

OLEGARIO BRITO, PETITIONER, VS. COURT OF INDUSTRIAL RELATIONS AND DENCIA'S KITCHENETTE WORKERS UNION, RESPONDENTS.

G.R. No. L-14201. May 31, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

Sometime in November, 1957, the Dencia's Kitchenette Workers' Union, in behalf of its members, filed with the Court of Industrial Relations a petition for differential pay and overtime compensation against Olegario Brito, their alleged employer.

Instead of answering, the respondent Olegario Brito, herein petitioner, moved to dismiss the petition on the grounds of lack of jurisdiction, prescription and lack of cause of action. The Industrial Court, however, resolved to defer action on the motion until after reception of evidence.

On December 18, 1957, the respondent filed his answer denying the allegations of the complaining union that its members were paid wages below the prescribed minimum wage and that they were not paid Overtime compensation. Respondent also reiterated as affirmative defenses the grounds upon which his motion to dismiss was based, alleging that petitioner's claim was simply for a sum of money, and by way of special defense averred that he became the owner of Dencia's Kitchenette at 95 Escolta, Manila, only in 1954.

Thereafter, the case was set for hearing on January 17, 1958, with due notice thereof sent to the parties through their respective counsel. As neither respondent nor his counsel appeared at the hearing, the Industrial Court allowed petitioner to present its evidence.

It would appear, however, that counsel for respondent was sick and confined in bed for several days prior to the date of hearing and that he came to know of said hearing only on January 20, 1958, when he returned to his office and went to the Court of Industrial Relations to find out about the status of the case. So, on the following day, January 21, respondent, through counsel, filed a motion, praying that he be given a chance to cross-examine the petitioner's witnesses and to present his evidence, it being alleged that his failure and that of his counsel to attend the hearing was due to excusable negligence, the latter's clerk, as explained in the affidavit attached to the motion, having misplaced the notice of hearing and, due to the volume of his work, failed to notify any of the lawyers in the office about it. Respondent, likewise, alleged that he has good and valid defenses, which he could prove if given a chance.

The motion, however, was denied by the lower court in an order dated July 14, 1958. Respondent moved to reconsider this order, supporting his motion with a memorandum together with his affidavit of merits and the sworn statements of his counsel and that of the latter's clerk as well as the certification signed by counsel's attending physician. The motion for reconsideration having been denied by the court en banc, with Judge Emilio C. Tabigne dissenting, respondent is now before this Court, praying that the order of the Industrial Court and the resolution en banc denying his motion for reconsideration be set aside, that the court be directed to allow him to

cross-examine the witnesses for the petitioner and to present evidence in his own behalf; and that he be granted such other just and equitable remedy under the premises.

We believe the failure of respondent, herein petitioner, and that of his counsel to appear on the date set for hearing has been satisfactorily explained. The notice of hearing, as stated in a sworn statement by counsel's clerk-messenger who received the same, was inadvertently misplaced by him with the papers of one of the many cases bearing the same title still pending with the court below, and due to his numerous duties and errands at the time he failed to note down the date of hearing in the calendar of cases in the office as well as to inform any of the lawyers therein about it. On the other hand, for several days prior to the date of the hearing and a few days thereafter, Atty. Antonio Gaw, who was personally handling the case, was sick and confined in bed. He was, consequently, not aware of the date of the hearing. These circumstances, in our opinion, constitute excusable negligence (see *Herrera vs. Far Eastern Air Transportation, Inc.*, G. R. No. L-2587, Sept. 19, 1950; *Miranda vs. Legaspi*, 92 Phil., 290; 48 Off. Gaz., 4819) sufficient to warrant the grant of herein petitioner's motion to be given a chance to cross-examine the witnesses for the complaining union and to submit evidence in his own behalf. This view, as stated by Judge Emilio C. Tabigne in his dissenting opinion, is fully in accord with the provisions of Sections 13 and 20 of Commonwealth Act No. 103, as amended, "that in the hearing, investigation and determination of any question or controversy and in exercising any duties and power under this Act, the 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 technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable."

It is significant to note that Atty. Gaw, upon returning to his office on January 20, 1958 immediately went to the Court of Industrial Relations to follow up and find out the status of the present case, and that upon being informed by a court personnel that said case was heard on January 17, 1958, he immediately filed a motion for leave to cross-examine the witnesses for the petitioning union and to present evidence in behalf of his client, herein petitioner. Since the application was made promptly and before rendition of judgment, we do not think material prejudice to the members of the complaining union would result by permitting a defense on the merit. In the case of *Selma vs. Philippine Land-Air-Sea Labor Union (PLASLU) Inc., et al.*, (G. R. No. L-9884, December 28, 1957), this Court held that—

***** a slight delay in the adjudication of the case occasioned by a reasonably justified continuance of the hearing of the case, to afford the herein petitioner the opportunity to cross-examine the witnesses of the herein respondent and to present evidence in his behalf, would not materially prejudice the members of the respondent union. It is in consonance with fairplay and justice."

In view of the foregoing, the order and resolution complained of are set aside and the case remanded to the Court of Industrial Relations for further proceedings to afford the petitioner, respondent in the court below, the opportunity to cross-examine the witnesses of the herein respondent union and to present evidence in his own behalf. No costs shall be taxed.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Barrera, JJ., concur.

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