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Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano and *Barredo, JJ.*, concur.

Order affirmed.

[G.R. No. L-24634 & L-24635. March 28, 1969]

UNION OF PHILIPPINE EDUCATION EMPLOYEES (NLU), petitioners, *vs.* PHILIPPINE EDUCATION CO., INC., and THE COURT OF INDUSTRIAL RELATIONS, respondents.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; INDUSTRIAL PEACE ACT; UNFAIR LABOR PRACTICE; ELIMINATION OF EMPLOYEE'S NAME FROM ROSTER IS NO UNFAIR LABOR PRACTICE.— Petitioner points to the case of five of the nineteen employees ordered reinstated with back wages, who "simply failed to return after the expiration of their leave of absence," and contends that the same relief must be awarded to Palaganas. There is a demonstrable difference between their situation and his, for they were working on a regular and continuous basis; and with respect to Jose Pineda, who was also reinstated despite the fact that he was working off and on, the Court did not find that he took a leave of absence and then failed to return thereafter. In any event, insofar as Palaganas is concerned, the elimination of his name from the company's roster on the ground that he remained unheard from after his leave of absence expired can hardly be considered as an unfair labor practice which would justify reinstatement, let alone back wages.

2. ID.; ID.; BACK WAGES; RIGHT THERETO ON THE BASIS OF JUSTICE.— In the case of Eduardo Elbanbuena, his claim for reinstatement was dismissed "as it appears that he was reinstated and is still in the service." The denial of back wages to him, however, was erroneous. The court found: "right now (as of the date of the decision) Eduardo Elbanbuena is still in the service, but complainant's evidence clearly showed that he was laid off. Probably he was recalled

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since the presentation of complainant's evidence." It is not disputed that he was out of work from January 9 to November 3, 1960. Respondent company says that for all that appears he might have been on extended leave of absence without pay during that period, and that it was incumbent upon petitioner to prove otherwise. The categorical finding of the court that he had been laid off sufficiently rules out the speculative possibility referred to by respondent company. And if the other regular employees who failed to return after the expiration of their leaves of absence were granted back wages, justice dictates that Elbanbuena should be entitled to the same benefits.

3. ID.; ID.; ID.; NO RIGHT THERETO WHERE THE EMPLOYEES WERE NOT LAID OFF.— The claim of Jesus Galang and Maximo Villanueva for back wages was correctly dismissed by the court because "they were not laid off; and they have already returned to work upon the expiration of their leaves of absence and have been thereafter continuously working in their former positions." This is a factual finding that is not disputed, nor has evidence of any lay-off of these two employees been brought to our attention.

APPEARANCES OF COUNSEL

Eulogio R. Lerum for petitioners.
Manuel O. Chan for private respondent.

DECISION

MAKALINTAL, *J.*:

Petitioning union filed two complaints for unfair labor practice against respondent company, alleging dismissal of twenty-seven of its employees for union activities. Respondent court, in its decision of January 4, 1965, ordered the reinstatement of nineteen (19), with back wages. Of the remaining eight (8), two had died, one had found employment elsewhere, and one had retired. The other four are Ernesto Palaganas, Eduardo Elbanbuena, Jesus Galang and Maximo Villanueva. Palaganas was not ordered reinstated, while Elbanbuena, Galang and Villanueva, although reinstated, were not granted back wages. The instant petition for review was filed by the union with respect to these four, the prayer being for the reinstatement of Palaganas with back wages and for the award of back wages to the three others.

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The burden of petitioner's argument is that these four employees were similarly situated as the nineteen who received the full benefits of the decision, and therefore, must be treated in the same manner. This is not altogether correct, as the decision itself reveals. The court's finding with respect to Palaganas is as follows:

"Ernesto Palagana's case as told by respondent was a little different. Similarly, he was on the payroll of the Company on the off-and-on basis. Then he went on a leave of absence and since then he was unheard of until the respondent ultimately decided to erase his name in their roster."

Petitioner points to the case of five of the nineteen employees ordered reinstated with back wages, who "simply failed to return after the expiration of their leave of absence," and contends that the same relief must be awarded to Palaganas. There is a demonstrable difference between their situation and his, for they were working on a regular and continuous basis; and with respect to Jose Pineda, who was also reinstated despite the fact that he was working off and on, the Court did not find that he took a leave of absence and then failed to return thereafter. In any event, insofar as Palaganas is concerned, the elimination of his name from the company's roster on the ground that he remained unheard from after his leave of absence expired can hardly be considered as an unfair labor practice which would justify reinstatement, let alone back wages.

In the case of Eduardo Elbanbuena, his claim for reinstatement was dismissed "as it appears that he was reinstated and is still in the service." The denial of back wages to him, however, was erroneous. The court found: "right now (as of the date of the decision) Eduardo Elbanbuena is still in the service, but complainant's evidence clearly showed that he was laid off. Probably he was recalled since the presentation of complainant's evidence." It is not disputed that he was out of work from January 9 to November 3, 1960. Respondent company says that for all that appears he might have been on extended leave of absence without pay during that period, and that it was incumbent upon

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petitioner to prove otherwise. To our mind, the categorical finding of the court that he had been laid off sufficiently rules out the speculative possibility referred to by respondent company. And if the other regular employees who failed to return after the expiration of their leaves of absence were granted back wages, justice dictates that Elbanbuena should be entitled to the same benefits.

The claim of Jesus Galang and Maximo Villanueva for back wages was correctly dismissed by the court because "they were not laid off; and (they) have already returned to work upon the expiration of their leaves of absence and have been thereafter continuously working in their former positions." This is a factual finding that is not disputed, nor has evidence of any lay-off of these two employees been brought to our attention.

WHEREFORE, the decision appealed from is modified by ordering the payment of back wages to Eduardo Elbanbuena for the period from January 9 to November 3, 1960, and affirmed in all other respects. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee and *Barredo, JJ.*, concur.

Decision modified and affirmed in all other respects.

[G.R. No. L-24699. March 28, 1969]

ABIGUEL REYES-GREGORIO, ET AL., plaintiffs-appellees, *vs.* ARSENIO REYES, defendant-appellant.

SYLLABUS

LAND REGISTRATION; MORTGAGES; EXTRA-JUDICIAL FORECLOSURE SALE; LEGAL REDEMPTION; RIGHT OF REDEMPTION WAS EXERCISED ON TIME IN INSTANT CASE.— On May 8, 1958, the spouses Dominador Gregorio (now deceased) and Abiguel Reyes—the latter is now one of the plaintiffs-appellees—borrowed from the Manila Building and Loan Association