

**RELIANCE SURETY & INSURANCE CO., INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND RELIANCE
SURETY & INSURANCE EMPLOYEES UNION, RESPONDENTS.**

G.R. Nos. 86917-18. January 25, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The only question in this petition for certiorari is whether or not strikers who have been found to have staged an illegal strike may be reinstated to work.

The facts are as follows:

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It appears that to avoid unnecessary loss of productive working time due to personal and non-work-related conversations, personal telephone calls and non-work-connected visits by personnel to other departments, the respondent Reliance Surety Insurance Co., Inc. (company for short) on 21 November 1986, thru the manager (Mr. Celso Eleazar) of its underwriting department, effected a change in the seating arrangement of its personnel in said department.

Four of those affected namely: Isagani Rubio, Rosalinda Macapagal, Glene Molina, and Severa Cansino protested the transfer of their tables and seats, claiming that the change was without prior notice and was done merely to harass them as union members. When the manager insisted, a heated discussion ensued, during which Rubio and companions were alleged to have hurled unprintable insults (sipsip, balimbing, vacuum, etc.) to the manager and supervisors.

Rubio, Macapagal, Molina and Cansino were asked to explain within 48 hours why no disciplinary action should be taken against them for misconduct, insubordination, and gross disrespect. The work atmosphere in the department had allegedly become charged or tense as Rubio continued to refuse to stay at his designated place, and Molina and Macapagal still levelled insults to those who testified against them. Hence, Rubio and companions were placed under preventive suspension on 3 February 1987 and ultimately dismissed after investigation on 3 March 1987.

On 6 March 1987, the Reliance Surety & Insurance Employees Union (or union for short) filed in behalf of Rubio, Macapagal, Molina, and Cansino with the NLRC-NRC Branch, Manila, against the respondent company a complaint for illegal dismissal (NLRC-NCR Case No. 00-03-00828-87) which it subsequently amended on 7 April 1987 to include the charge of unfair labor practice.

The union claims that the company was guilty of unfair labor practice because it, among others, effected transfer and changes in the seating arrangement to pressure or intimidate union members; because it interfered in the union members' exercise of their right to self-organization by forcing them to undertake overtime work even on a non-working Saturday and in times when there were scheduled union meetings to prevent them from attending the same; and because, thru its manager and assistant managers, it caused the resignation and withdrawal of union members from the union.

It also appears that on 12 March 1987, or while the complaint for illegal dismissal and ULP was hibernating in the NCR Arbitration Branch, the union filed with the DOLE a notice of strike predicated on unfair labor practices (dismissal of union officers/members, discrimination and coercion on employees) allegedly committed by the company.

On 13 March 1987, the company received a copy of the notice of strike and a telegram from the DOLE setting the notice of strike for initial conciliation conference on 17 March 1987 at 2:00 p.m. But even before the initial conference could take place, the union in the morning of 17 March 1987 struck and picketed the company premises by forming human barricades, which effectively obstructed the free ingress to and egress from its premises, more particularly at the lobby of the 8th floor of the building where it has its office, thereby preventing its officials and employees from doing their usual duties.

Because of this new development, the company filed on 31 March 1987 with the NLRC-NCR Arbitration Branch, Manila, a petition to declare the strike illegal (NLRC-CR Case No. 00-03-001179-87) on the grounds that the 30 or 15 day cooling-off period was blatantly defied; that the legal requirement to furnish the department with the results of the strike vote at least 7 days before the strike was ignored; just as the 24-hour period within which BLR or the Regional Office should be furnished with a written notice of the meeting to declare a strike was also not complied with.

Charged, together with the union and its members, as individual respondents in the petition to declare the strike illegal were the following officers: Rolando Tugade, president; Joseph Aying, vice-president; Isagani Rubio, treasurer; Ms. Glene Molina and Ms. Rosalinda Macapagal, secretaries; Froilan Garcia and Ms. Luz Monroy, Sgts. at arms; Orlando Calma, auditor; an Manolo Que, pro, who, the company claims, should be divested of their employment status for having knowingly participated in the illegal strike and in the commission of illegal acts.[1]

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The Labor Arbiter found the strike to be illegal, a finding the National Labor Relations Commission, on appeal, affirmed. However, the Commission held:

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However, while we are convinced that the strike is illegal, we are equally convinced that it should not be visited with the consequence so harsh as the supreme penalty of dismissal, where merely reinstating them (strikers) without backwages would suffice in view of the union's belief, in proceeding with strike, that the company was committing unfair labor practice in terminating the services of some of its officers and members, in line with the Supreme Court ruling in the case of Ferrer vs. CIR, 17 SCRA, 352, to that effect. In justifying the imposition of a penalty lesser than dismissal even in cases involving strikes tainted with illegality, the Supreme Court in the case of Almira vs. B.F. Goodrich Phils., Inc., 58 SCRA, 120 ruled:

It would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those depending on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided. x x x

In other words, under the circum-stances obtaining in this case, we find it more in keeping with justice and equity if the striking union officers are reinstated, instead of being dismissed, to their former positions without loss of seniority rights but without backwages to serve as penalty for their indiscretion in launching an illegal strike.[2]

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The Commission then disposed as follows:

WHEREFORE, under the premises, the decision appealed from is hereby AFFIRMED, subject to the modification that all the striking officers of the appellant union should be reinstated to their former positions without loss of seniority rights but without backwages except Isagani Rubio, Glene Molina, and Rosalinda Macapagal, whose dismissal due to gross disrespect was found to be justified, and Luz Monroy who, in consideration of the financial assistance of P4,500.00 had withdrawn her appeal and allowed the arbiter's order of dismissal to be binding upon her. The dismissal of Severa Cansino due to gross disrespect is likewise upheld. However, the company is directed to pay said employees, namely Isagani Rubio, Glene Molina, Rosalinda Macapagal and Severa Cansino one month salary each including cost of living allowance and other benefits.[3]

The petitioner argues that in so disposing, the Commission is guilty of a grave abuse of discretion.

There is no dispute that the strike in question was illegal, for failure of the striking personnel to observe legal strike requirements, to wit: (1) as to the fifteen-day notice; (2) as to the two-thirds required vote to strike done by secret ballot; (3) as to submission of the strike vote to the Department of Labor at least seven days prior to the strike.[4]

As found likewise by the Commission, in the course of the strike held on April 1, 1987, certain strikers harassed non-striking employees, called company officers names, and committed acts of violence (as a result of which, criminal charges were brought with the fiscal's office.)[5]

There is no question, finally, that the strike itself was prompted by no actual, existing unfair labor practice committed by the petitioner. In effecting a change in the seating arrangement in the office of the underwriting department, the petitioner merely exercised a reasonable prerogative employees could not validly question, much less assail as an act of unfair labor practice. The Court is indeed at a loss how rearranging furniture, as it were, can justify a four-month-long strike. As to the private respondent's charges of harassment, the Commission found none, and as a general rule, we are bound by its findings of fact.

Amid this background, the Court must grant the petition. In staging the strike in question, a strike that was illegal in more ways than one, the reinstated union officers were clearly in bad faith, and to reinstate them without, indeed, loss of seniority rights, is to reward them for an act public policy does not sanction.

The private respondents can not find sanctuary in the cases of *Ferrer v. Court of Industrial Relations*[6] and *Almira v. BF Goodrich Philippines, Inc.*,[7] in which we affirmed reinstatement in spite of an "illegal" strike. In the first place, neither *Ferrer* nor *Almira* involved an illegal strike. What was involved in *Ferrer* was a defective strike, that is, one conducted in violation of the thirty-day "cooling-off" period, but one carried out in good faith "to offset what petitioners were warranted in believing in good faith to be unfair labor practices [committed by] Management." [8] What *Almira* on the other hand declared was that a violent strike alone does not make the action illegal, which would justify the dismissal of strikers. It is therefore clear that we ordered reinstatement in both cases not in spite of the illegality of the strike but on the contrary, because the same was "legal", that is to say, carried out in good faith.

We can not apply, either, the ruling in *Bacus v. Ople*,[9] where we held that the mere finding of illegality attending a strike does not justify the "wholesale" dismissal of strikers who were otherwise impressed with good faith.

The Court must not be understood to be abandoning the teachings of either *Ferrer*, *Almira*, or *Bacus*. The Court reiterates that good faith is still a valid defense against claims of illegality of a strike. We do find, however, not a semblance of good faith here, but rather, plain arrogance, pride, and cynicism of certain workers.

With respect to the private respondent, Isagani Rubio, what militates against his readmission to the firm is the fact

that he had accepted the sum of P2,448.80 "in full satisfaction of the...Decision" (of the Labor Arbiter). He can not now insist on reinstatement after accepting the legality of his dismissal. He can not have his cake and eat it too.

As a general rule, the sympathy or the Court is on the side of the laboring classes, not only because the Constitution imposes sympathy but because of the one-sided relation between labor and capital. The Court must take care, however, that in the contest between labor and capital, the results achieved are fair and in conformity with the rules. We will not accomplish that objective here by approving the act of the National Labor Relations Commission which we hold to constitute a grave abuse of discretion.

WHEREFORE, the petition is GRANTED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.
Padilla, J., no part.

[1] Rollo, 156-159.

[2] Id., 164-165.

[3] Id., 165.

[4] Id., 162-163.

[5] Id., 164-165.

[6] Nos. L-24267-8, May 31, 1966, 17 SCRA 352.

[7] No. L-34974, July 25, 1974, 58 SCRA 120.

[8] Ferrer, *supra*, 360.

[9] No. 56856, October 23, 1984, 132 SCRA 690. See also Nos. 59711-12, May 29, 1987, 150 SCRA 429.

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