SUPREME COURT
EN BANC

CEBU PORTLAND CEMENT COMPANY,
***Petitioner*,**

-versus-

G.R. Nos. L-25032
and L-25037-38
October 14, 1968

CEMENT WORKERS UNION, LOCAL 7-ALU and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**
x----------x

D E C I S I O N

REYES, *J.*:

Petitions filed in this Court by the Cebu Portland Cement Company (CEPOC) for review of the single decision of the Court of Industrial Relations, in its Cases Nos. 35-IPA, 276-ULP-Cebu and 278-ULP-Cebu, on the following grounds:

1. The findings of the Court of Industrial Relations that there was discrimination against Union members in the assignment of work during Saturdays, Sundays and legal holidays, are not supported by substantial evidence;

2. The findings of the Court of Industrial Relations that there was discrimination in the appointment of Union members to permanent positions, are not supported by substantial evidence;

3. The management of petitioner CEPOC has power to compel its employees and workers to take vacation and/or sick leaves of absence whenever its finances so warrant; and

4. The Court of Industrial Relations gravely abused its discretion in not ordering the dismissal from the service of the workers or employees who actively participated in the strike of March 24, 1961.

On March 24, 1961, about 300 workers of CEPOC at its plant in Tinaan, Naga, Cebu City, and affiliated with the Cement Workers Union, Local 7-ALU (hereafter referred to as the Union), staged a strike, allegedly because of CEPOC's refusal to honor its oral commitment to incorporate in the collective bargaining agreement, then in the process of renewal, a provision for the collection of a monthly agency fee of P1.00 from every employee non-member of the Union. Certified by the President of the Philippines to the Court of Industrial Relations, the case was docketed therein as Case No. 35-IPA. At about the same time, on complaint by the Union, a case for unfair labor practice against CEPOC was filed in the Labor Court based also on the company's alleged refusal to bargain with the workers (CIR Case No. 276-ULP- Cebu). Thereupon, the CEPOC similarly filed unfair labor practice charges against the Union, for having staged an illegal strike and for having employed threats, intimidation and violence in the prosecution of the aforesaid strike, which resulted in death to one employee and physical injuries to several others. This case was docketed as CIR Case No. 278-ULP-Cebu. Pending final settlement of the controversy, the Labor Court issued a return-to-work order and the strikers were able to work again on July 6, 1961.

On November 6, 1964, in a single decision rendered in the three cases, the Court declared the strike illegal, its cause or aim being unjust, trivial and unreasonable. Accordingly, the mutual charges of unfair labor practice filed by the parties against each other (CIR Cases

Nos. 276-ULP-Cebu and 278-ULP-Cebu), arising from the same demand of the Union for collection of agency fees from non-Union members, were dismissed. However, having also found that there was discrimination against Union-members (a) in the assignment of employees to work on Saturdays, Sundays and legal holidays, as well as in the night shift, and (b) in the appointment of 6 Union members to permanent positions with lower salary range, the court below ordered the CEPOC: (1) to pay to those who were discriminated against in the assignment of work on Saturdays, Sundays and legal holidays the wages that they thus failed to receive; (2) to pay the night premium or salary differential to those strikers who were not given change in their shift assignments and remained in the day shift; and (3) to pay to the six employees (Dionisio Lapitan, Ponciano Mabatid, Vicente Siarza, Sabino Canillo, Fructuoso Gil and Pedro Sanchez) the difference in wages which they to receive because of discrimination in the classification of their positions. Additionally, finding that CEPOC's memorandum of April 4, 1961, issued when the labor dispute was already pending before the Labor Court, and requiring its employees to go on 3 day sick and vacation leaves of absence every month, was made in violation of its return-to-work order, the lower court ordered CEPOC to restore the accumulated leaves of the employees who were forced to use such leaves and to pay the wages that they thus failed to receive. To facilitate the computation of the amounts involved in the award, the Chief of the Examining Division of the said court was directed to examine the records and other pertinent documents of the company relative to the service of the affected employees and to submit to the court a corresponding report thereon. Its motion for reconsideration of the above-mentioned decision having been denied by the court en banc, CEPOC appealed, for the reasons already stated at the beginning of this opinion.

Passing upon the Union-charge that the CEPOC discriminated against the strikers in the assignment of employees to work on weekends and legal holidays and on the night-shift, the court below declared:

> "With respect to discrimination in the assignment of work for Saturdays, Sundays and legal holidays, the evidence is clear that the strikers except a very few of them were not permitted to work on those days. Admittedly, prior to the strike on March

> 24, 1961, workers performing operational work worked on Saturdays, Sundays and legal holidays. The shortage of coal and economic measure contended by CEPOC would not justify the authorization granted to the non-strikers to continue working on those days while only a very few strikers were granted the same privilege. By withholding this privilege to most of the strikers, they were deprived of additional compensation for work performed on those days.
>
> "The same justification — shortage of coal and economic measure — was interposed by CEPOC, as regard the Union's claim of discrimination in shift assignments. It is also claimed that before and after the strike CEPOC was operating at a loss and in order to incur additional obligation for work rendered at night, the workers were assigned to work in the day shift and only in cases of urgent necessity were they allowed to work during the night. But even granting this to be true, this alone can not justify why only non-strikers were given changes in shift while strikers remained in the day shift, thus denying them the night-work differential pay equivalent to 25% enjoyed by those assigned in the 2nd shift (3:00 P.M. to 11:00 P.M.) and 3rd shift (11:00 P.M. to 7:00 A.M. the following day) and greatly reducing their take home pay." (pages 13-14, Decision)

In assailing the correctness of the above conclusions of the lower court in this proceeding, petitioner confines itself to saying that the assignment of personnel rendering work on weekends, legal holidays and at nighttime was dictated by necessity; that considering the small volume of work to be done and the bad financial condition the company was in, it would be poor business management to have required everybody to render such services and to pay the corresponding extra wages. Petitioner, in so arguing, totally missed the point at issue, because the judgment of the lower court precisely was premised on the presumption that the rotation of personnel to do extra work was proper. In other words, the question to be resolved here is not the propriety or impropriety of the rotation measure adopted by the company but whether or not in the execution of such measure the strikers or union-members were discriminated against.

The court below, considering the evidence therein presented, found for the Union, and ruled that the charges of discrimination have been duly established, a conclusion which petitioner has failed to disprove. The findings of the lower court in this point must, therefore, be respected and maintained, particularly since appellant does not cite any portion of the record in support of its claim that the CIR findings are without substantial evidentiary support.

As regards the alleged discrimination in the appointment of union-members Dionisio Lapitan, Ponciano Mabatid, Vicente Siarza, Sabino Canillo, Fructuoso Gil and Pedro Sanchez, the records show that as of 1951 these employees were occupying the positions of Mixed Control Chemists at P195.00. On June 30, 1957, they were promoted in salary to P215.00 a month. For lack of appropriate civil service eligibility, however, their appointments were noted as temporary by the Civil Service Commission. When the WAPCO law went into effect on July 1, 1957, the positions of the above-named employees, based on their statements of duties, were classified as Construction Material Chemists with Range 34, at P259.00 a month. As they protested against this classification,[1] said employees were required to submit another statement of their respective duties, and, based on this later statement, their positions were reclassified by WAPCO as Senior Chemical Laboratory Technician, with salary range 27, at P183.00 a month. It is their appointment to these Positions with lower salary range that the Union contested allegedly for being discriminatory.

Sustaining the charge that the appointment of the six employees to the reclassified positions constituted discrimination, the lower court said:

> "If as alleged these mix-control chemists were reclassified to a lower position classification because of their protests and objections to a higher classification, it is surprising why non-union members Celso Perez and Jaime Medicielo, who were the least senior in point of service and appointment to these positions, were reclassified to Range 33, or only one grade lower than their previous position classification of Range 34, while the rest who were more senior in the service and were appointed much earlier to these positions were reclassified to Range 27, a difference of seven grades from their former

> position classification. Apparently the job description, wherein the job classification of the WAPCO is based, while accomplished by the employee concerned, must be with the advice and approval of the superior in the plant and non-union members were properly advised and informed by the superior what should be reflected in the preparation of their job description otherwise there seems to be no plausible reason why they should not be uniformly reclassified as before if the job description submitted by them were of equal import." (pages 14-15, Decision)

It cannot be denied that the classification of positions was undertaken not by petitioner CEPOC but by WAPCO, over which the former has no control; that the position-classification was based on the statements of duties submitted by the employees themselves; and that the appointments complained of were made pursuant to WAPCO's classification. CEPOC, nevertheless, was found guilty of discrimination in making the appointments because, according to the lower court, the superior of the employees at the plant must have advised the non-Union members on what to state in the job description form, inferring that no such advise was given to members of the Union; otherwise, there was no reason why the positions involved in this case would be given a different classification and lower salary range than the others.

It is the rule well established in this jurisdiction that for the factual findings of the Court of Industrial Relations to be conclusive upon this Court, they must be supported at least by substantial and credible proof.[2] The reasoning given by the lower court for its conclusion in connection with the appointments of the six-named employees, however, is as good an admission as any that there was no evidence presented during the hearing to support the discrimination- charge against the CEPOC, so that the finding on the latter's culpability was made to rest only on an inference derived from the absence or want of reason for the alleged discriminatory act. This we can not uphold. The lack of justification for an act alleged to be discriminatory by itself, would not be that kind of evidence that could establish the fact of discrimination. For a new inference may only be drawn from another inference, provided the first inference has the required basis of a proved fact;[3] and this is not so in the present cases.

Petitioner also seeks nullification of the Labor Court's order to restore to the employees concerned the vacation and sick leaves that they were forced to take in compliance with the company's memorandum of August 4, 1961, and to pay the wages that they failed to receive on account of such forced leaves. It is claimed that as a corporation, petitioner has the power to compel its employees to use up their earned sick and vacation leaves when the condition of the company's finances so requires.

But there is hardly any controversy in this regard, because the fact that petitioner may have authority to compel its employees to go on forced leave to avoid its accumulation has no consequence in these appeals. It may be pointed out that the lower court's order now in dispute was precipitated not by any lack of authority of the company but by the court's finding that the memorandum of August 4, 1961 was made in violation of its return-to-work order of April 8, 1961. Considering that an order to return to work, which the Labor Court may properly issue in the exercise of its power of arbitration and conciliation,[4] is intended to restore the strikers to their positions in the company under the last terms and conditions existing before the dispute arose,[5] the enforcement of a new company policy, requiring the employees to use up their earned leaves instead of accumulating them, without judicial authorization, would indeed constitute a violation of such order for the maintenance of status quo in the relations between the workers and the company.

Petitioner Cement Company charges the Court of Industrial Relations with grave abuse of discretion for not ordering the dismissal of the workers who actively took part in the illegal strike, invoking in support of its contention the ruling of this Court in the case of National Labor Union, Inc., et al. vs. Philippine Match Factory (70 Phil. 300).

The contention can not be sustained. For while it is true that in the above-cited case, promulgated on June 27, 1940, this Court declared:

> "The petitioners' strike in the instant case is clearly unjustified. Their cessation from their employment as a result of such an unjustified strike is one of such consequences which they must

> take by the choice of a remedy of their own, outside of the statute. To compel the respondent company, under the circumstances, to readmit the petitioners to their employment would be to lend countenance to what the Constitution and the law seek to avoid, and give protection to those who, by their conduct, have forfeited their rights thereto."

the rule on the matter has since undergone a lot of change. In fact, a reading of the decisions of the post-war Supreme Court on the effects of an illegal strike would reveal the marked, if gradual, departure from the aforesaid doctrine, as was to be expected, in view of the change in the regulation of labor relations from compulsory arbitration under Commonwealth Act 103 to free bargaining under Republic Act 875.

For a time, decisions on the issue under consideration was characterized by strict adherence to the ruling in the Philippine Match Factory case.[6] As late as 1956, this was still the prevailing rule.[7] However, although in another case it was held that —

> "But if the motive that had impelled, prompted, moved or led members of a labor union or organization to stage a strike, even if they had acted in good faith in staging it, be unlawful, illegitimate, unjust, unreasonable or trivial, and the CIR, the agency entrusted by the Government to determine it, finds it so, then the strike may be declared illegal. (Interwood Employees Association vs. International Hardwood & Veneer Co., 99 Phil. 82, 1956),

a dissent was already registered. Some members of the Court looked upon dismissal as excessive penalty at least for those workers who were merely misled by their leaders to join the strike.

The actual break-away from the doctrine laid down in the Philippine Match Factory case came in Dinglasan vs. National Labor Union,[8] when the discretionary power of the Court of Industrial Relations to grant affirmative relief was recognized. Thus, although it was therein found that there was no lock-out committed by the employer, and that the stoppage of work was voluntary on the part of the drivers, the order of the Labor Court for the return of said drivers to their work

was sustained. Finally, in 1964, this Court ruled that striking employees are "entitled to reinstatement whether or not the strike was the consequence of the employer's unfair labor practice," the only exceptions thereto being in cases where the strike was not due to any unfair labor practice on the part of the employer and said employer has hired others to take the place of the strikers, or where the strikers have committed unlawful conduct or violence.[9] Thereafter, the doctrine enunciated in Interwood Employees Association, supra, that good faith of the strikers in the staging of the strike is immaterial in the determination of the legality or illegality of the strike, was abandoned. In the case of Ferrer vs. CIR, et al.,[10] the belief of the strikers that the management was committing unfair labor practice was properly considered in declaring an otherwise premature strike, not unlawful, and in affirming the order of the Labor Court for the reinstatement without back wages of said employees.

In the present cases, considering that the strikers' demand for deduction of an "agency fee" from non-members was made in 1961, over two years before our decision in National Brewery & Allied Industries Labor Union vs. San Miguel Brewery, Inc., L-18170 (August 31, 1963) declared, for the first time, that such agency fee was not lawfully demandable; that the strikers offered to return to work, and in fact, did return to work when so ordered by the Labor Court; and there is no proof that all of them had resorted to, and were convicted of, unlawful acts committed in the prosecution of the strike, we find no abuse of discretion in the denial by the court below of the company's plea for the dismissal of the said strikers. Of course, following the jurisprudence on the matter, the separation from the service of those who may be found guilty of unlawful acts committed in carrying out the strike may properly be decreed.[11]

For its part, on the pretext of trying to maintain the judgment on appeal, respondent Union assigns in its brief as error allegedly committed by the lower court the declaration of the illegality of the strike of March 24, 1961. The point can not be entertained in this proceeding. In spite of respondent's protestations, it is evident that the assigned issue should have been raised by an appellant. Having failed to appeal from that portion of the decision declaring the strike illegal, the Union can no longer be heard to question that ruling which by now has become final.

WHEREFORE, with the modification that the petitioner CEPOC is not liable to pay the differential salary awarded by the lower court to the six employees named in the complaint, there being no discrimination employed by petitioner in the appointment of said employees to their present positions, the decision appealed from is affirmed in all other respects. Accordingly, these cases are remanded to the lower court for compliance with the judgment herein. Costs against petitioner.

Concepcion, *C.J.*, Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando and Capistrano, *JJ.*, concur.
Zaldivar, *J.*, on official leave, did not take part.

---

[1] Presumably because they do not possess the appropriate civil service eligibility.
[2] Union of Philippine Education Employees (NLU) vs. Phil. Education Co., 91 Phil. 93; Laguna Transportation Employees Union, et al. vs. Laguna Transportation Co., Inc., L-23266, April 25, 1968, and many others.
[3] Vol. 1, Jones Commentaries on Evidence, 2nd ed., on page 22, and cases cited therein.
[4] Philippine Marine Radio Officers Association vs. CIR, L-10095 & L-10115 Oct. 31, 1957: Feati University vs. Bautista, L-21278, 21462 & 21500, Dec. 27, 1966; Bachrach Transp. Co. vs. Rural Transit Shop Employees Association, L-26764, July 25, 1967.
[5] Section 19, Commonwealth Act 103.
[6] Luzon Marine Department Union vs. Arsenio C. Roldan, et al., 86 Phil. 507 (1950); Philippine Can Company vs. CIR, et al., 87 Phil. 9 (1950); Standard Coconut Corp. vs. CIR, et al., 89 Phil. 562 (1951); Liberal Labor Union vs. Phil. Can Co., 91 Phil. 72 (1952); Manila Oriental Sawmill Co. vs. NLU, L-6943, Dec. 29, 1954; INSUREFCO Paper Pulp & Project Workers Union vs. Insular Sugar Refining Corp., 95 Phil. 61 (1954); Almeda, et al. vs. CIR, et al., 98 Phil. 17 (1955).
[7] National City Bank of New York vs. National City Bank Employees Union, 98 Phil. 301 (1956).
[8] 106 Phil. 671 (1959).
[9] Cromwell Commercial Employees & Laborers Union (PTUC) vs. CIR, et al., L-19778, Sept. 30, 1964, 27 SCRA, 352; reiterated in Phil. Steam Navigation Co. vs. Phil. Marine Officers Guild, et al., L-20667- 69, Oct. 29, 1965.
[10] L-24267-68, May 31, 1966; also Norton & Harrison Co. & Jackbilt Concrete Blocks Co. Labor Union (NLU) vs. Norton & Harrison Co. & Jackbilt Concrete Blocks Co., Inc., et al., L-18461, Feb. 10, 1967, 19 SCRA, 310, PHILD. 1967A, page 245.

[11] Cromwell Commercial Employees and Laborers Union (PTUC) vs. CIR, L-19778, Sept. 30, 1964; Consolidated Labor Assoc. vs. Marsman & Co., L-17038; July 31, 1964; United Seamen's Union vs. Davao Shipowners Assoc. (1961) 30 SCRA 1226.