SUPREME COURT
FIRST DIVISION

NATIONAL FEDERATION OF LABOR and 275 MEMBERS OF TUMAJUMBONG CHAPTER-BASILAN,
***Petitioners*,**

-versus-

G.R. No. L-65150
November 11, 1985

THE NATIONAL LABOR RELATIONS COMMISSION, and SIME DARBY INTERNATIONAL TIRE COMPANY, INC.,
***Respondents*.**
x----------x

D E C I S I O N

PLANA, *J.*:

This Petition for *Certiorari* seeks to set aside the Resolution of public respondent National Labor Relations Commission which authorized

respondent Sime Darby International Tire Company, Inc. to permanently replace workers belonging to petitioner Union who had failed to comply with the return-to-work order given by public respondent.

The 275 individual petitioners are members of petitioner Union. They have been employed from 3 to 10 years by Sime Darby as rubber tree tappers at the Tipo-Tipo plantation at Tumajumbong, Basilan, one of the two plantations of Sime Darby at Basilan, the other being located at Latoan. The rubber tree tappers were each required to tap 250 trees daily. Petitioners sought a reduction of their daily quota, but respondent Company refused. On July 1, 1983, the tappers struck.

Petitioner Union describes the work involved in the present dispute. —

> "The mountain terrain at Tumajumbong is not the same as the terrain at Latoan. The former is more irregular than the latter. The rubber trees, which are higher than those at Latoan, being tapped at Tumajumbong, must now be tapped six feet or more above the ground. Hence, ladders are necessary to accomplish the work. The work sequence would be: (a) place the ladder on the trunk of the tree; (b) secure the same and climb it; (c) tap the tree above six feet and place the receptacle to where the rubber fluid must flow; (d) get down the ladder; (e) log the ladder to another tree on the irregular terrain. Under this new situation a great majority of the tappers could hardly finish the old quota of tapping 250 trees in a day which quota they easily accomplished when the tapping was from the ground when no ladder was needed. They just walked from tree to tree. As the sap from the lower trunk depleted, a ladder had to be used. Under this situation, the workers at Tumajumbong plantation requested a reduction of the quota, first to 150 trees, but after conciliation, to 175 trees. Respondent Company however refused to reduce the quota claiming that the same could be done and cited examples at the other plantation. The respondent Company's stand was coupled with disciplinary action in gradual stages that led to dismissals. As some tried with exertion of human endurance to make up for the quota, rubber was spilled at the higher placed receptacles and many

> got sick after the day's work. The penalties were imposed just the same. This intolerable situation made the tapper's leave their work on July 1, 1983, without any notice of strike, and even without authority from their mother-Federation, the petitioner." (Rollo, p. 3)

Conciliation efforts subsequently exerted by the Regional Office No. IX at Zamboanga were of no avail. The Ministry of Trade and Industry taking notice of the strike requested the Deputy Minister of Labor and Employment in its letter of July 13, 1983 to assume jurisdiction over the dispute or certify it to the NLRC for compulsory arbitration, maintaining that the strike, unless enjoined, would adversely affect the national interest. Accordingly, Minister Blas F. Ople certified the labor dispute to the NLRC for compulsory arbitration. The certification enjoined "all striking workers to immediately return to work and the management to allow said workers to return to work" pending compulsory arbitration.

On August 1, 1983 the respondent Company filed a motion with the NLRC for authority to hire replacements on the ground that the workers refused to return to work as enjoined in the certification served on them on July 26, 1983.

On August 2, 1983, the NLRC issued an injunctive order requiring the workers to return to work within 72 hours from receipt thereof and mandated a "status quo ante", under sanction of law including but not limited to contempt and replacement with the Commission's approval; but still the striking workers failed to return to work.

On August 8, 1983, respondent Company filed a motion alleging that since the 72 hours had already lapsed and the workers still failed to return to work, the permanent replacement of the non-complying petitioners was necessary.

On August 17, 1983, the workers executed a "Manifestation of Compliance" to the return to work order, not later than August 22, 1983.

On August 25, 1983, respondent Company again filed a motion reiterating the previous prayer for the permanent replacement of the

workers because the latter had not complied with their own aforementioned “Manifestation” to return to work.

On August 30, 1983, the NLRC issued an en banc resolution giving the workers 5 days from receipt thereof to report for work, but only 16 strikers returned to work before the deadline of September 8, 1983.

On September 7, 1983, the petitioners filed a motion for reconsideration asking NLRC that the return to work order be tempered with at least a provisional reduction of the usual work quota.

On September 9, 1983, the respondent Company filed another motion with the NLRC to declare the striking workers to have abandoned and forfeited their jobs and to authorize the respondent Company to replace them permanently.

On September 19, 1983, the NLRC issued another en banc resolution requiring the workers for the last time to report for work within 5 days or else their failure shall ipso facto constitute sufficient basis for the respondent Company to replace them permanently. The petitioner’s motion for reconsideration was dismissed, the NLRC stating that the motion raises issues which are the same as those to be resolved in the main case.

On September 27, 1983, the petitioners filed a petition for certiorari with a prayer for a temporary restraining order. On November 16, 1983, the Supreme Court restrained enforcement of the Commission’s resolution of September 19, 1983 insofar as it gives the respondent Company authority to permanently replace petitioners.

On December 5, 1983, the workers tried to return to work but 268 persons had already been hired permanently as of November 17, 1983, the date respondent Company received notice of the restraining order.

The workers continued to stay in their dwellings within the plantation. The respondent Company, being of the opinion that those workers who had failed to return to work were deemed to have abandoned their work and consequently were no longer its

employees, initiated ejectment proceedings against them before the courts of Zamboanga. Upon application of petitioners, the Supreme Court, on April 4, 1984, enjoined the respondent Company from evicting the replaced workers from their lodgings in the camps.

The issue here presented is whether the resolution of the public respondent dated September 19, 1983 authorizing private respondent to replace permanently the striking workers who refuse to return to work, was issued with grave abuse of discretion.

Under paragraph (g) of Article 264 of the Labor Code, when there is a labor dispute causing a strike affecting national interest, the Minister of Labor and Employment may certify the same to the National Labor Relations Commission for compulsory arbitration; and upon such certification, all striking employees shall immediately return to work. Of course, the NLRC itself may issue the return-to-work order. Such order however is by its very nature a provisional measure; and non-compliance therewith will not necessarily authorize the permanent replacement of the recalcitrant workers.

> "The order for the replacement of the striking employees was a provisional order which did not finally determine the right of the striking employees to go back to work or of the new recruits to continue therein as permanent employees." (NCBNY vs. NCBNY Employees, 98 Phil. 301.)

Each case must be decided, not simply on the basis of the application of general principles, but in the light of its own surrounding circumstances, legal and equitable, and the benign constitutional policy of promoting social justice, affording protection to labor and assuring the rights of workers to security of tenure, and just and humane conditions of work.

In the case at bar, individual petitioners precisely stopped working because they found it beyond normal human endurance to regularly tap at least 250 rubber trees a day at the level of six feet or more above the ground. As against this stance, private respondent contended that the reasonableness of the minimum workload prescribed for the workers should be threshed out in the arbitration proceedings, but only after individual petitioners shall have returned

to work, as compliance with the return-to-work order is a prerequisite for a hearing on the merits.

Apparently accepting private respondent's posture, NLRC's disputed order of September 19, 1983 required the petitioners to return to work under the very same conditions against which petitioners struck, under pain of being replaced permanently, and to work indefinitely under those conditions while the arbitration proceedings for the purpose of determining the reasonableness of the minimum daily workload of petitioners are going on without any definite terminal date. Meanwhile, in case the workers fail to finish the assigned daily quota of 250 trees, graduated penalties would be imposed: first offense — reprimand; second offense — 3 days' suspension; third offense — 14 days' suspension; fourth offense — 1 month suspension; and fifth offense — dismissal. It would indeed be pointless for NLRC to go on with the arbitration proceedings if the petitioners have already been permanently replaced either because they had been constrained to defy the return-to-work order or they had been dismissed for failure to meet the prescribed daily workload.

If some of the petitioners survive and the NLRC, after the arbitration proceedings, reaches the conclusion that the daily quota of 250 rubber trees is, after all, not reasonable and must be reduced, many workers would have already suffered great or perhaps irreparable injury.

All considered, we cannot resist the conclusion that in issuing its order dated September 19, 1983, the NLRC committed grave abuse of discretion. The said order is therefore annulled and set aside insofar as it authorized private respondent to permanently replace the individual petitioners who fail to return to work. Accordingly, private respondent is ordered to accept all returning workers who are members of the petitioner Union. Subject to the outcome of the pending arbitration proceedings, the quota of rubber trees to be tapped by the individual petitioners is provisionally fixed at one hundred seventy-five a day.

SO ORDERED.

Teehankee, *C.J., (Chairman)*, Melencio-Herrera, Gutierrez, Jr., De la Fuente and Patajo, *JJ.*, concur.
Relova, *J.*, is on leave.
