

BENSON LEI, FORMERLY DOING BUSINESS UNDER BENSON LEI TRUCKING SERVICES, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, 8TH DIVISION, THE EXECUTIVE LABOR ARBITER, RAB-X, GE...

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This Petition[1] for Certiorari with prayer for the issuance of a Temporary Restraining Order (TRO) and/or writ of preliminary injunction (WPI) seeks the nullification and reversal of the Resolution[2] dated April 25, 2011 of the National Labor Relations Commission which affirmed with modification the Order[3] dated August 12, 12, 2010 rendered by Executive Labor Arbiter Leon P. Murillo in NLRC Case Nos. RAB-10-11-00829-2002 and RAB-10-11-00830-2002, as well as the Resolution[4] dated June 30, 2011 denying petitioner's Motion for Reconsideration.

The facts are as follows:

On November 21, 2002, private respondents Geoffrey A. Jarmin and Roosevelt Tadeo filed separate complaints for illegal dismissal against petitioner Benson Lei before the labor arbiter, docketed as NLRC Case No. RAB-10-11-00829-02 and NLRC Case No. RAB-10-11-00830-02, respectively. These cases were later consolidated and jointly heard. Thereafter, on January 30, 2004, the labor arbiter dismissed private respondents' complaint for lack of merit.

On December 10, 2007, upon private respondents' appeal, the NLRC 5[th] Division (now 8[th] Division) rendered a Resolution reversing and setting aside the labor arbiter's decision.[5] The dispositive portion reads:

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

- Declaring that complainants were DISMISSED from their employment and such DISMISSAL was illegal;
- Ordering respondent to reinstate complainants to their previous positions without loss of seniority rights, and to pay their FULL BACKWAGES computed from the time these were withheld from them;
- Ordering respondent to pay complainant ROOSEVELT TADEO his 13[th] month pay, as earlier ordered;
- Awarding complainants attorney's fees equivalent to 10% of the total award.

SO ORDERED.

Petitioner filed a motion for reconsideration with the NLRC which, in its Resolution[6] of July 31, 2008, denied the motion but ordered private respondents be given separation pay in lieu of reinstatement, thus:

“WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED. Should the

reinstatement of complainants be rendered impossible, they shall be paid separation pay computed at one month pay for every year of service, with a fraction thereof at least six (6) months being considered as one (1) year of service.

SO ORDERED.”

The above resolutions were affirmed by the Court of Appeals and the Supreme Court. The NLRC Resolutions of December 10, 2007 and July 31, 2008 became final and executory per Entry of Judgment dated May 15, 2010.[7] Records of the case were remanded to the labor arbiter of origin for the execution of the NLRC resolutions.

On May 17, 2010, pursuant to Section 3, Rule VIII[8] of then NLRC Rules of Procedure, Fiscal Examiner Henrico N. Pacamo submitted an updated computation of the monetary awards due to private respondent Geoffrey Jarmin in the total amount of P592,474.14 and private respondent Roosevelt Tadeo in the total amount of P624,899.08 computed from the date of their respective employment up to May 15, 2010.[9]

On May 28, 2010, Executive Labor Arbiter Leon P. Murillo (ELA Murillo) scheduled the case for pre-execution conference on June 22, 2010, and required the parties to file their respective Comments on the computation of the monetary awards by the fiscal examiner.

At the pre-execution conference, petitioner questioned this computation claiming that the computation of the monetary awards should be reckoned from the date private respondents were employed until March 4, 2005, the date petitioner ceased its business operations, and not on May 15, 2010 the date of the finality of NLRC resolutions. Thus, the said computation was without factual or legal basis.

On August 12, 2010, ELA Murillo issued an Order[10] adopting the computation of Fiscal Examiner Pacamo and, consequently, ordered the issuance of a writ of execution. The dispositive portion reads:

WHEREFORE, premises considered, the Computation of Judgment award dated May 17, 2010 of the Fiscal Examiner II of the Arbitration Branch is upheld and adopted by the undersigned.

This Office will issue the corresponding Writ of Execution in the sum of P594,474.14 for complainant Jeoffrey Jarmin and P624,899.08 for Roosevelt Tadeo once this Order acquires finality.

SO ORDERED.

On September 3, 2010, petitioner filed an appeal[11] with the NLRC assailing the August 12, 2010 order of ELA Murillo. In his appeal, petitioner maintained that his business operations completely ceased on March 4, 2005. According to petitioner, the fiscal examiner should have based his computation of the monetary awards only until March 4, 2005, and not on May 15, 2010 during which he was no longer in operation of his business. Petitioner thus prayed for the recall of the August 12, 2010 Order of ELA Murillo and for the re-computation of the monetary award by the fiscal examiner.

On April 25, 2011, the NLRC rendered the assailed Resolution[12] affirming with modification the Order of ELA Murillo, the fallo of which reads:

WHEREFORE, premises considered, the assailed Order of the Executive Labor Arbiter is AFFIRMED with MODIFICATION to the effect that the separation pay should be recomputed based on 26 days and not 30 days.

Accordingly, let the entire records of the case be remanded to the Regional Branch of origin for the continuation of the execution proceeding and/or issuance of a writ of execution.

SO ORDERED.

Petitioner filed a motion[13] for reconsideration of the foregoing resolution but it was denied by the NLRC in its Resolution[14] dated June 30, 2011. In its assailed resolution, the NLRC clarified that the reckoning point for the computation of the award of backwages must be from the time private respondents were illegally dismissed until the finality of the NLRC resolutions on May 15, 2010. The NLRC further ruled that private respondents are entitled to separation pay because the reinstatement is no longer possible and must be computed from the first day of private respondents' employment up to the finality of the NLRC resolutions on May 15, 2010.

Thus, petitioner is before us contending:

A. THAT BOTH THE EXECUTIVE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION 8TH DIVISION GRAVELY ABUSED THEIR DISCRETION TANTAMOUNT TO LACK OR IN EXCESS OF JURISDICTION WHEN BOTH APPROVED THE COMPUTATION OF THE AWARD FOR BACKWAGES AND SEPARATION PAYS UP TO 15 MAY 2010 WHEN IT SHOULD ONLY BE UP TO 04 MARCH 2005 THE DATE PETITIONER CEASED OPERATIONS DUE TO INVOLUNTARY CLOSURE.

B. THAT THE PUBLIC RESPONDENT NLRC ABUSED GRAVELY ITS SOUND DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT HELD THAT AN ORDER OF THE EXECUTIVE LABOR ARBITER/LABOR ARBITER APPROVING COMPUTING A JUDGMENT AWARD OF THE FISCAL EXAMINER BEING INTERLOCUTORY IS NOT SUBJECT OF AN APPEAL.

The issues for Our resolution are: 1) whether the order dated August 12, 2010 of ELA Murillo is a proper subject of an appeal; and 2) what should be the reckoning point for computing the awards of backwages, separation pay, 13[th] month pay, service incentive leave pay.

We shall discuss the issues in seriatim.

Petitioner contends that the order of ELA Murillo approving the computation of the monetary awards at the same time ordering the execution of the award is a final order, and not interlocutory as ruled by the NLRC. As such, the order of ELA Murillo is the proper subject of an appeal before the NLRC.

We agree with the petitioner.

The differences between a final order and an interlocutory are well-established. The Supreme Court said in *Denso (Phils.) Inc. v. Intermediate Appellate Court* that:

[A] final judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move . . . and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

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Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory", e.g., an order denying a motion to dismiss under Rule 16 of the Rules xxx Unlike a 'final judgment or order, which is appealable, as above pointed out, an 'interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.

Bearing in mind these differences, there can be no doubt that the order approving the report on the computation of the monetary awards at the same time ordering its execution is a final order because it was issued for the purpose of enforcing and implementing a decision on the merits rendered in the main case which has already attained finality on May 15, 2010. Thus, the questioned order is the proper subject of appeal before the NLRC.

We find therefore that the NLRC gravely abused its discretion in ruling that the Order dated August 12, 2010 of ELA Murillo is not appealable, being an interlocutory order.

We, nonetheless, find no merit in the petition.

Petitioner vigorously assails the correctness of the computation of the monetary awards approved by ELA Murillo. Petitioner insists that the reckoning period for the computation of the monetary awards should be from the date private respondents were employed by him up to March 4, 2005 the date he ceased his business operations due to involuntary closure. Petitioner thus contends that the NLRC gravely abused its discretion amounting to lack or in excess of jurisdiction in affirming the labor arbiter's computation.

The core issue before us is the propriety of the awards made. Therefore, we deem it proper to determine whether the computation conforms with the final and executory resolutions of the NLRC, and the evidence. After all, a re-assessment of evidence is not absolutely prohibited in a petition for certiorari as ruled in *Cathay Pacific Airways v. NLRC*[15], *Aklan Electric Cooperative, Inc. v. NLRC*[16] and *Garcia v. NLRC*[17].

There is no longer any issue that the private respondents were illegally dismissed. As a consequence of the illegal dismissal, the NLRC awarded the private respondents backwages, separation pay in lieu of reinstatement, 13[th] month pay, service incentive leave pay, and attorney's fees.

Under Republic Act No. 6715, an employee who is illegally dismissed is entitled to full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the time his actual compensation was withheld from him up to the time of his actual reinstatement, but if reinstatement is no longer possible, the backwages shall be computed from the time of his illegal termination up to the finality of the decision.[18] Thus, where reinstatement is adjudged, the computation of backwages shall be reckoned from the time of illegal dismissal up to the time that the employee is actually reinstated to his former position.[19]

As can be gleaned from the NLRC resolutions, petitioner was ordered to immediately reinstate the private respondents to their former position. Notwithstanding, petitioner opted not to comply with the NLRC's order until the NLRC decision lapsed into finality. Hence, private respondents' reinstatement is no longer possible due to long passage of time. Thus, consistent with the above jurisprudence, We rule that full backwages should be awarded to the private respondents to be computed from the time that they were illegally dismissed until the time of the finality of the NLRC resolutions, i.e. from October 31, 2002 to May 15, 2010. It is only during the said period that the private respondents are deemed to be entitled to the payment of backwages. We thus agree with the NLRC.

We also agree with the NLRC in awarding private respondents their separation pay because reinstatement is no longer feasible. Separation pay is granted where reinstatement is no longer advisable because reinstatement is no longer practical.[20] The basis for computing separation pay is the actual period when the employee was unlawfully prevented from working.[21] Thus, the award for separation pay must be computed from the first day of private respondents' employment until the time of the finality of the NLRC resolutions, i.e. from June 1, 1996 (Tadeo) and July 23, 1999 (Jarmin) until May 15, 2010.

Petitioner likewise cannot escape the payment of 13[th] month pay and service incentive leave pay to private respondents. These benefits are mandated by law and should be given to the employees as a matter of right.

Presidential Decree No. 851, as amended, requires an employer to pay its rank and file employees a 13th month pay not later than 24 December of every year. On the other hand, service incentive leave, as provided in Art. 95 of the Labor Code, is a yearly leave benefit of five (5) days with pay, enjoyed by an employee who has rendered at least one year of service. Clearly, these benefits are given by law on the basis of the service actually rendered by the employee.[22]

The award of the 13th month pay must be computed from the first day of employment up to the last day that private respondents worked for petitioner,[23] or from June 1, 1996 (Tadeo) and July 23, 1999 (Jarmin) until October 31, 2002. On the other hand, the award for service incentive leave pay should start a year after commencement of service, for it is only then that the employee is entitled to said benefit up to the last day that private respondents worked for petitioner.[24] Thus, from June 1, 1997 (Tadeo) and July 23, 2000 (Jarmin) until October 31, 2002.

Moreover, the finality of the NLRC resolutions also become a judgment for money in which payment of legal interest is proper. Thus, in accordance with the ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[25] the payment of legal interest at the rate of 12% per annum from the finality of the CA decision must be awarded.[26]

Upon due consideration, we find that there is no grave abuse of discretion on the part of the NLRC. Grave abuse of discretion is defined in law as a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.²⁷ Verily, the NLRC acted in accordance with well settled jurisprudence. Thus, no abuse of discretion, much less grave abuse, may be attributed to public respondent NLRC.

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The Resolutions of the NLRC dated April 25, 2011 and June 30, 2011 are **MODIFIED**. Petitioner is **ORDERED** to **PAY** the privates respondents:

- a) backwages computed from October 31, 2002 (the date the employer illegally dismissed private respondents) up to May 15, 2010, the date of the finality of the NLRC resolutions dated December 10, 2007 and July 31, 2008;
- b) separation pay computed from June 1, 1996 for private respondent Roosevelt Tadeo and from July 23, 1999 for private respondent Geoffrey Jarmin (their respective first dates of employment) up to May 15, 2010, at the rate of one month pay per year of service;
- c) 13th month pay computed from June 1, 1996 for private respondent Roosevelt Tadeo and from July 23, 1999 for private respondent Geoffrey Jarmin (their respective first dates of employment) until October 31, 2002 (the last day privates respondents worked for petitioner);
- d) service incentive leave pay computed from June 1, 1997 for private respondent Roosevelt Tadeo and July 23, 2000 for private respondent Geoffrey Jarmin (second year of private respondents' employment) until October 31, 2002 (the last day privates respondents worked for petitioner;)
- (e) ten percent (10%) attorney's fees based on the total amount of the awards above; and
- (f) legal interest of twelve percent (12%) per annum of the total monetary awards computed from May 15, 2010, until their full satisfaction.

For this purpose, the case is hereby **REMANDED** to the Labor Arbiter to make another re-computation according to the above directives.

SO ORDERED.**CERTIFICATION**

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.

Borja, J., Chairperson and Badelles, JJ., concur.

[1] Rollo, p. 2.

[2] Rollo, p. 28.

[3] Rollo, p. 34.

[4] Rollo, p. 48.

[5] Rollo, p. 34 culled from the Order dated August 12, 2010.

[6] Rollo, p. 35, culled from the Order dated August 12, 2010 .

[7] Rollo, p. 8.

[8] SEC. 3. Computation. - The Labor Arbiter of origin, in cases involving monetary awards and at all events, as far as practicable, shall embody in any such decision or order the detailed and full amount awarded.

In case of an employee who is unjustly dismissed, his full backwages, shall include allowances and other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the the time of his actual reinstatement.

In situations not covered by Section 16, Rule V, but where further computation of the judgment amount is necessary, no execution shall issue until after the computation shall have been approved by the Labor Arbiter the parties shall have been duly notified and heard thereon.

Now Sections 2 and 4, Rule XI of the 2005 NLRC Rules of Procedure.

[9] Rollo, pp. 55-56.

[10] Supra, note 3.

[11] Rollo, p. 58.

[12] Supra, note 2.

[13] Rollo, p. 41.

[14] Supra, note 4.

[15] G. R. No. 141702-03 dated August 2, 2001.

[16] G..R. No. 121439 dated January 25, 2000.

[17] G..R. No. 147427 dated February 7, 2005.

[18] Coca-Cola Bottlers Phils., Inc. vs. Angel U. Del Villar [G..R. No. 163091 dated October 6, 2010].

[19] Bank of Lubao, Inc. v. Manabat, G.R. No. 188722, February 1, 2012.

[20] Velasco v. NLRC.

[21] Equitable v. Sadac, G.R. No. 164772, June 8, 2006.

[22] JPL Marketing Promotions v. CA, G.R. No. 151966.

[23] Id.,

[24] Id.,

[25] G.R. No. 97412, July 12, 1994.

[26] Session Delights Ice Cream and Fast Foods v. Court of Appeals, G.R. No. 172149, February 8, 2010.

[27] Mitra v. COMELEC, G.R. No. 191938, July 2, 2010.

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