

**AMERICAN INTERNATIONAL UNDERWRITERS (PHIL.) INC.
(FORMERLY AMERICAN INTERNATIONAL UNDERWRITERS FOR THE
PHILIPPINES, INC.) AND ARTHUR H. HENDERSON, PETITIONERS, VS.
COURT OF INDU...**

G.R. No. L-29680. January 21, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal by certiorari from the decision of the Court of Industrial Relations finding the petitioners guilty of discrimination in dismissing the respondent Cipriano C. Fortea and ordering his reinstatement to his former position, "without loss of any seniority rights, with backwages from the time he was discharged up to the time of his actual reinstatement, deducting therefrom whatever wages he has received", although with respect to the backwages, the voting in the Industrial Court en banc on the motion for reconsideration was as follows:

Presiding Judge Arsenio I. Martinez, with the concurrence of Judge Joaquin M. Salvador, failed "to find sufficient justification in altering or modifying the aforesaid Decision";

Judge Emiliano Tabigne voted "to modify the award of the Trial Court by allowing complainant three months backwages only from the date of decision" but "concur(red) with the rest of the Trial Court's findings and dispositions."

Judges Amado C. Bugayong and Ansberto P. Paredes "concur(red) with the modification of backwages which should be three (3) years from the date of dismissal of complainant Cipriano Fortea."

In the Court's resolution of November 22, 1968, the petition was given due course, with the qualification, however, that "the question before us (is) to be limited solely to the computation of the period to which complainant-respondent Cipriano C. Fortea is entitled in the concept of back pay," and that "the resolution of respondent court of July 17, 1968 stands in all other respects." Petitioners have not asked for reconsideration of this resolution. On the other hand, it is important to note that respondent Fortea did not appeal from the decision and resolution of the Industrial Court.

In synthesis, the Court of Industrial Relations found that respondent Fortea was employed with petitioner company since February 1941 to the date of his dismissal on May 15, 1956 (except from March, 1942 to November 23, 1946, when the company suspended operations on account of the Second World War) as a "block card clerk". On November 12, 1952, he organized the American International Underwriters of the Philippines, Inc. Employees' Social Club, composed of the employees and workers of petitioner company. This club became the nucleus of the AIUPI Employees' Association which was organized on February 11, 1954. In this connection, it was respondent Fortea who, on January 7, 1954 invited Atty. Wenceslao G. Laureta, the secretary of the Evening News Employees Union, to discuss "the various ramifications of unionism, which occasion was held at the Social Hall of the Manila Law College" where Atty. Laureta was a faculty member. In the election of officers of the union, Fortea was chosen business manager.

On February 15, 1954, the union President addressed a letter to petitioner Arthur H. Henderson, president of his co-petitioner company requesting recognition of the union as sole collective bargaining unit. To this letter, Petitioner Henderson replied that "you must qualify as a proper collective bargaining unit in the manner provided by law. The document which you have furnished us merely shows that you have formed a union and that you have registered it. Since, according to you, your membership is composed of 100% of all our employees, then presumably at the proper time, you will be able to obtain the necessary authority from your members authorizing you to act as the appropriate collective bargaining unit who can speak in their behalf. When that occasion arises we shall, of course, be glad to sit with you." Said letter notwithstanding, negotiations continued.

It was in the wake of these events that on May 15, 1956, Henderson Co. "addressed a letter to herein complainant advising him that as of even date, his services with respondent corporation, have been terminated due to a change in our procedures as dictated by New York, certain work such as blocking and statistical reports has been reduced to the point where it becomes necessary for me, from directives from my superiors, to reduce our staff." But refuting the claim of petitioners that Fortea was not dismissed because of union activities, the Industrial Court held:

"The respondents take the position that petitioner was dismissed not because of his union activities, but because of the policy of retrenchment adopted by the AIU due to its losses and dwindling business. (Exhs. 14-18, Castillo, T.S.N., October 2, 1964, pp. 13-32). While it may be admitted that on the records of its operations, there seems to be an indication that it suffered losses at the time the petitioner was dismissed, the fact, however remains that the respondents hired additional employees. (T.S.N., February 19, 1960, pp. 24-28). Respondents contend that the additional employees were not those assigned to the block card section. Be that as it may; however, the fact remains that respondents would hardly employ additional employees if it was really in financial difficulties. Moreover, the fact remains that respondents gave yearly bonuses from 1956, 1957, 1958, 1959 and 1960. Bonuses are something that respondents are not obliged to give under the law. Considering the amount that goes toward the giving of bonuses, it becomes highly improbable that respondents could afford to give such bonuses year after year following petitioner's separation from the company if it was true it was sustaining losses as respondents would want this Court to believe. The records also show that the respondents gave general increases in 1957, the year following petitioners separation in 1956, (Exhibit "Q") and another increase in June 1959 (Exhibit "Q-1").

Respondent justify the separation of petitioner by reason of the changes in procedures regarding blocking and statistical reporting about fire insurance policies which made for "redundancy" of work and superfluous employees. We have examined the block cards (Exhs. "B" and "C", petitioner) and the manner in which the entries in them are made.

One very outstanding fact stands out: that the entries are made by hand only, never by machine. (Exhs. "B", "C", "P", complainant; Exh. "20", respondent; including the testimonies of the following: Alfonso Mendoza, chief of the IBM section, p. 7, T.S.N., February 19, 1960. Mateo Reyes, assistant manager, Agency Department, concurrently at that time, agency field supervisor, pp. 42-43, T.S.N., November 4, 1965; Paul Lu, assistant manager, Fire Department, and formerly immediate chief of petitioner, p. 39, T.S.N., February 8, 1966; Cesar Ruelos, pp. 68, 69, 70, 71 and 73, T.S.N., June 6, 1957; Dioscoro Calzado, 1947 union president, pp. 13 and 26, T.S.N., July 8, 1957; Pio Mendoza, pp. 9-10, T.S.N., September 28, 1957)

This Court finds it immaterial that there is any reduction in the volume of statistical items to be entered by hand in the blockcards with respect to direct or indirect fire insurance policies as dictated by respondents' parent office in New York. While it might be admitted that there is such reduction in the statistical items to be entered in the blockcards but the evidence indisputably proves that the procedure of entering these statistical items remains to be made by hand. Respondents have introduced no evidence to disprove this fact.

By their own admission, respondents state that there were four block card clerks at the time of petitioner's lay

off, doing the same kind of work, namely, entering in the block card (Exh. 20) certain statistical items from the direct and indirect fire insurance policies. (p. 28 Reply Memorandum) And yet in the next breath, respondents insist that the condition in the block card section was not equal among the clerks. (No. 46, Reply Memorandum, p. 34) Respondents claim petitioner was inefficient and sleepy during office hours. And yet, if this were so, his immediate boss, Mr. Paul Lu did not even see fit to administer to him a reprimand. The testimony of Mr. Mateo Reyes, immediate chief of petitioner, according to respondents, and Mr. Paul Lu, assistant manager of the department where he worked, about petitioner's inefficiency is not well taken. That respondent did not see fit to terminate the services of petitioner until the union was fully organized and registered, sometime in 1956, since he was reemployed after respondent company resumed its operation after the liberation of Manila during World War II, denies their charge of petitioner's inefficiency. Respondents also attempted to prove, by the testimony of their witness Mr. Mateo Reyes, as to alleged errors committed by petitioner in making entries in the blockcards. And yet, if such errors were really committed it was incumbent for respondents to present these block cards where such errors were committed. Again, if this were so, and the errors were of such substantial nature, petitioner could hardly be permitted to continue with his job for all these years he worked for respondent company.

The evidence indicate that petitioner was the oldest employee in the block card section. From the standpoint of educational qualification, petitioner stands high as compared to the other clerks in the block card section, being not only a law graduate, but also a commerce graduate. It ought to logically follow that where there is a choice as to whom of these block card clerks were going to be laid off, even due to the alleged "redundancy" of work at least his qualifications and length of service should be considered. It is a rule that where all other things are equal, and when considered in connection with the other circumstances disclosed by the evidence, an employer's disregard of an employee's seniority rights is evidence that the discharge of the employee possessed of such rights is intended to discriminate. (Teller, Labor Dispute and Collective Bargaining, Vol. II, Ref. 72, pp. 838--839) Of the other nine employees in the block card section when petitioner was separated from the service, four remained with the block card section, the other five were transferred to the other departments of the respondent company. This constitutes a proof of respondents' discriminatory motive. Petitioner's dismissal, therefore, in the light of the background of his union activities, having organized the Social Club which was the nucleus of the AIUPI Employees Association, a union registered with the Department of Labor, together with the retention of his co-employees in the block card section despite his seniority status indicated the discriminatory pattern committed by respondents.

With respect to the payment to petitioner of his four months' termination pay, he admitted he received the amount in question. But in accepting the same, he did not mean to waive his right to prosecute his employer for unfair labor practice heaped upon him. The fact that he brought this complaint against them proves his proposition. It is well-accepted doctrine that "mere acceptance of separation pay does not deprive a laborer the right to prosecute his employer for unfair labor practices, because to tolerate the divesting of the right to prosecute on the mere acceptance of a separation pay would be giving the employer the chance to devise a legal bait which is a booby-trap serving the interest and caprice of the employer alone to the prejudice of the laborer (National Labor Union of Printing Workers PLUM, Ideal Press Local Chapter, vs. Ideal Press Company, Inc. and/or Manager, Enrique Uy Case, No. 529).

The weight of evidence on record leads this Court to the conclusion that petitioner had been unjustly dismissed by reason of his union activities."

These findings and conclusions may not now be disputed by petitioners in view of their failure to move for reconsideration of the resolution of November 22, 1968 limiting the scope of this review only to the question of what should be the period of back wages to which respondent Fortea is entitled. In other words, at this stage, there can be no more question that Fortea is entitled to back wages, as the industrial court unanimously held. The only point We have to decide is which of the three periods separately fixed by the judges of said court should be upheld. It must be so, because the only argument adduced by petitioners relative to the back wages in question,

which the Court can properly pass upon, is their contention that Fortea must have earned some kind of income after his services were terminated. And in this regard, it is implicit in the decision of the Industrial Court that the evidence presented by petitioners, during the trial, regarding Fortea's alleged outside income was not considered, inasmuch as in the dispositive portion, it is ordered that "whatever wages he (Fortea) has received" (in the meanwhile) may be deducted from the back wages he would otherwise be entitled to receive, meaning that, pursuant to the practice in that court, such deduction shall be determined only in the course of the execution of the judgment and not in the body of the decision. Accordingly, We need not rule now on how much exactly should such deduction be. We must state here, however, that in the subsequent determination to be made by the lower court of the deduction to be made from the back wages of respondent, the evidence of the wages or income from other sources must be concrete and specific and not the mere product of conjecture and inference, as petitioners have tried to do from Fortea's allegedly having been a musician and the fact that he has been able to support his family even after his discharge. Furthermore, the Industrial Court would be well advised if it resolves this incident as promptly as possible once the record is returned thereto, considering that the aggrieved employee has been deprived of his due for more than a decade and a half now.

Coming to the sole issue as to the period of back wages which petitioners have to pay, it is Our considered view that the correct interpretation of the split voting in the Industrial Court on said point, referred to at the outset of this opinion, is that the majority of the judges, more specifically, four of them, namely, Presiding Judge Martinez and Judges Salvador, Bugayong and Paredes, must be deemed to have concurred in fixing said period at three years from the date of dismissal, as per opinion of Judges Bugayong and Paredes, following this Court's ruling in *Eastern Textile Mills Inc. vs. Court of Industrial Relations*, 45 SCRA 586. In that case, the Industrial Court found that the strike declared by the employees and laborers of Eastern Textile Mills, Inc. on March 11, 1967 was illegal, but the five judges of the court disagreed as to whether or not the strikers should be held as having lost their employee status. Judges Paredes and Bugayong were for the suspension for three months of the strike leaders, four of them, excluding two who had opposed the declaration of the strike, and eleven members whom they found to have individually committed illegal acts during the strike. Presiding Judge Martinez voted to declare "all the individual respondents, except Manangan and Zamora, and the union members 'specifically mentioned (in the decision) who ha(d) committed illegal acts during the strike' to have forfeited their positions in the company." Judge Tabigne held that "all the 100 strikers involved in the case, except Zamora and Manangan, should be considered separated from the service of the company." And Judge Salvador declared that "he was not for indiscriminate separation of 100 strikers without determining their actual participation in said strike"; on this basis, he named 41 strikers whom he held "as having lost their status as employees." In the light of such divergence of view, this Court held:

"There can be no doubt as to the action of the court on the company's motion for reconsideration: a majority of three (3) CIR judges voted to grant reconsideration and decreed the dismissal of the strikers named in the resolution of Judges Paredes and Bugayong instead of merely suspending them. The vagueness in the judgment of the court, that seems to have misled the company into dismissing 38 instead of the 15 employees named in the Decision, appears to have been brought about by the fact that a majority of the judges who were for dismissal of the employees could not agree on the exact number and identity of the strikers to be separated from the company employ."

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"x x x. Plainly, therefore, Judge Martinez voted only for the dismissal of those workers, fifteen (15) in number, specifically named as subject to suspension in the resolution of Trial Judge Ansberto Paredes dated 10 June 1968 (concurred in by judge Bugayong).

"Since these fifteen workers whom judge Martinez voted against were also included in the 100 whom Judge

Tabigne voted to dismiss, and were also included in the 41 laborers that should be dismissed in the opinion of Judge Salvador, the conclusion is inescapable that there was a majority opinion of three C.I.R. judges for the dismissal of said fifteen (15), and only these fifteen. The separation of the other laborers was, therefore, unwarranted under the decision, and these latter should be reinstated, as correctly held in the Resolution of 20 December 1968."

Similarly, it is quite obvious that in the instant case, the three years fixed by Judges Paredes and Bugayong are within the period fixed by Presiding Judge Martinez, concurred in by judge Salvador, which was "from the time he (Fortea) was discharged up to the time of his actual reinstatement", or actually more than three years already as of the date of the decision.

With respect to the prayer of respondent Fortea that the joint view of Presiding Judge Martinez and Judge Salvador should be the one followed, it must be borne in mind that said respondent did not appeal from the decision and resolution in question of the Industrial Court. Accordingly, no affirmative relief can be granted to him here. (*Bulakeña Restaurant & Caterer vs. Court of Industrial Relations*, 45 SCRA 87) The result, therefore, is that there is no alternative but to fix the period of Fortea's back wages at three years from the date of his dismissal.

WHEREFORE, judgment is hereby rendered ordering petitioners, jointly and severally, to pay respondent Cipriano C. Fortea back wages for three years from May 15, 1956, deducting therefrom whatever income he may have earned from other sources during said period, said income to be determined by the trial court as promptly as possible, conformably to the above opinion, with costs against petitioners.

Zaldivar, (Chairman), Fernando, Antonio, Fernandez, and Aquino, JJ., concur.

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