

FAITH TAXI/RAMY JALANDO-ON, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, SEVENTH DIVISION, CEBU CITY, WENNIE L. ACOSTA, ALAN V. MAMON, DONATO A. AGUDA, ISABELO B. PACINI...

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

The filed under Rule 65 of the 1997 Rules of Civil Procedure, seeks to nullify the November 25, 2010 Decision[1] of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-08-000474-2010 for illegal dismissal, non-payment of separation pay and refund of cash deposits.

THE FACTS

Petitioner Ramy Jalando-on is the operator of petitioner Faith Taxi. Private respondents (respondents) are the drivers of petitioner's taxi units.

According to Petitioner[2]

Petitioner entered into a Rent-to-Own agreement or "Boundary-Hulog" arrangement with respondents. Under this agreement, the parties agreed that: the amortization for the taxi units would be P1,050.00 per day; that petitioner would exclusively supply the fuel; and that if respondents cannot remit their daily amortization, petitioner would take back the unit.

Respondent Acosta's unit overheated sometime in the first week of September 2009, but it was only repaired about a week later. He immediately filed the illegal dismissal case without waiting for his unit to be repaired.

Respondent Abindan abandoned his unit at petitioner's premises, and, without informing petitioner, took with him two days worth of amortization which has not been paid.

Respondent Aguda left his unit with his "extrador" without notifying petitioner, taking with him four days worth of amortization which has not been paid.

Respondent Mamon has a total of P18,284.00 unpaid amortization plus a personal loan of P1,890.00 and P940 worth of unpaid fuel. Respondent Pacinto has a total of P17,388.00 unpaid amortization plus a personal loan of P2,000.00 and P1,509 worth of unpaid fuel. To minimize his losses and only after repeated demands to the two respondents to pay, petitioner was forced to rescind the rent-to-own contract.

According to Respondents[3]

Respondents were hired as taxi drivers by petitioner on various dates in 2007. They drove the taxi units assigned to them 24-hours a day. They were paid based on the excess of their boundary which is P850.00 per day. They were also unilaterally imposed an additional amount of P200.00 per day by way of deposit which, supposedly, would make them the owner of the taxi units after five years.

Respondents tried to pay their daily remittance despite the fact that they are obligated to remit the P1,050.00 even

if the unit was not functional. What is worse is that petitioner had the sole discretion which unit to repair.

Respondents further claim that Pacinio, Abindan and Mamon were dismissed on various dates in 2009 because they failed to remit their monthly amortizations.

Respondent Acosta claims that sometime in the first week of September 2009 his unit overheated. He brought it to petitioner's shop to be repaired. When he returned to check it after three days, it was still untouched while the other units which came later were already repaired.

Respondent Aguda went to Manila sometime in April 5, 2009 due to an emergency. When he returned on April 9, 2009, he was no longer allowed to drive since his unit was already assigned to another driver. Apparently, petitioner thought that Aguda would no longer return.

THE CASE

Aggrieved by the turn of events, respondents filed separate complaints for illegal dismissal, non-payment of separation pay and refund of cash deposits, sometime on September 18, 23 and 28, 2009.[4]

On the rendered the Decision[5], the fallo of which reads:

WHEREFORE, premises considered, judgment is hereby rendered DIRECTING respondent RAMY JALANDO-ON, owner/operator of FAITH TAXI to pay complainants of their backwages and separation pay, as follows: (1) EDGARDO B. ABINDAN - P91,650.00; (2) WINNIE L. ACOSTA - P67,210.00; (3) DONATO A. AGUDA - P102,930.00; (4) ALLAN V. MAMON - P63,450.00; and (5) ISABELO B. PACINIO - P62,275.00, or the total amount of THREE HUNDRED EIGHTY SEVEN THOUSAND FIVE HUNDRED FIFTEEN PESOS (P387,515.00).

FURTHER, respondent RAMY JALANDO-ON is DIRECTED to refund the still undetermined cash deposits of complainants while under his employ.

SO ORDERED.

Petitioner appealed the case to the NLRC.

On November 25, 2010, the NLRC rendered the assailed, Decision the fallo of which reads:

WHEREFORE, premises considered, there is no cogent reason to deviate from the findings of the Labor Arbiter. The Decision below is, hereby, AFFIRMED.

SO ORDERED.

Petitioner's motion for reconsideration was denied by the NLRC through its Resolution dated April 29, 2011.[6]

On September 30, 2011, the instant petition was filed.[7]

On January 3, 2013, during the pendency of the instant petition, the parties entered into the Compromise Agreement,[8] herein quoted in full, as follows:

COMPROMISE AGREEMENT

COME NOW the parties, unto this Honorable Commission, respectfully submit this Amicable Settlement in settlement of the remaining balance of the judgment award (cash deposit) of the complainants in the above-entitled cases, to wit:

- That out of the complainants' total judgment award pertaining to their cash deposit in the above-entitled cases, in the amount of SIX HUNDRED SIXTY-FOUR THOUSAND PESOS (Php 664,000.00), FOUR HUNDRED TEN THOUSAND PESOS (P410,000.00) has already been paid to the complainants pursuant to

the auction sale of the two (2) levied motor vehicles held on December 7, 2012 and there remains a balance of TWO HUNDRED FIFTY-FOUR THOUSAND FOUR HUNDRED PESOS (Php 254,400.00) yet to be satisfied;

- That by way of compromise, respondent Ramy Jalando-on offered to pay the complainants the sum of TWO HUNDRED FIFTY-FOUR THOUSAND FOUR HUNDRED PESOS (Php 254,400.00), subject to following terms and conditions:

a) That the said total amount shall be paid in six (6) equal installments, as follows:

P42, 400.00 - payable on January 31, 2013;

P42, 400.00 - payable on February 28, 2013;

P42, 400.00 - payable on March 31, 2013;

P42, 400.00 - payable on April 30, 2013;

P42, 400.00 - payable on May 31, 2013; and,

P42, 400.00 - payable on June 28, 2013.

b) That the respondent shall issue six (6) uncrossed checks corresponding to the amount and the dates as above-stated and the same shall be in the name of Atty. Sarah M. Villamor, which six (6) checks shall be issue upon the execution of this agreement;

c) That in the event that any of the check will be dishonored by the drawee bank upon presentment for payment on the date indicated therein, the complainant shall be entitled, without need of demand, to request for the issuance of an Alias Writ of Execution for the enforcement of the remaining balance of the judgment award in the above-entitled cases and any amount that may be paid prior to the default in payment shall be forfeited in favor of the complainants and shall no longer be deducted from the balance of the judgment award yet to be satisfied as mentioned in paragraph 1 hereof.

- That the complainants hereby undertake to execute the pertinent document should their judgment award be COMPLETELY and FULLY satisfied pursuant to the herein stipulated terms and conditions;

- That the respondent hereby agrees to shoulder at his expense whatever fee/s that may be charged by the NLRC Cashier in connection with the execution of the foregoing agreement.

- That the parties hereby agree to faithfully comply with the terms and conditions of this agreement.

WHEREFORE, in the light of the foregoing, the parties jointly pray of this Honorable Commission that the foregoing Compromise Agreement be APPROVED.

RESPECTFULLY SUBMITTED.

On July 4, 2013, respondents filed before Labor Arbiter the Satisfaction of Judgment,[9] praying that the case be closed and terminated because petitioner had paid the judgment award.

On July 9, 2013, the Labor Arbiter issued the Order[10] granting the respondents' prayer. It reads:

ORDER

On record is a "Satisfaction of Judgment," filed by the complainants, through counsel, and received before this Office on 05 July 2013, to wit:

"1. That the Honorable Labor Arbiter's consolidated Decision in the above-captioned cases dated June 4, 2010, already became final and executory;

"2. That the respondent paid and/or settled the complainants' judgment award in the total amount of SIX

HUNDRED SIXTY FOUR THOUSAND PESOS (P664,000.00), Philippine Currency, receipt of which is hereby acknowledged to have been received by the complainants in installment, representing FULL and COMPLETE satisfaction of their judgment award in the above-entitled cases;

WHEREFORE, in the light of the foregoing, the complainants respectfully move that the above-entitled cases be considered CLOSED and TERMINATED in view of the full and complete satisfaction of their judgment award.”

Finding the said Satisfaction of Judgment proper, not contrary to law, morals and public policy, the same is hereby APPROVED.

IN VIEW THEREOF, let these cases be, as it is hereby ordered CLOSED and TERMINATED.

SO ORDERED.

Meanwhile, on September 17, 2013, respondents filed before this Court their Comment[11] to the petition, alleging that the case has been mooted in view of the full satisfaction of the judgment award.

On November 14, 2013, petitioner filed the Reply to Comment,[12] contending that the compromise agreement was for compliance purposes only in view of the fact that the NLRC decision had become final and executory.

On February 11, 2014, respondents filed their Memorandum of Authorities.[13]

On February 13, 2014, the Memorandum of Authorities for the Petitioner[14] was filed.

Subsequently, We declared the case submitted for decision.[15]

ASSIGNMENT OF ERRORS

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING ILLEGAL DISMISSAL.

ARGUMENTS

Petitioner argues that he did not dismiss the respondents. He pointed out that he merely took back the taxi units assigned to them because they failed to remit the agreed daily boundaries and amortizations. Petitioner is willing to let respondents drive their units again provided that they first settle their arrears.

Petitioner also alleges that the amount of backwages and separation pay have no factual and legal basis. The same were computed as if respondents operated their taxi units for 24 hours per day and 28 days a month, which he says is absurd.

Lastly, petitioner assails the order to refund the still undetermined cash deposits. He contends:

Private respondents claimed in their Motion for Computation of Deposits dated December 2, 2011 par, 3 thereof as Annex “9” which states: “P200.00 per day for twenty-eight (28) days per month commencing from the time of their employment up to the time their termination from work, which cash deposits the respondent (petitioner in his case) was directed by the Honorable Labor Arbiter to return to the herein complainants.”

It was done on a straight method manner which should be denied, not only on baseless ground but because it was not supported by evidence. Further, the actual dates of the work engagements of private respondents were not established.

Respondents for their part did not make any counter-arguments to those made by petitioner but insist that the instant petition has been rendered moot in view of the amicable settlement that the petitioner himself initiated.

Petitioner disagrees. He argues:

The respondents say that the case is now moot and academic because the judgment award was already satisfied. But this argument is for compliance purposes only insofar as the NLRC Decision Cebu which becomes final and executory after ten (10) calendar days from receipt thereof under the NLRC Rules x x x

THE COURT'S RULING

The petition is DENIED.

The Court will first resolve the issue of mootness.

It has been held that the finality of the NLRC's decision does not preclude the filing of a petition for certiorari under Rule 65 of the Rules of Court. The NLRC's issuance of an entry of judgment after the lapse of ten (10) days from the parties' receipt of its decision will only give rise to the prevailing party's right to move for the execution thereof but will not prevent this Court from taking cognizance of a petition for certiorari on jurisdictional and due process considerations.[16] In other words, this Court may still review the decisions or resolutions of the NLRC even when the said decisions or resolutions have already been executed.[17]

In *Leonis Navigation v. Villamater*, [18] after the NLRC resolution awarding disability benefits became final and executory, the employer paid the employee the monetary award. The employer then filed a petition for certiorari but this Court dismissed it because the NLRC Decision had already become final and executory and the award of the Labor Arbiter was already executed which resulted to the termination of the case. The Supreme Court, however, reversed Our ruling. It held that the final and executed decisions of the NLRC should not have prevented Us from reviewing the same under Rule 65 of the Rules of Court.

In *Philippine Transmarine Carriers, Inc. v. Legaspi*, [19] the employer paid the employee the judgment award after the NLRC's decision became final and executory. Subsequently, the employer filed a petition for certiorari before this Court which We found to be partially meritorious. We modified the NLRC's decision and reduced the amount awarded to the employee. The employer then moved that the excess payment that the latter received be returned. We, however, denied the motion and ruled that We should have dismissed the petition at the outset because it was already moot and academic considering that the NLRC decision had become final and executory, and that the judgment award had been satisfied. We essentially abandoned Our earlier ruling but the Supreme Court did not sustain Our Decision. It held that the petition for certiorari was not rendered moot despite the employer's satisfaction of the judgment award. It also directed the employee to return to the employer the excess payment.

Verily, contrary to respondents' contention, the instant petition cannot be rendered moot and academic despite the satisfaction of the judgment award. It is also important to note that the compromise agreement entered by the parties did not provide a stipulation for the dismissal of the instant petition after the satisfaction of the judgment award. We, therefore, rule that We can totally or partially reverse the ruling of the NLRC if We find it to be tainted with grave abuse of discretion, in line with Section 14, Rule XI of the 2011 NLRC Rules of Procedure which provides:

EFFECT OF REVERSAL OF EXECUTED JUDGMENT. — Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court, the Labor Arbiter shall, on motion, issue such orders of restitution of the executed award, except wages paid during reinstatement pending appeal.

Going now to the issue of whether respondents were illegally dismissed.

In Villamaria, Jr. v. Court of Appeals,[20] a case cited by petitioner which also involves a similar “boundary-hulog” scheme, the Supreme Court sustained the employee’s position that he was illegally dismissed because the employer was not able to show evidence that the former was terminated in accordance with the law. It held:

As respondent's employer, it was the burden of petitioner to prove that respondent's termination from employment was for a lawful or just cause, or, at the very least, that respondent failed to make his daily remittances of P550.00 as boundary. However, petitioner failed to do so. As correctly ruled by the appellate court:

x x x

Moreover, well-settled is the rule that, the employer has the burden of proving that the dismissal of an employee is for a just cause. The failure of the employer to discharge this burden means that the dismissal is not justified and that the employee is entitled to reinstatement and back wages.

In the case at bench, private respondent in his position paper before the Labor Arbiter, alleged that petitioner failed to pay the miscellaneous fee of P10,000.00 and the yearly registration of the unit; that petitioner also stopped remitting the "boundary hulog," prompting him (private respondent) to issue a "Paalala," which petitioner however ignored; that petitioner even brought the unit to his (petitioner's) province without informing him (private respondent) about it; and that petitioner eventually abandoned the vehicle at a gasoline station after figuring in an accident. But private respondent failed to substantiate these allegations with solid, sufficient proof. xxx

x x x

On another point, private respondent did not submit any police report to support his claim that petitioner really figured in a vehicular mishap. Neither did he present the affidavit of the guard from the gas station to substantiate his claim that petitioner abandoned the unit there. (emphasis supplied)

In this case, petitioner alleged that he “suspended” respondents because they failed to remit their boundaries and/or amortizations. However, he did not present evidence any to substantiate this. No ledger, record book or similar document was adduced to show what amount was paid by respondents and what was not. The contract embodying the “boundary-hulog” scheme as well as the position papers that were filed by the parties before the Labor Arbiter are not even on the record before Us. No document was also shown that he was ready to accept respondents provided they pay their arrears. Respondents, therefore, must be deemed illegally dismissed. Again, the rule is that the employer has the burden of proving that the dismissal of an employee is for a just cause. The failure of the employer to discharge this burden means that the dismissal is not justified and that the employee is entitled to reinstatement and back wages.[21]

Having ruled that respondents were illegally dismissed, the award of backwages is in order. Employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time of their illegal termination up to the finality of the decision, since reinstatement is no longer possible.[22] This also entitles respondents separation pay equivalent to one (1) month salary for every year of service.[23]

Petitioner argues that the amount of backwages and separation pay did not have any legal basis. Allegedly, the same were computed as if respondents operated their taxi units for 24 hours per day and 28 days a month, which he says is absurd.

We do not agree.

Respondents were paid under the boundary system. It would be very difficult to ascertain their actual salary rate

especially since petitioner did not provide his own computation (supported by concrete evidence) of what should the rate be. Under the circumstance, We find to be just and equitable the daily rate pegged by Labor Arbiter which is P235.00.[24] Incidentally, it is below the minimum wage for 2009 and 2010 in Region VI which is P250.00 and P265, respectively.[25] Obviously, this is favorable to petitioner.

Finally, We go to the issue of cash deposits. Petitioner says that, based on respondents' Motion for Computation of Deposits dated December 2, 2011, they demanded for P200.00 per day for 28 days commencing from their engagement up to their termination. Petitioner, however, failed to attach a copy of the December 2, 2011 Motion for Computation of Deposits, as well as the other related pleadings filed by the parties and the issuances of the Labor Arbiter relative to the incident. Under Section 1, Rule 65 of the Rules of Court, a petition for certiorari shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto. Absent the relevant and pertinent pleadings and documents on the issue of cash deposits, the Court would be constrained to abstain from ruling on the matter. Certainly, the lack of the foregoing would prevent this Court from making an informed and comprehensive ruling.

Prescinding from the foregoing discussion, We find that the NLRC did not commit grave abuse of discretion.

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.[26] As discussed, this is not the case here. The NLRC decision was in accord with existing laws and jurisprudence.

WHEREFORE, the petition is DENIED. The assailed NLRC Decision dated is AFFIRMED in toto.

SO ORDERED.

Delos Santos, J., Chairperson, and Lopez, JJ., concur.

[1] Rollo, p. 19.

[2] Rollo, p. 7.

[3] Rollo, p. 20.

[4] Rollo, p. 65.

[5] Rollo, p. 65.

[6] Rollo, p. 29; The Resolution dated April 29, 2011 was received by petitioner on August 1, 2011, see rollo, p. 6.

[7] Rollo, p. 3.

[8] Rollo, p. 165.

[9] Rollo, p. 166.

- [10] Rollo, p. 167.
- [11] Rollo, p. 137.
- [12] Rollo, p. 142.
- [13] Rollo, p. 160.
- [14] Rollo, p. 152.
- [15] Rollo, p. 169.
- [16] *Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012.
- [17] See *Leonis Navigation v. Villamater*, G.R. No. 179169, March 3, 2010, 614 SCRA 182.
- [18] *Supra*.
- [19] G.R. No. 202791, June 10, 2013.
- [20] G.R. No. 165881, April 19, 2006.
- [21] *Paguio Transport Corporation v. NLRC*, G.R. No. 119500, August 28, 1998.
- [22] See *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*, G.R. No. 163091, October 06, 2010.
- [23] *Golden Ace Builders v. Talde*, G.R. No. 187200, May 05, 2010.
- [24] See Rollo, p. 71.
- [25] See http://www.nwpc.dole.gov.ph/pages/statistics/stat_wage%20rates1989-present_non-agri.html.
- [26] *Yu v. Judge Reyes-Carpio*, G.R. No. 189207, June 15, 2011.

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