

COLUMBIAN ROPE COMPANY OF THE PHILIPPINES (TACLOBAN BRANCH), AND/OR E. C. SIMONSEN, JR., HAROLD L. CICERONE AND RAFAEL LEGADO, PETITIONERS, VS. T.A.L.E. AND/OR BRAULIO MALPAS, F...

G. R. No. L-14848. October 31, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for review by certiorari of the decision of the Court of Industrial Relations.

Respondents Braulio Malpas, Felipe Superable, Jose de la Rosa and Andres Macamay were the complainants below against petitioner Columbian Rope Company of the Philippines (Tacloban Branch), alleging that they were employees of the latter who were dismissed by reason of their membership in the Tacloban Association of Laborers and Employees (CIR Case No. 16-ULP-Cebu). Superable was dismissed on September 17, 1954; Malpas on November 17, 1954; de la Rosa on December 1, 1954; and Macamay on February 8, 1955. After trial and pending decision of the court, the Company filed an "urgent petition" for permission to close down its Tacloban branch effective October 15, 1955, on the ground of continuing losses in its local business. Acting on the petition, the court on September 29, 1955 issued an order stating that "there being no provision in Republic Act No. 875 or in any other act to the effect that an employer could not close his or its business without first securing authority from this Court if there is a pending certification or unfair practice case involving said business, the granting of such authority is unnecessary," but that "should the Tacloban branch of respondent Company be actually closed as planned, such closing should be without prejudice to the results of the two pending cases (Cases 16-ULP-Cebu and 28MC-Cebu) involving said Company and the Tacloban Association of Laborers and Employees." On September 22, 1958 the Industrial Relations Court rendered its decision declaring that the dismissal of the complainants was violative of Section 4 (a), subsections 1, 2 and 4 of Republic Act 875 and requiring the company "to cease and desist from committing unfair labor practice; to pay back wages to the complainants from the time of their dismissal until they are made whole; and to maintain the terms and conditions of employment at the time of their dismissal and not to disturb their seniority."

A motion for reconsideration was denied by the court en banc, with a separate concurring and dissenting opinion by judge Emiliano C. Tabigne.

In the instant petition, petitioner does not question the Industrial Relations Court's finding of unfair labor practice and the right of the complaining employees to back wages from the dates of their respective dismissals up to the time petitioner closed its Tacloban branch, allegedly on September 30, 1955. The sole issue now presented is: May an employer, found guilty of unfair labor practice in dismissing four employees, be ordered to reinstate them after the closure of its branch office where they were employed, and to pay the dismissed employees back wages from the date of such closure until they are actually reinstated?

On this question this Court's ruling in *Durable Shoe Factory vs. Court of Industrial Relations*, L-7783 May 31,

1956, is in point:

"Under ground (4), petitioner complains in the first place against the award of back wages beyond December 6, 1962, when, according to petitioner, it closed operations. As to this complaint, we think it only fair to rule that the back wages should not extend beyond the date of closure of business where such closure was due to legitimate business reasons and not merely to an attempt to defeat the order of reinstatement."

Apropos of a similar question of reinstatement under circumstances analogous to those claimed by petitioner, it is stated in *Erlanger & Galinger, Inc. vs. Court of Industrial Relations*, L-15118, December 29, 1960:

"The unfavorable conditions in the company's business and the consequent reduction of its collectible accounts, as held by the lower court, may not justify reinstatement, but they certainly are not sufficient grounds to deny back wages to respondent Flores who was illegally dismissed on account of union activities."

Even in the absence of any finding that an employer has been guilty of unfair labor practice a business recession may affect the right of an employee to reinstatement. So in *Philippine American Drug Co. vs. Court of Industrial Relations*, involving the dismissal of an employee because of business losses suffered by the employer, it was held:

"Unquestionably, petitioner had suffered a business recession which rendered unjustified Cuadra's reinstatement in March 1957—a remedy to which he would ordinarily have been entitled. So he was merely given a priority right to be employed should petitioner subsequently employ additional personnel." (L-15162, April 18, 1962).

The same view is held in American Jurisprudence:

"Nor may an employer be compelled by an order of reinstatement to give employment to a greater number of persons than the economic operation of his business requires. Thus, if between the time of the occurrence of the wrongful discharge and the proposed order of reinstatement, the employer's commercial or financial circumstances * * * have changed, the Board, despite the employer's unfair labor practices, cannot compel the employer to reinstate such a number of employees as may exceed his needs under the altered conditions. While the Board, under such circumstances, may not be empowered to order present reinstatement, it does have the right to order that such employees be given precedence in future hiring." *Rothenberg on Labor Relations*, p. 574.

"Implicit in the reinstatement provision of the Board's order was a condition of the continued operation by the offending employer of the refinery to the employment of which the illegally discharged employees were to be restored. Such operation might have continued under the old business form or under a disguise intended to evade this provision. If there was merely a change in name or in apparent control there is no reason to grant the petitioner relief from the Board's order of reinstatement; instead there is added ground for compelling obedience. Whether there was a bona fide discontinuance and a true change of ownership—which would terminate the duty of reinstatement created by the Board's order—or merely a disguised continuance of the old employer, does not clearly appear, and accordingly is a question of fact properly to be resolved by the Board on direct resort to it, or by the court if contempt proceedings are instituted." *Southport Petroleum Company vs. National Labor-Relations Board*, 315 U.S. 100-109; 86 L. ed. 719.

Respondents contend that even if it be true that the Tacloban Branch of petitioning Company has been closed for the reason alleged by it, they could still be reinstated in its other branches. There is indeed authority for the proposition that in such case the employer must offer the discharged employees substantially equivalent employment, if available:

"A provision of a Board order requiring that employees directed to be reinstated for whom no work is presently available be put on one preferential list covering all company plants in Ohio, Michigan and Pennsylvania, thus

making reinstatement possible at other than the plant where the employee formerly worked, was held to be within the power of the Board, and, so far as appears, not an abuse of discretion." Bufford on the Wagner Act, p. 848.

"A reinstatement order may issue although that branch of the employer's business in which the employee was engaged has been abandoned or his former position has been abolished, where the employer can offer his substantially equivalent employment." 56 C.J.S. 388, Citing *Williams Motor Co. vs. National Labor Relations Board*, 128 F. 2d 960.

Reinstatement under this circumstance does not necessarily have to be immediate:

"There was no positive requirement to re-employ these men immediately. The requirements as to employment were alternative and conditioned upon the actual situation. If there were substantially equivalent positions or any other available positions for which they are qualified, an offer of immediate reinstatement therein was required. If there were no such positions available, they were to be placed on a preferential list and to be first offered employment 'in any position for which they are qualified as such employment becomes available' and, if the body and fender shop be reopened, they were to be offered immediate employment therein. There was no requirement to discharge employed men to make places for these three; no requirement to employ them unless such services were needed; and no requirement to reopen the body and fender shop in order to furnish them employment. No compulsory change in petitioner's business was contemplated. Petitioner was permitted to conduct its business as it wished with the one requirement that these men should be offered such employment as they were qualified to undertake whenever there was need—immediate or in the future—of such service by petitioner. In short, the effect of the order is to restore these men to their previous status as nearly as this could be done without in any way 'dislocating' petitioner's business or its method of conducting such business." *Williams Motor Co. vs. National Labor Relations Board*, supra.

The views so far expounded assume that the employer has legitimately closed its business. In the present case the lower court has made no finding on this point. No evidence one way or another was presented at the trial.

All that appears is that petitioner asked for permission to close its Tacloban branch, and that its allegation of actual closure on September 30, 1955, contained in the memorandum submitted in support of its motion for reconsideration in the court below, has not been categorically denied by respondents in their written opposition to the motion.

In the *Durable Shoe Factory* case, supra, where a similar question was raised, namely, whether the employer's business closed on December 6, 1952, the lower court's decision not containing any express finding thereon, this Court, in order to "avoid any injustice that may be committed through any assumption that petitioner continued operations even after December 6, 1952," ruled that the Industrial Relations Court should require evidence on that particular question of fact and therefore remanded the case for that purpose.

The decision of respondent Court is set aside and the case is remanded for further proceedings—specifically to receive evidence on, and decide the questions of (1) whether or not the Tacloban branch of petitioning Company was closed on September 30, 1955 or on any other date thereafter; (2) whether such closure was for a justifiable cause, as alleged by said company, or was resorted to in order to circumvent any decision requiring reinstatement which the said court might render, as alleged by respondent employees and (3) if the closure was true and justified, whether or not, on the basis of the evidence, to order the reinstatement of said employees in the Company's other branches or to put them on a preferential list for that purpose, on the basis of the exigencies of its business. Without costs.

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

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