

LUZON LABOR UNION, PETITIONER, VS. LUZON BROKERAGE COMPANY, RESPONDENT.

G.R. No. L-17086. November 30, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

The facts constituting the background of the above-entitled case may be stated as follows: On April 7, 1951, the members of the Luzon Labor Union presented a petition with the Court of Industrial Relations, Case No. 397-V-(7), entitled "Luzon Labor Union (Antiguo Bloque de Francisco Salvio)" vs. Luzon Brokerage Company, with the following heading: "Reclamacion Enmendada de los que Trabajaron con el Luzon Brokerage Company en Bataan." In the petition it is alleged that on December 13, 1941, Mr. F. H. Myers, General Manager and biggest stockholder of the Luzon Brokerage Company posted a notice at the Durham Building, Muelle de San Francisco, Port Area, advising that Paulino O. Canlas, an employee of the Luzon Brokerage Company, is engaged in urgent army transportation by order of Col. Frederick A. Ward (U.S. Army) which work should not be delayed; that as required by the U.S. Army many workers of the Luzon Brokerage Company were engaged in transporting troops and army personnel to Bataan, driving trucks, servicing them, loading and unloading cargo, etc., and were being paid different rates of wages; that the petitioners went to the different parts of Bataan and worked therein and were classified as mechanics, drivers, truck helpers, checkers, attendants and cargadores, etc. The petition prays that the Luzon Brokerage Company be required to check the services of each claimant and that thereafter it be ordered to pay the amounts that the said laborers were entitled to receive.

In its second amended answer, the respondent company admitted the posting of the notice as indicated in the petition but denied all the other allegations, and by way of special defense, it admitted that the following groups or class of persons went to Bataan, namely, mechanics, truck drivers, truck helpers, checkers and paginantes and cargadores, and all others not embraced in said groups must be excluded and their claims discarded, but those employed (in Bataan) did not render any service to the Luzon Brokerage Company, because service to the company at the time of the war was already terminated, etc.; so it prayed that the petition be dismissed.

On October 15, 1951, the parties entered into a stipulation of facts, stating that the following persons worked with the Luzon Brokerage Company during the war in the towns of Bataan: (1) the group of mechanics and carpenters, 23 in number; (2) the group of chauffeurs, 125; (3) the group of truck helpers, 65; (4) the group of laborers, 58.

At the trial the petitioners presented 11 witnesses, the declarations of each of which is set forth in the body of the decision of the Court of Industrial Relations.

On December 29, 1952, said Court through Judge Jose S. Bautista, rendered the following judgment:

"We hold, therefore, that the Myers' promises as an established fact. Believing in those promises, the claimants went to Bataan and served the U.S. Army. Since the promises were accepted, there was a meeting of minds between the claimants and the company, and consequently the contract of employment existed. [Arts. 1254 and 1305, old and New Civil Code].

"It is true that, when the war broke out on December 8, 1941, the U.S. Army actually commanded all trucks of the company; but the ownership of the vehicles was not conveyed to the Army. The Army only acquired the right to use them for the purposes of war. Contractual relation always existed between the claimant's and the company, not between the U.S. Army and the workers. The mere fact that the Paymaster of the Quartermaster, Capt. Jose Luna, paid the wages of the laborers of the company at Motor Pool No. 4 corresponding to the last 15 days of December, 1941, did not make the U.S. Army the employer of said laborers. The drivers brought their trucks to Bataan, not because they were under military conscription, but because the management induced them to do so. * * *.

"The Company maintains that the claimants cause of action is barred by the statute of limitations. Granting that the claimants rendered services to the company until the surrender of Bataan, from said surrender on April 9, 1942 up to the filing of the action on December 29, 1950, a period of 8 years, 8 months and some days have elapsed. Granting that the Myers' promises were made in the later part of December, 1941, such promises being verbal, 'not in writing', the action upon them should have been brought within 6 years. (Sec. 43, No. 2, Act No. 190).

"This contention is well taken. F. H. Myers and Tom Myers consented to be bound with respect to the claimants to give 2 or 3 years back pay for services rendered to the U.S. Army in Bataan. Of the above-named 11 claimants, only 5 rendered services until the surrender of the American Army; 3 served for some few days; and 2 (Navales and Angeles) never went to Bataan. The action upon a verbal promise can only be brought within 6 years from the date the cause accrues. From the surrender of Bataan on April 9, 1942 up to December 29, 1950, when this action was filed in Court, the 6 year period had passed."

The Luzon Labor Union appealed by certiorari to this Court and in G. R. No. L-6608, the judgment of the court below denying the claims of members of the petitioner union on the ground of prescription was reversed and the case remanded to the Court of Industrial Relations for new trial, as follows:

"In our opinion the claim for backpay has not prescribed and the lower court should, therefore, not have limited recovery to one month's separation. But while we have come to this general conclusion, we are not in a position to make specific awards for that will have to be determined for each of the 425 claimants and the evidence of record for that purpose would appear to be incomplete because of the denial 'of a motion for new trial for the presentation of that evidence, for most of the claimants. Such being the case, we think that justice should be better served if a new trial were ordered."

A new trial having been held in Case No. 397-V-(7), the court below rendered judgment on December 29, 1959. In this decision, the court below ordered the respondent company to pay the 239 claimants the corresponding amounts due each as shown in the annexes embodied in the decision. But it refused to recognize the rights of all the others i.e., the 180 not included in the 239 and those of Padilla and his companions. Against this decision, the present petition for review by certiorari has been presented, petitioners assigning the following errors:

I

THE COURT OF INDUSTRIAL RELATIONS ERRED IN REFUSING TO AWARD THE CLAIMS OF THE 180 CLAIMANTS STATING AS REASON THEREFOR THAT THE RESPONDENT'S PROMISES TO GRANT BACKPAY CONTEMPLATED ONLY THOSE, WHO WENT TO BATAAN.

II

THE COURT OF INDUSTRIAL RELATIONS ERRED IN DISREGARDING THE CLAIMS OF DANIEL PADILLA, ANASTACIO BALANO, LUIS MALABANAN, EUGENIO BASCO, ARTURO SALAZAR AND EMILIANO LAZARO, IN SPITE OF, AND CONTRARY TO, THE OVERWHELMING EVIDENCE OF

RECORD SHOWING THAT THESE WITNESSES-CLAIMANTS; WERE PRE-WAR EMPLOYEES OF THE RESPONDENT COMPANY; HAVE ACCEPTED THE PROMISES PROFERRED AS INDUCEMENT AT THE OUTBREAK OF THE WAR, TO CONTINUE WORKING FOR THE RESPONDENT COMPANY; AND WERE AMONG THOSE WHO WERE SENT BY THE RESPONDENT COMPANY TO, AND WERE ACTUALLY SEEN WORKING FOR THE RESPONDENT COMPANY, AT BATAAN.

There are three potent reasons why the first assignment of error cannot be favorably considered. The first petition filed by the petitioner herein was limited to demanding pay for the period of the war to the mechanics, truck drivers, paginantes, cargadores, etc., who went to Bataan, and rendered services to the United States Army in the various municipalites of that province. Nowhere in the original petition filed on April 7, 1951 is there any mention of any claim on the part of those who remained in Manila, for pay for duration of the war. To the same import is the stipulation of the parties in the original case (*Luzon Labor Union vs. Luzon Brokerage Company*, G. R. No. L-6608, *supra*). The decision of the Court of Industrial Relations, in accordance with the petition, recognized the right (to pay) only of those who served the United States Army in Bataan, without mention of those who served and stayed in Manila. When the petitioner herein appealed in the said decision of the Court of Industrial Relations, dated December 29, 1952, it only questioned the ruling of said Court on prescription. This is so because the original petition of April 7, 1957 never contemplated the demand for backpay of those who did not serve in Bataan.

It is apparent, therefore, that the original case never included the demand for backpay of employees of the respondent company who did not go to Bataan. As the decision did not cover the claim of this class of employees (who did not go to Bataan) petitioning union moved for reconsideration and asked for a new trial to give opportunity to the union to present evidence on the claim (of those left in Manila) on February 20, 1953. But the above-motion was denied on March 9, 1953 (G. R. No. L-6608, Records, p. 118 *supra*) and this denial was never raised on the appeal, hence the right of said employees must be considered as having been waived by their failure to appeal.

Lastly the order for new trial issued by this Court upon the appeal (G. R. No. L-6608, *supra* dated December 29, 1954) limits new trial to the determination of the amount that each of the 239 claimants, who served in Bataan and who are entitled to pay, was to receive, and not to determine the right of the other 180 claimants whose claim for backpay was never demanded in the original petition, never tried as an issue therein, and never passed upon in the decision. Hence, the consideration of the claim of the 180 members is not authorized.

The above circumstances prevent us, as well as the parties, from considering the claim of the 180 members who remained in Manila. Their claim was not the subject of the original case; when petitioner tried to amend its petition to include this new demand, the court below refused to allow the amendment and petitioner failed to raise this denial on its appeal; and our decision in the previous case limited the new trial to fixing the claims of the individual claims of the 239 members who went to Bataan.

We have, however, examined the evidence submitted on the claim of the 180 members who did not go to Bataan to satisfy ourselves that no injustice is done and we agree with counsel for respondent company that the testimonies of the witnesses, especially the most important one (Alfonso Navales), are not sufficient to prove that said 180 members were to work and receive pay (even without working) for the duration of the war. Manager Myers may have expressed his belief that the employees could soon come back to work as he did not expect that the war would last so long and so expected that the employees could then go back to work. But there is no definite and positive promise that the employees would receive pay even if the war would last for a long time, such as would justify the present claim.

As to the second assignment of error, which refers to the backpay of Daniel Padilla and others, we are not in a position to declare that the finding of the court below that said claimants did not serve in Bataan is incorrect. The issue raised in this assignment is factual and We are without authority to reverse the findings of fact made by the court below.

For the foregoing considerations, the decision sought to be set aside is hereby affirmed, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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