CHANROBLES PUBLISHING COMPANY

SUPREME COURT
EN BANC

UNITED EMPLOYEES WELFARE ASSOCIATION,
***Petitioner*,**

-versus-

G.R. No. L-10327
September 30, 1958

ISAAC PERAL BOWLINC ALLEYS,
***Respondent*.**
x----------x

D E C I S I O N

REYES, *J.*:

This is an Appeal by *Certiorari* from an Order of the Court of Industrial Relations.

On October 10, 1952, thirty-six pinboys of the Isaac Peral Bowling Alleys, an enterprise owned and operated by the Philippine Advertising Corporation, declared a strike for the reasons stated in a petition filed in their behalf by their Union (the United Employees Welfare Association) with the Department of Labor. But through the mediation of the Court of Industrial Relations to which the case was certified and where it was docketed as Case No. 751-V, the parties entered into a temporary agreement on the basis of which that court issued an order on October 22, 1952, providing that —

> "Members of petitioning union, during pendency of case, are enjoined not to declare any strike, and respondent on the other hand, is refrained from accepting new pinboys other than those whose names appear in abovementioned payrolls without express authority of Court, and shall permit under last terms and conditions existing before the strike of October 10, 1952, continuation of the 36 pinboys in the service."

In view of this order, the striking pinboys immediately returned to work.

But on November 11, 1952, with the said case No. 751-V still pending trial, the management of the bowling alleys dismissed four of the pinboys, named Ramon Arevalo, Claro Bordones, Petronio Beriña and Carlos Menodiado "on grounds of grave and willful insubordination and grave misconduct" and on the further ground of "drunkenness" in the case of the last two.

Alleging that the dismissal was a violation of the above order, the Union filed a motion to declare the manager and directors of the bowling alleys guilty of contempt, later a ending, the motion by also asking that the dismissed pinboys be reinstated with backpay.

After hearing, the court handed down its order, dated December 9, 1955, denying the motion for contempt but ordering the reinstatement of the four pinboys —

> "With back wages from November 11, 1952 up to December 22, 1954 when this case was submitted for decision. Provided, however, that such back wages shall be based on the average earnings of each and every one of said 4 pinboys one month prior to their dismissal, or on November 11, 1952."

Not satisfied with the above order, both parties sought relief from this Court, one through a petition for *certiorari* and the other through appeal by *certiorari*. The petition for *certiorari*, which is that filed by the bowling Alleys, assails the order in so far as it directs the reinstatement of the pinboys and awards them backpay. On the other hand, the appeal by the other party, the Union, rests on the

contention that the order was erroneous (1) in so far as it allows back wages only up to the date the case was submitted for decision and (2) in so far as it directs that the back wages shall be based on the dismissed pinboys average earnings "one month prior to their dismissal.

The petition for *certiorari* filed by the Bowling Alleys having been already dismissed for lack of merit (See resolution dated March 21, 1956 in G. R. No. L-10331), the order complained of is now before us only for the purposes of the appeal interposed by the Union.

With reference to the first ground of appeal, it is the contention of the appellant Union that the dismissed pinboys were entitled to back wages until actually reinstated and not only up to the day the case was submitted for decision. This contention fails to reckon with the fact that the right to backpay is not absolute but subject to the discretion of the Industrial Court (Antamok Goldfields Mining Company vs. Court of Industrial Relations, et al., 70 Phil. 340; Union of Philippine Education Employees vs. Philippine Education Company, 91 Phil., 93). Being empowered — by section 5 (c) of Republic Act 875 — to order the reinstatement of an employee 'with or without backpay", that court must be deemed to have also the lesser power of mitigating the backpay where backpay is allowed. And we note that in the present case there are circumstances calling for mitigation. For it appears that there was a long delay in the disposal of the case — decision did not come down until one year after the case was submitted — and as we had occasion to note in our decision in the main case (102 Phil., 219) the Industrial Court was aware that the financial condition of the bowling alleys was "not very sound due to losses reported during the years 1952-1953." In view of those circumstances, we are not for disturbing the order appealed from in so far as it allows backpay only up to the day the case was submitted for decision.

We are, however, with the appellant in the view that in determining the earnings of the dismissed pinboys for the month preceding their dismissal, account must be taken of the fact that the pinboys were on strike for 12 days of that month. The order below must, therefore, be clarified in the sense that the month referred to means a full working month, i.e., excluding the period of the strike, so that the backpay

awarded to the dismissed pinboys is to be based on their earnings for such month.

With this only clarification, the order appealed from is affirmed, without pronouncement as to costs.

Paras, *C.J.*, Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, and Endencia, *JJ.*, concur.

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