

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**FIRST CITY INTERLINK
TRANSPORTATION CO., INC., DOING
BUSINESS UNDER THE NAME AND
STYLE FIL TRANSIT,**

Petitioner,

-versus-

**G.R. No. 106316
May 5, 1997**

**THE HONORABLE SECRETARY MA.
NIEVES ROLDAN-CONFESOR, IN HER
CAPACITY AS SECRETARY OF LABOR
AND EMPLOYMENT, AND
NAGKAKAISANG MANGGAGAWA NG
FIL TRANSIT-NATIONAL
FEDERATION OF LABOR (NMF-NFL),**

Respondents.

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DECISION

MENDOZA, J.:

This is a Petition for Review on *Certiorari* to set aside the Order dated July 23, 1992 of the respondent Secretary of the Department of Labor and Employment, ordering the payment of backwages and

separation pay to striking employees of petitioner First City Interlink Transportation Co., Inc.

Petitioner First City Interlink Transportation Co., Inc., is a public utility corporation doing business under the name and style Fil Transit. Respondent Nagkakaisang Manggagawa ng Fil Transit-National Federation of Labor (NMF-NFL) is a labor union composed of employees of Fil Transit.

On May 27, 1986, the Fil Transit Employees Union filed a notice of strike with the Bureau of Labor Relations (BLR) because of alleged unfair labor practice of petitioner. Despite several conciliation conferences, the parties failed to reach an agreement, so that, on June 17, 1986, the Union went on strike. As a result several workers were dismissed. The Union filed another notice of strike alleging unfair labor practice, massive dismissal of union officers and members, coercion of employees and violation of workers' rights to self-organization. Conciliation conferences were again held but, on July 27, 1986, the Union again went on strike, lifting their picket only on August 2, 1986.

On September 16, 1986, the then Minister of Labor and Employment, after assuming jurisdiction over the dispute under Art. 264(g) and Art. 278(b) of the Labor Code, ordered —

- (1) all striking employees including those who were dismissed prior to the June 17, 1986 strike to return to work within forty-eight (48) hours from receipt of the order; and
- (2) petitioner to accept all the returning employees under the same terms and conditions prevailing previous to the dispute.

On September 22, 1986, petitioner filed a motion for reconsideration and later a supplemental motion for reconsideration, contending that no strike vote had been obtained before the strike was called and the result of strike vote was not reported to the Ministry of Labor and Employment. Its motion was, however, not acted upon for the reason that petitioner had already brought the matter to this Court on *certiorari*, resulting in the issuance of a temporary restraining order.

The petition for *certiorari* was denied and the temporary restraining order was lifted by this Court in its resolution dated February 23, 1987. On November 24, 1987, the Department of Labor and Employment issued a writ of execution, ordering the chief of the execution arm of the NLRC to cause the actual and physical return to work of all striking employees, including those dismissed prior to the June 17, 1986 strike under the same terms and conditions prevailing previous to the dispute, and to secure certification that the parties have complied with such return to work order.

The Union then filed a motion for the award of backwages in the total amount of P1,364,800.00 for the period December 9, 1987 up to February 9, 1988 and for the issuance of a writ of execution.

On March 23, 1988, the Sheriff reported in his return that only 66 employees reported back to work and were accepted by petitioner on condition that they submit certain requirements.

On May 15, 1990 the Secretary of Labor issued the order awarding backwages and the corresponding writ of execution as follows:

Considering the unreasonable stance adopted by Fil Transit, Inc., *vis-a-vis* the implementation of the return to work order, and the consequent denial to the workers of their means of livelihood, this office is inclined to grant the union's prayer for backwages computed from the time the Writ of Execution was first served upon the company. We demur, however, to the amount of P1,364,800.00 backwages as computed by the union. This is a matter which is best discussed and maybe the subject of later proceedings. In the meantime, our paramount concern is the readmission of the workers to forestall further economic suffering arising from their loss income.

WHEREFORE, in view of the foregoing, the management of Fil Transit, Inc. is ordered to comply strictly with the return to work directive dated September 16, 1986, as sought to be implemented by the writ of execution of November 24, 1987. The list of employees attached to the aforementioned writ is

hereby adopted en toto as the sole basis for management's compliance.^[1]

Petitioner moved for a reconsideration but its motion was denied. In his order dated August 27, 1991, the Secretary of Labor ruled:

WHEREFORE, premises considered, the instant motion for reconsideration is hereby DENIED.

The Fil Transit, Inc. and Fil Transit Employees Union NFL are hereby directed to file their position papers and evidence with this office, within fifteen (15) days from receipt hereof, on the following issues, to wit:

- (a) Amount of backwages due to the workers covered by the Return to Work Order of September 16, 1986 using as basis therefore the list attached to the writ of execution;
- (b) the issues identified in the Assumption Order of September 16, 1986, to wit:
 - (1) Alleged unfair labor practices, harassment, coercion, violation of worker's right to self-organization, alleged non-payment of ECOLA.
 - (2) Validity of fines and suspensions;
 - (3) Validity of charge of wage distortion.

The Order dated 15 May 1990, calling for the compliance with the return to work directive of September 16, 1986 is hereby AFFIRMED.

No further motions of this same nature shall be entertained.^[2]

Petitioner questioned the order in a petition for *certiorari*, prohibition and mandamus filed with this Court which, however, dismissed the petition on September 23, 1991, for lack of showing that the Secretary of Labor committed a grave abuse of discretion in rendering the questioned order.^[3]

Thereafter, respondent Union submitted its position paper on October 30, 1991 and asked the Secretary of Labor:

1. To declare respondent company guilty of unfair labor practice for its continuous defiance of the return to work Order issued by the Department of Labor and Employment.
2. To pay complainant backwages from the time they were refused of their reinstatement last 1986.
3. To pay individual complainants their separation pay, in lieu of reinstatement considering that complainants are no longer interested to go back to Fil Transit.
4. To pay complainant union attorney's fees.

On the other hand, petitioner First City Interlink Transportation Co., Inc. asked that:

1. The Order of 27th August 1991, be amended, to include, among the issues the question of the legality or illegality of the strike;
2. Respondent be given an extension of thirty (30) days from today within which to file its position paper;
3. That after the parties shall have submitted their respective position papers the case be set for hearing to afford the respondent the opportunity to cross examine the supposed complainants.

Petitioner asked for another extension of the time for submitting its position paper but as of the date of respondent's questioned order of July 23, 1992, it had not yet submitted its paper. Without waiting for the paper, the Secretary of Labor ruled the strike of the Union legal and awarded backwages and separation pay to the strikers. The dispositive portion of her decision, dated July 23, 1992, states:

WHEREFORE, premises considered, Fil Transit Co., Inc., is hereby ordered to pay the dismissed striking employees the following:

1. Backwages for three (3) years without qualification and deduction; and
2. Separation pay equivalent to one-half month pay for every year of service in lieu of reinstatement, the date of this office's order as the cut-off date.

The Director, Bureau of Working Conditions (BWC), this Department, is hereby directed to immediately compute the monetary award, as ordered, which computation shall form part of this order.

Hence, this second petition questioning the above order.

The petitioner contends that:

1. The Honorable Respondent Secretary of Labor erred in declaring the strike legal;
2. The strikers, having engaged in violent, illegal and criminal acts, have lost their employment status;
3. The Honorable Secretary erred in declaring that management refused to comply with the Return to Work Order;
4. The Honorable Secretary erred in disregarding the report of the sheriff;
5. The striking employees are not entitled to backwages;
6. Assuming that backwages could properly be awarded, there was no basis for the amount fixed by the Secretary of Labor; and
7. The judgment against Fil Transit is null and void.

First. Petitioner's main contention is that the strike called by the Union was illegal. Pursuant to Art. 263(c)(f) of the Labor Code, the requisites for a valid strike are as follows:

- (1) a notice of strike filed with the Department of Labor at least 30 days before the intended date thereof or 15 days in case of unfair labor practice;
- (2) strike vote approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and
- (3) notice given to the Department of Labor and Employment of the results of the voting at least 7 days before the intended strike.

These requirements are mandatory.^[4]

Petitioner contends that the strike staged by the Union was illegal because no strike vote had been taken before the strike was called. This matter was raised by petitioner before the Secretary of Labor and now in this petition. However, in none of the numerous pleadings filed by respondent Union before this Court, has it been shown that a strike vote had been taken before declaring a strike. As between petitioner and respondent Union, the latter is in a better position to present proof of such fact. The Union's failure to do so raises the strong probability that there was no strike vote taken. The first and only instance it is mentioned that such a vote had been taken before the strike was called was in the order dated July 23, 1992 of the Secretary of Labor in which she stated:

The records show that a notice of strike was filed by the union with the Bureau of Labor Relations (BLR) on May 27, 1986, and after a failure of several conciliation conferences due to management's consistent refusal to appear, the union went on strike on June 17, 1986, after a strike vote was obtained.^[5] (Emphasis added)

But the Secretary of Labor did not indicate the basis for her statement nor the date the strike vote was allegedly taken. Neither did she

mention whether her office had been notified of the strike vote as required by law.

For that matter the statement in the same order that a notice of strike had been filed because several conciliation conferences failed “due to management’s consistent refusal to appear” is contrary to evidence in the record. Annexes E and F of the petition show that management was duly represented during the conciliation proceeding prior to the strike on June 17, 1986. Annex G likewise shows that at the conciliation conference held on July 17, 1986, management actively participated, contrary to the statement in the order of the Secretary of Labor that the failure of the second set of conciliation conferences was due to management’s refusal to attend.

Moreover, even assuming that a strike vote had been taken, we agree with petitioner that the Union nevertheless failed to observe the required seven-day strike ban from the date the strike vote should have been reported to the DOLE up to the time the Union staged the strike on June 17, 1986. As petitioner contends:

It must be noted in this regard that as shown in the minutes of conciliation conferences (Annex “F”), the parties met in a conciliation conference on June 13, 1986, four (4) days before the June 17, 1986 strike. So even if it is conceded that a strike vote was taken, there would have been non-compliance with the requisite cooling off period and the 7-day strike ban for the simple reason that between June 13, 1986, the day the parties met for conciliation conference and June 17, 1986, the day of the strike, there were only four (4) days.^[6]

It is nonetheless contended by the Solicitor General that “[a] strike inspired by good faith is not illegal simply because certain requirements were not followed,” citing the case of Ferrer vs. CIR.^[7] The contention has no merit. In Ferrer, the strikers failed to observe the 30-day cooling off period, but this Court found the strike legal because of the strikers’ belief in good faith that the employer committed unfair labor practice. But, in the case at bar, what is lacking is the strike vote which should have been reported to the DOLE seven days before staging the strike. The importance of the strike vote and reporting of the results to the DOLE cannot be

gainsaid as it is the Union itself that the law seeks to protect by ensuring that the majority of its members voted in favor of the strike. As held in *National Federation of Sugar Workers (NFSW) vs. Ovejera*:^[8]

When the law says “the labor union may strike” should the dispute “remain unsettled until the lapse of the requisite number of days (cooling-off period) from the mandatory filing of the notice,” the unmistakable implication is that the union may not strike before the lapse of the cooling-off period. Similarly, the mandatory character of the 7-day strike ban after the report on the strike-vote is manifest in the provision that “in any case,” the union shall furnish the MOLE with the results of the voting “at least seven (7) days before the intended strike, subject to the (prescribed) cooling-off period.” It must be stressed that the requirements of cooling-off period and 7-day strike ban must both be complied with, although the labor union may take a strike vote and report the same within the statutory cooling-off period.

Moreover, petitioner is right that good faith can not be invoked by the Union in this case.

As the records will bear out, the private respondent had clearly acted in bad faith when it went on strike.

Annex “F” of the petition (June 13, 1986 Minutes of Conciliation Proceedings) attached to the records of the case, shows that at the time the strike was staged, conciliation meetings were going on. In fact, said Annex “F” reveals that the parties met in a conciliation meeting on June 13, 1986 and agreed to meet further on June 17, 1986 at 2:00 P.M. (Please see Annex “F”). Instead of meeting with petitioner on the scheduled conciliation meeting on June 17, 1986 as agreed upon, private respondent went on strike. Certainly, this act of the private respondent cannot be characterized as having been made in good faith.^[9]

Indeed, there is no finding in this case that petitioner was guilty of the alleged unfair labor practices as charged by the Union. The award of backwages and separation pay was based solely on the alleged refusal

of petitioner to comply with the Return to Work Order — an issue which will be discussed in the latter part of this decision. Hence, the ruling in Ferrer vs. CIR — that the strike staged before the expiration of the 30-day cooling off period is not illegal because of what the strikers perceived in good faith to be unfair labor practices of the employer — does not apply.

Second. Petitioner contends that the strikers, having engaged in violent, illegal, and criminal acts, have lost their employment status. The Labor Code considers the commission of these acts a “prohibited activity”^[10] and any worker or union officer, who knowingly participates in their commission during a strike, may be declared to have lost his employment status.

Respondent Secretary held that responsibility for such acts should be individual and not collective. In her questioned order of July 23, 1992, she stated:

It is contended, by the Company, that several acts of violence were allegedly committed by former employees of the company during the strike. However, in the absence of clear proof that the strikers committed the same by design or policy, only those strikers who committed illegal acts could be held personally responsible therefor. To our mind, a wholesale dismissal of the strikers from their employment on the basis that the strike was attended by violence, is not warranted in the case at bar. As held by the Supreme Court in the case of FEATI Faculty Club vs. FEATI University, et al.; G.R. No. L-31504, to wit:

Not every form of violence suffices to affix the seal of illegality on a strike as to cause the loss of employment of the guilty party. Where acts of violence while the strike lasts are sporadic and not pervasive by design and policy, responsibility therefore is individual and not collective.^[11]

Contrary to respondent Secretary’s finding, the strike declared by the Union was attended by pervasive and widespread violence. The acts of violence committed were not mere isolated incidents which could normally occur during any strike. The hijacking of Fil-Transit Bus No. 148 at the intersection of EDSA and Quezon Avenue on Sunday, July

27, 1986, three days before the scheduled conciliation conference, reveals that it was staged in pursuance of a preconceived plan. This was followed by the barricading of the terminal in Alabang by means of five buses which had also been hijacked. In the days that followed, the strikers persisted in their violent acts, (1) the hijacking of 26 more buses which resulted in injuries to some employees and panic to the commuters; (2) the puncturing of tires; (3) the cutting of electric wirings, water hoses and fan belts; and (4) the alleged theft of expensive equipment such as fuel injections worth P30,000 each. The commission of these illegal acts was neither isolated nor accidental but deliberately employed to intimidate and harass the employer and the public. The strikers even resorted to the use of molotov bombs which were thrown into the petitioner's compound.

Nevertheless, we are constrained to uphold the respondent Secretary's ruling that responsibility for these illegal acts must be on an individual and not collective basis. Therefore, although the strike was illegal because of the commission of illegal acts, only the union officers and strikers who engaged in violent, illegal and criminal acts against the employer are deemed to have lost their employment status. Union members who were merely instigated to participate in the illegal strike should be treated differently.^[12]

Third. As already noted, respondent Secretary awarded backwages on the ground that petitioner had refused to comply with the Return to Work Order of September 16, 1986.

Petitioner explains that its failure to immediately reinstate the employees was due to the Union's insistence on the reinstatement of even those who had been dismissed for cause and had been dismissed even before the strike held on June 17, 1986. Moreover, by the time the respondent Secretary issued the questioned order of July 23, 1992, petitioner had already complied with the Return to Work Order. Out of the approximately 160 employees included in the Return to Work Order of the Secretary of Labor, 66 employees had been admitted back to work. The rest were not readmitted to work because they simply did not return on March 8, 1988, the date agreed upon by the parties.

On the other hand, the Union contends that petitioner imposed certain requirements as condition for reinstatement which amounted to a refusal to comply with the Return to Work Order. These were:

1. Cash Bond of P1,000.00
2. X-Ray, urinalysis and stool results
3. Birth Certificate/Baptismal
4. NBI Clearance
5. Police Clearance
6. Barangay Clearance
7. Residence Certificate
8. High School Diploma/Transcript of records
9. Certification of employment
10. Driver's/Conductors/Conductresses license
11. Marriage Contract (If married)
12. Pictures 4 1x1 — colored
13. Pictures 4 2x2 — black and white

Some requirements are indeed unreasonable considering that the strikers were not being hired for the first time but merely being reinstated. Reinstatement connotes a continuity of the employer-employee relationship as contrasted to an initial employment. Hence, a distinction must be made between requirements which are valid management prerogatives and those which are unreasonable.

On the other hand, there are certain conditions which are valid. The requirement to submit NBI, Police and Barangay clearances is reasonable to enable management to determine whether the

returning employees have pending charges of illegal acts especially those committed during the strike. So also is the requirement to have driver's and conductor's/conductress' license, to enable them to perform their tasks. The pictures required are necessary for the employer's personnel records and so can validly be required.

With respect to the required medical examination, the same can be justified as management prerogative since it is the employer's right to ensure that the employees are physically fit to resume the performance of their duties. This is especially true in this case, because two years had elapsed since the time of dismissal of the employees. As held in *Jackbilt Concrete Block Co., Inc. vs. Norton & Harrison Co.*,^[13] an employer should not be compelled to reinstate an employee who is no longer physically fit for the job from which he was ousted.

It is true that in *Davao Free Workers Front vs. CIR*,^[14] it was held that the medical examination could not be required as a condition for reinstatement, but that is in cases where the employer is guilty of unfair labor practice. As this Court explained:

To require [employees] to undergo a physical or medical examination as a precondition of reinstatement or return to work simply because of the long pendency of their case which is due to no fault of theirs would not only defeat the purpose of the law and the constitutional and statutory mandates to protect labor but would work to their unfair prejudice as aggrieved parties and give an undue advantage to employers as the offenders who have the means and resources to wage attrition and withstand the bane of protracted litigation.

Hence, the aggrieved workers may be subject to periodic physical or medical examination as old reinstated workers, but not as a precondition to their reinstatement or return to work with the important consequence that if they are found to be ill or suffering from some disability, they would be entitled to all the benefits that the laws and company practices provide by way of compensation, medical care, disability benefits and gratuities, etc. to employees and workers.^[15]

In the present case, although the Union has charged petitioner with unfair labor practice, the matter is still to be resolved. Hence, the ruling in *Davao Free Workers Front vs. CIR*^[16] does not apply.

With respect to some of the requirements (i.e., P1,000. cash bond, birth/baptismal certificate, residence certificate, high school diploma/transcript of records, certification of employment, and marriage contract), we agree with respondent Union that these requirements cannot be imposed being more appropriate for employees who are being hired for the first time. However, the imposition of such requirements by the employer did not amount to a refusal to admit workers back to work or an illegal lock-out so as to entitle the workers to the payment of backwages under Art. 264(g) of the Labor Code, the pertinent portion of which states:

For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

For the fact is that petitioner after all accepted all returning employees. If there were workers who were not taken in, they were those who did not return to work on March 8, 1988.

In the Sheriff's Return dated March 23, 1988, Antonio P. Soriano, Deputy Sheriff, reported:

1. That on 01 March 1988, as per appointment, undersigned together with a number of returning employees went to the company (FIL TRANSIT, INC.,) to discuss the final details of the implementation of the Order. The parties sat down with Mr. Virgilio M. Aquino, who represented Management. After a while and upon suggestion of said Mr. Aquino, parties agreed that the employee will return on 08 March 1988, where the returning employee duly covered by and qualified under the Order shall report for work with Management

reiterating its willingness to comply strictly with the said Order of this Honorable Office;

2. However, it appearing [sic] that only sixty-six (66) employees reported back for work, as evidenced in the yellow pad showing the names and their corresponding signatures. Acting on the same, Management accepted the returning employees.^[17]

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From the foregoing, undersigned is of the opinion that the Order has been complied with upon completion of the above-requirements being requested by Management.

In *Jackbilt Concrete Block Co., Inc. vs. Norton & Harrison Co.*,^[18] the unjustified refusal of the striking employees to return to work and comply with the employer's requirement to undergo a medical examination was considered a waiver of their right to reinstatement.

Consequently, petitioner is not liable for backwages. Employees, who are not guilty of illegal acts and, therefore, are entitled to reinstatement would only be entitled to backwages if they were refused readmission. As none of such employees was refused readmission, no backwages are due from petitioner. On the other hand, employees who are entitled to be reinstated because they did not take part in illegal acts would be entitled to separation pay in lieu of reinstatement in view of the fact that, after all the time that this case has been pending, reinstatement is no longer feasible. Separation pay should be computed only up to March 8, 1988, the date when employees were supposed to return as agreed upon by the parties. Those who failed to return on March 8, 1988, will not be entitled to separation pay after such date.

In view of the conclusion thus far reached, we find it unnecessary to discuss the other questions raised in this case.

To summarize, this Court holds that:

- 1) The respondent Secretary of Labor erred in declaring the strike legal. There is no evidence to show that a strike vote had in fact been taken before a strike was called. Even assuming that a strike vote had been taken, the strike called by the Union was illegal because of nonobservance by the Union of the mandatory seven-day strike ban counted from the date the strike vote should have been reported to the Department of Labor and Employment up to the time the Union staged the strike on June 17, 1986. In accordance with Art. 264 of the Labor Code, any union officer who knowingly participated in the illegal strike is deemed to have lost his employment status.
- 2) The commission of the illegal acts during the strike rendered it illegal. However, only officers and leaders of the Union and workers guilty of illegal acts are liable. Such employees are deemed to have lost their employment status in accordance with Art. 264 of the Labor Code.
- 3) Petitioner substantially complied with the Return to Work Order. The medical examination, NBI, Police and Barangay Clearances as well as the driver's and conductor's/conductress' licenses and photographs required as conditions for reinstatement were reasonable management prerogatives. However, the other requirements imposed as condition for reinstatement were unreasonable considering that the employees were not being hired for the first time, although the imposition of such requirements did not amount to refusal on the part of the employer to comply with the Return to Work Order or constitute illegal lockout so as to warrant payment of backwages to the strikers. If at all, it is the employees' refusal to return to work that may be deemed a refusal to comply with the Return to Work Order resulting in loss of their employment status. As both the employer and the employees were, in a sense, at fault or in pari delicto, the non-returning employees, provided they did not participate in illegal acts, should be considered entitled to reinstatement. But since reinstatement is no longer feasible, they should be given separation pay computed up to

March 8, 1988 (the date set for the return of the employees) in lieu of reinstatement.

- 4) Because the award of backwages was based on the alleged refusal of the employer to comply with the Return to Work Order, the same should be set aside for being without basis.

WHEREFORE, the questioned order of respondent Secretary of Labor is **SET ASIDE**. The union officers who participated in the illegal strike and those who participated in the commission of illegal acts are deemed to have lost their employment status. Petitioner is **ORDERED** to pay the employees who did not participate in the commission of illegal acts during the strike separation pay.

SO ORDERED.

Regalado, Romero, Puno and Torres, Jr., JJ., concur.

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- [1] Rollo, p. 168.
[2] Id., p. 169.
[3] First City Interlink Trans., Inc. vs. Torres, G.R. No. 101480, Sept. 23, 1991.
[4] Lapanday Workers Union vs. NLRC, 248 SCRA 95 (1995); National Federation of Sugar Workers (NFSW) vs. Ovejera, 114 SCRA 354 (1982).
[5] Rollo, p. 30.
[6] Rollo, p. 14.
[7] 17 SCRA 352 (1966).
[8] 114 SCRA 354, 365 (1982).
[9] Rollo, p. 121.
[10] LABOR CODE, Art. 264(a)(3).
[11] Rollo, p. 31.
[12] Lapanday Workers Union vs. NLRC, 248 SCRA 95.
[13] 71 SCRA 44, 55 (1976).
[14] 60 SCRA 408 (1974).
[15] Id., pp. 424-425.
[16] Ibid.
[17] Rollo, p. 34.
[18] 71 SCRA 44.