

PANGASINAN EMPLOYEES, LABORERS AND TENANTS ASSOCIATION (PELTA), AND PATRICK) TXJLIAO, PETITIONERS, vs. THE HONORABLE ARSENIO I. MARTINEZ, ASSOCIATE JUDGE OF THE COURT OF INDUSTRI...

G. R. No. L-13846. May 20, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

On August 11, 1953, Patricio Tuliao drove a bus inside the Pantranco terminal station at Alaminos, Pangasinan. As he was not an authorized driver at the time, the traffic superintendent suspended him for 30 days. This dismissal having been brought to the Court of Industrial Relations upon petition of the labor union to which he belonged, Judge Modesto Castillo found that Tuliao drove the bus as above indicated to save it and its cargoes from the rain and so he held that Tuliao's suspension was not justified, and he was ordered reinstated with back wages. The case, together with those of other employees of the Pantranco, having been brought to us by certiorari, this Court in *Pantranco, et al. vs. Court of Industrial Relations, et al.*, 101 Phil., 480, affirmed Judge Castillo's order.

Upon the return of the record to the court below, the case of Tuliao was heard upon a stipulation of facts, after which Judge Arsenio I. Martinez held:

"Patricio Tuliao, not having rendered services for the respondent company during the period of the strike from October 24, 1953 to January 18, 1954, is not entitled to the payment of his wages during the said period. A worker is entitled to a fair wage for a fair days work only.

"It is just and equitable that the total earnings of Patricio Tuliao elsewhere during the period of his dismissal be deducted from the total money value of the period of his said dismissal. A worker should not be benefited at the expense of his employer.

"Therefore, from the report of the Examiner concerning the back wages of Patricio Tuliao should be adjusted as follows:

"1. The date of effectivity of the award for Patricio Tuliao should commence on August 13, 1953.

"2. The living allowance for Tuliao is once for every three days.

"3. For the year 1953, Tuliao is entitled to a total of 19 days vacation leave with pay.

"4. Tuliao is not entitled to the payment of his wages during the period of the strike (October 24, 1953 to January 18, 1954).

"5. The total earning of Tuliao from the Golden Taxicab in the amount of P2,498.42 covering the period October 20, 1953 to June 23, 1955 per Exhibits '1', '1-A', and '1-B' be deducted from the total award for him.

The Rules of the Court of Industrial Relations provide that a motion for reconsideration should be filed in fifteen

days. The issue now before us is: Was a motion for reconsideration filed by petitioner in due time in the court below? Evidently the Court of Industrial Relations considered that petitioner's motion for reconsideration was filed out of time because it did not act thereon, and no denial or approval of the motion by the court en banc appears from the record.

Petitioner claims that its motion for reconsideration was filed on time. Support for this claim is made in an affidavit of one Manuel Q. Rico, clerk-messenger of attorneys for petitioner, that in the afternoon of March 31, 1958 he filed with one Santiago Garcia petitioner's motion for reconsideration and asked him to have said motion officially received by the Court of Industrial Relations (Annex "R"). Against the above affidavit, another is executed by Santiago Garcia, caretaker of the CIR building, to the effect that on April 2, 1958 Manuel Rico presented him a motion for reconsideration; that he referred the matter to the receiving clerk at 7:00 p.m. in the evening of April 2, 1958, but said clerk refused to receive it (Annex "1" to Answer).

We are inclined to agree with the court below in considering the motion for reconsideration as filed out of time. The motion should have been filed with the clerk or receiving officer of the court during office hours, or at least during the evening of March 31, 1958, as it appears that the receiving clerk of the court below has the practice of receiving papers in the evening after office hours. But this notwithstanding, we declare that it was the duty of the receiving clerk to accept the motion and stamp thereon the actual date and hour of receipt, so that questions relating to these matters may easily be determined the stamp placed on the pleading.

As the motion for reconsideration was filed out of time, the order of Judge Arsenio I. Martinez has become final, and the petition herein cannot be considered by us. The petition is hereby dismissed, with costs. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Barrera, and Gutierrez David, JJ., concur.

Petition dismissed.

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