

JOSE MA. GONZALES, PETITIONER, VS. VICTORY LABOR UNION (VICLU), JULIAN BOLTRON, SEVERINO APAWAN, PONCIANO SAYAM, AND QUIRICO MENDEZ, RESPONDENTS.

G.R. No. L-23256. October 31, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case is before us on review by certiorari of the decision of the Court of Industrial Relations dated May 8, 1963, and of its resolution of July 19, 1963, in Case No. 303-ULP-Cebu, Victory Labor Union (VICLU) et al., vs. Jose M. Gonzales.

Herein petitioner Gonzales was engaged in trawl fishing, and among his employees were Julian Beltran, Severo Apawan, Ponciano Sayan, Quirico Mendez and Virgilio Baes - all of them working to petitioner's fishing boat, the M/L Emiliana. On March 31, 1962 the Acting Prosecutor of the Court of Industrial Relations filed a complaint against petitioner, charging him with unfair labor practice in dismissing said employees without just cause but by reason of their membership in VICLU and thereby interfering and coercing them in the exercise of their right to self-organization.

Gonzales admitted in his answer that the complainants, except Virgilio Baes, were his employees, but denied that he dismissed them for their union affiliation, and alleged that their dismissal was for cause, they having been found to have connived with each other in pilfering the catch of the fishing boat and selling the same to the public for their personal benefit. Petitioner further denied that he had knowledge, prior to the filing of the complaint, of the complainants' membership in the labor union.

After trial, the court below, in a decision penned by Presiding Judge Jose S. Bautista, held herein petitioner guilty of unfair labor practice, ordered him to cease and desist from the acts complained of and directed the reinstatement of the complainants with back wages from February 7, 1962, which was the date of their dismissal. Petitioner filed a motion for reconsideration before the Court en banc, but the motion was denied in a minute resolution signed by Presiding Judge Bautista and concurred in by Associate Judges Arsenio I. Martinez and Baltazar M. Villanueva. An extended dissent, however, was filed, by Associate Judge Emiliano C. Tabigne, with the concurrence of Associate Judge Amando C. Bugayong.

In this case we are again faced with the application of the substantial evidence rule,[1] under which the findings of fact of the Court of Industrial Relations are not disturbed on appeal as long as they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." [2]

There is one circumstance which, at the very outset, has detained us from accepting the findings of fact in the decision appealed from as conclusive, namely, that the said decision was rendered by an almost evenly divided court and that the division was precisely on the facts as borne out by the evidence. In such a situation this Court feels called upon to go over the record and, in order to determine the substantiality of the evidence, consider it not only in its quantitative but also in its qualitative aspects. For to be substantial, evidence must first at all be

credible.

The question then is whether or not the conclusion of the bare majority of the Court below, that the complainants there, now respondents, were dismissed by petitioner for their union affiliation, meets the test thus established. The only evidence on this point is the testimony of respondents Julian Beltran, Severino Apawan and Quirico Mendez, as well as the testimony of the union president, Attorney Loreto G. Campos. The first three more or less uniformly declared that they be-came members of VICLU on November 15, 1951 by signing the corresponding membership slip (Exh. A); that they had not violated any rule or committed any irregularity in the performance of their duties; and that on February 7, 1962 they were called by the management and told that they were being dismissed by reason of their union membership. Upon its face and considered in isolation, such evidence could conceivably meet the test of substantiality. But there is other evidence which cannot be lightly dismissed without arbitrarily closing the door to a judicious discharge of the power of review, within the limits set down by the rule.

1. First of all, there is the membership slip signed by complainants Julian Beltran, Severino Apawan, Ponciano Sayan and Quirico Mendez when they allegedly affiliated to the Victory Labor Union. The slip is likewise signed by the union president, Attorney Loreto G. Campos, and bears the handwritten date in ink, "Nov. 15, 1951." Attorney Campos categorically affirmed on the witness stand the correctness of the date thus written, and said that the actual signing was done in the morning of that day. Yet the log book of the M/L Emiliana shows that the whole day of November 15, 1961 the boat was out fishing in the sea off Bohol. Between the entries in a log book, which is required by law to be kept by every master or captain of a registrable vessel, and a membership slip such as that signed by respondents, the first is undoubtedly more reliable.

2. The complaint for unfair labor practice named Virgilio Baes as one of the five complainants, all members of VICLU. According to Attorney Campos, when examined at the trial, Baes was not a member of the union at all, had not signed any membership paper, and was included in the complaint only through inadvertence. His inclusion certainly does not speak well of Attorney Campos' credibility as witness, particularly in the light of his other testimony that before he prepared the complaint, as president and lawyer of the union, he investigated the complainants one by one, and that there was a preliminary hearing of the case by the prosecutor of the Court.

3. Petitioner was never officially notified that respondents were members of the Victory Labor Union. No demand for check-off deductions from their wages was ever served upon him. In fact, respondents themselves said that from November 15, 1961, up to the time of their dismissal from employment on February 7, 1962, they did not pay any monthly union dues. And although all the crew members of the M/L Emiliana were supposedly affiliated to VICLU, no attempt whatsoever was made by the latter to secure a collective bargaining agreement or at least a certification election.

4. A significant fact is that it was not only respondents who were dismissed by petitioner but also the captain of the vessel himself, Ernesto Baroc, who was not a member of the union and whose dismissal was for complicity in the pilferage of the catch of the M/L Emiliana.

The foregoing circumstances, objective as they are, lend strong support to the testimony of petitioner Gonzales and of his witness Felipe Jubay, to the effect that they had received evidence, consisting of reports from different sources, that whenever the boat arrived at Cebu after a fish-ing trip respondents would sell fish at very cheap prices; that Gonzales investigated them one by one and was convinced of their guilt; that he was not yet through with the in-vestigation, but they failed to return after February 7, 1962; and that he did not know they were members of any labor union.

Besides the foregoing evidence for herein petitioner the two dissenting members of the court below also con-sidered certain significant contradictions in the testimony of respondents. We quote from their opinion:

"Regarding their dismissal, we find that there was sufficient justification for the action taken by the employer. It appears that these employees were found to have sabotaged the interest of their employer. They pilfered the fish caught by them and sold them to private parties and pocketed the proceeds thereof. This circumstance is a clear indication of sabotage and pilferage pure and simple. And the dismissal of this instant case should, therefore, be in order.

It is claimed that there were acts of discrimination on the part of the employer when these employees were dismissed. We hold the contrary view. Let us take for instance the so-called interview of the four employees by the employer on February 7, 1962. One witness (Boltron) testified that the four of them were called together to the office of the management and told them that they were dismissed because management did not like their membership to their union. The other witness testified that such incident happened aboard the boat M/L Emiliana (Witness Mendez). In another instance, Witness Apawan said that he was called alone to the office of respondent employer and nobody was with them at the time he was told of his dismissal. These contradictory statements clearly indicate that the employer has no knowledge of their membership at the time except when the complaint was filed and notified by the filing of the same and their dismissal was not, therefore, motivated by any discriminatory act on the part of the employer. As stated above, we find that there was justification of their dismissal because of the pilferage committed by them in disposing a portion of the catch to private parties to the loss of their employer. When an employee has committed an act inimical to the employer's interest, his dismissal is just cause and may be permitted by this Court."

We conclude, in view of all the considerations above set forth, that the bare testimony of respondents, complainants below, is insufficient to establish the charge of unfair labor practice under the standard fixed by law and enunciated in the decisions of this Court.

The judgment appealed from is set aside, and the complaint is dismissed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Teehankee, and Barredo, JJ., concur.
Fernando, J., in the result.

[1] Sec. 6, R. A. No. 875.

[2] *Ang Tibay vs. CIR*, 69 Phil. 635; *Santiago Rice Mill vs. Santiago Labor Union*, G. R. No. 18040, August 31 1962; *Kaisahan Ng Mga Manggagawa sa La Campana vs. Tantongco*, G. R. No. L-18338, October 31, 1962.

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