

YOKOHAMA TIRE PHILIPPINES, INC., PETITIONER, VS. YOKOHAMA EMPLOYEES UNION, RESPONDENT.

G.R. NO. 159553. December 10, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this appeal, petitioner Yokohama Tire Philippines, Inc. (hereafter Yokohama, for brevity) assails the Decision[1] dated April 9, 2003 of the Court of Appeals in CA-G.R. SP No. 74273 and its Resolution[2] dated August 15, 2003, denying the motion for reconsideration.

The antecedent facts are as follows:

On October 7, 1999, respondent Yokohama Employees Union (Union) filed a petition for certification election among the rank-and-file employees of Yokohama. Upon appeal from the Med-Arbiter's order dismissing the petition, the Secretary of the Department of Labor and Employment (DOLE) ordered an election with (1) "Yokohama Employees' Union" and (2) "No Union" as choices.[3] The election held on November 23, 2001 yielded the following result:

YOKOHAMA EMPLOYEES UNION

-

131

NO UNION

-

117

SPOILED

-

2

250

VOTES CHALLENGED BY [YOKOHAMA]

-

78

VOTES CHALLENGED BY [UNION]

-

73

TOTAL CHALLENGED VOTES

-

151

TOTAL VOTES CAST

-

401[4]

Yokohama challenged 78 votes cast by dismissed employees. On the other hand, the Union challenged 68 votes cast by newly regularized rank-and-file employees and another five (5) votes by alleged supervisor-trainees. Yokohama formalized its protest and raised as an issue the eligibility to vote of the 78 dismissed employees,[5] while the Union submitted only a handwritten manifestation during the election.

On January 21, 2002, the Med-Arbiter resolved the parties' protests, decreeing as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered as follows:

x x x x

- The appreciation of the votes of the sixty-five (65) dismissed employees who contested their dismissal before the National Labor Relations Commission shall be suspended until the final disposition of their complaint for illegal dismissal. . . .

- The votes of the sixty-eight (68) so-called "newly-regularized" rank-and-file employees shall be appreciated in the final tabulation.

x x x x

SO ORDERED.[6] (Emphasis supplied.)

On May 22, 2002, the DOLE Acting Secretary disposed of the appeals as follows:

WHEREFORE, the partial appeal of [Yokohama] is DENIED and the appeal of [the union] is PARTIALLY GRANTED. Thus, the Order of the Med-Arbiter dated 21 January 2002 is hereby MODIFIED as follows:

x x x x

- The votes of dismissed employees who contested their dismissal before the National Labor Relations Commission (NLRC) shall be appreciated in the final tabulation of the certification election results.
- The votes of the sixty-eight (68) newly regularized rank-and-file employees shall be excluded.

x x x x

SO RESOLVED.[7] (Emphasis supplied.)

The Court of Appeals affirmed in toto the decision of the DOLE Acting Secretary.[8] The appellate court held that the 78 employees who contested their dismissal were entitled to vote under Article 212 (f)[9] of the Labor Code and Section 2, Rule XII[10] of the rules implementing Book V of the Labor Code. However, it disallowed the votes of the 68 newly regularized employees since they were not included in the voters' list submitted during the July 12, 2001 pre-election conference. The appellate court also noted that Yokohama's insistence on their inclusion lends suspicion that it wanted to create a company union, and ruled that Yokohama had no right to intervene in the certification election. Finally, it ruled that the union's handwritten manifestation during the election was substantial compliance with the rule on protest.

Yokohama appealed.

On September 15, 2003, we issued a temporary restraining order against the implementation of the May 22, 2002 Decision of the DOLE Acting Secretary and the October 15, 2002 Resolution of the DOLE Secretary, denying Yokohama's motion for reconsideration.[11]

In a manifestation with motion to annul the DOLE Secretary's entry of judgment filed with this Court on October 16, 2003, Yokohama attached a Resolution[12] dated April 25, 2003 of the Med-Arbiter. The resolution denied Yokohama's motion to suspend proceedings and cited the decision of the Court of Appeals. The resolution also certified that the Union obtained a majority of 208 votes in the certification election while "No Union" obtained 121 votes. Yokohama also attached an entry of judgment[13] issued by the DOLE stating that the April 25, 2003 Resolution of the Med-Arbiter was affirmed by the DOLE Secretary's Office on July 29, 2003 and became final on September 29, 2003.

In a subsequent manifestation/motion with erratum filed on October 21, 2003, Yokohama deleted an allegation in its October 16, 2003 manifestation which was included "through inadvertence and clerical mishap." Said allegation reads:

x x x x

. . . Notably, the Resolution dated 29 July 2003 which affirmed the Resolution dated 25 April 2003 is still not final and executory considering the timely filing of a motion for its reconsideration on 15 August 2003 which until now has yet to be resolved.[14]

In this appeal, petitioner raises the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN DISALLOWING THE APPRECIATION OF THE VOTES OF SIXTY-EIGHT REGULAR RANK-AND-FILE.

II.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE [DOLE SECRETARY'S] DECLARATION THAT [THE UNION'S] MANIFESTATION ON THE DAY OF THE CERTIFICATION ELECTION WAS SUFFICIENT COMPLIANCE WITH THE RULE ON

FORMALIZATION OF PROTESTS.

III.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN ALLOWING THE APPRECIATION OF VOTES OF ALL OF ITS EMPLOYEES WHO WERE PREVIOUSLY DISMISSED FOR SERIOUS MISCONDUCT AND ABANDONMENT OF WORK WHICH ARE CAUSES UNRELATED TO THE CERTIFICATION ELECTION.[15]

We shall first resolve the last assigned issue: Was it proper to appreciate the votes of the dismissed employees?

Petitioner argues that “the Court of Appeals erred in ruling that the votes of the dismissed employees should be appreciated.” Petitioner posits that “employees who have quit or have been dismissed for just cause prior to the date of the certification election are excluded from participating in the certification election.” Petitioner had questioned the eligibility to vote of the 78 dismissed employees.

Respondent counters that Section 2, Rule XII[16] of the rules implementing Book V of the Labor Code allows a dismissed employee to vote in the certification election if the case contesting the dismissal is still pending.

Section 2, Rule XII, the rule in force during the November 23, 2001 certification election clearly, unequivocally and unambiguously allows dismissed employees to vote during the certification election if the case they filed contesting their dismissal is still pending at the time of the election.[17]

Here, the votes of employees with illegal dismissal cases were challenged by petitioner although their cases were still pending at the time of the certification election on November 23, 2001. These cases were filed on June 27, 2001[18] and the appeal of the Labor Arbiter’s February 28, 2003 Decision was resolved by the NLRC only on August 29, 2003.[19]

Even the new rule[20] has explicitly stated that without a final judgment declaring the legality of dismissal, dismissed employees are eligible or qualified voters. Thus,

Rule IX Conduct of Certification Election

Section 5. Qualification of voters; inclusion-exclusion. – . . . An employee who has been dismissed from work but has contested the legality of the dismissal in a forum of appropriate jurisdiction at the time of the issuance of the order for the conduct of a certification election shall be considered a qualified voter, unless his/her dismissal was declared valid in a final judgment at the time of the conduct of the certification election.

X X X X

Thus, we find no reversible error on the part of the DOLE Acting Secretary and the Court of Appeals in ordering the appreciation of the votes of the dismissed employees.

Finally, we need not resolve the other issues for being moot. The 68 votes of the newly regularized rank-and-file employees, even if counted in favor of “No Union,” will not materially alter the result. There would still be 208 votes in favor of respondent and 189[21] votes in favor of “No Union.”

We also note that the certification election is already a fait accompli, and clearly petitioner’s rank-and-file employees had chosen respondent as their bargaining representative.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Decision dated April 9, 2003 of the Court of Appeals in CA-G.R. SP No. 74273 and the Resolution dated August 15, 2003 are AFFIRMED. The temporary restraining order issued on September 15, 2003 is hereby DISSOLVED. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 45-53. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Marina L. Buzon and Rosmari D. Carandang concurring.

[2] Id. at 55-57. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Perlita J. Tria Tirona and Rosmari D. Carandang concurring.

[3] Id. at 333.

[4] Id. at 452.

[5] Id. at 106.

[6] Id. at 221.

[7] Id. at 226-227.

[8] Id. at 53.

[9] ART. 212. Definitions . . .

x x x x

(f) “Employee” includes any person in the employ of an employer. The term shall not be limited to the employees of a particular employer, unless this Code so explicitly states. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice if he has not obtained any other substantially equivalent and regular employment.

x x x x (Emphasis supplied.)

[10] Section 2. Qualification of voters; inclusion-exclusion proceedings. – All employees who are members of the appropriate bargaining unit sought to be represented by the petitioner at the time of the certification or consent election shall be qualified to vote. A dismissed employee whose dismissal is being contested in a pending case shall be allowed to vote in the election. (Emphasis supplied.)

In case of disagreement over the voters’ list or over the eligibility of voters, all contested voters shall be allowed to vote. However, their votes shall be segregated and sealed in individual envelopes in accordance with Section 9 of these Rules. (See Department Order No. 9 which took effect on June 21, 1997.)

[11] Rollo, pp. 286-288.

[12] Id. at 307.

[13] Id. at 306.

[14] Id. at 334-335.

[15] Id. at 457.

[16] Supra note 10.

[17] Id.

[18] Rollo, pp. 148-149.

[19] Id. at 397-407.

[20] See Department Order No. 40-03, Series of 2003.

[21] $121 + 68 = 189$.

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