

PHILTREAD TIRE AND RUBBER CORPORATION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND ALLIANCE OF DEMOCRATIC FREE LABOR ORGAN-IZATION (PHILTREAD CHAPTER), RESPONDENTS.

G.R. No. 102185. February 15, 1993

Ponente: GRIÑO–AQUINO, J.

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GRIÑO–AQUINO, J.:

This petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court, with prayer for the issuance of a temporary restraining order was filed by the Philtread Tire & Rubber Corporation (hereafter Philtread) to set aside and annul the Resolution dated February 14, 1991, of the National Labor Relations Commission (NLRC), First Division, in NLRC-NCR Certified Case No. 00002, as well as its Resolution dated September 24, 1991, denying the petitioner's Motion for Partial Reconsideration.

On March 3, 1990, private respondent Alliance of Democratic Free Labor Organizations (ADFLO) – Philtread Chapter, filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) against the petitioner, Philtread, a corporation engaged in the manufacture and sale of Firestone Tires and Rubber products, for alleged discrimination, union busting, non-granting of merit increases to outstanding employees, and other acts of unfair labor practice.

Reacting to the union's notice of strike, Philtread filed a Notice of Lockout on March 28, 1990, charging the union with acts of unfair labor practice and violation of the collective bargaining agreement. (Ibid.) It sought clearance to terminate the employment of all the union officials. On April 10, 1990, it announced that all salaried and supervising union employees would "not be allowed to work and enter the company premises effective April 16, 1990" (p. 33, Rollo). It published in the Manila Bulletin Classified Ads Section a notice of job vacancies for the positions formerly occupied by its salaried and supervisory union employees.

In retaliation, the union picketed the company and a complaint for illegal dismissal of the union officers (NLRC Case No. NCR-00-04-02207-90) was also filed.

Later, the company filed criminal charges for libel against thirty-six (36) union officers and members who allegedly had distributed to the public leaflets imputing defects in the company's products.

On April 24, 1990, the union filed a letter-petition addressed to the Secretary of Labor and Employment, requesting him to assume jurisdiction over the labor dispute.

Acting on the petition, Secretary Ruben D. Torres, on April 30, 1990, certified the case to the NLRC, First Division, for compulsory arbitration. The dispositive part of his order reads as follows:

"WHEREFORE, PREMISES CONSIDERED, the entire dispute at the Philtread Tire and Rubber Corporation is hereby certified to the National Labor Relations Commission (NLRC) for compulsory arbitration pursuant to Article 263 (g) of the Labor Code, as amended. To avoid multiplicity of suits, the case for illegal dismissal

before the NLRC-NCR Branch docketed as Case. No. 00-04-02207-90 is hereby ordered consolidated with the instant case.

"In the interest of industrial peace and due process, the effects of the termination of all affected employees are hereby suspended. Accordingly, the management is directed to accept them back under the same terms and conditions prevailing prior to the dispute. The parties are strictly enjoined to cease and desist from committing any act that will exacerbate the situation.

"The NLRC is further directed to ensure the company's compliance with the directive for reinstatement of the affected workers pending resolution of the dispute." (pp. 162-163, Rollo.)

Philtread sought a reconsideration of the order but its motion was denied by the Secretary of Labor.

Ultimately, Philtread partially complied with the Secretary's order by announcing on May 7, 1990 that it would accept back all members of the supervising salaried units except the thirty-six (36) union officers who were facing libel charges. With respect to them, the company (petitioner) filed a manifestation/motion not to reinstate them pending resolution of the labor dispute.

The union, on the other hand, filed in the NLRC a motion for execution of the Labor Secretary's return-to-work order.

Acting on the company's urgent manifestation/motion and on the union's motion for execution, the NLRC on August 20, 1990, reiterated the Secretary's order to accept the workers back in their jobs pending the resolution of the dispute:

"On June 20, 1990, the counsel for the union submitted a Motion praying that a Writ of Execution be issued by this Commission to implement the Order of the Secretary. A considerable period of time has already lapsed and the company has not taken any action to comply with the directive contained in the two (2) Orders of the Secretary of Labor and Employment.

"WHEREFORE, in view of the above premises, the Commission directs the Philtread Tire and Rubber Company and its officers to accept back to work under the same terms and conditions prevailing prior to the dispute the thirty six (36) officers/members of the Alliance of Democratic Free Labor Organizations (ADFLO) who were not accepted to work since April 16, 1990, within three (3) days from receipt of this Order, and to report its compliance therewith immediately thereafter to this Commission; other-wise, drastic action on this matter shall be taken thereon. No motion for reconsideration of this Order shall be entertained." (pp. 164--165, Rollo.)

However, Philtread was intransigent. It refused to reinstate the 36 employees/union officers, while it filed in this Court a petition for certiorari and prohibition with prayer for the issuance of a temporary restraining order (G.R. No. 94695).

Meanwhile, upon the request and agreement of the parties, conciliation meetings were held, presided over by Com. Vicente S. Veloso III, to help the parties thresh out their differences. They were attended by Labor Arbiter Emerson C. Tumanon, who had been delegated earlier to hear and receive the evidence in NLRC Certified Case No. 00002. Also present were Philtread's counsel, the national president of the Federation-ADFLO, and a majority of the members/officers of the union without counsel (p. 1 of Labor Arbiter Tumanon's Special Status Report at p. 382, Record).

During the conciliation meetings, Commissioner Veloso allegedly put before the employees the idea of "deferment" of the execution of the return-to-work order in exchange for financial concessions from Philtread (p. 3, NLRC Resolution dated May 22, 1991) which according to a letter dated March 6, 1991 addressed to the

NLRC by employees Glorieta T. Zacate and Rudolfo Mantalba was acceptable to the majority of employees present at the meetings.

However, on October 9, 1990, the union, through counsel, refiled its motion for execution.

Instead of acting on the motion, the NLRC on February 14, 1991, resolved the dispute between Philtread and the union by -

- "1) Awarding the unreinstated Supervisors backwages computed from May 7, 1990, up to September 19, 1990;
- "2) Awarding the said Supervisors a separation pay computed at sixty (60) days for every year of service, a remaining fraction of at least six (6) months to be considered as one (1) whole year;
- "3) Dismissing all other claims, for insufficiency of evidence and for lack of merit." (p. 51, Rollo.)

In view thereof, this Court declared G.R. No. 94695 closed and terminated.

On February 26, 1991, Philtread filed a motion for partial reconsideration on the ground that the award of two (2) months separation pay per year of service was excessive and the award of backwages had no legal basis.

The union, through counsel, likewise filed a motion for reconsideration alleging that the decision was premature because the Union had not yet completed the presentation of its evidence that the workers had not agreed to defer the implementation of the Secretary's return-to-work order and that the award of backwages without reinstatement to the unreinstated workers had no factual or legal basis.

On September 24, 1991, the NLRC denied both motions for reconsideration.

Philtread filed a petition for certiorari and prohibition with prayer for a temporary restraining order, contending that:

- 1) the award of 60 days separation pay in effect rewards disloyalty, destabilization and the instigation of labor unrest; and
- 2) the award of backwages was unjustified.

Unable to support the actions of the NLRC, the Solicitor General asked that the Commission be given time to file its own comment.

The NLRC defended its questioned resolutions.

After deliberating on the petition and the separate comments of the public and private respondents, the Court finds the petition partly meritorious.

Article 263 (g) of the Labor Code provides that:

"(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same." (Underscoring ours.)

Pursuant to the above provision, the Secretary of Labor certified the dispute to the NLRC for compulsory arbitration which was what Commissioner Veloso did when he called the parties to conciliation meetings and thereafter decided the case of the thirty-six (36) union officers/members who are facing libel charges filed by the company.

As stated in the petition, the only matters in issue are the separation benefits and backwages that the NLRC awarded to the 36 supervisors facing libel charges whom Philtread did not reinstate. The basis for computing those awards should be reexamined.

ADFLO which did not file a petition for review of the NLRC's decision is estopped from assailing the same for allegedly having been rendered by the NLRC without due process or without giving ADFLO a chance to finish the presentation of its evidence.

Its charge of lack of due process is not well taken for the record shows that the NLRC bent over backward to accommodate it, but it wasted its numerous opportunities to adduce evidence in support of its charges against the company. Its lawyer, Attorney Eulogio Lerum, absented himself repeatedly from the conciliation proceedings and "unduly delayed the disposition of this case" (p. 32, Rollo).

The finding of the NLRC that Attorney Lerum's motion for execution (with respect to the 36 unreinstated supervisors) of the Secretary's return-to-work order "was unanimously objected to by his clients present during the September 19 and 20, 1990 Conciliation Conferences" (p. 32, Rollo) (because they preferred financial concessions in lieu of reinstatement) has not been denied by any of the parties.

The NLRC also found that the company had complied with the procedural requirements of a valid lockout (Art. 263 of the Labor Code) and that in view of the reasons therefor (enumerated in pages 14-19 of the resolution of February 14, 1991), it was clear to the NLRC that "the company in resorting to lockout wanted to obtain industrial peace, a peace that seemed unobtainable as long as those locked out obstructively formed part of its operation" (p. 38, Rollo). This factual finding was not questioned by any of the parties. The NLRC concluded that the company incurred no liability to the locked out employees. The NLRC said:

"But again, we concede, as this is not even disputed by the Union, the company complied with the procedural requirements of a valid lockout. In relation, therefore, to the first question, the company incurred no liability to those employees affected by its lockout." (p. 45, Rollo.)

Nevertheless, the NLRC believed that the company should be penalized for its failure to fully comply with the Secretary's return-to-work order by refusing to reinstate the 36 supervisors facing charges of libel. It held the company liable for their backwages from May 7, 1990, when Philtread called back to work all other striking members of the union, up to September 19, 1990, when the 36 locked out supervisors chose to defer execution of the Secretary's order during the conciliation conferences. The computation of their backwages from May 7, 1990 conforms with, rather than contravenes, the NLRC's finding that the lockout was lawful for it did not order the company to pay backwages from the commencement of the lockout on April 16, 1990.

Sec. 5 (a) and Sec. 6, Rule IX, Certified Cases, of the NLRC Rules of Procedure, however, provides:

"Sec. 5. - Effects of Certification.

"(a). Upon certification, the intended or impending strike or lockout is automatically enjoined, notwithstanding the filing of any motion for reconsideration of the certification order nor the non-resolution of any such motion which may have been duly submitted to the Office of the Secretary of Labor and Employment. If a work stoppage has already taken place at the time of the certification, all striking or lockedout employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers

under the same terms and conditions prevailing before the strike or lockout.

"Sec. 6. - Effects of Defiance. - Non compliance with certification order of the Secretary of Labor and Employment or a return to work order of the Commission shall be considered an illegal act committed in the course of the strike or lock-out and shall authorize the Secretary of Labor and Employment or the Commission, as the case may be, to enforce the same under pain of loss of employment status or entitlement to full employment benefits from the locking-out employer or backwages, damages and/or other positive and/or affirmative reliefs, even to criminal prosecution against the liable party/ies.'" (Emphasis supplied.)

The Secretary's assumption and certification orders being executory in character are to be strictly complied with by the parties even during the pendency of a petition questioning their validity for this extraordinary authority given by law to the Secretary of Labor is "aimed at arriving at a peaceful and speedy solution to labor disputes, without jeopardizing national interests." (Union of Filipino Employees vs. Nestle Philippines, Inc., 192 SCRA 396, 410.) This Court further held in that case:

"One other point that must be underscored is that the return-to-work order is issued pending the determination of the legality or illegality of the strike. It is not correct to say that it may be enforced only if the strike is legal and may be disregarded if the strike is illegal, for the purpose precisely is to maintain the status quo while the determination is being made. Otherwise, the workers who contend that their strike is legal can refuse to return to work to their work and cause a standstill on the company operations while retaining the positions they refuse to discharge or allow the management to fill. Worse, they will also claim payment for work not done, on the ground that they are still illegally employed although actually engaged in activities inimical to their employer's interest.

"xxx xxx xxx.

"The return to work order does not so much confer a right as it imposes a duty; and while as a right it may be waived, it must be discharged as a duty even against the worker's will. Returning to work in this situation is not a matter of option or voluntariness but of obligation. The worker must return to his job together with his co-workers so the operations of the company can be resumed and it can continue serving the public and promoting its interest."

Since the return-to-work order was obtained by the workers, the right to return-to-work could be waived by them, as they did in this case when they opted to defer their reinstatement while negotiating with the company for financial benefits in lieu of reinstatement in view of the "bad blood" and "severely strained relations" between them and management (p. 49, Rollo). The award of separation pay in lieu of reinstatement is an equitable recourse that has been sanctioned by this Court in a number of cases. (Commercial Motors Corporation vs. Commissioners, Second Division, National Labor Relations Commission and Pedro Umlas, 92 SCRA 191, citing Citytrust Finance Corporation vs. NLRC, 157 SCRA 87 [1988], cited in Quezon Electric Cooperative vs. NLRC, 172 SCRA 88, 97-98 [1989]).

However, the NLRC's award of two (2) months instead of one (1) month separation pay for every year of service to the 36 supervisors is unprecedented and unwarranted both in law (Art. 283, Labor Code), and jurisprudence, and the existing collective bargaining agreement between the union and the company. The CBA between the petitioner and ADFLO contains the following provision on separation pay.

"ARTICLE XVIII

"SEVERANCE PAY

"SECTION 1. Except for cases already covered by any existing COMPANY policy or plan, permanent employees who are laid off for lack of work, reduction in force, or retrenchment shall be paid one and one-half month's pay for each year of service. Permanent employees who are separated from the COMPANY due to work-connected death and work-connected physical disability based on the finding of the COMPANY Physician that the employee has become totally disable to continue performing his regular duties shall likewise be paid one and one-half month's pay for every year of continuous service. Other cases of separation from employment including retirement but excluding termination for just cause and valid causes, shall be compensated at one month's basic pay multiplied by 1.115 for every year of continuous service. Fractions of a year shall be taken into account on a pro-rata basis to the nearest full month but fraction of a month shall be disregarded. If these cases of separation from employment are also covered by any existing COMPANY policy or plan, the employee shall be entitled only to the benefit under such COMPANY Plan or under this Agreement, whichever is beneficial to the employee." (pp. 11-12, Rollo; Emphasis supplied.)

The petitioner correctly argued that "this award of sixty (60) days would send signals that disloyalty, destabilization, and the fomenting of labor unrest is rewarded and given an extra premium, over and above the normal grant of retirement [benefits] to other more deserving employees" (p. 12, Rollo). It would indeed be unfair and demoralizing to the quiet and uncomplaining workers when the troublemakers can look forward to larger financial benefits than the law ordinarily allows. Paying a higher price to get rid of troublemakers would not be conducive to industrial peace.

How much then are they entitled to receive as separation pay?

The petitioner in its motion for partial reconsideration of the NLRC resolution dated February 14, 1991 prayed that the separation pay awarded by the NLRC "be reduced to one month's pay for every year of service" (p. 168, Rollo). Since such award accords with numerous previous decisions of this Court, the same may be followed in this case (*Commercial Motors Corporation vs. Commissioners, Second Division, National Labor Relations Commission and Pedro Umlas*, 192 SCRA 191, citing *Citytrust Finance Corporation vs. NLRC*, 157 SCRA 87 [1988], cited in *Quezon Electric Cooperative vs. NLRC*, 172 SCRA 88, 97-98 [1989]).

WHEREFORE, the petition for certiorari and prohibition is partially GRANTED. The NLRC resolution of February 14, 1991 is affirmed, except the award to the thirty-six (36) unreinstated supervisors of two months separation pay for every year of service which is hereby reduced to one month separation pay for every year of service in the petitioner company a remaining fraction of at least six (6) months to be considered as one (1) year. In other respects, the decision/resolution under review is AFFIRMED. No costs.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

Quiason, J., no part.

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