SUPREME COURT
FIRST DIVISION

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC. (ICTSI),
***Petitioner*,**

-versus-

G.R. Nos. 98295-99
April 10, 1996

NATIONAL LABOR RELATIONS COMMISSION (2nd Division), ADUANA SKILLED AND UNSKILLED UNION (ADSULU), LUZVIMIN INTEGRATED LABOR UNION (LISLU), JAMES SCHLOBOHM, ROMEO ROSAL, MARCELO S. VILLACARLOS, REYNALDO TOLENTINO, ARSENIO VILLASIN, PIO E. ACOSTA ANTONIO CARINO, ROLANDO DE LA PAZ, JOSE USTERIA, RODOLFO DONES, DOMINGO PAANO, MIGUEL MACABUTAS, ERNESTO DOMINGO, ENRIQUE TORRES, ERNESTO ALCARAZ, GUILLERMO MARIANO, RICARDO SORIANO, EDUARDO PESIMO, BERNARDO BALZA, ORLANDO ESCUREL, EUSEBIO PACETE, HECTOR REYES, JOSE BONOAN, EDUARDO FORMACIL, RODOLFO ERMONETA, MARIO STA. ANA, ALBERTO TAYABAS, MANUEL

ENSOMO, DANIEL ADIA, NARCISO FUERTES and ROMULO RAEL,
Respondents.
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D E C I S I O N

HERMOSISIMA, JR., *J.*:

Before us is a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court which seeks to reverse and set aside the Resolution rendered by the National Labor Relations Commission (NLRC) dated February 7, 1991 in NLRC NCR Case No. 00-06002633-88 and its Order dated April 19, 1991 denying petitioner's Motion for Partial Reconsideration.

The Manila International Container Terminal (MICT) is owned and operated by the Philippine Ports Authority (PPA), a government agency under the Department of Transportation and Communications. It is engaged in the cargo-handling service.

On July 1, 1979, the operation and management of MICT was awarded by PPA to the Manila International Ports Terminal, Inc. (MIPTI) and, subsequently, to Metrostar Port and Allied Services, on July 21, 1986. However, on July 21, 1987, PPA did not renew the permit of the Metrostar. It took over, managed and operated the MICT itself.

On May 19, 1988 PPA awarded the management and operation of MICT to International Container Terminal Services, Inc. (ICTSI), herein petitioner. On June 12, 1988, ICTSI then took over the operation and management of MICT.

Thereafter, PPA and petitioner entered into a contract wherein ICTSI shall utilize and employ PPA's present employees as maybe needed in the cargo-handling operations. However, said contract is subject to the condition that petitioner will conduct individual screenings to

enable it to determine the workers it will retain under its employ. It was also agreed upon, the petitioner shall enter into collective bargaining agreement (CBA) with one labor union representing the labor force and said CBA shall not extend beyond the term of the arrastre and stevedoring contract.

In compliance therewith, petitioner conducted individual screenings of the workers presently employed to determine who are qualified and who will be re-employed as its new probationary employees. As a result, more than 600 workers of the MICT under the PPA were not absorbed by petitioner when it took over the operation on June 12, 1988.

Thereafter, petitioner, in compliance with the contact, turned to the Associated Port Checkers and Workers Union (APCWU), the labor union representing the existing workers, for a CBA negotiation However, when the parties were about to conclude their CBA, the Anduana Skilled & Unskilled Labor Union (ADSULU), together with Luzviminda Integrated Stevedoring Labor Union (LISLU) filed on July 13, 1988 with the NCR-BLR,[1] a petition for certification election which resulted in the temporary suspension of the negotiation.

The said unions claimed that, as legitimate labor organizations, their officers and general membership banded together under the umbrella of ADSULU to file the petition because there was no existing CBA in the ICTSI. This is due to the fact that the CBA between the Metrostar(ICTSI's predecessor-operator) and the Associated Port Checkers and Workers Union (APCWU), had already expired when PPA did not renew Metrostar's permit to operate. APCWU intervened and opposed the petition for a certification election.

On August 4, 1988, ADSULU, and LISLU whose members were not employed by petitioner, jointly filed the Department of Labor and Employment a Notice of Strike against petitioner based on the following grounds:

1. Dismissal without termination papers;

2. Leaving regular workers floating;

3. Dismissal of regular employees and their replacement by new recruits;

4. No job assignment despite their being regular employees;

5. Confiscation of the employees I.D.'s and

6. Illegal change of promotions and assignment.

Conciliation conferences were scheduled on August 10, and 15, 1988, but petitioner's representative failed to appear on both dates, despite due notice.

On August 16, 1988, ADSULU and LISLU jointly staged their first strike.

On August 17, 1988, a conciliation was held at the National Conciliation and Mediation Board (NCMB) wherein the parties concerned, namely ICTSI and ADSULULISLU, including PPA and APCWU, signed an agreement, to wit:

"1. Stevedores should be given equal opportunities in the rotation of work regardless of union affiliation;

2. Former regular qualified employees who were employed by the former operator and who have not been absorbed by ICTSI should be given priority when there will be openings as stated in the contract.

3. Master list of stevedores should be furnished PPA and likewise a list of those yet absorbed.

4. PPA should assist in the assignment/rotation of stevedores for a period of two (2) weeks.

5. That upon signing of this agreement, the picket line shall be immediately lifted and free egress and ingress will be allowed."[2]

On August 19, 1988, ADSULU-LISLU wrote petitioner a letter declaring the aforesaid agreement as null and void due to alleged violations committed by APCWU and ICTSI.

On September 2, 1988, petitioner than filed a petition with the Office of the Secretary of Labor, to certify the case to the NLRC for compulsory arbitration. Despite the petition, the NCMB continued the conciliation proceeding in the hope that the parties might still reach an amicable settlement but it proved futile.

Meanwhile the Bureau of Labor Relations (BLR), in its Resolution dated October 12, 1988 set aside the Med-Arbiter's order granting the certification election and dismissed the petition on the ground that ADSULU-LISLU has no legal personality to represent the bargaining unit at the ICTSI. It found out that ADSULU-LISLU is not a registered alliance as required by E. O. No. 111 and that, as stated in their respective constitution and by-laws, their area of operation is at the South Harbor, Port Area, Manila, and ICTSI which is located at the North Harbor, is beyond their place of operation. The BLR also ratiocinated that there is an existing CBA between APCWU and PPA which ICTSI impliedly recognizes and which bars any petition for certification election.

When ADSULU-LISLU threatened to declare a strike, the Secretary of Labor issued an order certifying the labor to the National Labor Relations Commission (NLRC) for compulsory arbitration, thus:

> "Any work stoppage at ICTSI will cause paralization of the flow of goods and merchandise thereby creating serious adverse implications on trade and commerce in Metro Manila and other parts of the country."[3]

On December 16, 1988, an employee named Romeo Rosal filed a case for illegal dismissal[4] while the aforecited case was pending before the said Commission. Upon motion of petitioner, the same was forwarded to the NLRC for consolidation on the ground that the issues raised therein are the same issues raised in this case.

Likewise, on June 29, 1988, another employee by the name of Marcelo S. Villacarlos filed a complaint for illegal dismissal also with

the NCR Arbitration Branch.[5] The said case, upon motion of petitioner, was also forwarded on January 17, 1991 for consolidation with this case because they involve the same issues and the same employer.

On February 2, 1989, ADSULU again filed a Notice of Strike against ICTSI and actually staged a strike on petitioner's establishment on March 1, 2 and 3, 1989. As a result thereof, petitioner filed on March 13, 1989 a complaint to declare illegal the two strikes, viz.: the first dated August 16 and 17, 1988 and the second strike dated March 1, 2 and 3, 1989. The said dispute was then certified to the NLRC for compulsory arbitration.[6]

On March 31, 1989 ADSULU and its 21 individual members filed a complaint against petitioners for illegal dismissal and unfair labor practice with the NCR Arbitration Branch and docketed as Case No. NCR-00-03-01557-89. It appeared that petitioner issued suspension letters March 8, 1989 and dismissal letters dated April 5, 1989 to 21 individual complainants on the grounds of insubordination, actively engaging in union activities during working hours and actively participating in an illegal strike.

On February 7, 1991, the NLRC rendered a Resolution, the dispositive portion of which provides as follows, to wit:

> "In the light of the foregoing, it is but proper:
>
> a) To declare the strike on August 18 and 17, 1988 staged by ADSULU and LISLU illegal;
>
> b) To declare the non-absorption of the employees specially Mauricio Gamao, Joven Sanchez, Antonio Famisaran, Arturo Landrito, Roman Filomeno III, Jose Otayde, Hilario Gavan, Reynaldo Bordelo, James Schlobohm, Rogelio Tatel, Antonio Jarabelo, Richard Calumpang, Emmanuel Baquer and Nicholas Madrid including Romeo Rosal, Marcelo S. Villacarlos, Reynaldo Tolentino, Arsenio Villasin, Pio Acosta, Antonio Carino, Rolando de la Paz, Dewey Jose Usteria and Rodolfo Dones whose services were briefly

extended beyond the cut-off period (12 June 1988) fixed in the contract for management of the MICT, as constituting a constructive illegal dismissal;

c) To order the reinstatement of these aforementioned dismissed employees without loss of seniority and other privileges, plus backwages for a period not exceeding three years;

x x x

e) To declare strike staged on March 1, 2 and 3, 1989 by ADSULU-LISLU illegal with a stern warning that a reception of similar illegal acts (strike) would result in the cancellation of the certificate of registration of their respective unions; and

f) To order reinstatement without backwages of Domingo M. Paano, Narciso Fuertes, Enrique Torres, Miguel Macabutas, Ernesto Domingo, Mario Sta. Ana, Eusebio Pacete, Rodolfo Ermoneta, Bernardo Balza, Jose Bonoan, Guillermo Mariano, Rex Vergara, Hector Reyes, Romulo Rael, Ricardo Soriano, Ernesto Alcaraz, Sr. Daniel Adia, Eduardo Formacil, Manuel Ensomo, Orlando Escurel and Alberto Tayabas;"[7]

Hence, this present petition raising two (2) issues, to wit:

I

"Did ICTSI's non absorption of the 10 workers constitute constructive illegal dismissal?

II

Is the order of reinstatement of Domingo Paano and the 20 others on the ground that they merely participated in the strike justified, despite the fact the officer of the union were outsiders and not employees of ICTSI and Paano expressly admitted that

> he and the 20 others were the leaders of about 500 former PPA employees absorbed by ICTSI who participated in the strike?"[8]

Petitioner assails as grave abuse of discretion the NLRC's finding that in extending the services of the twenty three PPA-MICT employees and paying their wages, it was deemed to have absorbed said employees and their subsequent termination without cause is tantamount to a constructive dismissal. Petitioner further claims that public respondent disregarded the PPA memorandum, showing that it was the PPA-MICT general manager who extended the services of the workers and that payment of their wages by petitioner was a mere delivery on behalf of PPA-MICT.[9]

We find petitioner's averments unpersuasive.

A perusal of the records shows that petitioner formally signed the MICT contract with PPA on May 19, 1988 but it took over MICT's operations on June 12, 1988. During the period between May 19 and June 12, 1988 petitioner screened the qualifications of the PPA-MICT employees to determine who will be retained for its operation. As a result thereof, 600 out of 1,500 workers of PPA-MICT were not absorbed by petitioner. This is legal since under the MICT contract, petitioner has the prerogative to absorb or retain the workers whom it chooses.

However, with regard to private respondents, petitioner opted to extend their services beyond the cut-off period agreed upon. Such actuation could only be interpreted to mean that petitioner found that private respondents are qualified and that petitioner chose to retain services to perform duties reasonably necessary in petitioner's business. Hence, private respondents' rights and privileges as employees survive so as to be operative against the successor-employer company.[10]

With regard to petitioner's allegation that it was PPA-MICT which extended private respondents' services and that payment of their salaries by petitioner was a mere delivery for PPA-MICT, we advert to NLRC's findings of Fact, viz.:

"First, that in almost all of its pleadings, respondent ICTSI has invariably claimed that it assumed operation of the MICT on 12 June 1988. If this was so, how can the PPA-MICT, which in the meantime had ceased to have any say in the operation of the MICT authorize an extension of the 14 employees' services as late as 17 June 1988?

Second, that the payment of the salaries of those whose services were extended from 12 to 23 June 1988 were contained in a pay envelope bearing the letter-head 'ICTSI' and which even reflected the employees' deductions for SSS and Medicare premiums. This also includes Romeo Rosal, Marcelo S. Villacarlos and the seven other afore-mentioned employees in Annex "H", "H-1" to "H-6" who continued to work with ICTSI on June 12-23, 1988 as evidenced by their Pay Envelopes for that period.

In other words, on the basis of the foregoing revealing circumstances, it would not be too much to assume and conclude that by extending even for eleven (11) days the services of the 23 MICT employees, respondent ICTSI had in effect absorbed them to the point of making illegal their subsequent termination or retrenchment without cause. For it has been ruled by no less than the Supreme Court that employees absorbed by a successor-employer enjoy the continuity of their employment status and their rights and privileges survive so as to be operative against such successor-employer (Sumadhi vs. Leogardo, et al. G.R. No. 67635, promulgated 17 January 1985, citing the cases of Liberation Steamship Co. vs. CIR, 4 SCRA 457; and Guerrero Transportation Service vs. Blaylock 71 SCRA 621).

To hold otherwise, would render meaningless the security of tenure granted by law (Art. 280, Labor Code, as amended) to regular employees who, like the dismissed employees in the case at bar, perform functions and duties reasonably necessary or desirable in the usual trade or business of their employees."[11]

Petitioner further claims that public respondent committed grave abuse of discretion in directing the reinstatement of private respondents despite their participation in the illegal strikes. Petitioner also alleges that private respondents were not mere participants but were in fact the leader of the strike they conducted not for any grievance against petitioner but for their dislike against APCWU.

Under Article 264 (a) of the Labor Code, it is clearly stated therein that any union officer who knowingly in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status.

As aptly stated by the Solicitor General:

> "Union officer may be dismissed not only for their knowing participation in an illegal strike, but also for their commission of illegal acts in the course of strike, whether legal or illegal but union members may only be dismissed for their participation in the commission of illegal acts during a strike, whether legal or illegal (Amador, Law on Strikes, 1991 ed. p. 147)."[12]

Hence, for a worker or union member to suffer the consequence of loss of employment, he must have knowingly participated in the commission of illegal acts during the strike i. e., infliction of physical injuries, assault, breaking of truck side and windows, throwing of empty bottles at non-strikers.[13]

In the case at bench, there is nothing in the records which show that private respondent Paano and then 20 others expressly admitted that they are the leaders of the strike. A perusal of the testimony of respondent Paano Is quoted hereunder.

> "ATTY. DURIAN:
>
> > Isn't it a fact that only the 21 you mentioned in the complaint were the persons or employees actually working already in the payroll of the ICTSI that staged the strike on March 1 and 2 and thereafter in 1989?

WITNESS:

> We were not the only ones. We were many.

ATTY. DURIAN:

> How many of the others who were already employed in the payroll of the ICTSI joined in the ICTSI on March 1, 1989 and thereafter?

WITNESS:

> They were not identified as members of the striking group because they were just standing by the side and only those who were active in the group who were making a circle were the ones identified.

x x x

ATTY. DURIAN:

> Those companions (sic) the co-employees of yours whom you said were not active in the picketing but were just standing by the side, how many of them, more or less?

WITNESS:

> Maybe 500."[14]

From the aforequoted testimony, respondent Paano merely stated that those who were active in the group were the ones making a circle or those who were actively engaged in picketing. He did not categorically state that he and the 20 others were the leaders of the strike.

Furthermore, petitioner did not present evidence that respondents were agitating cajoling or leading others to join the strike. We can only conclude that at the very least, they were merely member of the union. The act of private respondents is failing to heed the order of their superior from joining the picket line is only tantamount to

insubordination which cannot be considered as an illegal or unlawful act committed during the strike to justify their dismissal from employment.

Jurisprudence is replete with the rule that findings of fact of quasi-judicial bodies which have acquired because their jurisdiction is confined to specific matters, are accorded not only with respect but even finality if they are supported by substantial evidence.[15] Therefore, the veracity or the falsehood of alleged facts is not for this Court now to re-examine.

From the foregoing considerations, it is clear that the assailed resolution of the NLRC is tainted neither with arbitrariness nor with grave abuse of discretion.

WHEREFORE, the Petition is **DISMISSED** for lack of merit and the Resolution of the respondent Commission Dated February 7, 1991 is **AFFIRMED.**

SO ORDERED.

Padilla, Bellosillo, Vitug and Kapunan, *JJ.*, concur.

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[1] BLR Case No. A-9-235-88.
[2] Rollo, pp. 465-466.
[3] Rollo, p. 466.
[4] Romeo Rosal vs. International Container Terminal Services Inc., NLRC Case No. NCR 00-12-05145-88.
[5] Captioned as Marcelo S. Villacarlos vs. International Container Terminal Services, Inc. and/or Enrique Razon, NLRC-NCR Case No. 00-06-02633-88.
[6] Captioned as International Container Terminal Services, Inc. vs. Aduana Skilled and Unskilled Labor Union, et al.
[7] Rollo pp. 112-114.
[8] id. at 20-21.
[9] ibid.
[10] Cruz vs. Philippines Association of Free Labor Unions (PAFLU), 42 SCRA 68 (1971); Majestic and Republic Theaters Employees' Association vs. Court of Industrial Relations, 4 SCRA 457 (1962).
[11] Rollo, pp. 110-112.
[12] Rollo, pp. 381-382.

[13] Philippine Marine Officers Guild vs. Compañia Maritima, 22 SCRA 1113 (1968).
[14] T.S.N, pp. 20-22; Rollo, pp. 271-273.
[15] Maya Farms Employees Organization vs. National Labor Relations Commission, 239 SCRA 508 (1994); Five J. Taxi vs. National Labor Relations Commission, 235 SCRA 556 (1994); Mehitabel Furniture Co., Inc, vs. National Labor Relation Commission, 220 SCRA 606 (1993); Philippine School of Business Administration vs. National Labor Relation Commission, 223 SCRA 305 (1993).