

ASSOCIATION OF DRUGSTORE EMPLOYEES, PETITIONER, VS. ARSENIO C. ROLDAN, ET AL., RESPONDENTS.

G.R. No. L-6511. February 25, 1954

Ponente: PARAS, C.J.

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PARAS, C.J.:

On March 4, 1952, the Court of Industrial Relations issued an order directing Farmacia Oro "to reinstate Leonila Calcas, Marina C. Villaroman, Salud Aranza, Vicente Sayago and Quirico Saratan to the same position from which they were removed, with pay from the time of their dismissal." The two motions for reconsideration filed by Farmacia Oro having been denied, and the decision of March 4 having become final, the Association of Drugstore Employees, in representation of the aforementioned five employees, filed on May 21, 1952, a motion for the issuance of the writ of execution, followed by similar motion filed on June 13, 1952, but these motions were not acted upon. On July 14, 1952, the association filed a supplemental motion for execution and, after hearing, the corresponding writ was issued on July 31, 1952. On August 14, 1952, the five employees were brought by a deputy sheriff of Manila to the store of Farmacia Oro at Rizal Avenue, Manila, but they were admitted in positions lower than what they held prior to their dismissal. On August 31, 1952, they were dismissed by Farmacia Oro on the ground that the latter had to close two branch stores, but the corresponding motion for permission to close is still pending.

In virtue of the writ of execution of July 31, 1952, the sheriff of Manila garnished from the account of Farmacia Oro in the Philippine Trust Co. the sum of P5,295.24, representing the back wages of the five employees from October 31, 1951, when they were dismissed, until July 31, 1952, when the writ of execution was issued. On September 22, 1952, the Court of Industrial Relations authorized its clerk of court to make the proper disbursement of the amount of P5,295.25; but before this could be done Farmacia Oro filed on September 24, 1952, a motion to suspend the payment on the alleged grounds (1) that during the pendency of the case in court, the five employees had employment elsewhere, and the amount of their wages received therefrom should be deducted, and (2) that before the decision of March 22, 1952 became final and executory, or on June 12, 1952, said employees, through their attorneys, were asked to report for duty and because they failed to do so, Farmacia Oro was not bound to pay back wages from the date of such notice.

On October 21, 1952, Presiding Judge Arsenio C. Roldan of the Court of Industrial Relations issued an order holding that the five employees involved are entitled to back wages only from October 23, 1951, the date of their dismissal, until June 12, 1952, when they were advised, but failed, to report for duty. The Association of Drugstore employees filed a motion for reconsideration which was denied by resolution of the court in banc of January 6, 1953, with Presiding Judge Arsenio C. Roldan and Associate Judges Modesto Castillo and Juan L. Lanting voting for said resolution, Associate Judge Jose S. Bautista, concurred in by Associate Judge V. Jimenez Yanson, voting against. The association has filed the present petition for review on certiorari.

The court a quo found that the five employees, through their counsel, were notified on June 12, 1952, to report for duty and they defaulted without justification. It appears, however, that at the time the alleged notice was given the

decision of March 4, 1952 was not yet final and executory, since, as a matter of fact, the petition for review on certiorari of said decision filed by Farmacia Oro with the Supreme Court (G. R. No. L-5744) had not yet been finally disposed of, since the latter's judgment dismissing said petition for certiorari became final only on July 7, 1952. In this connection it is noteworthy that no opposition was interposed whatsoever by Farmacia Oro to the three motions for execution filed with the Court of Industrial Relations, and this logically controverted the legal effect, if any, of the notice of June 12, 1952, and conveyed the idea that execution was necessary to restore the five employees concerned to their former positions. That Farmacia Oro placed said employees in lower positions when they were brought to its store on August 14, 1952 by a deputy sheriff, in pursuance of the writ of execution of July 31, 1952, is inconsistent with the claim that Farmacia Oro intended to reinstate said employees as early as June 12, 1952.

Without deciding whether the verbal notice to report for duty given by Farmacia' Oro to counsel for the five employees on June 12, 1952, was sufficient as a matter of law, said notice cannot for practical purposes be decisive against said employees, in view of the allegation that the latter lived in different places and in the provinces, with the result that compliance with the notice could not have been expected right on June 12.

In suspending the payment of the back wages of the five employees involved, and holding that the same should be only up to June 12, 1952, the Court of Industrial Relations has departed from the terms of its final and executory decision of March 2, 1952.

Wherefore, the order of October 21, 1952 and the resolution of January 6, 1953, herein complained of, are hereby set aside, and the Court of Industrial Relations is directed to enforce its decision of March 4, 1952. So ordered with costs against the respondent Farmacia Oro.

Pablo, Bengzon, Padilla, Reyes, Jugo and Bautista Angelo, JJ., concur.

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