SUPREME COURT
EN BANC

LIBERATION STEAMSHIP CO., INC.,
***Petitioner*,**

-versus-

G.R. No. L-25389
June 27, 1968

COURT OF INDUSTRIAL RELATIONS and THE UNLICENSED CREW MEMBERS OF THE THREE (3) DOÑA VESSELS, ALL AFFILIATES WITH THE PHILIPPINE MARITIME INDUSTRIAL UNION (PMIU), Et Al.,
***Respondents*.**
x----------x

NATIONAL DEVELOPMENT COMPANY,
***Petitioner*,**

-versus-

G.R. No. L-25390
June 27, 1968

UNLICENSED CREW MEMBERS OF THREE (3) DOÑA VESSELS (PMIU) and the COURT OF INDUSTRIAL RELATIONS,

Respondents.

x----------x

D E C I S I O N

REYES, *J.*:

Petitions filed separately by the Liberation Steamship Co., Inc. (hereinafter referred to as LISTCO) and the National Development Company (referred to hereafter as NDC) for the review of the resolution of the Court of Industrial Relations en banc of September 2, 1965 modifying the Decision of the trial Judge of May 13, 1964 in Cases Nos. 36-IPA, 36-IPA(81), 36-IPA(2) and 36-IPA(4).

Petitioner NDC, a government-owned and controlled corporation, in 1961 was the owner and operator of the vessels M/S "Doña Alicia", "Doña Nati" and "Doña Aurora." It can be gathered from the records that prior to April 15, 1961, said corporation decided to dispose of these three vessels; and in the bidding that ensued, LISTCO won. The crew members of the three vessels, through the Philippine Maritime Industrial Union (PMIU), made representations with both the seller and the purchaser to retail them in the service of the vessels. And when in the final deed of sale no provision on the hiring of the complement of the vessels was included, the crew-members declared a strike on April 15, 1961. On April 25, 1961, the dispute was certified by the President to the Court of Industrial Relations.

On April 29, 1961, the Industrial Court ordered, as follows:

"**O R D E R**

> It appears from the record that the three Doña vessels mentioned in the presidential certification had already been sold by the government to the Liberation Steamship Company. Hence, the said company is indispensable party in this litigation, without whom no final determination of this case can be had.
>
> "The Clerk of Court shall summon said company to appear in this action.
>
> "SO ORDERED."

Then, acting upon NDC's petition, alleging that the strike was causing the corporation an actual loss of about P15,000.00 daily, the court, on May 3, 1961, issued a return-to-work order, the pertinent part of which reads:

> "Considering further, that the labor dispute between the management of the National Development Company and the unlicensed crew members of said vessels cannot be promptly settled or decided, the Court hereby directs all the strikers to return to work immediately upon receipt of this Order, and the management to take them back under the last terms existing before the dispute arose.
>
> "During the pendency of this case, the management shall refrain from dismissing any employee or laborer, unless with the express authority of this Court.
>
> "SO ORDERED." (Emphasis supplied)

Over a month and a half after this order, i.e., on June 17, 1961, representatives of the LISTCO posted notices around the M/S "Doña Alicia" to the effect that the officers and members of the crew not otherwise appointed by the said new owner will be ejected. Then, at about 3:30 in the afternoon of the same day, some 30 security guards and about 50 men with luggages came aboard the said vessels and never departed therefrom — until the vessel left port on June 21, 1961,

and only after the remaining members of the original crew had been sent down.

The unlicensed crew members of the three "Doña" vessels thus petitioned the Industrial Court for an order to restrain LISTCO from carrying out its ejection threat of the officers and/or crew members of the M/S "Doña Alicia" and of the two other "Doña" vessels upon their delivery to the new owner. A restraining order was accordingly issued on June 30, 1961 against therein respondent NDC and/or its successor, the LISTCO, directing the maintenance of status quo during the pendency of the dispute. The restraining order, however, covered only the officers and unlicensed crew members of the "Doña Nati" and "Doña Aurora;" it did not extend to the crew of the "Doña Alicia," because their dismissal had been already carried out. Petitioners merely reserved the right to file the appropriate action against whoever was responsible therefor. A petition for contempt against the LISTCO, because of the dismissal of the original complement of the M/S "Doña Alicia" became one of the incidents of the case, but was later dismissed.

It may be stated at this juncture that petitioners' demands included payments by NDC of a gratuity equivalent to one month salary for every year of service from their employment up to the termination of their services on account of the sale of the vessels to LISTCO; payment of strike-duration pay; commutation of accumulated vacation and sick leaves, of unpaid overtime services rendered from the dates of their employment and of gratuity and accumulated vacation and sick leaves to the officers and/or crew members who were on leave and were required by the NDC to man the new cargo liners from Japan to the Philippines Petitioners asked of the LISTCO their retention as officers and/or crew members of the "Doña" vessels; for the observance or continuation of the collective bargaining contract had between NDC and the union until its expiration in June 1962, and for separation pay for any officer and/or crew members retained but separated by LISTCO from the service within one year from the turnover of the vessels.

Thereafter an agreement was reached between the petitioning officers[1] and crew members of the M/S "Doña Alicia" and the LISTCO duly approved by the court on November 29, 1961 by virtue

of which those who were laid off in June, 1961 were readmitted to work. On August 14, 1962 however the NDC again took possession of the vessels[2] and resumed their operation.

On May 13, 1964 the court rendered judgment (a) petitioners' demand gratuity pay (from the date of their employment to the sale of the vessels) was denied on the ground that, with the resumption of the operation of the vessels by NDC, this claim had become moot and academic; (b) petitioners were declared entitled to accumulation of sick and vacation leaves with pay, not exceeding 5 months, allegedly in accordance with Government Enterprises Circular No. 4 which authorizes payment of vacation and sick leaves to employees of government-owned and controlled corporations, as per Section 285 and 285-A of the Administrative Code, as amended; (c) the claim for unpaid overtime was ruled out on the ground of prescription, demand therefor having been made beyond three years from the accrual of cause of action; (d) denied the demand for gratuity for those who were required to serve as delivery crew of the new cargo liners from Japan to the Philippines, because gratuity is essentially voluntary and the management cannot be compelled to give the same. However, they were declared entitled to the corresponding vacation and sick leaves with pay. The trial Judge also held NDC responsible for the ejection of the crew of the M/S "Doña Alicia", in view of its failure to incorporate in the deed of sale in favor of LISTCO a provision on the retention of the services of the complement of the vessels, in spite of the latter's requests therefor prior to the consummation of the sale. Consequently, the NDC was ordered to pay the back wages of the ejected crew up to the date of their actual reinstatement. The LISTCO, on the other hand, was completely exonerated from any liability, the trial court reasoning that the lay off of the crew of the M/S "Doña Alicia" was committed on June 21, 1961, or before said respondent became subject to the restraining order of June 30, 1961.

On September 2, 1965, the Court of Industrial Relations en banc, resolving the motion for reconsideration filed by the NDC, modified the decision of the trial Judge, by holding the NDC and LISTCO solidarily liable for payment of the backwages of the officers and/or crew members of the M/S "Doña Alicia" for the duration of their lay-off. In holding LISTCO equally responsible, the court en banc took into account the fact that as of April 29, 1961, it was already an

indispensable party to the case. Thus, with knowledge of the restraining order of May 3, 1961 to the "management" against unauthorized dismissal of employees and laborers, the court held that LISTCO could not claim to have acted in good faith when it ejected the crew of the M/S "Doña Alicia" on June 21, 1961. The resolution en banc also increased the allowable accumulated vacation and sick leaves with pay of the petitioners, from 5 to 10 months, pursuant to Republic Act 1081. Furthermore, considering the petitioners' allegation in a supplemental memorandum that a new sale of the "Doña" vessels had taken place during the pendency of the motion for reconsideration, the case was ordered reopened, but only for the purpose of determining the merits of the demand for gratuity pay. This is a resolution now subject of these petitions for review.

In G.R. No. 25389, LISTCO assails the correctness of the ruling of the Court of Industrial Relations en banc insofar as it required this petitioner to pay, jointly and severally with the NDC, back wages to the affected officers and crew members of the M/S "Doña Alicia", claiming (1) that the Industrial Court was without jurisdiction over its persons, LISTCO not being a party to the labor dispute certified to it by the President; (2) that the restraining order of May 3, 1961 did not include this petitioner; and (3) that it cannot legally be compelled to retain the services of the original crew of the M/S "Doña Alicia."

On the first issue raised by this appellant, it is contended that the disputed ruling is based on the singular factor that LISTCO was a party to the case. This, according to petitioner, is erroneous, because under Section 10 of Republic Act 875 the Industrial Court has jurisdiction only over the employer and employees involved in the dispute certified to it. And since what was certified was the labor conflict between the crew members of the vessels and the NDC, it is now asserted that the Industrial Court was bereft of authority to bring LISTCO (which had no employer-employee relationship with therein petitioners) into the case and thereafter to issue orders against it.

The contention is without merit. It cannot be denied that when the certification was made by the President on April 25, 1961, and the Court of Industrial Relations assumed jurisdiction over the case, the three "Doña" vessels were still owned and operated by the NDC. Understandably, the presidential certification mentioned only the

crew of the vessels and the NDC as parties to the dispute. Although not originally named as respondent, the court, informed of the consummation of the sale, ordered the inclusion of LISTCO as an indispensable party.

Petitioner LISTCO cannot contest the authority of the trial judge in ordering it to be impleaded in the proceeding. In the first place, this being a certified case, the Court of Industrial Relations, in the exercise of its arbitration power, can direct the inclusion or exclusion of parties therefrom;[3] it is clothed with authority to issue such order or orders as may be necessary to make effective the exercise of its jurisdiction,[4] which may include the bringing in of parties into the case. Secondly, what confers jurisdiction on the Industrial Court is not the form or manner of certification by the President, but the referral to said court of the industrial dispute between the employer and the employee.[5] Thus, the court is not deprived of jurisdiction over a case simply because the certification of the President is erroneous.[6] In other words, the particular names of the contending parties as specified in the presidential directive, are descriptive of the disputants. That LISTCO was not so named in the certification would not make it any less the employer of the petitioning employees within the contemplation of law, since by the transfer of ownership of the vessels it actually became such employer.

It is next claimed LISTCO is not bound by the restraining order (back to work and no lockout order) of May 3, 1961, for the reason that the order itself referred to "the management of the National Development Company". Besides, petitioner asks, how could it comply with the order to take the strikers back when the crew-members were never in its employ?

The argument fails to consider that by the order of April 29, 1961 LISTCO, as the new owner of the vessels, was included as an indispensable party in the litigation, "without which no final determination of this case can be had." It was, therefore, made of record that LISTCO was then already the owner and operator of the ships, there having been no showing that the management thereof was lodged in another; it was a party against which any appropriate order shall be binding and enforceable. The order of the trial judge to "the management", to reinstate the strikers under the last terms

existing before the dispute arose and to refrain from dismissing any employee or laborer, could not have been directed solely against the NDC but also to LISTCO which had the power to admit or discharge employees.

Even if we follow petitioner's theory that the restraining order should be literally construed, and the ambiguity or imperfection created by the mention of "the management of the National Development Company" be resolved in favor of LISTCO, the ruling of the court below must still be affirmed. With actual knowledge of the aforementioned restraining order of May 3, 1961, LISTCO cannot claim to have acted in good faith when it caused the ejection of the crew of the M/S "Doña Alicia", and should be held liable for payment of the wages which the crew of the latter failed to receive. Hence, the award of back wages by the Court of Industrial Relations is proper. It is a means adopted to enforce or carry into effect a solution to the labor dispute; a valid exercise of its power of arbitration and conciliation under Commonwealth Act 103.[7]

In L-25390, the NDC raises as issues (1) the legality of the strike staged by the crews of the three vessels and of their right to strike-duration pay; (2) its liability for such strike-duration pay and for reinstatement of the officers and crew-members who were not reemployed after the conclusion of the Agreement of November 28, 1961; (3) the jurisdiction of the Court of Industrial Relations over the officers of the vessels; (4) the legality of the ruling that the crew-members are entitled to accumulated sick and vacation leaves with pay; and (5) the correctness of the order of the court en banc to reopen the case, insofar as the union's demands for gratuity (Nos. 1 and 8) are concerned.

To question the legality of the strike declared on April 15, 1961, for the purpose of disputing the award of back pay to the affected employees and the order to reinstate the strikers, is not here proper. It may be pointed out that in both the decision of the trial judge and the resolution of the court en banc presently on review, the award of back wages is not for the period when the employees were on strike, but while the crew members of the M/S Doña Alicia" were out of work, on account of their ejection from the vessel by LISTCO. In other words, the legality or illegality of the strike has nothing to do with the

judgment for backwages; the payment of these wages was the offshoot or consequence of the disregard or violation of the court's order of May 3, 1961 prohibiting unauthorized dismissal of employees during the pendency of the main controversy.

Furthermore, it is evident that the strike of April 15, 1961 was precipitated by the non-inclusion in the deed of sale in favor of LISTCO of a provision on the retention in the service of the complements of the vessels. With the reinstatement of the employees, as a consequence of the agreement of November 28, 1961, and the reacquisition by the original owner, NDC, of the possession and management of the vessels, this issue has become academic.

Nor is there reason for exempting the NDC from liability for payment of the employees' back wages. There can be no dispute that as of June 17,1961, when the Owner's Protocol of Delivery and Acceptance (of the M/S "Doña Alicia" was signed, purporting to grant to the LISTCO the sole right of management of the vessel and the absolute authority to hire and fire the members of the crew, the Court of Industrial Relations back to work order simultaneously ordering management to refrain from dismissing laborers without the labor court's authority was already in full force, having been issued since May 3. Yet, in its letter dated June 17, 1961 and sent to the Master of the M/S "Doña Alicia", the General Manager of the NDC "enjoined" the officers and crew members thereof, who were not selected by the new owner to debark. This letter, in effect, was a defiance of the Industrial Court's injunction, just as the LISTCO's replacement of the "Doña Alicia" crew was in disregard of the same order. This cooperation and concordant action of both appellants, plainly contrary to the express order of the Court of Industrial Relations of May 3, justifies their being held solidarily liable for the back wages of the officers and crew of said motor vessel.

The claim that the Court of Industrial Relations did not acquire jurisdiction over the person and demands of the officers of the three vessels because they did not go on strike and were not included in the certification by the President, is without merit. The inclusion of said officers, as parties petitioners, effected in virtue of the order of July 31, 1961, was well within the power of the court below to do.[8] And, as heretofore discussed, it is not the title of the case nor the names of the

disputants mentioned in the presidential certification that confers jurisdiction on the Industrial Court over an industrial dispute, but the reference to it of such dispute by the President.

The question whether or not the petitioning officers and crew members of the vessels are entitled to accumulated sick and vacation leaves with pay is actually an important one. In arguing against the affirmative ruling of the court en banc, petitioner NDC contends that the employment of seamen or sailors are on voyage-to-voyage basis and, therefore, cannot be considered permanent or regular. This matter of the nature or character of employment of the complement of the vessel cannot be passed upon in this case. There was finding by the trial judge on the absence of proof that the employment of seamen was temporary; it was found that they were paid their wages from payday to payday, regardless of the renewal of the Shipping Articles; they were previously given leaves of absence, and had been in the employ of NDC for the past 10 years. These factual findings, left unaltered by the court en banc, we cannot here review.

The lower court's recognition of the right of herein private respondents to accumulation of sick and vacation leaves with pay is based on the provisions of Government Enterprises Counsel Circular No. 4 of March 19, 1948 (Exhibit "BB"), allowing payment of sick and vacation leaves to employees of government-owned and controlled corporations, and of Sections 284-286 of the Administrative Code, as amended by Republic Act No. 1081, which increased the allowable accumulated vacation and sick leaves of government employees to 10 months.

Admittedly, the NDC is a government-owned and controlled corporation. The fact that the officers and unlicensed members of the crews of the vessels had a collective bargaining contract that did not contain any provision on the payment of accumulated leaves does not bar by itself the employees' resort to the leave-law. The rule is that the law forms part of, and is read into, every contract, unless clearly excluded therefrom in those cases where such exclusion is allowed [Manresa, Comm. Vol. 8. part 2 (5th Ed) p. 58].

> "Pero en los mas de sus preceptos, la ley como se ha dicho muchas veces, da un solo modelo del contrato, que pueden o no

> aceptar los contratantes. Sentado esto y siendo costumbre la modificacion de este modelo legal, puede surgir la duda de si el contrato que nada diga, se suple por los preceptos legales o por la practica que mos modifica. La superioridad incontrovertible de la ley, hace suponer que el problema se decidiria generalmente por esta, salvo dos excepciones: una indudable, cuando ella misma hace sus preceptos supletorios, no solo del pacto, sino de los usos locales; otra legitima, cuando la costumbre es constante, y ademas hay en el contrato datos para suponer su aceptacion."

In the absence of any showing that the parties intended to exclude the application of Sections 284-286 of the Administrative Code and Government Enterprises Counsel Circular No. 4, it is rational to assume that they intended these legal rules to apply, and that for this very reason no stipulation was made any more in the collective agreement about vacation and sick leaves.

As regard the last assigned issue, it appears that the trial judge denied the employees' demands for payment by NDC of gratuity (Demands Nos. 1 and 8) on the ground that with the reacquisition by NDC of possession and management of the vessels they had become academic. The court en banc however, informed of the resale of the vessels to another party during the pendency of the motion for reconsideration of the trial court's decision ordered the reopening of the case insofar as these demands for gratuity are concerned. Petitioner contends such reopening to be error because gratuity is not demandable by an employee as a matter of right, being a reward given by an employer in recognition of the services rendered by the employees; consequently, it is a proper subject for negotiation or collective bargaining. It is argued further that there being no showing that the collective bargaining contract between the employees and the NDC provides for payment of gratuity by the employer upon termination of the employee's services the order to remand the case for reception of evidence on Demand lacks legal basis.

To this reasoning we can not agree. While normally discretionary, the grant of a gratuity or bonus, by reason of its long and regular concession may become regarded as part of regular compensation (Philippine Education Co., Inc. vs. C.I.R., 92 Phil. 382, 385, and cases

cited therein). In order to determine whether such conditions operated in the instant case, the reopening of the trial for receiving evidence on the point was evidently proper.

WHEREFORE, the resolution appealed from is hereby affirmed. Costs in G.R. No. L-25389 are taxed against petitioner-appellant LISTCO and in G.R. No. L-25390, against petitioner-appellant NDC.

Concepcion, *C.J.*, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles and Fernando, *JJ.*, concur.

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[1] Notwithstanding opposition by the respondents, the title of the case was amended by order of July 31, 1961 to include as parties- petitioner "the licensed officers and/or crew members represented by Gerardo Angeles", the court considering the situation that a common question of fact or law, arising from the same subject matter, exists between the unlicensed crew members and the licensed officers and crew members of the Doña vessels (pp. 229-230, CIR record).

[2] On May 15, 1962, LISTCO served notice on NDC to rescind the contract of sale of the vessels, claiming that the latter failed to disclose during the negotiations its obligations to the Philippine Maritime Industrial Union, thus bring about LISTCO's involvement in legal disputes. The NDC later repossessed the vessels, charging LISTCO with having abandoned them and breach of contract.

[3] Section 7, Commonwealth Act 103.

[4] Rizal Cement Co., Inc. vs. Rizal Cement Workers Union, G.R. No. L-12747, July 31, 1960; Hind Sugar Co. vs. CIR, G.R. No. L-13364, July 26, 1960; Philippine Marine Radio Officers Association vs. CIR. 102 Phil. 373.

[5] Section 10, Republic Act 875.

[6] See Pampanga Sugar Development Co. vs. CIR, et al., G.R. No. L-13178, March 25, 1961.

[7] Philippine Marine Radio Officers Association vs. CIR, 102 Phil. 372, 383.

[8] See Notes (3) and (4), ante.
