

DY PAC AND COMPANY, PETITIONER, VS. KATIPUNAN NG MGA MANGGAGAWA SA KAHoy SA FILIPINAS, AND LEOPOLDO ROVIRA, RESPONDENTS.*G.R. No. 47776. March 11, 1941*

Ponente: LAUREL, J.

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This is a petition for a writ of certiorari to review the decision of the Court of Industrial Relations dated September 5, 1940, ordering the petitioner, Dy Pac Company, to reinstate laborer Benito Nahag, who was dismissed from the petitioner's employ on July 30, 1940.

Prior to this date, Benito Nahag was a laborer in the employ of the petitioner, and at the time of his dismissal was President of the branch of the respondent union, "Katipunan ng mga Manggagawa sa Kahoy sa Filipinas," in the petitioner's establishment. On or about July 29, 1940, a fight occurred between said Benito Nahag and a Chinaman named Martin Hollman, who was also in the petitioner's employ as a truck driver. After an investigation of this incident by the management of the petitioner company, both Hollman and Nahag were dismissed. Hollman did not contest his dismissal, but the respondent union, through its president, protested against, the discharge of Benito Nahag and demanded that he be reinstated. This controversy was subsequently referred to the Department of Labor, but as no agreement could be reached between the parties, the respondent union declared a strike. On August 19, 1940, the dispute was certified by the Department of Labor to the Court of Industrial Relations, and after hearing, the said court rendered judgment the dispositive part of which reads as follows:

"En su virtud, declaramos que el incidente habido entre Benito Nahag y Martin Hollman es de minima importancia que no es razon que justifique su despido, y por lo tanto, ordenamos la inmediata re-admision de Benito Nahag al servicio de la recurrida, debiendo esta pagarle sus salarios devengados, a contar desde el 1.º de agosto de 1940, fecha de su despido, hasta la fecha en que dicho Benito Nahag se presentara de nuevo a trabajar en virtud de la pvesent-e orden."

The petitioner now seeks a reversal of this judgment claiming that the dispute was erroneously certified to the Court of Industrial Relations, and that the said court acted in excess of its jurisdiction in ordering the reinstatement of Benito Nahag.

But one question need be considered for the iinal disposition of the present case, namely, whether or not the Court of Industrial Relations erred in ordering the reinstatement of Benito Nahag. It appears that before the present controversy arose, a collective bargaining contract existed between the petitioner and the respondent union, whereby the petitioner Was empowered to dismiss any of its laborers who were guilty of disorderly conduct. It is admitted that the cause of Nahag's dismissal on July 30, 1040, was his improper conduct in engaging the Chinaman in a light. It appears, furthermore, that on a previous occasion, Nahag was discharged once for cause from the petitioner's employ, but that he was taken back on condition that the president and the secretary of the

union to which he was affiliated would guarantee his good conduct and deportment. Under these circumstances, we are of the opinion that the petitioner in discharging Benito Nahag for the second time for failure to observe exemplary conduct, acted merely in the normal exercise of its right to hire and discharge its employees and in strict accord with the collective bargaining contract above mentioned.

In the case of *Manila Trading & Supply Co. vs. Zulueta*, G. R. No. 46853, we held that the right of an employer to freely select or discharge his employees is subject to regulation by the State basically in the exercise of its paramount police power, but that an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance, and whose continuance in the service of the latter is patently inimical to his interest. (*Manila Trading & Supply Co. vs. Philippine Labor Union*, G. R. No. 47233; *Manila Electric Co. vs. National Labor Union, Inc.*, G. R. No. 47279; and *Jacinto vs. Standard-Vacuum Oil Co. et al.*, G. R. No. 47425.) The present case is not one where the dismissal of an employee is whimsical or unjustified or otherwise illegal.

The writ is granted and the order of the Court of Industrial Relations appealed from is hereby reversed, without pronouncement regarding costs. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

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