STERLING PRODUCTS INTERNATIONAL, INC. AND V. SAN PEDRO, PETITIONERS, VS. LORETA C. SOL AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-19187. February 28, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition to review on certiorari the resolution of the Court of Industrial Relations, dated June 23, 1961 in Case No. 2292-ULP, ordering the herein petitioner to reinstate complainant-respondent Loreta C. Sol, with back wages from the date of her dismissal until her reinstatement.

Loreta C. Sol charged the herein petitioners Sterling Products International and its Radio Director V. San Pedro with having committed an unfair labor practice act. In her complaint she alleged among others that she has been a regular Radio Monitor of respondents-petitioners; that on January 8, 1960, she filed a complaint against the said firm for underpayment, money equivalent of her vacation leave from 1952 to 1959, and Christmas bonus for 1959, equivalent to one month salary. The complaint resulted in her dismissal, without just cause, on December 16, 1960.

In their answer petitioners herein denied the charges and by way of affirmative defenses, alleged that complainant is an independent contractor whose services were restrained by petitioners to submit reports of radio monitoring work performed outside of their (petitioner's) office; that petitioners no longer required complainant's services and therefore, it gave her notice of termination, as it did in fact terminate her services, as an independent contractor; that petitioners terminated the services of complainant-respondent for good and justifiable reasons and in accordance with business requirements; that the complaint states no cause of action and that petitioners did not and are not engaged in unfair labor practice acts against the complainant within the meaning of Sec 4 (a), subsection o of the Industrial Peace Act.

Judge Tabigne of the Court of Industrial Relations in a decision dated October 8, 1960 held that the complainant is not an employee of the respondent firm but only an independent contractor and that respondent firm was justified in dismissing the complainant due to economic reasons.

Complainant filed a motion to reconsider that decision, raising the question as to whether she is an employee or an independent contractor. The lower court reversed the decision of Judge Tabigne, ruling that complainant was an employee and not an independent contractor, and ordered her reinstatement with back wages. The lower Court further ruled that respondent firm was guilty of unfair labor practice. In arriving at this ruling it considered the following circumstances: (1) Complainant was given an identification card stating that "Bearer Loreta C. Sol is a bonafide employee of this Company;" (2) when she applied for purchase of a lot from the PHHC, she was given a certificate to show that she was indeed an employee of the respondent company for the last five years or six years; and (3) as such employee, she enjoyed the privilege of borrowing money from the Employees Loan Association of the firm.

The court further found that the company's control over respondent's work is shown by the fact that she can not listen to broadcasts other than those that were contained in the schedule given to her by the company. Supervision and control of her work could be done by checking or verifying the contents of her reports on said broadcasts, said the court.

Further discussing the question the court states:

> "In the case at bar, the company not only hired and fired Mrs. Sol, without third party intervention, but also reserved to itself possessed and exercised its right to control 'the end to be achieved and the means' to be used in reaching such end, namely, the schedule and other instructions by which the monitor shall be guided, and this reports with specifications by which the company observes and verifies the performance of her work."

In consequence the court held that the respondent was an employee. It also found that the petitioners herein are guilty of unfair labor practice, so it orders petitioners to reinstate respondent Loreta C. Sol, with back wages from the date of her dismissal until her reinstatement. Two judges dissented to this decision.

In the petition now brought to Us by certiorari it is urged that respondent Sol was an independent contractor because in the performance of her work, the elements of control and direction are lacking, hence no relationship of employer and employee must have existed, citing in support of this contention Section 3, 35 Am. Jur. 445-446; and that since respondent was employed to work according to her own methods and without being subject to control except as to its final result, she may not be considered as an employee. (Ibid.) We cannot accept this argument. Respondent Sol was directed to listen to certain broadcasts, directing her, in the instructions given her, when to listen and what to listen, petitioners herein naming the stations to be listened to, the hours of broadcasts, and the days when listening was to be done. Respondent Sol had to follow these directions. The mere fact that while performing the duties assigned to her she was not under the supervision of the petitioners does not render her a contractor, because what she has to do, the hours that she has to work and the report that she has to submit—all these are according to instructions given by the employer. It is not correct to say, therefore, that she was an independent contractor, for an independent contractor is one who does not receive instructions as to what to do, how to do, without specific instructions.

Finally, the very act of respondent Sol in demanding vacation leave, Christmas bonus and additional wages shows that she considered herself an employee. A contractor is not entitled to a vacation leave or to a bonus nor to a minimum wage. This act of hers in demanding these privileges are inconsistent with the claim that she was an independent contractor.

The next point at issue is whether or not the petitioners herein are guilty of unfair labor practice. Petitioners claim that under the decision rendered by Us in the case of Royal Interocean Lines, et al. vs. Court of Industrial Relations, et al. G. R. No. L-11745, Oct. 31, 1960, as respondent Sol was merely an employee and was not connected with any labor union, the company cannot be considered as having committed acts constituting unfair labor practice as defined in the Industrial Peace Act, Rep. Act 875. We find this contention to be well-founded. The term unfair labor practice has been defined as any of those acts listed in Sec. 4 of the Act. The respondent Sol has never been found to commit any of the acts mentioned in paragraph (a) of Sec. 4. Respondent Sol was not connected with any labor organization, nor has she ever attempted to join a labor organization, or to assist, or contribute to a labor organization. The company, cannot therefore, be considered as having committed an unfair labor practice.

The court below found that there is an employment contract (Exhibit "3") between petitioners and respondent Sol in which it was expressly agreed that Sol could be dismissed upon fifteen days' advance notice, if petitioners herein desire. Respondent Sol was dismissed on January 13, 1959 and therefore the dismissal should be governed

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by the provisions of Republic Act 1787, which took effect on June 21, 1957. Section 1 of this Act provides:

> "SECTION 1. In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, the employer or the employee may terminate at any time the employment with just cause; or without just cause in the case of an employee by serving written notice on the employer at least one month in advance, or in tne case of an employer, by serving such notice to the employee at least one month in advance or one-half for every year of service of the employee, whichever is longer, a fraction of at least six months being considered as one whole year.
>
> "The employer, upon whom no such notice was served in case of termination of employment without just cause may hold the employee liable for damages.
>
> "The following are just causes for terminating an employment without a definite period:
>
> "1. By the employer—
>
> "a. The closing or cessation of operation of the establishment or enterprise, unless the closing is for the purpose of defeating the intention of this law."

The contract between the petitioners and the respondent Sol providing that the respondent Sol can be dismissed upon fifteen days' notice is therefore null and void. Inasmuch as respondent Sol was employed since the year 1952 and was in the employment of the petitioners from that time up to 1959, or a period of seven years, she is entitled to three and one-half months pay in accordance with the above quoted section 1 of the Act.

Wherefore, that portion of the decision finding the petitioners herein guilty of unfair labor practice and sentencing petitioners to reinstate respondent Sol in her former work is hereby set aside, and the petitioners are sentenced to pay, as separation pay, three and one-half months' pay to respondent Sol. In all other respects the decision is affirmed. No costs.

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

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