SUPREME COURT
EN BANC

PHILIPPINE ENGINEERING CORPORATION,
***Petitioner*,**

-versus-

G.R. No. L-27880
September 30, 1971

COURT OF INDUSTRIAL RELATIONS and FREE LABOR UNION,
***Respondents*.**
x----------x

D E C I S I O N

ZALDIVAR, *J.*:

Petition to Review the Decision, dated May 10, 1967, of the Court of Industrial Relations (CIR for short), in its Case No. 3415-ULP, and its resolution en banc dated July 6, 1967 denying the motion for reconsideration.

Petitioner, Philippine Engineering Corporation, a domestic corporation engaged in the purchase, sale, installation and repair of machineries, with offices at 1691 M. H. del Pilar, Malate, Manila, operated a machine shop at 888 Raon St., Quiapo, Manila, where its marine and other departments, as well as the offices of the corporation and the offices of its sister companies, were also located.

It had in its employ members of the respondent Free Labor Union, a legitimate labor organization, with which it had a collective bargaining agreement, effective from January 1, 1960 to December 31, 1963.[1] After the expiry date of the agreement, the union through its officers and members made repeated representations with the management of the petitioner for the execution of a new collective bargaining agreement. The first request, a letter dated January 6, 1964, was answered by the corporation on even date of the information that a draft of a new agreement would soon be sent to the union. No draft having been received, the union once more in October, 1964, asked to confer with management, but the request was denied by the President and General Manager of petitioner. In December, 1964 the union president Amado Cuison talked to the President of petitioner by phone about the execution of a new contract but the latter answered that he was very busy. Subsequent representations were also of no avail as the President of petitioner always asked for deferment of the execution of the new labor agreement.

On February 1, 1965, the employees in the machine shop of petitioner were served by management with written notice that their services would be terminated within the month of February, although the regular employees would still be paid for the period from February 1, 1965 to March 31, 1965. The union members then complained twice to the Department of Labor, and on the occasion of the second complaint the representatives and counsel of management told them, in the presence of the labor conciliator, that the formal letter regarding the final decision on the closing of the machine shop would not yet be released, so that there was nothing to be alarmed at. The conciliator told them that since the corporation was not closing the shop there was no point to be discussed. The union members, therefore, withdrew the case that they filed in the Department of Labor.

In the meantime, the union members continued their efforts to negotiate with the petitioner corporation for a new collective bargaining agreement.

On May 31, 1965 the corporation closed the machine shop at Raon Street, dismantled the machineries and transferred them, together

with the equipment and tools, to its bodega at Carpena Street. Effective June 1, 1965, about 70% of the union members (about 57 of them) were dismissed, but the remaining 30% of the union members, mostly mechanics and mechanic helpers, including union president Amado Cuison, union adviser Francisco Sanga and union board member Tomas Peña, were retained for the maintenance of customers' equipment. The corporation started selling its machineries that came from Raon Street, but continued accepting machine jobs and service and repair works which it turned over, on a sub-contract basis to other machine shops. Before and after the closure of the Raon machine shop a number of employees and laborers had been, and were being, hired by the corporation.

The respondent union, on behalf of its laid off 57 members, through a complaint dated July 28, 1965, filed by the acting prosecutor of the CIR, charged petitioner with unfair labor practice under Section 4(a), sub-paragraphs 1 and 4 of Rep. Act No. 875, for having discriminatorily dismissed the 57 members of the union for no other reason than because of their membership and activities in the union, and praying, among other things, their reinstatement to their former positions with full back wages from the date of their dismissal to the date of their actual reinstatement.

The corporation, in its answer, denied all the material averments of the complaint and alleged, by way of special and affirmative defenses, that the 57 subject employees were dismissed for just and lawful cause upon prior notice; that the machine shop wherein they used to work was closed; that the court lacked jurisdiction over the complaint, there being no employer-employee relationship between the complainants and the corporation, or that the case simply involved the legality or illegality of the termination of the services of the employees.

After trial, respondent CIR rendered a decision declaring petitioner Philippine Engineering Corporation guilty of unfair labor practice as charged, and ordering it to cease and desist from further committing acts of unfair labor practice and to reinstate the complaining employees to their former or equivalent positions with backwages for three months, computed on the basis of the respective rates of wages that received on the date of their dismissal, without deduction, and

without loss of seniority and other privileges appertaining to their respective positions.

A motion for reconsideration having been denied by the CIR en banc on July 6, 1967, the instant petition for review was filed, to which respondent union filed an answer dated October 28, 1967.[2] This answer upon request of said respondent is considered as its brief.[3]

Petitioner, in its brief, contends that respondent CIR erred, and gravely abused its discretion and/or acted without or in excess of jurisdiction:

1. In not finding that petitioner's machine shop was closed due to financial losses and therefore due to legitimate cessation of business;

2. In finding that the dismissal of some personnel was due to union membership and union activities;

3. In not dismissing the charge of unfair labor practice;

4. In ordering reinstatement of the dismissed employees;

5. In awarding back wages; and

6. In not dismissing the case for lack of jurisdiction.

1. Petitioner contends, in the first error assigned, that the CIR committed error and gravely abused its discretion in not finding that the machine shop was closed due to financial losses, and in support of that contention argues that the "evidence amply shows that the machine shop had been losing money for at least two years before it was shut down for good on May 31, 1965"; that the losses, with concrete figures, were made known to the members of the respondent union through notices, circulars, letters and note;[4] that the poor business was confirmed by manifold circumstances admitted by witnesses, such as delays and partial payments of wages for years up to the time the shop went out of business, the adoption of rotation system of work of the laborers from 1958 to the time of the closure, the amount of arrears in the payment of

> rentals for the shop buildings for about one year in the sum of P125,747.61, the uncollected accounts of customers running to several hundred thousand pesos, the inability to remit the monthly contributions to the Social Security System from 1962 to 1966 totalling about P120,000.00 and the loss of distributorship of several of its major profitable machinery lines, that, notwithstanding and evidence, the respondent CIR minimized, contrary to the evidence, the effect of the rotation system by saying that it was not put into effect because there was enough work and much overtime; lessened the significance of the unpaid rentals by saying that petitioner did not pay the rentals because the landlord failed to reduce the same; speculated that the failure to remit the contributions to the Social Security System was due to mismanagement; belittled the losses of the company by stating that said losses were not conclusive as petitioner failed to present its accountant as witness, and its statements of profit and loss; that, in the light of said evidences of continuing losses of the shop, it should not be difficult to conclude that the machine shop was closed due to financial reverses, and that, consequently, the subsequent dismissal of the members of the respondent union was due to legitimate cessation of business.[5]

Respondent union, in its answer, contends that the finding of the CIR, on the basis of the evidence before it. that petitioner's machine shop was not closed due to financial losses is a finding of fact which this Court may not disturb on appeal.

After a careful study of the record, We can not sustain the stand of petitioner. Petitioner asserts that the machine shop at Raon folded up because of financial losses. The CIR, however, did not consider the evidence presented by petitioner sufficient to support that assertion. It is a settled doctrine of this Court that matters touching on the weight and sufficiency of evidence[6] and on the credibility of witnesses[7] involve questions of fact, and the findings of the CIR on such matters are conclusive upon this Court.

It can not be said that the CIR abused its discretion when it did not consider petitioner's evidence credible and sufficient. We find that the testimonies of petitioner's witnesses Antonio Tamparen and Gilbert Gullen, regarding the losses were not given credit by the CIR because

they failed to state specifically the amount of the alleged losses in 1965 or 1961, and in prior years. The corporation, according to the CIR, did not present its books of account and its statements of profit and loss which would clearly demonstrate the alleged financial losses, nor did petitioner present its accountant or auditor to testify on that matter. The failure of petitioner to present the best evidence in its possession, concluded the CIR, gives rise to the presumption that there was suppression on its part of evidence unfavorable to its interests.[8] This Court has ruled that the matters regarding the financial condition of a company to justify the closing of its business and whether a company is losing in its operations are questions of fact.[9]

2. In the second error assigned by petitioner, it contends that the trial court erred in finding that the dismissal of some personnel was due to union membership and activity, claiming that such findings is "patently contrary to the evidence and circumstances of record as fully discussed under the preceding first assignment of error." Petitioner claims that union activity could not have been the cause of the dismissal because 30% of the members of the union were retained after the shop was closed, that the finding of the CIR was based primarily on the based testimonies of the vice-president and the secretary of the union to the effect that they had been pressing for a new collective bargaining agreement to replace the old one that expired on December 31, 1963 but that petitioner deferred negotiations. In short, petitioner claims that the dismissal of the 57 union members was based on justifiable ground and not because they were discriminated against due to their union membership and activity.

Again We find that the issue raised in the second assignment of error involves questions of fact. It is evident upon reading the arguments of petitioner in its brief and the decision appealed from that there is conflicting evidence regarding the cause of the dismissal. In this connection, the decision states that "there is, however, variance in their respective assertions as to the cause of dismissal from employment of the herein subject workers."[10] To reach a finding on the cause of the dismissal, there must be an evaluation of the conflicting evidence of the parties,[11] a determination of the weight

and sufficiency of evidence, as well as the credibility of witnesses, all of which, as this Court has held, involve questions of fact.

All that this Court is called upon to do regarding this issue is to find out whether the finding of fact of the CIR is supported by substantial evidence in the record — such relevant evidence as a reasonable mind may accept as adequate to support the conclusion arrived at:

> The CIR found that the dismissal of the 57 employees could not have been due to the precarious financial condition of the shop, for there was plenty of work at the time of their dismissal; that during the whole year of 1964, the employees in the machine shop rendered overtime work such that additional employees, or casuals, were sometimes hired, and on January 5, 1964, petitioner published in the Sunday Times that it "wanted ten diesel installation and repair mechanics;" that petitioner at that time purchased from Deutz Company $349,068.71 worth of spare parts; that even after the closure of the shop, the corporation had been accepting jobs, some of them big ones, hiring new employees and giving salary increases to its new employees.[12]

Contrary to petitioner's claim, the trial court found that the complaining employees were discriminatorily dismissed, for after they asked the management verbally and in writing for a new collective bargaining agreement which would embody new rates of pay, terms and conditions of employment, the corporation began issuing "pass around" notes announcing the precarious financial condition and losses in the machine shop, which notes were considered by the CIR as "a systematic approach intended to dampen the enthusiasm of the union members;"[13] that after the closure of the shop, the corporation continued to accept job orders and repair work which it subcontracted to other repair shops; that after the dismissal of the complaining employees the corporation hired new employees to perform its contracts, like the installation of escalators and construction of air-conditioning units at the Shoe World, which job was finished in September, 1965; that salary increases were given by petitioner to its employees after the herein complaining workers were no longer in the service.[14]

The fact that 30% of the union members were retained might indeed show that "union membership and activity" was not the exclusive cause for dismissal, but the CIR also found that "those who were retained in the service upon the closure of the machine shop on May 31, 1965 were also dismissed on October 31, 1965," and after their dismissal, the corporation gave promotions to its employees by way of salary increases.[15] But even if it be granted, for the sake of argument, that there was another reason for the dismissal, such other reason would not help petitioner's cause. It has been said, anent this matter that:

> "It is not necessary to support a finding that a particular discharge constitutes an unfair labor practice to demonstrate that the dismissal was entirely and exclusively motivated by the employee's union activities or affiliations. It is enough to denounce the discharge if it is established that the discrimination motive was a contributing factor." (Rothenberg on Labor Relations, p. 415 citing Cupples Mfg. Co. vs. N.L.R.B., 106 F (2d) 100; N.L.R.B. vs. Polson Logging Co., 136 F. (2d) 314; Carter Carburetor Corp. vs. N.L.R.B., 140 F (2d) 714; Onan vs. N.L.R.B., 139 F. (2d) 728; N.L.R.B. vs. Davies Co., 135 F. (2d) 179).

This Court has also said that if it can be established that the true and basic inspiration for the employer's act is derived from the employee's union affiliation or activities, the assignment by the employer of another reason, whatever its semblance of validity, is unavailing.[16]

3. In the third error assigned by petitioner, it contends that the CIR erred in not dismissing the charge of unfair labor practice, arguing that the evidence required to prove a charge of unfair labor practice should be proof beyond reasonable doubt — a situation which does not obtain in the instant case. This contention has no merit. While this Court has held that complaints for unfair labor practice are prosecuted as in complaints for criminal offenses[17] it did not declare that proceedings in cases of unfair labor practice should be equated to prosecutions of offenses punishable under the Revised Penal Code such that proof beyond reasonable doubt is required in order to make a finding of guilt.[18] Section 5,

paragraph (b) of the Industrial Peace Act (R.A. 875) in relation to unfair labor practice cases party provides as follows:

> "In any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that the Court and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure."[19]

The Industrial Peace Act does not provide for the quantum or measure of evidence required in proceeding in cases of unfair Labor practice. It does not require preponderance of evidence as in ordinary civil cases,[20] and much less proof beyond reasonable doubt. The Act requires only substantial evidence with respect to findings of facts. Thus Section 6 of the Act provides: "The findings of the Court with respect to question of fact if supported by substantial evidence on the record shall be conclusive. The appeal to the Supreme Court shall be limited to questions of law only." To issue an order requiring a Person to cease and desist from an unfair labor practice, and take further affirmative action as may be necessary, the Industrial Peace Act requires only that the Court be of the opinion that an unfair labor practice has been engaged in. This is clear from the provision of its Section 5 paragraph (c) which, in part, provides as follows:

> "If, after investigation, the Court shall be of the opinion that any person named in the complaint has engaged in or is engaging in any unfair labor practice, then the Court shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and take such affirmative action as will effectuate the policies of this Act."

4. In the fourth error assigned by Petitioner it contends that the CIR erred in ordering the reinstatement of the dismissed employees. The petitioner argues that in the absence of unfair labor practice, which has not been conclusively shown in the instant case, the CIR could not order reinstatement; and that even if it is shown that the employer is guilty of unfair labor practice, reinstatement can not

be ordered of employees who are no longer needed or there would be more employees than that required by the economic operation of the business. The petitioner further argues that its shop having been closed, machinery installations dismantled and partly sold, it can not reinstate the discharged employees, most of them being welders, drill press operators, lathemen, tinsmith and carpenters.

We find merit in the stand of petitioner. There is no doubt that employees who were discriminatorily dismissed can be ordered reinstated by the CIR, with or without backpay pursuant to section 5(c) of the Industrial Peace Act and the decisions of this Court.[21] Reinstatement refers to a restoration to a state from which one has been removed, or a return to the position from which one was taken out. Reinstatement presupposes that the previous position from which one had been removed still exists, or that there is an unfilled position more or less of similar nature as the one previously occupied by the employee.

In the instant case, as found by the CIR, the machine shop at Raon-Street was closed, the machineries were dismantled and transferred to the bodega at Carpena Street, and some of the machineries were already sold. There being no more positions in the machine shop to which the dismissed employees, musty welders, drill press operators, lathemen, tinsmith and carpenters, could be returned, reinstatement is not possible. The CIR should not have ordered reinstatement. The law itself can not exact compliance with what is impossible. "Ad impossible nemo tenetur."[22]

5. In the fifth error assigned, the petitioner contends that the CIR error in awarding back wages. In support of its contention petitioner argues that back wages can not extend beyond the closure of the business, and in the instant case the machine shop was closed on May 31, 1966; and that, assuming that the workers were entitled to back wages, any amount that the discharged shop workers had earned during the period of their dismissal should have been ordered deducted by the CIR.

We believe that no error has been committed by the CIR in ordering the payment of three months back wages. In the case of Sta. Cecilia Sawmills, Inc. vs. CIR, et al., 1.19273-74, May 25, 1964,[23] this Court

ordered the employer to pay the dismissed employees their three months backpay where reinstatement was not possible by way of penalty because it was shown that the employees were dismissed without just cause.

6. In the sixth error assigned, petitioner contends that the CIR should have dismissed the case for lack of jurisdiction. The petitioner asserts that the evidence shows clearly that the case relates to the termination of service under Rep. Act No. 1787, and it is one that is not within the jurisdiction of the CIR because petitioner had disposed of his business for economic reasons, and petitioner had an undeniable right to do what it did even if it meant dismissing its employees. On the other hand, respondent union contends that, as shown in the decision of the CIR, petitioner did not insist on this issue. The respondents avers that jurisdiction over the subject matter is determined by the allegations of the complaint, and in the instant case, the complaint alleges unfair labor practice on the part of the petitioner.

The stand of petitioner can not be sustained. It is the settled rule that the jurisdiction of a court over the subject matter is determined by the allegations in the complaint.[24] The complaint in the instant case alleges unfair labor practice on the part of petitioner, who was the respondent in the court below, and the case involving unfair labor practice is exclusively cognizable by the CIR pursuant to the explicit provision of Sec. 5(a) of Republic Act 875, and as repeatedly held in a long line of decisions of this Court.[25]

IN VIEW OF THE FOREGOING, the decision of the CIR appealed from is modified by eliminating therefrom the order of reinstatement. In all other respects the said decision is affirmed. No pronouncement as to costs. It is so ordered.

Concepcion, *C.J.*, Dizon, Makalintal, Castro, Barredo, Villamor and Makasiar, *JJ.*, concur.
Reyes, Fernando and Teehankee, *JJ.*, did not take part.

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[1] Exhibit "A."
[2] Record. pp. 49-72 and 82-87.

[3] Record, p. 91.
[4] Exhibits 14, 1, C, 15, 18, 4, and 5.
[5] Brief for petitioner, pp. 27-43.
[6] Cuyugan vs. Santos, 34 Phil. 100; Tolentino vs. Gonzales, 50 Phil. 558.
[7] Rumbaoa vs. Arzaga, 84 Phil. 812, 816; Sanchez vs. Court of Industrial Relations, L-26932, March 28, 1969, 27 SCRA 490, 501.
[8] Section 5, par. (d), Rule 131 of the Rules of Court. See also Moran Comments on the Rules of Court, 1963 ed., Vol. 5, p. 12.
[9] See C. Chuan and Sons, Inc., vs. Nahag, et al., 95 Phil. 837, 841: Yellow Taxi and Pasay Transportation Workers Union vs. Manila Yellow Taxicab Co., 80 Phil. 833, 837.
[10] Record, pp. 29-30.
[11] Perez vs. Mendoza, L-15744, Oct. 31, 1969; Rapatan, et al., vs. Chicano, et al., L-13828, Feb. 25, 1960.
[12] Record. pp. 30-31, 43-46.
[13] Record, p. 41.
[14] Record, p. 47.
[15] Record, p. 47.
[16] Visayan Bicycle Manufacturing Co., Inc. vs. NLU, L-19997, May 19, 1965, 14 SCRA 6, 9.
[17] Baguio Gold Mining vs. Tabisola, L-15265, April 27, 1962; Malaya Workers Union vs. CIR, L-17880-81, April 23, 1963; Tanglaw ng Paggawa vs. CIR, L-24498, Sept. 21, 1968.
[18] Cano vs. CIR, 109 Phil. Rep., 1086, 1090.
[19] See also Magdalena Estate Inc. vs. Kapisanan ng mga Manggagawa, etc., L-18336, May 31, 1963; 8 SCRA 237.
[20] Industrial, Commercial, Agricultural Workers Assn. vs. Bautista, L-15639, April 30, 1963; 7 SCRA 907, 911.
[21] Cromwell Commercial Employees and Laborers Union (PTUC) vs. Court of Industrial Relations, et al., L-19778, Sept. 30, 1964, 12 SCRA 124, 131, 134; National Labor Union vs. Insular-Yebana Tobacco Corporation, L-15363, July 31, 1961, 2 SCRA 924; Luzon Stevedoring Corporation vs. Celorio, et al., L-22542, July 31, 1968, 24 SCRA 521; Itogon-Suyoc Mines, Inc. vs. Sañgilo-Itogon Workers' Union, et al., L-24189, Aug. 30, 1968, 24 SCRA 873; Gonzalo Puyat & Sons, Inc. vs. Labayo, et al., L-22215, Jan. 30, 1968, 22 SCRA 381.
[22] Philippine Educational Institution vs. MLQSEA Faculty Association, L-24019, Nov. 28, 1968, 26 SCRA 272, 279; Coronel, et al. vs. CIR, et al., L-22359, 22524-25, Aug. 30, 1968, 24 SCRA 990, 999; San Miguel Brewery vs. Santos, L-12682, Aug. 31, 1961, 2 SCRA 1081, 1089.
[23] 11 SCRA 46.
[24] Security Bank Employees Union-NATU vs. Security Bank and Trust Co., L-28536, April 30, 1968, 23 SCRA 503, 508: National Shipyards and Steel Corporation vs. CIR, L-21675, May 23, 1967, 20 SCRA 134, 139; Associated Labor Union vs. Ramolete, L-23537, March 31, 1965, 13 SCRA 582.
[25] Eastern Paper Mills Employees Association-NATU vs. Eastern Paper Mills, L-23958, Sept. 28, 1968, 25 SCRA 234; Security Bank Employees Union-

NATU vs. Security Bank and Trust Co., L-28536, April 30, 1968, 23 SCRA 503; Veterans Security Free Workers (FFW) vs. Cloribel, L-26439, Jan. 30, 1970, 31 SCRA 297, 300.