

## THE MANAGEMENT OF EL HOGAR FILIPINO MUTUAL BUILDING EMPLOYEES ASSOCIATION, ET AL., PETITIONERS, VS. BUILDING EMPLOYEES ASSOCIATION, ET AL., RESPONDENTS.

*G.R. No. L-9740. March 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

On May 7, 1954, the Building Employees Association filed before the Court of Industrial Relations as complaint for unfair labor practice against the management of El Hogar Filipino Mutual Building and Loan Association alleging that two of its employees Arnaldo Buizon and Justino Legaspi were dismissed from the service because of their union activities and that the management has refused to bargain collectively with the complaining labor union.

On May 13, 1954, the management, in its answer, denied that Arnaldo Buizon and Justino Legaspi were dismissed for their union activities, alleging that their dismissal was for a just cause and that if the management declined to bargain collectively with the union, it was because the union did not represent the majority of the workers of the company.

After hearing, the industrial court rendered decision holding that the management is guilty as charged and, among other things, ordered the reinstatement of Arnaldo Buizon and Justino Legaspi with back pay from March 16, 1954 until they are reinstated, authorizing the management to deduct from the back wages of Buizon whatever he might have earned after his separation it appearing that he was able to find work elsewhere. Its motion for reconsideration having been denied, the management brought the case before us for review on a petition for certiorari.

The pertinent facts of this case are: Arnaldo Buizon and Justino Legaspi were night guards of petitioner's edifice known as El Hogar Filipino Building located in the City of Manila. Buizon started working as such on March 2, 1953 while Legaspi began on April 23, 1946. As guards their tours of duty were from 4:00 o'clock p.m. to 12:00 o'clock midnight for Buizon and from 12:00 o'clock midnight to 8:00 o'clock a.m. for Legaspi. Their duties included, among others, to guard the building against any intruder during their respective hours of work.

Before his employment in the company, Buizon worked as guard in the Compania Maritima, of which Mr. Ramon Fernandez is the president, as also he is in said company. During his employment in the former company, as well as in the latter, Buizon had been receiving from Mr. Fernandez free quarters for himself and his family in addition to one sack of rice a month. Legaspi in turn was employed in petitioning company upon recommendation of Servando Bernas, his brother-in-law, who is chief janitor of the building. During his employment, Legaspi also worked in the Goodrich International Rubber Company Recapping Plant in Caloocan, Rizal whose duties there had sometimes overlapped with those he had with petitioning company. On March 2, 1954, petitioning company received a letter (Exhibit 1) from Mercantile, Inc., a tenant of long standing in the building, in (which said tenant complained against the behavior of both Buizon and Legaspi as night watchmen and stating that unless the

management takes remedial measures to protect its interest the tenant would file charges against the building administration and at the same time move out of the building. As soon as this letter was brought to the attention of Mr. Fernandez, he directed that the same be taken up during the regular meeting of the board of directors of petitioning company, which meeting, under its by-laws, fell on March 9, 1954, at about 11:00 o'clock a.m.. In that meeting, the board, after discussing the case of Buizon and Legaspi, decided to dismiss them effective on the same day, although they were paid their salaries up to the 15th of the same month. The meeting took place at about 11:00 o'clock a.m. and Mr. Fernandez personally notified Buizon, who lived near his residence, of his separation in the afternoon of the same day. Bernas notified Legaspi of the decision of the board when the former arrived in his office in the morning of March 11, 1954.

In the afternoon of March 9, 1954, after the board's meeting petitioning company received a letter dated March 8, 1954 from the complaining union wherein, among other things, it demanded that it conclude a collective bargaining agreement with the union. Mr. Fernandez, who does not hold office in the El Hogar Filipino Building, first came to know of this letter two or three days later, through its building superintendent. This letter was followed by three other letters wherein the union demanded the reinstatement of Buizon and Legaspi and, among other things, that the company answer its original letter within 48 hours from receipt thereof. Having failed to obtain a satisfactory answer to its demands, the union filed a complaint with the industrial court for unfair labor practice and, after an ex parte investigation, the complaint was formalized charging not only the company but also Mr. Ramon Fernandez and chief janitor Servando Bernas with unfair labor practice under sections 3 and 4 (a) of Republic Act 875.

After considering the evidence both testimonial and documentary submitted by both complainant and respondents, the industrial court made the following conclusion:

"Under the facts and circumstances of this case, the Court concludes that the respondent has engaged and is engaging in an unfair labor practice when it discharged Arnaldo Buizon and Justino Legaspi on March 10 and 11, 1954, respectively. It constitutes an act of discrimination committed by respondent in regard to hire and tenure of employment of any term or condition of employment to discourage membership in the Building Employees Association (FFW), in violation of Section 4(a) (4) of the Act, Because such an act of respondent interferes, restrains and coerces employees in the exercise of their rights guaranteed in section 4 (a) (1) thereof. In conformity with the provisions of Section 5 (c) of the Act, the Court finds that it is necessary to order the reinstatement of Arnaldo Buizon and Justino Legaspi in the service of respondent with back salaries."

It appears, however, that the two workers abovementioned were separated from the service not because of their union activities but because they committed, certain acts of misconduct which rendered them unfit to continue in the service of petitioning company, their positions being confidential in nature. Thus, the evidence shows that Legaspi committed the following acts of misconduct: In a complaint lodged by Mercantile, Inc. on March 2, 1954 with the management, said entity being a tenant of good standing in the building, he was charged with stubborn behavior, discourtesy and uncooperative service, chasing employees with a piece of wood and sleeping on a cot placed on a corridor while on duty, immorality in having cohabited with one Gloria Vargas through misrepresentation and deceit resulting in the birth of a child to said woman, series of robberies during nighttime in which several tenants of the building were victims, misrepresentation in claiming that he was only an extra worker in Goodrich International Rubber Company during the time he was employed as a watchman when the truth was that he was a regular recap moldman in said rubber company, his time of duty in both firms frequently overlapping and conflicting, and that he had a bad character as testified to by his immediate superiors. The above acts appear to be supported by substantial evidence, portions of which may be mentioned: The testimony of A. Hileman, administrative assistant of Mercantile, Inc., and his letter to the management marked Exhibit 1. Because of its direct bearing on the conduct of Legaspi, we are quoting the contents of said letter hereinbelow:

"We wish to call your attention on the stubborn behavior of your night watchman and the discourteous, uncooperative services we are getting. We have endured this in mute silence for the past month hoping for a change in their attitude eventually. But no matter how friendly we tried to get with them, it availed us nothing. Hence, we believe that it is high time that we present the situation to you and have it straightened out.

"We call your attention particularly to your night guard by the name of 'Tinio'. He put up a sleeping cot in the corridor of the ground floor and sleeps during his watch. And for somebody who has to leave the building during his shift will have to wake him up gently for about half an hour, as if he was asking the guard a favor.

"Sometimes he wakes up cursing and mumbling and opens tire door but at other times he just would not wake up and the poor employee forces himself to sleep in the office. At one time, he refused to let our supervisors out to take some refreshments. In another instance he even chased a group of our employees with a piece of wood because they did not 'beg' him to open, the door and probably because a beautiful dream was interrupted. This is just to give you an example of the kind of service we get from your night watchmen.

"We are contemplating on filing charges against this particular guard and the Administration, but in the meantime we would like to give you a chance of straightening this out yourself to avoid embarrassment and ill-feelings. But in the event that no action has been taken in this regard, please do not take it ill of us if we transfer ourselves to another building and file charges against you.

"Trusting that this letter will merit the intention for which it was written, we remain."

In addition, we wish to mention the robberies that some of the tenants of the building have reported to the management, in connection with which they lost money and property and as to which the only ones to be blamed were the two watchmen. We refer to the robberies reported by tenants Benita Lamagna, C. S. Hipolito, McDonally and one Herrera, which were committed sometime in February, 1953. The industrial court did not give importance to these incidents simply because the supposed victims did not press their complaint nor take the matter to court.

With regard to Buizon, we have the charges, contained in the letter of Mercantile, Inc. which equally apply to him as watchman, the series of robberies committed in the building, and the negligence committed by him in the performance of his duties wherein Mr. Ramon Fernandez himself, president of the company, took a direct part in its detection in connection with the withdrawal of a box from the building by an outsider without having been detected by Buizon. It should be here noted that Buizon was formerly an employee of Compania Maritima, of which Mr. Fernandez was the president, and was merely taken by Mr. Fernandez to the El Hogar Filipino Building to work as guard, giving him and his family free quarters in addition to one sack of rice a month. Mr. Fernandez, therefore, is the last mail to cause him prejudice were it not for the bitter fact that he betrayed his confidence and rendered himself unfit to continue holding that confidential position.

Moreover, it cannot be true what is claimed by the union that the two workers were separated because they affiliated with that union or because of the demands for better working conditions submitted by the union to the company, because it appears that the meeting of the board of directors of petitioning company took place in the morning of March 9, 1954 at which the board decided to dismiss the two workers after deliberating on the complaints of the tenants against them and other irregularities committed by them in the past, whereas the demand of the union was received by the company only in the afternoon of the same day. This fact was admitted by Buizon himself who said that Mr. Fernandez and other officials of the company only came to know that he was a member of the union when the latter submitted its demands. This is also borne out by the testimony of Mr. Fernandez of whose veracity this Court has no reason to doubt.

Considering the circumstances above pointed out, we cannot but consider and give full effect in this case what this Court has observed in connection with the right of an employer to protect his interest against his unworthy

employees in order to save it from destruction. We said: "But much as we should expand beyond economic orthodoxy, we hold that an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer." (San Miguel Brewery, vs. The National Labor Union, et al., 97 Phil., 378).

The claim of the union that the company declined to give it recognition or to entertain its demand for collective bargaining, cannot also be entertained, it appearing that it does not represent the majority of the employees of the company. It appears that there were only 10 employees or workers in that company, 2 watchmen, 2 drivers, 1 mechanic, and 5 houseboys. The demand for collective bargaining was made by the union only in behalf of Buizon, Legaspi, Catangay, Gapuz, Diocera and Froilan, but since Buizon and Legaspi have already been separated and Froilan appears to have resigned, it results that only three remain. These three cannot certainly represent the union in a collective bargaining agreement. They do not represent the necessary majority.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs. Complaint is dismissed.

Paras, C. J., Bengzon, Montemayor, Labrador, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.  
Concepcion, J., reserves his vote.

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