

SAN MIGUEL BREWERY, INC., AND COL. JOSE P. RUEDA, PETITIONERS, VS. PETER C. SANTOS, AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-12682. August 31, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

In a complaint filed in the Court of Industrial Relations by the court prosecutor, San Miguel Brewery and Col. Jose P. Rueda, its Security Officer, were charged with unfair labor practices allegedly committed by (1) interfering with, restraining, and coercing complainant Peter C. Santos, a member of the SMB Special Police Union, in the exercise of his rights to self-organization; (2) harassing and discriminating against him by not appointing said complainant to the position of permanent security guard and by dismissing him instead from the service, on account of his union activities; and (3) refusing to reinstate or reappoint complainant notwithstanding the union's recommendation, because he was instrumental in the filing of charges (by the union) against the Security Officer, Col. Rueda.

Col. Rueda and San Miguel Brewery, in their answer, denied the charges of interference or harassment because of union activities, claiming that complainant was not even a member of the union; that there was no discrimination in his non-appointment to a permanent position, because it is the Company's prerogative to determine who may be appointed or not; and that the charges, if at all, were purely personal to complainant and the Security Officer, and have no bearing on labor relations between the union and the company.

After due hearing, the court rendered a decision, in part reading as follows:

"The evidence presented by the parties show the following to be undisputed or duly established: that Peter C. Santos was employed off and on as a temporary security guard during the period from December 16, 1952, to February 3, 1955, when he was dismissed, the total time of his actual service being eight and a half months; that on April 11, 1954, Santos was appointed confidential agent of the union (Exhibit 'F') and on October 23, 1954, formally became a member thereof (Exhibit 'H'); that on April 1, 1954 (must be August 1, 1954), the union filed charges against Col. Rueda with Santos gathering the materials for some of the charges, and the union at the same time demanded that positions vacated by the members of the union be filled with applicant's recommended by the board of directors of the union (Exhibit 'G'); that on September 26, 1955, the board of directors of the union recommended Santos to take the place of Carlos Abelardo who was a permanent guard and a member of the union (Exhibit 'N'); that on October 23, 1954, Santos was called or employed for the last time; that on November 3, 1954, Santos was physically examined to find out if he could be made permanent guard; and that on January 27, 1955, he was again physically examined and on February 3, 1955, dismissed instead of being made permanent guard.

"That there were meetings and conversations between Santos And Col. Rueda and investigations of Santos' possession of firearms conducted by Col. Rueda himself and by the MIS and PC agents on October 29, November 10, November 17, November 20, and/or December 11, all in the year 1954, either at the instance of

Col. Rueda or of their (MIS & PC) own volition, is not disputed.

"Under the circumstances, it is safe to say that if Santos' possession of the firearms was found illegal, that would have been the best 'way and means' to stop him from becoming a regular security guard and to dismiss him from his work. Failing in this, Col. Rueda sent Santos to the medical department of the San Miguel Brewery for a physical examination, the reason, according to the management, being to find out if Santos could be made a regular guard. Santos was allegedly found by Dr. Horilleno to be suffering from a chronic O.M.P.C. on his left ear which is described as a 'decided liability because it impairs the hearing to some degree if not markedly'.

"The Court cannot see why Dr. Horilleno did not tell or advise Santos of the said defect; why no treatment whatsoever was given; why, if the medical department did not have the necessary medicine, the doctor did not issue any prescription so that Santos could buy the medicine elsewhere; why Santos was allowed to continue in the service for three months while suffering from a chronic O.M.P.C. which is a 'decided liability'; and why, after three months from the first physical examination, he was again examined physically to find out if he was already cured when he had not been advised of, nor treated for, his ailment.

"Rueda explained that he 'let him stay to give him time to be cured' because '* * * I (Rueda) never suspected him to be the one to be doing things like that because I was the one who put him in the job and put him there from time to time.' Then he added; 'If I ever knew that, I would not have put him in again if he will be doing that, but I have confidence in him because I was the one giving him bread and butter. Because I do not think a man to whom you give bread and butter will work against you' (t.s.n., p. 44, December 19, 1955). Stated otherwise, Rueda is disappointed, so that if he knew Santos would work against him, he would not have employed him time and again.

"But did Rueda really not know that Santos worked against him (Rueda) prior to the investigations conducted by the MIS and PC agents and by him of Santos' possession of firearms from and between October 29, 1954 and December 11, 1954?

"The evidence belies Rueda's and the San Miguel Brewery's contention. It will be recalled that Rueda knew Santos to be a confidential agent of the Union (t.s.n., p. 9, Hearing of December 19, 1955); that he saw the charges against him filed by the union with the petition to fill positions vacated by the members of the union with applicants recommended by the board of directors of the union (t.s.n., pp. 11-12, Hearing of August 17, 1955, and pp. 39-41, Hearing of December 11, 1955); that the management received the recommendation of the union's board of directors in favor of Santos to take the place of Carlos Abelardo who was a permanent guard and a member of the union; and that Rueda had him examined physically in order to find out if he could be made a permanent guard. Rueda and the management knowing Santos to be the confidential agent of the union and member thereof and knowing that he gathered materials in support of some of the charges against Rueda, it could hardly be a mistake to conclude that because of his (Rueda) disappointment, the respondents dismissed Peter C. Santos for his union activities with the physical defect as a pretext.

"There is no showing, not even a claim, that because Santos is suffering from chronic O.M.P.C., on his left ear, something untoward in the performance of his duties, happened as a result thereof for more than two years when he was with the respondent company off and on. On the contrary, his efficiency record is commendable. Upon the whole, the evidence supports the conclusion that respondents committed unfair labor practice against Peter C. Santos in discharging him."

The court, consequently, directed the reinstatement of Peter C. Santos to the position of permanent security guard vacated by Carlos Abelardo, and the payment of back wages from the date of his dismissal until actually reinstated. Therein respondents were further directed to cease and desist from committing similar unfair labor practice.

Their motion for reconsideration of the aforementioned decision having been denied by resolution of the court en

banc[1] on July 19, 1957, San Miguel Brewery and Col. Rueda filed the instant appeal by certiorari upon the following grounds:

Error I.—That the CIR committed an error of law in denying petitioners' motion for reconsideration without any hearing on oral arguments by the court en banc and notwithstanding the fact that the CIR is without a full membership, contrary to the provisions of law.

Error II.—That the Court of Industrial Relations committed an error of law in making findings and conclusions not supported by substantial evidence on the record taken as a whole, contrary to the decision of the Supreme Court in "Ang Tibay vs. Court of Industrial Relations" [40 Off. Gaz., pp. 35, 37] and Section 6, Industrial Peace Act.

Error III.—That the decision of the Court of Industrial Relations is contrary to the decision of the Supreme Court in "Olaivar vs. Manila Electric Co." [Off. Gaz., 14th Supp. 73].

On August 16, 1957, this Court, deliberating upon the allegations of the petition, resolved to dismiss it on the ground that the questions involved were factual and that there was no merit in the petition. A motion for reconsideration of this resolution was denied. However, upon a second motion for reconsideration predicated on an additional ground—

Error IV.—That the Court of Industrial Relations acted with grave abuse of discretion and in excess of its jurisdiction by directing the employment of respondent Peter C. Santos as a permanent security guard when he was discharged as a temporary security guard—an affirmative action which clearly exceeded the basic objective of "effectuation of the policies" of Republic Act No. 875—

the petition was given due course.

We now take up the first three assignments of error urged by the petitioner.

Error No. 1.—There is no merit in the contention that the lower court erred in resolving the motion for reconsideration by the vote of four of the five judges of the court—Judge Lanting, who penned the original decision, being on leave at the time. The requirement that a motion for reconsideration shall be resolved by the court en banc, the judges sitting together, simply demands that all the available judges shall take part and as long as three, at least, of the judges attending concur, it is enough for the pronouncement of a decision, order or award. (C.A. No. 559).

Errors Nos. 2 and 3.—These two assignments of error involve the factual findings of the lower court. It is an oft—repeated doctrines that is not for this Court to review the findings of fact of the Court of Industrial Relations in the absence of a showing that it had abused its discretion to an extent amounting to a lack or excess of jurisdiction. In the case at bar, we are not prepared to conclude that there is lack of substantial evidence to support the finding of the trial court that the dismissal of respondent Santos was attributable to his union activities. This conclusion is borne out by the following established facts:

(1) Santos was appointed confidential agent of the Union on April 11, 1954 (Exh. F); (2) it was Santos who gathered data or information which became the basis of the complaint filed with the Company against Col. Rueda on August 1, 1954 (See Exh. G), charging him, among others, with unfair labor practices, in that he had been keeping "an eye on the officers and members of the Union who have previous records"; advising his recommendees and proteges not to join the union; and imposing severe punishment on union members, but lighter impositions to non-members for any violation of the rules and regulations of the Security Department, for the purpose of discouraging union membership; (3) Col. Rueda learned of this complaint and, consequently, became prejudiced against Santos who gathered such information; (4) in the same communication (complaint),

Exh. G, sent by the union to the management, it was petitioned that vacancies created by the resignation or retirement of union members be filled in by recommendees of the union; (5) Santos was recommended by the union to fill the vacancy created by the resignation of Carlos Abelardo. With these antecedents, it is not at all far-fetched to conclude, as did the trial court, that because of the activities of Santos, joined in by the union, Rueda would not only oppose the appointment of Santos as permanent guard, but would also work for his dismissal. Hence, the harassment of the investigation and the pretext of the affected ear. It is uncontradicted that when examined by private specialists in February and March, 1955, Santos' left ear was found to be normal. (Exhs. B and C).

It is urged for the company that the differences between Santos and Col. Rueda were purely personal and did not concern the company, and that there was no evidence of hostility between the management and the union or any of its members. It can not be gainsaid, however, that the acts of Col. Rueda, constituting an unfair labor practice, while may have been prompted by personal motives, were executed in his capacity as Security Officer of the company and in the course of his duties. In dismissing the complainant, with full knowledge of the actuations of Col. Rueda and the circumstances of Santos' case, the petitioner company in effect ratified the acts of Col. Rueda complained of and, consequently, became liable therefore.[2]

Taking together these attendant circumstances and the joint activities of Santos and the union, the trial court, we believe, was justified in concluding that the herein petitioners committed unfair labor practice against herein respondent Santos in discharging him.

"It has previously been indicated that an employer may treat freely with an employee and is not obliged to support his actions with a reason or purpose. However, where the attendant circumstances, the history of the employer's past conduct and like considerations, coupled with an intimate connection between the employer's action and the union affiliations or activities of the particular employee or employees taken as a whole raise a suspicion as to the motivation for the employer's action, the failure of the employer to ascribe a valid reason therefor may justify an inference that his unexplained conduct in respect of the particular employee or employees was inspired by the latter's union membership or activities. While the presence of this mere suspicion neither takes the place of evidence that the employer's conduct was improperly motivated nor dispenses with the requirement of proof of the fact, such suspicion, when coupled with other facts which, in themselves, might have been inadequate to support an adverse finding against the employer, may suffice to sustain a finding that the employer's actions violated the prohibition of the Act." (Rothenberg on Labor Relations, pp. 401-402, and the cases cited therein.)

Error 4.—We find this to be meritorious.

The records show that Santos was employed as temporary guard, on and off for short durations between December 16, 1952 and February 3, 1955. On the date of his separation from the service, he was still occupying the position of temporary guard. There is no question that, having been the subject of unfair labor practice, Santos is entitled to reinstatement. However, the company can not be required to appoint said dismissed employee to a position which he had not previously occupied. Reinstatement, in its generally accepted sense, refers to a restoration to a state from which one has been removed or separated; it is the return to the position from which he was removed[3] Santos, therefore, should be ordered reinstated to his former position of temporary guard.

With this modification, the appealed decision and confirmatory resolution of the court a quo are hereby affirmed, without costs. So ordered.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

Padilla, J., took no part.

Bautista Angelo, J., on leave, took no part.

[1] Judge Juan Lanting, on leave, did not take part; Judge Arsenio Martinez concurred in the result.

[2] N.L.R.B. vs. Chicago Apparatus Co., 116 F. 2d 753.

[3] Vol. 36, Words & Phrases, Perm. ed., p. 730, and cases cited therein.

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