

TALISAY-SILAY MILLING CO., INC., PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND TALISAY EMPLOYEES & LABORERS ASSOCIATION (TELA), RESPONDENTS.

G.R. No. L-17344. April 23, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari from two (2) orders of the Court of Industrial Relations.

The record shows that on December 17, 1952, many laborers of the Talisay-Silay Milling Co., Inc., affiliated to the Talisay Employees and Laborers Association, hereinafter referred to as the Union, went on strike. Thereupon, the Talisay-Silay Milling Co., Inc., hereinafter referred to as the company, instituted Case No. 788-V of the Court of Industrial Relations, to declare the strike illegal. During the pendency of that case, and pursuant to a stipulation entered into by the parties in February, 1953, a number of striking laborers and employees were reinstated. In due course, on June 25, 1953, Judge Bautista, of said court, issued an order declaring the strike illegal and directing

"* * * that the rest of the strikers who were excluded to return to work in accordance with the stipulation submitted by the parties on February 19, 1953, be immediately; reinstated to their former positions in the company. "The strikers who by virtue of said stipulation returned to their work on February 19, 1953 and those who will return to their former works in the company are not entitled to any compensation during said illegal strike."

A reconsideration of this order was denied by the court en banc on August 12, 1953, and copy of the order of denial was received by the Company on October 30, 1953. On appeal by certiorari, taken by the Company, said orders of June 25 and August 12, 1953, were affirmed by this Court in G. R. No. L-7228, on November 29, 1955.[*]

Soon thereafter, or on January 16, 1956, the lower court issued a writ of execution of the order of June 25, 1953, as regards the reinstatement therein directed, and most of the laborers and employees concerned were actually admitted to the service of the Company from January 27 to January 30, 1956. On February 5, 1958, the Union moved that the Company be immediately required to pay said laborers their back wages, from June 25, 1953, when said order of reinstatement was issued, to January 30, 1956, when said laborers were actually reinstated. The record is silent on what transpired, until February 10, 1958, when the court issued an order directing its chief examiner to compute the back wages for the period aforementioned, preparatory to the issuance of writ of execution therefor. By an order dated April 11, 1958, the court refused to reconsider, on motion of the Company, said order of February 10, 1958, but amended the same, in the sense that the back wages to be computed should cover only the period from November 10, 1953 (or ten [10] days after notice of the denial of the motion for reconsideration of the order of June 25, 1953) to January 1956. Thereupon the Company instituted cases Nos. L-14023 and L-14135 of this Court for a review by certiorari of, among other things, said order of February 10, 1958, as thus amended, which, however, we affirmed in a decision rendered on January 30, 1960.

Later on, or on April 27, 1960, the chief examiner of the lower court submitted a report stating the sum due to each of the laborers concerned from November 10, 1953, to the date of their reinstatement, late in January 1956, which altogether amounted P238,430.84. There upon, the Company was required to deposit this sum with the lower court. On June 8, 1960, the Company objected to said report upon the ground that it had not been prepared in accordance with said decision, and submitted its own computation of said back wages, aggregating P68,204.10 less than the amount reported by the court examiner. This notwithstanding, on July 7, 1960, Judge Bautista approved the report of said officer and ordered the Company to deposit in court said sum of P238,430.84, within five (5) days. A reconsideration of this order of July 7, 1960, was denied by the lower court en banc on July 26, 1960. Hence, this appeal by certiorari, taken by the Company, from said orders of July 7 and 26, 1960.

The Company maintains that pursuant to our decision in G. R. Nos. L-14023 and L-14135, the back wages in question should be computed on the basis of "the employee's average pay in a given period" prior to that for which said compensation is intended, because we quoted with approval a statement of Rothenberg, in his work on Labor Relations, to the effect that the National Labor Relations Board in the United States customarily uses said method of computation. The Company further alleges that its own computation, as set forth in Annexes E, E-1 and E-2 to its petition for certiorari in this case, is in accord with said decision and practice. Accordingly, it prayed that said orders of July 7 and 26, 1960, be set aside, that the computation made in said Annexes E, E-1 and E-2 be approved, and that, meanwhile, a writ of preliminary injunction be issued restraining the lower court from further proceeding, more specifically in connection with the deposit of the sums of money involved in said orders. Upon the filing of the petition herein, and of a bond in the sum of P30,000, given by the Capital Insurance & Surety Co., we issued said writ on September 17, 1960.

We find no merit in petitioner's pretense. To begin with, our decision in L-14023 and L-14135 did not direct the application of "the-employee's-average-pay-in-a-given-period" method in the computation of the back wages in question. We merely stated that:

"* * * the computation undertaken by the Court examiner was in consonance with the leading doctrine in American jurisprudence, thus:

'In determining the rate of pay to be used in computing the award, where there is no fixed wage, or where the work is seasonal or part time, the Board customarily uses as the criterion the employee's average pay in a given period prior to his improper discharge.' (Rothenberg on Labor Relations, p. 583, citing authorities)."

Secondly, the foregoing portion of said decision, not only did not reject the method of computation used by the court examiner, but sanctioned and approved it. In fact, the order of February 10, 1958, directing the preparation of said report, as amended by the order of April 11, 1958, was affirmed in our decision in L-14023 and L-14135.

Indeed, the amount due to each laborer as backpay was determined by the court examiner as follows: (a) he ascertained the average daily wage of each laborer during the years 1951 and 1952, based upon the payrolls of the Company for these years; (b) thereafter, the examiner determined the "actual number of working days" of the employees and laborers of the Company during the period for which the backpay was due (November 1953 to January 1956; and (c) then said number of actual working days was multiplied by the aforementioned average daily wage of the laborer concerned.

Upon the other hand, the computation of the Company was made in this manner: (a) the compensation actually received by each laborer during the years 1951 and 1952 was added; (b) then the sum total was divided by twentyfour (24) months, to determine his average monthly earning during said two (2) years; and (c) lastly, his aforementioned average monthly compensation for 1951 and 1952 was multiplied by 26.6666, which represents the number of months covered by the period from November 1953 to January 1956.

The procedure used by the Company in the computation of the back wages in question would be proper if the number of actual working days of the laborers and employees of the Company from November 1953 to January 1956, were not known; but, it is known, for the records of the Company show it. Had the laborers in question been reinstated on November 10, 1953—or immediately after the date when the order of reinstatement of June 25, 1953 would have become final (after notice or the order denying the motion for reconsideration thereof), had the Company not appealed therefrom to this Court—said laborers would, undoubtedly, have worked for said number of "actual working days" of the Company. It is only fair and just, therefore, that they be paid their average daily wage in 1951 and 1952 for said number of actual working days.

Thirdly, the only difference between the report of the court examiner, made pursuant to the order of February 10, 1958, and the report of the same examiner dated April 27, 1960, is that the period covered by the first report began on June 25, 1953, whereas the period covered by the second report commenced only from November 10, 1953, in conformity with the order of the lower court dated April 11, 1958. The method of computation used in both reports is the same and, since the order of February 10, 1958, directing the preparation of the first report, as amended by the order of April 11, 1958, was affirmed in G. R. Nos. L-14023 and L-14135, it follows that said method has, also, been approved by our decision therein, and that the report complained of is in accordance with said decision.

In its answer to the petition herein, the Union has set up a counterclaim for damages, under which it prays: (1) that the ₱30,000 bond given by the Capital Insurance & Surety Co., for the issuance of the writ of preliminary injunction by this Court, be held liable for the payment of interest, at legal rate, on the amount of back wages due the laborers concerned—for the period from November 10, 1953 to January 27 and 30, 1956—from the date of the granting of said writ to the time of payment of said back wages; and (2) that the Company be, likewise, sentenced to pay interest on said amount of back wages, from ten (10) days after receipt of notice of the order denying its motion for reconsideration of the order of February 10, 1958, up to the date of actual payment.

The relief referred to in the second part of this prayer cannot be granted, said relief not having been sought in the lower court, and our jurisdiction over the matter being purely appellate.

As regards the liability under said bond, we find that the counterclaim of the Union is well taken. Indeed, the foregoing considerations, with respect to the main issue in this proceedings, show that the Company is not, and was not, entitled to the writ of preliminary injunction above mentioned. Apart from this, the method of computation used in the report now complained of is the same as that followed in the first report of the examiner of the lower court, and the order of the latter approving said first report—except as to the date on which the back wages would begin (on November 10, 1953, instead of June 25, 1953)—had already been affirmed by this Court. It is obvious, therefore, that the Company has absolutely no justification in objecting to said method of computation and in preventing the execution of the order approving said second report.

Moreover, the institution of an appeal does not stay the execution of the decision, award or order of the Court of Industrial Relations sought to be reviewed (section 14, Commonwealth Act No. 113). Consequently, the members of the Union would have already received the back wages above referred to, were it not for the issuance of the writ of preliminary injunction aforementioned. The same has thus caused damages to said members of the Union, they having been thereby deprived meanwhile of the benefits that would have accrued from the payment of said back wages to them. Upon the other hand, the Company has retained the amount of said back wages, with the corresponding opportunity to make profits or derive benefits from its use. Again, the damages collectible for noncompliance or delay in the performance of an obligation to pay a sum of money consist, in the absence of specific provision or stipulation to the contrary, of the payment of interest at the legal rate (Art. 2209, Civil Code of the Philippines). Lastly, although copy of the answer of the Union in this Court, with its aforementioned

counterclaim, was served upon the Capital Insurance & Surety Co., the same has not controverted the right of the Union to recover on said surety bond. Wherefore, the orders appealed from are hereby affirmed, the writ of preliminary injunction issued by this Court is dissolved, and the Capital Insurance & Surety Co. is sentenced, on its aforementioned surety bond, to pay to the Union interest, at the legal rate, on the sum of P238,430.84 from September 17, 1960, until full payment of said amount, with the understanding, however, that the liability of said Surety Company for the payment of the interest shall not exceed P30,000. The Talisay-Silay Milling Co., shall, in addition, pay the costs.

It is so ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

* Talisay Silay Milling Co. vs. C. I. R. (98 Phil., 17; 51 Off. Gaz., [12] 6200).

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