

TELEPHILIPPINES, INC., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (4TH DIVISION), HON. VENERANDA C. GUERRERO AND OLIVER ALLAN M. LEE, RESPONDENTS.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

This Petition for Certiorari[1] (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Of Preliminary Injunction) filed under the 1997 Rules of Civil Procedure ascribes grave abuse of discretion on the part of the National Labor Relations Commission (NLRC) in rendering the Decision[2] dated 31 May 2013 and Resolution[3] dated 15 July 2013, in NLRC-LER Case No. 01-016-13. The impugned Decision denied the Petition with Prayer for the Issuance of Preliminary Injunction filed under Rule XII (Extraordinary Remedies) of the 2011 NLRC Rules of Procedure[4] lodged by petitioner Telephilippines, Inc. (petitioner) while the assailed Resolution found meritless petitioner's Motion for Reconsideration thereof.

The case has its provenance in a Complaint for Illegal Dismissal filed by private respondent Oliver Allan Lee (private respondent) against petitioner. After weighing the respective postures of the parties, the Labor Arbiter rendered a Decision[5] dated 26 September 2011, adjudging—

“WHEREFORE, premises considered, judgment is here-by rendered declaring complainant (private respondent) to have been illegally dismissed. Respondent Teleperformance Phils.(.) Inc. (petitioner) is hereby ordered to reinstate complainant to his previous position under the Toshiba or any similar account, and to pay backwages, tentatively computed as of the date of this decision, in the amount of Four Hundred Fifteen Thousand Pesos (P415,000.00).

All other claims are dismissed for lack of merit/ jurisdiction.

SO ORDERED.”[6]

Nonplussed, petitioner sought recourse before the NLRC which, in the Decision[7] dated 31 January 2012, dismissed its Appeal and affirmed the Labor Arbiter's Decision. Petitioner moved for a reconsideration but its plea was denied in the Resolution dated 24 April 2012.

Ensuingly, petitioner filed before Us a Petition for Certiorari (with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction), docketed as C.A. G.R. SP No. 125502.[8] In a Decision dated 31 January 2013 rendered by Our Fourth Division, the said Petition was dismissed.[9] Petitioner appealed to the Supreme Court which, in its Resolution[10] dated 16 September 2013, declared the case closed and terminated.[11]

During the pendency of the Petition, private respondent filed with the NLRC an Omnibus Motion (Motion for the Issuance of a Writ of Execution and Motion for Re-computation).[12] Thereafter, the Labor Arbiter issued an Order[13] dated 21 September 2012 attaching her re-computation, as follows:

“Additional Computation of Complainant's Backwages as per Labor Arbiter's Decision dated 26 September

2011as affirmed by the Commission (First Division) dated 4/24/12

As of 26 September 2011

=

P415,000.00

Additional Backwages

9/27/11 – 9/27/12 = 12

P36,000.00 x 12 = P432,000.00

13[th] month pay

P432,000.00/12 = 36,000.00

allowance

P2,500.00 x 12 = 30,000.00

P768,000.00

Total

P1,183,000.00”[14]

As expected, petitioner opposed¹⁵ the re-computation asseverating that private respondent's gross basic salary was only P33,679.80 and not P36,000.00. Moreover, the monetary awards in dispute should not be granted beyond 18 March 2012 since on said date, it had already served upon private respondent a return-to-work order. Private respondent having failed to return to work on 17 March 2012, he was deemed to have abandoned his right to reinstatement and backwages beginning 18 March 2012.[¹⁶]

All the same, the Labor Arbiter approved the re-computation and granted private respondent's Motion for Issuance of Writ of Execution. Declaiming against the Labor Arbiter's disposition, petitioner filed a Petition[¹⁷] before the NLRC which subsequently issued a Temporary Restraining Order enjoining the Labor Arbiter from implementing the 21 September 2012 Order upon petitioner's filing of the requisite bond.

On 31 May 2013, the NLRC rendered the assailed Decision denying the Petition. The NLRC, in the repugned Resolution, denied petitioner's Motion for Reconsideration thereof.

Perforce, petitioner comes to Us via this Petition anchored on the following grounds:

I

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT PRIVATE RESPONDENT'S BASIC SALARY TOTALED PHP36,179.80, SINCE THIS AMOUNT INCLUDES AN ALLOWANCE THAT IS TREATED SEPARATELY FROM PRIVATE RESPONDENT'S BASIC PAY.

II

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT DISREGARDED EVIDENCE ON RECORD PROVING THAT PRIVATE RESPONDENT REFUSED TO RETURN TO WORK DESPITE NOTICE TO DO SO.

In ruling in favor of private respondent, the NLRC ratiocinated in this wise:

“Private respondent, in his position paper, stated that in June 2010, his salary was increased to P34,303.00, plus an allowance of P2,500.00.

Charmaine Ocampo, petitioner's Asst. Human Resources Manager, confirmed the private respondent's compensation in her Certification dated October 18, 2012. xxx It reads:

'This is to certify that Mr. Oliver Allan Mariano Lee was an employee of Teleperformance Philippines. He was hired December 5, 2006, last position held was Supervisor.

This is to further certify that Mr. Lee's last salary increase was dated June 26, 2010 with the following monthly compensation:

Basic pay

P33,679.80

Allowance

2,500.00

Total

P36,179.80

xxx'

Teleperformance Philippines, Inc. is Telephilippines, Inc.'s former corporate name.

Petitioner's assertion that private respondent was receiving only P33,679.80 is contrary to its own evidence. We cannot allow petitioner to deny the same in order to deprive the private respondent's entitlement.

The order of reinstatement is immediately executory. Petitioner should either re-admit the illegally dismissed private respondent to work under the same terms and conditions prevailing prior to his dismissal, or to reinstate him in the payroll.

Petitioner's contention that the computation should not go beyond March 18, 2012 due to the 'return to work' order is untenable.

We give credence to private respondent's statement that after receipt of the letter from the petitioner requiring him to present himself to the recruitment department for re-profiling and job placement, on May 7, 2012, he saw Reymond Gerard Bondoc, Asst. HR. Manager. Bondoc told him that there was no available position for him at the Sucat office. Private respondent asked Bondoc if he could be reinstated to his previous post and designation, and the latter replied that he would bring the matter to his superior, and contact him as soon as possible.

The 2011 NLRC Rules of Procedure requires that the employer should submit a report of compliance to the Labor

Arbiter within ten (10) calendar days from receipt of the decision.

If indeed private respondent did not report for work despite receipt of the 'return to work' order, petitioner should have informed the Labor Arbiter in writing the private respondent's refusal to continue with his employment.

Thus, its arguments that the computation of the backwages and other benefits should not be computed beyond March 18, 2012, and that it should be based on his monthly salary of P33,679.80, lack factual or legal basis.”[18]

In the case at bench, petitioner inveighs against the foregoing disquisition asserting that the item “allowance” should not be incorporated in the computation of private respondent's regular basic pay. For an “allowance” to be included in the computation of the basic pay, the same must be of regular nature. On this premise, petitioner maintains that the NLRC could not simply assume that the “allowance” is regular in nature, and that it would be given to private respondent regardless of work performance. Moreover, the computation in dispute should only be up to 18 March 2012 since by then, private respondent had already received a “return to work” order.

While We do not agree with petitioner's postulations, a judicious scrutiny of the record convinces Us that the NLRC glaringly misappreciated and disregarded the evidence on record.

The amount of basic pay, as indicated on the Certification[19] is not at all ambiguous. It categorically states that private respondent's monthly compensation amounted to P36,179.80 which consisted of a basic pay of P33,679.80 and an allowance of P2,500.00. To Our mind, this statement plainly demonstrated propriety. Indeed, it behooves the petitioner to controvert the same given that it definitely has in its possession and control the pertinent personnel files, payrolls, records, remittances, and other similar documents which will show the nature of such “allowance” and if the same was given to private respondent regardless of work performance.[20] Since no proof whatsoever was adduced by petitioner, We can only conclude that the “allowance” is regular, and should therefore be included in the computation of private respondent's basic regular pay.

Still and all, since the said “allowance” was already included in private respondent's basic regular pay, the same should not be once again included as a separate item in the computation of his backwages. Ineluctably, the NLRC fumbled when it affirmed the Labor Arbiter's computation. Whence, the separate item denominated as allowance should be deleted.

As regards the reckoning period when the computation for backwages should end, We rule and so hold that it should be on 21 June 2012.[21] On this point, while We agree with the NLRC's disquisition, We cannot turn a blind eye to the hard fact that private respondent himself admitted in his Reply dated 5 November 2012 that he was apprised of the reinstatement date— 21 June 2012. Such judicial admission does not require proof.[22] Withal, it is not disputed that private respondent never reported to work even after such order. This being so, fair play dictates that the computation of his backwages should end on said date.

WHEREFORE, the Petition is hereby GRANTED. The assailed Decision dated 31 May 2013 and Resolution dated 15 July 2013 of the National Labor Relations Commission, in NLRC-LER Case No. 01-016-13 are REVERSED and SET ASIDE. The labor tribunal is DIRECTED to modify the computation of the Labor Arbiter in that the separate item denominated as allowance should be deleted and the payment of backwages should end on 21 June 2012.

SO ORDERED.

(ORIGINAL SIGNED)

JAPAR B. DIMAAMPAO

Associate Justice

WE CONCUR:

(ORIGINAL SIGNED)

(ORIGINAL SIGNED)

ELIHU A. YBAÑEZ

MELCHOR Q. C. SADANG

Associate Justice

Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

(ORIGINAL SIGNED)

JAPAR B. DIMAAMPAO

Associate Justice

Chairperson, Thirteenth Division

[1] Rollo, pp. 3-26.

[2] Id., pp. 28-35.

[3] Id., pp. 36-37.

[4] Rule XII Extraordinary Remedies.

SECTION 1: Verified Petition.- A party aggrieved by any order or resolution of the Labor Arbiter including those issued during execution proceedings may file a verified petition to annul or modify such order or resolution. The petition may be accompanied by an application for the issuance of a temporary restraining order and/or writ of preliminary or permanent injunction to enjoin the Labor Arbiter or any person acting under his/her authority to desist from enforcing said resolution or order.

[5] Rollo, pp. 60-70.

[6] Id., pp. 69-70.

[7] Id., pp. 72-80.

[8] Id., pp. 84-108.

[9] Id., pp. 339-351.

[10] Id., pp. 82-83.

[11] Id., p. 382.

[12] Rollo, pp. 113-114.

[13] Id., p. 58.

[14] Id., p. 59.

[15] See Comment and Opposition, Id., pp. 116-121.

[16] Id., pp. 119-120

[17] Id., pp. 39-51.

[18] Rollo, p. 33-34.

[19] Rollo, p. 151.

[20] See Heirs of Manuel H. Ridad v. Gregorio Araneta University Foundation, 690 SCRA 575, 582 (13 February 2013).

[21] See Reply (Re: Comment and Opposition), Rollo, p. 188.

[22] Rule 129, Section 4, Rules of Court.

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