

HOTEL AND RESTAURANT FREE WORKERS (FFW), PETITIONER, VS. KIM SAN CAFE AND RESTAURANT, ET AT., RESPONDENTS.

G. R. NO. L-8100. November 29, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

The Hotel & Restaurant Free Workers (FFW), hereinafter referred to as petitioner, is a registered labor organization composed of employees of Kim San Cafe & Restaurant owned and operated by Tan Guan, Sy Teh and Emilia Go, hereinafter referred to as respondents. On December 11, 1953, petitioner submitted to respondents a petition containing certain demands for the improvement of the working conditions of its members. Instead of answering the petition, respondents dismissed one Pedro Vinluan for having discovered that he had engaged in union activities. On December 28, 1953, petitioner asked that Vinluan be reinstated and because this request was ignored and respondents' did not entertain its demands, petitioner gave notice of its intention, to strike on January 5, 1954.

Meanwhile, the Conciliation Service of the Department of Labor intervened in an effort to settle their differences with the result that a collective agreement was prepared to be signed by both parties. When the date came for the execution of said agreement, respondents failed to appear whereupon petitioner filed a charge of unfair labor practice against them before the Court of Industrial Relations. This charge was answered by respondents and thereafter a hearing was held during which the parties presented their respective evidence. And on March 19, 1954, the court issued an order finding respondents Tan Guan and Sy Teh guilty of unfair labor practice and ordering them to pay a fine of P500. The court also ordered respondents to reinstate Pedro Vinluan with back pay from December 10, 1953 until his 'actual reinstatement.

On March 24, 1954, respondents filed a motion for reconsideration which the court en banc denied on April 21, 1954. But on June 25, 1954, the court en banc issued a resolution setting- aside the order it had previously entered on March 19, 1954.

This is now a petition for certiorari interposed by petitioner seeking to set aside said resolution alleging that in issuing it the industrial court acted in excess of jurisdiction and with grave abuse of discretion.

It is contended that the Court of Industrial Relations erred in issuing' its resolution of June 25, 1954 because the original order signed by Judge Bautista on March 19, 1954 had already become binding and final when it denied the motion for reconsideration filed by respondents on April 21, 1954. It is contended that said resolution can no longer affect the effectiveness of the order of Judge Bautista. It appears however that the order of April 21, 1954 was only concurred in by Judge Castillo because Judge Jimenez Yanson concurred with Judge Lanting in his dissenting opinion with the result that said order lacked the requisite majority vote to make it effective and so it cannot be said that order had the effect of denying the motion for reconsideration filed by respondents. At any rate, it appears that on June 25, 1954, the same court issued a resolution which appears signed by three judges which in effect set aside the original order of March 19, 1954, and this the court can do in the exercise of its

discretion provided that the three-year period for the effectivity of an award has not yet expired. [Section 17, Commonwealth Act 103; Connell Bros. Company (Philippines) vs. National Labor Union, G. R. No. L-3681, June 30, 1956]

The next point in issue is whether the Court of Industrial Relations can act on the charge of unfair labor practice filed by petitioner against respondents and in imposing upon the latter a fine of P500.

In *Scoty's Department Store, et al. vs. Nena Micaller*, 99 Phil., 762, this Court, in holding that the Court of Industrial Relations has no criminal jurisdiction to act on a charge of unfair labor practice provided for in Republic Act 875, made this pronouncement: "In conclusion, our considered opinion is that the power to impose penalties provided for in section 25 of Republic Act 875 is lodged in ordinary courts, and not in the Court of Industrial Relations, notwithstanding the definition of the word 'Court' contained in section 2 (a) of said Act. Hence, the decision of the industrial court in so far as it imposes a fine of P100 upon petitioner is illegal and should be nullified."

The action, therefore, of the Court of Industrial Relations in imposing upon respondents a fine of P500 is illegal and should be nullified, but the portion of the dispositive part of the order which directs the reinstatement of Pedro Vinluan to his former position should be maintained, it being within the jurisdiction of the court.

We therefore modify the aforesaid order in the sense above indicated with the understanding that the respondents may deduct from the back pay whatever may have been earned by Vinluan out of any employment he may have found in the interregnum, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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