

## **PHILIPPINES INTER-FASHION, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SHERIFF'S OFFICE OF THE NATIONAL LABOR RELATIONS COMMISSION, AND NATIONAL FEDERATION OF LA...**

*G.R. No. 59847. October 18, 1982*

Ponente: TEEHANKEE, J.

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### **TEEHANKEE, J.:**

Petitioner employer seeks to set aside the resolution of respondent commission of October 1, 1981 and February 9, 1982, respectively ordering the reinstatement with three months' backwages of its 114 striking employees listed in the case record and represented by respondent National Federation of Labor Unions (NAFLU) and denying reconsideration.

The established background facts as found by public respondent's commissioner are as follows:

"Sometime on 12 December 1979, the workers in the COMPANY grouped themselves and organized a labor union known as the Philippine Inter-Fashion Workers Union and thereafter directly affiliated the same with the NAFLU.

Believing that it has a majority of the more or less 600 employees, it filed on 26 December 1979 a petition for direct certification as the exclusive bargaining agent of the employees which, as of the date of submission for resolution of this case, remained unresolved.

Sometime in January 1980, the COMPANY conceived and decided to retrench its employees and selected about 40 employees to be dismissed effective 20 February 1980 allegedly because of lack of work (Affidavit of Asterio Guanzon, personnel assistant of the company; Annex "A" thereof).

Sometime on 8, 9 and 11 February 1980, Asterio Guanzon, Personnel Assistant of the COMPANY, called about 20 of the affected employees and informed them of the intended retrenchment and offered them to voluntarily resign and be paid retrenchment benefit. Since said employees refused, Guanzon asked them 'to acknowledge receipt of the clearance application and the termination letter but except for two (2) workers, they refused even to acknowledge receipt of the forms.' (Affidavit of Guanzon).

The following day, 12 February 1980, during breaktime at 9:15, about 200 employees boarded two buses and went to the Ministry of Labor and talked with then Deputy Minister who advised them to return to their work. These employees actually returned in the afternoon but stayed outside the compound.

"On 14 February 1980, the employees returned to the Ministry of Labor and on the same day obtained a Return to Work Order pertinently reading as follows:

"x x x all workers of Inter-Fashion are hereby directed to re-turn to work and the management to take them back under the same terms and conditions prior to the walk?out/lockout. Parties are hereby enjoined to maintain status quo until final determination of the case.

x x x x x x x x x."

(Annex "L", NAFLU'S Position Paper)

"The following day, 15 February 1980, the employees returned to the company with the aforesaid Order and were allowed to enter the compound but they merely stayed in the canteen because they were not given work on the pretext that machines were undergoing repairs and servicing and because the sewing lines were reorganized and workers were reassigned to new lines x x x."

"On February 1980, more than 200 employees returned and reported for work but again they were only made to stay at the canteen inside the compound and were not allowed to work but they were nevertheless paid their wages from 12 February 1980 to 20 February 1980 (Company's Position Paper dated 13 March 1980).

"On the same date, 20 February 1980, the COMPANY filed with this Ministry "applications for clearance to terminate the workers who participated in the (alleged) walkout for serious misconduct, effective March 1, 1980 placing the affected employees under preventive suspension in the meantime." (parenthesis supplied: Affidavit of Guanzon, personnel assistant).

"Subsequently, the COMPANY hired "additional workers to be able to complete twelve (12) production lines and to be able to deliver according to my production schedule." (Affidavit, Solito P. Sandoval, production services manager).

"On 20 October 1980, one hundred fifty (150) employees who were not re-admitted before were allowed to return to work and in so doing withdrew their case or complaint against the COMPANY (Annex "A"; Company's Memorandum dated 18 March 1981), thereby leaving 114 employees still subject of its clearance application."

The Solicitor General has correctly stated in his comment that "from these facts are derived the following conclusions which are like-wise undisputed: that petitioner engaged in an illegal lockout while the NAFLU engaged in an illegal strike; that the unconditional offer of the 150 striking employees to return to work and to withdraw their complaint of illegal lockout against petitioner constitutes condonation of the illegal lock-out; and that the unqualified acceptance of the offer of the 150 striking employees by petitioner likewise constitutes condonation of the illegal strike insofar as the reinstated employees are concerned."

The issues at bar arise, however, from respondent commission's approval of its commissioner's conclusions that (1) petitioner must be deemed to have waived its right to pursue the case of illegal strike against the 114 employees who were not reinstated and who pursued their illegal lockout claim against petitioner; and (2) the said 114 employees are entitled to reinstatement with three months' backwages.

The Court approves the stand taken by the Solicitor General that there was no clear and unequivocal waiver on the part of petitioner and on the contrary the record shows that it tenaciously pursued its application for their dismissal, but nevertheless in view of the undisputed findings of illegal strike on the part of the 114 employees and illegal lockout on petitioner's part, both parties are in *pari delicto* and such situation warrants the restoration of the status quo ante and bringing the parties back to the respective positions before the illegal strike and illegal lockout through the reinstatement of the said 114 employees, as follows:

"The Bisaya case (102 Phil. 438) is inapplicable to the present case, because in the former, there were only two strikers involved who were both reinstated by their employer upon their request to return to work. However, in the present case, there were more than 200 strikers involved, of which 150 who desired to return to work were reinstated. The rest were not reinstated because they did not signify their intention to return to work. Thus, the ruling cited in the Bisaya case that the employer waives his defense of illegality of the strike upon reinstatement of strikers is applicable only to strikers who signified their intention to return to work and were

accepted back. x x x.

Truly, it is more logical and reasonable for condonation to apply only to strikers who signified their intention to return and did return to work. The reason is obvious. These strikers took the initiative in normalizing relations with their employer and thus helped promote industrial peace. However, as regards the strikers who decided to pursue with the case, as in the case of the 114 strikers herein, the employer could not be deemed to have condoned their strike, because they had not shown any willingness to normalize relations with it. So, if petitioner really had any intention to pardon the 114 strikers, it would have included them in its motion to withdraw on November 17, 1980. The fact that it did not, but instead continued to pursue the case to the end, simply means that it did not pardon the 114 strikers.

xxx xxx xxx

The finding of illegal strike was not disputed. Therefore, the 114 strikers employees who participated therein are liable for termination (*Liberal Labor Union v Phil. Can Co.*, 91 Phil 72; *Insurefco Employees Union v Insurefco*, 95 Phil. 761). On the other hand, the finding of illegal lockout was likewise not disputed. Therefore, the 114 employees affected by the lockout are also subject to reinstatement. Petitioner, however, contends that the application for readmission to work by the 150 strikers constitutes condonation of the lockout which should likewise bind the 114 remaining strikers. Suffice it to say that the 150 strikers acted for themselves, not in behalf of the 114 remaining strikers, and therefore the latter could not be deemed to have condoned petitioner's lockout.

The findings show that both petitioner and the 114 strikers are in *pari delicto*, a situation which warrants the maintenance of the status quo. This means that the contending parties must be brought back to their respective positions before the controversy; that is, before the strike. Therefore, the order reinstating the 114 employees is proper."

With such restoration of the status quo ante it necessarily follows, as likewise submitted by the Solicitor General, that the petition must be granted insofar as it seeks the setting aside of the award of three months' backwages to the 114 employees ordered reinstated on the basis of the general rule that strikers are not entitled to backwages<sup>[1]</sup> (with some exceptions not herein applicable, such as where the employer is guilty of oppression and union-busting activities and strikers ordered reinstated are denied such reinstatement and therefore are declared entitled to backwages from the date of such denial<sup>[2]</sup>). More so, is the principle of "no work, no pay" applicable to the case at bar, in view of the undisputed finding of illegality of the strike.

ACCORDINGLY, judgment is hereby rendered affirming respondent commission's Resolution insofar as it orders the reinstatement of the 114 employees but setting aside the award therein for the payment of three months' backwages.

### **SO ORDERED.**

Melencio-Herrera, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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[1] See *JB Heilbronn Co v. NLU*, 92 Phil. 575; *Dinglasan v NLU*, 106 Phil. 671; *Cromwell Employees and Labor Aaan. v. CIR*, 12 SCRA 124; *Pampanga Sugar Development Co. Inc. v. Sugar Workers' Assn.*, 55 SCRA 613 and *People's Bank and Trust Co. v PBTC Employees Union*, 69 SCRA 10.

[2] See *Philmaroa vs. CIR*, 102 Phil. 373; *Cromwell Employees and Laborers' Ass'n. vs. CIR*, 12 SCRA 124; and *Davao Free Workers Front vs. CIR*, 60 SCRA 408.

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