102 Phil. 561

[G. R. No. L-10263. December 17, 1957]

ASSOCIATION OF DRUGSTORE EMPLOYEES, PETITIONER, VS. ARSENIO MAKTINEZ, ET AL., RESPONDENTS.

D E C I S I O N

FELIX, J.:

This is an appeal by certiorari of the Association of Drugstore Employees from a decision of the Court of Industrial Relations dated April 15, 1955, in Case No. 949-V (8) granting authority to Farmacia Oro to close its Rizal Avenue and Taft Avenue branches with the consequent laying off of the personnel therein. The facts of the ease are as follows:

Case No. 549—V (8) is an incidental case to the main controversy between the management of Farmacia Oro and the Association of Drugstore Employees composed of employees working in said establishment. The incident arose out of the employer's motion of August 2, 1952, seeking for authorization from the Court of Industrial Relations to close 3 of its stores, namely, the Taft Avenue, Legarda and Rizal Avenue branches and the corresponding laying off of the personnel therein due to heavy losses suffered by said establishment occasioned by the big slump in the volume of its business. This motion was opposed by the Union, alleging among others, that the laying-off of personnel in said 3 stores was discriminatory because the management effected transfers of personnel from one branch to another in anticipation of such move, without regard to seniority and other good practices of labor relationship. It was thus charged that the proposed closing of the aforementioned stores was part of a general scheme designed to prejudice the members of the Union.

On September 3, 1952, the Union filed an urgent motion informing the Court that the management of Farmacia Oro caused the closing of its Rizal Avenue and Taft Avenue branches' and thus prayed that an examination of the records of the establishment be ordered to find out whether losses were really incurred to justify the cessation of business

in said stores; to issue an order requiring the management to reinstate those entitled to seniority rule to their former positions and for back wages from September 1, 1952, to the date of actual reinstatement; and to punish the owners of Farmacia Oro for contempt of court. In its reply, the respondent contended that the Rizal Avenue and Taft Avenue stores of the Farmacia Oro were closed for reasons already stated in its motion; that the employees affected by such step were duly notified of the closing of these branches; that the dismissal of personnel therein was not discriminatory because all employees working in said stores were laid off except those in the Central accounting department who were transferred to the Oro Laboratories; that the seniority rule could not be followed because it would prejudice those employees who were able to survive the slump in the business of respondent.

After the parties had presented their evidence to sup- port their respective stands, the Court rendered decision dated April 15, 1955, with 2 Judges dissenting, allowing the management to close its drugstores in Rizal Avenue and Taft Avenue and lay off the personnel therein, after finding that respondent transferred some of the employees to the Rizal Avenue store not by reason to their 'union affiliation or activities but in the honest exercise of its prerogative as an employer, with which, the Court had no power to interfere. As the motion filed by the Union for the reconsideration of the decision was denied by re- solution of the Court in bane on October 25, 1955, the matter was brought to this Court on appeal raising1 as the sole issue the question of "whether a contract, fixing the terms and conditions of work, freely entered into by both parties and which was made the basis of a final award by the court can be disregarded and violated".

It appears that in the course of the hearing, the Union withdrew its demand for an examination of the books of account of the management and in effect admitted the employer's right to close its stores. But opposition was consistently offered against the laying off of the employees working in the stores subject of controversy as some of them were employed ahead of those who were retained in the employ of the establishment. Petitioning Union maintains that pursuant to the partial decision of the Industrial Court in the main case (No. 549-V), fixing some of the terms and conditions of work in said stores, one of which is:

"DEMAND NO. VII-SENIORITY

> "Seniority shall be determined by the length of continuous service an employee has been on the payroll of the company. Any employee who is laid off by the Company and subsequently re-employed shall be credited with his previous seniority; Provided that length of service shall be determined from the date of the original employment by the Company."
>
> "There being no objection from respondent, the foregoing demand is hereby granted"

seniority rule should have been observed in the dismissal of the employees involved herein.

It could be seen, however, that the aforequoted demand of the Union which was approved by the Court and embodied in its decision in the main case is merely a statement or declaration of how seniority rule should be determined for the purpose of crediting" the same in favor of the employees of the company, which the Union cannot invoke in the case at bar. Although an employer's disregard of an employee's seniority rights is evidence that the discharge of the employee possessed of such rights is intended to discriminate, and this is especially true where the main achievement of the Union against whom the employer intends to discriminate, is seniority rights (Vol. II, Ludwig Teller's Labor Disputes and Collective Bargaining, p. 838-839), considering that petitioner in the instant case acknowledges the employer's right to close its stores and lay on the personnel therein, and as the lower Court found that the employees who manned these stores were originally assigned therein or transferred thereto, apparently without any objection on the part of the transferees, pursuant to the employer's privilege to transfer any of its employees to the different branches of said establishment, We fail to see any act of discrimination in their dismissal upon the cessation of business in said stores belonging to respondent. The fact that the parties already reached an agreement on how seniority among employees should be determined, which was approved by the court, and that the employees involved herein are ahead in employment than those who were not laid off, have no bearing in the controversy for it is not assailed that the laying off of personnel was the result of the closing of the aforementioned stores. Actually the only question in this case is whether the transfer of the employees to the stores which were subsequently closed was part of a scheme or maneuver on the part of the employer to ease out of its employ the employees involved herein which would then be a case of discrimination. But this matter was already taken out of our reach when the lower Court, after considering the evidence on hand, resolved the question in the negative and it being essentially a question of fact, We are

restricted by law to review the same (Isaac Peral Bowling Alley vs. United Employees' Welfare Association et al., *supra*, p. 219; G. P. T. C. Employees' Union vs. Court of Industrial Relations et al., *supra*, p. 538).

Wherefore, the petition for certiorari is dismissed and the decision of the lower Court dated April 15, 1955, in this case is hereby affirmed, without pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and *Endencia, JJ.*, concur.

DISSENTING

Reyes, J.B.L., with whom *Paras, C.J.*, concurs, :

I can not subscribe to the view that the violation of the seniority rule, agreed between the parties, is not involved. Since the employee were rotated among the different branch stores from time to time, it is but logical to view them as employees of the corporation regardless of the stores where they happen to be working at a given time. Granting that financial conditions demanded that some of the branch stores should be closed, the lay-off or reduction of personnel should have been made by the respondent company strictly according to the stipulated seniority rule, i.e., by keeping in its employ those who were oldest in the service, regardless of their place of work at the closure time. If the branch stores were not treated as separate units for the assignment of the employees, why should they be regarded as independent establishments for lay-off purposes? It is easy to see that unless the seniority rule is observed, the company can commit discrimination in the lay-off by assigning the employees it dislikes to the branch stores that are slated to be closed. The fact that nine senior employees were among those laid-off supports the view of the minority judges of the Industrial Court that discrimination was intended, and it should not be sanctioned by this Court.

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