Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-26136. October 30, 1978]

THE BACHRACH MOTOR CO., INC. and/or "BACHRACH TRANSPORTATION CO., INC.", as operator of the RURAL TRANSIT, *petitioner, vs.* **THE COURT OF INDUSTRIAL RELATIONS and RURAL TRANSIT EMPLOYEES ASSOCIATION,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO CROSS-EXAMINATION; PARTY DEPRIVED OF RIGHT TO CROSS-EXAMINE ENTITLED TO HAVE DIRECT TESTIMONY STRICKEN OFF THE RECORD.** — Where after the conclusion of a direct testimony of a witness the latter failed to appear at the scheduled hearings for his cross-examination, because he had left for abroad, thus depriving the adverse party, without fault on its part, of its right to cross-examine the witness, said adverse party is entitled to have direct testimony of the witness stricken off the records.

2. **ID.; ID.; DUE PROCESS; RIGHT TO CROSS-EXAMINATION PART OF DUE PROCESS.** — The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. (Citing *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.*, 62 SCRA 258). The right of a party to cross-examine the witness of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right thereto of parties in civil cases less constitutionally based, for its an indispensable part of the due process guaranteed by the fundamental law. (Citing *Ortigas Jr. v. Lufthansa German Airlines*, 64 SCRA 610, 636-637)

3. **REMEDIAL LAW; EVIDENCE; ORAL TESTIMONY; DEEMED COMPLETE WHEN WHOLLY CROSS-EXAMINED BY ADVERSE PARTY.** — Oral testimony may be taken into account

Supreme Court E-Library

only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party or the right to cross-examine is lost wholly or in part thru the fault of such adverse party. Until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case. (Citing *Ortigas, Jr. v Lufthansa German Airlines*, 64 SCRA 610, 636-637)

4. **ID.; ID.; ID.; ID.; EXEMPTION.** — Where the right to cross-examination had been lost thru the fault or actuations of the party entitled thereto such party shall be considered to have impliedly waived the right because the same can be forfeited by a party litigant through his own conduct.

5. **ID.; ID.; DOCUMENTARY EVIDENCE; ADMISSION THAT A SIGNATURE IN A DOCUMENTARY EVIDENCE IS GENUINE DOES NOT CONSTITUTE ADMISSION OF THE TRUTH OF ITS CONTENTS.** — Where respondent's counsel manifested that he was admitting the signature of petitioner's witness affixed on documentary exhibits, the admission merely refers to the signatures and not to the contents of the documents. Respondent's counsel was still entitled to cross-examine the witnesses on the matters written on the exhibits, especially if they adversely affected the substantial rights of the party against whom they were presented. When respondent's counsel admitted that the signatures appearing in the exhibits were that of the witness, the counsel of petitioner should have inquired if the party was admitting likewise the veracity of the documents; not having done so, petitioner must suffer the consequences.

6. **ID.; ID.; ID.; EFFECT OF FAILURE TO IDENTIFY DOCUMENTARY EVIDENCE.** — Where documentary exhibits were adduced in evidence, but no one was presented to testify on their intrinsic value, said documents cannot be considered as competent proof of the truthfulness of their contents. Without the supporting testimony of a witness, they are hearsay evidence.

7. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; BURDEN TO JUSTIFY SUSPENSION OF EMPLOYEE RESTS UPON EMPLOYER.** — When an employer's petition to discharge an employee, who had been suspended during the pendency of a labor dispute, is dismissed by the labor court, the lifting of the employee's suspension and his reinstatement

Supreme Court E-Library

is but a necessary consequence of the order dismissing the employer's petition. For obvious reasons, the relief could be granted without need of evidence. The *onus probandi* rests on the employer to justify the suspension of the employee and his eventual separation from service. If the employer fails to discharge the burden, it would have no valid grounds to keep its employee away from his work.

8. **ID.; ID.; BACKWAGES; PHILOSOPHY OF FIXING REASONABLE PERIOD FOR THE PAYMENT OF BACKWAGES.** — On the matter of backwages the judicial trend is to fix a reasonable period for the payment of backwages, the philosophy being to avoid protracted delay in post-judgment hearings during the period he had not been reinstated to his employment.

APPEARANCES OF COUNSEL

Flores, Macapagal, Ocampo & Balbastro for petitioners.
Carlos Santiago for private respondent.

D E C I S I O N

MUÑOZ PALMA, *J.*:

In 1958 the Bachrach Motor Co., Inc. and/or the "Bachrach Transportation Co., Inc.," now petitioner in this case, was in the transportation business and operated what was then known as the "Rural Transit." In that year the Rural Transit Employees Association went on strike and the dispute between the management and the union reached the Court of Industrial Relations for compulsory arbitration. The case was docketed as Case No. 22-IPA, entitled: *Rural Transit Employees Association vs. Bachrach Motor Co., and Bachrach Transportation Co.*" The Court of Industrial Relations (CIR for short) immediately issued an order on August 7, 1958 by which the strikers were ordered to return to work and the management to take them back under the terms and conditions existing before the disputes arose.[1]

[1] see p. 112, *rollo*. Memorandum for the respondent Rural Transit Employees Association.

Supreme Court E-Library

While this labor dispute was pending with the CIR *Bachrach* filed a "Petition for Authority to discharge driver Maximo Jacob from the service," dated July 24, 1961. The reasons given for the petition were alleged violations of the Motor Vehicle Law by Maximo Jacob resulting in damage to property and injuries to third parties, the latest of which occurred on June 9, 1961 resulting in the "total destruction of bus 170" of the company.

An "Answer and Counter-Petition" was filed in behalf of Maximo Jacob by the Rural Transit Employees Association whereby it denied the charges and alleged that the June 9, 1961 accident was due to a mechanical defect of the bus which was beyond the control of the driver Jacob, hence, the latter's suspension from the service was not justified.

The petition of *Bachrach* docketed as Case No. 22-IPA (11) was heard on January 23, 1963, during which petitioner presented its one and only witness, Mr. Joseph Kaplin, general manager of Rural Transit, and various documents marked as Exhibits "1" to "8-F" inclusive. After Mr. Kaplin concluded his direct testimony, with agreement of the parties, the hearing was scheduled for another date for purposes of cross-examination of the witness. The case was reset on various dates but Mr. Kaplin failed to appear because he had left for abroad.

Sometime on March 8, 1965, the employee's association filed a motion praying that:

(a) the testimony of Mr. Joseph Kaplin be stricken from the records;

(b) the petition of the Company for authority to dismiss Maximo Jacob from the service be denied; and

(c) the Company be ordered to reinstate Maximo Jacob immediately with backwages from June 9, 1961 up to the date of his actual reinstatement.[2]

In an order dated March 1, 1966, the CIR through then Presiding Judge Arsenio I. Martinez dismissed the company's

[2] *Rollo*, pp. 22-25.

Supreme Court E-Library

petition, lifted the suspension of driver Jacob, and ordered his reinstatement with backwages from the date of his suspension up to his actual reinstatement.[3]

Bachrach's motion for reconsideration[4] having been denied,[5] it filed the instant Petition for *Certiorari* on June 15, 1966 which in the Court's Resolution of July 18, 1966 was given due course.[6]

The following errors are now assigned by petitioner, *viz*:[7]

I

The respondent court erred in dismissing the petition of the herein petitioner, after ordering the testimony of Joseph Kaplin to be stricken off the record, notwithstanding the fact that the service records of Maximo Jacob, upon the basis of which his dismissal could be justified were admitted by it.

II

The respondent court erred in not admitting the petitioner's exhibits unqualifiedly and in admitting them "for whatever worth they may have" only to disregard them entirely thereafter on the alleged ground that "the contents of the same were not proven."

III

The respondent court erred in not ordering the dismissal of Maximo Jacob.

IV

The respondent court erred in granting the respondent union's counter-petition without reception of evidence, especially after it earlier dismissed the petitioner's petition on the technical ground that Joseph Kaplin was not cross-examined by the respondent union.

---

[3] *Ibid.*, pp. 28-29.

[4] *Ibid.*, p. 30.

[5] *Ibid.*, p. 34.

[6] *Ibid.*, p. 54.

[7] *Ibid.*, pp. 90-91.

Supreme Court E-Library

V

The respondent court erred in granting backwages to Maximo Jacob from the date of his suspension up to actual reinstatement without evidence to prove that he has exercised reasonable diligence to secure other employment during the time of his alleged suspension.

VI

The respondent court erred in not holding that the union has the burden to prove that Maximo Jacob is entitled to backwages.

VII

The respondent court erred in not holding that, if at all, Maximo Jacob is only entitled to three months backwages according to the Sta. Cecilia Sawmill case.

1. Respondent court did not err in ordering the dismissal of *Bachrach's* petition to discharge Maximo Jacob.

Petitioner presented only one witness, Joseph Kaplin, to prove its case against driver Jacob. The witness failed however to appear at the scheduled hearings for his cross-examination for the simple reason that he left for abroad. Having been deprived, without fault on its part, of its right to cross-examine Kaplin, respondent association was entitled to have the direct testimony of the witness stricken off the record.

"The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is fundamental right which is part of due process." (*Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.,* 1975, 62 SCRA 258).

In *Ortigas Jr. v. Lufthansa German Airlines*, 1975, defendant's witness failed to appear at the continuation of hearing during which the witness was to be cross-examined by plaintiff's counsel. The trial court denied defendant's motion for postponement and ordered the unfinished testimony of the witness Lazzari stricken off the record. In sustaining said order, this Court held *inter alia:*

Supreme Court E-Library

"*Oral testimony may be taken into account only when it is complete, that is, if the witness has been wholly cross-examined by the adverse party or the right to cross-examine is lost wholly or in part thru the fault of such adverse party.* But when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.

"The right of a party to cross-examine the witness of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right thereto of parties in civil cases less constitutionally based, for it is an indispensable part of the due process guaranteed by the fundamental law. x x x Until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case." (64 SCRA 610, 636-637; italics supplied)

Parenthetically, the situation in *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al., supra,* was different. There, the witness, Atty. Morabe, had finished his direct testimony and he was ready and available for cross-examination. Motions for postponement of the cross-examination were made however by the adverse counsel from time to time until one day Atty. Morabe succumbed to a fatal heart attack without the cross-examination having been accomplished. On motion of the respondents the *Court of Industrial Relations ordered the testimony of Atty. Morabe deleted from the record.* On a petition for *certiorari* by Savory Luncheonette, this Court set aside the order and held that *by their own actuations, respondents were considered to have impliedly waived* and thereupon lost their right to cross-examine the witness, for such a right may be forfeited by a party litigant through his own conduct.

Petitioner contends however that it was ready to present another witness, Mrs. Ursula Silva, to identify the documents, Exhibits "1" to "8-F", but it did not proceed to call the witness for the reason that during the hearing of January 16, 1965, respondent's counsel, Atty. Santiago, manifested that he was

Supreme Court E-Library

admitting the signatures of Joseph Kaplin on the aforesaid documents.[8] However true that may be, what Atty. Santiago *admitted* merely *was the signature of Mr. Kaplin and not the truth of* the contents of the documents.[9] The opposing party was still entitled to cross-examine the witness on the matters written on Exhibits "1" to "8-F" especially if they adversely affected the substantial rights of the party against whom they were being presented, namely, driver Maximo Jacob. When Atty. Santiago admitted that the signature appearing in Exhibits "1" to "8-F" was that of witness Kaplin, the counsel of petitioner then, Atty. Joven Enrile, should have inquired if the party was admitting likewise the veracity of the contents of the documents; not having done so, petitioner must now suffer the consequences.

Exhibits "1 " to "8-F" were admitted by respondent court only for "whatever they may be worth." Evaluating them, however, it did not consider said documents, and rightly so, as competent proof of the truthfulness of their contents without the supporting testimony of witness Kaphin. As stated in the order under review "(N)o other witness was presented by respondent company (now petitioner) to testify on the intrinsic value of those exhibits"; consequently, they are hearsay.

Inasmuch as the testimony of Joseph Kaplin is stricken off the record and the contents of Exhibits "1" to "8-F" are hearsay, and there is no other evidence which substantiates the charges against Maximo Jacob, the dismissal of the company's petition to discharge Jacob from its service is in order.

2. No error was committed when the CIR, without receiving evidence, granted relief to private respondent herein on its counter-petition.

At the time *Bachrach* filed its petition to discharge Maximo Jacob, there was a pending labor dispute in the CIR between the company and the employee's union. The CIR ordered the strikers to return to work. The company in the meantime

---

[8] pp. 3-4. petitioner's brief. .

[9] see p. 4. *ibid.*

Supreme Court E-Library

suspended its driver Maximo Jacob after the alleged June 9, 1961 accident.[10]

Considering the dismissal of *Bachrach's* petition to discharge Maximo Jacob, the lifting of the latter's suspension and his reinstatement in the service were but a necessary consequence thereof. For obvious reasons, the relief could be granted without need of evidence. The *onus probandi* was on the company, now petitioner, to justify the suspension of Jacob and his eventual separation from the service. Having failed to discharge that burden, there were no valid grounds for it to keep its employee away from his work.

3. On the matter of backwages, We agree with petitioner's counsel that the judicial trend is to fix a reasonable period for the payment of backwages, the philosophy being to avoid protracted delay in post-judgment hearings to prove or disprove earnings of the worker elsewhere during the period he had not been reinstated to his employment.[11] Following this principle, We hold that payment of backwages for a period of three (3) years is fair and reasonable under the circumstances of the case.

WHEREFORE, We hereby render judgment affirming the order of respondent Court of Industrial Relations dated March 1, 1966, now under review, with the *sole modification* that

---

[10] The suspension of Maximo Jacob was alleged in paragraph 3 of the "Answer and Counter-Petition" of Rural Transit Employees Association and this was never denied by Bachrach, the latter having failed to file a Reply to said Answer. See pp. 20-21, *rollo*.

[11] *Mercury Drug Co., Inc. v. CIR, et al.*, 56 SCRA 694; *People's Bank & Trust Company, et al. v. People's Bank and Trust Company Employees Union, et al.*, 69 SCRA 10, citing *NASSCO v. CIR, 57 SCRA 642*; *Almira v. B.F. Goodrich Phil., Inc.*: 58 SCRA 120; *Feati University Faculty Club v. Feati University*, 58 SCRA 395, and others. *Insular Life Assurance Co., Ltd. Employees Association-Natu v. Insular Life Assurance Co., Ltd.*, 76 SCRA 50; *Manila Cordage Company v. CIR*, 78 SCRA 398; *Monteverde v. Court of Industrial Relations*, 79 SCRA 259; *Visayan Stevedore Transportation Company (Hinigaran Branch), et al. v. Court of Industrial Relations, et al.*, 79 SCRA 271; *Danao Development Corporation v. NLRC*, 81 SCRA 487; *Cristobal v. Melchor*, 78 SCRA 175; *Davao Free Workers Front v. CIR*, 67 SCRA 418, 422.

Supreme Court E-Library

petitioner shall pay its driver Maximo Jacob three (3) years backwages at the rate of the last salary received before he was suspended, without qualification and deduction.

With costs against petitioner.

Order modified.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, and *Guerrero, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-29728. October 30, 1978]

NEW MANILA CANDY WORKERS UNION (NACONWA-PAFLU) and MAGDALENA PINGOL, CARMEN BELTRAN, JOVITA BUSTAMANTE, CECILIA YUMOL, ROSALINA TRIAS, MAGDALENA PABUSTAN, FLORENCIA ATANACIO, AURORA CEREZO, CORAZON ANGELES, ZOILA YAMBAO, DIONISIA FERRER, ANASTACIA MANAIT, MERCEDES CRUZ, NATY TAYAO, EPIFANIA TUNGOL, MARIA MANANSALA, AMPAO AVILA, CLARA ASIS, FRANCISCA MANALAC, ROSA PAUIG, VISITACION CRISTE, ADELAIDA SANTOS, FELICISIMA TADEO, ALECIA PRUDENCIO, ELENA DUFREDO, JOVITA OPINIA, CONCEPCION CRUZ, FILOMENA SANGCAP, ARSENIA CARREON, ISIDRA LAZARO, JULIANA JOSE, TERESITA ANTONIO, ALFONSO CONTRERAS, SOTERA ZAPANTA, PACITA RUBIO, DOLORES CRUZ, CONCEPCION CRUZ, ERLINA MONTEMAYOR, SOTERA SANTOS,