

ETERNIT EMPLOYEES AND WORKERS UNION, PETITIONER, VS. VOLUNTARY ARBITRATOR, HON. JESUS DE VEYRA AND ETERNIT CORPORATION, RESPONDENTS.

G.R. No. 50110. September 21, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari under Rule 65 seeks the annulment of the order of the voluntary arbitrator dated January, 1979 which denied petitioner's claim for overtime pay in NLRC Case No. RV-047, entitled, "Eternit Employees and Workers Union, Petitioner v. Eternit Corporation, Respondent."

The facts of this case are as follows:

Petitioner is a labor union of workers employed in respondent corporation which is engaged in the manufacture of asbestos cement products. The petitioner union and respondent corporation entered into a collective bargaining agreement which was renewed for a term of three (3) years from August 1, 1975 to July 31, 1978.

Due to the failure of respondent corporation to implement some of the provisions of the CBA, petitioner union filed a complaint with the then Ministry of Labor. The case was thereafter certified for voluntary arbitration.

At the preliminary hearing before the voluntary arbitrator, petitioner agreed to submit the following issues for resolution:

- "1. The privilege of buying second class sheets.
2. Overtime work on Saturday - 4 hours from August 1, 1975 to December 31, 1975.
3. Cash value of unused vacation and sick leave in 1976.
4. Right of 23 employees ordered reinstated by NLRC to vacation and sick leave for 1976.
5. Right of these same 23 employees to 13th month pay.
6. Right of these same 23 employees to P2.00 adjustment pay." (p. 22, Rollo)

On March 16, 1978, the voluntary arbitrator, Dean Jesus de Veyra, rendered an award granting the claims of petitioner union except claims no. 2 on overtime pay and no. 6 on the right of 23 employees to adjustment pay.

On April 11, 1978, petitioner union filed a motion to re-open the case on issue no. 2 concerning overtime pay on the ground of newly discovered evidence. The arbitrator granted the motion and allowed petitioner to present its evidence on the overtime work of the employees.

In January, 1979, voluntary arbitrator de Veyra issued an order, the dispositive portion of which states:

"In view of the foregoing, this Arbitrator must reiterate this conclusion reached in the main award that as far as

issue no. 2 is concerned, on the right to overtime pay for work on the Saturdays of August to December, 1975, no satisfactory evidence has been presented." (p. 21, Rollo)

Hence, the instant petition is filed with the petitioner alleging grave abuse of discretion on the part of the voluntary arbitrator in issuing the assailed order.

Petitioner union contends that the voluntary arbitrator erred in requiring petitioner to present evidence on its claim for overtime pay since the respondent company had admitted that it had in fact overpaid petitioner's claim for overtime work; that the findings and conclusions of respondent arbitrator are belied by the evidence presented by petitioner, to wit, the joint affidavit of the employees and time cards in the company.

Respondent voluntary arbitrator made the following findings and conclusions in his order:

"This Arbitrator allowed Petitioner to present evidence only on issue No. 2 which was the reception of evidence that the members of Petitioner Union actually worked for four hours on the 22 Saturday from August, 1975 to December 31, 1975. The only evidence presented by Petitioner on this point are Exhibits E to E-589 which are the weekly time cards of some of the employees plus a joint affidavit by 150 of the employees of Respondent claiming that they had worked for four hours on 22 Saturdays aforementioned. x x x. The time cards presented numbering 589 are defective in this respect and are of no aid to this Arbitrator: first, because for 22 Saturdays and 150 employees the best evidence should have been 3,300 time cards. As Respondent claims it no longer had these time cards in its possession and the 589 time cards were allegedly 'rescued' by Petitioner when about to be burned, secondary evidence consisting of the joint affidavit, Exhibit G, of 150 employees were presented instead. x x x. This Arbitrator took the trouble of checking on the time cards and found the following:

Tomas Alvarico

-

no work on Saturday in week – September 15 to 21, 1975

Abraham Lumugdang

-

- ditto -

Jovencio Sibug

-

“

Rodolfo Morales

-

“

Ramon Magdaleno

-

“

Sesinio Salud

-

“

Gregorio Reyes

-

“

Reynaldo Manaog

-

“

Antonio Sta. Ana

-

“

Raul Corcolo

-

did not work Saturday on week – September 8-14, 1975.

“These time cards were picked up at random and confirm the contention of Respondent that the claim in the joint affidavit, Exhibit G, that each of the 150 employees had worked overtime on 22 Saturdays is belied by the time cards Exhibit E to E-589 of Petitioner. It should be borne in mind that Exhibit G, is a joint affidavit of 150 employees all claiming under oath having worked 22 Saturdays of August 1, 1975 to December 31, 1975. This is secondary evidence in the absence of the proper time cards. As the ten time cards picked out at random by this Arbitrator show that at least on one Saturday in August, 1975 to December, 1975 ten of the employees signatories to the joint affidavit, really did not work on that Saturday, this Arbitrator is now faced with the fact that the joint affidavit, Exhibit G, contains a falsity, and following the rule in evidence of falsus in unus est falsus in omnibus, this Arbitrator has no other alternative but to reject Exhibit G, and with its rejection, Petitioner is left where it had originally started, that no competent evidence has been presented to support their claim of having worked 22 Saturdays of August to December, 1975. In passing this Arbitrator would like to reinforce his conclusion that CBA should be given retroactive effect to August, 1975. This conclusion is based on the fact that the CBA in reducing the hours of work from 44 to 40 provides for ‘no reduction in pay.’ In effect that meant that the average week wage for 6 days would now have to be divided by 5 instead of six, thus increasing the daily wage of the employee. This conclusion is supported by Exhibit 5, time card of Alvarico for August, 1975 showing a daily rate of P20.57, whereas his time card, Exhibit E-589 for August, 1976 shows a daily rate of P28.68. This conclusion is further corroborated by Exhibit H, official letter of Atty. Ernesto Caluag to the Department of Labor, wherein among other things he says:

‘Our employees actually work 40 hours a week only, but this company pays them for 48 hours.’” (pp. 19-21, Rollo)

The petitioner's contentions are devoid of merit.

The voluntary arbitrator had plenary jurisdiction and authority to interpret the agreement to arbitrate and to determine the scope of his own authority subject to the certiorari jurisdiction of this Court. In the instant case, his authority includes not merely the determination of the question of whether or not a claim is to be granted but also, in the affirmative case, the amount thereof (*Sime Darby Pilipinas v. Magsalin*, G.R. 90426, December 15, 1989).

Thus, as a rule, the decision of the voluntary arbitrator chosen by the parties is final, executory and not appealable. This is true especially when the parties have stipulated to that effect in their submission agreement as in the present case (p. 69, Rollo). This principle strengthens the purpose of arbitration in preserving industrial peace and in avoiding unnecessary litigation between the parties.

The contention of petitioner union that it does not have the legal obligation to present evidence on its claim for overtime pay is untenable. It is a basic rule in evidence that each party must prove his affirmative allegation and therefore, it behooves upon petitioner claiming overtime pay to prove that he is entitled to the same. Moreover, petitioner's allegation is contrary to the actuations it had before the voluntary arbitrator. Records show that after the issuance of the award by the voluntary arbitrator on March 16, 1978 granting the other claims of petitioner, the latter on its own initiative moved to re open the case and manifested that it will present newly discovered evidence on its claim for overtime pay (p. 25, Rollo). After petitioner was allowed to do so by the voluntary arbitrator, it cannot come now to this Court and allege that it had no legal obligation in the first place to prove that they had rendered overtime work.

Where the petitioner union's evidence does not satisfactorily establish its cause of action against the employer, the voluntary arbitrator did not commit arbitrariness in his decision in dismissing the complaint, when the proceedings had in the case were considered in their totality and the petitioner was given the opportunity to present its side. Further, the computation of salaries, allowances and even overtime pay of the workers are factual questions vested with the labor official concerned, who in this case, is the voluntary arbitrator chosen by the parties pursuant to Article 263 of the Labor Code, as amended. This Court has no authority in certiorari proceedings to evaluate the sufficiency of evidence before a labor officer (*Zamboanga City Water District v. Bartolome*, G.R. No. 66766, December 20, 1985, 140 SCRA 432). In the absence of any sufficient proof in this case that the voluntary arbitrator gravely abused its discretion, his decision should be given the highest respect and finality (*Mantrade/FMMC Division Employees and Workers' Union v. Bacungan*, G.R. No. L-48437, September 30, 1986, 144 SCRA 510).

ACCORDINGLY, the petition is DISMISSED and the order of the voluntary arbitrator in NLRC Case No. RV-047 dated January, 1979 is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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