

FIRST DIVISION

[G.R. No. 114521, November 27, 1998]

**CCBPI POSTMIX WORKERS UNION, PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION AND COCA-COLA BOTTLERS,
PHIL., INC., RESPONDENTS.**

[G.R.NO. 123491. NOVEMBER 27, 1998]

**COCA-COLA BOTTLERS PHILS., INC., PETITIONER, VS. NATIONAL
LABOR RELATIONS COMMISSION, CCBPI POSTMIX WORKERS
UNION, MARTIN GUMARANG, LUISITO PIEDAD, EDMAR BASCO,
VICTORIANO JUMALON AND JUANITO DAYAO, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

Although far from easy application in the field of labor-management relations, well-settled is the rule that a union officer who knowingly participates in an illegal strike, or in the commission of illegal acts during a strike, may be terminated from his employment. An ordinary striking worker, however, may not be dismissed from his job for mere participation in an illegal strike.^[1] There must be proof that he committed illegal acts during an illegal strike. Thus, absent any clear, substantial and convincing proof of illegal acts committed during an illegal strike, an ordinary striking worker or employee may not be terminated from work.

Before us are two petitions for certiorari under Rule 65 of the Rules of Court, that have been consolidated since they arose from the same factual milieu. They, however, demonstrate the difficulty of the application of the officer and member dichotomy in the aforesaid rule when there is an illegal strike or when there are illegal acts committed, even if the strike is legal.

In G.R. No. 114521, the petition by the workers union in the Postmix Division of Coca-Cola Bottlers Phil., Inc. (CCBPI) seeks to annul the Resolution^[2] of the public respondent National Labor Relations Commission^[3] (NLRC) promulgated on December 28, 1993, disposing as follows:

"WHEREFORE, finding the subject strike to be illegal, the decision appealed from is hereby SET ASIDE. Consequently, the strike staged by the respondent is hereby declared illegal and the respondent union officers are hereby declared to have lost their employment status."^[4]

In G.R. No. 123491, the petition by the management of the said company seeks to nullify the Decision^[5] of public respondent NLRC^[6] promulgated on December 12, 1995, in CA No. L-00804-94,^[7] decreeing that:

"WHEREFORE, in view of all the foregoing, our decision of 25 August 1995 is hereby RECONSIDERED AND SET ASIDE, and the appealed decision of the Labor Arbiter dated 05 October 1994 is likewise SET ASIDE and VACATED. Respondents are hereby ordered to reinstate all five (5) terminated employees herein, namely, Luisito Piedad, Juanito Payao, Jr., Edmar Basco, Victoriano Jumalon, and Martin Gumarang, to their former positions without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time of their dismissal until actually reinstated, less earnings elsewhere, if any."^[8]

For a clear comprehension of the petitions, we now set forth the background circumstances of the dispute between the union and the management. Coca-Cola Bottlers Phils., Inc. Postmix Workers union (hereinafter referred to as the "union") is the certified sole and exclusive bargaining agent for all regular office and sales employees of CCBPI Postmix Division (hereinafter referred to as the "company"). With the impending expiration of the Collective Bargaining Agreement (CBA) between the parties on June 30, 1986, a series of negotiations were held for the possible renewal thereof. Since the negotiations failed to produce any agreement, the union filed a Notice of Strike with the Department of Labor and Employment (DOLE) on March 9, 1987. Acting thereon, the DOLE summoned the parties for conciliation hearings to resolve the bargaining deadlock. Still unable to reach a common ground, the union conducted a strike vote^[9] on April 14, 1987, the result of which clearly showed the members' sentiments in favor of waging a strike.

On April 20, 1987, the union struck. On even date, the company filed a Petition to Declare the Strike Illegal,^[10] alleging that the union staged a strike without observing the mandatory seven-day strike ban imposed under Art. 264 (f) of the Labor Code and that the strike was done in bad faith, considering that the union did not exhaust the conciliation period. The strike, which lasted for about five months, ended with the signing of the renewed CBA^[11] between the union and the company on November 27, 1987. The CBA includes the Memorandum of Agreement^[12] (the "Memorandum") drawn by the parties on September 23, 1987, and the Amendments to Memorandum of Agreement^[13] (the "Amendments") finalized on October 1987.

On December 14, 1989, the Labor Arbiter^[14] rendered a Decision^[15] dismissing the Petition to Declare Strike Illegal for lack of merit, ruling that there was substantial compliance with the mandatory seven-day strike ban, the union having struck on the sixth day from the submission of the results of the strike vote to the NLRC.

On appeal, the NLRC reversed the Decision of the Labor Arbiter. In its Resolution^[16] dated December 28, 1993, the NLRC ruled that the seven-day strike ban is a mandatory requisite before a union may strike, such that "a strike held even on the seventh day of the said seven-day ban, would be illegal." Consequently, the respondent officers of the union were declared to have lost their employment status. The company thus terminated the services of eight employees who were believed to be officers of the union, namely: Alex T. Devierte, Dominador Silvestre, Martin Gumarang, Ernesto Dula, Luisito A. Piedad, Edmar L. Basco, Juanito F. Dayao, and Victoriano P. Jumalon.

Asserting that the termination of the above-mentioned employees is null and void, the union filed a petition for certiorari^[17] with this Court on April 7, 1994. Said petition seeks to annul the Resolution of the NLRC dated December 28, 1993, which reversed the Decision of the Labor Arbiter. In support of their assertion, the union offered as evidence the Certification^[18] dated 18 April 1994, issued by the Bureau of Labor Relations (BLR) Labor Organization Division,^[19] to show that the terminated employees were not officers of the union during the strike held on April 20, 1987.

Thus, on April 8, 1994, the union filed a complaint^[20] against the company with the NLRC, questioning the validity of the termination of the following employees, namely, Martin Gumarang, Luisito A. Piedad, Edmar L. Basco, Victoriano P. Jumalon, and Juanito F. Dayao, (hereinafter collectively referred to as the "employees"). The union alleges that the termination is not in accordance with the resolution which declares the loss of employment status of the respondent union officers and that the employees were not among those sought to be terminated in the Petition to Declare the Strike Illegal nor were they union officers during the strike.

In answer to the union's allegations, the company submitted its Position Paper dated July 15, 1994^[21] and its Supplemental Position Paper dated August 23, 1994.^[22] The company likewise offered evidence proving that the terminated employees were among the officers of the union during the strike.

With respect to the complaint for illegal dismissal, the Labor Arbiter^[23] rendered a Decision^[24] dated October 5, 1994, dismissing the complaint, ruling that as union officers, the termination of the employees was a logical consequence of their participation in the illegal strike. The union appealed the Labor Arbiter's decision to the NLRC, on grounds of serious errors in the findings of fact, prejudice or bias in favor of the company and that the decision dated October 5, 1994 does not conform to the facts alleged and relief prayed for in the company's Petition to Declare the Strike Illegal.

The company then filed its Opposition to Appeal^[25] dated December 13, 1994, on grounds that the certification and other documents relied upon by the union as bases for its claim of illegal dismissal are erroneous and misleading and that the evidence offered to show that the employees were union officers during the strike, remains uncontroverted.

In its August 25, 1995 Decision^[26], the NLRC ruled:

"WE REMAND.

x x x

"The matter on who actually participated during the April 20, 1987 strike is a factual issue. Considering, therefore, that the basis of the Labor Arbiter a quo's findings is being assailed as speculative, and considering as well that complainants' documentary evidence is likewise assailed by respondent as not being up-to-date, it is imperative that this instant case be Remanded for further elucidation and specific determination of who

were the union officers involved in the declared illegal strike on April 20, 1987 (paragraph 3, Article 264 (g), Labor Code)."

The company filed its Motion for Reconsideration^[27] from the Decision dated August 25, 1995 and argued that the Labor Arbiter's Decision of October 5, 1994 declaring the termination or dismissal as legal was based on strong and convincing evidence.

However, on December 12, 1995, the NLRC reversed its October 5, 1994 ruling and ordered the company to reinstate the terminated employees based on the finding that the latter were illegally dismissed, as they were not union officers during the April 20, 1987 strike.^[28]

On February 5, 1996, the company filed a petition questioning the Decision dated December 12, 1995, which ordered the reinstatement with full backwages of the said employees, for having been rendered capriciously and whimsically, with grave abuse of discretion amounting to lack of jurisdiction considering that, other than the outdated certification, there is no sufficient evidence on record to support the union's contention that the terminated employees were not its officers at the time the illegal strike was staged.

Hence, this case.

From the foregoing factual and procedural antecedents which gave rise to and now form part of the circumstances attendant to the instant case, the following issues emerge for our resolution:

I.

Whether the strike declared by the union on April 20, 1987 was illegal for failure to comply with the mandatory seven-day strike ban imposed under Art. 264 (f) of the Labor Code.

II.

Whether the employees who participated in the strike, who were later declared to have lost their employment status, were union officers at the time of the strike.

III.

Whether the employees were rightfully and legally dismissed from service as a consequence of their union membership and mere participation during the strike.

The union submits that the NLRC gravely abused its discretion when it issued the assailed Resolution promulgated on December 28, 1993, ruling that the strike declared on April 20, 1987 was illegal, and consequently declaring the respondent union officers to have lost their employment status. The assailed Resolution reversed the Decision of the Labor Arbiter dated December 14, 1989 which found that the strike held on April 20, 1987, though staged only after six days from the strike vote or a day short of the seven-day mandatory strike ban, is not illegal. In

the opinion of the Labor Arbiter, the deficiency of one day is not a fatal defect that would necessarily make the strike legally infirm.

"As explained by the respondents in their position papers:

'xx that respondent union, its officers and members were forced by circumstances to proceed with the strike in the morning of April 20, 1987 because of abnormal activities then being undertaken by petitioner-management days before, that was Holy Thursday and Good Friday, April 16 and 17, respectively. xx that during these two (2) holidays, vendo dispenser machines, raw materials, finished products, and other items were removed from the main plant, at Timog Ave., Quezon City to another place. The strike, therefore, staged the first working day after the holy week was upon the provocation of petitioner.'

Indeed, respondents had to stage the strike the first working day, April 20, 1987, after the holy week to effectively protect their interest. They regretly [sic] felt that if they did not declare the strike on April 20, 1987, everything necessary for the production, distribution and effective marketing of the CCBPI vendo products, could be removed from the premises, and thus their intended strike could be rendered useless.

Respondents also contend that the 7-day ban contemplated under Article 264(f) of the Labor Code, as amended, was not violated. The union claims that the 'strike vote' was conducted on April 14, 1987, between 7:30 a.m. to 8:45 a.m., by a Bureau of Labor Relations' representative, who certified that the balloting was peaceful and orderly; that the strike was staged exactly on the 7th day from the balloting, in accordance with law, as the counting of the 7 days has to start at 8:45 a.m. and the result thereof was taken cognizance of the BLR representative.

While petitioner-company declares that the strike staged by the respondents at 8:30 a.m. of April 20, 1987 was merely six (6) days from the strike vote violative of Article 264(f) of the Labor Code, respondents claim that it was declared on the 7th day from balloting hence the same does not violate the law.

But conceding that the strike was staged only after six (6) days from strike vote, or short of the seven-day ban by one (1) day, this Labor Arbiter, still does not consider the deficiency of one-day as a fatal defect, to conclude that the strike is illegal. A one day deficiency could not have changed the fact that respondents have in fact substantially complied with the cooling-off period."^[29]

Articles 264 and 265 of the Labor Code, insofar as pertinent here, read:

"ART. 264. *Strikes, picketing and lockouts.*--xx xx

'(c) In cases of bargaining deadlocks, the certified or duly recognized bargaining representative may file a notice of strike with the Ministry (of Labor and Employment) at least thirty (30) days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be