

BETTING USHERS UNION (PLUM) PETITIONER, VS. JAI ALAI CORPORATION OF THE PHILIPPINES, AND THE COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G. R. No. L-9330. June 29, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal by certiorari from a resolution of the Court of Industrial Relations dismissing a petition filed in that court by the Betting Usher's Union (PLUM) to have the Jai Alai Corporation of the Philippines pay its betting ushers the minimum wage fixed in Republic Act No. 602.

As a background to the case, it should be stated that previous to the filing of that petition, the acting chief of the WAS (Wage Administration Service, Department of Labor) had been investigating the Jai Alai Corporation with a view to determining its liability to pay minimum wage to its betting ushers, but upon complaint of the corporation, the Court of First Instance of Manila—in Civil Case No. 24155 of that court—enjoined the investigation on the ground that the said betting ushers, who plied their trade under a concession, were not employees of the corporation and, therefore, not entitled to the legal minimum wage. In granting the injunction to stop the investigation, the Court of First Instance at the same time denied the claim of the Jai Alai Betting Ushers' Association which, having been made co-defendant in the action, had set up a counterclaim for P243,360 as total minimum wages already due its 65 members.

From the judgment rendered in the said civil case, the acting chief of the WAS appealed to the Supreme Court, but the Betting Ushers' Association did not. What it did was to file a petition in the Court of Industrial Relations to have that court order the Jai Alai Corporation to pay the claim for minimum wages which had already been denied by the Court of First Instance. For reasons which do not appear, the petition is in the name of Betting Ushers' Union (PLUM). But there appears to be no question that this union and the Jai Alai Betting Ushers' Association are one and the same thing.

Answering the petition, the corporation set up the defense of (1) lack of jurisdiction, (2) lack of cause of action and (3) pendency of another case between the same parties in the Court of First Instance of Manila. And then after the expiration of the association's period for appeal in that case, the corporation amended its answer by converting the third defense (pendency of another suit) into one of *res judicata*—on the theory that the judgment in the Court of First Instance had already become final with respect to the association or union—and at the same time prayed that the preliminary issues raised in its three affirmative defenses, which also constituted grounds for a motion to dismiss, be ruled upon and resolved pursuant to section 5 of Rule 8.

The general manager of the corporation having subsequently received a letter signed by 64 out of the 65 members of the union, authorizing him to ask for the dismissal of the case before the Industrial Court for lack of merit, the corporation filed a "supplemental motion to dismiss" pursuant to said letter as well as on the grounds of *res judicata* and lack of cause of action. And the union itself, by resolution of its members and acting through its

board of directors, filed a motion for dismissal "with prejudice and without pronouncement as to costs."

Informed of the motion to dismiss, Attys. Rafael and Ilustre, who had theretofore been handling the case for the union, filed an opposition thereto, alleging that they had no knowledge of the letter sent by the 64 members of the union to the management of the corporation or of its authenticity and praying that resolution on the motion to dismiss be deferred until the union should have duly authorized dismissal either through counsel "or directly by proper notice of their lack of interest to prosecute." Despite this opposition, however, the Judge in charge of the case handed down an order on March 30, 1955, which reads:

Acting on the motion for dismissal filed by the petitioner union, through its Board of Directors acting under authority of its members this case is, as it is hereby, dismissed with prejudice."

On April 5, 1955 Attys. Rafael and Ilustre filed a motion for reconsideration, supporting it 8 days later with written argument in which, among other things, it is alleged that 40 members of the union had not authorized the dismissal of the case and that if they signed the letter to the general manager of the corporation, it was because the same was "imposed" (sic) upon them and on condition that they would be fully compensated for their claim, as shown by a resolution of the said 40 members, dated April 2, 1955 attached to the written argument.

Opposing the motion for reconsideration, the corporation alleged that, contrary to the assertion of Attys. Rafael and Ilustre, the dismissal was consented to and duly authorized by the members of the union; that the dismissal was without any condition; that the said attorneys were without authority to ask for a reconsideration of the dismissal as, the day following the said dismissal, they were by letter informed by the union through its board of directors that their services were being dispensed with; and that as the dismissal partook of the nature of a judgment by consent, it became final upon promulgation and, therefore, no longer subject to reconsideration or appeal. In pleadings subsequently filed, with supporting affidavits from the members of the union, the corporation also informed the court that subsequent to the resolution of April 2, 1955, purportedly signed by 40 members of the union and presented by the complaining attorneys as basis for their motion for reconsideration, 28 of the signers thereof made statement under oath to the effect that it was their real desire to have the case dismissed for the reason that they were not really employees of the corporation and that if they signed the said resolution it was because they had been made to believe that its purpose was only to secure refund of one-half of the cost of their original uniforms. The corporation further informed the court that 28 more of the members of the union also signed sworn statements reiterating their desire to have the case dismissed with prejudice and to abide by the decision of the Court of First Instance, so that the total, number of those who had expressed their desire in favor of dismissal was 56, or more than four-fifths of the total union membership.

After considering the arguments adduced by both sides, the Industrial Court, sitting en banc, handed down its resolution, dated June 18, 1955, denying the attorneys' motion for reconsideration.

From that resolution the aforementioned attorneys have appealed to this Court by certiorari, contending that the dismissal of the case was erroneous because (1) it in effect authorized a waiver of the legal right of the betting ushers to a minimum wage, (2) it denied due process by not allowing a trial on the merits, and (8) it foreclosed the question of jurisdiction.

The basic question to determine is whether the dismissal of the case was proper.

The record shows that the dismissal was decreed upon motion filed by the petitioning union itself, through its board of directors, acting in deference to the wishes of all the members of, the union except one as expressed in their resolution. Attys. Rafael and Ilustre tried to show by means of a resolution purportedly signed by 40 members of the union that the said 40 signers had not authorized the dismissal of the case, alleging that the resolution for dismissal had been "imposed" upon them and that they were made to believe that they would be

fully paid their claim for minimum wages. But it appears from the sworn statements of more than three-fourths of the 40 signers of the resolution presented by the attorneys that their signatures were affixed thereto under a misapprehension in that they had been made to believe that the object of the said resolution was only to secure reimbursement for one-half of the cost of their original uniforms, whereas their real desire was to have the case dismissed because it lacked merit since they were not employees of the corporation. It appearing then that the dismissal was sought by the union itself acting through the instrumentality of its governing body and also in accordance with the wishes of an overwhelming majority of the members of the union, we do not think the lower court abused its discretion or violated any legal rule in dismissing the case. Surely, the will of one or several members of an association cannot be allowed to prevail over the will of the great majority. And it may well be questioned whether Attys. Rafael and Ilustre could still be deemed authorized to ask for a reconsideration of the dismissal after they had been notified by the union that their services had already been dispensed with. It is true that, as already held in several cases, once the case is in court with the requisite jurisdictional number of employees involved, jurisdiction over it is not lost upon the withdrawal of some of those employees from the union. But such is not the situation in the instant case, it not appearing that any of the dissenting members has withdrawn from the union. And as already stated, it was the union itself that asked for the dismissal of the case."

The objection on lack of due process on the ground that the movants for reconsideration were not heard is without basis, for we gather from the allegations in the answer of the corporation, which is not denied by the movants, that although a hearing was held Attys. Rafael and Ilustre did not appear thereat. Petitioner also contends that the subject matter involved in the case dismissed below was a labor dispute falling under the exclusive jurisdiction of the Industrial Court, but it is now idle to argue that point, the case having been dismissed on motion of the petitioning union itself.

It may here be stated that the appeal taken by the acting chief of the WAS from the judgment of the Court of First Instance was dismissed by that court and the petition for mandamus to elevate the appeal here was denied by us in our decision of October 31, 1956.

In view of the foregoing, the petition is denied, without special pronouncement as to costs.

Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L. and Felix, JJ., concur.

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