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SUPREME COURT
FIRST DIVISION

JACKBILT CONCRETE BLOCK CO., INC. and ALBERT GOLDEN,
***Petitioners*,**

-versus-

G.R. No. L-39174
May 7, 1976

NORTON & HARRISON CO. and JACKBILT CONCRETE BLOCK CO. LABOR UNION-NLU and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**

x---x

NORTON & HARRISON CO., INC.,
***Petitioner*,**

-versus-

G.R. No. L-39186
May 7, 1976

NORTON & HARRISON CO. and JACKBILT CONCRETE BLOCK CO.

LABOR UNION-NLU and COURT OF INDUSTRIAL RELATIONS,
***Respondents*.**

x---x

D E C I S I O N

ESGUERRA, *J.*:

Petitions for Review on *Certiorari* of the Order of the Court of Industrial Relations dated December 28, 1973, and its Resolution En Banc dated July 31, 1974, both issued in its Case No. 1799-ULP.

The factual background, common to both petitions in these two cases, is as follows:

In Norton & Harrison Co. & Jackbilt Concrete Block Co. Labor Union (NLU) vs. Norton & Harrison Co. & Jackbilt Concrete Block Co., Inc. and Albert Golden, L-18461, promulgated on February 10, 1967, 19 SCRA 310, this Court, in deciding the case ordered the respondents company and manager "to reinstate, without back wages, Jaime Arcaina and the strikers of the union who offered to return to work on October 23, 1958, the reinstatement to be made, in both cases, sixty days after the finality of this Court's decision herein."

The respondents company and manager in the aforecited case, now petitioners in the cases at bar, were absolved from the charge of the union of unfair labor practice. However, the strikers of the union were ordered reinstated, but without backwages, on the ground that the strike was resorted to in good faith in the belief that the managements of the herein company-petitioners committed unfair labor practice. Said this Court in the aforesaid case:

> "So, also, in this case, the act of the company in dismissing Arcaina, done without the required fair hearing, and, therefore, not tenable even under strict legal ground, induced the union

> and its members to believe that said company was guilty of unfair practice, although viewed now in retrospect said act would fall short of unfair labor practice. Since the strike of the union was in response to what it was warranted in believing in good faith to be unfair labor practice on the part of the management, said strike, following the Ferrer ruling, did not result in the termination of the striking members' status as employees, and, therefore, they are still entitled to reinstatement but without back wages." (Norton & Harrison Co., etc. vs. Norton & Harrison, etc., et al., supra, 19 SCRA 310, 315).

In a motion for clarification of the decision in G.R. No. L-18461, supra, (Annex "A" of both Petitions) herein petitioners informed this Court that they cannot accommodate and/or reinstate all the strikers, numbering about 170, without causing a dislocation in their business and plant operations because of the automation and modernization of their plant, which caused the reduction of the number of their employees from 228 as of October 31, 1958, to only 122 on June 9, 1967. Herein petitioners claim that only 122 employees are required to operate, at full capacity, their modernized and automated plant including the carrying out of their usual business operations; that the number of 122 employees include 35 former strikers who returned to work during the strike, 85 replacements hired during the strike and 2 former company guards who were reassigned to other duties; that out of the 85 replacements, 70 of them occupied positions which were held before by the strikers; that even if the services of the 70 employees occupying positions held before by the strikers be terminated, still the strikers cannot all be accommodated and reinstated: and that the strikers before they be reinstated should undergo the required usual physical and medical examinations by herein petitioners' company physician, to determine their illness for continued work and employment.

In a resolution dated June 20, 1967. (Annex "B", and "A-1", of the Petitions, respectively) this Court denied the motion for clarification, which reads as follows:

> "Acting on respondents' motion for clarification L-18461 (Norton & Harrison Co., etc., Labor Union vs. Norton &

> Harrison Co., et al.) the Court, considering that: (1) all the matters therein brought to the attention of the Court have allegedly taken place during the pendency of the appeal and yet they are raised only now after the decision has been rendered herein: (2) it is not fair to reconsider the decision so as to render the strikers' right to reinstatement dependent upon the employers' choice to abolish their positions allegedly due to operational changes that were not seasonably invoked herein; (3) the decision is not in need of clarification; rather facts allegedly pertinent to its execution are sought to be advanced; (4) the Court of Industrial Relations is in charge of the execution of the final judgment of this Court; and (5) the request may be presented to the Court of Industrial Relations, submitting the alleged facts mentioned in the motion for clarification for the purpose of determining their actual existence, without in any way authorizing the Court of Industrial Relations to amend the Supreme Court's decision, to see how the same could be executed, RESOLVED, to DENY said motion."

In the interim, respondent union filed with the Court of Industrial Relations two (2) motions dated October 9, 1967 and December 4, 1967, respectively, (Annexes "B" and "C", Petition of Norton & Harrison Co., Inc.) alleging that after the Supreme Court's decision in G.R. No. L-18461, supra, had become final and executory, the union member-strikers presented themselves for work and reinstatement with the herein petitioning companies on September 7, 1967, but were not accepted. Because of this, the union prays for the issuance of an order directing the company-petitioners to accept in their employ its member-strikers and to pay them backwages from September 7, 1967, the date the strikers presented themselves for work, up to the date they are reinstated.

Petitioners interposed their opposition to the motions (see Annex "D", Petition of Norton & Harrison Co., Inc.) and therein attached a copy of their motion for clarification, which has been the subject of a resolution of this Court under date of June 20, 1967, supra, and submitted the same for the consideration and determination by the respondent Court of Industrial Relations of the actual existence of the

facts therein mentioned in consonance with the aforestated resolution of this Court.

In the course of the hearings of the two afore-mentioned motions of the labor union and the opposition filed by herein petitioners, the respondent Industrial Court issued three (3) orders dated March 23, 1970, June 16, 1970 and August 10, 1970, respectively, (Annexes "E", "F" and "G", Petition of Norton & Harrison Co., Inc.) directing the union member-strikers listed therein to report for work with the herein company-petitioners and for the latter companies to accept them back to work within the period given by the trial court.

Pursuant to the lower court's order of March 23, 1970, only 37 union strikers reported for work and were reinstated by petitioner Jackbilt Concrete Blocks Co., Inc. out of the 70 strikers listed therein and in the case of the other petitioner Norton & Harrison Co., Inc. only 14 out of the 22 strikers listed and previously working with the said company, presented themselves for work. The rest of the strikers listed in the order of March 23, 1970 either ignored or disobeyed said order. Of the strikers who reported for work with the company-petitioners, some have either not submitted for medical examinations as required and did not report back anymore, or after having undergone medical examinations, did not report back for work, or after reporting back did not continue working anymore and the others were found suffering from tuberculosis and unfit for work at the time. Those found suffering from tuberculosis were advised to report back for work assignment as soon as they are cured and declared physically fit for work. Those who were found already suffering from tuberculosis when the strike was declared were paid workmen's compensation benefits.

Pursuant to the June 16, 1970 Order of the court a quo, 44 out of the 60 strikers therein listed reported for work and reinstatement. The rest did not report for work. Of those who reported for work, 14 of them were found suffering from tuberculosis and other sickness and as such were not physically fit for work. Thus only 30 were found fit for work, but 4 of them, however, subsequently left their work.

Under the last order of reinstatement dated August 10, 1970, all the 33 strikers mentioned therein reported for work. But 16 of them,

however, were found suffering from tuberculosis and other illness which rendered them physically unfit for work, and as usual they were advised by the company-petitioners to report for work assignment when they have recovered from their sickness.

Petitioners, now, therefore, claim that by virtue of the three (3) orders of reinstatement above-mentioned, the respondent Court of Industrial Relations has already complied with and has so implemented the decision and resolution of this Court in L-18461, supra, regarding the reinstatement of the striking members of the herein respondent union who offered to return to work on October 23, 1958, without backwages. Thus, the order of the court a quo dated December 28, 1973, the dispositive portion of which reads as follows, —

> "WHEREFORE, the two motions dated October 9, 1967 and December 4, 1967 are hereby resolved in accordance with the foregoing dispositions and respondents (now petitioners) are hereby ordered to pay the backwages of the members of the complainant union listed in the two foregoing motions starting from September 2, 1967 (should read September 7, 1967 per Resolution en banc of the Industrial Court dated July 31, 1974) up to the time they were ordered reinstated by the Court in its Orders respectively dated March 23, 1970, June 16, 1970 and August 10, 1970."

came as a surprise to the herein petitioners, according to them. And so, petitioners filed a motion for reconsideration of the said order but the same was denied in a resolution en banc dated July 31, 1974, which reads as follows:

> "Respondent companies, through their respective counsel, in separate motions, seek reconsideration of the Order of the Trial Court dated December 28, 1973. Complainant union likewise filed a 'Motion for Clarification' on January 14, 1974, which in form and substance is a motion for reconsideration of the same Order.
>
> "Respondents raised several grounds in support of their respective motions, but the Court en banc finds no merit in the

same. The disposition of the Trial Court, however, deserves a little discussion, i.e., the award of backwages to the members of complainant union, listed in the two motions of complainant dated October 9, 1967, and December 4, 1967, respectively, starting from September 2, 1967, up to the time they were ordered reinstated by the Court in its Orders, respectively dated March 23, 1970, June 16, 1970 and August 10, 1970.

"It will be noted that on February 10, 1967, in G.R. No. L-18461, the Supreme Court ordered the reinstatement of Jaime Arcaina and the other strikers, without backwages, sixty days after the finality of the Court's decision. Thus, the employees involved, named in complainant's two motions aforementioned, presented themselves for work on September 7, 1967, but were not admitted by respondents.

"Respondents contend that at the time the employees involved reported for work, they could not have been admitted because their motion for clarification was then still pending resolution by this Court. This stand cannot be sustained for the reason that the Supreme Court, in resolving the respondents' motion for clarification on June 20, 1967, explicitly ruled that this Court cannot in any way amend the Supreme Court's decision of February 10, 1967, aforementioned. Thus, having suffered loss of wages from the date, they presented themselves for work on September 7, 1967, and were refused, the employees involved are therefore, entitled to compensation from that date up to the time they were ordered reinstated by the Court in its Orders respectively dated March 23, 1970, June 16, 1970 and August 10, 1970.

"Concerning the motion filed by complainant, the Court en banc finds no merit in the same.

"The date September 2, 1967, appearing in the dispositive portion of the Order of the Trial Court sought to be reconsidered is a clerical error and should be corrected and changed to September 7, 1967.

> "WHEREFORE, let the aforementioned motions for reconsideration be, as they are hereby DENIED."

Hence these Petitions for Review on *Certiorari*.

Petitioners, in their respective briefs, maintain that, (1) the Court of Industrial Relations erred in ordering them to pay backwages to their respective striker-employees; (2) the Court of Industrial Relations erred in giving the striking employees who did not comply with the three (3) orders of reinstatement another period of thirty (30) days within which to still report for work; and (3) the Court of Industrial Relations erred in granting the strikers found unfit for work because of pulmonary tuberculosis and other illness the right to separation pay and in awarding them backwages.

Petitioners contend that the Industrial Court erred in ordering them to pay backwages to the union member-strikers because the Supreme Court's decision in L-18461, supra, was explicit in that it provided only for reinstatement without backwages. The lower court even violated the June 20, 1967 resolution in L-18461, supra, which, in effect ordered the Industrial Court to determine the actual existence of the alleged facts mentioned in petitioners' motion for clarification, and which states, "without in any way authorizing the Court of Industrial Relations to amend the Supreme Court's decision, to see how the same could be executed . . ." Yet the court a quo did not make any finding on the actual existence of the facts mentioned in the motion for clarification; neither did it make any finding that the facts therein mentioned did not at all exist. Petitioners insist that the evidence which they have presented to the trial court proved that there was actual modernization and automation of their business operations which resulted in the reduction of their labor force, thus rendering the reinstatement of all the strikers impossible. The impossibility of reinstating all the strikers, petitioners contend, did not in any way empower the lower court to then and there amend the Supreme Court's decision by awarding backwages to the strikers. Petitioners further aver that the three (3) orders of reinstatement of the lower court did not provide for backwages, which the respondent union failed to question at all, thus allowing said orders to become final and are, therefore, no longer subject to alteration or amendment. Accordingly, the respondent Industrial Court acted in

excess of its authority and with grave abuse of discretion when it not only amended the Supreme Court's decision in said L-18461, but also modified its final orders of reinstatement by awarding backwages to the strikers in its questioned order of December 28, 1973, and resolution en banc of July 31, 1974.

Petitioners likewise contend that the Court of Industrial Relations erred in giving the strikers who did not comply with the three (3) reinstatement orders "another chance to return to work" within the period of "30 days from receipt by their counsel" of the order under question for the reasons that the three (3) reinstatement orders had long become final when the order under question was issued; that the strikers concerned violated the reinstatement orders and to give them a chance to report for work anew would be giving them premium for their defiance and violation of the orders reinstating them to their respective jobs; that there is evidence that the strikers concerned were already employed elsewhere as they are no longer interested in their reinstatement, no petition to that effect having been filed by them. Petitioners maintain that the strikers concerned should have been declared to have forfeited their right to reinstatement as what the respondent court had done with the strikers "who presented themselves in accordance with the return-to-work Orders issued by the Court but did not submit to medical and physical examinations and did not report back to work, or after undergoing such examinations did not continue working despite notices to them." Petitioners theorize that these strikers concerned, who did not even go through the motion of reporting for work, were in a much worse situation than the strikers who presented themselves for work assignment, and therefore, reasons and logic dictate that their right to reinstatement should have likewise been declared forfeited.

On the third assignment of error, petitioners maintain that the grant of separation pay is proper only in cases where there is termination of employment, which is not the situation in the case at bar. The services of the strikers found unfit for work because of tuberculosis and other illness were not terminated, but that said strikers were advised to report back for work as soon as they have recovered from their illness and upon proof that they are physically fit for work. Thus, petitioners reason out, the strikers concerned were charitably given a chance to rest and to recover from their illness. No termination or dismissal was

ever made. Besides, petitioners contend that voluntary termination is never covered by the Termination Pay Law, and in this particular case, no separation pay should be given to the striker concerned who would want their employment voluntarily terminated as what the respondent court would want them to do. Said the respondent court in its questioned order of December 28, 1973.

> "The evidence shows, however, that they were advised by the respondents to report back for work as soon as they have recovered from their illness and that upon proof that they are physically fit for work, they would be accepted. The Court, however, finds it equitable to grant them in lieu of recall the option to elect voluntary termination in which case they shall be entitled to separation pay equivalent to one-half month-pay for every year of actual service." (Emphasis supplied).

Furthermore, petitioners aver that the respondent court, in awarding the strikers concerned separation pay and backpay, acted merely on the assumption that the said strikers were physically fit for work when they reported for work on September 7, 1967, up to the dates the three (3) orders of reinstatement were issued, considering the absence of evidence presented by the strikers on their sound physical condition.

I

> We sustain the view of the petitioners that the court a quo, in granting and awarding backwages to the strikers in its order of December 28, 1973, had amended the judgment of this Court in G.R. No. L-18461. The final verdict of this Court in L-18461 was explicit — "reinstatement but without back wages", in view of the absence of a finding that herein company-petitioners (respondents in that case) were guilty of unfair labor practice. Had it not been for the Court's adherence to the ruling in the Ferrer case (17 SCRA 352), reinstatement would not have been available to the striker. But this, certainly, is the better view than the Interwood Employees Association vs. International Hardwood & Veneer Company of the Philippines (Interwood), L-7409, May 18, 1956, 99 Phil. 82, 88 and Lusteveco Employees Association - CCLU, et al., vs. Luzon Stevedoring Co., et al., L-

18681, May 19, 1966, 17 SCRA 65, cases where this Court held that the belief of the strikers in good faith that they were striking because of a legitimate or real grievance against the management is immaterial, because what the strikers had in mind or believed in good faith at the time they struck can hardly be refuted, rebutted or disproved.

The court a quo, therefore, exceeded its authority in seeing to it that the decision of this Court should be executed, "without in any way authorizing the Court of Industrial Relations to amend" the same, there being no showing of unjust refusal on the part of the herein petitioners to reinstate their striker-employees. To rule otherwise, in the face of the uncontroverted automation and modernization of the business operations of the petitioners, would be tantamount to exacting compliance with the impossible, unjust, or inequitable (City of Butuan vs. Ortiz, et al., 3 SCRA 659, Philippine Engineering Corporation vs. CIR, et al., 41 SCRA 89), and thus making Our decisions to hang in the precipice of uncertainty or to remain on the brink of disaster.

II

We are also of the opinion and so hold that the strikers who failed, without proper justification, to report for work assignment despite the issuance of the orders reinstating them to their job are deemed to have forfeited their right to reinstatement. Their unexplained failure to request for another period or an extended period within which to comply with the reinstatement orders and report back for work militate against them.

In East Asiatic Co., Ltd., et al. vs. CIR, et al., G.R. No. L-29068, August 31, 1971, 40 SCRA 521, this Court had occasion to rule that the failure to report for work when one had the opportunity to do so waived thereby his right to reinstatement. Because of the apparent lack of interest of the strikers concerned as shown by their failure to report for work without justifiable reason with the petitioners herein, We are constrained to declare them to have forfeited their right to reinstatement.

III

> Likewise, We sustain the view of the petitioners that the court a quo erred in granting separation pay to the strikers found unfit for work because of pulmonary tuberculosis and other illness considering that the services of the said strikers were not actually terminated. What is on the record is the fact that the said strikers were advised by the petitioners to report back for work as soon as they have recovered from their illness and upon proof that they are physically fit for work, and they shall all be accepted.
>
> The Termination Pay Law, R.A. No. 1052, as amended, requires payment of separation pay or termination pay only in cases wherein a covered employer dismisses or terminates in its employ an employee without just cause or advance notice. In the instant case, the employees concerned went on strike on the belief that an unfair labor practice was committed against them by the petitioners. It was not, however, established that the petitioners did commit any unfair labor practice. On the contrary, the petitioners were absolved of the charge of unfair labor practice. Furthermore, the record of the case is bereft of any showing of the soundness of the physical condition of the strikers concerned when they reported back for work with the petitioners on September 7, 1967.

It has been held by this Court, in the recent case of Mercury Drug Co., Inc., et al. vs. CIR, et al., L-23357, April 30, 1974, 56 SCRA 694, that an employer should not be compelled to reinstate an employee who is no longer physically fit for the job from which he was ousted. However, the employee can be reinstated after securing a certification of his physical fitness from a government physician.[*]

WHEREFORE, the Order and Resolution of the court a quo dated December 28, 1973 and July 31, 1974, respectively, are hereby ordered set aside insofar as the award of backwages, the grant of another period for the strikers to report back for work, and the grant of separation pay are concerned. The petitioners are, however, directed to immediately reinstate the strikers formerly found to have been suffering from tuberculosis and other illness upon presentation

by them of certification of their physical fitness for work by a government physician.

No pronouncement as to costs.

SO ORDERED.

Teehankee, *J.*, *(Chairman)*, Makasiar, Muñoz Palma and Martin, *JJ.*, concur.

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[*] Cf. Davao Free Workers Front, et al. vs. CIR, et al., L-29356, October 31, 1974, where there was a clear case of unfair labor practice against the employer (while there was none in this case) and hence medical examination was not required as a precondition to reinstatement of illegally ousted workers.

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