

ELIZALDE ROPE FACTORY, INC., PETITIONER AND APPELLANT, VS. SOCIAL SECURITY COMMISSION, RESPONDENT AND APPELLE.

G. R. No. 15163. February 28, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from Resolution No. 41 adopted by the Social Security Commission.

On 17 September 1957 the laborers of the Elizalde Rope Factory, Inc. went on strike. Edilberto Tupas, a laborer, was one of the strikers. The strike ended in the middle of February 1958. From October 1957 to January 1958, the period of time the strike lasted, the rope factory did not pay to the Social Security Commission any premium for Edilberto Tupas. In February 1958 it resumed and continued to pay the premium until 6 May 1958 when Edilberto Tupas died.

On 16 July 1958 the Social Security Commission sent bill No. 138 to the Elizalde Rope Factory, Inc. in the amount of P10.27 representing its contribution to the unpaid premium for Edilberto Tupas. In a letter dated 23 July 1958 the rope factory averred "that the amount of P9.45, representing employer's 3 1/2% premium contribution for October, November, December, 1957 should be for the account of the late Edilberto Tupas for the reason that he was then on strike and consequently, unemployed by the company. Mr. Tupas, during these months, received no wages. The Company, however, was willing to pay the amount of P0.82 only, as underpaid premium for the month of May, 1958."

On 4 November 1958 the Social Security Commission wrote to the Elizalde Rope Factory, Inc., declaring the strike "not unlawful" and reiterating its demand upon the latter to pay the amount of P10.27. To the letter were attached as Annex A circular No, 21, dated 15 October 1958, which reads as follows:

To: All Employers and Employees

Subject: Obligation to pay Premiums

The Social Security Commission in further clarification of its policies on the implementation of the Social Security Law, calls the attention of all member Employers and Employees of the Social System to the following requirements:

In general the Employer's obligation to remit his 3 1/2% contribution and to deduct or withhold and remit to the System the Employee's 2 1/2% contribution, exists as long as the employer-employees membership is not broken or terminated, as when the employee is on leave without pay. In other words, the Employer will continue to remit his 3 1/2% contribution every month even without the employee's 2 1/2%, where there are no earnings on the part of the employee. The 3 1/2% will be based on the month's earnings of the employee immediately preceding the month where there is no earning. The unpaid 2 1/2% employee's contribution will be deducted either in lump sum or by installments from future earnings of the employee.

EMETERIO ROA

Acting Administrator

Approved for the Commission:

GONZALO W. GONZALES

Chairman

and as Annex B a memorandum dated 28 October 1958 prepared by the Legal Staff of the Commission recommending that—

(1) The Elizalde Rope Factory be advised that it should pay the 3 1/2% contribution for the account of the deceased Edilberto Tupas corresponding to the months of October, November, December (1957), January and February (1958) the same to be based on the wages he received in August, 1957, in accordance with Circular No. 21.

(2) The Elizalde Rope Factory be advised that it should pay its 3 1/2% contribution for the account of all the other strikers corresponding to the months covered by the strike, the same to be based on the wages or compensation each of them received in August, 1957, in accordance with Circular No. 21.

(3) The premiums for the deceased Edilberto Tupas be recomputed such that the 2 1/2% employee's contribution should be based on the wages he received in August, 1957.

(4) The other employees who participated in the strike be required to pay 2 1/2% employee's contribution corresponding to the months covered by the strike, the same to be based on the wages or compensation each of them received in August, 1957.

On 2 December 1958 the rope factory requested the Commission to reconsider its ruling requiring it to pay the 3 1/2 contribution in question. By resolution No. 41, a copy of which was received by the rope factory on 16 January 1959, the Commission denied the request for reconsideration. Hence, this appeal from said resolution.

The issue is: should social security premium corresponding to a period when a covered worker is on strike be paid by the employer.

The petitioner Elizalde Rope Factory, Inc. contends that that it is not required to pay the 3 1/2% contribution corresponding to a period of strike, because during such period a striker ceases to be an employee whom the law [*] describes as—

Any person who performs services for an employer in which either or both mental and physical efforts are used and who receives compensation for such services.

According to the petitioner, since the requisites of rendering or performing service and receiving compensation therefor are wanting while Edilberto Tupas was on strike, he during the strike was not an employee for whom premium should be paid. Also invoking the legal definition of an employer [*] as—

Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment * * *,

the petitioner contends that during the strike it ceased to be Edilberto Tupas' employer, for it neither used his services nor had him under its order as regards his employment, and concludes that while he was on strike no premium should accrue and be paid for him.

On the other hand, the respondent Social Security Commission argues that "the premiums corresponding to the months during which the strike was pending must be paid * * *," pursuant to its Circular No. 21 dated 15 October 1958, heretofore quoted.

Although during a strike the worker renders no work or service and receives no compensation, yet his relationship as an employee with his employer is not severed or dissolved. Strike is the workers' means of expressing their grievances to employers and enforcing compliance with their demands made upon them. And when laborers go on strike, it cannot be said that they intend to cut off or terminate their relationship with their employer. On the contrary, a strike may improve the employer-employee relationship by bringing about better working conditions and more efficient services. Hence, the petitioner's contention that Edilberto Tupas ceased to be an employee from 17 September 1957 to the middle of February 1958 when he was on strike, cannot be sustained.

Section 18 of Republic Act No. 1161 as amended by Republic Act No. 1792 provides that—

Beginning as of the last day of the calendar month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, there shall be deducted and withheld from the monthly compensation of such covered employee a contribution equal to two and a half per centum of his monthly compensation. (*Italics supplied.*)

and section 19 thereof provides that—

Beginning as of the last day of the month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, his employer shall pay, with respect to such covered employee in his employ, a monthly contribution equal to three and a half per centum of the monthly compensation of said covered employee. * * * (*Italics supplied.*)

The above legal provisions do not require that the employer's 3 1/2% and employee's 2 1/2% contributions be based on the latter's monthly compensation actually earned or received by the employee covered by the Social Security System. They only provide that after an employee is compulsorily covered by the System he and his employer will contribute to pay the premium every month during his employment. In the case at bar, Edilberto Tupas was compulsorily covered in September 1957 by the System.

When he was on strike from 17 September 1957 to the middle of February 1958, his employment did not cease or end. For such period, his monthly premium accrued and the petitioner as his employer must pay its 3Va% contribution in accordance with Circular No. 21 of the System.

The resolution appealed from is affirmed, with costs against the petitioner.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[*] Republic Act No. 1161, as amended by Republic Acts Nos. 1792 and 2658.

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