

**AIR MANILA, INC., FRANCISCO G. RAMIREZ, JAIME MANZANO,
JAMES RAMIREZ AND FLORANTE LIMCOLIOC, PETITIONERS, VS.
COURT OF INDUSTRIAL RELATIONS (NOW NATIONAL LABOR
RELATIONS COMMISS...**

G.R. No. L-39742. June 09, 1978

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PER CURIAM:

Before the Court is a motion of respondent Air Manila Line Pilots Association (AMILPA for short) praying, inter alia, that an order be issued directing the National Labor Relations Commission (NLRC) to execute the final and executory decision dated August 25, 1971 of the Court of Industrial Relations (CIR) and that the decision dated March 30, 1976 of the NLRC which in effect "reconsidered" the aforementioned decision of the CIR be set aside for being a nullity.[1]

In its Comment on the motion the NLRC pointed out certain aspects of the case alleging that as to the amount of backwages there is yet no final amount that is subject to execution and which will merit the present motion for execution.[2] Petitioners Air Manila, Inc., et al. argued in their Comment, among other things, that the motion has no legal basis because applications for execution of judgments are filed not with the appellate court but with the court or body of origin; that the remedy of respondent AMILPA is to appeal to the Secretary of Labor; and that the NLRC acted legally with jurisdiction when it rendered the questioned 1976 "decision".[3]

The final August 25, 1971 decision of the CIR which respondent AMILPA now seeks to be executed was rendered in Case No. 5295-ULP, entitled: "Air Manila Line Pilots Association (AMILPA) vs. Air Manila, Inc., et al." [4] Said decision declared Air Manila, Inc., et al. guilty of unfair labor practice acts as charged and ordered the reinstatement of the union members to their former positions with backwages from November 1, 1968 in the case of those who were furloughed, and from November 2, 1968 for those who went on strike, until actually reinstated, and without loss of seniority and other rights and privileges pursuant to their Collective Bargaining Agreement. However, the said decision left the computation of the award to the Examining Division of the Court.

The report dated November 27, 1972 submitted by the Chief, Examining Division of the CIR and containing the computation of backwages and other monetary benefits due and payable to the members of respondent AMILPA was approved in toto by order dated March 6, 1973 of Associate Judge Alberto S. Veloso of the CIR.[5]

The approved report and computation of award consisted of the following:

"D. (1) By-pass pay of Air Manila Line Pilots Association members who were by-passed due to appointments of Captain Diosdado Deang and Victor Bernardo.....

P1,395,119.78

(2) By-pass pay to Air Manila Line Pilots Association members who were by-passed in the hiring and training of 707 captains.....

3,322,464.00

(3) By-pass pay to Air Manila Line Pilots Association members who were by-passed in the hiring of Electra captains.....

___484,800.00

Total.....

P5,202,383.78"

"A.

(1) Guaranteed backwages of 24 unreinstated pilots from Nov. 1, 1968 to Nov. 30, 1972.....

P2,891,000.00

(2) Guaranteed backwages of 13 reinstated pilots from Nov. 1, 1968 to date of reinstatement.....

530,824.00

B. (1) Overtime pay below 1, 000 hours from November 1, 1968 to November 30, 1972

1,147,700.72

(2) Overtime pay in excess of 1,000 hours from November 1, 1968 to November 30, 1972

803,063.28

C. (1) Night Differential pay for pilots from November 1, 1968 to November 30, 1972.....

289,104.90

(2) Differential Pay for co-pilots from November 1, 1968 to November 30, 1972

132,491.45

E. (1) Unpaid vacation leave pay

__223,952.00

Total

P6,018,135.68"

This report and computation became the subject of subsequent pleadings and counterpleadings between the parties as well as of the successive orders of the CIR briefly stated as follows:

Order of June 16, 1973 granting, as prayed for by respondent AMILPA, the writ of execution to enforce the final decision of August 25, 1971 and the order of March 6, 1973, as follows:

"WHEREFORE, and in view of all the foregoing, let a writ of execution be, as it is hereby ordered, issued by the Clerk of Court to enforce the Decision dated August 25, 1971 and the Order dated March 6, 1973 only for the amount, in the meantime of Eight Million Pesos (P8,000,000.00), reserving, to satisfy whatever possible deductions that may be made from the Award as approved, which Respondent may be entitled to prove in the form of the alleged payments already effected and of the 'earnings elsewhere' as hereinbefore adverted to, the amount of more than Three Million Pesos, plus the expected total amount of award or benefits that may be computed in favor of complainant's members beginning December 1, 1972, for further disposition of this Court."[6];

Order of November 16, 1973 dismissing the petition for relief filed by petitioners Air Manila, Inc., et al. but setting for hearing the motion to deduct earnings elsewhere and other payments made;[7]

Resolution dated July 23, 1974 of Associate Judge Alberto S. Veloso concurred in by Acting Associate Judge Guillermo C. Medina, which, instead of granting petitioners' motion for reconsideration, modified the orders of March 6, June 16 and November 16, 1973 by giving petitioners Air Manila, Inc., et al. the chance to prove not only the earnings elsewhere of the pilot-claimants, as well as, payments already made, but also to substantiate their claim on the alleged errors made by the Auditing Examiner of the court, and directed the Hearing Examiner to schedule the hearings for reception of such evidence;[8]

Concurring and separate opinion dated August 22, 1974 of Acting Associate Judge Alberto L. Dalmacion, concurred in by Acting Associate Judge Pedro F. Perez, voting not only for a modification of the aforementioned orders but also for the allowance of petitioners' motion for reconsideration;[9] and

Per Curiam resolution of the CIR dated October 10, 1974 denying petitioners' Motion for Clarification as to the voting made by the members of the court and maintaining its order for a limited modification of the questioned orders, as follows:

"This concerns the Motion filed on September 2, 1974 by petitioners Air Manila, Inc., et al., thru counsel, seeking clarification of the Resolution of the Court en banc dated July 23, 1974.

"After a careful study and analysis of the opinions rendered in the aforesaid Resolution, the Court en banc is of the considered view, and so holds, that the subject Resolution is already clear enough as to its substance, as well as the participation or votes of the members of the Court en banc on the same, that it feels no further necessity or justification to clarify the same.

"As can be readily seen from the face of said Resolution, Hon. Associate Judge Alberto S. Veloso and Hon. Acting Associate Judge Guillermo C. Medina voted for a modification of the Orders of the Trial Court dated March 6, 1973, June 16, 1973 and November 16, 1973 to give a chance to the petitioner company to prove earnings elsewhere, payments allegedly effected, alleged errors in the computation of the so-called 'by pass pay' for 707 Jet Captains and for the hiring of Electra Flight Pilots. And, in the 'Concurring in Part with Separate Opinion' of Hon. Acting Associate Judges Alberto L. Dalmacion and Pedro P. Perez, it is explicitly stated that they vote 'x x x not only for a modification of the aforementioned Orders of the Trial Court dated March 6, 1973, June 16, 1973 and November 16, 1973, but also for the allowance of the subject Motion for Reconsideration x x x.' (emphasis supplied)

"It is thus clear that there are already four (4) votes from among the present membership and composition of the Court en banc for a limited modification of the aforesaid three (3) Orders and for the reception of evidence only on the alleged earnings elsewhere, alleged payments effected, alleged errors in the computation of the 'by pass pay' for the 707 Jet Captains and for the hiring of the Electra Flight Pilots. There were only two (2) votes for a total allowance of the petitioner company's Motion for Reconsideration.

"MOTION DENIED." [10]

This per curiam resolution of the CIR dated October 10, 1974 granting only a limited recomputation or reopening of the approved report and computation of award to the members of respondent AMILPA - limited to three items, viz., earnings elsewhere, payments made and correctness of the computation of the by-pass pay (Item D, supra - for the total sum of P5,202,383.78) - was the subject of the case at bar as per the petition for review filed on December 23, 1974 by petitioners Air Manila, Inc., et al., praying of this Court that it set aside the same and render decision

"a) Declaring that the Resolution dated 23 July 1974 (Annex 'F' hereof) and Concurring Opinion dated 22 August 1974 (Annex 'G' hereof) have effectively set aside in toto the Order of the Trial Court dated 6 March 1973 (Annex 'B' hereof) and the Order of the Trial Court dated 16 November 1973 (Annex 'C' hereof); or

"b) In the alternative, this Honorable Court remand the matter to the respondent-appellee National Labor Relations Commission which shall be directed to deliberate and decide en banc the question as to whether or not to reopen and recompute the awards made in items A, B, C and E of paragraph 7 (b), supra, and break the tie vote of two to two with one abstention on these items, as explained in paragraph 7 in relation to paragraph 11 of above petition."

We denied the petition for review for lack of merit, as well as, the motion for reconsideration by resolutions dated February 24, and June 6, 1975, respectively. Entry of judgment in this case was made on June 22, 1975.[11]

Notwithstanding such entry of judgment, petitioners Air Manila, Inc., et al. thereafter filed in NLRC Cases Nos.

5295 & 5295-ULP (1)-8-Inj a petition in the guise of an injunction to restrain the Labor Arbiter from further hearing the case and praying that the NLRC decide the merits of their motion for reconsideration; in other words, to obtain the same relief already denied by the per curiam CIR resolution and by this Court's final judgment in the case at bar as entered on June 22, 1975. On March 30, 1976 the NLRC nevertheless rendered a decision granting the petitioner company's motion for reconsideration of November 27, 1973 "by way of a total reopening of the disputed computations made by the Chief of the Examining Division of the defunct CIR" and remanding the case to the Labor Arbiter for further proceedings.[12]

Hence, the present "Motion to Compel Execution of Final Judgment" filed on November 26, 1976 by respondents and praying that:

"1. The NLRC 'decision' of March 30, 1976 be declared a nullity and of no force and effect.

"2. The decision of August 25, 1971 and resolutions of the CIR as upheld by this Honorable Court be immediately executed and implemented.

"3. That pending Resolution of this Motion, the NLRC be restrained from further proceeding with the case.

"Respondent AMILPA prays for such other reliefs as may be just and equitable in the premises."[13]

After receiving the various comments and pleadings of the parties, the Court holds that the NLRC had no jurisdiction to set aside or further modify the per curiam CIR resolution of October 10, 1974 as sustained by this Court in the very case at bar by ordering a "total reopening" of the approved report and computation of award (instead of the limited reopening as to three items, *supra*) and that its "decision" of March 30, 1976 is therefore null and void and of no force and effect.

The foregoing brief narration of the antecedents in this case clearly shows that the final disposition of the case on hand which was finally decided by the defunct Court of Industrial Relations on August 25, 1971 (and upheld by this Court as per its Resolution of May 8, 1972 dismissing the petition to review the same) or more than six (6) years ago has been unreasonably delayed due to the unrelenting and repeated objections (bordering on contempt of court and abuse of judicial processes[14] of petitioners to the computation of the award for backwages made by the Examining Division of the defunct CIR, as well as, to the failure of the said industrial court and now the National Labor Relations Commission to finally resolve the matter.

What remains is to avoid further protracted delays and for the members of respondent association to be enabled to savor the fruits of their victory and to expedite the execution even in part of the judgment and award in their favor, considering the lapse of over 6 years now since the CIR decision in their favor as upheld by this Court has been final and executory.

As stated above, there were three items allowed in the limited recomputation of award as per the approved report of the Chief, CIR Examining Division. As to the question of previous payments made and alleged errors in the computation of the bypass pay (Item D, *supra*, in the total sum of P5,202,383.78) these should have been finally clarified and determined long ago were it not for the void NLRC 1076 "decision" restraining the Labor Arbiter from doing so and instead granting a total reopening of the case. Respondent NLRC shall be ordered to expedite

without further delay the determination of these two items, as hereinafter stated.

The main cause of delays in the execution and payment of backwages awards is in the determination of earnings elsewhere of the employees during the period of their wrongful lay-offs or dismissals, which proceedings for implementation of a final judgment have been noted to take just as long if not longer than the whole period of trial of the original case and appeal until final judgment of this Court.

It is precisely to avoid such protracted delays in the execution of awards for backwages that this Court adopted the principle of "fixing the amount of backwages at a reasonable level without qualification and deduction so as to relieve the employees from proving their earnings during their lay-offs and the employer from submitting counter-proofs and thus obviate the twin evils of idleness on the part of the employees and attrition and undue delay in satisfying the award on the part of the employer." [15]

In *Feati University Faculty Club (PAFLU) vs. Feati University* [16] the Court, speaking through Associate Justice Claudio Teehankee, stated thus:

"As to the amount of backwages, the Court applies the precedent recently set in *Mercury Drug Co. vs. CIR* (L-23357, April 30, 1974) applied in *NASSCO vs. CIR*, L-31852 & L-32724, June 28, 1974 and *Almira, et al. vs. B.F. Goodrich Phil., Inc.*, (L-34974, July 25, 1974) of fixing the amount of backwages to a just and reasonable level without qualification or deduction so as to avoid protracted delay in the execution of the award for backwages due to extended hearings and unavoidable delays and difficulties encountered in determining the earnings of the laid-off employees ordered to be reinstated with backwages during the pendency of the case for purposes of deducting the same from the gross backwages awarded.

"As has been noted, this formula of awarding reasonable net backwages without deduction or qualification relieves the employees from proving or disproving their earnings during their lay-off and the employers from submitting counterproofs, and obviates the twin evils of idleness on the part of the employee who would 'with folded arms, remain inactive in the expectation that a windfall would come to him' (*Itogon Suyoc Mines, Inc. vs. Sangilo-Itogon Workers Union*, 24 SCRA 873 (1968), cited in *Diwa ng Pagkakaisa vs. Filtex International Corp.*, 43 SCRA 287 (1972) per Makalintal, now C.J.) and attrition and protracted delay in satisfying such award on the part of unscrupulous employers who have seized upon the further proceedings to determine the actual earnings of the wrongfully dismissed or laid-off employees to hold unduly extended hearings for each and every employee awarded backwages and thereby render practically nugatory such award and compel the employees to agree to unconscionable settlements of their backwages award in order to satisfy their dire need (See *La Campana Food Products, Inc. vs. CIR*, 28 SCRA 314 (1969) and *Kaisahan ng Mga Manggagawa vs. La Campana Food Products, Inc.*, 36 SCRA 142 (1970))."

The *Feati* case adopted the policy of pegging the amount of backwages to their total equivalent for three (3) years (depending on the circumstances) without deduction or qualification. This policy was followed in the cases of *Luzon Stevedoring Corporation* and *B.H. Tenefrancia vs. CIR, et al.* [17] per Makasiar, J. and *Insular Life Assurance Co., Ltd. Employees Association-NATU, et al. vs. Insular Life Assurance Co., Ltd., et al.*, per Castro, C.J. [18]

In the case of *Cristobal vs. Melchor, et al.* [19] the Court granted an award of back salaries equivalent to five (5) years without qualification or deduction.

Respondent AMILPA has thus come to us with a motion to compel execution of final judgment and an appeal for justice.

Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do.[20] "Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts." [21]

The remaining bulk of the award to the members of respondent AMILPA consists of Items A, B, C and E, supra, representing backwages, overtime pay and night differential pay in the total sum of P6,018,135.63, as per the CIR Chief Examiner's approved report and computation of the final award. The only approved deduction to be made therefrom are the earnings elsewhere of the employees concerned. In line with the cited precedents and in the interest of justice and equity under the special circumstances obtaining in this case, the Court fixes (without the necessity of further hearing) such deduction in the amount of one-third of the total award or in the sum of P2,006,045.21, leaving a net amount of P4,012,090.42 due and payable by way of net backwages,[22] for which a writ of execution shall forthwith issue.

ACCORDINGLY, the Court declares and orders the following:

1. The NLRC "decision" of March 30, 1976 ordering a "total reopening" of the approved report and computation of award of the CIR Chief Examiner is declared null and void and of no force and effect;
2. The NLRC and its commissioned Labor Arbiter are hereby directed to schedule immediately the hearings for reception of pertinent evidence on previous payments allegedly effected by petitioner Air Manila, Inc. to the members of respondent AMILPA and alleged errors made by the CIR Auditing Examiner in computing the so-called "by pass pay" (Item D, supra,[23]) for no less than five (5) consecutive days (which should be more than sufficient for the purpose) and as continuously and expeditiously thereafter as may be necessary until terminated and thereafter to set forth the deductions and revisions of computation found to be in order, if any, and state the final amount found to be due on this item under the final CIR decision of August 25, 1971 and to issue the corresponding writ of execution therefor, reporting to this Court the action taken hereon within thirty (30) days from notice hereof; and
3. Execution without further hearing of the aforesaid final CIR decision of August 25, 1971 is hereby ordered immediately insofar as the backwages, overtime pay and night differential pay awarded therein to the members of respondent AMILPA (Items A, B, C and E, supra,[24]) are concerned in the total net amount of P4,012,090.42 (one-third of the gross amount having been already deducted from earnings elsewhere). The clerk of court shall forthwith issue a writ of execution against petitioner Air Manila, Inc. for the satisfaction of said amount and the payment thereof to respondent AMILPA, which writ shall be returned to the NLRC through its Execution Arm.

SO ORDERED

Castro, C.J., Fernando, Teehankee, Makasiar, Antonio, Santos, Fernandez, and Guerrero, JJ., concur.

Barredo, J., concur but he reserves the meaning of a few observations.

Muñoz Palma and Concepcion, Jr., JJ., on official leave.

Aquino, J., no part.

[1] Pp. 330-341, Rollo.

[2] Pp. 426-429, *ibid*.

[3] Pp. 437-465, *ibid*.

[4] Pp. 18-19, *ibid.*

[5] Pp. 34 and 47, *ibid.*

[6] P. 57, *ibid.*

[7] P. 22, *ibid.*

[8] Pp. 23 and 119, *ibid.*

[9] P. 130, *ibid.*

[10] Pp. 27-28, *ibid.*

[11] P. 325, *ibid.*

[12] Pp. 357-382, *ibid.*

[13] Pp. 340-341, *ibid.*

[14] *Gabriel vs. Court of Appeals*, L-43757-58, July 30, 1976.

[15] See Separate Opinion, *Teehankee, J., Mercury Drug Co., Inc. vs. CIR*, L-23357, April 30, 1974, 56 SCRA 694, 711.

[16] L-31503, August 15, 1974, 58 SCRA 395, 418.

[17] L-34300, November 22, 1974, 61 SCRA 154.

[18] L-25291, March 10, 1977, 76 SCRA 50.

[19] L-43203, July 29, 1977, per Muñoz Palma, J.

[20] See 27 Am Jur 2d, *Equity* s 3, p. 520.

[21] *Bouvier's Law Dictionary*, 3rd Revision, p. 1063, citing *Moring v. Privott*, 146 N.C. 558, 60 S. E. 509; *Clinton v. Winnard*, 135 Ill. App. 274; *Curtin v. Krohn*, 4 Cal. App. 131, 88 Pac. 243; see also *Cristobal vs. Melchor*, *supra*.

[22] The total of P6,018,135.63 represents 4 years backwages from November 1, 1968 to Nov. 30, 1972 or approximately P1.5 million per year. Three (3) years backwages corresponding to the standard set in the *Feati* case would amount to P4. 5 million.

[23] At pages 2-3 hereof.

[24] At page 4 hereof.

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