

**NATIONAL WATERWORKS AND SEWERAGE AUTHORITY,
PETITIONER, VS. NWSA CONSOLIDATED UNIONS, COURT OF
INDUSTRIAL RELATIONS, AND ATANACIO PACIS, RESPONDENTS.**

G.R. Nos. L-32444-46. August 18, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the Order dated July 15, 1970, of the defunct Court of Industrial Relations (CIR)[*] in cases Nos. 19-IPA, 19-IPA (1), 19-IPA (2), entitled "NWSA Consolidated Unions vs. National Waterworks and Sewerage Authority" stating:

"WHEREFORE, the Clerk of Court is hereby ordered to issue the Writ of Execution against respondent NWSA for the sum of FORTY EIGHT THOUSAND (P48,000.00) PESOS." (Rollo, p. 30).

as well as the Resolution dated August 11, 1970, of the same court, sitting en banc,**] in the said cases denying petitioner National Waterworks and Sewerage Authority's (NWSA) motion for reconsideration of the aforementioned order.

It appears that a cluster of cases involving NWSA and the respondent NWSA Consolidated Unions were instituted before the defunct CIR over disputes dealing with collective bargain-ing agreements, backwages, etc., as well as attorney's fees of the lawyers who assisted the NWSA employees and workers through their consolidated unions, namely, Cases Nos. 66-IPA and 19-IPA, 45-IPA, 27-IPA and 52-IPA. The NWSA employees and workers eventually prevailed, and the respondent NWSA Consolidated Unions, particularly KKMK-PAFLU and BELA-PAFLU through their respective presidents, Attys. Cirpiano Cid, Israel Bocobo as well as herein respondent Atty. Atanacio Pacis were all awarded their respective shares in the attorney's fees.

The controversy arising in the instant cases before the Supreme Court deals with the propriety of payment of the attorney's fees of Atty. Atanacio Pacis amounting to P48,000.00 representing 6% of the gross sum of P800,000.00 which NWSA has already paid to its employees and workers in staggered amounts of P300,000.00 and P500,000.00 less the attorney's fees as settled in the CIR Order dated June 16, 1966 which wittingly or unwittingly left out the share of Atty. Pacis. The rather complex character of the present petition before this Court is the fact that the respondent NWSA Consolidated Unions, which had already been paid the sums from NWSA, did not file its answer to the petition much less a brief in its behalf, so much so that reliance may only be made upon the arguments and allegations of petitioner NWSA and the brief answer of Atty. Pacis.

The following facts can however, be reasonably established:

The attorney's fee due to the respondent Atty. Atanacio Pacis was first established in the CIR Order of November 27, 1964 which became final in the absence of any appeal therefrom and/or a reconsideration thereof. This order fixed the fees of the lawyers and the share of the NWSA Consolidated Unions as follows:

"Atty. Cipriano Cid 6%

Atty. Atanacio E. Pacis 6%

Atty. Israel Bocobo 6%

NWSA Consolidated Unions. 5%

Total 23%

"Let these amounts therefore be seg-regated by respondent company from the awards thus granted under their case and delivered to the person and/or entity mentioned herein." (Rollo, pp. 72-73).

Thus, according to Atty. Pacis, he was paid his 6% fee during the first partial payment made in 1965 (Rollo, p. 73).

Subsequently, in the CIR Order of July 18, 1968, NWSA was directed to pay the sum of P18,000.00 to Atty. Pacis repre-senting his 6% attorney's fees in the second partial payment of P300,000.00 pursuant to the sharings mentioned in the CIR Order of November 27, 1964. The respondent NWSA Consolidated Unions opposed the said CIR Order of July 18, 1968 leading to its appeal to the Supreme Court in G.R. No. L-26890-92, entitled "NWSA Consolidated Unions vs. National Waterworks and Sewerage Authority, et al."

In its Decision promulgated on May 29, 1970, the Supreme Court in the said appeal affirmed the CIR Order of July 18, 1968, stating:

"It will be seen that the paragraph transcribed makes no reference to the implementation of Case No. 66-IPA but explicitly refers to the award in Case No. 19-IPA. And this is logical since Case No. 66-IPA had not yet been fully decided, and was still under consider-ation by the labor court. Hence, it is just that Atty. Pacis should share in the 23% counsel fees corresponding to the amounts appropriated by the NWSA under Item IV abovementioned of the collective bargaining agreement since these were the claims adjudicated in the case wherein he acted as one of the attorneys. No error was therefore, committed in the appealed order of 18 July 1968.

"IN VIEW THEREOF, the appealed order is affirmed, with costs against appel-lants." (133 SCRA 180, 185)

Said CIR Order of July 18, 1968, has the following dispo-sitive part:

"WHEREFORE, pursuant to the order of November 27, 1964, the National Water-works and Sewerage Authority is hereby ordered to pay to Atty. Atanacio E. Pacis the sum of P18,000.00 corresponding to his 6% attorney's fee on the P300,000.-00 appropriated fee payment to workers under the decision of the case." (Annex "A" of Petition in G.R. no. L-26890--92).

Seeking the immediate implementation of the aforesaid Supreme Court Decision, Atty. Pacis filed before the CIR an Urgent Motion for Execution dated June 30, 1970 (Annex "A" of Petition; Rollo, pp. 20-21), alleging, inter alia, that the P300,000.00 paid by NWSA in March, 1966 pursuant to the partial decision of March 9, 1966 in Case No. 66-IPA is only a part of the P800,000.00 which the NWSA undertook to pay as follows - P300,000.00 at the end of March, 1966, and the balance of P500,000.00 in three installments on quarterly basis; that the full amount of P800,000.00 had already been paid to the workers, and the corresponding fees of Atty. Cipriano Cid and Israel Bocobo have likewise been paid and, therefore, prayed for a writ of execution for the payment of his P48,000.00 attorney's fees from NWSA.

On July 16, 1970, NWSA filed its Opposition (Annex "B" of Petition; Rollo, pp. 22-24) to said motion. On July 22, 1970, NWSA through counsel received a Notice of Order (Annex "C" of Petition; Rollo, p. 28) attaching thereto the questioned CIR Order of July 15, 1970 (Annex "C-1" of Petition; Rollo, pp. 29-30) which commanded the clerk of court to issue the writ of execution as prayed for in said motion, as it stated that there was no

opposition to the motion from any party.

On July 27, 1970, NWSA filed its motion for reconsideration (Annex "D" of Petition; Rollo, pp. 39-40) of said questioned order and its arguments (Annex "D-1" of Petition; Rollo, pp. 41-43) in support thereof.

On August 17, 1970, NWSA through counsel received a copy of the similarly questioned CIR Resolution en banc dated August 11, 1970 (Annex "E" of Petition; Rollo, p. 45) which denied the motion for reconsideration for having been filed beyond the four (4)-day reglementary period contrary to Section 17-A of the CIR Rules.

After due Notice of Appeal had been given to the CIR, NWSA filed the present petition before this Court on September 11, 1970. This Court gave DUE COURSE thereto in its Resolution dated September 15, 1970 (Rollo, p. 54).

NWSA, through the Office of the Government Corporate Counsel, raises the following assignments of error against the respondent CIR, viz:

"(A)

Respondent CIR committed a grave abuse of discretion tantamount to lack of jurisdiction when in its Order of July 15, 1970, Annex "C-1" hereof, it directed the issuance of a writ of execution against your petitioner for the sum of forty-eight thousand (P48,000.00) Pesos, representing 6% of the amount of P800,000.00, as attorney's fees of respondent Atty. Atanacio Pacis, when in its previous Order of June 16, 1966, Annex "G" hereof, the same respondent CIR directed your petitioner to disburse the said amount of P800,000.00 to employees concerned without the attorney's fees of respondent Atty. Atanacio Pacis;

(B)

Respondent CIR erred in holding your petitioner, who is not the client of respondent Atty. Atanacio Pacis, liable for the attorney's fees of the latter;

(C)

Respondent CIR committed a grave abuse of discretion tantamount to lack of jurisdiction, when it held that your petitioner's Motion for Reconsideration dated July 24, 1970 was filed out of time." (Rollo, p. 12).

NWSA's refusal to pay Atty. Pacis 6% attorney's fees, as commanded in the CIR Order of July 15, 1970 which in effect approved the execution of the earlier CIR Order of July 18, 1968 which was affirmed by the Supreme Court in its final Decision of May 29, 1970 in G.R. nos. L-26890-92, is harped upon the much earlier CIR Order of June 16, 1966 (Annex "G" of Petition; Rollo, pp. 49-52) in Cases Nos. 66-IPA and 19-IPA, 45-IPA, 27-IPA and 52-IPA, entitled "Kaisahan at Kapatiran ng mga Manggagawa at Kawani ng NAWASA (PAFLU) and Balara Employees' and Labor Association (PAFLU) vs. National Waterworks and Sewerage Authority", issued through then Presiding Judge Arsenio L. Martinez. The text of said CIR Order of June 16, 1966 is quoted in full herein below:

"ORDER

"This concerns the motion filed by Attys. Cipriano Cid and Israel Bocobo on June 4, 1966, praying for reasons alleged therein, as follows: That this Honorable Court:

'1. Order the Respondent Management to pay directly to Attys. Cipriano and Israel Bocobo as lawyers' fees pursuant to case No. 10-IPA 6% each of the amount of P300,000.00 appropriated pursuant to NAWASA

Resolution No. 267, Series of 1966, and also out of the balance of P500,000.00 that would be subsequently paid in three quarter by installments, regardless of and in advance of actual payment to claimants.

2.) Order of Resolution Ma-nagement to pay directly Atty. Cipriano Cid and Israel Bocobo as their attorney's fees pursuant to Case No. 45-IPA 17% and 13% respectively of the amount of P154,000.00 appropriated pursuant to the same Resolution No. 267, regardless of and in advance of actual payment to claimants: as well as other benefit payment that may be made in the future in Case No. 15-IPA.'

"From the pleading it is very clear that the basis of the claim of attor-ney's fees are previous awards for attor-ney's fees in Case No. 19-IPA and 45-IPA. In the former Attys. Cid and Bocobo were granted by the Court 6% each, while in Case No. 45-IPA they were granted 17% and 13% respectively.

"Respondent company filed no opposi-tion to the motion. On the contrary, the Government Corporate Counsel rendered an Opinion No. 76, Series of 1966, to the effect that Attys. Cid and Bocobo are entitled to attorney's fees at the rates being claimed.

"At the hearing of the motion on June 9, 1966, the president of the peti-tioner union intimated to the Court that they are filing their opposition to the motion. The Court then suggested that the parties, the employees and the lawyers, thresh out and resolve the matter among themselves. It suggest-ed that, they sit together before the unions file their pleading to avoid further disagreement, if any.

Heeding the advice of the Court, the parties conferred, as a result of which an agreement was reached, as embo-died in the Joint Manifestation/Motion filed on June 11, 1966. They agreed as follows:

"a) With respect to Item No. 1 in Resolution No. 267, Series of 1966 of NAWASA, appropriating the amount of P300,000.00, the fol-lowing will be deducted and paid as fees:

1. Atty. Cipriano Cid 4%
2. Atty. Israel Bocobo. 4%

3. KKMK-PAFLU. 2%

4. BELA-PAFLU. 2%

(This is a result of waiver of 2% each by the lawyers in favor of the Unions)

The fees shall be paid in advance of any actual payment to individual claimants.

(Copy of Resolution No. 267 is respectfully attached)

"b) With respect to Item No. 2 in Resolution No. 267, appropriat-ing the amount of P154,000.00, the following will be deducted and paid as fees:

1. Atty. Cipriano Cid 12%
2. Atty. Israel Bocobo. 8%

3. KKMK-PAFLU. 3%

4. BELA-PAFLU..... 1%

(The remaining 6% is waived in favor of the employees)

No fees shall be deducted from the longevity pay included in the amount appropriated.

"c) The balance of the amount of P500,000.00 be appropriated by Management to complete the amount of P800,000.00 ordered to be paid in the Partial Decision of this Honorable Court dated March 9, 1966, shall likewise be subject to the following fees deduction and payment.

1. Atty. Cipriano Cid 4%

2. Atty. Israel Bocobo. 4%

3. KKMK-PAFLU..... 2%**4. BELA-PAFLU 2%**

(Also a result of waiver of 2% each by the lawyers in favor of the Union)

"d) This agreement is confined to the amounts mentioned in the last paragraph of page 2 and 1st paragraph of page 3 of the Partial Decision of this Honorable Court rendered in the above entitled case of March 9, 1966.

"Parties pray that the foregoing agreement be approved, and an order be issued directing the Respondent Management to pay the lawyers and the Union the fees directly, as agreed upon.

"Finding the terms of the agreement not to be contrary to law, public policy or morals, the same is hereby approved and the previous awards or attorney's fees in favor of Attys. Cid and Bocobo are hereby modified with respect to these particular payments.

"WHEREFORE, Respondent Authority is hereby ordered to pay the claimants herein directly, pursuant to the aforementioned agreement, to the followings:

I. Re: P300,000.00 Case No. 19-IPA, (1) & (2)

Atty. Cipriano Cid - 4% P12,000.00

Atty. Israel Bocobo 4% P12,000.00

President, KKMK (PAFLU) 2% P 6,000.00

President, BELA (PAFLU) 2% P

6,000.00

II. Re: P154,000.00 Case No. 45-IPA

Atty. Cipriano Cid 12% P18,480.00

Atty. Israel Bocobo 8% P12,320.00

President, KKKM (PAFLU) 3% P 4,620.00

President, BELA (PAFLU) 1% P 1,540.00

“With respect to the P500,000.00 as appearing in paragraph (c), the same rate for attorney's fees is applied.

"In case there are workers who have already received their share from the appropriated P300,000.00 and P154,000.00, under the old rate of attorney's fees, they shall be entitled to a correspond-ing refund.

"SO ORDERED."

NWSS contends that inasmuch as it has fully complied with the letter of said CIR Order of June 16, 1966, by paying the aggregate sum of P800,000.00 to the prevailing employees and workers and segregating the respective shares of Attys. Cid, Bocobo, and those of KKKM-PAFLU and BELA-PAFLU which amounts were likewise paid to each of them, it should not be penalized for obeying the same. Said order never mentioned the attorney's fees of Atty. Pacis, and NWSS submits that the proper remedy would be for Atty. Pacis to collect his attorney's fees directly from his clients.

Atty. Pacis avers that the same CIR Order of June 16, 1966 is the result of an agreement between Attys. Cipriano Cid and Israel Bocobo on one hand, and the Unions on the other hand; that under the agreement, Atty. Cid and Bocobo waived in favor of the Balara Employees and Laborers Association (BELA) and Kaisahan at Kapatiran ng Manggagawa at Kawani ng NAWASA (KKMK) 2% each, thus modifying the fees of Cid and Bocobo as follows:

Atty. Cipriano Cid

4%

Atty. Israel Bocobo

4%

BELA

2%

KKMK

2%

Total

12%

that he (Atty. Pacis) was not a party to this agreement, hence, he cannot be affected thereby; that the same order merely approved the reduction of attorney's fees of Cid and Bocobo, but he is not in any manner affected for being a non-party thereto, and, as a matter of fact, the CIR Order of July 18, 1968 ordered the payment by NWSA to Atty. Pacis the amount of P18,000.00 representing his 6% attorney's fees from the sum due of P300,000.00, and this subsequent order was affirmed by the CIR en banc and by the Supreme Court in G.R. Nos. 26890?92.

It appearing that the subject P300,000.00 already paid by NWSA by the end of March 1966 is the same, and part and parcel, of the aggregate sum of P800,000.00 due to its employ-ees and workers, NWSA cannot be held liable

to pay the separate and additional sum of P18,000.00 for the attorney's fees of Atty. Pacis. The NWSA cannot be faulted for following to the letter the sharings in the attorney's fees per the CIR Order of June 16, 1966 which inadvertently omitted the 6% attorney's fees of Atty. Pacis. The proper remedy however, under the premises is for Atty. Pacis to claim directly from his clients in the absence of material and concrete showing of bad faith or gross negligence on the part of NWSA which the records do not show at all.

Similarly, when NWSA paid the subsequent amount of P500,000.00 in three quarterly installments to its employees and workers still following the proportions as approved in said CIR Order of June 16, 1966, as to the attorney's fees, NWSA cannot be held in bad faith or under gross negligence for failure to segregate the 6% attorney's fees of Atty. Pacis and pay him directly. Atty. Pacis should have immediately called the attention of NWSA on the matter or moved for the stoppage of such payments until the question of his attorney's fees from such amounts shall have been settled or clarified. The CIR Order of July 18, 1968 commanding the NWSA to pay Atty. Pacis his 6% attorney's fees from the amount of P300,000.00 was too late. Said amount had already been disbursed two years earlier.

While it is true that the 6% attorney's fee of Atty. Pacis was fixed by the earlier CID Order of November 27, 1964, and that Atty. Pacis was not a party to the agreement entered into by the other union counsels with their union clients which was approved by the CIR Order of June 16, 1966, it must be stressed that NWSA followed said CIR Order of June 16, 1966 which is a later order and can be reasonably assumed to be more controlling than the Order of November 27, 1964. Be that as it may, NWSA cannot be held liable for the negligence of Atty. Pacis who failed to assert his rights. Since the total amount due to its employees and workers had already been paid in full by NWSA, Atty. Pacis cannot insist on the payment of attorney's fee without unwittingly establishing a lawyer-client relationship between him and NWSA which is untenable.

At most, the recourse of Atty. Pacis is to collect either judicially or extrajudicially as warranted by the circumstances, said attorney's fee from his client, respondent NWSA Consolidated Unions (Atty. Atanacio E. Pacis died last November 22, 1976 [Rollo, p. 140]. His claim may be pursued by his surviving heirs).

Procedure wise, there appears to be a flaw or the denial of NWSA's motion for reconsideration of the assailed CIR Order of July 15, 1970 on the ground of having been filed late under Section 17-A, CIR RULES, which provides:

"Sec. 17-A. - Time of filing Motion for Reconsideration in Certification Cases: - The aggrieved party may file a motion for reconsideration in six (6) copies duly verified together with the supporting arguments within a period of four (4) days without extension from receipt of decision or order together with proof of service of one (1) copy thereof.

"The adverse party may file his answer or opposition with arguments also in six (6) copies duly verified within four (4) days also without extension from receipt of movant's arguments.

"These amendments shall take effect immediately." (Resolution of May 27, 1965 amending the C.I.R. Rules of Court).

Atty. Pacis avers that the CIR Resolution en banc dated August 11, 1970 denied said motion for having been filed five (5) days after NWSA's receipt of notice of the CIR Order of July 15, 1970 which is beyond the four days prescribed period under the aforequoted rule; that the subject cases being certified by the President to the CIR fall within the ambit of said Rule 17-A; that the CIR Clerk of Court committed a mistake in attaching the said Order to the Notice of Order (Annex "C" of Petition) with the inscription of the regular five (5) days reglementary period to file a motion for reconsideration therefrom; and, that said mistake cannot bind the CIR.

Atty. Pacis also asserts that the NWSA motion for reconsideration was filed without the required arguments

attached thereto. Said arguments were filed sometime later, hence, on this score alone NWSA has allegedly violated Rule 17-A.

The records of the cases elevated to this Court are bereft of material showing that said cases were indeed certified by the President to the CIR. As a matter of fact, the cover Notice of Order attached to the assailed CIR Order (Annex "C" of Petition) as signed by the CIR Clerk of Court is circumscribed with the note that a motion for reconsideration therefrom may be filed within five (5) days from receipt of notice thereof pursuant to Rules 15, 16 and 17 of the CIR Rules, the regular procedure followed for non-certified cases in the CIR.

The said pertinent rules are hereunder quoted for convenience, to wit:

"15. The movant shall file the motion, in six copies, within five (5) days from the date on which he receives notice of the order or decision, object of the motion for reconsideration, the same to be verified under oath with respect to the correctness of the allegations of fact, and serving a copy thereof, personally or by registered mail, on the adverse party. The latter may file an answer, in six (6) copies duly verified under oath.

"16. Both the motion and the answer shall be submitted with arguments supporting the same. If the arguments can not be submitted simultaneously with said motion, upon notice to the Court, the movant shall file same within ten (10) days from the date of the filing of his motion for reconsideration. The adverse party shall also file his answer within ten (10) days from receipt by him of a copy of the arguments submitted by the movant.

"17. After an answer to the motion is registered, or after ten (10) days from the receipt of the arguments in support of said motion by the adverse party without any answer having been filed, the motion shall be deemed submitted for resolution of the Court en banc, unless it is considered necessary to hear oral arguments, in which case the Court shall issue the corresponding order or notice to that effect.

Failure to observe the above-specified periods shall be sufficient cause for dismissal of the motion for reconsideration or striking out of the answer and/or the supporting arguments, as the case may be. (As amended by resolution of the Court dated April 20, 1951.)" (Castro, Labor and Social Legislation, Second Ed., p. 1095).

It is therefore evident that under the above rules, the motion for reconsideration submitted by NWSA was filed on time.

Moreover, it is noteworthy that said Order of July 15, 1970 is patently defective for its insistence on making NWSA pay Atty. Pacis attorney's fees when it had already paid the aggregate sum of P800,000.00 in accordance with the tenor of the previous CIR Order of June 16, 1966. To compel NWSA to pay Atty. Pacis the amount of P48,000.00 would exceed the actual sum awarded of P800,000.00 due to its workers and employees which included the shares of attorney's fees. In view of this anomalous situation, said CIR Order of July 15, 1970 should be annulled in the interest of substantial justice, the same having been issued with grave abuse of discretion.

PREMISES CONSIDERED, the assailed CIR Order of July 15, 1970 and the CIR Resolution en banc dated August 11, 1970, are ANNULLED and SET ASIDE, with costs de officio.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Sarmiento, JJ., concur.

[*] Issued by then Associate Judge Joaquin M. Salvador.

[**] Concurred in by Presiding Judge Arsenio I. Martinez and Associate Judge Emiliano C. Tabigne. Associate Judges Amando C. Bugayong and Ansberto P. Paredes took no part.

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