

LUZON BROKERAGE COMPANY, PETITIONER, VS. LUZON LABOR UNION, RESPONDENT.*G. R. No. L-17085. January 31, 1963*

Ponente: LABRADOR, J.

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The above-entitled case, G.R. No. L-17085, is a sequel to case G.R. No. L-6608 promulgated by this Court on December 29, 1954 . In the latter some 425 employees of the Luzon Brokerage Company at the time of the outbreak of the last war brought an action in the Court of Industrial Relations for the recovery of their respective back pays for service rendered during the war. The Court of Industrial Relations found that claimants rendered services to the United States Army in Bataan , upon orders of their employer, the Luzon Brokerage Company, and under promise made by their president and general manager to grant them pay while in said service. Said Court found that a contract of employment existed and the claimants were entitled to their back pay. However, it dismissed the action on the ground that the cause of action for said back pay had prescribed. Upon appeal of the case to Us in G.R. No. L-6608, we reversed the decision, declaring that the action was not barred, so the case was remanded for new trial because the court below had not made specific awards for each of the 425 claimants. We ordered the court below, therefore, to give opportunity to the claimants to present evidence to determine the amount of pay each of the claimants was entitled to.

In the case at bar, which was the new trial ordered by this Court as above indicated, the Court of Industrial Relations received the evidence submitted by the claimants. After trial it found that only 239 of the claimants were entitled to back pay, setting forth in its decision the amounts that each of them was entitled to receive. This decision, dated December 29, 1959 , is the subject of this present petition for certiorari.

In the Court below petitioner herein contended that in the new trial, further evidence on the question of the existence of a right on behalf of the claimants should be admitted from either side, but the court overruled the contention and held that the scope of the new trial should be limited to the reception of evidence on the specific amount that each of the claimants was entitled to receive, and that issues previously tried and determined could not be litigated anew. After hearing the evidence the court below found that only 239 of the original 425 claimants were entitled to recover back pay, overtime pay and incidental expenses, in the sums stated in the respective affidavits of claimants. The court summarized the said claims in a table of unpaid claims and this reached a total of around P1,500,000.

The first important question raised in this petition is the claim of petitioner herein that the new trial in the court below should not have been limited to the determination of the specific award that each of the claimants should receive. We find no merit in this contention. In the previous case, G.R. No. L-6608, the Court of Industrial Relations had found that there was a contract of employment between the members of the union and the Luzon Brokerage Company, when the manager of the latter asked the laborers to proceed to Bataan and there render services under the direction of the United States Army, and said manager made the promise to pay them wages that they were entitled to during their term of service. The court dismissed the petition, however, on the ground

that their claims had already prescribed. To such effect was the decision of this Court in G.R. No. L-6608. The reason why the case was remanded by Us to the court below was because there was no sufficient evidence upon which to determine the amount of the award that each of the claimants was entitled to. The contention of petitioner in the case at bar is, therefore, inconsistent with the decision in the said previous case, G.R. No. L-6608. The existence of a cause of action was the main issue in the original case. The trial court found that there was a cause of action but that the same had prescribed. On appeal the judgment of the Industrial Court was set aside, not on the ground that there was no cause of action, but on the ground that the said cause of action had not yet prescribed. This Court expressly ordered the remanding of the case to determine the specific amounts that each of the claimants was entitled to. This order would not have been issued had not the court found that the cause of action had already been proved.

Elaborating on its theory that the issue as to the right of the claimants to receive back pay should have been further examined and further evidence permitted, petitioner herein argues that some claimants who were given back pay did not state in their affidavits that they went to Bataan . We find however that there are witnesses to these claimants having been in Bataan . One of such witnesses is Agripino Monares. It is further argued that the ruling or finding that the claimants went to Bataan as employees of the petitioning company is erroneous because the records of the United States Army show that many of these claimants (24 mentioned in the brief for petitioner) had actually received pay from the United States Army, particularly the Philippine Motor Transport Depot, QMC, U.S. Army. On examining the transcript of the payrolls we find that the 24 employees received pay for actual work for different number of days, some 8, some 24 hours, some 132 hours, some 1-1/2 days, some

15 days, etc., so that the United States Army paid for services actually rendered in the motor pools, but these are only for the actual days employed. The basis of the claims is the promise of the Luzon Brokerage Company to pay for their services while in Bataan . The receipt of these salaries or wages does not mean that they are excluded or barred from claiming the back pay which the manager of the Luzon Brokerage Company had promised to them when they left Manila and proceeded to Bataan on orders of the United States Army.

A third important objection to the decision sought to be reviewed is the claim that there is no evidence to support the awards given to the 239 claimants by the court below, except their respective affidavits. The gist of the contention is that the affidavits of the claimants upon which the awards are based had been objected to by petitioner herein and the court below never resolved said timely objections. The court below states the following in its judgment:

"The rest of the union witnesses, representing the group of garage employees, named and identified the 239 claimants who were sent to Bataan and indicated the, designations and positions that each claimant was holding at the outbreak of the war, * * *"

But the decision states that 30 witnesses testified at the time of the trial and these witnesses, with the exception of six, identified the claimants who were in Bataan. It is, therefore, not true that the award was based on the affidavits alone. Besides, Section 20 of Commonwealth Act No. 103 expressly provides that the Industrial Court shall act according to justice and equity and substantial merits of the case without regard to technicalities or legal forms and shall not be bound by any technical rules of evidence. The bases of the awards were not only the respective affidavits of the claimants but the testimonies of 24 witnesses (because 6 were not given credence by the court below), who identified the said 239 claimants. The contention of petitioner on this point is therefore unfounded.

But it is further contended on the appeal that inasmuch as 6 witnesses for the claimants were not believed by the court below, the claimants whom they identified, around 80 in number, should not have been awarded their claims. These witnesses are Daniel Padilla, Anastacio Balano, Luis Malabanan, Eugenio Basco, Arturo Salazar

and Emiliano Lazaro. The court below clearly declared that these witnesses could not be believed, but according to the court below their testimonies were not the only evidence upon which the claims of the 80 claimants mentioned by them were based. As the court below said, they were identified by the other witnesses, meaning that the 80 claimants questioned were identified by other witnesses (page 8, decision), as having been in Bataan. This identification together with their affidavits should be sufficient support for the finding of the court below that they were entitled to back pay.

A fifth question raised in the appeal is that as claimants have received their separation pay they should have been considered as having waived their back pay. There is also no merit in this contention. Separation pay is the pay that an employee receives at the time of separation from the service. Separation pay is distinct and different from the wages that he was entitled to. Precisely, the granting of separation pay presupposes a previous employment; how can an employee receive separation pay if he was not employed prior to the separation?

The sixth error assigned to the court, that the claim of petitioners has prescribed, was passed upon adversely by Us in the previous case, L-6608. The last contention of petitioner is that the Court of Industrial Relations had no jurisdiction to consider the claims for said money claims. This contention was already passed upon by Us adversely to the petitioner in G.R. No. L-9446, wherein we held that an employee-employer relationship existed between petitioner company and respondent claimants for back pay, and claims for back pay are potential sources of dispute between employer and employees. Consequently the Court of Industrial Relations had jurisdiction. (G.R. No. L-9446)

Finding no error in the decision of the court below, the petition for certiorari is hereby denied, and the decision sought to be reviewed affirmed, with costs against petitioner. So ordered.

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

RESOLUTION

July 31, 1963

LABRADOR, J.:

This concerns a motion for reconsideration submitted by petitioner Luzon Brokerage Company.

In the decision rendered by Us in this case we ruled that an affidavit is admissible as evidence before the Court of Industrial Relations for the reason that the same is an administrative body. This view, however, does not prevent us from reviewing an affidavit itself for the purpose of determining whether the same justifies a claim. Consonant with this view we have taken pains to examine the affidavits supporting the claims objected to by petitioner in his motion for reconsideration and we have found that certain claimants have been listed twice in the questioned order of the Court of Industrial Relations, thus:

No. 16—Alvia, Nicanor is the same person referred to in No. 11—Aldea, Nicanor
No. 232—Verano, Saturaino is the same person referred to in No. 31—Barano, Saturnino
No. 62—Dang-ca, Teodorico is the same person referred to in No. 64—Dangwa, Teodorico
No. 222—Tayao, Jose is the same person referred to in No. 65—Dayao, Jose
No. 75—Doble, Beirito is the same person referred to in No. 135—Noble, Benito
No. 159—Pangan, Angel is the same person referred to in No. 160—Pangan, Manuel
No. 209—Sansfno, Marcelino is the same person referred to in No. 207—Salima, Marcelino

No. 219—Tabita, Francisco is the same' person referred to in No. 223—Iobida, Francisco
No. 134—Nicolas, Santiago is the same person referred to in No. 210— Santiago, Nicolas

We have also found, and respondent union itself admits in its answer to the instant motion, that the name of Alfonso Pagayon, has been inadvertently included in the appealed order.

Petitioner also objects to the claim of back pay of Domingo Barcelona. The affidavit of this claimant, Exhibit "A-58" states that he was sent by one Mr. Tingin to Camp O'Donnell, Tarlac and there his truck was loaded with kitchen utensils and brought to Pangasinan. There the truck was bombed and they returned back to Manila in the month of February, 1942. For these services he claims three months pay amounting to P450 and overtime pay of P302.40.

He also claims back pay from March, 1942 to January, 1945 at the rate of P150:00 for 35 months equivalent to P5,250.00. This claim cannot be approved for the reason that the services do not appear to have been rendered in the province of Bataan and in connection with the order of the manager of the Luzon Brokerage Company for the employees to go to Bataan . The claim for P752.40 should be approved and the claim of P5,250.00, denied.

The dispositive part of our decision is, therefore, hereby amended so as to read as follows: "The petition for certiorari is hereby denied, except that the following claims shall be disallowed:

No. 11—Nicanor Aldea, who is the same as Nicanor Alvia;
No. 31—Saturnino Barano, who is the same as Saturnino Verano;
No. 65—Jose Dayao, who is the same as Jose Tayao;
No. 135—Eenito Noble, who is the same as Benito Doble;
No. 160—Manuel Pangan, who is the same as Angel Pangan;
No. 207—Mareelino Salimo, who is the same as Marcelino Sansino;
No. 223—Francisco Tobida, who is the same as Francisco Tabita;
No. 210—Nicolas Santiago , who is the same as Santiago Nicolas; and
No. 64—Teodorico Bangwa, who is the same as Teodorico Dangca.
No. 148—Alfonso Pagayon, whose name has been inadvertently included in the list of awardees, and
No. 30—Domingo Barcelona, whose services does not appear to have been rendered in the province of Bataan
."

So ordered.

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

RESOLUTION

October 31, 1963

LABRADOR, J.:

The second motion for reconsideration raises the question, previously raised in the first motion for reconsideration, as to whether or not the claimants are entitled to back wages during the war, for a period of two or three years. The motion is predicated on the alleged statements of fact made in the original and subsequent proceedings in this case, especially the "Reclamacion Enmendada" of April 7, 1951 presented by the petitioners in Civil Case No. 397~V(7), in which it was then alleged that the company "esta obligada a pagar con los

reclamantes por el servicio prestado en Bataan." Our decision of this same case in G.R. No. L-17086, when it was brought to Us for the first time is as follows:

"Manager Myers may have expressed his belief that the employees could soon come back to work as he did not expect that the war would last so long and so expected that the employees could then go back to work But there is no definite and positive, promise that the employees would receive pay even if the war would last for a long time, such as would justify the present claim."

The award of back wages is based on an erroneous conclusion of law made by the lower court in Civil Case No. 397-V(7). We had assumed that the finding or conclusion of the Court of Industrial Relations in the original case could not be reviewed as a finding¹ of fact. But as we will presently show, no positive finding of fact was made in the trial court's decision that the promise for back pay was proved by preponderance of evidence.

We have taken pains to study the findings of fact made by the Court of Industrial Relations in the original case, Civil Case No. 397-V(7), entitled "Luzon Labor Union vs. Luzon Brokerage Company" and We note that the claim of claimants for back pay for two or three years was granted by the Court of Industrial Relations in the following manner:

"Respondent union tried to prove that before the claimants left Manila for Bataan in the later part of December, 1941, Tom Myers and his father F. H. Myers promised to give them 2 to 8 years back pay for services Tendered to the U.S. Army in Bataan.

"This contention is contradicted by the company on these grounds:

"a) Mateo C. Cornelio, Vice-President of the Luzon Brokerage Company denied on the witness stand the alleged promises.

"b) There are discrepancies and variations between the promise of Tom Myers made to Pio Flores and those given to Verano, de Gula and Presa, which render doubtful the theory of the promise.

"c) Marcelino Sarceno, Alfonso Navales and Jose Angeles did not testify to any matter regarding the Myers' promises. Navales and Angeles were office managers of the company at the outbreak of the war, and as such they were in a better position than anyone else to know such promises. The fact that they made no reference whatsoever in their testimonies with respect to said promises, shows that no such promises were made.

"d) Exhibit 'B' is a letter addressed to Forest H. Myers, president of the Luzon Brokerage Company on February 25, 1948 , whereby the claimants were seeking a reward from the company 'for these unselfish services which we have voluntarily and willingly rendered during those dark days of the occupation.' The fact that said Exh. B does not mention, the promises of Tom Myers and F. H. Myers, alleged to have been given to the claimants in December, 1941, and in the year 1945, shows' that they were never made.

"These observations deserve the most serious attention. Furthermore, Tom Myers is now dead. F. H. Myers is insane and has lost his power of speech. They cannot deny the alleged promises. As the saying goes: 'Of all evidence the narration of a witness of his conversation with a dead person is esteemed in justice the makest' (II Moore on Facts, pp. 1014-1015). To avoid, therefore, a miscarriage of justice our duty is to receive with utmost caution the testimonies on said promises.

"Considering, however, that Mateo C. Cornelio was not present at the particular time and place where the promise was made; that the claimants' affirmative testimonies are stronger than Cornelio's negative testimony; that the discrepancies in the claimants testimonies may be explained by the circumstance that the testimony of every person should not be expected to be identical to and coinciding with each other, the Court has to give the claimants the benefit of doubt."

As shown by the above, the court granted the claimants' right for back pay for two or three years because "the

Court has to give the claimants the benefit of doubt." This conclusion has no foundation in law.

Some of the claimants testified that the manager of the respondent company promised them two to three years back pay for services rendered to the U.S. Army in Bataan . Evidence, according to the court, was submitted to refute said testimony on the back wages, and the court declared that it was in a state of doubt as to whether or not the promise to pay back wages was actually made. But it granted back pay because it held that the claimants are supposedly entitled to the benefit of a doubt.

As the claimants were the ones who made affirmative allegation that back pay was promised, it was they who had the duty of establishing the truth of such affirmative allegation by a preponderance of evidence. Because the lower court entertained a doubt as to whether the promise was made, the court below did not find that the promise to give back pay was supported by preponderance of evidence. In such a situation the claimants must fail, because having the obligation to prove the affirmative allegation of the supposed existence of the promise, the fact of such promise was not proved by preponderance of evidence. The court below should have found that the promise to give back pay was not made, because proof thereof was not sufficient to overcome the denial by the adverse party.

We add that the supposed promise to pay back wages for two or three years, allegedly made in December 1941, could not have been true. At the beginning of the war, the belief prevalent among Filipinos as well as Americans was that the war would not last for a long time because the United States was fully prepared and sufficiently strong to repel the Japanese attack. The most sensible interpretation of the alleged promise to pay, in view of the above circumstances, was that the pay must be during the period of hostilities only, when the claimants worked with the U.S. Army in Bataan . This period must be during the period of the war in Bataan . The manager or the respondent company, therefore, if he made that promise to give back pay, must have referred the promise to the period during which the claimants would be working for the U.S. Army in Bataan , that is during the period of actual hostilities, and not up to the period of the termination of the war.

In view of all the above considerations, We set aside the finding of the Court of Industrial Relations that the claimants are entitled to back pay for a period of two to three years and instead We declare that they should be entitled to pay during the actual period of hostilities in Bataan, that is from December 8, 1941 to April 9, 1942. But considering that after the surrender of Bataan the claimants had to go back to their respective homes, which are presumed to be in Manila, the Court believes that they should be entitled to pay up to June 8, 1942.

The second point raised in the second motion for reconsideration is that the claimants should not be entitled to "incidental expenses." We find this contention to be correct. There is no specification of the nature thereof, hence it is difficult to judge the probability of their existence; and inasmuch as the claimants were under the U.S. Army, the latter must have supplied them with all their needs. Hence, the grant of incidental expenses can not be authorized.

The third point raised in the second motion for reconsideration is that the claimants should not be entitled to sixteen hours overtime pay during their stay in Bataan. If we take into account that the claimants joined the U.S. Army in Bataan and were actually in service there, and if we also take into account that hostilities were continuous from the time they went to Bataan up to the surrender in April 9, 1942, the claim for overtime pay should be justified, because during the .period of hostilities they had to be on the alert and be ready to be called any time of the day or night. We can take judicial notice of the fact that during war time an army is on the alert for the full twenty four hours, so should all the employees or workers thereof, as the claimants were.

Another claim of the movant is that the claim of the claimants should be reduced by the actual amounts received by them from the U.S. Army. This claim of reduction should also be denied because of the fact that during the claimants' stay in Bataan they were there as employees of the respondent Luzon Brokerage Company. If the U.S.

Army paid them for actual work, that does not mean that the claimants thereby and thereupon ceased to be employees of the Luzon Brokerage Company. As the promise was made to the effect that they shall be considered as employees of the respondent company during their stay in Bataan, whatever they received from the U.S. Army should not be deducted because the same was paid by the U.S. Army and not by the Luzon Brokerage Company.

In the second motion for reconsideration, movant also claim that thirty claimants who do not appear in Annexes "A" to "L" enumerated on page 4 of their motion for reconsideration should be excluded. This claim is based on the fact that their claims are not supported by any affidavits on their part. We find this claim to be justified because while the presence of these claimants was testified to by other witnesses, said claimants not having filed their respective affidavits of claim, the Court feels that it cannot grant the claim without their affidavits; it is the affidavit of the claimant that constitutes the best evidence admissible as to whether or not they actually rendered services and the nature thereof. The contention of the movant Luzon Brokerage Company that the claims of the said thirty claimants should be denied, is hereby sustained, except that of claimant No. 7, Martin Feria, which is approved. We also found that one claimant by the name of Jose Padilla did not file any affidavit of claim. The claim of said Padilla therefore should also be discarded and denied.

The respondent Luzon Labor Union argues that the second motion for reconsideration should not be considered because the same is prohibited by the rule on omnibus motions. This opposition cannot be sustained. The rule on omnibus motions is applicable only to motions for reconsideration that tend to delay the perfection of an appeal, but not to motions for reconsideration addressed to the merits of the case, as in the case at bar. The Court is authorized under the Rules [Rule 124, Sec. 5(g)] to amend its judgments and orders at any time to make them conformable to law and justice. This power of the Court cannot be deemed affected or modified by the fact that the questions raised in the second motion for reconsideration have not been previously raised in the first motion for reconsideration.

The movant further prays that the claims of Pablo Pureza and Alfredo Peraan should be disallowed. We find that Pablo Pureza is the duplication of claimant Pablo Puresa. Alfredo Peraan in his affidavit (Exhibit A-22) appears to have rendered services in Manila but not in Bataan. Hence, these claimants should be discarded from the list of persons entitled to recover back wages.

Wherefore, the original decision rendered by Us is hereby modified in the sense that the claims for back wages of the respondents in this case, with the exception of those whose claims were disallowed in our resolution on the first motion for reconsideration, be limited to the period from December 8, 1941 to June 8, 1942. All claims for incidental expenses are denied.

The claims of the thirty claimants enumerated on page 4 of the second motion for reconsideration are hereby disallowed, with the exception of that of Martin Feria. The claims of Jose Padilla, Pablo Pureza and Alfredo Peraan are also disallowed. No costs.

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

Original decision further modified.

Resolution on Respondents' Motion for Reconsideration.

March 31, 1964

LABRADOR, J.:

This concerns a motion for the reconsideration of the resolution of this Court awarding back wages to the respondents for a period from December 8, 1941 to June 8, 1942, modifying the previous ruling affirming the grant of back wages to the extent of two to three years. It is contented in the motion for reconsideration that the grant of back pay for a period of two to three years had already been decided in the previous decision and resolution of this Court (decision of January 31, 1963, resolution of July 31, 1963).

It is not true that the previous judgment of this Court on December 29, 1954 (L-6608), remanding the case for new trial to determine the specific amount that each of the claimants should be entitled to receive, had already specifically decided that the back pay should be for the period of two to three years. The resolution itself saying that the back pay was to be for a period of two or three years shows that no specific period had been found. Besides, the first decision of the Court of Industrial Relations in which back pay was denied on the ground that the claim therefor was already barred by prescription, did not specifically determine for what period of time was the back pay to be given. So the period for which the back pay was to be awarded was properly the subject of the new trial after which the Court of Industrial Relations rendered its decision of December 29, 1959 in its Case No. 397-V(7). In this decision the court actually considered the period or length of time for which back pay was to be granted. That decision considered the conflicting testimonies offered by the parties as to the period for which back pay was to be given; thus in the portion of the decision quoted in Our resolution of October 31, 1963 We started with a portion of the decision thus: "Respondent union tried to prove that before claimants left Manila for Bataan . . ." and the conclusion of the decision as to the issue (as to whether or not back pay for two or three years was promised) is as follows: "Considering however . . ." (the conflicting testimonies) ". . . the court has to give the claimants the benefit of the doubt." So, in the decision appealed from the court below concluded as a finding of fact that the promise to give back pay was for a period of two or three years because the court found that the testimonies on the said subject were conflicting, for which reason the court was in duty bound "to give the claimants the benefit of the doubt." This finding of fact was based on the rule laid by the court below that in case of doubt the claimants were entitled to the benefit thereof. But the ruling was reversed by Us in Our resolution of October 31, 1963.

In the original decision in this case, rendered by this Court on January 31, 1963, and in the first resolution on the motion for reconsideration dated July 31, 1963, the Court had assumed all the time that the finding of fact of the Court of Industrial Relations as to the existence of a promise to give two to three years, back pay was correct. In the first resolution on the motion for reconsideration dated July 31, 1963 the said finding of fact was not reviewed. Neither was this finding of fact reviewed in the original decision; hence it cannot be stated that this finding of fact was passed upon in the previous decision and resolution of this Court. We therefore hold that the finding of fact in question was never passed upon the previous decision and resolutions of this Court and may still be the subject of the motion for reconsideration.

The second question presented refers to the denial by the Court in its resolution subject of the motion for reconsideration, of the so-called "incidental expenses." It is claimed that these "incidental expenses" represented money of the laborers spent while in their operations in Bataan. We held that since there was no agreement that all incidental expenses or money spent by them should be charged against the Luzon Brokerage Company, the claim therefor cannot be granted. They received both their back pay from the Luzon Brokerage Company and their wages from the United States Army, and in view of these circumstances We believe that the denial of the right to incidental expenses is just and proper.

The last question raised is the fact that back wages were granted only from December 8, 1941 to June 8, 1942, and that the claimants were not paid salaries even before December 31, 1941. The subject of the present suit is

back wages when the claimants went to Bataan . These back wages could not include the wages that they were supposed to have received from the Luzon Brokerage Company up to the day of the declaration of war. The claims for such wages should be the subject of another claim because the same can not be included in the claim for back wages.

Wherefore, finding no merit in the motion for reconsideration, it is hereby denied.

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

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