

GUALBERTO CRUZ, PETITIONER VS. COURT OF INDUSTRIAL RELATIONS, ET AL., RESPONDENTS.

G.R. No. 18277. August 31, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

After the Court of Industrial Relations rendered a decision in CIR Case No. 802-V, ordering the Manila Railroad Company to reinstate, with back wages dismissed employees Pedro Vergara, Rafael Barbante, and Vicente Vifias, the matter of fees due the lawyers who assisted said claimants in the prosecution of their case,, was brought to the attention of the trial court. As a consequence thereof, Judge Emiliano Tabigne issued an order on May 11, 1960, fixing their fees as follows: Atty Gualberto Cruz, the total sum of P16,088.28, [1] Atty. Vicente A. Rafael, the total sum of P6,340.17; [2] and Atty. Nicolas B. Flores, the sum of P134.10. [3]

On May 19, 1960, Gualberto Cruz filed a motion for partial reconsideration of the aforesaid order, objecting to the award of attorney's fees to Attys. Rafael and Flores, and to the consequent reduction of the fees allegedly due him under the contract of services between him and the employees. It was alleged that under the aforementioned contract of services, he was to receive 50% of the total amount recoverable by the latter and not only 50% of that amount corresponding to the period when he actually took charge of the case.

Before this motion could be resolved, Cruz filed another motion dated September 12, 1960, questioning the jurisdiction of the trial judge to modify the agreement between him and his clients.

On September 20, 1960, the court en banc issued a resolution, signed by two judges, reducing Cruz's fees to only 10%. On September 26, 1960, one judge filed his own resolution (decision) fixing the attorney's fees at 30%. On November 17, two other judges signed dissenting opinion reiterating that Atty. Cruz was entitled to 50%.

In view of this divergence of opinion among the five judges of the court, Gualberto Cruz filed on November 29, 1960 a motion for reconsideration of the resolution, alleging that Atty. Rafael rendered professional services in CIR Case No. 802-V not for the individual claimants but for the union of which they were members, and as a member of the law firm Cid, Villaluz & Rafael which had a retainer contract with said union,[4] that the law firm of Cid, Villaluz & Rafael "abandoned" claimant's case in December, 1954; that the supposed manifestation of claimants- employees dated December 20,1956, re-employing Atty. Rafael was filed actually on February 28, 1957 after the court's decision on the merits ordering the employees' re-instatement with back wages was promulgated on February 23, 1957. In the meantime, or on December 7, 1960, Cruz filed a petition for certiorari in this Court, [5] premised among others on the same allegation that Atty. Rafael not being a lawyer for the individual claimants but for the union, should not have been awarded attorney's fees from the amount recoverable by the said claimants; and that the Industrial Court has no jurisdiction to reduce the attorney's fees due him under the contract of services with the claimants in the absence of a showing that said contract was not entered into voluntarily and that the amount agreed upon is champertous. By resolution of this Court of December 23, 1960, this petition was dismissed for being factual and for lack of merit. However, upon a motion for reconsideration

filed by petitioner Cruz, this Court on February 8, 1961 in effect reconsidered its former resolution by dismissing the petition upon another ground, viz, "there being a motion for reconsideration pending in the Court of Industrial Relations which has not yet been resolved".

On February 10, 1961, pursuant to this resolution of the Supreme Court, Cruz filed with the Court of Industrial Relations another petition to resolve the motion for reconsideration. As the said motion remained unacted upon, Cruz filed on April 3, 1961, the present petition for mandamus, prohibition and certiorari, seeking to compel the respondent Court of Industrial Relations to resolve his motion for reconsideration (of the resolution of the court supposedly en banc) as well as his other motion of September 12, 1960; and to restrain execution of the same resolution insofar as the award of attorney's fees to Attys. Rafael and Flores was concerned.

In their answer in the present case, respondents tried to justify the Industrial Court's inaction on the various pleadings filed by petitioner Cruz, specifically the motion for reconsideration dated November 29, 1960, by contending that under Commonwealth Act 103, as amended, only a decision or award or order of the trial judge shall be subject to reconsideration by the court en banc; that under Section 7 of the same Act, the court may "refrain from hearing further or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Court are not necessary or desirable"; and that in view of petitioner's failure to appeal therefrom in due time, such resolution became final 10 days thereafter.

It does not appear from the records when petitioner Gualberto Cruz was served copy of the so-called resolution of the Court en banc, together with the concurring and dissenting opinions. At any rate, the fact remains that on November 29, 1960, he filed a motion for reconsideration thereof which was not acted upon by the respondent court notwithstanding our resolution in the certiorari case instituted by Cruz (G. R. No. L-17736). The lower court can not avoid its duty to settle this matter of attorney's fees by saying that only a decision or order or award of a trial judge is subject to motion for reconsideration. A motion for reconsideration of the resolution of the court en banc is a proper matter for consideration by the court and should be acted upon one way or another, specially where, as in this case, the resolution is not supported by a majority and the motion is not trivial and in fact requires further proceedings.

Although as heretofore stated, this is an action for mandamus, prohibition and certiorari, primarily to compel the respondent court to act on petitioner's motion for reconsideration of November 29, 1960, nevertheless, in view of the inaction of the court, notwithstanding the repeated petitions to pass upon the motions in question which could be interpreted as an insistence on or adherence to the judges' respective previous runnings and, therefore, a denial of the motion for reconsideration, and considering that we have already before us all the records of the case, it is believed that the interest of justice would be better subserved if the present petition would be treated as one for review.

Going over the evidence presented in this case, we find reason to sustain the finding of the trial judge that petitioner Cruz bore the brunt of the prosecution of the employees' claim to its successful end. It was petitioner who attended the daily hearings, presented witnesses, filed the various pleadings and conducted the appeal to this Court of the original case. It is true that in the so-called manifestation dated December 20, 1956, the employees supposedly appointed Atty. Rafael their "exclusive" counsel, yet it appears that said pleading was actually filed in the Industrial Court only on February 28, 1957 or after the favorable decision to the employees was made known. It is not difficult to see that it was more of a devise to deprive petitioner Cruz of what would be due him as attorney's fees.

Petitioner's claim to 50% of the amount recoverable by the employees can not, however, be sustained. Written contract of services between a lawyer and his client, may be modified by the court where the stipulated fee would

be found unreasonable considering the nature of the services.[6]Taking into account the fact that one judge of the respondent Court voted to give 30%, which is the ordinary percentage awarded by said court in previous cases, and two voted to give petitioner 50%, and considering the nature of the case and the length of time said petitioner handled the same, an award of attorney's fees to petitioner Cruz computed at 30% is deemed reasonable.

As above modified, the resolution of September 20, 1960, is hereby affirmed, without costs. So ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Paredes, Dizon, and Makalintal, JJ., concur.

[1] For professional services rendered to Vergara and Barbante from March 1, 1955 to Feb. 17, 1960; and for Viñas, from April 23, 1955 to Feb. 17, 1960, computed at 50% of the amounts due the employees for the said periods.

[2] For professional services rendered to Vergara from Sept. 9, 1952 to Nov. 9, 1954, at 30% of the amount recoverable for said period; to Barbante from Aug. 10, 1952 to Dec. 20, 1954, at 30% of the recoverable amount for said period, and to Vicente Viñas for services from Sept. 10, 1962 to Dec. 20, 1954, also at 30%. For services rendered to these employees from Feb. 28, 1957 to Feb. 17, 1960, he was given 10% of the recoverable amount for said period.

[3] For professional services rendered to Vergara from Nov. 10, 1954 to Feb. 22, 1955.

[4] The petition was originally filed by the law firm of Cid, Villaluz and Rafael for the Kapisanan Ng Mga Manggagawa sa Manila Railroad. Co.

[5]G.R. No. L-17736.

[6] Sec. 22 Rule 127, Rules of Court

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