

**ATLANTIC GULF & PACIFIC CO. OF MANILA, INC., PETITIONER,
VS. COURT OF INDUSTRIAL RELATIONS AND A.G. & P.
EMPLOYEES AND WORKERS UNION (PAFLU), RESPONDENTS.**

G.R. No. L-16992. December 23, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari from a decision of the Court of Industrial Relations convicting Atlantic Gulf and Pacific Co. of Manila, Inc., hereafter referred to as the petitioner, of unfair labor practice and directing the same to cease and desist from committing further acts of unfair labor practice and to reinstate Felipe Mercado to his former position, with back wages from the time of his dismissal up to his actual reinstatement.

Felipe Mercado was petitioner's employee since 1928. He rose from the ranks until he became foreman supervisor. Admittedly, he was an efficient employee Respondent Atlantic Gulf and Pacific Free Workers and employees Union (PAFLU), hereafter referred to as the Union, is a legitimate labor organization, some of whose members are workers or employees of petitioner herein, including Mercado, Who had been one of the organizers of said Union and was its auditor since March 1957. As such he was active in holding meetings and caucuses among union members, which were held at his place of work, during off hours and lunch breaks, with petitioner knowledge. He was, also, active, in July, 1953, as one of the watchers, in an election, held under the supervision of the Department of Labor, in connection with the certification election proceedings in Case No. 495–MC, in which the PAFLU—to which respondent Union is affiliated—and NLU were the contenders.

On October 28, 1958, Mercado was dismissed by petitioner for allegedly taking out from the company premises, on October 4, 1953, two (2) brushes and the handle of a hammer, valued at P1.00 each. Alleging that the true reason for Mercado's dismissal was his union affiliation and activities, the Union charged petitioner with unfair labor practice. In due course, the corresponding complaint therefor was filed against petitioner, and, after appropriate proceedings, the Court of Industrial Relations rendered the decision adverted to above. On motion for reconsideration filed by petitioner, said decision was affirmed by a divided Court sitting en banc. Hence, this appeal by certiorari.

The main issue is, as it was in the lower court, whether or not the dismissal of Mercado had been due to his union activities. This is a question of fact which was affirmatively decided by said court, whose finding thereon is conclusive upon us. Petitioner maintains, however, that it is not upon the ground that the lower court had committed a grave abuse of discretion in making the aforementioned finding there being allegedly no evidence whatsoever in support thereof. The record before us refutes this pretense.

The Union introduced evidence, consisting mainly of the testimony of Felipe Mercado, Ruben Pangan and Benito Samonte, to the effect that several days before the election adverted to above, petitioner's shop superintendent, Robert Russel, talked to Mercado about the membership of the Union and its activities and branded the PAFLU as a communist organization; that Mercado refuted the charge by showing to Russel the minutes of the meetings

of said organization; that, in reply, Russel told Mercado that he was like Luis Taruc, the HUK leader; that on October 24, 1953, at about 4:15 p.m., as Mercado was about to leave the company compound carrying a bundle, he unwrapped the same before the gateman and showed its contents, consisting of two (2) brushes and the handle of a hammer, stating that he wanted to bring the same with the intent of using them in the cemetery and returning them the next day; that the gateman advised him to secure a pass and that, if he could not get one that afternoon, he could leave said objects and then obtain a pass the next day; that he agreed to this arrangement and left the brushes and hammer handle with the gateman; and that on October 28, he was dismissed by appellant upon the pretext that he had taken out said property from its compound.

Petitioner tried to prove that Mercado had not voluntarily and upon his own initiative presented the bundle already referred to and its contents to the gateman, who turned out to be Rodolfo Caminio, and that the latter had to forcibly grab said bundle in order to take possession thereof. The evidence of petitioner thereon consisted, however of the testimony of its security guard, Cornelio Tongson, who, not having witnessed the occurrence, declared about a conversation he allegedly had with Gaminio shortly thereafter. Likewise placed on the witness stand by the petitioner were Ricardo Mamuyac and Eladio Morales, who testified about a report allegedly submitted to them by Tongson and Gaminio. The lower court found that the story by Tongson, Mamuyac and Morales were hearsay evidence. Inasmuch, moreover, as petitioner had not presented Caminio as witness, upon the ground that he was no longer under its employment, and that there was no competent evidence contradicting the testimony of Mercado concerning the incident on October 24, 1958, the lower court accepted the version of respondent Union and held that, in the afternoon of October 24, 1958, Mercado had voluntarily shown the objects aforementioned to petitioner's gateman, and informed him of his intent to use them in the cemetery (presumably in connection with the All Saints' Day on November 1), and then to return them the next day (October 25, 1953) and that Mercado had no intent of appropriating said object.

Considering, also, (1) that Mercado had been in petitioner's service for thirty (30) years; (2) that he was, admittedly, an efficient employee; (3) that another employee of the company, suspected of stealing ten (10) empty drums (seemingly of oil or gasoline), had merely been suspended for six (6) months, so that petitioner could not have believed that Mercado should be dismissed for having tried to use company property—worth only P300, or much less than said drums—under the aforementioned conditions; (4) that petitioner had given Mercado no opportunity to defend himself before dismissing him; (5) that Mercado had been very active as member of respondent Union, particularly in a certification election contested between said Union and another labor organization, about three (3) months before his dismissal; and (6) that petitioner's shop superintendent had branded respondent Union as a communist organization and told Mercado that he was like Luis Taruc, the HUK "supremo", we are not prepared to hold that a grave abuse of discretion had been committed by the lower court in concluding that the union activities of Mercado were the cause of his dismissal or of the discrimination that the same entailed against him, when compared or contrasted with the action taken by petitioner against the employee suspected of stealing ten (10) drums.

It is urged that, being a foreman supervisor, Mercado was, pursuant to section 3 of Republic Act No. 875, "not eligible for membership in a labor organization of employees under their supervision"; that he was not, therefore, a lawful member and officer of respondent Union; and that, consequently, he is not protected by law for his activities as such.

This question was not raised, however, in the lower court either before Judge B. Villanueva, who rendered the decision appealed from, or before the Court of Industrial Relations en banc. It cannot be entertained, therefore, in this appeal, since it does not affect the jurisdiction of said court, (*International Oil Factory Workers Union (FFW) vs. Hon. Martinez, et al.*, 110 Phil., 595.)

Upon the other hand, the aforementioned section 3 explicitly provides that "employees"—and this term includes supervisors—"shall have the right to self-organization, and to form, join or assist labor organizations of their own choosing for the purpose of collective bargaining through representations of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection" and that "individuals employed as supervisors * * * may form separate organizations of their own". Indeed, it is well settled that, "in relation to his employer", a foreman or supervisor "is an employee within the meaning of the Act" (see 169 ALR, 446-447, citing *Packard Motor Car Co. vs. National Labor Relations Bd.* [1947] US, 91 L ed [Adv 697], 67 S. Ct. 789; *National Labor Relations Bd. vs. Skinner & K, Stationary Co.* [1940; CCA 8th] 133 F, 2d 667; *National Labor Relations Bd. vs. Armour & Co.* [CCA 10th]; *Jones & L. Steel Corp. vs. National Labor Relations Bd.* [1945; CCA 5th] 146 F. 2d 833 [writ of certiorari denied in [1945] 325 US 886, 89 L. ed, 2000, 65 S. Ct. 1575]). For this reason, supervisors are entitled to engage in union activities any discrimination against them by reason thereof constitutes an unfair labor practice. Moreover, it does not appear that employees under Mercado's supervision are members of respondent Union. Again, petitioner does not claim to have dismissed Mercado by reason of the alleged illegality of his membership in respondent Union. Lastly, the case of *N.L.R.B. vs. Inter-City Advertising Co.*, 190 F. 2d, 420) cited by petitioner is not in point, for supervisors are expressly excluded from the definition of "employees" contained in the statute therein relied upon,[1] unlike the definition of employees found in our Republic Act. No. 875.[2]

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

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon and De Leon, JJ., concur.

[1] "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined." (29 USCA, Sec. 152[3] p. 201; (Italics ours.)

[2]"The term 'employee' shall include any employee and shall not be limited to the employee of a particular employer unless the Act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment" (Republic Act N0. 875, Section 2[d]).

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