

**YOLITO FADRIQUELAN, ARTURO EGUNA, ARMANDO MALALUAN,
DANILO ALONSO, ROMULO DIMAANO, ROEL MAYUGA, WILFREDO
RIZALDO, ROMEO SUICO, DOMINGO ESCAMILLAS AND DOMINGO
BAUTRO, PETITIONERS...**

G.R. No. 178409. June 08, 2011

Ponente: ABAD, J.

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ABAD, J.:

These cases are about the need to clearly identify, for establishing liability, the union officers who took part in the illegal slowdown strike after the Department of Labor and Employment (DOLE) Secretary assumed jurisdiction over the labor dispute.

The Facts and the Case

On April 30, 2002 the three-year collective bargaining agreement or CBA between the union Bukluran ng Manggagawa sa Monterey-Ilaw at Buklod ng Manggagawa (the union) and Monterey Foods Corporation (the company) expired. On March 28, 2003 after the negotiation for a new CBA reached a deadlock, the union filed a notice of strike with the National Conciliation and Mediation Board (NCMB). To head off the strike, on April 30, 2003 the company filed with the DOLE a petition for assumption of jurisdiction over the dispute in view of its dire effects on the meat industry. In an Order dated May 12, 2003, the DOLE Secretary assumed jurisdiction over the dispute and enjoined the union from holding any strike. It also directed the union and the company to desist from taking any action that may aggravate the situation.

On May 21, 2003 the union filed a second notice of strike before the NCMB on the alleged ground that the company committed unfair labor practices. On June 10, 2003 the company sent notices to the union officers, charging them with intentional acts of slowdown. Six days later or on June 16 the company sent new notices to the union officers, informing them of their termination from work for defying the DOLE Secretary's assumption order.

On June 23, 2003, acting on motion of the company, the DOLE Secretary included the union's second notice of strike in his earlier assumption order. But, on the same day, the union filed a third notice of strike based on allegations that the company had engaged in union busting and illegal dismissal of union officers. On July 7, 2003 the company filed a petition for certification of the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration but the DOLE Secretary denied the motion. He, however, subsumed the third notice of strike under the first and second notices.

On November 20, 2003 the DOLE rendered a decision that, among other things, upheld the company's termination of the 17 union officers. The union and its officers appealed the decision to the Court of Appeals (CA).

On May 29, 2006 the CA rendered a decision, upholding the validity of the company's termination of 10 union

officers but declaring illegal that of the other seven. Both parties sought recourse to this Court, the union in G.R. 178409 and the company in G.R. 178434.

The Issues Presented

The issues these cases present are:

1. Whether or not the CA erred in holding that slowdowns actually transpired at the company's farms; and
2. Whether or not the CA erred in holding that union officers committed illegal acts that warranted their dismissal from work.

The Rulings of the Court

First. The law is explicit: no strike shall be declared after the Secretary of Labor has assumed jurisdiction over a labor dispute. A strike conducted after such assumption is illegal and any union officer who knowingly participates in the same may be declared as having lost his employment.[1] Here, what is involved is a slowdown strike. Unlike other forms of strike, the employees involved in a slowdown do not walk out of their jobs to hurt the company. They need only to stop work or reduce the rate of their work while generally remaining in their assigned post.

The Court finds that the union officers and members in this case held a slowdown strike at the company's farms despite the fact that the DOLE Secretary had on May 12, 2003 already assumed jurisdiction over their labor dispute. The evidence sufficiently shows that union officers and members simultaneously stopped work at the company's Batangas and Cavite farms at 7:00 a.m. on May 26, 2003.

The union of course argues that it merely held assemblies to inform members of the developments in the CBA negotiation, not protest demonstrations over it. But as the CA correctly observed, if the meetings had really been for the stated reason, why did the union officers and members from separate company farms choose to start and end their meetings at the same time and on the same day? And if they did not intend a slowdown, why did they not hold their meetings after work. There is no allegation that the company prevented the union from holding meetings after working hours.

Second. A distinction exists, however, between the ordinary workers' liability for illegal strike and that of the union officers who participated in it. The ordinary worker cannot be terminated for merely participating in the strike. There must be proof that he committed illegal acts during its conduct. On the other hand, a union officer can be terminated upon mere proof that he knowingly participated in the illegal strike.[2]

Still, the participating union officers have to be properly identified.[3] The CA held that the company illegally terminated union officers Ruben Alvarez, John Asotigue, Alberto Castillo, Nemesio Agtay, Carlito Abacan, Danilo Rolle, and Juanito Tenorio, there being no substantial evidence that would connect them to the slowdowns. The CA said that their part in the same could not be established with certainty.

But, although the witnesses did not say that Asotigue, Alvarez, and Rolle took part in the work slowdown, these officers gave no credible excuse for being absent from their respective working areas during the slowdown. Tenorio allegedly took a break and never went back to work. He claimed that he had to attend to an emergency but did not elaborate on the nature of such emergency. In Abacan's case, however, he explained that he was not feeling well on May 26, 2003 and so he decided to take a two-hour rest from work. This claim of Abacan is consistent with the report[4] that only one officer (Tenorio) was involved in the slowdown at the Calamias farm.

At the Quilo farm, the farm supervisor did not include Castillo in the list of employees who failed to report for work on May 26, 2003.[5] In Agtay's case, the evidence is that he was on his rest day. There is no proof that the

union's president, Yolito Fadriquelan, did not show up for work during the slowdowns. The CA upheld his dismissal, relying solely on a security guard's report that the company submitted as evidence. But, notably, that report actually referred to a Rolly Fadrequellan, another employee who allegedly took part in the Lipa farm slowdown. Besides, Yolito Fadriquelan was then assigned at the General Trias farm in Cavite, not at the Lipa farm. In fact, as shown in the sworn statements^[6] of the Cavite farm employees, Fadriquelan even directed them not to do anything which might aggravate the situation. This clearly shows that his dismissal was mainly based on his being the union president.

The Court sustains the validity of the termination of the rest of the union officers. The identity and participations of Arturo Eguna,^[7] Armando Malaluan,^[8] Danilo Alonso,^[9] Romulo Dimaano,^[10] Roel Mayuga,^[11] Wilfredo Rizaldo,^[12] Romeo Suico,^[13] Domingo Escamillas,^[14] and Domingo Bautro^[15] in the slowdowns were properly established. These officers simply refused to work or they abandoned their work to join union assemblies.

In termination cases, the dismissed employee is not required to prove his innocence of the charges against him. The burden of proof rests upon the employer to show that the employee's dismissal was for just cause. The employer's failure to do so means that the dismissal was not justified.^[16] Here, the company failed to show that all 17 union officers deserved to be dismissed.

Ordinarily, the illegally dismissed employees are entitled to two reliefs: reinstatement and backwages. Still, the Court has held that the grant of separation pay, instead of reinstatement, may be proper especially when as in this case such reinstatement is no longer practical or will be for the best interest of the parties.^[17] But they shall likewise be entitled to attorney's fees equivalent to 10% of the total monetary award for having been compelled to litigate in order to protect their interests.^[18]

WHEREFORE, the Court MODIFIES the decision of the Court of Appeals in CA-G.R. SP 82526, DECLARES Monterey Foods Corporation's dismissal of Alberto Castillo, Nemesio Agtay, Carlito Abacan, and Yolito Fadriquelan illegal, and ORDERS payment of their separation pay equivalent to one month salary for every year of service up to the date of their termination. The Court also ORDERS the company to pay 10% attorney's fees as well as interest of 6% per annum on the due amounts from the time of their termination and 12% per annum from the time this decision becomes final and executory until such monetary awards are paid.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Labor Code, Article 264 (a).

[2] *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*, G.R. No. 140992, March 25, 2004, 426 SCRA 319, 328.

[3] *Sukhothai Cuisine and Restaurant v. Court of Appeals*, G.R. No. 150437, July 17, 2006, 495 SCRA 336, 355.

[4] *Rollo* (G.R. 178409), p. 188.

[5] *Rollo* (G.R. 178434), pp. 49-50.

[6] *Rollo* (G.R. 178409), pp. 23-26.

[7] *Annex "C-27"*, CA *rollo*, p. 292.

[8] Annex "C-3", id. at 268; Annex "C-4", id. at 269; Annex "C-8", id. at 273.

[9] Id.

[10] Annex "C-36", id. at 302.

[11] Annex "C-35", id. at 301.

[12] Supra note 8.

[13] Supra note 7.

[14] Annex "C-8", CA rollo, p. 273.

[15] Annex "C-29", id. at 294.

[16] Lima Land, Inc. v. Cuevas, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 45.

[17] Malig-on v. Equitable General Services, Inc., G.R. No. 185269, June 29, 2010, 622 SCRA 326, 331.

[18] Macasero v. Southern Industrial Gases Philippines, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

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