

NORTON & HARRISON CO. & JACKBUILT CONCRETE BLOCKS CO. LABOR UNION (NLU), PETITIONER, VS. NORTON & HARRISON CO. & JACKBUILT CONCRETE BLOCKS CO., INC. AND ALBERTO GOLDEN, RESPONDE...

G.R. No. L-18461. February 10, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Jaime Arcaina was employed since 1953 in Norton & Harrison Co. & Jackbuilt Concrete Blocks Co., as a mechanic. Arcaina joined the Norton & Harrison & Jackbuilt Concrete Blocks Co. Labor Union-NLU. From September of 1956 to September of 1957 he was the president of said union. And as president, he followed up a petition of the union setting forth several demands. Apparently, though promised to be considered, none of said demands was granted during Arcaina's term as president. After September 17, 1957, when Arcaina lost, the presidency of the union to Jorge Dakila, he remained an active member of the union, pressing its officers to continue the aforementioned demands.

On Saturday afternoon, May 24, 1958, Arcaina, during the course of his work, said to the assistant superintendent, Artemio Martinez: "Pare, I will only work up to 5:00." Martinez did not say anything. And Arcaina left at five that afternoon; his prescribed hours of work were from twelve noon to eight in the evening.

On the following Monday, May 26, 1958, Arcaina was dismissed by Alberto Golden, Manager of Jackbuilt Concrete Blocks Co., allegedly for having left his work without permission and in violation of the rules of the company and continuous disregard of orders from his superiors.

After incumbent Union president Jorge Dakila addressed a letter to the company on May 28, 1958, requesting Arcaina's reinstatement, the union filed, on May 30, 1958, a notice of strike alleging unfair labor practice by the company.

The parties failed to reach thru the conciliation proceedings any settlement, notwithstanding the efforts of the Department of Labor to this end. And on July 29, 1958, the union struck.

Subsequently, on October 23, 1958, around 300 strikers offered to return to work, but the company refused to accept them; it appears that other persons had been hired to replace them. On November 21, 1958, the union filed in the Court of Industrial Relations a complaint against the Company for unfair labor practice, allegedly consisting of (1) the dismissal of Arcaina, which precipitated the strike; and, (2) the refusal to accept the strikers who offered to return to work, as afore-stated.

After joinder of issues and trial, on January 25, 1960, the Court of Industrial Relations rendered thru Presiding Judge Jose S. Bautista (as trial judge) a decision ordering Arcaina's reinstatement with back wages from May 23, 1958 and the reinstatement of the strikers who were refused acceptance when they offered to return to work, also with back wages, from October 23, 1958. Said trial Judge found that Arcaina's dismissal was real ly done due to

his activities for the union, and, there fore, an unfair labor practice; and that the strike called thereafter was prompted by said dismissal, and, thus, an unfair labor practice strike, resulting in the strikers' right to be reinstated with back wages even if their positions had been filled by others during the strike.

Against this decision, the company filed a motion seeking reconsideration by the full court. And on May 19, 1961, the Court of Industrial Relations en bane reversed said decision per resolution finding that Arcaina's dismissal was not due to union activities but for a just cause, that is, leaving his work without permission. It further held, as a result, that the strike was not an unfair labor practice strike but merely an economic strike, so that strikers replaced by other workers cannot demand reinstatement.

Petitioner union herein appeals from the resolution of the Court of Industrial Relations en bane. Appellant's contentions are that Arcaina's dismissal constituted unfair labor practice; that the strike was an unfair labor practice strike; and, that, therefore, Arcaina and the strikers are entitled to reinstatement with payment of back wages.

The record shows conflict of testimonies as to whether Arcaina obtained permission from his superintendent to work only up to five in the afternoon of May 24, 1958.[1] And the finding of the Court of Industrial Relations en banc is, as afore-stated, that he did not. Said finding being one of fact and supported by substantial evidence, should not be disturbed by Us.[2]

It has likewise been found, however, as borne out by the record, that Arcaina's dismissal was in disregard and violation of the stipulated procedure in the parties' collective bargaining agreement. Said provision required that:

"I. All personnel will be directly under the President of the Company; and in his absence the Vice President of the Company will be in charge.

"(1) All cases of dismissal will be handled by the President of the Company. In his absence, the Vice President will take action on the recommendation of a Board of four (4) representatives of management with four (4) union representatives."

Not only did the management fail to observe the required and usual procedure for dismissal, but it acted posthaste and without affording Arcaina sufficient time and opportunity to present his side. And said absence of fair chance to be heard was not remedied when 18 days afterwards the president of the company stated in a letter (Exh. I) to the union that he thereby "confirmed" the dismissal.

Since Arcaina was the former president of the union and his activities for and in the union—which were well known—had continued even after his presidency, as a member of said union, his swift dismissal without benefit of the required procedure, for an infraction of a rule of the company that resulted in no appreciable damage to the latter, could not but reasonably lead the union and its members into believing that said dismissal was in reality predicated upon his union activities.

For this reason they filed a notice of strike alleging unfair labor practice,[3] they raised during the conciliation proceedings Arcaina's dismissal as alleged unfair labor, practice; and in their so-called "Union's Final Stand" in said proceedings, they expressed willingness to forgo their economic demands, but not the reinstatement of Arcaina.

The net result of these facts and circumstances is to bring the strike in the present case within the ruling in *Ferrer et al. vs. C. I. R.*, L-24267-68, May 31, 1966. Said this Court therein:

"Although the Management may have had the strict legal right to take against union members the disciplinary and other administrative measures above referred to, there is no denying the fact that the time chosen by the Management therefor, when considered in relation with the attending circumstances, reasonably justified it."

belief of the Union that the real or main purpose of the Management was to discourage membership in the Union, to discredit its officers thereof, to weaken the Union and to induce or compel same to sign the draft of agreement Exhibit D as amended, on May 29 and 30 or 31, 1963. As stated in the decision of His Honor, the trial Judge, said belief was confirmed by the fact that prosecutors of the Court of Industrial Relations found sufficient grounds to file and did file, against the Management, a complaint for unfair labor practice.

"In other words, both parties had performed acts which understandably induced each to believe that the other was guilty of such practices—although, as we now analyze the whole situation, without the excitement, the heat and the passion of the direct participants in the labor dispute, at the peak thereof, such belief may not turn out to be borne out by the objective realities—and both were reasonably justified in taking the counter measures adopted by them. As a consequence, we hold that the strike in question had been called to off-set what petitioners were warranted in believing in good faith to be unfair labor practices on the part of Management, that petitioners were not bound, therefore, to wait for the expiration of thirty (30) days from notice of strike before staging the same, that said strike was not, accordingly, illegal and that the strikers had not thereby lost their status as employees of respondents herein. Upon the other hand, considering that the latter have been absolved from the charge of unfair labor practice, the reinstatement of the strikers must be without backpay."

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So, also, in this case, the act of the company in dismissing Arcaina, done without the required fair hearing, and, therefore, not tenable even under strict legal ground, induced the union and its members to believe that said company was guilty of unfair labor practice, altho viewed now in retrospect said act would fall short of unfair labor practice. Since the strike of the union was in response to what it was warranted in believing in good faith to be unfair labor practice on the part of Management, said strike, following the Ferrer ruling, did not result in the termination of the striking members' status as employees, and, therefore, they are still entitled to reinstatement but without back wages.

Anent the company's argument that reinstatement of said strikers would be unfair to those who had been taken in to replace them, during the strike, when the company direly needed their services, suffice it to consider two other points. The first is that said other workers must be deemed to have accepted their employment as replacements with the knowledge that the same is subject to the consequences of the labor dispute between the strikers and the company on the resolution of which depended the effects of the strike as to right to reinstatement of the strikers. The second point is that said workers had by now been engaged for almost nine years, so that it is not inequitable for them to be made to yield their positions to those finally ruled to be with right to occupy the same.

As to Arcaina himself, as heretofore said, his dismissal cannot be sustained for lack of the requisite fair hearing; he should therefore also be reinstated, without back wages, the intervening period without pay between his dismissal and reinstatement being deemed sufficient penalty for his leaving his work without definite and clear permission from his superiors, a fact duly ascertained only in the course of the proceedings in the Court of Industrial Relations.

Wherefore, the resolution en bane of the Court of Industrial Relations dated May 19, 1961 is hereby reversed, and respondents company and manager are hereby ordered to reinstate, without back wages, Jaime Arcaina and the strikers of the union who offered to return to work on October 23, 1958, the reinstatement to be made, in both cases, sixty days after the finality of this Court's decision herein. So ordered.

Concepcion, C. J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Resolution reversed.

[1] Arcaina testified that he did (tsn. Jan. 20, 1959, pp. 53-54); Martinez, that he did not (tsn. March 31, 1959, pp. 5-7); Dakila stated that Martinez admitted to him that permission was given (Tsn., March 16, 1959, p. 8); Golden said that Martinez when confronted by him said no permission was granted (Tsn., May 5, 1959, pp. 18-19).

[2] National Fastener vs. CIR, L-15834, Jan. 20, 1961; Lu Do & Lu Ym Corp. vs Phil. Land-Air-Sea Labor Union, L-18450, May 29, 1964.

[3] From the filing of a notice of strike it does not necessarily follow that the projected strike is not for ULP; in a ULP strike, notice of strike is not necessary but neither is it prohibited.

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