

UNION OF THE PHILIPPINE EDUCATION EMPLOYEES (NLU), PETITIONER, VS. PHILIPPINE EDUCATION CO., RESPONDENT.

G.R. No. L-4423. March 31, 1952

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from the order of the Court of Industrial Relations in Case No. 489-V (1), entitled Union of Philippine Education Employees vs. Philippine Education Co., in so far as it denied the payment of the wages of two reinstated officials of the petitioning Union during separation from their employment and the wages of the rest of the Union members during a strike.

Jacinto Fabroa and Juanito Carandang, president and secretary, respectively, of the above Union having been discharged for alleged defiance of their employer's authority and subversive acts against the company's interest, and for allegedly having indulged in Union activities during office hours, and the rest of the members of the Union having called a strike by reason of that dismissal, the Court of Industrial Relations, to which the disputes were submitted, found the said dismissal unwarranted and the strike legal. Fabroa and Carandang were accordingly ordered reinstated, and the other members of the Union returned to work.

But the court refused to decree the payment of the salary of any of the dismissed or striking employees, and it was from this portion of the order that this appeal was taken.

Paragraph 2, Section 19 of Commonwealth Act No. 103, as amended by Commonwealth Act No. 355 and Section 5 of Commonwealth Act No. 559, provides in part that, "If it is proved that during the said period an employee or laborer, tenant, or farm-laborer has been suspended or dismissed without just cause, the court may direct his reinstatement and the payment of his salary or wage during the time of the suspension or dismissal, or of any sura which he should have received had he not been suspended or dismissed, without prejudice to any criminal liability of the employer or landlord as prescribed by section 24 of this Act."

This provision, upon which the petitioners and appellants rely, does not entitle as a matter of course the suspended or discharged employees to salary during suspension or separation without just cause. The matter of payment of wages in such cases is left to the sound discretion of the court. Note that the law employs the word "may" and not "shall" or equivalent expression, and there is nothing in the context to indicate that the first-mentioned word—may—was not used in its usual, ordinary sense.

The discretionary character of the power of the Court of Industrial Relations receives a bolstering from Section 20 of the same Act, as amended, which enjoins the court to proceed in the investigation, determination and decision of controversies according to justice and equity without regard to technicalities or legal formalities. This section applies to procedure and appreciation of evidence as well as to the merits of the case, as this Court impliedly ruled in *Antamok Goldfields Mining Co. vs. Court of Industrial Relations, et al.*, 70 Phil., 340, 361, 362, cited by the appellants.

On the nature of the power of the Court with regard to the payment of back salary, *Antamok Goldfields Mining Co. vs. Court of Industrial Relations, et al.*, supra, is authority for the view that that power is discretionary rather than that payment of salary is a matter of absolute right. The Supreme Court in that case sustained the order directing the payment of salary, not because payment is obligatory but because it is allowed by Commonwealth Act No. 103.

Did the court abuse its discretion thus conferred upon it? The answer to this question depends upon the evidence and the circumstances surrounding the separation and the resultant strike under consideration.

It appears from the records of this appeal that on July 29, 1950, the manager of the respondent company issued a mimeographed circular, Exhibit "A", to all its employees, informing them that as a result, of the various Government economic controls, especially controls on foreign exchange and imports, the company stood to lose nearly half of its business and, for this reason, would be forced to reduce its personnel correspondingly. "To meet this unfortunate situation" the circular stated "that all positions will terminate September 30, 1950," but that it was the "aim of the company to take back as many of the employees as possible, to give the utmost protection to the faithful and loyal in so far as it is within our power to do so."

This circular was met by the Union with a 17-point demand, a demand which was mailed on July 31 at 10:30 and received by the management on August 1, although the letter was dated July 28 to make it appear, it would seem, that the proposed cut in personnel was just a counter move on the part of the company.

This turn of affairs prompted the management to issue a memorandum circular on August 8, inviting the employees to a meeting to be held that afternoon in the accounting office but making it understood that attendance was not compulsory although everybody was requested to be present if he could possibly come. None heeded the invitation because Carandang, signing Fabroa's name, on the same date and before the scheduled hour, had circularized the employees telling them not to attend. They were reminded that the Union of the Philippine Education Employees was an affiliate of the National Labor Union; that the management had no business to deal directly with the union members individually; that all negotiations must of necessity be conducted with the National Labor Union or its Board of Directors; that a petition was then pending in the Court of Industrial Relations and the proposed meeting would be highly improper. As a matter of fact, however, no case had yet been filed with the Court of Industrial Relations; the record shows that such case was docketed only the next day, August 9, 1950, the day the employees struck.

Let us take up the matters of Fabroa's and Carandang's separation and the legality of the strike separately for clearness sake; they involve different sets of facts and evidence.

Explaining the reasons for Fabroa's and Carandang's discharge, David G. Gunnell, general manager of the Philippine Education Co., testified, according to the appealed decision, that he received the employee's 17 demands on August 8, 1950; that a week before that, he had heard of the union activities of the employees and the election of their officers; that on August 8, 1950, he had memorandum Exhibit "C" circulated, wherein he requested the employees to meet with him on the company's premises; that considering Fabroa's and Carandang's circular, which countermanded the manager's, a defiance of Gunnell's authority and an act of insubordination, he, Gunnell, dismissed Fabroa and Carandang effective at the close of business of August 9 with pay up to that date plus one month salary.

Francis B. Freeman, education department head, related an incident with Fabroa on the morning of July 29, 1950. On that occasion, according to Freeman, Fabroa in a loud and arrogant tone of voice told him not to compel the employees in Freeman's department to sign the manager's circular as he, Fabroa, had told them not to.

Jose Marbella, manager of the order department, testified that during the month of July he saw Fabroa leave his desk four or five times a day, sometimes going to the toilet room and conversing there with other employees, presumably about union affairs, and at other times talking with one of the Perez brothers although he, the witness, did not know the subjects of the latter conversations. Marbella further declared that he having distributed the manager's circular on July 29, Fabroa came to see him on July 31 with a batch of copies thereof and informed him that there was no use having the boys sign them.

Judge V. Jimenez Yanzon whose decision, upon motion for reconsideration, was ratified by a majority of the court, said, referring to Fabroa's conduct toward Freeman, that "it cannot then be concluded that Fabroa intentionally and arrogantly defied his superior's authority in the absence of definite proof that his attitude caused any commotion or disorder in the department at the time." This conclusion, it will be noted, is of negative character in that there is no positive finding that Fabroa did not commit the acts imputed to him. Yet, the Judge did find that in a discussion with Freeman, "Fabroa might have been excited and his voice perhaps went a pitch high."

Regarding the charge that Fabroa and Carandang used the company's time in union activities, these two employees were also exonerated, but this exoneration, like their exoneration from the charge of misbehavior, was based not on a clear conviction but on alleged lack of clear proof. Judge Yanzon merely thought that "from the testimony of the above witnesses, Fabroa's union activities during office hours had not been duly established." Here, again, there is manifested a feeling of uncertainty.

From the tone of the order with reference to these two charges it is gathered that the court had doubts and gave the employees the benefit thereof. On the other hand there lurked the distinct probability that the facts were as stated by the company's witnesses, and this probability might well have made the court reluctant to go more than half way, awarding the reinstatement of the accused employees but not back salary. In other words, the court struck a compromise.

Under the circumstances, we are not prepared to say that the court committed an error in stopping where it did. Indeed if we were forced to express our own opinion, we might say that Fabroa's and Carandang's dismissal was not entirely devoid of justification and that with their reinstatement they had reason enough to be satisfied. Certainly the management had not been guilty of unfair labor practices. It was Fabroa and Carandang who committed acts bordering on unfair labor practice.

It was insinuated that the company's decision to lay off some of its employees was a retaliation to the Union's demands. It so happened that it was the other way around for, as has been seen, the demands were submitted after the proposed cut in personnel was announced. There was obviously an attempt here to mislead; and there is no doubt that Fabroa and Carandang also misled their co-employees into believing that a petition had already been lodged with the Court of Industrial Relations.

The court made no comment on these misstatements and we are not precluded from making our own finding. Our belief is that such misstatements as an obvious case of bad faith should not be lightly regarded.

Bearing on these misstatements is one charge on which the court failed to make a finding and which does not put Fabroa and Carandang in good light. It is that these employees blocked the company's entirely legitimate efforts to explain to its personnel the precarious state of its business. Fabroa's and Carandang's actions were all the more unwarranted, in our opinion, because Gunnell's memorandum sounded reasonable and was couched in sympathetic and conciliatory language, and the projected meeting did not in any way tend to prejudice or compromise the employees' interest. On the contrary, it was to have been a good occasion for them to air their grievances, if they had any, and to state their reasons why the contemplated layoff should not be carried out. If the

Union must have spokesmen Fabroa and Carandang were there and there was nothing to prevent representatives of the national organization from being summoned.

Coming down to the question of the legality of the strike, the ground for the court's denial of the employees' claim to compensation during the period of strike, although the strike was adjudged legal, was that the said employees "quit work voluntarily as a manifestation of protest in the action of the management."

Since the walkout was launched for the sole reason that Fabroa and Carandang had been dismissed, the right of the striking employees to backpay can be no greater than the right of Fabroa and Carandang to remuneration during their separation. A stream can not run higher than its source.

There was no justifiable cause for the employees to stop working immediately following or simultaneously with Fabroa's and Carandang's dismissal. Having been paid or promised a month's salary, Fabroa and Carandang had the wherewithal to tide over their unemployment for at least one month, and the matter of their suspension was to have been taken up with, the Court of Industrial Relations or, as the employees had been led to believe, was already in the hands of the court. There was therefore no urgent need for a strike and if the employees struck they did so at their risk. Until all the remedies and negotiations looking toward the adjustment or settlement of labor disputes have been exhausted, the law does not look with favor upon resorts to radical measures, the pernicious consequences of which transcend the rights of the immediate parties.

For another thing, witnesses testified that during the strike a saleslady on her way to the company's store had been grabbed by the arm by one of the strikers and eluded for going to work again, and that on August 10, 1950, three strikers made a motion to lay hands on a clerk though they did not succeed in their attempts, thanks to the intervention of one Leoncio Bahiyot who pushed the would be assault victim inside a store to separate him from his assailants.

In refusing to give credence to the company's evidence on these occurrences the court was swayed entirely by the fact that "no incident of whatever nature had been reported to the police." It was from this fact alone that the court concluded that "the strikers had not committed acts of violence or caused injuries to persons or damages to properties."

Findings on the weight of evidence by the Court of Industrial Relations are conclusive, but findings unsupported by substantial or credible proof are not binding on the reviewing court. Now, the mere circumstance that the police was not called had no rational probative force to discredit the testimony of otherwise credible witnesses, testimony which had all the ring of truth. The Court overlooked the fact that the untoward incidents did not produce results serious enough to warrant police intervention or criminal prosecution, and the more important fact that under the existing state of passions the frustrated violence was better forgotten than kept alive for the good of all concerned.

All things considered, we are of the opinion that the court committed no error in holding that the strike was voluntary as it was unnecessary and in denying the employees' claim to remuneration for the period they did not report for work.

The appealed order is affirmed without costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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