

AIR MANILA, INC., ET AL., PETITIONERS, VS. COURT OF INDUSTRIAL RELATIONS, ET AL., RESPONDENTS.*G.R. No. L-39742. December 02, 1980*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/160ec91a7b13/>**GENTLEMEN:**

Quoted hereunder, for your information, is a resolution of the Court of En Banc dated December 2, 1980

"L-39742 (Air Manila, Inc., et al. vs. Court of Industrial Relations, et al.). - The Court finds no further reason for delay in the enforcement and implementation of the writ of execution issued by its Clerk of Court on June 14, 1978 against petitioner Air Manila, Inc. for satisfaction of the total net amount of P4,012,090.42 (one third of the gross award of P6,018,135.63 or the sum of P2,006,045.21 having been deducted as and for earnings elsewhere) determined and awarded as and by way of net backwages, pursuant to the Court's per curiam Resolution of June 9, 1978 (reported in 83 SCRA 579, 592) - more than sufficient time and opportunity having been afforded petitioner Air Manila, Inc. and its owner-president, Ricardo C. Silverio since the hearing held on June 20, 1978 for the purpose of hearing any specific proposal from Mr. Silverio on how to satisfy the money judgment in the aforesaid amount of P4,012,090.42 and such amicable settlement as the parties may reach, for which purpose the Court had extended the period of suspension of the execution of the judgment up to June 28, 1978 only although several extensions were granted thereafter - and accordingly DENIES petitioner's motion for reconsideration of the aforesaid Resolution of June 9, 1978 and this denial is FINAL and immediately executory. The aforesaid writ of execution issued by the Clerk of Court is hereby made returnable to this Court within sixty (60) days from this date.

FERNANDO, C.J., while not oblivious to the significance of the procedural principle expressed so emphatically and so vehemently in the dissent of Justice Barredo, concurs in the result primarily on the ground that in labor controversies, doctrines of such character must yield to the peremptory to labor provisions of the Constitution if the fundamental law is to retain its character as such and if this Court is to be faithful to its sworn duty of enforcing its mandates. TEEHANKEE, J. filed a separate concurrence and BARREDO, J. filed a dissent. AQUINO and ABAD SANTOS, JJ. took no part."

SEPARATE CONCURRING OPINION**TEEHANKEE, J.:**

I. Our basic per curiam Resolution of June 9, 1978 (reported in 83 SCRA 579) unanimously and correctly declared null and void the NLRC "decision" of March 30, 1976 which despite respondent AMILPA's (Air Manila Line Pilots Association) objection of res judicata would have granted petitioner AMI (Air Manila, Inc.) the very same relief already denied by the CIR's per curiam Resolution of October 10, 1974 (which granted only a limited recomputation or reopening of the approved computation of backpay award of P6,018,135.63 to respondents pilots by principally allowing petitioner AMI to prove and deduct their earnings elsewhere) as upheld by this Court's final judgment in the case at bar entered on June 22, 1975 and would have all over again brought the litigation back to square one by ordering a "total reopening of the disputed computation" made in the approved

computation of award in implementation of the CIR's long final August 25, 1971 decision which granted such award after finding petitioner AMI guilty of unfair labor practice acts. The NLRC would in effect have overruled this Court's final judgment.

What remained - we said then - was to avoid further protracted delays and for respondents pilots to be enabled to savor the fruits of their victory and to expedite the execution of the judgment and award in their favor, and following settled precedents cited in our per curiam Resolution of "fixing the amount of backwages at a reasonable level without qualification and deduction so as to relieve the employees from proving their earnings during their lay-offs and the employer from submitting counter-proofs and thus obviate the twin evils of idle ness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer," we still reduced the total award by one-third or P2,006,045.21 to the net amount of P4,012,090.42 due and payable by way of net backwages and ordered our own Clerk of Court to forthwith issue a writ of execution for the said net amount. The Court's per curiam Resolution was unanimous,[1] including Mr. Justice Barredo who now has filed a "vehement dissent and protest" (while his vote then was "I concur but I reserve the making of a few observations").

Upon petitioners' filing on June 15, 1978 of their "Urgent Motion for pre-execution conference and to hold in abeyance writ of execution" stating inter alia "that in order to find ways and means to satisfy the award in favor of respondent AMILPA or its members an immediate conference or dialogue between the respondent AMILPA and its lawyers and petitioner Air Manila, Inc. be held to work out a satisfactory solution for the satisfaction of the award in favor of respondent AMILPA, the Chairman of the Board of Air Manila, Inc. and/or Mr. Ricardo C. Silverio are willing to sit down at any time convenient to this Honorable Court and respondents....," the Court unanimously per its Resolution of the same date, set the motion for a special hearing on June 20, 1978 and ordered that "the enforcement of the writ of execution be suspended until after the hearing" and "directed petitioners to submit at the hearing their specific written proposals for the satisfaction of the award in favor of respondent AMILPA." [2]

The hearing was held as scheduled on June 20, 1978 and as recorded in the Court's unanimous Resolution of the same date "Upon motion of counsel for the petitioners, Mr. Ricardo C. Silverio, President of petitioner Air Manila, Inc. (AMI) was allowed to address the Court and submit any specific proposal on how to satisfy the money judgment in the net amount of P4,012,090.42 in favor of respondent AMILPA. Mr. Silverio made a proposal to pay P500,000.00 of the judgment in cash and the balance with AMI shares, but the same was not acceptable to respondent AMILPA;" and

"The Court made it clear that it would not arbitrate much less supervise whether in open court or otherwise the discussions and negotiations of the parties and their counsels. Both parties, particularly Mr. Silverio assisted by counsel and respondent AMILPA through counsel, having manifested that a period of seven (7) days would suffice for them to thresh out the matter, the Court Resolved to EXTEND the period of suspension of the execution of the judgment up to June 28, 1978 and to GRANT the parties the same period within which to confer and agree on the manner of satisfying the judgment and to inform the Court accordingly of whatever be the outcome of such negotiation and conference." [3]

Several extensions were thereafter obtained upon joint motion of the parties of the suspension of the execution of judgment during which they would continue their conferences for satisfaction of the judgment (the last one of record being that which expired July 17, 1978)[4] until the AMILPA reported the failure of the negotiations in its motion of August 7, 1978 for enforcement of the writ of execution issued by the Clerk of Court on June 14, 1978. Notwithstanding the lapse of the specific period of suspension of the writ of execution that had been granted by the Court and several other urgent and anguished motions for enforcement of the writ of execution and resolution

of AMI's motion for reconsideration which had meanwhile been filed on August 1, 1978 after numerous extensions and sought to relitigate all over again the issues already resolved, it is only now after almost a year and a half, that the Court has finally written *finis* with the resolution at bar.

II. The foregoing amply demonstrates the fundamental error of the premise of Mr. Justice Barredo's dissent, to wit, that the CIR decision and award of backwages computed at P6,018,135.63 less earnings elsewhere (which we reduced to two-thirds as net backwages to avoid further attrition and undue delay, following the Mercury case and other precedents) "no longer exists because it has been replaced by another one rendered by the NLRC"[5], a contention that not even petitioner AMI has put forward - when such approved computation was but an implementation of the CIR award of backwages as granted in its basic decision of August 25, 1971 - long and undisputedly final and executory, with this Court having dismissed a petition to review the same per its Resolution of May 8, 1972.

The CIR in its per curiam Resolution of July 23, 1974 (erroneously referred to in the dissent as a "2-2-1 decision") denied reconsideration of the trial judge's previous Orders approving the computation of the award at P6,018,135.63 for backwages in implementation of the unquestioned basic decision of August 25, 1971 but modified the same by allowing AMI to prove and deduct earnings elsewhere of the pilots.

Upon AMI's motion for clarification that the 2-2-1 vote did not conclusively resolve the motion for reconsideration, all four judges of the CIR issued their per curiam Resolution of October 10, 1974 (with Acting Presiding Judge Ansberto P. Paredes continuing his inhibition) and unanimously denied the motion, holding that all four of them voted in favor of the limited modification allowed in its July 23, 1974 Resolution by allowing further evidence and deduction of the pilots' earnings elsewhere, while only two votes were for a total granting of AMI's motion for reconsideration which would set aside the CIR's approval of the P6 million plus computation of the backwages and totally reopen the computations all over again from scratch.[6]

This CIR per curiam resolution was the subject of AMI's petition in this case, with AMI praying that the case be remanded to the NLRC to break the supposed tie vote of 2-2-1 and to decide on a total reopening and recomputation of the award for backwages, and this Court denied (a) the petition for lack of merit, and (b) reconsideration of such denial by our Resolutions of February 24 and June 6, 1975, and entry of judgment was made on June 22, 1975. Since the CIR's per curiam resolution was patently correct based on a 4-0-1 vote, our denial of the petition could hardly be termed "cavalier", as Mr. Justice Barredo states in his dissent (at par. II-A thereof).

III. Clearly, then, the only authority left for the NLRC (as successor of the defunct CIR) was to implement and enforce the award of backwages as finally computed in the sum of P6,018,135.63 by determining the earnings elsewhere of respondents pilots and deducting the same, as per the final judgment of this Court upholding the CIR's per curiam resolution of October 10, 1974.

The NLRC had no jurisdiction or authority to act on AMI's petition in the guise of an injunction to restrain the Labor Arbiter from further hearing the case for the purpose of determining only such earnings elsewhere nor to grant the same relief already denied by the above-cited per curiam resolution of October 10, 1974 as upheld by this Court's final judgment in the very case at bar as entered on June 22, 1975, by ordering anew a "total reopening" of the approved report and computation of the award for backwages.

The NLRC was barred from doing so by *res judicata* which was duly pleaded by respondents before it. When it nevertheless persisted in totally reopening the case and starting the computation all over again, instead of its limited authority only to enforce the award as upheld by final judgment of this Court through its void "decision" of March 30, 1976, respondent AMILPA properly filed in this case its "Motion to Compel Execution of Final

Judgment" which partakes of the nature of a special civil action of certiorari and mandamus to set aside the void "decision" of the NLRC and to compel or enforce execution of a long final and executory judgment and award of backwages.

IV. As we stressed in our per curiam Resolution in question, "(T)he foregoing brief narration of the antecedents in this case clearly shows that the final disposition of the case on hand which was finally decided by the defunct Court of Industrial Relations on August 25, 1971 (and upheld by this Court as per its Resolution of May 8, 1972 dismissing the petition to review the same) or more than six (6) years ago [over eight years now] has been unreasonably delayed due to the unrelenting and repeated objections (bordering on contempt of court and abuse of judicial processes [Gabriel vs. Court of Appeals, L-43757-58, July 30, 1976]) of petitioners to the computation of the award for backwages made by the Examining Division of the defunct CIR, as well as, to the failure of the said industrial court and now the National Labor Relations Commission to finally resolve the mat-ter." [7]

Such a void "decision" of the NLRC which was a flagrant refusal to perform its ministerial duty of enforcing and implementing a final and executory judgment for backwages cannot conceivably "replace" the valid and subsisting judgment of the CIR as affirmed by this Court. No appeal lies therefrom and the motion for enforcement of judgment was properly filed directly with this Court as a matter of urgent justice and equity. As was stressed in *De Luna vs. Kayanan* [8] "the settled rule is that once a judgment has become final and executory, the prevailing party is entitled as a matter of right to a writ of execution and issuance thereof is the court's ministerial duty, compellable by mandamus." Equally settled is the rule that once the decision becomes final, it is binding on all inferior courts, and hence, beyond their power and authority to alter or modify. [9]

In *Reyes vs. Arca*, [10] then Acting Chief Justice J. B. L. Reyes reiterated for the Court the injunction in *Shioji vs. Harvey* ([1922], 43 Phil. 333, 337), and reiterated in subsequent cases, "(that) if each and every Court of First Instance could enjoy the privilege of overruling decisions of the Supreme Court, there would be no end to litigation, and judicial chaos would result. A becoming modesty of inferior courts demands on conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation."

V. It is elementary that one and the same cause of action shall not be twice litigated between the same parties and litigation must end sometime and somewhere. As former Chief Justice Roberto Concepcion stressed for the Court in *Galvez vs. PLDT*, [11] "the demands of public policy and public interest - which are also responsive to the tenets of equity - require that all issues passed upon in decisions or final orders that have become executory, be deemed conclusively disposed of and definitely closed, for, otherwise, there would be no end to litigations, thus setting at naught the main role of courts of justice, which is to assist in the enforcement of the rule of law and the maintenance of peace and order, by settling justiciable controversies with finality."

VI. In several other cases, as in this case in order to avoid further undue delay and to expedite execution for the prevailing parties who have long waited to realize the satisfaction of judgment, the Court has ordered the Clerk of this Court to issue directly the corresponding writs of execution of judgment addressed to the sheriffs of the locality (not the Supreme Court's own sheriffs). Thus, has the Court sought to reach out and do complete justice expeditiously and effectively, if not speedily, as in the cases herein listed. [12]

VII. Finally, on the extraneous note as to why this case has been finished ahead of another case, where Mr. Justice Barredo states that he has prepared a decision favorable to the same party, Mr. Ricardo Silverio (also involved herein as principal stockholder of AMI), but that the same has been pending with me for a much longer time for the preparation of a dissenting opinion, suffice it to state that as already indicated above, the immediate execution ordered in the per curiam Resolution of June 9, 1978 was suspended only up to July 17, 1978 in order to allow

AMI and Mr. Silverio upon their own motion to confer and negotiate with respondents "in order to find ways and means to satisfy the award" in respondents' favor and that it was understood that upon the failure of negotiations or the lapse of the period of suspension of the writ of execution, enforcement of the backwages award would ensue, as ordered by the Court. I therefore opposed his insistence that the two cases be taken up and decided at the same time - which already delayed for over a year such execution and resolution of AMI's motion for reconsideration which merely reiterated in one form or another the grounds already rejected by the Court - as there was no *pari materia*, nor common factual or legal issue, and cases are decided on the merits of each case and not on the personality involved therein.

The fact is that the other case has not yet been the actual subject of the Court's deliberations, due to the Court's being swamped with other urgent cases of public interest and significance, such as habeas corpus cases involving ASSO's and election cases, etc., as against this other case which involves adjudication of purely private adversary rights over a sum of money and where Mr. Silverio has filed with this Court his pending special civil action challenging the Court of Appeals' refusal to dismiss the appeal of his adversary. Withal, I reiterate the assurance that I am preparing my own draft opinion in the case which should be ready before year's end for the Court's consideration and deliberation, despite the constraints of circumstances which require the diversion of time and effort therefrom and from other urgent cases such as the rush preparation of the present separate opinion, impelled by Mr. Justice Barredo's manifest personal dissatisfaction with the brief resolution at bar cutting short any further delay in the enforcement of the Court's writ of execution of June 14, 1978 (regardless of the alleged bankrupt or insolvent state of AMI) that I had drafted for the Court.

[1] Of twelve members of the Court then presided by Chief Justice Fred Ruiz Castro, Aquino, J. did not take part, and Palma and Concepcion, JJ. were on leave.

[2] Rollo, at page 641; italics supplied.

[3] *Idem*, at page 688; italics supplied.

[4] *Idem*, at page 715.

[5] Paragraph II, at p. 2 of Justice Barredo's dissenting opinion; emphasis supplied.

[6] The CIR en banc October 10, 1974 Resolution signed unanimously by the four participating judges thus read: "(T)his concerns the Motion filed on September 2, 1974 by petitioners Air Manila, Inc., et al., thru counsel, seeking clarification of the Resolution of the Court en banc dated July 23, 1974.

"After a careful study and analysis of the opinions rendered in the aforesaid Resolution, the Court en banc is of the considered view, and so holds, that the subject Resolution is already clear enough as to its substance, as well as the participation or votes of the members of the Court en banc on the same, that it feels no further necessity or justification to clarify the same.

"As can be readily seen from the face of said Resolution, Hon. Associate Judge Alberto S. Veloso and Hon. Acting Associate Judge Guillermo C. Medina voted for a modification of the Orders of the Trial Court dated March 6, 1973, June 16, 1973 and November 16, 1973 to give a chance to the petitioner company to prove the earnings elsewhere, payments allegedly affected alleged errors in the computation of the so-called 'by pass pay' for 707 Jet Captains and for hiring of Electra Flight Pilots. And, in the 'Concurring in Part with Separate Opinion' of Hon. Acting Associate Judges Alberto L. Dalmacion and Pedro F. Perez, it is explicitly stated that they vote 'x x x not only for a modification of the aforementioned Orders of the Trial Court dated March 6, 1973, June 16, 1973 and November 16, 1973, but also for the allowance of the subject Motion for Reconsideration x x x.'

"It is thus clear that there are already four (4) votes from among the present membership and composition of the Court en banc for a limited modification of the aforesaid three (3) Orders and for the reception of evidence only on the alleged earnings elsewhere alleged payments affected, alleged errors in the computation of the 'by pass pay' for the 707 Jet Captains and for the hiring of the Electra Flight Pilots. There were only two (2) votes for a total allowance of the petitioner company's Motion for Reconsideration.

"MOTION DENIED." (Italics supplied)

[7] 83 SCRA at page 587; cf. Reyes vs. Arca, 35 SCRA 247, holding that a judge is guilty of contumacious conduct in refusing to enforce a final judgment of the Supreme Court.

[8] 61 SCRA 49 (1974).

[9] Kabigting vs. Director of Prisons, 6 SCRA 281 (1962).

[10] 35 SCRA 247, italics supplied.

[11] 3 SCRA 418, 423 (1961); italics supplied.

[12] See Visayan Stevedore Trans. Co. vs. WCC, L-42403, Nov. 17, 1976; Banzon vs. Court of Appeals, L-46464, Nov. 21, 1979; Guardiano vs. Talisay-Silay Milling Co., G.R. No. 52288, June 20, 1980 and Luding vs. Hon. Jesus N. Borromeo, L-33281, Oct. 28, 1980.

DISSENTING OPINION

BARREDO, J.:

I VEHEMENTLY DISSENT AND PROTEST.

THE DENIAL RESOLUTION PREPARED BY MR. JUSTICE TEEHANKEE IS TO MY MIND VERY MUCH SHORT OF WHAT LAW, EQUITY AND JUSTICE REQUIRE. FOR ONE THING, IT SIDESTEPS THE PRINCIPAL AND DECISIVE MATTERS IN ISSUE BETWEEN THE PARTIES. INDEED, I WONDER WHY NOT A LITTLE MORE TIME IS DEVOTED TO SAID FUNDAMENTAL ISSUES AND WHY WE HAVE TO HURRY FINISHING THIS CASE WHICH IS VIRTUALLY AGAINST MR. RICARDO SILVERIO, THE PRINCIPAL STOCKHOLDER OF AIR MANILA, WHEN THERE IS ANOTHER DECISION FAVORABLE TO THE SAME PARTY ALREADY PREPARED BY THE UNDERSIGNED AND ALREADY BEARING THE CONCURRENCE OF OTHER MEMBERS OF THE COURT AND ALREADY IN THE HANDS OF MR. JUSTICE TEEHANKEE FOR A MUCH MUCH LONGER TIME, ONLY BECAUSE HE FEELS HE HAS TO PREPARE A DISSENTING OPINION. THE DISTINCTION ATTEMPTED TO BE DRAWN BETWEEN THE TWO CASES IN THAT THIS ONE IS A LABOR CASE WHILE THE OTHER IS A SIMPLE RECOVERY OF MONEY IS TO ME UNACCEPTABLE, FOR, IN TRUTH, THE PETITIONERS HERE ARE NOT ORDINARY LABORERS BUT AIRPLANE PILOTS WHO EARN SUBSTANTIAL SALARIES AND IF I AM NOT MISTAKEN HAVE NEVER LOST GAINFUL OCCUPATION IN A SUBSTANTIAL DEGREE NOTWITHSTANDING THE PENDENCY OF THIS CASE.

I

THE PRESENT RESOLUTION REITERATES THE INDUBI-TABLY BAD AND PROCEDURALLY ERRONEOUS ACTION OF THIS COURT, DONE ONLY IN THIS CASE, OF GRANTING THE PETITIONERS MORE THAN WHAT THEY ARE ASKING FOR. WE ARE BEING MORE POPISH THAN

THE POPE. THE PRESENT RESOLUTION ORDERS THE EXECUTION OF A JUDGMENT OF THE COURT OF INDUSTRIAL RELATIONS BY THE SUPREME COURT'S OWN SHERIFFS, BY VIRTUE OF A WRIT OF EXECUTION TO BE ISSUED BY OUR OWN CLERK OF COURT, WHEN ALL THAT PETITIONERS ARE ASKING IS THAT WE ENJOIN THE ENFORCEMENT OF SAID JUDGMENT, WHICH SIMPLY MEANS, WE SHOULD ORDER THE NATIONAL LABOR RELATIONS COMMISSION, THE SUCCESSOR OF THE INDUSTRIAL COURT, TO EXECUTE SAID DECISION.

II

THE PRESENT RESOLUTION IS NOTHING BUT A MERE INSISTENCE TO REPEAT A GRAVE ERROR WE DID NOT NOTICE IN THE ORIGINAL RESOLUTION, NAMELY, THAT OF EXECUTING A DECISION THAT NO LONGER EXISTS BECAUSE IT HAS BEEN REPLACED BY ANOTHER ONE RENDERED BY THE NATIONAL LABOR RELATIONS COMMISSION.

- A -

THE BASIC DECISION OF THE INDUSTRIAL COURT WAS A 2-2-1 DECISION - TWO JUDGES VOTED IN FAVOR OF ORDERING A RECOMPUTATION BY THE COURT EXAMINERS OF THEIR MANIFESTLY ERRONEOUS COMPUTATION OF THE BACKWAGES DUE PETITIONERS. TWO JUDGES VOTED TO GRANT ONLY A PARTIAL RECOMPUTATION, IGNORING THE OBVIOUS FACT THAT THE ORIGINAL COMPUTATION WAS BASED NOT ON ACTUAL RECORDS OF AIR MANILA BUT MORE GENERALLY ON A STRAIGHT COUNTING OF THE NUMBER OF THE DAYS INVOLVED MULTIPLIED BY THE SALARY OF EACH OF THE PILOT-PETITIONERS, REGARDLESS OF WHETHER OR NOT THERE WERE ACTUAL FLIGHTS OR PLANES ON CERTAIN DAYS (NOT VERY FEW) FOR WHICH REASON THEY WOULD NOT BE ENTITLED TO ANY PAY. ONE JUDGE ABSTAINED. AIR MANILA ASKED FOR CLARIFICATION AND EXPRESSED DOUBT AS TO THE VALIDITY OF A RESOLUTION NOT SUPPORTED BY THREE (3) VOTES. RESOLVING THE MOTION, THE COURT SIMPLY DENIED THE SAME BY SAYING WHAT WAS ALREADY MANIFEST, I.E., THAT THERE ARE TWO VOTES IN FAVOR OF COMPLETE RECOMPUTATION AND TWO VOTES FOR PARTIAL RECOMPUTATION AND, THEREFORE, THERE ARE FOUR VOTES FOR PARTIAL RECOMPUTATION AND ONLY TWO FOR COMPLETE RECOMPUTATION, AND WITHOUT SAYING ONE WORD ABOUT THE DOUBTFUL LEGAL STATUS OF SUCH 2-2-1 VOTING WHICH WAS THE THRUST OF THE MOTION. AIR MANILA ELEVATED THE MATTER TO THIS COURT BY CERTIORARI BUT ITS PETITION WAS CAVALIERLY DENIED IN A MINUTE RESOLUTION.

AS THE MATTER INVOLVED WAS ONE OF EXECUTION, AT WHICH STAGE THE RULE IS THAT MATTERS OF EQUITY MAY BE RAISED NOTWITHSTANDING FINALITY OF THE JUDGMENT, AIR MANILA RESUBMITTED TO THE NATIONAL LABOR RELATIONS COMMISSION, AS SUCCESSOR OF THE INDUSTRIA COURT, WHICH HAD BEEN ABOLISHED IN THE MEANWHILE, THE ISSUE OF THE CLARIFICATION AND/OR INVALIDITY OF THE 2-2-1 DECISION. ADMITTEDLY, IN THE PREMISES, SUCH RESUBMISSION COULD HAVE BEEN BARRED BY A PLEA OF RES ADJUDICATA, WHICH, HOWEVER IS A WAIVABLE DEFENSE. INDEED, AMILPA, THE PETITIONER, RAISED SAID DEFENSE, BUT WAS OVERRULED BY THE NLRC. FROM THE DECISION OF THE COMMISSION, WHICH WAS UNANIMOUS, WITH THE SOLE ABSTENTION, NOT DISSENT, OF JUDGE VELOSO WHO HAD RENDERED THE 2-2-1 RESOLUTION WHEN HE WAS IN THE INDUSTRIAL COURT, AMILPA DID NOT APPEAL. AND SO, THE SUBJECT OF THE PRESENT RESOLUTION OF EXECUTION IS THE CIR DECISION, BUT NOTABLY, THE MOTION PRAYING THEREFOR WAS FILED BY AMILPA

ALREADY SEVEN MONTHS AFTER THE DECISION OF THE NLRC HAD BECOME FINAL. EVEN IF WE SHOULD CONSIDER THE PRESENT INCIDENT AS A CERTIORARI TO NULLIFY WHAT MIGHT BE ALLEGED TO BE A VOID DECISION OF THE NLRC, PETITIONER IS ALREADY GUILTY OF LACHES. THE PRESENT INCIDENT IS A MERE AFTERTHOUGHT CONCEIVED BELATEDLY BY COUNSEL WHO MUST HAVE BEEN STUNNED BY THE COGENCY OF THE NLRC DECISION.

- B -

WHAT IS MOST ESSENTIAL IN THIS CASE IS TO UNDERSTAND EXACTLY THE RES ADJUDICATA ISSUE THAT HAS CREPT IN. THERE IS NO QUESTION THAT AS A RULE A DECISION THAT IS ALREADY FINAL AND EXECUTORY SHOULD BE EXECUTED ACCORDING TO ITS TERMS. BUT THIS GENERAL RULE HAS EXCEPTIONS, SUCH AS WHEN OTHER EVENTS SUPERVENE WHICH WOULD MAKE THE LITERAL EXECUTION UNJUST, INEQUITABLE OR LEGALLY INAPPROPRIATE.

BUT MORE THAN THESE EXCEPTIONS, THERE IS THE RULE THAT THE DEFENSE OF RES ADJUDICATA IS A WAIVABLE ONE. SO, EVEN ASSUMING THE ABSENCE OF THE SUPERVENING EVENTS JUST MENTIONED OR THAT THE AMBIGUITY OF THE LEGAL STATUS OF THE SO-CALLED FINAL DECISION OF THE CIR, WHICH THIS COURT REFUSED TO PASS UPON, MAY NOT AFFECT THE EXECUTORY CHARACTER OF THE CIR DECISION IN QUESTION, AS IS, THERE IS, HOWEVER, THE IMPORTANT AND DECISIVE POINT OF RES ADJUDICATA INVOLVED IN THIS CASE IN ITS PRESENT SITUATION.

WE CANNOT JUST IGNORE THE DECISION OF NLRC AS THE ACT OF AN INTERLOPER AND CASUALLY REFER TO IT AS NULL AND VOID. WE MUST BEAR IN MIND THAT A CASE ALREADY DECIDED CAN IN SOME INSTANCES BE REVIVED OR RESURRECTED. WHETHER OR NOT THIS CAN BE DONE DEPENDS ON THE PARTY FEELING AGGRIEVED THEREBY, IN WHICH EVENT, HE HAS THE RIGHT TO PLEAD THE DEFENSE OF RES ADJUDICATA. BUT AGAIN, I EMPHASIZE, RES ADJUDICATA IS A WAIVABLE DEFENSE. IT IS ENTIRELY THE PRIVILEGE OF A PARTY TO WISH TO FIGHT OR NOT ALL OVER AGAIN A MATTER ALREADY PREVIOUSLY JUDICIALLY SETTLED. CERTAINLY, HOWEVER, IT IS NOT FOR THE COURT, NOT EVEN THE SUPREME COURT, TO INVOKE IT FOR HIM.

WHAT IS MORE, IN THIS CASE, WHAT HAPPENED IS THAT WHEN AMI RESORTED TO THE REOPENING OF THE ISSUE OF THE 2-2-1 DECISION IN THE NLRC, THE PETITIONER AMILPA JOINED ISSUES WITH IT, RAISING, OF COURSE, AT THE SAME TIME THE DEFENSE OF RES ADJUDICATA (POINT OF JURISDICTION IN EXECUTION IS COMPELLING ONLY WHEN THE DECISION IS INDUBITABLE LEGALLY OR OTHERWISE, WHICH IS NOT THE CASE HERE, HENCE PROPERLY, ONLY RES ADJUDICATA COULD BE INVOKED). IN THE ULTIMATE SENSE, THE NLRC OVERRULED THE DEFENSE OF RES ADJUDICATA. NOW, THE QUESTION ARISES, WHAT DID AMILPA DO AFTER THAT DECISION? THE RECORD IS CLEAR THAT IT TOOK NO STEP AGAINST IT, MUCH LESS AN APPEAL OR EVEN A CERTIORARI. JUDGMENTS OF THE NLRC ALSO REACH A POINT OF FINALITY LIKE THOSE OF OTHER JUDICIAL OR QUASI-JUDICIAL BODIES. THE MOST IMPORTANT CIRCUMSTANCE IN THIS CASE, WHICH I SUBMIT IS DECISIVE, IS THAT, IT WAS ONLY AFTER SEVEN MONTHS AFTER THE FINALITY OF THE NLRC DECISION THAT AMILPA CAME TO US. AND ITS MOTION IS FOR US TO ORDER THE NLRC TO ENFORCE THE CIR DECISION, CERTAINLY, NOT FOR US TO BE THE COURT TO EXECUTE IT.

MY POINT IS THAT THAT DECISION OF THE CIR HAS ALREADY BEEN SUPERSEDED BY THE NLRC

DECISION WHICH HAD BECOME FINAL THRU THE INDIFFERENCE OR OMISSION OF HEREIN PETITIONER. THAT CIR DECISION NO LONGER EXISTS IN THE CONTEMPLATION OF THE RULE ON RES ADJUDICATA AND ITS WAIVABILITY. IN ANY EVENT, IF THE MAJORITY OF THE COURT FEELS THAT MY POSITION IS WRONG, ALL I AM ASKING IS THAT THE RESOLUTION GIVE THE REASONS IN SUPPORT OF THE OPPOSITE VIEW FOR THE GUIDANCE OF ALL CONCERNED.

III

THE MAIN PREMISE OF THE COURT'S ORIGINAL RESOLUTION IS THAT ONCE A DECISION HAS BECOME FINAL IT CAN NO LONGER BE CHANGED IN ANY WAY. IF THAT IS SO, WHY DID THE RESOLUTION MODIFY THE AWARD OF THE CIR BY APPLYING THE MERCURY CASE-THREE-YEAR FORMULA? BESIDES, THIS COURT HAS NEVER APPLIED THE MERCURY CASE FORMULA TO DECISIONS ALREADY FINAL AND EXECUTORY, BUT ONLY TO INSTANCES WHERE WE WERE CALLED UPON TO DETERMINE ORIGINALLY HOW MUCH BACKWAGES SHOULD BE AWARDED. THERE IS NO PARITY BETWEEN THAT CASE AND THE PRESENT ONE. MAY I ADD, IF WE CAN ALTER THE CIR DECISION ON GROUNDS OF EQUITY UTILIZING THE MERCURY RULE, WHY DO WE REFUSE TO DO REAL JUSTICE AND EQUITY BY ATTENDING TO THE NLRC DECISION?

IV.

ON THE PRACTICAL SIDE, AIR MANILA APPEARS TO BE BANKRUPT IF NOT INSOLVENT. IF WE ARE GOING TO APPLY IN PRINCIPLE THE MERCURY RULE BY CHANGING A FINAL JUDGMENT, WHICH WE HAVE NEVER DONE BEFORE, I SUBMIT IT WOULD BE IN THE BETTER INTERESTS OF JUSTICE TO BASE OUR RESOLUTION ON THE PROPOSAL OF MR. SILVERIO, OFFERING P2,000,000.00 CASH, PAYABLE QUARTERLY, AND SEVERAL MILLION PESOS WORTH OF SHARES OF STOCK OF AIR MANILA, WHATEVER THEY MIGHT BE WORTH IN THE FUTURE.

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