

ILIASCOR EMPLOYEES AND WORKERS UNION-SOUTHERN PHILIPPINES FEDERATION OF LABOR (IEWU-SPFL), AND ITS OFFICERS AND MEMBERS HEADED BY CLEMENTINO DENSING, PRESIDENT (NOW HEADED BY GI...

Ponente: CAMELLO, J.

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CAMELLO, J.:

This special civil action of certiorari assails the 24 September 2012[1] and 23 November 2012[2] resolutions of the public respondent National Labor Relations Commission [NLRC] in NLRC Case No. MAC-05-012544-2012.

The facts as disclosed by the decisions of the Labor Arbiter and the National Labor Relations Commission [NLRC] and the pleadings on record are as follows:

Petitioner ILIASCOR Employees and Workers Union-Southern Philippines Federation of Labor [IEWU-SPFL] was the certified bargaining agent of ILIASCOR's arrastre and stevedoring workers. On the other hand, ILIASCOR was the contractor of the stevedoring and arrastre services at the private pier of private respondent Iligan Cement Corporation.

Private respondent Iligan Cement Corporation [ICC] now Lafarge Iligan, Inc., is a corporation duly organized and existing under the laws of the Philippines with plant office located at Kiwalan, Iligan City.

This case stemmed from a complaint filed before the National Labor Relations Commission (NLRC) Sub-Regional Arbitration Branch XII by the petitioner against the private respondent for the declaration of their status as regular employees and for the payment of separation pay.

On 30 March 2001, Labor Arbiter Guardson A. Siao ruled in favor of the private respondent and ordered the dismissal of the case for lack of merit, to wit:

Anent the above issue, this office believes that respondent ICC is not liable to pay the unpaid portion of complainants' separation pay representing differentials since respondent is not the employer of the former. xxx

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As can be gleaned from the above-discussion, herein respondent ICC is merely the principal in the contract with ILIASCOR, an independent contractor, the employer of individual complainants.

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xxx Respondent ICC is not a privy to that CBA, thus, the former cannot be held liable or be demanded upon to pay the same to the complainants.

xxx While it appears by allegation of complainants that they were hired by respondent's packhouse manager, however, they are mere allegations not synonymous with proof xxx complainants were employed under another contractor, Vedali General Services xxx.

xxx respondent having the sole prerogative with whom to contract with. What complainants therefore claim as “union-busting” is but an exercise of prerogative by respondent.[3]

Disappointed, the petitioners brought the case to the NLRC and it was docketed as NLRC CA No. M-006380-2001. In its 19 April 2002 Resolution,[4] the NLRC reversed the labor arbiter's decision and declared that:

WHEREFORE, premises considered, the decision on appeal is hereby VACATED and a new one entered:

1. Declaring complainants regular employees of respondent ICC for the period August 2, 2000 to November 15, 2000;
2. Declaring their dismissal from employment as illegal; and
3. Awarding complainants full backwages, separation pay, and attorney's fees in the amounts to be computed by the branch of origin.

SO ORDERED.[5]

Aggrieved, the private respondent filed a petition for certiorari before the Court of Appeals which dismissed it on technical grounds, to wit:[6]

The Court resolves to DISMISS the petition based on the following legal infirmities:

1. The verification and certification of non-forum-shopping was signed by Renato C. Sunico, however, petitioner failed to attach a copy of the board resolution authorizing him to sign the same in behalf of the corporation as required in *Digital Microwave Corp. v. Court of Appeals* (328 SCRA 286 [2001]); and
2. Petitioner failed to explain why service was done through mail as required by Section 3, Rule 13 of the 1997 Rules of Civil Procedure.

SO ORDERED.

Dissatisfied with the above-quoted resolution, petitioners filed a petition for review on certiorari with the Supreme Court. The Supreme Court affirmed the decision of the NLRC and declared in its 24 April 2009 Decision,[7] that:

Taking into consideration the factual milieu of this case, the Court agrees with the conclusion of the NLRC that petitioner and not Vedali, is the employer of individual respondents and the latter are employees of petitioner. Individual respondent's work as stock-pilers, arrastre and stevedores were undoubtedly directly related to and in pursuit of the cement manufacturing and sales business of petitioner. Petitioner's packing plant operations would have been hampered were it not for the work rendered by individual respondents.

Having determined the real employer of respondents, we now proceed to ascertain the legality of their dismissal from employment.

Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause, the rudimentary requirements of due process — notice and hearing — must, likewise, be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.

As the employer, petitioner has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Petitioner failed to discharge this burden. Indeed, it failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of individual respondents. Neither did petitioner show that individual respondents were given ample opportunity to contest the legality of their dismissal. No notice of such impending termination was

ever given to them. Individual respondents were definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of individual respondents was tainted with illegality.

Even if the assailed resolutions of the CA were set aside, the petition must still fail considering that we find no reversible error was committed by the NLRC in rendering its April 19, 2002 Resolution.

WHEREFORE, the petition is hereby DENIED. The Resolution of the National Labor Relations Commission dated April 19, 2002 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Entry of Judgment was made in this case on 24 September 2009.[8]

Pursuant to the decision of the Supreme Court, on 25 February 2010, petitioners filed a Motion to Approve Proposed Computation of Award and for Issuance of Writ of Execution.[9]

Private respondent filed Comment[10] to petitioners' proposed computation arguing that: First, petitioners have no right to demand the benefits under the Collective Bargaining Agreement [CBA] because they are not union members; second, the Supreme Court ruled that the petitioners rendered service as regular employees for only three [3] months, thus, petitioners' separation pay should only be one [1] month pay for every year of service and; and lastly, the petitioners' backwages should be computed only until 21 April 2002, when the NLRC declared petitioners illegally dismissed.

On 31 January 2012, Labor Arbiter Nicodemus G. Palangan issued an Order[11] adopting the computation of Acting Fiscal Examiner Jovito A. Branzuela ordering payment of separation pay of Php384,412.50 and full backwages plus 13[th] month pay of Php1,082,846.02 for each of the petitioner.[12]

By Decision[13] of 24 September 2012, the NLRC, finding that the Labor Arbiter altered the terms of the monetary award of its final and executory decision, found merit in private respondent's appeal. It reasoned out :

xxx xxx xxx

xxx the Labor Arbiter a quo committed reversible error when he computed the judgment award beyond the finality of our Decision on July 1, 2002 per NLRC Entry of Judgment. Under the cited jurisprudence, the judgment award on the running backwages corresponding to the respondent's salary differentials should be computed only up to the finality of the decision sought to be enforced. Hence, the correct computation of the judgment award in this case should only up to the finality of our Resolution on July 1, 2002.

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As to the issues whether the economic provisions of the CBA of ILIASCOR should be applied in the computation of complainants-appellees backwages and separation pay, we rule that it should not be applicable since to do so is in effect an alteration and modification of our final and immutable Resolution.

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In light of the facts and jurisprudence, the computation of the backwages of complainants-appellees should not include CBA benefits and should only be limited from the time they were illegally dismissed on November 16, 2000 up to July 1, 2002, the date of the finality of our Resolution per date of Entry of Judgment; and at the rate prevailing at the time of their dismissal unqualified by deductions, increases and/or modifications. The formula then should be daily rate prevailing at the time of dismissal multiplied by actual days worked times number of months covered. As can be gleaned from the records, the prevailing daily rate at the time complainants were

illegally dismissed on November 16, 2000 was P174.00 [Wage Order No. 9] and that both parties used the daily to monthly conversion of 25.5 days factor and that complainants entitlement of backwages would be from November 16, 2000 up to July 1, 2002 or a total of 19.5 months. Thus, the mathematical computation of their backwages should be $P174.00 \times 25.5 \text{ days} \times 19.5 \text{ months}$.

With regards to complainants' separation pay, it should be computed as follows: one month salary rate multiplied by number of years or length of service [a fraction of six months being considered as one year]. Undisputedly, complainants' length of service should be reckoned only from August 2, 2000 the date the NLRC declared them as regular employees until July 1, 2002, finality of our Resolution in line with the Javellan ruling. Hence, complainants are entitled to a 2-year separation pay. Thus, the mathematical computation of their separation pay is $P174.00 \times 25.5 \text{ days} \times 2 \text{ years}$.

WHEREFORE, the assailed Order dated 31 January 2012 is SET ASIDE for lack of legal and factual merit.

The computation of the Fiscal Examiner of this Commission is hereby adopted as to complainants' judgment award, as follows:

- Backwages:

[From Nov. 16, 2000-July 01, 2002] = 19.5 mos.

Backawages = $P174.00 \times 25.5 \times 19.5 \text{ mos.} = P84,303.00/\text{per complainant}$

- Separation Pay:

[From Aug. 2, 2000-July 01, 2002] = 2 yrs.

Separation Pay = $P174.00 \times 25.5 \text{ days} \times 2 \text{ yrs.} = P8,874.00/\text{per complainant}$

Total Monetary Awards = P93,177.00 per complainant

SO ORDERED.[14]

Hence, the petitioners filed with this Court a petition, assailing both the 24 September 2012 and 23 November 2012 resolutions of the NLRC. The petitioners raise the following issues for our consideration:

A. THE LABOR ARBITERS DID NOT TAKE INTO ACCOUNT APPLICABLE JURISPRUDENCE AND THE NEW IMPLEMENTING RULES UNDER DEPT. ORDER NO. 10; THAT RESPONDENT, AS INDIRECT EMPLOYER, IS LIABLE FOR UNPAID SEPARATION PAY UNDER ARTICLE 109 OF THE LABOR CODE;

B. THAT RESPONDENT, AS DIRECT EMPLOYER FROM AUGUST 2, 2000 TO NOVEMBER 15, 2000 IS LIABLE FOR ILLEGAL DISMISSAL;

C. THAT RESPONDENT IS LIABLE FOR MORAL AND EXEMPLARY DAMAGES IN VIEW OF ITS FRAUDULENT CONDUCT; AND FOR ATTORNEY'S FEES.[15]

By petitioners' computation, the total amount of the monetary award for each petitioner is P2,338,175.40, representing separation pay, backwages and other benefits under the CBA. According to the petitioners, the computation of the separation pay should be reckoned from 2 August 2000 up to the finality of the Supreme Court decision on 24 September 2009.

Private respondent disputed petitioners claim. Its computation shows an amount of only P80,277.50 for each petitioner, excluding the benefits provided under the CBA. It posits that backwages should be computed only until 19 April 2002, or the date the NLRC declared petitioners illegally dismissed. Petitioners, ICC contends, cannot use as basis for computing backwages the date of finality of the Supreme Court's decision for it is absurd to make private respondent liable after 19 April 2002 because no work was rendered by the petitioners during that period.

Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[16]

It bears stressing that in the decision of the Supreme Court in G.R. No. 158956, which affirmed the 19 April 2002 Decision of the NLRC, it was specifically enjoined the petitioners' payment of full backwages, separation pay, and attorney's fees. However, the NLRC, in its assailed 24 September 2012 Decision, directed the payment of the petitioners' backwages and separation pay from the time of dismissal on 15 November 2000 up to the finality of its own decision on 1 July 2002, thus sustaining the claim of the private respondent. In that same decision, the NLRC did not touch upon the award of attorney's fees as granted. In so doing, the NLRC sought to enforce the final judgment in G.R. No. 158956 in a manner that contradicts its explicit terms. We cannot countenance such a travesty. *Solidbank Corporation v. Court of Appeals*,[17] underscores the strict principle that a writ of execution must not vary the terms of the judgment, thus:

It is a settled general principle that a writ of execution must conform substantially to every essential particular of the judgment promulgated. Execution not in harmony with the judgment is bereft of validity. It must conform, more particularly, to that ordained or decreed in the dispositive portion of the decision.

Corollary thereto, it must be stressed that a judgment which has acquired finality becomes immutable and unalterable, and hence may no longer be modified in any respect except only to correct clerical errors or mistakes — all the issues between the parties being deemed resolved and laid to rest. This is meant to preserve the stability of decisions rendered by the courts, and to dissuade parties from trifling with court processes. One who has submitted his case to a regular court necessarily commits himself to abide by whatever decision the court may render. Any error in the decision which has not been considered in a timely motion for reconsideration or appeal cannot be impugned when such error becomes apparent only during execution. . . .

At the core of the instant case are the divergent contentions of the parties on the manner of computation of backwages and separation pay. The question now arises: when is the period for computation of backwages and separation pay supposed to end?

This question was squarely addressed in *beaucoup* cases[18] where it was held that in such circumstance, the computation must be up to the time of finality of the Supreme Court decision. It is settled that a judgment is final when it is no longer appealable, hence final and executory. The justification obviously, is that along with the finality of the Supreme Court's decision, the issue of illegal dismissal is finally laid to rest.

Private respondent appears to have been mistaken about the options open to it upon promulgation of the Supreme Court's decision. The private respondent's insistence that it cannot be held liable for backwages and separation pay during the period of the pendency of this action for it cannot be faulted for the delay of the disposition of this case cannot take precedence over the long-standing and well-entrenched jurisprudential rule.

The distinction between backwages and separation pay is elementary. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The bases for computing the two are different, the first being usually the length of the employee's service and the second the actual period when he was unlawfully prevented from working.[19]

Article 279 of the Labor Code of the Philippines provides that a worker terminated without just cause is entitled to full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The pertinent portion of the law provides:

Art. 279. Security of Tenure. — . . . An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Art. 279 clearly provides that the determination of backwages plus other benefits should be computed from the time his compensation was withheld from him up to the time of his actual reinstatement. An illegally dismissed employee who, in contemplation of the law, never left his work, should be granted the compensation which rightfully belongs to him from the moment he was unduly deprived of it up to the time it was restored to him.

We find, and so hold therefore, that the NLRC abused its discretion in merely fixing backwages and separation pay from the time the petitioners were illegally dismissed up to the time of finality of its Resolution on 1 July 2002. This period covers only a total of 19.5 months, from 15 November 2000 to 1 July 2002. Such formula runs affront of both the letter and the spirit of the Labor Code.

In consonance with Article 279, the petitioners should be given full backwages and all the benefits accruing to them from the time they were declared illegally dismissed on 15 November 2000, up to the date of finality of the Supreme Court decision on 24 September 2009, in light of the NLRC's declaration that reinstatement is no longer possible. Incidentally, we reiterate the ruling in *Bustamante v. NLRC*[20] that the backwages to be awarded the petitioner should not be diminished or reduced by interim earnings or those derived by him from other sources during the term of his illegal dismissal.

On the other hand, an award of separation pay in lieu of reinstatement does not bar an award of backwages, computed from the time of illegal dismissal, in this case on 15 November 2000, up to the date of the finality of the Supreme Court decision, without qualification or deduction.[21] Separation pay, equivalent to one month's salary for every year of service, is awarded as an alternative to reinstatement when the latter is no longer an option. Separation pay is computed from the commencement of employment up to the time of termination, including the imputed service for which the employee is entitled to backwages, with the salary rate prevailing at the end of the period of putative service being the basis for computation.[22]

The dispositive portion of the 19 April 2002 Decision of the NLRC, as affirmed by the Supreme Court awarded petitioners attorney's fees. And so, even if the assailed 24 September 2012 Resolution of the NLRC did not touch upon the award of attorney's fees as granted, the award stands. There is already a final and executory judgment finding the petitioners illegally dismissed, and awarding backwages, separation pay, and attorney's fees. It is now beyond the power of this Court to modify that immutable determination.

FOR THE REASONS STATED, the assailed decision and resolution of the NLRC are **AFFIRMED** with **MODIFICATIONS**. Private respondent is ordered to pay petitioners full back wages and separation pay from the time of their illegal dismissal until the finality of the Supreme Court decision in G.R. 158956, without qualification or deduction. Likewise, private respondent is **ORDERED** to pay attorney's fees equivalent to 10% of the total monetary award. Let the records of this case be remanded to the Computation and Examination Unit of the NLRC for proper computation of subject money claims as above-discussed.

SO ORDERED.

Inting and Perez, JJ., concur.

[1] Written by Commissioner Dominador B. Medroso, Jr. and concurred in by Commissioners Bario-Rod M. Talon and Proculo T. Sarmen, rollo, pp. 39-50.

[2] Rollo, pp.52-53.

[3] Written by Commissioner Leon G. Gonzaga, Jr., and concurred in by Commissioners Salic B. Dumarpa and Oscar N. Abella, rollo, pp. 57-58.

[4] Rollo, pp.55-61.

[5] Rollo, p. 61.

[6] Iligan Cement Corporation v. ILIASCOR Employees and Workers Union — Southern Philippines Federation of Labor (IEWU-SPFL), G.R. No. 158956, April 24, 2009, 586 SCRA 449, 461.

[7] Id.

[8] Rollo, p. 77.

[9] Rollo, pp. 66-73.

[10] Rollo, pp. 168-171.

[11] Rollo, p. 177.

[12] Rollo, pp. 227-229.

[13] Rollo, pp.39-50.

[14] Rollo, pp. 46-50.

[15] Rollo, pp. 12-13.

[16] Sacdalan v. Court of Appeals, G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599.

[17] G.R. No. 138131, March 12, 2002.

[18] See Masagana Concrete Products et al. v. NLRC, G.R. No. 106916. September 3, 1999; Buhain v. CA, G.R. No. 143709. July 2, 2002; De Guzman v. NLRC, G.R. No. 130617. August 11, 1999; Gaco v. National Labor Relations Commission, G.R. No. 104690, 23 February 1994.

[19] Lim v. National Labor Relations Commission, G.R. Nos. 79907 and 79975, 16 March 1989, 171 SCRA 328, 336.

[20] 265 SCRA 61 (1996).

[21] Lopez, Jr. v. NLRC, 245 SCRA 644.

[22] Reformist Union of R.B. Liner, Inc. v. NLRC, 266 SCRA 713.

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