

SOUTH P. R. BROADCASTING CORP. D/B/A RADIO STATION WISO and GREMIO DE PRENSA, RADIO, TEATRO Y TELEVISION DE PUERTO RICO, LOCAL 24929, AFL. *Case No. 24-CA-561. January 21, 1955*

Decision and Order

On September 1, 1954, Trial Examiner David London issued his Intermediate Report in the above-entitled proceedings, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Union filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case. The Board finds that it will not effectuate the policies of the Act to assert jurisdiction in this case, and shall, for the reasons hereinafter stated, dismiss the complaint in its entirety.¹

The Respondent is a Puerto Rico corporation whose principal office and place of business is Ponce, Puerto Rico, where it operates under a license granted by the Federal Communications Commission. The Respondent operates under the call letters WISO, and has been in operation since September 15, 1953. From that date to the date of the hearing, a period of approximately 8 months, the gross advertising revenue of the station is valued at approximately \$4,000, of which approximately 5 percent represents revenue derived from advertising of products originating in the United States. The value of equipment, materials, and supplies necessary for the operation of the radio station obtained during the same period, from sources located in the United States and the radio station itself, amounts to approximately \$10,000.

In the *Sixto Ortega*² case, the Board decided that in future cases involving types of business or operations for which the Board has established specially applicable standards for taking jurisdiction in the 48 States, it shall apply the same standards for asserting jurisdiction in Puerto Rico.

In the *Hanford Broadcasting Company*³ case, the Board decided that it will assert jurisdiction over radio and television stations and

¹ As we are dismissing the complaint herein on jurisdictional grounds, we need not pass on the Trial Examiner's findings and conclusions, recommending dismissal on the merits.

² *Sixto Ortega d/b/a Sixto*, 110 NLRB 1917

³ *Hanford Broadcasting Company (KNGS)*, 110 NLRB 1257.

111 NLRB No. 45.

telephone and telegraph systems only if the gross income of the particular enterprise amounts to at least \$200,000 annually.

As the income of the Respondent's radio station, projected on a 12-month basis, was below the minimum figures established by the Board for the assertion of jurisdiction over radio stations, and as we are now applying the specially applicable standards for jurisdiction in the 48 States to Puerto Rico, we shall dismiss the complaint in its entirety.⁴

[The Board dismissed the complaint.]

⁴ Member Murdock in signing this decision directs attention to the fact that he dissented from the adoption of this policy of applying specially applicable U. S. standards to Puerto Rico in place of the Board's former plenary policy, in the *Sisto Ortega* case.

Intermediate Report

STATEMENT OF THE CASE

Upon charges duly filed by Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Local 24929, AFL, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-fourth Region, issued a complaint against South P. R. Broadcasting Corp. d/b/a Radio Station WISO, hereinafter called Respondent or the Station, alleging that Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (3) and (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges, complaint, and notice of hearing were duly served upon Respondent.

With respect to the unfair labor practices, the complaint alleged, in substance, that on or about March 3, 1954, Respondent discharged Julio Torres Lopez, because he joined or assisted the Union, or engaged in concerted activities with other employees of Respondent for the purposes of collective bargaining or other mutual aid or protection. By its answer, Respondent denied that it had been guilty of any unfair labor practice and pleaded that Lopez was discharged for cause.

Pursuant to notice, a hearing was held at Ponce, Puerto Rico, on May 5 and 6, 1954, before the duly designated Trial Examiner, at which the General Counsel was represented by counsel and Respondent by its general manager. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to present oral argument and briefs, was afforded all parties. Since the close of the hearing, briefs have been received from the General Counsel and Respondent which have been duly considered.

From my observation of the witnesses, and upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and at all times material herein has been, a corporation organized under and existing by the virtue of the laws of the Commonwealth of Puerto Rico. Its principal office and place of business is located at Ponce, Puerto Rico, where it has, at all times material herein, continuously engaged in the operation of Radio Broadcasting Station WISO. In the course and conduct of its business operations, Respondent has been licensed by the Federal Communications Commission to broadcast programs to listeners in Puerto Rico and other sections in the Caribbean area. These programs advertise products manufactured by companies engaged in interstate and foreign commerce. Respondent receives a substantial part of its income in the operation of said radio station from commercial companies that advertise their products by radio. In the year preceding the hearing, Respondent purchased a substantial amount of equipment, materials, and supplies necessary for the operation of its radio station from sources located in the United States. Respondent admits, and upon the entire record I find, that Respondent is engaged in commerce within the meaning of the Act and that the Board has jurisdiction in this proceeding. *Xavier Zequiera*, 102 NLRB 874.

II. THE LABOR ORGANIZATION INVOLVED

Gremio de Prensa, Radio, Teatro y Television de Puerto Rico, Local 24929, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The sole issue in this proceeding is whether or not Respondent discharged Julio Torres Lopez because he "joined or assisted the Union or engaged in concerted activities with other employees of the Respondent for the purposes of collective bargaining or other mutual aid or protection."

Respondent began the operations of WISO in Ponce, Puerto Rico, on September 15, 1953. Luis Freyre Montero, manager of the station, hereinafter referred to as Freyre, hired Lopez on October 23, 1953, as a control operator and announcer for the station. Lopez testified that, though only 22 years old at the time of the hearing in May 1954, he had "been working in the radio industry since 1941" when he was apparently only 9 years old. Freyre was aware that Lopez was a member of the Union at the time and hired him notwithstanding his opinion, expressed to Lopez at the time, "that all those who belong to the [Union] were undisciplined, and joined . . . because they were not efficient employees." There is no evidence, however, except for his membership, that Lopez was engaged in any union activity among Respondent's employees, or that any other employees were members of the Union.

Prior to Sunday, February 28, 1954, Respondent had made arrangements to broadcast the carnival parade in Ponce, an important civic affair, which was to take place that afternoon. Freyre was to do the broadcasting from the scene of the parade by means of a remote control transmitter and Lopez, who during that afternoon handled the controls at the station, was expected to pick up Freyre's transmission and broadcast the same over the facilities of the station. Freyre, from the scene of the parade, made contact with Lopez at the station at 2:30 p. m. and was informed by the latter that "everything was o. k." Instead of joining Freyre's portable transmitter, however, to permit a broadcast of the parade which started at that time, Lopez "continued putting records on at the station without announcing them." It was not until about 3:10 p. m. that Lopez joined the portable transmitter.

At about 10 o'clock of that evening, Jimmy Montanez, another station employee, informed Freyre "about the things [later characterized as horseplay] that Mr. Lopez was doing in the control room that afternoon while [Freyre] was broadcasting the parade." Montanez, who had received his information from Lede, another station employee, also told Freyre that Lopez, in the presence of an employee of another station, had criticized, in most vulgar terms, a WISO employee who had participated in the parade broadcast and compared that broadcast most unfavorably with that of another station. Montanez told Freyre that Lopez' remarks made him "so angry that he was looking for Lopez to break his face." Freyre told Montanez that the matter "would be fixed the next morning."

At about 9:30 of the following morning, March 1, Freyre received a telephone call from his brother in Mayaguez, in another part of the island, urging him to come to Mayaguez promptly because of the serious illness of their uncle. Freyre left almost immediately and did not return to the station until the morning of March 3. At that time, he instructed Ramos, assistant manager, to call a staff meeting for 2 p. m. of that day. All the men, including Lopez, were notified and directed to attend.¹

During the same morning of March 3, 1954, the exact time not being disclosed, Respondent received a letter from the Union advising the station that Lopez had been appointed its "delegate" to discuss terms and conditions of employment. There were delivered to the station at the same time 3 letters from the Union addressed to 3 other employees which letters were handed to the addressees that afternoon under circumstances hereafter narrated. All these letters were contained in envelopes which bore the imprint of the Union. The letters to the employees solicited membership in the Union, advised each addressee that Lopez had been appointed "delegate" at the station, and that within a very short while an agreement would be negotiated in behalf of the addressee and his "fellow workers."

¹ Lopez testified that at about noon of that day he asked Freyre the purpose of the meeting. Though, according to Lopez, he received no reply to his inquiry, he testified that Freyre said to him: "If you want to come, come along; if you don't want to, don't come." I do not believe or credit that testimony.

All employees called to the 2 p. m. meeting of March 3 appeared at, or shortly after, the appointed time, except Lopez. At about 2:30, Freyre told those present that he had called the meeting to give Lopez an opportunity to explain "why he was acting in controversy with the policies of the station, and why he criticized the other boys of the station that were broadcasting the carnival parties on February 28." Freyre asked Lede to tell the assembled group what had happened in the control room on February 28, and Lede repeated what he had previously told Montanez. Freyre then told the men: "Inasmuch as Julio Lopez has not come to this meeting, thus paying no attention to my order, he is fired from the radio station."

During the course of the meeting, Freyre handed out the letters from the Union above described to the addressees then present. He told the men that trouble had arisen at a station in Mayaguez because of the Union and that while the men were "at perfect liberty to think what [they] thought best," employees of WISO should make a choice between the Union and the station. Two of the men spoke up and stated they were not interested in the Union and expressed indignation that Lopez "used their names to send to the Union without [their] authorization."

When Lopez appeared between 3 and 3.30 p. m. he told Freyre he had not come to the meeting earlier because he was asleep. He was immediately discharged. Freyre chided him because of his previous boasting that he was the best announcer in Puerto Rico, that he could now go to the best station in San Juan to look for a job. During the course of the conversation, Freyre gave him the letter from the Union, addressed to Lopez, which had arrived at the station that morning.

Though Lopez' failure to make connection with Freyre during the latter's broadcast of the carnival parade played a part in the decision to discharge him, the immediate cause of that termination was Lopez' failure to come to the 2 o'clock meeting as directed. His failure to do so was not only a breach of instructions, but was also construed by Freyre to be an admission of the accusations made by fellow employees that Lopez had sought to bring the station and its employees into disrepute.

Upon the entire record, and from my observation of the witnesses, I am convinced and find that it was the latter factors which were the motivating causes for the discharge of Lopez. His conduct in these respects was aggravated by his repeated boasting that he was, in the vernacular, radio's gift to Puerto Rico. Without regard to whether or not there was any basis for his vaunting that he was the best announcer on the island, and the record fails to establish that there was anything to support his vain boasts, his pompousness was made even more offensive to the other members of the staff by the scorn and ridicule he imposed upon the station manned by employees older than himself.

The only circumstances which have given me pause in reaching my ultimate conclusion herein are the receipt by Respondent of the letters from the Union aforescribed on the morning of March 3, and Freyre's statement to the men that afternoon that it was up to them to make a choice between the Union and the station. The complaint does not allege that the remark last referred to had a restraining or coercive effect on the employees or that it was violative of the Act. I have considered it, however, in determining whether or not Lopez' discharge was discriminatorily motivated and conclude that it does not outweigh the reasons relied on by Respondent for dispensing with Lopez' services.

Admittedly, the timing of the discharge, following so closely upon receipt of the letters from the Union and Freyre's statement to the men, creates a suspicion that there is a causal connection between those events and Lopez' discharge. However, a finding that Lopez was discriminatorily discharged cannot rest upon suspicion alone. Here, even that suspicion is dispelled by the fact that Freyre told Montanez during the evening of February 28, 3 days before the receipt of the letters from the Union, that Lopez' scorn of the station and its employees "would be fixed the next morning." In any event, the General Counsel has the burden of establishing by a preponderance of the evidence that Lopez was discharged for the reasons alleged in the complaint. This he has failed to do. Rather, I find that Lopez was discharged for the reasons heretofore detailed. Accordingly it will be recommended that the complaint be dismissed.

CONCLUSION OF LAW

Respondent has not engaged in any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]