

**PHILIPPINE FISHING BOAT OFFICERS AND ENGINEERS UNION,
SAMAHAN NG MANGDARAGAT SA FILIPINAS, FRANCISCO VISAYAS
AND AMBROCIO BERGADO, PETITIONERS, VS. COURT OF
INDUSTRIAL RELATIONS...**

G.R. No. L-30592. February 25, 1982

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TEEHANKEE, J.:*

In this petition for review by certiorari, petitioners seek the reversal of the decision of the now defunct Court of Industrial Relations dismissing their complaint of unfair labor practices against respondents San Diego Fishery Enterprises, Inc., Bartolome A. San Diego and Anatolio Llido. Petitioners Francisco Visayas and Ambrocio Bergado, who were dismissed by respondent corporation likewise pray that they be granted backwages from the date of their dismissal on May 9, 1958.

Respondent San Diego Fishery Enterprises, Inc. is a domestic corporation engaged in deep-sea fishing and respondents Bartolome A. San Diego and Anatolio Llido are the manager and an employee thereof while petitioners Philippine Fishing Boat Officers and Engineers Union and Samahan ng Mangdaragat sa Filipinas are duly registered labor unions. Petitioners Francisco Visayas and Ambrocio Bergado were the President and Treasurer, respectively, of the first named union. The Philippine Fishing Boat Officers and Engineers Union is composed of officers and engineers, while Samahan ng Mangdaragat sa Filipinas is composed of crew members, in the employ of respondent corporation.

On charges instituted by herein petitioners, the prosecution staff of respondent court, after conducting a preliminary investigation filed a complaint for unfair labor practices against herein respondents. The complaint shows that petitioners-unions sent letters of demands and proposals to respondent corporation on May 6, 1958 and June 12, 1958 but respondent corporation failed to answer the said letters with-in the reglementary period as provided for in Section 14 of Republic Act No. 875 and also refused to talk with representatives of petitioners-unions. It also appears that on May 9, 1958, respondent corporation, through its manager Bartolome A. San Diego dismissed petitioners Visayas and Bergado because of their union activities and their refusal to resign from the Philippine Fishing Boat Officers and Engineers Union and join the union being organized by respondents San Diego and Llido. Consequently, on or about June 24, 1958, petitioners-unions declared a strike.

In their answer, respondents denied all the substantial allegations of the complaint and maintained that complainants do not constitute representative groups for collective bargaining purposes and therefore the strike declared by the employees was not legal. Respondents likewise denied that petitioners Visayas and Bergado were employees of the corporation.

What transpired during the hearing of the case can well be seen from the appealed decision. Petitioners introduced evidence that Visayas and Bergado had continuously been employed by respondent San Diego Fishery Enterprises, Inc. since April 1952 and September 1956, respectively. In the course of their employment, they joined the Philippine Fishing Boat Officers and Engineers Union and were duly elected, respectively, as its

vice-president and treasurer. On May 6, 1958 and June 12, 1958, petitioners-unions sent letters of demand to respondent corporation which remained unanswered in spite of the lapse of the reglementary period provided in Section 14, Republic Act 875. Sometime thereafter, respondent San Diego, with the cooperation and assistance of Llido started gathering information on the employees' affiliations with the two complaining unions. This was heightened when on May 8 and 9, 1958 respondent San Diego allegedly called into his office petitioners Visayas and Bergado and interrogated, coerced and required them to resign from their union and to cooperate with the company by joining the union being organized by respondents San Diego and Llido. When they refused to heed the demands of the management, Visayas and Bergado were dismissed. As an offshoot of their dismissal, the two unions staged a strike and threw picketlines in the premises of the respondent corporation.

Respondent corporation in turn tried to establish its defense that there is no employer-employee relationship between petitioners Visayas and Bergado and the company in view of the peculiar feature of the fishing industry i.e., the regular dry docking of fishing vessels to make them seaworthy; the repairs that must be made from time to time or the delay in the trips because of scarcity of ice. Respondents alleged that the contract of employment invariably lasts only for the duration of each fishing trip and terminates on the return of the vessel to its home port; and that the moment the crew members disembark, they are no longer considered employees of the company.

Since the record indicated that individual petitioners were not on board any of the company's fishing vessels at the time of their dismissal, respondent court ruled in its decision of October 3, 1968 that there existed no employer-employee relationship between the parties and therefore respondents could not be held liable for unfair labor practices.

Petitioners timely filed a motion for reconsideration of the decision but respondent court, in an en banc resolution found the motion to be without merit, besides the fact that the arguments of petitioners' counsel were "not duly verified." Hence, this appeal by certiorari, which the Court finds to be meritorious.

It is settled that tenure of employment is not considered as the test of employment. All that is required is hiring.[1] For it is not the continuity of employment that renders the employer responsible, but whether the work of the laborer is part of the regular business or occupation of the employer.[2] In the case at bar, the employer-employee relationship is merely suspended during the time the vessels are dry docked or undergoing repairs or being loaded with the necessary provisions for the next fishing trip. All these activities form part of the regular operation of the company's fishing business. Thus, in the analogous case of *Manila Hotel Co. vs. CIR*,[3] the Court held that:

"Where the nature of the employees' relationship with the hotel is such that during off season they are temporarily laid off and during summer season they are reemployed, or their services may be needed, their status is that of regular seasonal employees. They are not strictly speaking separated from the service but are merely on leave of absence without pay until they are reemployed. Their employment relationship is never severed but merely suspended. As such these employees can be considered as in the regular employment of the hotel."

The temporary suspension of the business due to some foreseeable events, say, the scarcity of ice for the fishing trips or when the fishing vessels cannot go out to sea due to repairs or strong typhoons does not sever the employer-employee relationship between the parties. Under similar circumstances, the Court likewise held in *Industrial-Commercial--Agricultural Worker's Organization vs. CIR*,[4] that:

"x x x The cessation of the Central's milling activities at the end of the season is certainly not permanent or definitive; it is a foreseeable suspension of work, and both Central and laborers have reason to expect that such activities will be resumed, as they are in fact resumed, when sugar cane ripe for milling is available. There is, therefore, merely a temporary cessation of the manufacturing process due to passing shortage of raw materials

that by itself alone, is not sufficient, in the absence of other justified reasons, to sever the employment or labor relationship between the parties, since the shortage is not permanent. The proof of this assertion is the undenied fact that many of the petitioner members of the ICAWO Union have been laboring for the Central, and reengaged for many seasons without interruption. Nor does the Central interrupt completely its operations in the interval between milling seasons; the office and sales force are maintained, precisely because operations are to be later resumed.

"That during the temporary layoff the laborers are considered free to seek other employment is natural, since the laborers are not being paid, yet must find means of support. A period during which the Central is forced to suspend or cease operation for a time (whether by reason of lack of cane or by some accident to its machinery) should not mean starvation for employees and their families. Of course, the stopping of the milling at the end of the season, and before the next sugar crop is ready, being regular and foreseen by both parties to the labor relation, no compensation is expected nor demanded during the seasonal layoff."

The Court holds, therefore, that the employer-employee relationship existed between the parties notwithstanding evidence to the fact that petitioners Visayas and Bergado, even during the time that they worked with respondent company alternated their employment on different vessels when they were not assigned on the company's vessels. For, as was stressed in the above-quoted case of Industrial-Commercial-Agricultural Workers Organization vs. CIR, "that during the temporary layoff the laborers are considered free to seek other employment is natural, since the laborers are not being paid, yet must find means of support" and such temporary cessation of operations "should not mean starvation for employees and their families." The fact that on the date of the individuals-petitioners dismissal on May 9, 1958, they were not on board any of the company's fishing vessels does not exonerate respondents from the charge of unjust dismissal.

It was shown that at the time of the dismissal of said petitioners Visayas and Bergado, respondent San Diego was not the general manager of the corporation. The power to hire and dismiss employees was then exercised by Enrique Diaz, who approved or disapproved contracts of employment as acting general manager of respondent corporation. Respondent court ruled that even assuming that respondents San Diego and Llido coerced the officers and engineers regarding their union affiliations under threat of dismissal, no evidence existed to warrant a conclusion that San Diego was acting for and in behalf of respondent firm as an employer. Respondent court thus ruled that since respondent San Diego was not, at the time of petitioners' dismissal, the general manager and president of respondent corporation but merely a stockholder, he had no power to hire and dismiss employees and any act imputed to him, even if assumed to be true, could not bind the corporation. Whatever be the case, the Court has found the dismissal of petitioners to be unjustified, and it is not San Diego nor Diaz who are herein held personally liable but respondent corporation itself as the employer.

Moreover, respondent corporation is undeniably a family corporation and Bartolome A. San Diego is one of the incorporators and directors. In *Emilio Cano Enterprises, Inc. vs. CIR*,^[5] the Court ruled that where the incorporators and directors belong to a single family, the corporation and its members can be considered as one in order to avoid its being used as an instrument to commit injustice, and held that -

"A judgment of unfair labor practice rendered against two individuals in their capacity as officials of the corporation may be made against the property of said corporation, notwithstanding the fact that the corporation was not a party to the unfair labor practice charged, it appearing that the corporation is a closed family corporation where the incorporators and directors belong to a single family. This is an instance where the corporation and its members can be considered one, and to hold such entity liable for the acts of its members is not to ignore the legal fiction but merely to give meaning to the principle that such fiction cannot be invoked if it is used as a shield to further an end subversive of justice."

The fact that the hiring and dismissal of employees was exercised by Enrique Diaz, the acting general manager

of respondent corporation, does not alter the employer-employee relationship between the parties and mean that he personally was the employer. It is obvious that respondent corporation is the statutory employer of petitioners.[6] The intervention of Enrique Diaz, in this case, was merely that of an agent or intermediary between the owner of the fishing boat and the members of its crew. In short, Diaz was merely the person charged by respondent corporation to recruit its officers and crew members to work on its vessels in pursuance of its regular fishing business.[7]

The Court finds as totally unjustifiable respondent court's dismissal of petitioners' motion for reconsideration on the flimsy ground that the arguments filed by their new counsel were "not duly verified." Such defect was merely formal and did not affect the validity and efficacy of the pleading and the arguments submitted. The most respondent court could have done was to require such formal verification.[8] The Rules of Court (Rule 1, Sec. 2) prescribe a general directive that procedural rules be liberally construed or interpreted in order to promote their objective and to assist the parties in obtaining just, speedy and inexpensive determination of their cases.[9] As stated by the now Chief Justice in *Firestone Filipinas Employees Association, et al. vs. Firestone Tire and Rubber Co. of the Philippines, et al.*[10] it is "the well-settled doctrine that in labor cases before this Tribunal, no undue sympathy is to be accorded to any claim of a procedural misstep, the idea being that its power be exercised according to justice and equity and substantial merits of the controversy." We find that respondents committed unfair labor practices in their refusal to answer the proposals of the petitioners-unions and to bargain with them, coupled with the unlawful dismissal of petitioners Francisco Visayas and Ambrocio Bergado.

Accordingly, the decision under review is set aside and respondent San Diego Fishery Enterprises, Inc. is ordered to cease and desist from further commission of such acts, and to pay petitioners Francisco Visayas and Ambrocio Bergado backwages for a period of five (5) years without qualification and deduction, computed on the basis of their average yearly earnings at the time of their unlawful dismissal on May 9, 1958.[11] This decision is immediately executory. With costs against respondent company. SO ORDERED.

Makasiar, Fernandez, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

[1] See *Rothenberg on Labor Relations*, p. 330; *Francisco, Labor Laws of the Philippines*, p. 374; Vol. 1, 4th Edition.

[2] *Mansal vs. P.P. Gocheco Lumber Company*, 96 Phil. 941.

[3] 9 SCRA 186; *Italics supplied*.

[4] 16 SCRA 562, 567-568; *Italics supplied*.

[5] 13 SCRA 290.

[6] *Abong vs. WCC*, 54 SCRA 385.

[7] *Ibid*.

[8] *Oshita vs. Republic*, 19 SCRA 700; *Gadit vs. Feliciano, Sr. et al.*, 69 SCRA 388.

[9] *Lamco vs. WCC*, 84 SCRA 401.

[10] 61 SCRA 340, citing *Philippine Maritime Industrial Union vs. CIR*, 60 SCRA 287.

[11] *Davao Free Workers Front vs. CIR*, 60 SCRA 408; cf. *Feati University Faculty Club vs. Feati University*, 58 SCRA 395; *Danao Dev. Corp. vs. NLRC*, 81 SCRA 487.

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