SUPREME COURT
FIRST DIVISION

BATANGAS LAGUNA TAYABAS BUS COMPANY,

***Petitioner*,**

-versus-

G.R. No. 101858
August 21, 1992

NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), TINIG AT LAKAS NG MANGGAGAWA SA BLTBCO-NAFLU and its reinstated one hundred ninety (190) members, namely, BIENVENIDO PAGKATUTUHAN, GIL A. ALANO, ANGELITO CALISIHAN, CARLOS CORTEZ, RUSTICO PANTOJA, RICO M. SERDAN, NESTOR GARCIA, DANILO SAN AGUSTIN, MARLON TIZON, MANUEL LUBUGUIN, EDGARDO AVENIDA, LENARDO ROLDAN, HILARION QUINTAIN, BASILIO BITUIN, LEONARDO PINEDA, GREGORIO CABRERA, ALFREDO ARROYO, NOLITO BESAS, CRISOSTOMO DE LUNAS, MARTINIO ORTEGA, ENRIQUITO CIPRIANO, PEDRO BUGAY, NOLASCO MARQUEZ ANTONIO GAA, VIRGILIO AVENANTE, DANTE AURE, FELIPE ANDALEON, REYNALDO CANETE, GREGORIO

DELOS REYES, ZOSIMO P. ROZEL, RUBEN ROZEL, TOMAS ESTEVA, JACINTO LANDICHO, OSCAR DELOS REYES, ROBERTO PESCASIO, MANUEL PEREJA, FELIX P. SALIBA, LEOGARIO SALAZAR, EDUARDO DELA CUESTA, REYNALDO CATANGAY, CELSO PENANA, ROGELIO SAVIDO, EDGARDO DIMAYUGA, RODRIGO LORENZANA, LORETO UMALI, LEONIDES MENDOZA, JOSE ALINA, MANOLITO F. CAPIANGAO, RAMON ALCANTARA, GREGORIO M. BREGONIA, ENRICO P. DIASANTA, FORTUNATO GAITE, NESTOR R. HOMOROK, JR., NESTOR LIM, SONIA MARALIT, NATALIA M. MARAMOT, FERNANDO A. MARANAN, AURORA S. MARIANO, CEFERINO M. ROYO, DANILO M. SAMBOJON, DIONISIO APURADO, AUGELIO PASUMBA, DEMOCRITO SISPEREZ, CARLITO R. ZUGUIRE, MARIANO UMALI, NEMESIO T. RUMOLO, PEDRO MONTERO, JAIME MALLA, ROMEO C. EBORA, LEOPOLDO REGALO, MARIO C. GRINDALO, BASILIO ADAJAR, GREGORIO P. CESAR, PEDRO DYPIANGCO, ARTURO B. DE LUNA, YOLANDA MONTICER, ARMANDO P. CODERA, CARLITO C. LUBUGUIN, ILUMINADO A. MEDINA, RAMON V. EM, JR., JAIME N. BENEDICTO P. BLASTIQUE, CESARE VILLANUEVA, EDWIN CARASCO, CRISANTO T. VALENTE, LUIS S. DELEMA, CARLOS D. DELGADO, PEDRO B. PERENA, JR., AMANCIO C. CLARETE, ALFREDO E. AREJA, RUFINO G. ALINSUNURIN, TELESFORO URI, ARNEL ASOY,

RODRIGO A. AVARADO, PABLITO BELLERAS, ROMEO M. HUTALIA, JOSE M. MAGPANTAY, ERNESTO C. MASCULINO, DANILO O. PARDILLA, ROMEO C. QUINDARA, ROMEO R. RAZA, RODOLFO S. SANTILLAN, DANILO C. VISITACION, ROGELIO B. YAMBAO, ALDEN P. MANUPIL, BUENVENTURA ARGENTE, ROGELIO M. DELICA, NARCISO M. RAMIREZ, ROGELIO A. TAN, CARLOS T. CHUA, NONILON A. GUTIERREZ, PEDRO E. LOBO, WILFREDO G. LEGUA, FELICIANO G. GONZALES, ORLANDO H. VERGARA, CARLOS A BORDON, HOSPICIO D. BRIONES, MARTIN DALISAY, ISIDRO C. MACATANGAY, FLORENCIO E. MALAPIT, MIGUEL SANCHEZ, RENATO A. VILLENA, CARLIE M. DELICIA, REYNALDO B. ABANADOR, CELESTINO A. DALISAY, REYNALDO E. ACAB, RONELO U. ALINEA, REYNALDO T. ALVISO, JESUS V. CATAPIA, NOLETO R. DE CHAVEZ, INOCENCIO S. EGAMINO, DOMINADOR ILAO, CRISOSTOMO E. MAGADIA, RODOLFO B. MARALIT, ISIDRO PACIA, EFRENIO R. PALMA, PROSPERO B. PENA, ARMANDO V. PON, NICOLAS M. RECEDE, DOMINGO SECRETARIO, CRISANTO V. ULAC, REYNALDO V. FERMIN, MARCELINO N. NOSES, MARIO C. SUAREZ, ROGELIO W. BURON, MARIO D. ZOMBILLA, JACINTO B. ORANTE, SANECITO Q. DE LUNA, JACINTO S. GRIMALDO, DANTE LADERA, FELIX S. LADINES, NOEL S. MARQUEZ, JUANCHO S. ALMORAS, DANILO S. RICO, TIMOTEO J. QUINCENA,

MELECIO F. LLAMELO, NICOLAS C. ASEJA, DOMINGO J. EVANGELISTA, ROLANDO P. REYES, RENATO ABILLA, DONATO ALCANTARA, ELADIO Q. MANALO, OLYMPIO C. PERENA, ARMANDO C. SAAVEDRA, JOSELITO TROZADA, LAURO M. ZUBRANO, JULIO A. ANTENOR, MANOLO A. ATIENZA, CELESTIMO D. ENRIQUEZ, RODANTE C. VICTORIA, EDUARDO, E. ALCANTARA, SANTIAGO ARENDA, LEOPOLDO V. DEL MUNDO, LEOPOLDO REGALO, JAIME MALLA, ELMAR CHUA, RENE A. ANEMIAS, MANUEL MILLAR, JESUS M. FAVIS, SALLY ALMARIO, ARCANGEL F. FAURA, FLORENCIO BUHAY, JUANELIO ALMORES, JAIME FAJELAN, CRISTOBAL M. LUCI, JUANITO CRIMALDO, RAUL I. CONSIGNADO, ISAGANI R. SUNGA, EFREN LINA, and PEPITO ABRATIQUE,

Respondents.

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D E C I S I O N

CRUZ, *J.*:

This case arose when on May 23, 1988, private respondent Tinig at Lakas ng Manggagawa sa BLTB Co. NAFLU (TLM-BLTB-NAFLU), an affiliate of the National Federation of Labor Unions (NAFLU), filed a Notice of Strike against the Batangas Laguna Tayabas Bus Company on the grounds of unfair labor practice and violation of the CBA.

The reaction of BLTBCo was to ask the Secretary of Labor to assume jurisdiction over the dispute or to certify it to the National Labor Relations Commission for compulsory arbitration. The petitioner also moved to dismiss the notice of strike on August 3, 1988.

Efforts at amicable settlement having failed, Acting Labor Secretary C. Castro certified the dispute to the NLRC on August 29, 1988.[1]

A copy of the certification order was served upon the NAFLU on August 29, 1988, and on the TLM-BLTBCo-NAFLU on August 30, 1988. However, it was noted in the notice of order that union secretary Jerry Soriano refused to receive it.

On August 31, 1988, the officers And members of TLM-BLTBCo-NAFLU went on strike and maintained picket lines blocking the premises of BLTBCo's terminals.

On September 6, 1988, the NLRC issued an en banc resolution ordering the striking employees to lift their picket and to remove all obstructions and barricades. All striking employees on payroll as of May 23, 1988, were required to return to work. BLTBCo was directed to accept them back to work within 5 days under the same terms and conditions prevailing before the strike.[2]

On September 15, 1988, the BLTBCo caused the publication of the resolution and called on all striking workers to return to work not later than September 18, 1988. It later extended the deadline to September 19, 1988.

Of the some 1,730 BLTBCo employees who went on strike, only 1,116 reported back for work. Seventeen others were later re-admitted. Subsequently, about 614 employees, including those who were allegedly dismissed for causes other than the strike, filed individual complaints for illegal dismissal. Their common ground was that they were refused admission when they reported back for work.

Among those who failed to comply with the return-to-work order were the respondent individual union members.

On July 19, 1991, the NLRC issued a resolution deciding the dispute thus:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. Dismissing the charge of unfair labor practice and union busting filed by the union against BLTBCo for lack of merit;
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> 2. Ordering BLTBCo to fully implement the provisions of the CBA in the matter of uniform and safety shoes;
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> 3. Declaring valid the dismissal of Jose M. Calubayan, Tirso Vinas, Ronelito Torres, Floro T. Isla and Rosauro Aguilar, being grounded on lawful causes:
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> 4. Declaring the strike illegal;
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> 5. Declaring the following officers and members of the union, namely: to have lost their employment status;
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> 6. Ordering the reinstatement of the following union members, namely; to their former position without loss of seniority rights but without backwages.
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> 7. The case of Ladislao Violanda is considered withdrawn.
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> 8. Directing likewise the reinstatement of all striking employees of BLTBCo who have not committed illegal acts.
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> 9. Declaring regular the employment of casual employees who have already rendered service of at least one year whether continuous.

On September 16, 1991, the NLRC issued the other challenged resolution, viz.:

WHEREFORE, the Motion for Reconsideration of Respondent BLTBCo and Complainant Pepita Abratique are denied for lack of merit. As a consequence, respondent's prayer for temporary restraining order is likewise denied.

As prayed for, respondent is directed to reinstate the union members specifically named in the questioned resolution and all those striking employees who have not committed illegal acts.

This order of reinstatement is immediately executory. No further motions for reconsideration shall be allowed.

BLTB then filed this special civil action for certiorari, claiming that the respondent NLRC commits grave abuse of discretion in:

1. ordering the reinstatement of the aforenamed 190 individual respondent union members notwithstanding the fact that they knowingly participated in a strike which was illegal from its inception as it was done in complete defiance and/or disobedience to the Assumption Order of August 29, 1988 and the Return-To-Work Order of September 6, 1988;

2. failing to consider that aforenamed individual union members have already abandoned their employment when they defied the Return-To-Work Order of September 6, 1988;

3. limiting the declaration of forfeiture of employment status to mere thirty-six (36) union officers, and members of the striking union when BLTBCo was able to initially identify at least (a) one hundred (100) employees who committed illegal/violent acts during and after the strike; and (b) twenty (20) employees who reported back for work and later on abandoned it and resumed their strike activities;

4. not including the recognized union officers — Jerry Soriano, Serafin Soriano and Desiderio Comel — among the union officers whose employment status have been declared forfeited; and

5. incorporating in its subject Resolution a blanket order reinstating BLTBCo's striking employees who have not committed illegal acts.

On motion of the petitioner and upon its posting of a cash bond in the amount of P500,000.00, the Court issued a temporary restraining order on November 6, 1991, against the enforcement of the above-quoted resolutions.[3]

Separate comments on the petition were filed by two of the private respondents. Celso Peñana and Pepito Abratique, and by the Solicitor General on behalf of the public respondent. A consolidated reply to these comments was later submitted by the petitioner.

The Court has deliberated on the arguments of the parties and finds that the challenged resolutions must be sustained.

BLTBCo contends that the 190 union members who participated in the illegal strike should not have been reinstated because they defied the return-to-work order of September 6, 1988. It invokes against the NLRC its own words in its resolution of July 19, 1991, where it said:

> A strike that is undertaken despite the issuance by the Secretary of Labor of an assumption or certification order becomes a prohibited activity and thus illegal, pursuant to the second paragraph of Art. 264 of the Labor Code as amended (Zamboanga Wood Products. Inc. vs. NLRC, G.R. 82088. October 13, 1989: 178 SCRA 482). The Union officers and members, as a result, are deemed to have lost their employment status for having knowingly participated in an illegal act. (Union of Filipro Employees (UFE), et al. vs. Nestle Philippines, Inc., et al., G.R. No. 88710-13, December 19, 1991).

That is only half the picture. however. As the NLRC further explained, it was "not inclined to declare a wholesale forfeiture of employment

status of all those who participated in the strike" because, first of all, there was inadequate service of the certification order on the union as of the date the strike was declared and there was no showing that the striking members had been apprised of such order by the NAFLU.

Secondly, and more importantly, the resolution declared as follows:

Applying the principle of vicarious liability, only the officers of the union deserved to be penalized with the loss of their employment status. The leaders of the union are the moving force in the declaration of the strike and the Rank-in-file employees merely followed. Likewise, viewed in the light of Article 264, paragraph (e), those who participated in the commission of illegal acts who stood charged criminally thereof in court must be penalized. BLTBCo will have to agree with Us that while the general membership of TLM-NAFLU may have joined the strike at its inception, We are convinced that they returned to work on September 19, 1988 or, immediately thereafter. And, We are not swayed that these employees have abandoned their job just because they reported late or, beyond the period required by the Commission and by BLTBCo. The circumstance, of time and place of employment and the residences of the employees as well as the lack of individual notice to them are reasons enough to justify their failure to beat the deadline.

True it is, that management of BLTBCo caused the publication of the Resolution of the Commission of September 5, 1988 in the Manila Bulletin, We cannot reasonably expect the complainants, who are ordinary workers, to be regular readers of such newspaper. Moreover, the publication of the said resolution was only made once.

We accept these factual conclusions as they do not appear to have been reached arbitrarily. The mere fact that the majority of the strikers were able to return to work does not necessarily mean that the rest deliberately defied the return-to-work order or that they had been sufficiently notified thereof. As the Solicitor General correctly adds, some of them may have left Metro Manila and did not have enough time to return during the period given by the petitioner, which was only five days.

The contention of the petitioner that the private respondents abandoned their position is also not acceptable. An employee who forthwith takes steps to protest his lay-off cannot by any logic be said to have abandoned his work.

For abandonment to constitute a valid cause for termination of employment, there must be a deliberate, unjustified refusal of the employee to resume his employment.[4] This refusal must be clearly established. As we stressed in a recent case,[5] mere absence is not sufficient: it must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. In the case at bar, the affidavit of Eduardo Azucena, BLTBCo operations manager,[6] besides being hearsay, lacks credibility in light of the subsequent acts of the private respondents in complaining about their separation.

A worker who joins a strike does so precisely to assert or improve the terms and conditions of his employment. If his purpose is to abandon his work, he would not go to the trouble of joining a strike.

The petitioner also alleges that the NLRC erred in limiting the forfeiture of employment status to the 36 union officers and members although there were at least 100 employees who committed violent acts and 20 employees who reported back for work and later abandoned it to resume their strike activities.

These issues are also factual. The findings thereon of the NLRC are conclusive on us and will not be disturbed as it clearly appears that they are not tainted with grave abuse of discretion.

We agree with the Solicitor General that the mere filing of charges against an employee for alleged illegal acts during a strike does not by itself justify his dismissal. The charges must be proved at an investigation duly called where the employee shall be given an opportunity to defend himself. This is true even if the alleged ground constitutes a criminal offense, as we held in Almira vs. B.F. Goodrich Phil., Inc.[7] In that case, we ordered the reinstatement of employees against whom criminal complaints had been filed but not yet proved.

The next contention of the petitioner is that Serafin Soriano, Jerry Soriano and Desiderio Comel should also be dismissed with the other union officers and members who participated in the illegal strike. We note, however, that these three have not been impleaded in this petition (unlike the others who have been individually named) and so have not been given an opportunity to defend themselves against the charges of BLTBCo. Absent such an opportunity, we are precluded from making any pronouncement regarding their alleged role in the strike for which their dismissal is sought.

The petitioner's last point is that the NLRC should not have issued the blanket directive for the "reinstatement of all striking employees of BLTBCo who have not committed illegal acts."

The key clause here is "who have not committed illegal acts. The directive was not really blanket," as the petitioner would call it, but indeed selective. The NLRC made this clear in the resolution dated September 16, 1991, thus:

> The loss of employment status of striking union members is limited to those "who knowingly participates in the commission of illegal acts." (Article 264, Labor Code) Evidence must be presented to substantiate the commission thereof and not merely an unsubstantiated allegation. He who asserts the commission of illegal acts, must prove the same, and it is on the basis of substantiated evidence that this Commission declares the loss of employment status of specific union members who have committed illegal acts.

This Commission's order directing the reinstatement of all striking employees against whom no complaint of illegal acts having been committed during the strikes, and who were barred from returning to work and is similarly situated with those who have been directed to be reinstated, should, as a consequence and on the basis of the reasons discussed in the questioned resolution be reinstated. There is no denial of due process in this direction, for respondent has been given the chance to defend its position.

Elaborating on the same issue, the Solicitor General astutely observes:

> The assailed Resolution does not prevent petitioner from continuing with its investigations and come up with evidence against these workers. But they have to be admitted back to their work first. This is clearly a situation where the social justice provisions of our laws and jurisprudence come in aid of labor. Since such investigations might be extended, intentionally or otherwise, the workers are in danger of losing their livelihood. As compared to the management that in a position to wage an extended legal struggle against labor. the latter cannot do so. This is where the State intervenes to equalize matters between labor and management.
>
> The right to strike is one of the rights recognized and guaranteed by the constitution as an instrument of labor for its protection against exploitation by management. By virtue of this right, the workers are able to press their demands for better terms of employment with more energy and persuasiveness. poising the threat to strike as their reaction to the employer's intransigence. The strike is indeed a powerful weapon of the working class. But precisely because of this, it must be handled carefully, like a sensitive explosive, lest it blow up in the workers' own hands. Thus, it must be declared only after the most thoughtful consultation among them, conducted in the only way allowed, that is, peacefully, and in every case conformably to reasonable regulation. Any violation of the legal requirements and strictures, such as a defiance of a return-to-work order in industries affected with public interest, will render the strike illegal, to the detriment of the very workers it is supposed to protect.

Even war must be lawfully waged. A labor dispute demands no less observance of the rules, for the benefit of all concerned.

WHEREFORE, the Petition is **DISMISSED**. The resolutions dated July 16, 1991, and September 16, 1991, are **AFFIRMED**. The temporary restraining order dated November 6, 1991, is **LIFTED**. Costs against the petitioner.

SO ORDERED.

Griño-Aquino and Bellosillo, *JJ.*, concur.
Medialdea, *J.*, took no part.

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[1] Rollo, p. 137.
[2] Ibid., p. 140.
[3] Id., p. 189.
[4] Nueva Ecija I Electric Cooperative, Inc. (NEECO-I) vs. Minister of Labor, 184 SCRA 25.
[5] Ibid.
[6] Rollo, p. 153.
[7] 58 SCRA 120.
