

SECOND DIVISION

[G.R. No. 153664, July 18, 2003]

GRAND BOULEVARD HOTEL (FORMERLY KNOWN AS SILAHIS INTERNATIONAL HOTEL, INC.), PETITIONER, VS. GENUINE LABOR ORGANIZATION OF WORKERS IN HOTEL, RESTAURANT AND ALLIED INDUSTRIES (GLOWHRAIN), RESPONDENT.

G.R. NO. 153665

GRAND BOULEVARD HOTEL (FORMERLY KNOWN AS SILAHIS INTERNATIONAL HOTEL, INC.), PETITIONER, VS. EDNA B. DACANAY, RESPONDENT.

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals in CA-G.R. SP Nos. 53284 & 53285 dated January 9, 2002 and its Resolution^[2] dated May 27, 2002 denying the petitioner's motion for reconsideration of the said decision.

The Antecedents

On February 27, 1987, Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries - Silahis International Hotel Chapter (GLOWHRAIN-Silahis) (respondent union for brevity) and the petitioner Grand Boulevard Hotel (then Silahis International Hotel, Inc.) executed a Collective Bargaining Agreement (CBA) covering the period from July 10, 1985 up to July 9, 1988. The petitioner thereafter dismissed some of its employees and suspended others who were members of the respondent union. On May 26, 1987, the respondent union filed a notice of strike with the Department of Labor and Employment, National Capital Region (DOLE-NCR), based on the following grounds:

- a) Illegal dismissal
- b) Illegal suspension
- c) CBA violations
- d) Harassments^[3]

On June 4, 1987, the then Acting Secretary of Labor and Employment (SOLE for brevity) issued a *status quo ante bellum* order certifying the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration pursuant to Article 263(g) of the Labor Code; and further directing the employees to return to work within forty-eight hours from receipt of the order,^[4] and for the petitioner to accept all returning employees under the same terms and conditions prevailing prior to the labor dispute. The respondent union complied with the order of the SOLE. On

May 9, 1990, the respondent union filed another notice of strike against the petitioner on account of alleged violations of the CBA and the illegal dismissal of nine employees. The matter was docketed as NCMB-NCR-Case No. 06-400-90. On May 23, 1990, the SOLE issued another *status quo ante bellum* order certifying the case to the NLRC for compulsory arbitration, directing the nine employees to return to work and enjoining both parties from engaging in any strike or lockout that would exacerbate the situation. The parties were also directed to sign a CBA within fifteen days from notice of the said order.^[5]

On June 15, 1990, the petitioner and the respondent union entered into and signed a third CBA covering the period of July 10, 1988 to July 9, 1991. On August 22, 1990, Union President Rogelio Soluta wrote the petitioner, calling its attention to and protesting the following violations of the CBA:

1. Union dues and other assessments deducted from CBU and union members' salary for July 15, 1990 payday.
2. Union dues and other assessments deducted from CBU and union member's salary for July 31, 1990 payday.
3. Union dues and other assessments deducted from CBU and union members' salary for August 15, 1990 payday.^[6]

On September 6, 1990, the petitioner placed the respondent union's Director for Grievances Apolonio Bondoc, Jr. under preventive suspension. On September 13, 1990, the respondent union filed a manifestation and motion in NCMB-NCR-NS Case No. 06-400-90 praying that the petitioner be held in contempt for violating the May 23, 1990 Order of the SOLE. On September 22, 1990, the petitioner suspended Francisco Pineda, a union counselor.

On September 27, 1990, the respondent union filed a notice of strike based on the following grounds:

- a. Violation of CBA;
- b. Coercion of employees;
- c. Harassment;
- d. Arbitrary transfer of employees; and
- e. Illegal termination and suspension of employees^[7]

The matter was docketed as NCMB-NCR-NS-09-807-90. On October 10, 1990, the respondent union moved that the SOLE reconsider the May 23, 1990 Return-to-Work Order.

On October 16, 1990, Michael Wilson, the petitioner's general manager, wrote the SOLE informing him of the petitioner's decision to retrench seventeen less senior employees on a staggered basis, spread over a period of sixty days, to lessen the daily financial losses being incurred by the petitioner. A portion of the letter reads:

Due to the present continued downturn in tourism, we at the Silahis International Hotel are about to undertake a retrenchment program. As you know the other hotels have also invoked this management prerogative in order to lessen their financial losses incurred these last few months.

Due to our unique situation/relationship with the KMU, I am writing to you and appealing to your good sense of fair play on case of problems arising from unruly elements. We plan to retrench on a staggered basis one hundred seventy-one (171) less senior employees over a period of sixty (60) days, in order to stem the huge losses being incurred by us daily, during this unfortunate period.

Therefore, on behalf of my staff we ask fairness in this situation and hope the above actions can be taken smoothly and peacefully.^[8]

The next day, the respondent union, through its president, informed the DOLE-NCR that the union will conduct a strike vote referendum on October 23 and 24, 1990. The members of the respondent union voted to stage a strike. On October 25, 1990, the respondent union informed the DOLE-NCR of the results of the strike vote referendum. On October 31, 1990, the SOLE issued another *status quo ante bellum* order certifying the case to the NLRC for compulsory arbitration and enjoining the parties from engaging in any strike or lockout. The decretal portion of the order reads:

WHEREFORE, ABOVE PREMISES CONSIDERED, this Office hereby certifies the labor disputes at Silahis International Hotel, Inc., to the National Labor Relations Commission for compulsory arbitration. Accordingly, any strike or lockout, whether actual or intended, is hereby enjoined.

Consequently, pending resolution of the legality of the alleged dismissal of Apolonio Bondoc, Jr., the Company is directed to effect payroll reinstatement and accord him free access to the union office so that his duties as union officer will not be impaired.^[9]

The petitioner wrote the SOLE of its decision to implement its retrenchment program to stem its huge losses. On November 5, 1990, the petitioner disseminated a circular to all the employees, informing them that the personnel plantilla would be decreased by two hundred employees to be implemented on a staggered and "last in, first out" basis. It terminated the employment of sixty employees and two officers of the respondent union effective December 6, 1990. Moreover, the said employees, including the two union officers, were immediately barred from working. On November 7, 1990, the respondent union protested the actions of the petitioner invoking Section 15, Article VI of the CBA. The respondent union filed an urgent motion for a reconsideration by the SOLE of the Certification Order dated October 31, 1990. On November 14, 1990, the petitioner terminated the employment of eighty-six more employees effective December 14, 1990. The remaining employees were also informed that it will close in six months. On November 14, 1990, the petitioner terminated the employment of Kristoffer So, effective December 14, 1990.

By way of riposte, the respondent union filed on November 16, 1990 another notice

of strike because of what it perceived as the petitioner's continuing unfair labor practices (ULP). On the same day, at about 12:00 noon, the officers of the respondent union and some members staged a picket in the premises of the hotel, obstructing the free ingress and egress thereto. At 3:00 p.m., the police operatives of the Western Police District arrived and dispersed the picket line. Police officers detained the respondent union's president Rogelio Soluta, Henry Baybay and Dennis Cosico. On November 17, 1990, the petitioner sent identical letters to the officers and members of the respondent union terminating their employment effective that day on the following grounds:

Management found that you have willingly and knowingly participated in the illegal strike and concerted activity which was staged against the Hotel beginning on 16 November 1990. Management also found that you have, singly and collectively with others, committed illegal acts in the course of the said illegal strike such as, among others, obstructing the free ingress and egress to and from the hotel's premises.

In addition, Management has determined that you have grossly and glaringly violated existing company rules on peace and order such as, Rule V, and on promotion of goodwill such as Rule IV of the Company Rules. Worse, you have violated the Company Rule against abandonment of work under Rule VII, thus, adversely affecting the hotel operations.

Your foregoing acts are not only serious violations of the law but also constitute grave misconduct and blatant disregard of company rules, any or all of which, justify your dismissal from the company.

In view of the foregoing, notice is hereby given upon you that effective today, 17 November 1990, your employment with the company is terminated for cause.^[10]

On November 28, 1990, the SOLE issued an order certifying the labor dispute to the NLRC for consolidation with the previously certified case (Certified Case No. NCMB-NCR-NS-09-807-90). The SOLE issued a return-to-work order, excluding those who were retrenched, and enjoined all parties from committing any act that would aggravate the already tense situation. The SOLE further stated that the validity and propriety of the retrenchment program of the petitioner should be ventilated before and resolved by the NLRC. The SOLE denied the respondent union's motion to reconsider its October 31, 1990 Cease and Desist Order, thus:

WHEREFORE, PREMISES CONSIDERED, and pursuant to Article 263 (g) of the Labor Code, as amended, this Office hereby certifies the instant labor dispute at the Company to the National Labor Relations Commission for consolidation with Certified Case No. NCMB-NCR-NS-09-807-90.

Accordingly, all striking employees including those who were terminated for participation in the alleged illegal strike, but excluding those workers affected by the retrenchment program, are directed to return to work within twenty-four (24) hours from receipt hereof and for the Company to accept them under the same terms and conditions of employment prevailing prior to the work stoppage.

The validity and propriety of the Company's retrenchment program shall be ventilated and adjudicated by the NLRC.

The directive for the parties to cease and desist from committing any act that will aggravate the situation is hereby reiterated.

The union's Motion for Reconsideration is hereby denied.

Finally, the Superintendent of the Western Police District is hereby deputized to assist in the orderly and peaceful implementation of this Order.^[11]

In his order, the SOLE made the succinct observation that both the petitioner and the respondent union were to blame for the current labor conflict:

... From the series of events that occurred from the time this Office issued the Order on 31 October 1990 up to the declaration of the strike, it is very apparent that several acts were committed by both parties that caused the further deterioration of their relationship despite this Office's admonition to desist from engaging in any (*sic*) form of lockout or strike, whether actual or intended. Likewise, it is also very obvious that the current labor conflict is deeply rooted in an (*sic*) intertwined with the earlier dispute on account of the nature of the acts committed by both parties. Unfair labor practices, by its nature, could be committed through series of continuing acts, and allegations of commission of unfair labor practice acts should be ventilated in the forum earlier tasked to resolve the dispute at the Company.^[12]

The respondent officers and members complied with the order of the SOLE and returned to work. On January 15, 1991, the SOLE issued an order for the reinstatement of the thirty-five dismissed employees with full backwages.

On February 1, 1991, the petitioner filed a complaint^[13] with the Regional Arbitration Office of the NLRC for illegal strike against the union, its members and officers, namely: Rogelio M. Soluta, Elmer C. Labor, Joselito A. Santos, Florentino P. Matilla, Edna B. Dacanay, Henry N. Babay, Ray Antonio E. Rosaura, Dennis C. Cosico, Vicente M. Delola, Irene B. Ragay, Apolonio Bondoc, Jr., Quintos B. Barra, Alfredo S. Bautista, Richard T. Galigo, John Does and Jane Does. The petitioner alleged *inter alia* that the union members and officers staged a strike on November 16, 1990 which lasted until November 29, 1990 without complying with the requirements provided under Articles 263 and 264 of the Labor Code. The petitioner alleged *inter alia* that:

1. The strike staged by the respondents from 16 to 29 November 1990 is illegal for failure of the strikers to comply with the requirements provided for by law;
2. Individual respondents who are the union officers and respondent John Does and Jane Does knowingly participated in the commission of illegal acts during the strike;