

BAY VIEW HOTEL EMPLOYEES' UNION, PETITIONER, VS. BAY VIEW HOTEL, INC., ET AL., RESPONDENTS.

G.R. No. 10393. March 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal by certiorari from a decision and a resolution of the Court of Industrial Relations.

The petitioner Bay View Hotel Employees' Union is a legitimate labor organization within the meaning of Republic Act No. 875, the respondent Bay View Hotel, Inc. is a corporation duly organized and existing under the laws of the Philippines, and the other respondents are officers of the said corporation.

On June 9, 1954, the petitioner, represented by its president, Antonio V. Policarpio, and the respondent corporation, represented by its Executive vice president, Mrs. Esperanza Zamora, entered into a working agreement providing, among other things, for the recognition of the aforesaid union as the sole collective bargaining agency for all the employees of the hotel, and for the setting up of a Labor Management Committee for the settlement of disputes arising under the agreement in the course of the relationship between the said petitioner and respondents.

On February 18, 1955, the petitioner union filed with the Court of Industrial Relations a complaint for unfair labor practice against the herein respondents, alleging that the latter had discriminated against Antonio V. Policarpio, president of the union, and six (6) security guards, namely, Raymundo de la Cruz, Moises Montoya, Ubaldo Luna, Nicasio Aquino, Timoteo Manalo, and Toribio Macapagal, with regard to terms or conditions of employment in order to discourage membership in the union or because of union membership or activity, in violation of section 4(a), sub-paragraph 4 of Republic Act 875, committed thus:

"(a) That shortly after the execution of the collective bargaining agreement entered into by and between the Bay View Hotel Employees' Union and the Bay View Hotel, Inc. on June 19, 1954, respondent Floro Santos, Jr. required Antonio Policarpio to turn over his work to two (2) new employees hired by the respondents; and that at the suggestion of respondent Floro Santos, Jr., Antonio Policarpio approached Mrs. Esperanza Zamora who told him to just sit behind his desk for the whole eight (8) hours a day with pay;

"(b) That more or less at the same time, respondent Floro Santos, Jr. demoted six (6) security guards named above by assigning them as linen, room and elevator boys thereby depriving them of their coffee allowances and insurance benefits."

The complaint further alleged that respondents also committed unfair labor practice under section 4 (a) sub-paragraph 6 in relation to section 13 of Republic Act 875, in refusing to bargain collectively in good faith with the union relative to some four-point demand or grievance submitted to the management of the respondent hotel, after the execution and during the effectivity of the collective bargaining agreement, committed as follows:

"(a) That after the execution and during the lifetime of the collective bargaining agreement, complainant union submitted to the management of respondent Hotel 4-point demands or grievances, one of which is the

withdrawal of the coffee allowances given to and enjoyed before by respondent's telephone operators;

"(b) That said 4-point demands or grievances having been submitted to the Labor Management Committee provided for in clause No. 10 in relation with clauses Nos. 2 and 14 of the Collective Bargaining Agreement for settlement of differences, said committee, after hearing, handed down a unanimous decision recommending to the management of respondent Hotel the grant of the demands or grievances of complainant union;

"(c) That despite the unanimous decision of the Labor Management Committee, respondents refused to comply therewith and even failed to answer said demands or grievances;

(d) That when the representatives of complainant union approached Mrs. Esperanza Zamora to ask her to consider the unanimous recommendation of the Labor Management Committee on the 4-point demands or grievances, Mrs. Esperanza Zamora refused to do so, which caused the complainant union to serve a copy of the notice of its intention to declare a strike on November, 1954, and the actual declaration of the strike on January 1, 1955."

Answering the complaint, the respondents maintained that Policarpio was not discharged nor suspended but was merely assigned to work in the office, this step having been taken because the said employee had not been performing his duties properly and efficiently, had wasted his time and loitered uselessly during office hours, and had usurped a function not assigned to him, thereby disrupting the smooth functioning of the organization.

Respondents claimed further that the action taken on the six (6) security guards was prompted by the fact that those guards had been lax in their vigilance so much so that an inventory showed that at least eight (8) table radio receiving sets belonging to the hotel were missing and none of the said security guards could account for them.

As to the alleged refusal to bargain, the respondents denied altogether such claim, asserting that they acted in accordance with the collective bargaining agreement and that the employer has the right to approve or disapprove the decision of the Labor Management Committee.

Upon joining of the issues, the case was heard by a trial examiner of the Court of Industrial Relations. And after trial, during which oral and documentary evidence were presented by both parties, the case was submitted for decision.

The respondents were absolved of the charges on October 6, 1955. Reconsideration of the decision having been denied by a resolution of the lower court en banc, concurred in by Judges Arsenio I. Martinez, Juan L. Lanting and V. Jimenez Yanson, and dissented to by Judge Jose S. Bautista, the petitioner has brought the case to us for review.

The first issue raised is whether or not the assignment of Policarpio and the six (6) security guards to other positions constitute discrimination. Paragraph 2 of the "Working Agreement" entered into by the petitioner union and the respondent employer provides:

"2. Management Supervision.—Subject" to the conditions of this agreement, the operation of the hotel and the supervision control and rotation of the employees therein shall be vested in the EMPLOYER, including the right to suspend and/or discharge for cause, depending upon the nature and gravity of the offense, provided, however, that any member of the UNION with a complaint or grievance shall have the right to present same to the EMPLOYER or the "Labor Management Committee" hereinafter established.

"Cause means, but is not restricted to, the following:

"(a) Fraud or breach of trust in the work intrusted to the employees;

"(b) Tardiness and drunkenness interfering with employment;

- "(c) Incompetence and inefficiency;
- "(d) Violation of a company policy;
- "(e) Violation of reasonable company rules and regulations;
- "(f) Misfeasance or malfeasance in the performance of duties or towards the employer;
- "(g) Failure to observe proper discipline;
- "(h) Unprovoked insolence or disrespect on the part of the employee toward the employer or the latter's representative;
- "(i) Refusal to be transferred from one position to another in the same organization (Bay View Hotel) provided that the transfer shall not amount to an unjustified demotion or undue discrimination;
- "(j) Competing with employer's business;
- "(k) Immoral, disreputable and unbecoming conduct; and
- "(l) Other similar reasons."

Note that the employer is entitled to operate the hotel and supervise, control and rotate the employees thereof, And as may be inferred from item (i) of the above-quoted provision of the working agreement, the employer may also transfer its employees from one position to another in the same organization, "provided that the transfer shall not amount to an unjustified demotion or undue discrimination." On this point, the only question left for us to determine is whether there was demotion or undue discrimination in the transfers of Policarpio and the security guards to their new assignments.

It appears that before the transfer of Policarpio to his new office assignment, he had the duties of mailing letters, collecting accounts, assisting the chief accountant and paying taxes and various matters at the City Hall. Supporting its claim that Policarpio had been discriminated against, the petitioner union made imputations of anti-union attitude on the part of the Executive Vice-President of the respondent company, which, however, were not substantiated. Apart from the fact that the said imputations were vigorously denied by the respondent, the lower court observed that Policarpio, as a witness for petitioner was unreliable. Thus, while he averred that he was an Accounting Clerk, the payrolls and a description of his real duties show that he was a mere clerk-messenger. On the other hand, the Court of Industrial Relations found that the cause of Policarpio's reassignment was his inefficiency and tardiness—a valid cause under the agreement. And we find no reason why this factual finding should be disturbed.

Likewise, the allegation that the transfer of the six security guards' amounted to a demotion has not been established. For as found by the court below, their salaries were not decreased and there had been no indication that their transfer was motivated by their union affiliation or union activities. As correctly stated by the lower court, the anti-union attitude charges against the respondents are belied by: "first, the management voluntarily entered into a working agreement with complainant union even without the instrumentality of a certification election, which working agreement practically gave almost all the demands of the union. Second, the union was the recipient of moral and financial aids when the basketball and bowling teams were provided with uniforms and their members afforded a chance to earn additional income in the shoe-shine concession."

Considering that the transfer of these employees from their old positions was effected after they had proved themselves to be incapable of efficiently doing their duties, the said transfer was nothing but a protective and corrective measure on the part of the respondent.

"* * * Fair play requires that the company assume the responsibility of giving new opportunity to employees who have performed their tasks conscientiously, but have failed in a particular job on account of lack of ability to do it well or because of an absence of interest in it. In another position, the worker may prove unusually competent." (The Management of Labor Relations by Watkins and Dodd, p. 298).

Upon the whole, we believe that the holding of the lower court to the effect that the transfer of complainants to other positions was a valid exercise by the respondent corporation of its right in accordance with the provisions of the working agreement above-quoted is correct.

As to the alleged breach of the collective bargaining agreement, petitioner contends that under paragraph 14 of the said agreement the decision of the Labor Management Committee on disputes between the employer and the employee, as those covered by the 4-point demands, are final and may not be disturbed by the employer. This contention is not well taken. The pertinent provisions of the agreement read—

"10. Labor Management Committee.—A 'Labor Management Committee' composed of two members elected by the UNION and two members to be designated by the EMPLOYER shall be immediately constituted. The Committee shall, upon the instance of the employee concerned, investigate all cases involving, according to present rules and practices, not more than three (3) days of suspension. The Committee's decision in such cases shall be binding on both parties. In cases involving more than three (3) days of suspension, the Committee shall likewise investigate the employee concerned and make its report and recommendation to the EMPLOYER. The EMPLOYER shall decide the case and its decision shall be final and binding, provided, however, that if said decision of the EMPLOYER overrules the recommendation of the Committee THE UNION MAY APPEAL THE SAME within five (5) days in which case the matter shall be submitted to the Conciliation Service of the Department of Labor. * * *"

"14. Settlement of Disputes.—The parties shall endeavor to maintain harmonious, just and cooperative relations with each other, so that efficiency may be achieved for the benefit both of labor and management. To this end, they agree that, during the term of this agreement, their relations shall be governed by the provisions thereof, which they mutually undertake to carry into effect with the utmost good faith. However, in case of any disagreement, they shall refer the same to the Labor Management Committee created in Paragraph 8 hereof."

In the first place, there is nothing in paragraph 14 stating that the decision of the committee shall be final. If the contracting parties to the collective bargaining agreement really intended to include such a rule, they would have expressed it in unequivocal terms as in paragraph 10 wherein it is clearly ordained that the "committee's decision in such cases shall be binding on both parties." In the absence of any such provision in the agreement, the rule applicable would be section 13 of Republic Act 875 stating that the duty to bargain collectively does not compel any party to agree to a proposal or to make concession.

Paragraph 14 merely provides that the disagreement be referred to the Labor Management Committee. Reference to the committee was so done in this case, but it appears that the said committee itself would not and, in fact, did not, interpret paragraph 14 as conferring upon it final powers to decide disputes other than those involving less than 5 days suspension as mentioned in paragraph 10. This may be gleaned from the fact that when confronted with the 4-point demands submitted by the Union, the committee did not assume the authority to settle the dispute once and for all but choose to make a recommendation to the management. It is clear that only in specified cases (paragraph 10) does the decision of the Labor Management Committee enjoy final and binding effect upon the parties and that in all other cases the committee may only make its recommendation to the management or employer who may approve or disapprove the same. In the present case, therefore, the nonapproval by the management of the committee's recommendation on the union's 4-point demands was not a violation of the collective bargaining agreement.

There is not much to the point raised by petitioner, that the decision of the lower court was based merely on the report of the trial examiner, for it is clearly stated in the decision that the observations of the said court were based not only on the report aforementioned but also on "all pleadings and evidence, oral or documentary" presented by both parties. And the claim that the report of the trial examiner was erroneous was not substantiated. There is nothing in petitioner's arguments that would impute any distortion or misrepresentation of facts on the part of the trial examiner.

Neither is there merit in the claim that there was irregularity in the proceedings before the trial examiner due to the non-observance of the procedure prescribed by sections 10 and 11 of Rule 34 of the Rules of Court, that is, notice to the parties of the filing of the report of a trial commissioner and the setting of such report for hearing. In *Manila Trading & Supply Co. vs. Philippine Labor Union*, 71 Phil., 539, it was held:

"When the Court of Industrial Relations refers a case to a commissioner for investigation, report and recommendation, and at such investigation the parties are duly represented by counsel, heard or at least given an opportunity to be heard, the requirements of due process has been satisfied, even if the Court failed to set the report for hearing, and a decision on the basis of such report, with the other evidence of the case, is a decision which meets the requirements of a fair and open hearing."

Premises considered, the decision and the order of the Court of Industrial Relations must be, as they are hereby affirmed in all respects. Without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Barrera, JJ., concur.

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