

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**CONRADO CASTILLO, SILVESTRE
ASTORGA, VALENTIN OFILADA, and
SIMPLICIO DAMULO,**

Petitioners,

-versus-

**G.R. No. L-26124
May 29, 1971**

**COURT OF INDUSTRIAL RELATIONS,
MAYFAIR THEATRE, INC., and/or
HENRY YANG (whose true name is
"YUNG CHIAO SENG"), General
Manager,**

Respondents.

X-----X

**MAY FAIR THEATRE, INC., and/or
HENRY YANG,**

Petitioners,

-versus-

**G.R. No. L-32725
May 29, 1971**

**COURT OF INDUSTRIAL RELATIONS,
SILVESTRE ASTORGA, and CONRADO
CASTILLO,**

Respondents.

X-----X

DECISION

MAKALINTAL, J.:

These two separate petitions — L-26124, Appeal by *Certiorari* filed at the instance of four former employees of the Mayfair Theatre, Inc. from the resolution of the Court of Industrial Relations en banc dated November 9, 1964; and L-32725, an original action of certiorari filed by the Mayfair Theatre, Inc., questioning the order of said court dated June 11, 1969 and its resolution en banc dated October 8, 1970 — both originated from Case No. 2167-ULP instituted by the aforesaid employees on September 18, 1959, charging said company and/or Henry Yang^[1] with arbitrary dismissal due to union activities and/or affiliation. The National Federation of Labor Unions (NAFLU) originally joined as complainant in the court below, but was subsequently dropped upon its own motion.

On June 29, 1962, the trial judge, Hon. Arsenio I. Martinez, rendered a decision holding that the dismissal of two of the complainants, namely, Valentin Ofilada and Simplicio Damulo, was justified; but finding the employer guilty of unfair labor practice in dismissing the other two — Silvestre Astorga and Conrado Castillo — and ordering that they be reinstated, without back wages for Astorga but with back wages for Castillo from the date of his dismissal (September 2, 1959) up to his actual reinstatement.

Both parties moved for partial reconsideration of the decision.

On September 2, 1962, while the motions for reconsideration were pending before the court En Banc, NAFLU moved to withdraw as

complainant in the case, alleging that the same had been filed without its knowledge or authorization and that the complainant employees had never been bona fide members of the union.

The employer, in turn, filed an amended Petition For Partial Relief From Judgment on October 5, 1962, alleging two grounds: (a) that in view of the manifestation of NAFLU that the complainant workers had never been members of the union, their dismissal from employment, contrary to the finding of the trial judge, could not have been for union activities; and (b) that Astorga, Castillo and Ofilada had each been found guilty of the offense of threats and sentenced to imprisonment for 15 days by the City Court of Manila in Criminal Case No. F-047844, and that in another case for slight physical injuries, Criminal Case No. F-047845, Astorga had likewise been found guilty and sentenced by the same court to imprisonment for 25 days.

On July 22, 1964 the lower court issued an order granting the motion of NAFLU to withdraw as complainant but denied the employer's Petition For Partial Relief From Judgment on the grounds that the complainant workers did sign affiliation papers with NAFLU in February 1959, although they resigned a few days later; that they again affiliated in August of the same year, and were even told by the president of NAFLU to solicit more members; and that NAFLU's motion to withdraw as complainant was motivated merely by personal differences between the union president and the complainants' counsel. In the same order, however, the court deferred the reinstatement of Astorga and Castillo until the final termination of the criminal cases, which were then on appeal, inasmuch as the same might affect their right to such reinstatement.

On November 9, 1964, the lower court en banc affirmed the decision of June 29, 1962, but likewise held reinstatement of Astorga and Castillo in abeyance, as follows:

“It appearing, as found in the Order dated July 22, 1964, which has become final and executory, that said complainants had been convicted of criminal offenses, which are presently pending appeal and which may affect their rights to reinstatement, said reinstatement should therefore be held in

abeyance until after the final determination of said criminal charges.”^[2]

Judge Arsenio I. Martinez penned the resolution of affirmance, which was fully concurred in by Judge Ansberto P. Paredes. Judge Emiliano C. Tabigne concurred and dissented, maintaining that the dismissal of all four complainants was justified; Judge Amando C. Bugayong also concurred in part, but dissented with respect to the deferment of the reinstatement of Astorga and Castillo; and Judge Vicente A Rafael voted for the immediate reinstatement of all four complainants. The aforesaid resolution is the subject of review in case No. L-26124, wherein the corresponding petition was filed by the four complainants, after extensions granted by this Court, only on June 22, 1966, they having received a copy of the said resolution on May 23, 1966.

On July 23, 1968, Astorga and Castillo filed a motion in the court below for immediate reinstatement and computation of back wages, alleging that the criminal case for threats against them had been finally dismissed by the Court of First Instance of Manila in an order dated June 8, 1968.

The employer opposed the motion on the ground, inter alia, that although the case for threats had been dismissed, Astorga, the only defendant in the slight physical injuries case, had been found guilty on appeal and sentenced to imprisonment for 15 days by the Court of First Instance of Manila on February 11, 1964.

On June 11, 1969 the court nevertheless directed “the reinstatement of Astorga and Castillo to their former positions in the Mayfair Theatre, Inc., without loss of seniority rights and other privileges.” The court en banc affirmed this order on October 8, 1970 and directed the Corporate Auditing Examiner of the court to compute the recoverable back wages due to Conrado Castillo. From the foregoing order and resolution Mayfair Theatre, Inc., came to this Court on certiorari (No. L-32725).

L-26124

In L-26124 the petitioners maintain: (a) that the dismissal of Valentin Ofilada and Santiago Damuho was contrary to law, discriminatory, and an abase of discretion on the part of the lower court: (b) that the denial of backwages to Silvestre Astorga was discriminatory and contrary to precedents; and (c) that the suspension of the effectivity of the order to reinstate him and Conrado Castillo pending the termination of the criminal charges against them has no basis in law.

The facts concerning the dismissal of each of the four petitioners were considered by the lower court and narrated in its decision separately. In their brief these petitioners challenge the veracity of said facts in a most perfunctory manner, and cite no evidence in the record to show otherwise.

In the case of Ofilada, while he did affiliate with the union on August 19, 1959 and was dismissed on the following August 24, the court found that his dismissal had nothing to do with any union activities on his part but was due to various infractions of company rules and regulations he had committed, such as allowing his friends and relatives to enter the theater free of charge, sleeping during working hours and leaving his ticket-booth open, contrary to a standing instruction that it be closed at all times as a precaution against hold-ups and other untoward incidents. Ofilada was a ticket-seller and knew of that instruction, issued precisely because a hold-up had just been attempted in another theater; and yet Ofilada, while on duty, would admit visitors and friends inside a room near the ticket-booth and carry on conversation with them through its open doorway. We agree that these violations were serious enough to warrant his dismissal.

With respect to Simplicio Damulo, who was employed as lobby boy, the lower court found that, like Ofilada, he affiliated with the union on August 19, 1959. On August 24 he was transferred by the floor manager of the theater from the day shift to the night shift, and at the same time was assigned from the Esquire Theatre to the Savoy Theater. He asked respondent Henry Yang that the change be recalled, but his request was denied. Evidently he disliked the new assignment, since he did not report for work beginning August 25. After three days he was dismissed on August 28. There was nothing unusual or discriminatory, according to the lower court, in Damulo's

change of assignment, because rotation of employees from one shift to another was a standard practice with respondent, adopted precisely to avoid any discrimination among them; and Damulo had already been in the morning shift for quite a time. We agree that for his insubordination and abandonment of work his dismissal was justified.

In the cases of Silvestre Astorga and Conrado Castillo, their dismissal was viewed by the lower court in a different light. Astorga affiliated with the union on August 19, 1959. He was transferred from the Mayfair Theater to the Savoy Theater on August 25; and on August 27 he was dismissed. The reason for his dismissal, according to the respondents, was abandonment of work for three days — from August 25 to 27, inclusive. Analyzing the conflicting evidence on this point, however, the lower court found that Astorga complied with his new assignment and actually worked at the Savoy Theater the first two days, but became ill with fever after he was caught in the rain while changing the posters outside the movie-house in the afternoon of August 26, upon instructions of the floor manager, who was duly informed of such illness. Astorga did commit, however, certain irregularities although the evidence has not established their causal relation to his dismissal. Thus he had an unexplained absence on August 23, 1959, although after that he was allowed to work again and indeed was even transferred to another theater; and on one occasion he took a film out to be shown at Ofilada's house in Muntinglupa — an act not mentioned in the letter discharging him and brought up only thereafter. It was for such irregularities that the lower court denied him back wages. We do not find such denial to be unjustified under the circumstances.

Conrado Castillo was one of the movie projectionists when he was dismissed on September 2, 1959. Like the other petitioners he was transferred to the Savoy Theater on August 25, 1959. The evidence in his case is even more conflicting than in that of Astorga. His testimony is that he became a member of the union as early as February 25, 1959; that the next day he was called by his uncle, Tomas Dizon, floor manager of the Mayfair Theater, who questioned him about a meeting of the union supposedly held at its office, but which, Castillo answered, was still to be held in the evening of that day, that he was taken by Dizon to the office of Henry Yang, where he

was investigated in connection with his membership in the union, that he admitted being a member after Dizon gave him a beating; that Dizon asked him to resign from the union and did not allow him to work for one day, as a result of which the union filed charges against the respondents (Case No. 1994-ULP), but the case was dismissed by the court; and that thereafter he was allowed to work again, and on August 19, 1959 rejoined the union.

The respondents' version is entirely different. Castillo, according to them, was not dismissed for his union activities but because he was caught sleeping several times while on duty, and punching the time record of another employee, for which he even wrote his uncle a letter of apology on August 28, 1959.

We need not go into an analysis of the factual findings made by the trial court. It is enough that there is substantial evidences to support them. The question of credibility is addressed mainly to the trier of the facts, and unless there is clear and manifest error, amounting to an abuse of discretion, the findings should not be disturbed on appeal. Since the trial court found that Conrado Castillo had been dismissed by reason of his union activities, the order of reinstatement with back wages was not without justification.

L-32725

The Mayfair Theatre, Inc., petitioner in this second case, questions the order of the trial court dated June 11, 1969, affirmed by the court en banc on October 8, 1970, directing the reinstatement of Astorga and Castillo to their former positions, and the computation of the latter's back wages.

The first contention of petitioner is that the court exceeded its jurisdiction in ordering reinstatement in view (1) of the order of July 22, 1964, which had become "final and executory," holding such reinstatement in abeyance until the criminal cases against Astorga and Castillo were terminated, and (2) of the fact that these two respondents were finally found guilty in said cases.

The first ground is untenable on its face. The very nature of the order of the July 22, 1964 shows that the basic decision of June 29, 1962, in

which the right to reinstatement of Astorga and Castillo was adjudged, was neither set aside nor amended, but that such reinstatement was merely suspended. The alleged finality of the order of July 22, 1964 did not affect the jurisdiction of the court to enforce its decision after the termination of the criminal cases.

The real issue is whether, considering that the reinstatement of the two respondents as adjudged in the decision had been suspended precisely by virtue of the pendency of criminal charges against them, the trial court was justified in ordering them reinstated after they were finally found guilty of such charges.

In the first place, the premise of the argument is not entirely correct. In the criminal case for threats, while both respondents were convicted in the City Court of Manila, the case was appealed to the Court of First Instance. The latter returned it to the court of origin in 1963 upon motion of the prosecuting Fiscal on the ground that the appeal should have been taken to the Court of Appeals directly. It appears that the City Court sat on the case for five years, only to send it back in 1968 to the Court of First Instance which thereupon dismissed the case in the interest of justice, considering the light character of the offense and the long delay already suffered. Under the circumstances it cannot be said that the accused had been found guilty by final judgment in the case.

With respect to the case for slight physical injuries, it should be noted that like the one for slight, threats, it arose from an incident which had nothing to do with the dismissal of the respondents. That incident took place on May 7, 1962, almost three years later, when Astorga, together with his co-employees and co-petitioners in case No. L-26124, passed at the lobby of the Mayfair Theater after attending a birthday party of their lawyer. Coming upon a certain Celso Esquila, a theater employee, Astorga gave him two fist blows in the stomach, causing one contusion which, however, required no medical attendance.

Obviously that incident, which happened years after Astorga was dismissed from employment, could not materially affect the question of whether or not it was justified. And while the respondent court, in its order of July 22, 1964, deferred his reinstatement because the

outcome of the criminal charges against him might affect his right thereto, it is equally obvious that after Astorga was finally found guilty on appeal and sentenced to imprisonment for fifteen days, the said court did not take that fact as a sufficient ground to deny such reinstatement altogether. We do not see that a reversible error was committed in this regard, especially considering that Astorga was denied back wages.

The last point raised by petitioner is that the order of June 11, 1969, affirmed by the resolution of the respondent court en banc dated October 8, 1970, constitutes an interference with the jurisdiction of this Court in L-26124. The point has no merit. What is under review in L-26124 is the order holding the judgment for reinstatement in abeyance until the criminal cases were terminated, and there is no inconsistency between the pendency of this review and the issuance of the aforesaid order and resolution of reinstatement, which are challenged by the petitioner, Mayfair Theater, Inc., in the other petition, L-32725.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Petitions in these two cases are dismissed; the orders and resolutions in question are affirmed, with the modification that (a) with respect to Conrado Castillo, his backwages should be from the date of his dismissal on September 2, 1959 up to the time he is actually reinstated, but excluding the time comprised between July 22, 1964, when his reinstatement was suspended, and June 11, 1969, when it was again ordered, and deducting whatever earnings Castillo may have received from other sources during the entire period that he is entitled to back wages; and (b) with respect to Silvestre Astorga, he should be paid backwages from June 11, 1969 until he is reinstated, but deducting likewise whatever earnings he may have received during that period from other sources. No pronouncement as to costs.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor and Makasiar, JJ., concur.

[1] President and General Manager.

[2] Appealed as Criminal Case No. 66527 for Threats and Criminal Case No. 66526 for Slight Physical Injuries, both in the Court of First Instance of

Manila. Actually the second case had been decided by said Court since February 11, 1964, but was again appealed, first to the Court of Appeals and then to the Supreme Court, both of which courts affirmed the decision.

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