

NATIONAL LABOR UNION, PETITIONER, VS. INSULAR-YEBANA TOBACCO CORPORATION, RESPONDENT.

G.R. No. L-15363. July 31, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

The legal issue presented in this case has been stated correctly by the respondent and is as follows:

"In an unfair labor practice proceeding under Republic Act 875, charging an employer of discriminatory dismissal of an employee because of union activity which results in the dismissal of the case in view of a negative finding that the employer did not dismiss the employee for union activity, may the Court of Industrial Relations order the reinstatement with back pay of the dismissed employee pursuant to the provisions of Section 19 of Commonwealth Act 103, as amended, on the ground that the dismissal was 'not justified.'" (Page 5, Respondent's memorandum in lieu of oral argument)

The facts that have brought the above issue before Us may be briefly stated as follows: The petitioner herein, the National Labor Union, filed charges against the respondent Insular-Yebana Tobacco Corporation, in Court of Industrial Relations Case No. 798-ULP, alleging discriminatory dismissal by the respondent of two employees, Juana Torres and Dominador Gonzales, and charges for discriminatory dismissal of Honorato Gabriel in CIR Case No. 851-ULP. The cases were heard by Judge Arsenio I. Martinez who made, in his decision of December 26, 1957, the following findings on the above charges:

As to Juana Torres:

"Under the facts of this case, it may be argued that the company was not completely justified when it dismissed Juana Torres. Be that as it may, still the fact remains that in an unfair labor practice case like the one at bar, the sufficiency or insufficiency of the cause of her dismissal is not the issue but rather whether the dismissal of Juana Torres was due to her union activity. As pointed out elsewhere, the evidence does not warrant a finding that Juana Torres was dismissed because of her alleged union activity. It is therefore respectfully recommended that the complaint in Case No. 798-ULP insofar as it alleges discriminatory dismissal of Juana Torres be dismissed."

As to DOMINADOR GONZALES

"After considering the evidence presented by both parties, the undersigned is fully convinced that the immediate and fundamental cause of the dismissal of Gonzales was the quarrel that took place between him and Dionisio Toh on August 2, 1955. This conclusion is supported by the undisputed fact that Gonzales was barred from entering the company's compound the next day, Aug. 3, 1955 and since that time was not allowed to work by respondent company. While the union attempted to show that Gonzales was not at fault and therefore should not be blamed for the quarrel, still the preponderance of evidence shows that it was the cause of the dismissal. * * * Under the circumstances the undersigned is led to conclude that Gonzales invented the tale about his alleged union activity and the conversation between him and the company's manager to make it appear that his dismissal was caused by an unfair labor practice committed by the company."

In the case of Honorato Gabriel, the findings are as follows:

"Considering the evidence presented by the parties, the undersigned is fully convinced that Gabriel was not dismissed because of his union activities. He ceased working because the machine he was operating broke down. Said machine has not been repaired up to now and the evidence also shows that it is already very old and worn out. As a matter of fact it was salvaged from a fire and broke down very often. The union has not indicated any place where an axle may be bought to replace the broken one. While the machine presented by the union as witness claimed that the broken axle could have been welded together, his superior, the chief mechanic, claimed otherwise. Considering that the chief mechanic's experience in his line of work dates back to 1937, the undersigned is inclined to give due weight and credit to his expert testimony.

"As stated above, it was claimed by Gabriel that the company refused to repair the machine because of his union activity. The undersigned, however, cannot see any harm or prejudice caused to the company by reason of such activity. On the other hand, the non-operation of the machine is patently disadvantageous to the company as it was deprived of the products produced by that machine. The only logical and sensible conclusion that can be arrived at in this case is that the company did not endeavor to repair the machine of Gabriel for legitimate business reasons and not because of his union activity.

"It is therefore respectfully recommended that the complaint in Case No. 851-ULP alleging discriminatory dismissal of Honorato Gabriel be dismissed."

A motion for the reconsideration of the above decision of Judge Martinez having been submitted to the court en banc, the majority sustained the decision of Judge Martinez.

Judge Bautista, with whom Judge Villanueva concurred, held that as the removal was not fully justified, and since the offenses were so trivial and insignificant, Juana Torres and Dominador Gonzales should be reinstated with back wages.

With the above-quoted portions of the decision and dissent, it is clear that the issue is as hereinabove quoted. It must be noted that the cases were instituted for unfair labor practice by the National Labor Union against the Insular-Yebana Tobacco Corporation. In the case of Juana Torres, it was charged that she was dismissed from her work because "she campaigned actively against the president of the Union as alleged in the complaint." (Page 1, Decision of the Court of Industrial Relations.) In the case of Dominador Gonzales, it is charged that he was dismissed "Because I (Gonzales) am a rabid member of the union and I was campaigning for membership to be able to change our president." (Page 5, Ibid.) In the case of Honorato Gabriel no specification of unfair labor practice is made because even the complainant Gabriel stated or admitted that the axle of the machine, which he operated, broke and as the machine had not yet been repaired he was unable to do any work.

The proceedings had in the Court of Industrial Relations are, therefore, the proceedings described in Section 5 of the Industrial Peace Act (Rep. Act No. 875). Pertinent provisions of said Act are as follows:

"SEC. 5. Unfair Labor Practice Cases.— (a) The Court shall have jurisdiction over the prevention of unfair labor practices and is empowered to prevent any person engaging in any unfair labor practice. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by an agreement, code, law or otherwise.

(b) * * * Whenever it is charged by an offended party or his representative that any person has engaged or is engaging in any such unfair labor practice, the Court or any agency or agent designated by the Court must investigate such charge and shall have the power to issue and cause to be served upon such person a complaint stating the charges in that respect and containing a notice of hearing before the Court or a member thereof, or before designated Hearing Examiner at the time and place fixed therein not less than five nor more than ten days after serving the said complaint.***

(c) * * * If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person such unfair labor practice and take such affirmative action as will effectuate the policies of this Act, including (but not limited to) reinstatement of employees with or without back-pay and including rights of the employees prior to dismissal including seniority. Such order may further require such person to post the Court's order and findings in a place available to all the employees and to make reports from time to time showing the extent to which the Court's order has been complied with. If after investigation the Court shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Court shall state its findings of fact and shall issue an order dismissing the said complaint. If the complaining party withdraws its complaint, the Court shall dismiss the case."

The question now before us may be stated thus: In a proceeding for the trial of charges of unfair labor practice, prosecuted in accordance with Section 5 of Republic Act No. 875, pertinent portions of which are as quoted above, can the court grant a remedy such as reinstatement and back pay, even if the complaint is to be dismissed because the unfair labor practice alleged to have been committed has not been proved or found to exist?

A consideration of the entire law on the matter clearly discloses the intention of the lawmaker to consider acts which are alleged to constitute unfair labor practices as violations of the law or offenses, to be prosecuted in the same manner as a criminal offense. The reason for this provision is that the commission of an unfair labor practice is an offense against a public right or interest and should be prosecuted in the same manner as a public offense. It should also be noted that there is no provision in Section 5 for the return or reinstatement of a dismissed employee, if the charge for unfair labor has not been proved. On the contrary, the provision of the law is clear and express that if the acts alleged to have been committed as constituting unfair labor practice have not been proved, or if the complainant asks for the dismissal of the case, the charges for unfair labor practice shall be dismissed.

But the dissenting opinion as well as petitioner herein ask: What is the remedy left to the employee who has been dismissed if the dismissal is not entirely justified, when there is no proof of the existence of unfair labor practice? We note that in the beginning of Section 5 of the Industrial Peace Act (Republic Act No. 875), this prohibition is contained:

"(b) The Court shall observe the following procedure without resort to mediation and conciliation as provided in section four of Commonwealth Act Numbered One hundred and three, as amended, or any pre-trial procedure:" (Sec. 5, R. A. 875)

This prohibition confirms the principle above indicated governing the proceeding in unfair labor practice cases, i. e., that the proceeding is in the nature of a public prosecution for an offense or offenses defined in the Industrial Peace Act. This prohibition against the court's exercising its power of conciliation and mediation, is in complete consonance with the directive contained in the same section that if unfair labor practice has not been proved or if the complainant withdraws his charges, the unfair labor practice case shall be dismissed. The reason for the distinction between an unfair labor practice case and a mere violation by an employer of its contractual obligation towards an employee, is, as we have stated above thus: That unfair labor practice cases involve violations of a public right or policy, to be prosecuted like criminal offenses; whereas a breach of an obligation of the employer to his employee is only a contractual breach to be redressed like an ordinary contract or obligation. To this effect has been the express ruling in the United States in the case of *National Labor Relations Board vs. Newark Morning Co.*, 120 F (2d) 262, 265-266.

"If during the life of such a contract an employee is discharged because of union membership and activity in direct violation of the terms of the contract, the employer has violated a contractual right of the employee which the latter is entitled to have enforced. But this is a breach of a private right which may be redressed in

the manner stipulated in the agreement or by the recourse to the courts. The National Labor Relations Act contemplates no more than the protection of the public right which it creates and defines. *National Licorice Co. vs. Labor Board*, 300 U. S. 350, 366, 84 L. ed. 799. The breach of a covenant against discharge may not be redressed by the Board because, while clearly a breach of contract, the discharge is not an unfair labor practice within the meaning of the National Labor Relations Act since it cannot possibly have the effect of interfering with, restraining, or coercing the employees in exercising a right of collective bargaining which has already been fully and successfully exercised by them. The Board is concerned only with those situations in which an employer and his organized employees have not yet reached agreement, it is no part of its duty to police relations between an employer and his employees under a collective bargaining agreement. To construe the Act otherwise would be to impose upon the Board the Herculean task of supervising the day to day relations of employers and employees in the vast and ever growing segment of commerce and industry in which successful collective bargaining has well nigh eliminated industrial strife. If Congress had intended that the Board should assume such enormous additional responsibility it would certainly have expressly so provided. This, as we have seen, it did not do." (*National Labor Relations Board vs. Network Morning L. Co.*, 120 F.[2d] 262, 265-266).

A similar or parallel case is that of the *National Labor Relations Board vs. Union Pacific Stages*, 99 F [2d] pp. 153, 177-179, in which the following principles are laid down.

"* * * Because the discharged drivers admittedly were guilty of infractions of the respondent's rules and regulations the Board has sought to show that these breaches were trifles and that the real reason for the discharges was the union activities of the drivers. It thus ignores and minimizes the violations and bases its order on what is referred to as "background", which we have shown is not correctly presented or rightly interpreted and therefore not to be relied upon. Not only is 'there no evidence which shows that respondent was seeking for an opportunity to discharge these drivers, but there is affirmative evidence to establish the contrary conclusion * * *."

"* * * The National Labor Relations Act was not intended to empower the National Labor Relations Board to substitute its judgment for that of the employer in the conduct of his business and did not deprive the employer of the right to select or dismiss his employees for any cause except where the employee was actually discriminated against because of his union activities or affiliation. It did not authorize the Board to absolve employees from compliance with reasonable regulations for their government and guidance. The Act does not vest in the Board managerial authority * * *."

"We find that the evidence fails to sustain the finding of the Board 'that the respondent has discriminated with respect to the hire and tenure of employment of Hebe Dobbs and Carrol B. Kiesel for the purpose of discouraging membership in the Union,' and the order of the Board requiring respondent to reinstate them in their former positions, or to remunerate them for any losses of pay is set aside, and the complaint with respect to the discharges of said Hebe Dobbs and Carrol B. Kiesel dismissed." (*National Labor Relations Board vs. Union Pacific Stages, Inc.* 99 F [2d] pp. 15, 176-179).

The above considerations are believed sufficient to support the conclusion that we have reached, as above indicated, on the questions we proposed to answer at the beginning of this opinion. But it may not be superfluous to invite attention to some provisions of the laws on labor relations to assure ourselves that our conclusion is not contrary thereto.

Under Commonwealth Act No. 103, the power of arbitration and conciliation may be exercised only if an industrial dispute is causing or likely to cause a strike or lockout and the number of employees or laborers involved exceeds 30 (Sec. 4, Republic Act No. 103). Once the courts acquire jurisdiction and the case is pending before the court, the suspension, lay-off or dismissal of employees or laborers may not be made without the court's approval (Sec. 19, *Ibid*). After trial, the court is granted power to decide the nature and form of the remedy, or

award that it may grant, which remedy, may include reinstatement, suspension or otherwise (Sec. 13, *Ibid*). The only other instance where the court may order reinstatement of an employee is where the discharge of an employee is caused by his testifying or intention to testify in an investigation before it (Sec. 21, *Ibid*). As none of the above circumstances is present in the case at bar, the reinstatement in the court below suggested by the dissenting opinion may not be granted.

Under the Industrial Peace Act, the power of the Court of Industrial Relations in cases not certified to it by the President, seems to be limited to cases of unfair labor practice. The power and duty of mediation and conciliation under the law is not granted to the Court of Industrial Relations. Such power lies with the Conciliation Service of the Department of Labor, thus:

"It shall be the duty of the Service, in order to prevent or minimize labor disputes, to assist parties to labor disputes in settling such dispute through conciliation and mediation."

"The Service may proffer its services in any labor dispute in any industry either upon its own motion or upon the request of one or more of the parties to the dispute."

"If the Service is not able to bring the parties to agreement by conciliation within a reasonable time, it shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot." (Sec. 18, R. A. 875).

The duty thus imposed upon the Department of Labor is reiterated in Section 20 of the Industrial Peace Act which provides for the calling of labor management conferences, the purpose of which is "to establish a positive philosophy in the governmental approach to the problem of industrial relations" which "must rest, in keeping with the spirit of our democratic institutions, on an essentially voluntary basis." (Sec. 20, Republic Act No. 875). Furthermore, the Secretary of Labor is entrusted with the study of Labor relations and the causes of industrial unrest in order to increase "the usefulness and efficiency of collective bargaining for settling differences." (Sec. 22, *Ibid*).

We find that mediation and conciliation, except in cases of industries indispensable to the national interest and certified to be such by the President to the Court of Industrial Relations, is entrusted to the Department of Labor, which shall have as its aim the settling of industrial differences between labor and capital "on an essentially voluntary basis." So that in cases of conflict between an employer and an employee in the absence of any unfair labor practice, attempt should be made to settle the difference through the mediation of the Secretary of Labor or the Conciliation Service. Upon failure of this remedy it seems that recourse may be made to the ordinary courts for the enforcement of the respective rights of the parties in accordance with the terms of their labor agreements or in accordance with the provisions of law.

Our attention has been invited to cases already decided by Us in which orders for the reinstatement of dismissed employees were made even if apparently there was no finding that unfair labor practice was committed. The cases in question are *Confederated Sons of Labor vs. Anakan Lumber Co., et al.*, 107 Phil., 917; *Freeman Shirt Manufacturing Co., Inc., et al. vs. Court of Industrial Relations, et al.*, 110 Phil., 962; 61 Off. Gaz., (21) 3107; and *National Labor Union vs. Zip Venetian Blind, et al.*, *supra*, p. 407. In the first case *Confederated Sons of Labor vs. Anakan Lumber Co.*, we ordered the reinstatement of 45 laborers and employees who were not members of the union with which respondent had a contract with a closed-shop agreement clause. The case was started as one for unfair labor practice and we held that the employer had no right to dismiss the old employees, who are not members of the union with which it had a labor contract, notwithstanding the existence of a closed-shop agreement with another and later union (*United Workers' Union*). We did not expressly state in this case that the

return of the dismissed employees was ordered because an unfair labor practice was committed by respondent company. But that an unfair labor practice was committed is the import of the decision. The act of the company in dismissing the old employees, already so at the time of its contract with the United Workers Union, constitutes an unfair labor practice within the meaning of Section 4, paragraph 4 of the Industrial Peace Act, because the respondent company discriminated in regard to tenure of employment against the members of the petitioner-union, Confederated Sons of Labor, to the benefit of the United Workers' Union, helping to destroy the tenure of employment that the members of the Confederated Sons of Labor had already acquired at the time the closed-shop agreement was entered into.

In the case of *Freeman Shirt Manufacturing Co. vs. Court of Industrial Relations*, the action was also brought for unfair labor practice, it being charged that the company dominated the other union and violated Sec. 4 (a) of Republic Act No. 875 for having dismissed ten laborers. The charge for unfair labor practice was dismissed on the ground that the company had a closed-shop agreement which was made pursuant to law. But we held that the dismissed employees were entitled to reinstatement because their dismissal "was illegal." We said:

"Since a closed-shop clause in a collective bargaining agreement is inapplicable to employees who were already in the company's service at the time of its execution, the dismissal of the employees herein concerned is unjustified. (*Local 7, Press & Printing Free Workers (FFW) et al., vs. Tabigne etc., et al.*, 110 Phil., 962; *I Francisco Labor Laws*, 3rd ed. 374-375, citing *Electric Vacuum Cleaner Co., NLRB No. 75, 1939*, cited in *II Teller, Labor Disputes and Collective Bargaining*, 867-868.)"

"Petitioners contend that the dismissal of the charges of unfair labor practices against the company precludes any order for reinstatement. The contention is untenable, for the dismissal here was made pursuant to a closed-shop agreement which is unauthorized by law. In short, the dismissal was illegal. Ordinarily, the order for reinstatement should carry with it an award for back pay. Considering, however, that there is no local decision on point, we are inclined to agree with the lower court and give the company the benefit of the doubt regarding its claim that it acted in good faith and in the honest belief that, as the law now stands it could dismiss the employees who refused to join the winning or contracting union." *Freeman Shirt Manufacturing Co., Inc., vs. Court of Industrial Relations*, 110 Phil., 962; 61 Off. Gaz., (21) 3107.

An analysis of the facts of the case discloses that the act of the respondent company in discriminating against members of the union with which it had no contract in favor of the union with which it had recently entered into a closed-shop agreement, constitutes an unfair labor practice under Section 4, par. 4 of the Industrial Peace Act.

The third case, *National Labor Union vs. Zip Venetian Blind, et al.*, (supra, p. 407) which follows the preceding case, is to the same effect. We ordered the reinstatement of the employees saying that the employer had dismissed the company employees in good faith believing that it had the right to dismiss them by virtue of a closed-shop agreement. As in the two other preceding cases, the act of the company or employer in dismissing old employees because they do not pertain or belong to the union with which it had recently entered into a closed-shop agreement, is also an unfair labor practice within the meaning of Section 4, paragraph 4 of the Industrial Peace Act, because the company discriminated against the tenure of old employees, in favor of the members of a labor union with which it subsequently entered into a closed-shop agreement.

Resuming what we have explained above, we hold that the above cases, although not expressly declared by Us to be cases of unfair labor practice, are actually such cases because in each and every one of them the employer had discriminated against the tenure of old employees in favor of new employees belonging to a union with which it recently entered into a closed-shop agreement.

In conformity with the principles above expressed, we hold that the cases at bar having been instituted expressly as unfair labor practice cases, pursuant to Section 5 of the Industrial Peace Act, and no unfair labor practice

having been proved to have committed, the Court of Industrial Relations has no power to grant remedy under its general powers of mediation and conciliation, such as reinstatement or back wages, but must limit itself to dismissing the charges of unfair labor practice. Conformably thereto, we hold that the majority of the court below correctly dismissed the charges, without considering the merits of the claim of the two employees, Juan Torres and Dominador Gonzales, for reinstatement. No costs.

Bengzon, C. J., Padilla, Reyes, J. B. L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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