

## THIRD DIVISION

[ G.R. NO. 158075, June 30, 2006 ]

**PHILIPPINE DIAMOND HOTEL AND RESORT, INC. (MANILA DIAMOND HOTEL), PETITIONER, VS. MANILA DIAMOND HOTEL EMPLOYEES UNION, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

The Court of Appeals, by the assailed decision of November 21, 2002,<sup>[1]</sup> declared the strike staged by respondent, Manila Diamond Hotel Employee's Union (the union), illegal and its officers to have lost their employment status. It ordered, however, among other things, the reinstatement and payment of backwages to its members.

On November 11, 1996, the union, which was registered on August 19, 1996 before the Department of Labor and Employment (DOLE),<sup>[2]</sup> filed a Petition for Certification Election<sup>[3]</sup> before the DOLE-National Capital Region (NCR) seeking certification as the exclusive bargaining representative of its members.<sup>[4]</sup>

The DOLE-NCR denied the union's petition as it failed to comply with legal requirements, specifically Section 2, Rule V, Book V of the Rules and Regulations Implementing the Labor Code, and was seen to fragment the employees of petitioner.<sup>[5]</sup>

On June 2, 1997, Francis Mendoza (Mendoza), one of the Hotel's outlet cashiers, was discovered to have failed to remit to the Hotel the amount of P71,692.50 at the end of his May 31, 1997 duty.<sup>[6]</sup> On being directed to explain such failure, Mendoza claimed that after accomplishing his daily cash remittance report, the union president Jose Leonardo B. Kimpo (Kimpo) also an outlet cashier, who signed the same and dropped his remittances.<sup>[7]</sup>

Kimpo, who was thus directed to explain why no administrative sanction should be imposed on him for violating the standard procedure for remitting cash collections, informed that he was not aware of any such procedure.

Mendoza was subsequently suspended for one week, it being "the responsibility of the cashier to personally drop-off his remittances in the presence of a witness."<sup>[8]</sup> In the meantime or on July 14, 1997,<sup>[9]</sup> he was re-assigned to the Hotel's Cost Control Department.<sup>[10]</sup>

Through its president Kimpo, the union later notified petitioner of its intention to negotiate, by Notice to Bargain,<sup>[11]</sup> a Collective Bargaining Agreement (CBA) for its

members.

Acting on the notice, the Hotel, through its Human Resource Development Manager Mary Anne Mangalindan, advised the union that since it was not certified by the DOLE as the exclusive bargaining agent, it could not be recognized as such.<sup>[12]</sup>

The union clarified that it sought to bargain "for its members only," and declared that "[the Hotel's] refusal to bargain [would prompt] the union to engage in concerted activities to protect and assert its rights under the Labor Code."<sup>[13]</sup>

By Notice<sup>[14]</sup> to its members dated September 18, 1997, the union announced that its executive officers as well as its directors decided to go on strike in view of the management's refusal to bargain collectively, and thus called for the taking of strike vote.

Petitioner thereupon issued a Final Reminder and Warning<sup>[15]</sup> to respondent against continuing misinformation campaign and activities which confused the Hotel employees and disturbed their work performance.

The union went on to file a Notice of Strike<sup>[16]</sup> on September 29, 1997 with the National Conciliation and Mediation Board (NCMB) due to unfair labor practice (ULP) in that the Hotel refused to bargain with it and the rank-and-file employees were being harassed and prevented from joining it.<sup>[17]</sup>

Conciliation conferences were immediately conducted by the NCMB on October 6, 13, and 20, 1997 during which the union insisted on the adoption of a CBA for its members.<sup>[18]</sup>

In the meantime, or on or about November 7, 1997, Kimpo filed before the Arbitration Branch a complaint for ULP against petitioner.<sup>[19]</sup>

More conferences took place between petitioner and the union before the NCMB.

In the conference held on November 20, 1997, the union demanded the holding of a consent election to which the Hotel interposed no objection, provided the union followed the procedure under the law. Petitioner then requested that the election be held in January 1998.<sup>[20]</sup>

The parties agreed to meet again on December 1, 1997.<sup>[21]</sup>

In the early morning of November 29, 1997, however, the union suddenly went on strike. The following day, the National Union of Workers in the Hotel, Restaurant and Allied Industries (NUWHRAIN) joined the strike and openly extended its support to the union.<sup>[22]</sup> At about this time, Hotel supervisors Vicente T. Agustin (Agustin) and Rowena Junio (Rowena) failed to report for work and were, along with another supervisor, Mary Grace U. de Leon (Mary Grace), seen participating in and supporting the strike.<sup>[23]</sup>

Petitioner thus filed on December 1, 1997 a petition for injunction before the

National Labor Relations Commission (NLRC) to enjoin further commission of illegal acts by the strikers.<sup>[24]</sup>

Mary Grace, who was directed to explain her participation in the strike, alleged that she was merely trying "to pacify the group."<sup>[25]</sup> Petitioner, finding her explanation "arrogant" and unsatisfactory as her active participation in the strike was confirmed by an eye witness, terminated her services, by communication sent on December 9, 1997, drawing her to file a complaint for illegal dismissal against petitioner.<sup>[26]</sup> Agustin, who was also terminated, filed a similar complaint against the Hotel.<sup>[27]</sup>

An NLRC representative who conducted an ocular inspection of the Hotel premises confirmed in his Report that the strikers obstructed the free ingress to and egress from the Hotel.<sup>[28]</sup>

By Order of December 8, 1998, the NLRC thus issued a Temporary Restraining Order (TRO) directing the strikers to immediately "cease and desist from obstructing the free ingress and egress from the Hotel premises."<sup>[29]</sup>

The service upon the strikers of the TRO notwithstanding, they refused to dismantle the tent they put up at the employee's entrance to the Hotel, prompting the Hotel's security guards to, on December 10, 1997, dismantle the same during which the strikers as well as the guards were hit by rocks coming from the direction of the construction site at the nearby Land Bank Plaza, resulting to physical injuries to some of them.<sup>[30]</sup>

Despite the efforts of the NCMB, which was joined by the Department of Tourism, to conciliate the parties, the same proved futile.

On January 14, 1998, Rowena, whose services were terminated, also filed a complaint against petitioner for illegal dismissal.

For its part, petitioner filed on January 28, 1998 a petition to declare the strike illegal.

As then DOLE Secretary Cresenciano Trajano's attempts to conciliate the parties failed, he, acting on the union's Petition for Assumption of Jurisdiction, issued on April 15, 1998 an order certifying the dispute to the NLRC for compulsory arbitration, and directing the striking officers and members to return to work within 24 hours and the Hotel to accept them back under the same terms and conditions prevailing before the strike.<sup>[31]</sup>

On petitioner's motion for reconsideration, then DOLE Acting Secretary Jose Español, Jr., by Order of April 30, 1998, modified the April 15, 1998 Order of Secretary Trajano by directing the Hotel to just reinstate the strikers to its payroll, and ordering that all cases between the parties arising out of the labor disputes which were pending before different Labor Arbiters be consolidated with the case earlier certified to the NLRC for compulsory arbitration.<sup>[32]</sup> It appears that the said order of the Acting Secretary directing the reinstatement of the strikers to the Hotel's payroll was carried out.

By Resolution of November 19, 1999, the NLRC declared that the strike was illegal and that the union officers and members who were reinstated to the Hotel's payroll were deemed to have lost their employment status. And it dismissed the complaints filed by Mary Grace, Agustin, and Rowena as well as the union's complaint for ULP. [33]

On appeal by the union, the Court of Appeals affirmed the NLRC Resolution dismissing the complaints of Mary Grace, Agustin and Rowena and of the union. It modified the NLRC Resolution, however, by ordering the reinstatement with back wages of union members. Thus it disposed:

WHEREFORE, in view of the foregoing, the petition is granted only insofar as the dismissal of the union members is concerned. Consequently, the ruling of the public respondent NLRC to the effect that the unionmembers lost their employment status with the Hotel is hereby reversedand set aside. Private respondent Hotel is hereby ordered to immediately reinstate the members with backwages from the time they were terminated. The Court finds no grave abuse of discretion on the part of the NLRC, and therefore affirms the ruling of the NLRC as follows:

- (1) that the strike is illegal;
- (2) that the union officers lost their employment status when they formed the illegal strike; and
- (3) That the dismissal of Ms. Mary Grace U. de Leon, Vicente C. Agustinand Rowena Junio is valid.

SO ORDERED. [34] (Underscoring supplied)

In so ruling, the appellate court noted that petitioner failed to establish by convincing and substantial evidence that the union members who participated in the illegal strike committed illegal acts, and although petitioner presented photographs of the striking employees, the strikers who allegedly committed illegal acts were not named or identified. [35]

Hence, the present appeal by petitioner faulting the appellate court:

## I

IN ORDERING THE REINSTATEMENT AND THE PAYMENT OF BACKWAGES OF THE INDIVIDUAL RESPONDENTS WHOSE EMPLOYMENT STATUS WERE PREVIOUSLY DECLARED TO HAVE BEEN LOST BY THE NATIONAL LABOR RELATIONS COMMISSION, THE COURT OF APPEALS HAS IN EFFECT DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW WHICH HAS NOT YET BEFORE BEEN DETERMINED BY THIS HONORABLE COURT, [AND]

## II

IN [THUS] DEVIAT[ING] FROM ESTABLISHED DOCTRINES LONG SETTLED

BY CONSISTENT JURISPRUDENCE ENUNCIATED BY THIS HONORABLE COURT.<sup>[36]</sup> (Underscoring supplied)

Petitioner argues that:

IT WAS THE NLRC WHICH DECLARED THAT THE UNION OFFICERS AND **MEMBERS** HAVE LOST THEIR EMPLOYMENT AS A CONSEQUENCE OF THEIR STRIKE WHICH IT ALSO DECLARED AND FOUND TO BE ILLEGAL.

SUCH BEING THE CASE, IN THE EVENT THE NLRC'S DECISION IS NOT UPHeld AS FAR AS THE UNION **MEMBERS'** LOSING THEIR EMPLOYMENT IS CONCERNED, PETITIONER SHOULD NOT BE HELD LIABLE TO PAY THEIR BACKWAGES.

UNDER THE CIRCUMSTANCES, NEITHER CAN PETITIONER BE VALIDLY DIRECTED TO REINSTATE THEM.<sup>[37]</sup> (Emphasis and underscoring supplied)

Respondents, upon the other hand, pray for the dismissal of the petition, they arguing that:

- A. Respondent [union members] must be reinstated and paid full backwages because their strike was legal and done in good faith.
- B. Even assuming *arguendo*, that the strike started as an illegal strike, the union's unconditional offer to return to work, coupled with the hotel's unfair labor practices during the strike, transformed the strike into a legal strike.
- C. Even assuming *arguendo*, that the strike is illegal, the reinstatement of the strikers and the payment of full backwages is consistent with the ruling in Telefunken Semiconductors Employees Union-FFW v. Secretary, 283 SCRA 145 which states that the individual liability of each of the union officers and members determines whether or not strikers should be reinstated.
- D. Even assuming *arguendo*, that the strike is illegal, Article 264 of the Labor Code directs the reinstatement of and payment of full backwages to the respondents.<sup>[38]</sup> (Underscoring supplied)

As did the NLRC and the Court of Appeals, this Court finds the strike illegal.

Article 255 of the Labor Code provides:

ART. 255. EXCLUSIVE BARGAINING REPRESENTATION AND WORKERS' PARTICIPATION IN POLICY AND DECISION-MAKING

The **labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit** shall be the **exclusive representative** of the employees in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.