

DOJOSE, DOMEL TRADING AND DOMINGO JOSE, PETITIONERS, VS. HON. SECRETARY OF LABOR, THE NATIONAL LABOR RELATIONS COMMISSION AND INOCENCIO BARRIENTOS, RESPONDENTS.

G.R. No. L-44740. January 20, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

The Court of Industrial Relations, in a decision dated January 20, 1971, adjudged Domingo Jose and the corporations controlled by him, known as Dojose and Domel Trading, guilty of unfair labor practice for having dismissed Inocencio Barrientos due to his union activities, and ordered them to reinstate him to his former position of driver, with back wages from May, 1964, the date of the dismissal, up to his actual reinstatement (CIR Case No. 5277-ULP). The CIR denied the two motions for reconsideration of Domingo Jose, Dojose and Domel Trading.

Instead of asking this Court to review that decision, Domingo Jose, Dojose and Domel Trading on January 20, 1972 filed a motion in the CIR "to reopen the case". The CIR denied the motion in its order of May 28, 1974.

On June 14, 1974 Domingo Jose, Dojose and Domel Trading, with a pertinacity worthy of a better cause, filed another motion for reconsideration. Later, they moved that they be given a chance to argue the motion orally. The CIR did not act on those motions. After the Labor Code became effective, the case was turned over to the National Labor Relations Commission (NLRC).

In a decision dated July 1, 1975 the NLRC affirmed the CIR's 1971 judgment. Domingo Jose, Dojose and Domel Trading appealed to the Secretary of Labor. The Secretary, in a minute order dated July 27, 1976, affirmed the NLRC's decision with the modification that the earnings of Barrientos during the pendency of the case should be deducted from his back wages.

On October 7, 1976 Domingo Jose, Dojose and Domel Trading filed in this Court the instant petition for certiorari and prohibition. The petitioners seek to annul the 1971 judgment of the CIR on the ground of lack of jurisdiction. They also contend that they were denied due process; that the CIR's decision is not supported by substantial evidence; that there was no employer-employee relationship between Barrientos and the petitioners; that the two corporations were not yet in existence when the alleged unfair labor practice was committed, and that Domingo Jose, who had employed Barrientos as his family driver, was not sued as the employer of Barrientos.

Barrientos in his answer stressed that the long final and executory decision of the CIR could no longer be disturbed.

The Secretary of Labor and the NLRC, through the Solicitor General, interposed the plea of nonexhaustion of administrative remedies. They contended that the petitioners should have appealed to the President of the Philippines (Art. 222, Labor Code). The Solicitor General observed that the CIR had jurisdiction to decide the unfair labor practice case, that the NLRC and the Secretary of Labor had jurisdiction to review the CIR decision

(Art. 289, Labor Code), and that they did not gravely abuse their discretion in affirming the CIR decision. He adverted to the fact that Barrientos, although a family driver, was employed in Jose's business, which later became the business of two corporations controlled by him.

The issue is whether the petitioners have a cause of action for certiorari and prohibition or whether at this late hour the 1971 judgment of the CIR can still be annulled or modified.

We hold that the petition is patently devoid of merit. The CIR and the NLRC did not act without jurisdiction or in excess of jurisdiction. There is no jurisdictional issue involved in this case.

The petitioners simply failed to appeal from the CIR's decision. They should have seasonably appealed to this Court so that their contention that the decision is not supported by substantial evidence could have been duly resolved. Instead, they resorted to dilatory tactics. The CIR's decision has the force of res judicata.

The record shows that Barrientos was allegedly the family driver of Atty. Julian Villaluz from February 1, 1966 to March 30, 1968 and that from December 5, 1969 up to January 28, 1971, he was an "extra regular taxi driver" of the Zomar Taxi (pp. 83-84, Record). Because of these alleged facts, the Secretary of Labor directed that the earnings of Barrientos should be deducted from his back wages.

WHEREFORE, the order of the Secretary of Labor is affirmed. No costs.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

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