

COMPAÑIA MARITIMA, PLAINTIFF-APPELLEE, VS. ALLIED FREE WORKERS UNION, SALVADOR T. LLUCH, MARIANO LL. BADELLES, INDIVIDUALLY AND IN THEIR CAPACITIES AS PRESIDENT AND VICE-PRESIDE...

G.R. No. L-28999. May 24, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

Antecedents. - Since the onset in 1954 of litigation between the parties herein, this is the fifth case between them that has been elevated to this Court. The incidents preceding the instant appeal are as follows:

On August 11, 1952 the Compañia Maritima and the Allied Free Workers Union entered into a written contract whereby the union agreed to perform arrastre and stevedoring work for the company's vessels at Iligan City. The contract was to be effective for one month counted from August 12, 1952.

It was stipulated that the company could revoke the contract before the expiration of the term if the union failed to render proper service. The contract could be renewed by agreement of the parties (Exh. J).

At the time the contract was entered into, the union had just been organized. Its primordial desire was to find work for its members. The union agreed to the stipulation that the company would not be liable for the payment of the services of the union "for the loading, unloading and deliveries of cargoes" and that the compensation for such services would be paid "by the owners and consignees of the cargoes" as "has been the practice in the port of Iligan City" (Par. 2 of Exh. J).

The union found out later that that stipulation was oppressive and that the company was unduly favored by that arrangement.

Under the contract, the work of the union consisted of arrastre and stevedoring services. Arrastre, a Spanish word which refers to hauling of cargo, comprehends the handling of cargo on the wharf or between the establishment of the consignee or shipper and the ship's tackle. The service is usually performed by longshoremen.

On the other hand, stevedoring refers to the handling of the cargo in the holds of the vessel or between the ship's tackle and the holds of the vessel.

The shippers and consignees paid the union only for the arrastre work. They refused to pay for the stevedoring service. They claimed that the shipowner was the one obligated to pay for the stevedoring service because the bill of lading provided that the unloading of the cargo was at the shipowner's expense (Exh. 1).

On the other hand, the company refused to pay for the stevedoring service because the contract (Exh. J) explicitly provided that the compensation for both arrastre and stevedoring work should be paid by the shippers and consignees, as was the alleged practice in Iligan City, and that the shipowner would not be liable for the payment of such services.

Thus, the issue of whether the company should pay for the stevedoring service became a sore point of contention between the parties. The union members labored under the impression that they were not being compensated for their stevedoring service as distinguished from arrastre service.

Although the arrastre and stevedoring contract (Exh. J) was disadvantageous to the union, it did not terminate the contract because its members were in dire need of work and work, which was not adequately compensated, was preferable to having no work at all (204, 214-5, 226-7 tsn May 20, 1960).

Upon the expiration of the one-month period, the said contract was verbally renewed. The company allowed the union to continue performing arrastre and stevedoring work.

On July 23, 1954 the union sent a letter to the company requesting that it be recognized as the exclusive bargaining unit to load and unload the cargo of its vessels at Iligan City. The company ignored that demand. So, the union filed on August 6, 1954 in the Court of Industrial Relations (CIR) a petition praying that it be certified as the sole collective bargaining unit.

Despite that certification case, the company on August 24, 1954 served a written notice on the union that, in accordance with paragraph 4 of the 1952 contract, the same would be terminated on August 31, 1954. Because of that notice, the union on August 26, 1954 filed in the CIR charges of unfair labor practice against the company.

On August 31, 1954 the company entered into a new stevedoring and arrastre contract with the Iligan Stevedoring Association. On the following day, September 1, the union members picketed the wharf and prevented the Iligan Stevedoring Association from performing arrastre and stevedoring work. The picket lasted for nine days.

On September 8, 1954 the company sued the union and its officers in the Court of First Instance of Lanao for the rescission of the aforementioned 1952 contract, to enjoin the union from interfering with the loading and unloading of the cargo, and for the recovery of damages.

On the following day, September 9, the lower court issued ex parte a writ of preliminary injunction after the company had posted a bond in the sum of P20,000. A few hours later on that same day the union was allowed to file a counterbond. The injunction was lifted. The union members resumed their arrastre and stevedoring work.

Later, the union assailed in a prohibition action in this Court the jurisdiction of the trial court to entertain the action for damages and injunction.

A majority of this Court held that the lower court had jurisdiction to issue the injunction and to take cognizance of the damage suit filed by the company but that the injunction was void because it was issued ex parte and the procedure laid down in section 9(d) of Republic Act No. 875 was not followed by the trial court (*Allied Free Workers Union vs. Judge Apostol*, 102 Phil. 292, 298).

After trial, the lower court rendered a decision dated December 5, 1960, amended on January 11, 1961, (1) declaring the arrastre and stevedoring contract terminated on August 31, 1954; (2) dismissing the union's counterclaim; (3) ordering the union and its officers to pay solidarily to the company P520,000 as damages with six percent interest per annum from September 9, 1954, when the complaint was filed; (4) permanently enjoining the union from performing any arrastre and stevedoring work for the company at Iligan City, and (5) requiring the union to post a supersedeas bond in the sum of P520,000 to stay execution.

The union filed a motion for reconsideration. On the other hand, the company filed a motion for the execution pending appeal of the money judgment. It filed another motion for the immediate issuance of a writ of injunction. That second motion was filed in the municipal court of Iligan City in view of the absence of the District Judge.

The municipal court issued the writ of injunction. However, this Court set it aside because it was not an

interlocutory order and no special reasons were adduced to justify its issuance (*Allied Free Workers Union vs. Judge Estipona*, 113 Phil. 748).

The union on January 6, 1961 had perfected an appeal from the lower court's original decision. It did not appeal from the amended decision. On March 24, 1962 the lower court issued an order declaring its amended decision final and executory in view of the union's failure to appeal therefrom. The court directed the clerk of court to issue a writ of execution. That order was assailed by the union in a certiorari action filed in this Court. A preliminary injunction was issued by this Court to restrain the execution of the judgment.

On May 16, 1962 this Court dissolved the injunction at the instance of the company which had filed a counterbond. Thereupon, the 225 members of the union yielded their ten-year old jobs to the new set of workers contracted by the company.

The certiorari incident was decided on June 30, 1966. This Court noted that the lower court amended its decision for the purpose of correcting certain errors and omissions which were not substantial in character and that its amended decision was served upon the parties after the union had perfected its appeal from the original decision.

Under those circumstances, this Court held that the union's appeal should be given due course, subject to the amendment of its record on appeal. This Court reserved to the members of the union the right to secure restitution under sections 2 and 5, Rule 39 of the Rules of Court (*Allied Free Workers Union vs. Estipona*, L-19651, June 30, 1966, 17 SCRA 513, 64 O.G. 2701).

Pursuant to that reservation, the union on December 16, 1966 filed a motion for restitution, praying that its 225 members be restored to their jobs and that the company be ordered to pay P1,620,000 as damages consisting of the lost earnings during the four-year period from May 8, 1962 to May 8, 1966.

On the other hand, the company in its motion of January 18, 1967 reiterated its 1960 motion for the execution of the lower court's judgment as to the damages of P520,000 and the permanent injunction.

Later, the company called the lower court's attention to this Court's decision dated January 31, 1967. In that decision, this Court affirmed the CIR's decision holding that the company did not commit any unfair labor practice and reversed the CIR's directive that a certification election be held to determine whether the union should be the exclusive bargaining unit. This Court held that the union could not act as a collective bargaining unit because the union was an independent contractor and its members were not employees of the company (*Allied Free Workers Union vs. Compañia Maritima*, L-22951-2 and L-22971, 19 SCRA 258).

The lower court in its order of April 25, 1967 (1) denied the union's motion for restitution and to stay execution of its amended decision on January 11, 1961 and (2) required the union to file a supersedeas bond in the sum of P100,000 within thirty days from notice. The bond was reduced to P50,000 in the lower court's order of August 16, 1967. The union posted the bond on August 24, 1967.

The lower court approved the union's amended record on appeal in its order of October 6, 1967.

The union appealed directly to this Court because the amount involved exceeds P200,000. The appeal was perfected before Republic Act No. 5440 took effect on September 9, 1968.

Other proceedings. - The company in its original complaint prayed that the union and its officials be ordered to pay actual damages amounting to P15,000 for the union's failure to load and unload cargo in and from the company's vessels from September 1 to 8, 1954; P50,000 as damages due to the union's inefficiency in performing arrastre and stevedoring work "during the latter part of the existence" of the contract; P50,000 as moral and exemplary damages (not supported by any allegation in the body of the complaint) and P5,000 as attorney's fees

(10-12, Record on Appeal).

On September 15, 1954 the company added a fourth cause of action to its complaint. It alleged that by reason of the acts of harassment and obstruction perpetrated by the union in the loading and unloading of cargo the company suffered additional damage in the form of lost and unrealized freight and passenger charges in the amount of P10,000 for September 9 and 10, 1954 (66, Record on Appeal).

On November 2, 1954 the company attached to its motion for the revival of the injunction against the union an auditor's report dated September 15, 1954 wherein it was indicated that the company lost freight revenues amounting to P178,579.20 during the period from January 1 to September 7, 1954 (121-143, Record on Appeal).

On November 27, 1954 the company filed another motion for the restoration of the injunction. In support of that motion, the company attached a trip operation report showing the unloaded cargoes on the company's vessels, when they docked at Iligan City on September 14, 19, 22 and 26 and October 3 and 5, 1954, as well as the delays in their departure (157-162, Record on Appeal).

On March 5, 1955 the company added a fifth cause of action to its complaint. It alleged that during the period from September 12 to December 28, 1954 it lost freight charges on unloaded cargoes in the sum of P62,680.12, as shown in a detailed statement, and that it incurred an estimated amount of P20,000 for overhead expenses for the delay in the departure of its vessels attributable to the union's unsatisfactory stevedoring and arrastre work (225-229, 237-8, Record on Appeal).

Also on March 5, 1955 the union answered the original and supplemental complaints. It denied that its members had rendered inefficient service. It averred that the termination of the contract was prompted by the company's desire to give the work to the Iligan Stevedoring Association which the company had allegedly organized and subsidized. The union filed a counterclaim for P200,000 as compensation for its services to the company and P500,000 as other damages (239-252, Record on Appeal).

On March 9, 1960 the company filed a third supplemental complaint. It alleged that the continuation of the stevedoring and arrastre work by the union for the company from 1955 to date had caused losses to the company at the rate of P25,000 annually in the form of lost freight on shutout cargoes and the expenses for the equipment used to assist the union members in performing their work (320-3, Record on Appeal).

Plaintiff company's evidence. - Jose C. Teves, the company's branch manager at Iligan City, testified that on August 24, 1954 he terminated the arrastre and stevedoring contract with the union (Exh. J) upon instruction of the head office. The contract was terminated in order to avoid further losses to the company caused by the union's inefficient service (85-86 tsn March 11, 1960).

After the termination of the contract, the members of the union allegedly harassed the company with the help of goons. The cargoes could not be unloaded in spite of the fact that the company had sought the protection of the law-enforcing authorities (88). The company's last recourse was to go to court (89).

The company supposedly suffered losses as a result of the union's inefficient service since September 1, 1954 (91). Teves hired auditors to ascertain the losses suffered by the company during the period from January 1 to September 11, 1954.

The trial court awarded actual damages amounting to P450,000 on the basis of the auditors' reports, Exhibits A to I. It did not carefully examine the said exhibits. Contrary to the trial court's impression, Exhibits B, C and D are not auditors' reports.

The trial court did not bother to make a breakdown of the alleged damages totalling P450,000. The reports of the

two hired accountants, Demetrio S. Jayme and M.J. Siojo, show the following alleged damages in the aggregate amount of P349,245.37 (not P412,663.17, as erroneously added by the company's counsel, 161, 163-4 tsn March 11, 1960):

TABULATION OF ALLEGED DAMAGES CLAIMED BY COMPAÑIA MARITIMA

- (1) Freight for 74,751 bags of fertilizer allegedly booked for shipment in the company's vessels but loaded in other vessels during the period from Jan. 1 to August 31, 1954, Statement A in Exh. A, CPA Jayme's report - - - -
----- P29,900.40
- (2) Lost freight on other shutout cargoes for January 1 to August 31, 1954, Statement A in Exh. A, report of CPA Jayme - - - - - 4,339.64
- (3) Lost freight on shutout cargoes for September 2 to 7, 1954 booked for shipment in M. V. Mindoro, Panay and Masthead Knot, Statement B in Exh. A, CPA Jayme's report - - - - -
----- 6,167.16
- (4) Losses sustained in voyages of M. V. Panay and Mindoro in four voyages from September 4 to 11, 1954, with estimates, Statement B, Exh. A - - - - -
----- 3,764.50
- (5) Other estimated losses for the said voyages of M. V. Panay and Mindoro for the same period, based on interviews of parties at the wharf, Statement B, Exh. A - - - - -
----- 10,000.00
- (6) Additional subsistence expenses for the M. V. Mindoro and Panay due to the delays in their departure from January 1 to August 31, 1954 as certified by the pursers of the two vessels, Statement C., Exh. A - - - - -
----- 4,407.50
- (7) Estimated loss in freight and passenger revenue for the period from January 1 to August 31, 1954, based on 1953 freight revenue for the same period Statement D Exh. A - - - - -
----- 100,000.00
- (8) Estimated loss in passenger fares for the period from September to December 31, 1954, Statement D, Exh. A -
----- 20,000.00
- (9) Lost freight charges from September 12 to December 28, 1954, as certified by the chief clerk of the company's Iligan office, Exh. B - - - - -
----- 62,680.12
- (10) Estimated overhead expenses for delay of vessels in port, Exh. B - - - - -
----- 20,000.00
- (11) Forklift operating expenses for 1955, consisting of salaries and maintenance expenses, Exh. E-1 - - - - -
----- 5,677.54
- (12) Lost freight revenue for 1955, Exh. E-2 - - - - -
----- 17,838.78
- (13) Forklift operating expenses for 1956, Exh. F - - - - -
----- 3,520.90
- (14) Lost freight revenue for 1956, Exh. F-2 - - - - -

----- 3,849.56

(15) Forklift operating expenses for 1957, Exh. G-1 -----

----- 8,259.08

(16) Lost freight revenue for 1957, Exh. G-2 -----

----- 14,538.10

(17) Forklift operating expenses for 1958, Exh. H-1 -----

----- 7,503.45

(18) Lost freight revenue for 1958, Exh. H-2 -----

----- 10,193.46

(19) Forklift operating expenses for 1959, Exh. I-1 -----

----- 8,745.35

(20) Lost freight revenue for 1959, Exh. I-2 -----

----- 7,859.83

T O T A L P349,245.37

We tabulated the alleged damages to show that the trial court's award to the company of P450,000 as damages is not supported by the evidence. On the other hand, the statement of the company's counsel that the damages totalled P412,663.17 (162-164 tsn March 11, 1960) is wrong.

Teves, the company's branch manager, submitted a statement (Exh. K) showing the alleged cost of three forklifts, 200 pieces of pallet boards, 530 pieces of wire rope slings and two pieces of tarpaulins in the total sum of P27,215. In that statement, he claims that the damages to the company by reason of the depreciation of the said items of equipment amounted to P38,835 or more than the cost thereof.

The company's counsel, in his summary of the damages, ignored the alleged damages of P38,835 indicated by Teves in Exhibit K. The company's counsel relied only on the auditors' reports, Exhibits A and E to I and on Exhibit B, the chief clerk's statement. As already noted, those documents show that the total damages claimed by the company amounted to P349,245.37.

The best evidence on the cost of the said equipment would have been the sales invoices instead of the oral testimony of Teves. He did not produce the sales invoices.

Teves further testified that Salvador T. Lluch was the president of the union; Nicanor Halibas, the treasurer; Mariano Badelles, the general manager, and Laurentino Badelles, a vice-president.

Appellants' statement of facts. - To sustain their appeal, the appellants made the following exceedingly short and deficient recital of the facts:

"Sometime in the month of August, 1954, defendant, Allied Free Workers Union filed an unfair labor practice case against defendant (should be plaintiff) and its branch manager, Mr. Jose Teves, with the Court of Industrial Relations, Manila, and docketed as Case No. 426-ULP: defendant union also filed a petition for certification election docketed as Case No. 175-MC against plaintiff; defendant union also filed a notice of strike dated August 27, 1954; the Secretary of Labor wired the public defender, Iligan City, on August 27, 1954 (see annexes 1 to 4, motion to dismiss, Record on Appeal, pp. 54-65).

"To counteract these legitimate moves of labor, plaintiff filed the complaint docketed as Civil Case No. 577 in

the Court of First Instance of Lanao (now Lanao del Norte) for damages and/or resolution of contract with writ of preliminary injunction. On a decision adverse to their interests, defendants take this appeal.

"On the question of jurisdiction taken before this Honorable Tribunal in G.R. No. L-8876, it was held:

"x x x for the instant case merely refers to the recovery of damages occasioned by the picketing undertaken by the members of the union and the rescission of the arrastre and stevedoring contract previously entered into between the parties."

The appellants did not discuss their oral and documentary evidence.*

First assignment of error. - The appellants contend that the trial court erred in awarding to the company actual damages amounting to P450,000, moral damages of P50,000 and attorney's fees of P20,000, and in holding that the four officers of the union are solidarily liable for the said damages.

Appellants' counsel assailed the award of actual damages on the ground that the auditors' reports, on which they were based, were hearsay.

After analyzing the nature of the damages awarded, how the same were computed, and the trustworthiness of the company's evidence, we find the first assignment of error meritorious.

We have already stressed that, on the basis of the reports of the two accountants, the damages claimed by the company, as a matter of simple addition, does not reach the sum of P450,000 fixed by the trial court. The damages shown in the accountants' reports and in the statement made by the company's chief clerk (who did not testify) amount to P349,245.37, or much less than P450,000.

The company argues that the accountants' reports are admissible in evidence because of the rule that "when the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole", the original writings need not be produced (Sec. 2[e], Rule 130, Rules of Court).

That rule cannot be applied in this case because the voluminous character of the records, on which the accountants' reports were based, was not duly established (U. S. vs. Razon and Tayag, 37 Phil. 856, 861; 29 Am Jur 2nd 529).

It is also a requisite for the application of the rule that the records and accounts should be made accessible to the adverse party so that the correctness of the summary may be tested on cross-examination (29 Am Jur 2nd 517-8; 32A C.J.S. 111).

What applies to this case is the general rule "that an audit made by, or the testimony of, a private auditor, is inadmissible in evidence as proof of the original records, books of accounts, reports or the like" (Anno: 52 ALR 1266).

That general rule cannot be relaxed in this case because the company failed to make a preliminary showing as to the difficulty or impossibility attending the production of the records in court and their examination and analysis as evidence by the court (29 Am Jur 2nd 529).

A close scrutiny of the accountants' reports reveals their lack of probative value. The propriety of allowing the different items of damages is discussed below.

Unrealized freight and passenger revenue for 1954 ascertained by Accountant Demetrio S. Jayme.- In his report (Exh. A, pp. 134 to 147, Record on Appeal), Jayme used the pronouns "we" and "our" and made reference to the examination made by the "auditors" of his accounting office. He did not disclose the names of other "auditors"

who assisted him in making the examination of the company's records.

He gave the impression that he was an independent accountant hired by the company to make a "special investigation" of the company's losses for the period from January 1 to September 7, 1954.

The truth is that Jayme was a "personal friend" of Teves, the company's branch manager at Iligan City. Teves was the company's principal witness in this case. He verified the complaint herein. He signed for the company the stevedoring and arrastre contract which he later rescinded. In fact, Teves intervened in the drafting of the contract. It was his idea that the company should not pay the arrastre and stevedoring fees and that those charges should be borne by the shippers and consignees.

Jayme was not only the friend of Teves but was also his co-employee. Jayme was the company's branch manager at Ozamis City and later at Cagayan de Oro City (217-8 tsn May 20, 1960; Exh. 12). He suppressed that fact in his report of examination. Apparently, the practice of accounting was his sideline or he practised accounting and, as the saying goes, he moonlighted as the company's branch manager. Obviously, Jayme would be biased for the company. He violated a rule of the accountants' code of ethics by not disclosing in his report of examination that he was an employee of the company (84 tsn June 2, 1960).

Accountant Jayme allegedly found from the company's records at Iligan City that its freight and passenger revenue for the eight-month period from January 1 to August 31, 1953 amounted to P373,333.14 and that for the same period in 1954, that revenue amounted to P470,716.29, or an increase of P97,383.12 (Statement D of Exh. A, 145, Record on Appeal).

Jayme interpreted those figures as signifying that the company would have realized more revenue if the union had rendered better service. He reasoned out that there was a big volume of business in Iligan City due to the Maria Cristina Fertilizer Plant, Iligan Steel Mill and NPC Hydroelectric Plant. He imagined that the company's freight revenue during the first eight months of 1954 could have amounted to at least P600,000 and that since it actually realized only P470,716.29, its loss of freight revenue for that period could be "conservatively" estimated at least P100,000 (item 7 of the tabulation of damages).

He stated that he attached to his report on the comparative statement of gross revenue a certificate of the captain of the vessel Panay showing the delays in its departure in Iligan City as indicated in its logbook. No such document was attached to Jayme's report.

And from the fact that the total fares received by the company during the eight-month period were reduced in the sum of P3,951.58 (Jayme fixed the reduction at the round figure of P4,000), he calculated that the company suffered a loss of at least P20,000 in passenger revenue up to December 31, 1954 (Item 8 of the tabulation of damages).

Jayme also included in his report (a) damages amounting to P10,000 as his estimate of losses supposedly "based on interviews with disinterested parties at the wharf and city proper customers"; (b) damages amounting to P3,764.50 allegedly suffered in the operation of the vessels Mindoro and Panay from September 4 to 11, 1954, consisting of extra meals, expenses for unloading cargo, estimated loss in passage revenue for four voyages, and estimated loss from "re-routed freights to competing vessels" (consisting of rice, corn and bananas), and (c) the sum of P4,407.50 as alleged additional subsistence incurred for the crew of the Panay and Mindoro from January 1 to August 31, 1954 (items 4, 5 and 6 of the tabulation of damages). The records of the purser and chief steward were allegedly examined in ascertaining those damages.

It would not be proper to allow Jayme's estimates as recoverable damages. They are not supported by reliable evidence. They can hardly be sanctioned by the "generally accepted auditing standards" alluded to in Jayme's

report. The pertinent records of the company should have been produced in court. The purser and steward did not testify.

The rule is that the auditor's summary should not include his conclusions or inferences (29 Am Jur 2d 519). His opinion is not evidence.

The trial court unreservedly gave credence to the conjectures of Jayme. Obviously, his inflated guesses are inherently speculative and devoid of probative value. Furthermore, his estimate of the unrealized freight revenue for January 1 to August 31, 1954 overlapped with his computation of the lost freight for the unloaded 74,751 bags of fertilizer and other cargoes covering the same period (Statement A of Exh. A).

The foregoing discussion shows Jayme's unreliable *modus operandi* in ascertaining the 1954 losses which the company claimed to have suffered in consequence of the union's alleged inefficiency or poor service. It is noteworthy that those losses were not averred with particularity and certitude in the company's complaint.

The same observations apply with equal cogency to the damages amounting to P40,407.20 as lost freight revenue also for the year 1954 (items 1 to 3 of the tabulation of damages) which were computed by Accountant Jayme.

Those items refer to (1) the sum of P29,900.40 as lost freight revenue on 74,751 bags of fertilizer, already mentioned, which were booked for shipment in the company's vessels from January 1 to August 31, 1954 but which were allegedly loaded in other vessels; (2) P4,339.64 as unrealized freight revenue for other cargoes booked in the company's vessels but not loaded therein during the same eight-month period, and (3) P6,167.16 as unrealized freight revenue on shutout cargoes not loaded in the company's vessels during the six-day period from September 2 to 7, 1954.

Jayme allegedly based his computations on the records of the company which were not produced in court. The union objected to Jayme's report as inadmissible under the hearsay rule or as not being the best evidence.

Even if the presentation of the records themselves as exhibits should have been dispensed with, yet the company, to show good faith and fair dealing, could have brought the records in court (manifests, bills of lading, receipts for the freights, if any, etc.) and enabled the court and the union's counsel and its expert accountant to verify the accuracy of Jayme's summaries.

Photostatic copies of some manifests and bills of lading proving that the company was not able to collect the stipulated freight on the alleged shutout cargoes should have been presented in evidence as supporting papers for Jayme's report. No such exhibits were presented.

The flaw or error in relying merely on Jayme's summaries is that, as pointed out by witness Mariano LL. Badelles, cargoes might be shutout due to causes other than the supposed inefficiency of the union. He testified that cargoes were shut out deliberately by the company because they could not be loaded in one vessel (for example, 50,000 bags of fertilizer), or a shipper had no allotment, or because the company did not want to load cargoes like bananas (189-194 tsn May 20, 1960). Jayme's summaries did not take into account the probability that a part of the cargo booked in the company's vessel for a certain date might not have been loaded on that date but was loaded in another vessel of the company which docked at the port a few days later. In that case, there would be no loss of freight revenue. The mere shutting out of cargo in a particular voyage did not *ipso facto* produce loss of freight revenue.

Our conclusion is that an injustice would be perpetrated if the damages aggregating P178,579 computed and estimated in the report of Jayme, a biased witness, should be accepted at their face value.

Damages computed by Salvador M. Magante. - The company also claims as damages for the period from

September 12 to December 28, 1954 lost freight charges on shutout cargoes in the sum of P62,680.12, and the sum of P20,000 as "overhead expenses for delay of vessels in port", as set forth by Salvador M. Magante, the company's chief clerk at Iligan City, in his statement, Exhibit B (items 9 and 10 of the tabulation of damages).

Magante did not testify on his statement. Instead, accountant Jayme, substituting for Magante, testified on that statement. Jayme said that he verified the company's records on which Magante based his statement. Jayme assured the court that the figures in Magante's statement were supported by the company's records.

But as to the damages of P20,000, Jayme said that he could not certify as to their correctness because he had not finished his investigation (33 tsn March 9, 1955). In spite of that admission, the trial court allowed that item of damages.

The trial court erred in allowing the damages totalling P82,680.12 because Magante's statement, Exhibit B, is hearsay. Magante should have been presented as a witness. Jayme was not competent to take his place since the statement was prepared by Magante, not by Jayme. More appropriate still, the documents and records on which the statement was based should have been presented as evidence or at least brought to the court for examination by the union's counsel and its accountant. The trial court required the production of the manifests supporting Magante's statement (85-86 tsn March 9, 1955). Only one such manifest, Exhibit C, was produced. The nonproduction of the other records was not explained.

Lost freight revenue and operating expenses for the forklifts.- The company claimed as damages the sum of P87,986.05 (P151,403.85 as erroneously computed by the company's counsel, 163 tsn March 11, 1960) consisting of supposed unrealized freight charges for shutout or unloaded cargoes for the year 1955 to 1959 (Exh. E to I, Items 11 to 20 of the tabulation of damages).

The claim is covered by the company's third supplemental complaint dated March 9, 1960 wherein it was alleged that due to the acts of the union and its officers the company had suffered damages of not less than P25,000 annually since 1955 (320-3, Record on Appeal). That supplemental complaint was hurriedly filed during the trial as directed by the trial court.

The said damages were computed in the reports of Miguel J. Siojo, an accountant who, for two days and nights, March 8 to 10, 1960, or shortly before and during the trial, allegedly examined the company's record at Iligan City, such as its cash book, cash vouchers, reports to the head office, shipping manifests, and liquidation reports. Those records were not produced in court. Their nonproduction was not explained. If the accountant was able to summarize the contents of those records in two days, they could not have been very voluminous. They should have been offered in evidence.

The alleged expenses in the operation of the forklifts consisted of (a) the wages of the operators hired by the company and (b) the cost of gasoline and oil and expenses for repair.

The company's theory is that under the 1952 contract (Exh. J) the union was obligated to provide for forklifts in the loading and unloading of cargo. Inasmuch as the union allegedly did not have forklifts, the company, to expedite the arrastre and stevedoring work, purchased forklifts, hired laborers to operate the same, and paid for the maintenance expenses. The company treated those expenses as losses or damages.

Those alleged damages amounting to P87,986.05 are in the same category as the depreciation allowances amounting to P38,835 which the company claimed for the forklifts, pallet boards, tarpaulins, and wire rope slings that it purchased for only P27,215. We have stated that the company's counsel ignored that depreciation in his recapitulation of the damages claimed by the plaintiff.

The union contends that Siojo's reports (Exh. E to I) were inadmissible evidence because they were hearsay, meaning that the original documents, on which the reports were based, were not presented in evidence and, therefore, appellants' counsel and the court itself were not able to gauge the correctness of the figures or data contained in the said reports. The person who had personal knowledge of the operating expenses was not examined in court.

We are of the opinion that, to avoid fraud or fabrication, the documents evidencing the alleged expenses should have been presented in evidence. Siojo's reports were not the best evidence on the said operating expenses. The explanation of Badelles with respect to shutout cargoes and our observations on Jayme's summaries are applicable to accountant Siojo's reports.

A more substantial ground for rejecting Siojo's reports is that the said expenses, if really incurred, cannot be properly treated as damages to the company.

The union's witness, Mariano Ll. Badelles, testified that the company's forklifts were not used exclusively on the wharf. They were used in the fertilizer and carbide plants. Sometimes, the union supplied the driver and the gasoline for the operation of the forklifts (174-177 tsn May 20, 1960).

Moreover, as stated earlier, the company was not paying the union a single centavo for arrastre and stevedoring work. The shippers and consignees paid for the arrastre service rendered by the union. The union did not receive any compensation for stevedoring work.

The company complained that the union had been rendering unsatisfactory arrastre and stevedoring services. That grievance was controverted by the union.

The use of the forklifts, tarpaulins, pallet boards and wire rope slings immeasurably benefitted the company. It is not proper nor just that the company's investment in those pieces of equipment should be considered damages just because it was able to bind the union to a one-sided contract which exempted it from the payment of arrastre and stevedoring fees and which impliedly obligated the union to purchase the said equipment.

If the service rendered by the union members was unsatisfactory, it must be because the poor stevedores were underfed, and underpaid. They were underfed and underpaid because the company was astute enough to insure that it would obtain stevedoring service without paying for it.

If to improve the arrastre and stevedoring service, the company had to incur expenses for the purchase of forklifts, pallet boards, tarpaulins and wire rope slings and for the operation of the forklifts, the union should not be required to reimburse the company for those expenses. The company should bear those expenses because the same redounded to its benefit.

The trial court erred in ordering the union and its officials to pay the amount of the said expenses as damages to the company.

Moral damages and attorney's fees. - Considering that the company's claim for moral damages was based on the same facts on which it predicated its claim for actual damages, which we have found to be groundless, it follows that the company, a juridical person, is not entitled to moral damages.

Anyway, the company did not plead and prove moral damages. It merely claimed moral damages in the prayer of its complaint. That is not sufficient (*Darang vs. Ty Belizar*, L-19487, January 31, 1967, 19 SCRA 214, 222).

Under the facts of this case, we do not find any justification for awarding attorney's fees to the company. Hence, the trial court's award of P20,000 as attorney's fees is set aside.

Appellants' first assignment of error, although not properly argued by their counsel, should be sustained.

Other assignments of error. - The union and its officers contend that the lower court erred in dismissing their counterclaims. Their counsel did not even bother to state in their brief the amount of the counterclaims.

The union filed counterclaims for P200,000 as compensation for stevedoring services from August, 1952 to March 4, 1955; P500,000 as damages, P10,000 as attorney's fees and P5,000 as premium on the counterbond (251-2, Record on Appeal). In their supplemental counterclaim, they demanded P500,000 as stevedoring charges for the period from March 4, 1955 to March 4, 1960 and additional damages of P10,000 (308-10, Record on Appeal). The trial court dismissed the said counterclaims.

The appellants in their three-sentence argument in support of their counterclaims alleged that the company's bill of lading provided that the unloading of the cargoes was at the company's expense (Exh. 1); that the company had not paid the sum of P500,000 as compensation for the stevedoring services rendered by the laborers up to 1960, and that the stipulation in the arrastre and stevedoring contract, "that the Compañia Maritima shall not be liable for the payment of the services rendered by the Allied Free Workers Union for the loading and deliveries of cargoes as same is payable by the owners and consignees of cargoes, as it has been the practice in the port of Iligan City" (Exh. J, pp. 14, 334, 359, 500, Record on Appeal), was "non-operative" and void, "being contrary to morals and public policy".

That superficial argument is not well-taken. The printed stipulation in the bill of lading was superseded by the contractual stipulation. The contract was prepared by the union officials. As already noted, it was stipulated in the contract that the stevedoring and arrastre charges should be paid by the shippers and consignees in consonance with the practice in Iligan City. That stipulation was binding and enforceable.

The supposed illegality of that stipulation was not squarely raised by the union and its officials in their answer. They merely averred that the contract did not express the true agreement of the parties. They did not sue for reformation of the instrument evidencing the contract. The lower court did not err in dismissing defendants' counterclaims.

The other two errors assigned by the appellants, namely, that the lower court erred in issuing a permanent injunction against them and in executing its decision pending appeal, are devoid of merit.

The appellants invoke section 9(d) of the Magna Carta of Labor regarding the issuance of injunctions. That section has no application to this case because it was definitively ruled by this Court in the certification and unfair labor practice cases that there is no employer-employee relationship between the company and the stevedores. (They work under the cabo system).

The lower court did not execute the money aspect of its judgment. It merely required the defendants to file a supersedeas bond of P50,000.

As to the injunction, it should be recalled that it was this Court which, in its resolution of May 16, 1962 in the execution and appeal incident (L-19651, 17 SCRA 513), allowed the company to terminate the stevedoring and arrastre work of the union and to use another union to perform that work.

The company had the contractual right to terminate the 1952 contract (Taylor vs. Uy Tieng Piao, 43 Phil. 873). The lower court did not err in sustaining the company's rescission of the contract and in enjoining the union from performing arrastre and stevedoring work.

WHEREFORE, that portion of the trial court's judgment, declaring the arrastre and stevedoring contract terminated, permanently enjoining the union and its officials from performing arrastre and stevedoring work for

the vessels of the Compañia Maritima, and dismissing defendants' counterclaims, is affirmed.

The lower court's award of damages is reversed and set aside. No costs.

SO ORDERED.

Barredo, Antonio, and Martin, JJ., concur.

Fernando, J., concurs in the exhaustive and ably-written opinion of Justice Aquino, with the observation that the objective of industrial peace and the ideal of a "compassionate society" so clearly manifest in the present Constitution call for greater understanding and more sympathetic approach on the part of management.

Concepcion, Jr., J., no part.

* This case was submitted for decision on July 9, 1970. One reason for the delay in its disposition is the fact that the briefs are exceedingly brief and do not give much enlightenment to the Court.

The decision under appeal consists of 70 printed pages; the record on appeal, 883 printed pages; the folder of exhibits, 140 pages, and the transcripts of the testimonies, 1,101 pages.

The briefs do not conform with the requirements of sections 16 and 17, Rule 46 of the Rules of Court. Their subject indexes do not contain a digest of the argument (Secs. 16[a] and 17[a], Rule 46).

Appellants' inadequate statement of the case does not contain "a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record." (Sec. 16[c], Rule 46).

Their statement of facts does not contain "a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page reference to the record" (Sec. 16[d], Rule 46).

Under section 1(g), Rule 50 of the Rules of Court, this Court may dismiss *motu proprio* the union's appeal for want of page references to the record in its skimpy statement of facts (*Genobiagon vs. Court of Appeals*, L-44323, March 2, 1977).

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