

DY PAC & COMPANY, INC., PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND DY PAC PAKIAO WORKERS UNION, RESPONDENTS.*G.R. No. L-18460. August 24, 1962*

Ponente: CONCEPCION, J.

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At the behest of Dy Pac Pakiao Workers' Union—hereinafter referred to as the Union—an acting prosecutor of the Court of Industrial Relations filed therewith a complaint for unfair labor practice against Dy Pac & Co. Inc.,—hereinafter referred to as the Company—and A. Santos Soriano. The latter and the Company, although represented by the same counsel, filed separate answers denying the material allegations of the complaint and setting up some special and affirmative defenses. After due trial the Court of Industrial Relations rendered a decision in favor of the Union, the dispositive part of which reads:

"In view of all the foregoing considerations, the respondents are hereby ordered to pay immediately, the backwages of the complainant workers, from the date of the stoppage of work in the old carro up to the date when this decision shall become final and executory, without reinstatement."

A motion for reconsideration of this decision was denied in an unanimous resolution of said court sitting en banc. Hence, the present petition for review by certiorari filed by the Company.

The latter is a private corporation engaged in the lumber business in the City of Manila, where it operated two (2)—machines of a given type—referred to in the record as "carros"—for the sawing of ilogs. One of these "carros", which, seemingly, was older than the other, was operated at nighttime, by about nineteen (19) laborers under the supervision of A. Santos Soriano. Another group of persons operated the other "carro" at daytime. Said A. Santos Soriano, was, according to the Company, an independent contractor, but the lower court found that he was merely a "dummy" of the Company. Indeed, it appears that on November 14, 1956, the laborers working under A. Santos Soriano organized the Union, and then notified the Company about it. Subsequently, or in January, 1957, the Union wrote to the Company a letter calling attention to the fact that the compensation paid to said laborers was below that fixed in the Minimum Wage Law, and requesting, among other things, an increase in their wages. Soon thereafter the work under the old "carro" stopped. When the laborers inquired about the reason therefor, the Company informed them that it had received a letter from Santos Soriano terminating his contract with the Company and that Santos Soriano was away. It was only then that the laborers learned of the alleged existence of a contract between the Company and Santos Soriano. Sometime in November or December, 1957, the old "carro" of the Company resumed operation under Alfonso Soriano, a son of Santos Soriano, with another set of laborers. The Union members were not readmitted to the work—although they sought readmission—upon the ground that they were troublesome. The record shows, also, that the Union members were hired by Santos Soriano subject to the approval of the Company, which paid their wages and that although, at first, the laborers signed no payroll, they were later required to sign a payroll of the Company. Under the foregoing facts, we find that lower court did not err in concluding that Santos Soriano was not an independent contractor, but merely an agent of the Company

(Madrigal Shipping Co., Inc. vs. Workmen's Compensation Commission, L-17495, June 1962; Velez vs. PAV Watchmen's Union, 107 Phil., 689; U. S. Lines vs. Associated Watchmen & Security Union, L-12208-II, May 21, 1958; Asia Steel vs. Workmen's Compensation Commission, L-7636, June 27, 1955), and that the stoppage of the work of the members of the Union was due to their Union activities, thus constituting an unfair labor practice on the part of the Company.

It is next urged that the Court of Industrial Relations should have granted the motion for new trial therein filed by the Company upon the ground of fraud, accident, mistake or excusable negligence, because it could not introduce the testimony of Santos Soriano owing to the failure of their common counsel to locate him prior to the trial in the lower court. We find, however, no merit in this pretense, for there is no showing that appellant had exercised reasonable diligence to notify Santos Soriano of the date of the trial and assure itself of his presence on that occasion. Besides, no affidavit of Santos Soriano showing what he would testify to if a new trial were held and indicating that the result then would probably be otherwise, was submitted in support of said motion. Hence, the same was properly denied.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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