

LU DO & #038; LU YM CORPORATION, PETITIONER, VS. PHILIPPINE LAND-AIR-SEA LABOR UNION (PLASLU) AND THE PROGRESSIVE EMPLOYEES AND LABORERS UNION (PELU), RESPONDENTS.

G.R. No. L-18450. May 29, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the resolution dated March 2, 1961 of the Court of Industrial Relations, ordering Lu Do & Lu Yin Corp. to pay P8,413.93 to its employees as additional compensation for services rendered by them on Sundays and legal holidays.

The antecedents of this case are:

In a decision dated March 12, 1953, the Court of Industrial Relations rendered judgment for the Philippine Land-Air-Sea Labor Union (PLASLU), by ordering Lu Do & Lu Ym Corp. to pay the employees concerned extra compensation computed at the rate of 25 per cent of their daily wages for work done on Sundays and legal holidays.

Thereafter, the court directed its examiner to compute "the money value of all rights and privileges due the employees and laborers of the respondent (Lu Do & LuYm Corp.) in accordance with the decision of this Court xxx and to submit his report to the Court."

On April 8, 1954, the examiner rendered a report. According to him, the company claimed that it had paid its employees the equivalent of eight hours work on Sundays and legal holidays during the period in question even if the employees worked for just six hours, the implication being that the company did not feel bound to pay more because the employees had been paid more than the differentials ordered by the Court. The examiner said that there was no means by which to check the correctness of the company's claim inasmuch as the time cards were missing. There was nothing in the payrolls, which were the only records available, to indicate the time spent by the employees in working. All that was written in them opposite the names of the employees were the symbols "x" for those present, and "o" for those who were absent. The examiner added, however, that an alleged leader of the PLASLU substantiated the claim of the company.

In his second report dated December 3, 1954, the court examiner stated that after computing the extra pay of the employees, he found that the amount totalled P8,413.93. The company vigorously assailed this report and insisted that it had paid its employees the equivalent of eight hours work although they actually put in only six hours of work on Sundays and legal holidays.

In the meantime, 111 members quitted from the PLASLU, formed a new union — the Progressive Employees and laborers Union (PELU) — and sought intervention in the case. The court allowed the intervention and thereafter heard the opposition of the company against the examiner's report.

On November 19, 1956, the court, thru Judge Arsenio I. Martinez, sustained the company's opposition and

disapproved the report of the examiner. In his decision, Judge Martinez stated:

"In the hearing of this opposition, respondent (Lu Do & Lu Ym Corp.) presented twenty (20) witnesses and all of them were positive, firm and uniform in their testimonies that they only worked for 6 hours during Sundays and legal holidays and they were paid equivalent to 8 hours work. The time keeper who was with the respondent company since 1948 up to 1955 testified that they only worked for 6 hours during Sundays and legal holidays and on the payroll he marked ("X") for those who had actually worked but in the computation of their payments it was computed on the basis of 8 hours work.

"The Progressive Employees and Laborers Union(PELU) movant-intervenor presented and introduced only three witnesses but their declarations were contradictory and conflicting.

"For the petitioner (Philippine Land-Air-Sea Labor Union) only Felipe Terso, Court Examiner who declared that in his computations he considered the mark "X" during Sundays and legal holidays as work corresponding to eight hours because there was no evidence shown to him by the respondent company, that the same corresponds to six hours. This view as declared by the petitioner thru the testimonies of the Court Examiner, cannot be sustained considering the unanimity of the respondents' witnesses who were coherent, uniform and definite in their declarations that they only worked for 6 hours during those days yet they were paid equivalent to 8 hours work.

"All things considered, it is the feeling of this Court that the workers of the respondent company involved in this case only worked for six (6) hours during Sundays and legal holidays instead of 8 hours as computed by the aforementioned Examiner.

"WHEREFORE, IN VIEW OF THE FOREGOING, the report of Felipe Terso, Chief of Examiner dated December 3, 1954, on the matter of the money value of the 25% additional compensation in the amount of P8,413.93, should be, as it is hereby disapproved."(Underlining supplied.)

On December 7, 1956, PELU moved for a reconsideration of this decision, but its motion was dismissed by the Court of Industrial Relations, sitting en banc, on the ground that it was not filed "in accordance with the rules of this Court."

Obviously, the rule referred to was Section 15 of the Rules of the Court of Industrial Relations which requires that a motion for reconsideration must be verified as to the correctness of the allegations of fact. That is why on December 20, 1956 PELU submitted the affidavit of its president and asked for a reconsideration of the dismissal of its appeal.

No action appears to have been taken on the motion for reconsideration. On March 2, 1961, however, the Court of Industrial Relations en banc reversed the decision of judge Martinez and ordered the company to pay the sum of P8,413.93. The resolution was prepared by Judge Arsenio I. Martinez himself, with judges Villanueva and Bugayong concurring and Presiding Judge Jose s. Bautista abstaining.

In reversing the trial court's decision, the Court of Industrial Relations in banc stated:

"The company agreed that an 'X' mark appearing in its payrolls represents 8 hours in the case of the 26 guards whose total claim for 25% additional compensation for work done on Sundays and legal holidays amounts to P2,124.33. The company did not object to the report of examiner about the guards' unpaid additional compensation for Sunday and holiday work.

"The company objects to the computation of the amount of P8,413.93 as 25% additional compensation for work done on Sunday and legal holidays for the period June, 1952 to August 13, 1954 in the case of more than 250 employees and laborers other than the guards, on the ground that these employees did not render 8 hours service on Sun-days and legal holidays but only 6 hours during those days.

"The company presented some 25 employees who testified that they worked only 6 hours during Sundays and legal holidays. These employees represent about 1/12 of the more than 250 employees whose names appear in Appendix "2".

"It is doubted if these employees could still remember the number of hours rendered by them on Sundays and legal holidays as far back as the years 1952, 1953, and 1954. At best, their testimony was the result of pure guess work and could not be relied upon. x x x

"The report of the examiner was based from the official payrolls of the respondent which were kept in the ordinary course of business. The computation of the amount of P8,413.93 re-presenting the 25% additional compensation for work done on Sundays and legal holidays for the period June, 1952 to August 13, 1954, was based on the principles (1) that an ("X") mark appearing on the payrolls of the company should be considered as a full day is work of eight (8) hours for all employees and laborers for all days of the week and (2) that a uniform practice of not paying the 25% additional compensation for work done on Sundays and legal holidays by all its workers was consistently followed by the respondent company. If it is true that an ("X") mark in the company's payrolls on Sundays and legal holidays represents work of only 6 hours, why did not the respondent indicate clearly the number 6 in their payrolls? The company was notable to produce the time books or the time cards which are the best evidence and most convincing proofs of the employees' hours of service, the reason being that they were destroyed by typhoons. Business and accounting records should be properly kept to avoid different interpretations and misleading inferences in the future. When the company admitted the examiners' computation of the overtime in the amount of P643.61 (Appendix "1" Report of Examiner dated April 8, 1954) as correct, it also approved as correct the basis of timing — an (X) mark to mean 8 hours. As stated elsewhere in this Resolution, the computation of the overtime and the Sunday and legal holiday differentials was based on only one timing and the same number of hours on a given Sunday. If the overtime computation submitted by the Court examiners is correct, the timing of 8 hours for an (X) mark on Sundays and legal holidays must per-force be correct, because that was the basis of the examiner's computation. If the timing of 8 hours for an (X) mark in the payrolls of the respondent is correct, it must follow that the computation of 25% additional compensation for work done on Sundays and legal holidays is, no doubt, correct. It could never happen that the overtime differential is correctly stated while the Sunday and holiday differential is erroneously computed. The two differentials must either be both correct or both wrong because they were determined from one base timing and the same number of hours rendered."

From this resolution, the company appealed, contending that –

"1. The Court of Industrial Relations erred in giving more weight to the second report of an examiner of the aforesaid court which contradicts his first report than to the firm, affirmative and uniform testimonies of twenty (20) witnesses who are among the laborers involved in the said reports ;

"2. The Court of Industrial Relations erred in basing its resolution dated March 2, 1961 up-on the opinion of an examiner of the aforesaid court which is completely contradictory to the evidence presented by Lu Do & Lu Ym Corporation consisting of the positive, firm and uniform testimonies of twenty witnesses for said corporation which was the respondent in Case No. 652-V and now the petitioner in these proceedings;

"3. The Court of Industrial Relations erred in entertaining a motion for reconsideration which was already dismissed under a prior and final resolution on the ground that said motion was not in accordance with the rules of the aforesaid court."

With respect to the first two assignments of error, the only question is whether the employees worked for eight hours on Sundays and legal holidays during the period in question, as the Court of Industrial Relations found, or, whether they worked for six hours only but were paid the equivalent of eight hours work, as the company contends. Incidentally, the inquiry turns on the meaning of "X", as found opposite the names of employees in the payrolls of the company.

As Judge Martinez stated in his decision of November 19, 1956, twenty witnesses for the company testified that although they worked for only six hours on the days in question, the company actually paid them the equivalent of eight hours work. This means that they were more than paid their Sunday and holiday differentials. The testimony of these witnesses, which the trial judge described as "positive", firm and uniform," was substantiated by the company's timekeeper who said that he credited the 250 employees with eight hours work by placing an "x" mark opposite their names although in reality these employees put in only six hours of work.

The trial judge held that as against this evidence for the company, the testimony of the three witnesses for the PELU and the PLASLU, which he called "contradictory and conflicting," and that of the court examiner who said he considered "x" as meaning eight hours work in the absence of anything to indicate the contrary, could not prevail.

However, when the case came up for review before the Court of Industrial Relations, en banc, Judge Martinez reversed his decision as trial judge on the ground that if "x" meant eight hours work with respect to the guards of the company, there was no reason why the same mark should not mean the same thing with regard to 250 other employees. In so doing, he disregarded the testimony of witnesses for the company —testimony which he had earlier characterized as "positive, firm and uniform."

To be sure, the findings of the Court of Industrial Relations on the weight of evidence are conclusive, but its findings unsupported by substantial or credible proof are not binding on the reviewing court. (See *The Superintendent of the La Loma Catholic Cemetery vs. CIR, et al.*, G. R. No. 13365, July 31, 1963)

On this score, this Court reversed a finding of the Court of Industrial Relations that no violence was committed by a union in a certain case, despite testimony to that effect, simply because "no incident of whatever nature had been reported to the police." It held that the mere circumstance that the police was not called in had no rational probative force to discredit the testimony of other-wise credible witnesses, testimony which had all the ring of truth. (*Union of the Phil. Edu. Emp. v. Phil. Edu. Co.* 91 Phil. 93)

Here, the mere fact that "x" was admitted by the company to mean eight hours work in the case of the guards does not justify the inference that it must also mean the same thing with respect to the other classes of employees such as the 250 other employees of the company. The mere fact that the mark was admitted as standing for eight hours work for purposes of overtime compensation does not justify the inference that it must also mean the same number of hours for purposes of Sunday and legal holiday differentials. This fact alone is not strong enough to overcome the probative force of the testimony of witnesses for the company who declared that although they worked for only six hours on Sundays and legal holidays during the period in question, they were actually paid the equivalent of eight hours work. To repeat, the testimony of these witnesses is, in the language of the trial judge, "positive, firm and uniform, compared to the "contradictory and conflicting" testimony of the witnesses for the union. If their testimony is indeed positive, then it is stronger than the negative statement of the court examiner, one of the witnesses for the unions, who said he took "x" to mean eight hours because he found no evidence that the mark stands for six hours. Affirmative testimony is stronger than negative testimony. (6 Moran, *Comments on the Rules of Court*, 146-147 [1963])

Finally, there is no merit in the belated observation of the court that the testimony of the witnesses for the company is at best guess work considering the lapse of time, because these witnesses were not testifying on the details of their working hours during the period 1952-1954. They testified only as to the total number of hours they spent working just a few years before, since they testified in 1956 about working hours in 1952-1954.

Under the circumstances, we feel it unnecessary to discuss the third assignment of error.

WHEREFORE, the resolution of the Court of Industrial Relations dated March 2, 1961 is hereby set aside, without pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, and Makalintal, JJ., concur.

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