

SECOND DIVISION

[G.R. No. 106316, May 05, 1997]

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

D E C I S I O N

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.
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;
- (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