, Inc. in 1952 how to operate the machineries for making chicklets and bubble gums; that the persons whom they taught how to handle the machineries were taken later by the Operators, Inc., while they themselves were laid-off. The Court further found that after the elections held in October, 1953, Pelagio was congratulated by Atfcy. Tagle, an officer of the said companies, and the latter asked the former why he accepted such position in the union. Petitioner, Jose Pelagio, declared further that he is not filing this complaint against the American Biscuit Co., Inc., but against the Operators, Inc. which dismissed him. On this point, the Court hereby approve the withdrawal of the charges of unfair labor practice against the American Biscuit Co., Inc. On the other hand, the evidence of the respondent, Operators, Inc. show that Pelagio was separated from the service because—from what respondent's witness, Wone Gang Yan, has heard from other persons and what he saw in the records of the company—Pelagio did not show good work in carpentry and is not fit to work in the candy factory. The management of the Operators, Inc. did not present sufficient evidence to justify the dismissal of the petitioners.

Upon the whole, this Court finds that Jose Pelagio is an experienced worker, taking into consideration his long experience in the American Biscuit Company, Inc. and his daily wage of P8.00 which is for skilled workers; that he was laid-off immediately after having been elected president of the branch of the National Labor Union in the said company, while the laborers whom he and Lagman taught how to operate the machineries for making chicklets and bubble gums were retained. In the case of N.L.R.B. *vs.* Luxuray, Inc., 5 CCH Labor Cases 62, 185, the U. S. Circuit Court of Appeals, 2nd Circuit, held that "An inference of discrimination is justified where an employee, who was a leader in union activities, is discharged and refused reinstatement while juniors in service were being rehired." As regards the testimony of Wone Gang Yan which was not of his own personal knowledge, it may be stated that "Mere uncorroborated hearsay on rumor does not constitute substantial evidence".

(Consolidated Edison Co. *vs.* N. L. R. B., 305 U. S. 197, at 230, cited in the Law of Labor Union by Dangle and Shriberr page 62). In short, the witness for the respondent, Operators, Inc. has not presented sufficient evidence to substantiate respondent's defense. Therefore, the inference and conclusion of the Court from the evidence of petitioners are inevitable that Jose Pelagio and Vicente Lagman .were dismissed by the management of the Operators, Inc., because of their membership in the National Labor Union." (Annex "E"f petition pp. 7-9)

and rendered judgment for petitioner Pelagio and Lagman as above stated. From said judgment, Operators, Inc. appealed by certiorari to this Court, assigning the following errors:

"I

That the Court erred by committing grave abuse of discretion in holding by mere inference that the dismissal of petitioners-appellees, Jose Pelagio and Vicente Lagman, was due to their membership in the National Labor Union and not because of inefficiency and lack of skill. As in truth and in fact the existence of a local chapter of said union was unknown to respondent-appellant.

II

That the Court erred by committing grave abuse of discretion in not finding that petitioners-appellees misrepresented themselves as skilled gum and chicklet makers when in truth and in fact they are carpenters by occupation.

III

That the Court erred by committing grave abuse of discretion in concluding that petitioners-appellees are skilled gum and chicklet makers because they are paid a daily wage of P8 each.

IV.

> The Court erred in holding that the dismissal of petitioners-appellees constitute unfair labor practice." (Petition, pp. 3-4)

The appeal has no merit. The errors assigned by appellant raise only questions of fact. As correctly pointed out by appellees, only questions of law, which must be distinctly set forth, may be raised in an appeal by certiorari from a decision, order, or award of the Court of Industrial Relations (section 6, Republic Act 875; Rule 44, sec. 2); and pursuant to this rule, it has been the constant ruling, of this Court that findings of fact of the Industrial Court are final and not reviewable by us (H.E. Heacock *vs.* NLU, et aL, 50 Off. Gaz., No. 9, 4233; Dee C. Chuan *vs.* CIR, 85 Phil., 365; Atok Big Wedge Mining Co. *vs.* Atok Big Wedge Mutual Benefit Assn., 93 Phil., 62; Javellana *vs.* Barilea, 92 Phil., 600; Kaisahan ng Manggagawa (CLO) *vs.* CIR, 81 Phil., 566; Olaivar *vs.* Meralco, 71 Phil., 503, 605).

Appellant urges, however, that the Industrial Court committed grave abuse of discretion in finding that petitioners Pelagio and Lagman are skilled workers and in holding by mere inference that they were dismissed because of union membership. The decision appealed from shows no such abuse. The finding that petitioners are skilled workers is based on the testimony of Jose Pelagio, summarized in detail by the Court as follows:

> "*Jose Pelagio,* testifying for petitioners and in his own behalf, declared that he was formerly employed in the American Biscuit Co., Inc. that he was employed in this company from 1935 to 1941, and then from July 16, 1951 to December 11, 1953, and was dismissed on December 12, 1953 by the Operators, Inc. which took over the management of the American Biscuit Co., Inc.; that he established a branch of the National Labor Union in the American Biscuit Co., Inc. and in the Operators, Inc. in November, 1953; that in the election held by the members of the Union in the respondent companies in October, 1953, he was elected president, and Castro vice-president; that he presumed the company had knowledge of his being the president of the union because after the election he was asked by Atty. Tagle, an officer of respondents, why he accepted such position in the union; that he did not commit any anomaly while in the service of respondent companies; that before the war he performed carpentry work in the American Biscuit Co., Inc., and when he was not performing carpentry work he

> was helping the mechanic or helping in making bubble gums; that before he was dismissed on December 12, 1953, his wage was P8.00 a day; that he has not misrepresented his qualifications because he could demonstrate his ability to perform the work he claimed to know in the presence of anybody; that he was assigned to make chicklets and bubble gums since he was employed in 1951 by helping in the operation of the machinery; that he and Vicente Lagman taught the employees who were hired in 1952 how to handle the machineries; that the persons whom they taught how to operate the machineries were taken by the company later and are still working in the said company. He declared further that long before the death of Mr. Malone, his companions had no more work to do, while he still1 has some work, such assorted jobs in the factory, although the' factory was not functioning; that he started with the Operators, Inc.'in October, 1953; that he is not filing this complaint against the American Biscuit Co., Inc. in view of the fact that the Operators, Inc. took over the management of the former, hence his claim is only against the latter company which dismissed the petitioners; that it is not easy to handle the machineries because if one does not know how to operate them, he is liable to be hurt or injured, for example, one person's finger was caught in the roller in February, 1953, while another lost a finger; that he has not filed any demands with the respondents companies; that when he was dismissed he was informed there was no more work for them; that when he was taken by the Operators, Inc., he was not informed by management that he was under trial for three months." (Annex "E" petition, pp. 3-5)

and which is not overcome by the hearsay testimony of the only witness for appellant, its president Wone Gang Yan; while the inference that petitioners were dismissed due to union membership was drawn from the established facts that their dismissal came close at the heels of their having become president and members, respectively, of the National Labor Union, and that not only had they been retained as workers from October to December 1953, but the workers trained by the two appellees were retained while the appellees were themselves dismissed; and, as appellant failed to prove that their dismissal was for just cause, the inference is not at all unjustified. As for the charge that the lower Court committed grave abuse of discretion in granting petitioner Vicente Lagman the same relief as that awarded to petitioner Jose Pelagio, notwithstanding Lagman's failure to take the witness stand, the charge is likewise untenable, for Pelagio testified in behalf of both himself and Lagman, and the latter's testimony would have been merely corroborative.

The decision appealed from is affirmed, with costs against appellant Operators, Incorporated. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endeneia, and *Felix, JJ*. concur.

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