SUPREME COURT
FIRST DIVISION

MACLEOD & COMPANY OF THE PHILIPPINES,
***Petitioner*,**

-versus-

G.R. No. L-7887
May 31, 1955

PROGRESSIVE FEDERATION OF LABOR,
***Respondent*.**
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D E C I S I O N

BAUTISTA ANGELO, *J.*:

This is a Petition for Review of a Decision of the Court of Industrial Relations which orders petitioner herein to reinstate to their former positions the thirty-eight (38) members of the outside gang of respondent union who, together with the other members, struck on May 22, 1952, with payment of their wages from said date to the date

of their reinstatement computed at the minimum wage each had received for eight hours work.

On May 28, 1952, the Progressive Federation of Labor, respondent herein, a labor union whose members are in the employ of Macleod & Company of the Philippines, petitioner herein, filed with the Court of Industrial Relations a petition stating, among other things, that on April 18, 1952 the union sent a letter to the company setting up certain grievances and demands to improve the labor conditions of its members; that the company, in reply, sent a letter to thirty-eight members of the union stating therein that they are to be dismissed from service on June 1, 1952 unless they "should choose to remain in the employ of the Davao Stevedore Terminal Company," and that as such dismissal would cause injustice and irrepairable injury to them, the union prayed that an injunction be issued to restrain the company from carrying out its plan of dismissal.

This petition was opposed by the company on the ground, among others, that it did not entertain the demands because the status of the union as a legitimate labor organization has never been established as to justify its recognition as a collective bargaining agency. The company further alleged that the notice of termination of service of the thirty-eight laborers served by the company was legal.

After the efforts of the commission to induce the parties to come to an amicable settlement of their differences proved futile, the case was set for hearing at which the following facts were proven: The Progressive Federation of Labor is composed of members who worked in the different departments of the company known as outside gang, press gang, classifiers, tip cutters and laborers. On April 18, 1952, the president of the labor union addressed a letter to the company containing certain grievances and demands to improve the labor conditions of its members. This letter was not favored with a reply and instead, on May 2, 1952, the company sent a letter to the thirty-eight members of the outside gang notifying them that their services would be dispensed with 30 days thereafter, or on June 1, 1952. After receipt of this letter, and after consulting its legal counsel, the labor union in turn addressed a letter of protest on May 5, 1952 to the company requesting reconsideration of its separation order and asking that instead of giving the stevedoring work to the Davao

Stevedore Terminal Company it be awarded to the outside gang which "owing to the fact that they were/are paid on piece work basis, is virtually a contractor with you in that regard." This letter was not answered by the company and on May 10, 1952 the union again wrote another letter reiterating its previous demands and threatening to call a strike if the notice of termination is not withdrawn.

It appears that upon receipt of the letter on April 18, 1952, the manager of the company referred it to the local public defender for consultation and advice inasmuch as it was not certain of the legitimacy of the status of said labor union but, notwithstanding the advice of the public defender to the effect that, according to an opinion of the Secretary of Justice, article 302 of the Code of Commerce which allows the termination of the contract of employment upon giving one month advance notice, has already been repealed by the new Civil Code, the company decided to send its letter of May 2, 1952 terminating the services of the thirty-eight members of the outside gang after the period of 30 days. And as the company did not reconsider its stand, on May 22, 1952, or ten days before the date set for the termination of the services of the thirty-eight laborers, the union made good its threat and declared a strike. A few days later, all the strikers, with the exception of fifty-two, returned to work. Among the fifty-two who did not return were the thirty-eight laborers.

The issues posed by petitioner in this appeal are: (1) "May an employer, regardless of motives, terminate the services of his employees upon 30 day's notice of termination of services to him?"; and (2) "Are strikers entitled to their wages during the strike?"

With regard to the first issue, petitioner sustains the affirmative and in support of its stand it invokes article 302 of the Code of Commerce and the cases of Barretto vs. Sta. Marina, 26 Phil., 440 and Sanchez, et al vs. Harry Lyons Construction, Inc., et al., 48 Off. Gaz., 605, wherein it was laid down that "in a mercantile contract of service in which no specific time is fixed, any one of the parties may cancel said contract upon the giving of one-month notice, called mesada, to the other party." Petitioner contends that, as the thirty-eight laborers did not have any fixed contract of employment with it, it could very well terminate the services of its employees thirty days after notice.

This contention cannot be sustained for the simple reason that article 302 of the Code of Commerce has already been repealed by the new Civil Code. The cases invoked are likewise inapplicable for the reason that the doctrine therein laid down was merely an elaboration of the provisions of said article. Moreover, it should be here emphasized that, after the approval of the new Civil Code, the relations between labor and capital have ceased to be merely contractual. They became impressed with public interest that for their determination, as well as the incidents arising therein, other considerations of moral and social character have to be reckoned with to promote industrial peace (Article 1700). This is in keeping with the spirit of social justice.

With this principle in mind, the question that arises is: Was the company justified in giving the thirty-day notice of termination of service to the thirty-eight employees without previous authority of the Court of Industrial Relations? This, in our opinion, should be answered in the negative considering the facts surrounding this incident. It should be noted that days prior to this notice, the labor union submitted to the company certain grievances and demands in an effort to improve the labor conditions of its members, and the company, far from considering or discussing those demands with the officials of the union, chose to ignore them, and instead sent the notice of separation. Before this action was taken, the union made an effort to compromise by requesting the company to give to the union the stevedoring work instead of giving it to the Davao Stevedore Terminal Company considering that the outside gang was virtually the contractor of that work and had been doing it right along. The company turned a deaf ear to this request. Instead the company went to the local public defender for legal advice and notwithstanding the opinion of this official that, in the opinion of the Secretary of Justice, article 302 of the Code of Commerce had already been repealed by the new Civil Code, the company ignored such advice and gave course to its notice of separation. This action of the company is not only illegal but improper. Illegal because it contravenes the provisions of the law which prohibit any employer from laying-off any laborer or employee whenever a labor union presents to its employer a petition regarding any matter that many likely cause a strike (Section 19, Commonwealth Act No. 103), and it is improper because by its notice of separation the company practically locked out its employees thus forcing them to call a strike. The union, therefore, was justified in

resorting to the only weapon it has under the law to protect its interest. It is for this reason that we say that the company was not justified in decreeing the separation of the thirty-eight employees because in so doing it resorted to ways other than what is sanctioned by law.

With regard to the second issue, whether the strikers are entitled to their wages during the strike, while there is a rule that "strikers may not collect their wages during the days they did not go to work" because of the age-old rule governing the relation of labor and capital epitomized in a "fair day's wage for a fair day's labor" (Manila Trading & Supply Co. vs. Manila Trading Labor Association,[1] G.R. No. L-5062, April 27, 1953 and J. P. Heilbrown Co. vs. National Labor Union,[2] G.R. No. L-5121, January 30, 1953), this rule does not apply in this case for the simple reason that the thirty-eight laborers herein concerned did not voluntarily strike but were practically locked out. They were notified that on a certain date they would cease to work, and notwithstanding their efforts to reach a compromise, the company adopted a stern attitude which left no other alternative to them than to walk out. Moreover, the company not only limited itself to dispensing with their services, but indirectly forced them to join another labor union as a condition whereby they could be readmitted. We refer to the clause inserted in the contract of service entered into by the company with the Davao Stevedore Terminal Company which provides that the employment of the members of the outside gang would be subject to the condition that they shall affiliate themselves with the Davao Stevedore Mutual Benefit Association. This clause smacks of an unfair labor practice the purpose of which is to bust a well organized labor union.

Since it appears that the walkout of said employees is not of their own volition but in spite of it, it is only fair that they be reinstated with the payment of their back wages. However, as it appears that the thirty-eight laborers had been out of the services of the company for more than two years during which they may have found another employment or means of livelihood, it is the sense of the Court that whatever they may have earned during that period may be deducted from their back wages to mitigate somewhat the liability of the company. This is under the principle that no one should be allowed to enrich himself at the expense of another.

Petition is denied, without pronouncement as to cost.

Pablo, *Acting C.J.*, Bengzon, Reyes, A., Labrador, Concepcion and Reyes, *JJ.*, concur.

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[1] 92 Phil., 997.
[2] 92 Phil., 575.
