

**PRUDENTIAL GUARANTEE AND ASSURANCE, INC. / ELLIS BETITO,
PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION
(NRLC), FOURTH DIVISION, ANGELO C. ZAMORA / PRUDENTIAL
GUARANTEE AND...**

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GONZALES-SISON, M., J:

Assailed in this instant Petition for Certiorari with Application for Temporary Restraining Order and/or Preliminary Injunction[1] are the Decision and Resolution of the National Labor Relations Commission Fourth Division in NLRC NCR Case No. 03-04007-12 (NLRC LAC No. 08-002285-12) dated 28 February 2013 and 15 July 2013 respectively.

The 28 February 2013 Decision reversed and set aside the 29 June 2012 Decision of the Labor Arbiter and thus ordered petitioners Prudential Guarantee and Assurance, Inc. / Angeles Betito to pay private respondent Angelo Zamora Php 37,729.84 as reimbursement for illegal salary deductions, moral and exemplary damages and attorney's fees. The 15 July 2013 Resolution on the other hand, denied petitioners' Motion for Reconsideration of the 28 February 2013 Decision.

Briefly, the antecedent facts, are as follows:

Petitioner Prudential Guarantee and Assurance, Inc. (PGAI) is a corporation engaged in non-life insurance and surety duly organized and existing in accordance with Philippine laws. Petitioner Angeles "Ellis" V. Betito (Betito) is the Vice President and Head of the Branch Operations Department of PGAI.

At the other side of the coin, private respondent Angelo C. Zamora (Zamora) is a Claims Evaluator of PGAI in its Iloilo Branch. Meanwhile, private respondent Prudential Guarantee and Assurance Employees Labor Union (PHAELU) is a labor organization registered as the the exclusive bargaining representative of all the rank-and-file employees of PGAI.

The controversy arose sometime in the early part of 2011 when PGAI decided to open a new branch in Roxas City. Conformably, PGAI opened a new position of Officer-In-Charge (OIC) for its planned Roxas City Branch. PGAI's Iloilo Branch Manager then informed private respondent Zamora and other interested employees of said opening. Subsequently, Zamora sent a letter to petitioner Betito dated 23 May 2011 accepting said OIC position. Soon after, Zamora was sent by PGAI to Manila to undergo training from 21-30 June 2011. Notably, the training of Zamora cost PGAI Thirty Seven Thousand Seven Hundred Twenty Nine and 84/100 Pesos (P37,729.84).

However, a day before the opening of the Roxas City Branch, Zamora changed his mind and sent a text message to Betito informing the latter that he (Zamora) does now want to assume the OIC position anymore. Later on, after an extended deliberation, PGAI decided to charge Zamora for his training expenses which would be taken monthly from Zamora's salary until full payment.

Aggrieved, Zamora and PHAELU filed a Complaint[2] for Illegal Deduction, Moral and Exemplary Damages and Attorney's Fees against petitioners PGAI and Betito before the National Labor Relations Commission in Quezon

City. Zamora, in his Position Paper[3] alleged that he declined the position of OIC of Roxas City Branch because of the concomitant miniscule increase in his salary which is not commensurate to the responsibilities of an OIC. More significantly, Zamora claimed that the training he took on 21-30 June 2011 had nothing to do with being an OIC but was mandatorily taken by all rank-and-file employees of PGAI. According to Zamora said training was intended as a preparation for the installation of the Phoenix Computer System in all of PGAI's branches as shown by an Inter-Office Memorandum dated 4 January 2010.[4] Zamora then argued that the monthly deductions in his salaries have no basis because the training he took was a necessary expense incurred by PGAI in running and maintaining its business.

PGAI, in its own Position Paper,[5] insisted that there was a binding contract between the company and Zamora that the latter would assume the OIC position. By backing out unceremoniously from his end of the deal, PGAI claimed that Zamora acted in bad faith and must be held liable for damages which is equivalent to Zamora's training cost that was shouldered by PGAI.

Further, in its Reply,[6] PGAI asserted that the training of Zamora was in preparation for his assumption as the OIC Head of the Roxas City Branch. According to PGAI, the Inter-Office Memorandum dated 4 January 2010 cited by Zamora in his Position Paper refers to an IT Training program which was scheduled from 11-28 January 2010 or more than a year and a half before Zamora's training. Moreover, the Inter-Office Memorandum did not mention Zamora's name or the Roxas City and more importantly, another employee was sent from Iloilo Branch to attend said training. These circumstances according to PGAI point to the fact that Zamora would not have benefited from a free training in Manila if not for his acceptance of the OIC position. PGAI thus concluded that it was Zamora who was unjustly enriched by learning novel skills and knowledge after completing a company-sponsored training

Afterward, on 29 June 2012, the Labor Arbiter to whom the case was assigned rendered a Decision[7] in favor of petitioners PGAI and Betito. The Labor Arbiter ratiocinated that Zamora failed to prove that the training he took was mandatorily given to all rank-and-file employees of PGAI, hence Zamora could not claim that he was entitled to said training. Assuming that Zamora was entitled, the Labor Arbiter was nonetheless convinced that Zamora failed to prove that he was already due to attend said training. The only explanation, according to the Labor Arbiter, why Zamora was sent for training on 21-30 June 2011, was because of a perfected contract between PGAI and Zamora that the latter would assume the OIC position. Considering however that Zamora did not fulfill his part, the principles of equity and unjust enrichment demand that Zamora reimburse PGAI for the training expenses incurred by the latter, the Labor Arbiter concluded.

On appeal, the National Labor Relations Commission Fourth Division (public respondent) overturned the Decision of the Labor Arbiter. The public respondent, unlike the Labor Arbiter, found that the training attended to by Zamora was not exclusively given to branch heads as a requirement for their assumption of office but was given to other employees of PGAI in preparation for the installation of a new computer system in PGAI's branches. The public respondent then resolved that charging Zamora with his training cost would constitute unjust enrichment on the part of PGAI as it would be saving cost while Zamora is burdened of shouldering it. Further, the public respondent pointed out that the deductions made by PGAI in Zamora's salaries are not allowed under the Labor Code particularly Articles 113 and 116 thereof. In fine, the public respondent ordered PGAI and Betito to jointly and severally reimburse Zamora for the deductions made in the latter's salaries and to pay Zamora, moral and exemplary damages as well as attorney's fees. The fallo of the 28 February 2013 Decision reads:

“WHEREFORE, premises considered, the Appeal is hereby GRANTED. The Decision of Labor Arbiter Potenciano F. Napenas, Jr. dated June 29, 2012 is hereby REVERSED and SET ASIDE and a new judgment is entered ordering respondents, jointly and severally:

To fully reimburse Mr. Zamora the total amount of Php37,729.84 representing the illegally deducted Phoenix System Training expenses.

To pay the complainant the amount of Php10,000.00 as and by way of moral damages;

To pay complainant the amount of Php10,000.00 as and by way of exemplary damages; and

To pay complainant 10% of the total monetary award equivalent to Php7,772.984 as and by way of Attorney's fees.

SO ORDERED.”[8]

Thereafter, PGAI and Betito filed a Motion for Reconsideration of the above Decision but was met with a denial by the public respondent in a Resolution dated 15 July 2013. The decretal portion of said Resolution reads:

“WHEREFORE, respondents' Motion for Reconsideration is hereby DENIED for lack of merit.”[9]

Undaunted, PGAI and Betito elevated the case to this Court via a Petition for Certiorari with Application for Temporary Restraining Order and/or Preliminary Injunction. In support of this Petition, petitioners assign the following errors for this Court's consideration, to wit:

I. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THE PRESIDING COMMISSIONER AS THE PONENTE FAILED TO RESOLVE FIRST THE MOTION FOR INHIBITION WHICH WAS FILED ON FEBRUARY 18, 2013 BEFORE THE PROMULGATION [OF] THE NLRC DECISION DATED FEBRUARY 28, 2013, AND ONLY INHIBITED IN AN ORDER DATED MAY 9, 2013, AFTER PETITIONERS FILED A MOTION FOR RECONSIDERATION ON APRIL 1, 2013.

II. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GIVING DUE COURSE TO THE APPEAL DESPITE PRIVATE RESPONDENTS' FATAL PROCEDURAL ERROR FOR FAILURE TO COMPLY WITH THE REQUISITES FOR PERFECTING AN APPEAL UNDER THE NLRC RULES.

III. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE PHOENIX COMPUTER SYSTEM TRAINING IS MANDATORY TO ALL EMPLOYEES.

IV. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONERS ARE GUILTY OF ILLEGAL DEDUCTION REPRESENTING THE AMOUNT OF ACTUAL EXPENSES OF PRIVATE RESPONDENT ZAMORA'S TRAINING AS OIC OF THE NEW PGA ROXAS CITY BRANCH.

V. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONERS WERE IN BAD FAITH.

VI. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT ZAMORA IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES.

VII. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT ZAMORA IS ENTITLED TO ATTORNEY'S FEES AND THAT THE NLRC'S COMPUTATION THEREOF IS ERRONEOUS.

VIII. THE HONORABLE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PETITIONER BETITO IS JOINTLY AND SEVERALLY LIABLE WITH PETITIONER PGAI.

As to the first assigned error, petitioners questions the integrity and impartiality of the public respondent when the ponente of the assailed Decision, Commissioner Herminio V. Suelo only inhibited himself from the case after the assailed Decision has been rendered and not prior thereto. According to petitioners, it was incumbent upon Commissioner Suelo to have first acted on the Motion for Inhibition filed by petitioners before he participated in the Assailed Decision.

With respect to the second assigned error, petitioners argue that the Appeal filed by Zamora before the public respondent was fatally defective because the verification and certificate of non-forum shopping were signed only by the President of PHAELU and not by Zamora himself. Petitioners posit that the public respondent should not have entertained Zamora's appeal in the first place due to said technical infirmities.

Anent the third assigned error, petitioners reiterate their stand that the training undergone by Zamora was in preparation for his assumption as the OIC head of the Roxas City Branch, thus the public respondent committed grave abuse of discretion in assuming otherwise. After Zamora turned his back on his commitment to PGAI, petitioners maintain that Zamora should be made liable for damages and not the other way around.

Dwelling on the fourth and fifth assigned errors, petitioner contend that Zamora agreed to the terms of his employment with PGAI which specifically authorizes PGAI to deduct whatever amount the company will incur for damages caused by Zamora. According to petitioners said stipulation validate their action of deducting Zamora's salaries, hence they did no act with bad faith.

As for the sixth assigned error, petitioners assert that they did not act fraudulently and maliciously toward Zamora to warrant the award of moral and exemplary damages.

With respect to the seventh assigned error, petitioners protest the award of attorney's fees because it allegedly has no basis. Further, petitioners harp that the amount given as attorney's fees is greater than the ten percent (10%) of the total monetary award.

Finally, as for the last assigned error, petitioners contend that petitioner Betito should not have been made personally liable together with petitioner PGAI, because corporate officers are not personally liable for corporate acts, absent any showing of any ill will.

At the outset it bears to stress that a petition for certiorari is the proper remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain speedy, and adequate remedy at law. There is "grave abuse of discretion" when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[10]

Moreover, it also important to point that ordinarily, factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect but even finality, and are binding upon this Court. However, when the findings of the Labor Arbiter and the NLRC are inconsistent, there is a need to review the records to determine which of them should be preferred as more conformable to the evidentiary facts.[11]

Verily, after sifting through the facts of the case, as guided, by the applicable laws and jurisprudence, We find partial merit in the present petition.

With respect to the first assigned error, there is no law or rule prescribing that a sitting NLRC Commissioner must resolve a Motion for Inhibition before the promulgation of the main case on appeal. The only requirement which was duly complied with is that a Commissioner recusing himself should state so in writing the legal or justifiable grounds therefor.[12] Moreover, even after Commissioner Suelo has already inhibited himself from the case, the same assailed 28 February 2013 Decision was still affirmed by the remaining members of the Division in the 15 July 2013 Resolution. This signifies that both the assailed Decision and Resolution are collegial acts and not solely Commissioner Suelo's own conclusions. Unless and until petitioners could prove that the public respondent as a collegiate body was biased against them then surely this assigned error has no leg to stand on.

As to the second error, it is settled that the requirements of verification and certification against forum shopping are not jurisdictional.[13] Further, non-compliance with the verification requirement does not necessarily render the pleading fatally defective; hence, the court may order its correction if verification is lacking, or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the Rules may be dispensed with in order that the ends of justice may thereby be served. On the other hand, jurisprudence instructs that the rule on certification against forum shopping may be relaxed on grounds of "substantial compliance" or "special circumstance or compelling reasons." [14] In the case at bar, it is admitted by petitioners that private respondent Zamora later filed a Manifestation and Motion attaching a Special Power of Attorney authorizing the President of PGAELU to file the Memorandum of Appeal.[15] In Our books, such belated submission constitute substantial compliance which would justify a liberal application of the rules. More significantly, it is a horn book in labor cases that rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice, technicalities must be avoided.[16] Indubitably then, the public respondent did not gravely abuse its discretion in entertaining the Memorandum of Appeal filed by Zamora.

As to the third and fourth assigned errors which pertain to the crux of this petition, petitioners insist that the training taken by Zamora was in preparation for his assumption as the OIC of Roxas City Branch which position was seconded by the Labor Arbiter. Zamora, on the other hand, claim that said training was given indiscriminately to all rank-and-file employees of PGAI which perspective is concurred by the public respondent. After careful deliberation, We find the view of Zamora and the public respondent more in accord with the records of the case.

On this score, the burden of proving that Zamora's salary deductions were valid lies in the shoulder of PGAI since it was the one which imposed an additional burden to its employee.[17]

Indeed, since the petitioners were the ones sponsoring the training seminar, it was incumbent upon them to prove that the session given to Zamora was especially given to those who would assume an OIC position. However, aside from general averments and inconclusive arguments, petitioners could not even produce a single trainee who attended the same seminar who was also being groomed to occupy the position of an OIC or of a same level position. More significantly, petitioners could not specifically point to any of the training courses completed by Zamora which refer exclusively to the responsibilities of an OIC. Zamora, on the other hand, in his Position Paper, was adamant in stating that there was no course in his training that is related in any way to his being an OIC. Verily, this argument was not substantially refuted by petitioners bolstering the position of Zamora that the training he attended to was mandatorily given to all rank-and-file employees of PGAI in preparation for their migration to a new computer system. All told, the training attended to by Zamora was for the benefit of PGAI regardless of whether Zamora would become an OIC of the Roxas City Branch or not. It is then just and proper that PGAI as the ultimate beneficiary of said training should shoulder its entire cost.

Granting arguendo that petitioners are correct, they still do not have any right to automatically deduct the salaries

of Zamora, as it is clearly prohibited under the Labor Code. On this score, Article 113 of the Labor Code clearly provides that:

ART. 113. No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

- (a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;
- (b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and
- (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor,

On the other hand, Rule VIII, Section 10 of the Rules Implementing Book III of the Labor Code reads:

SEC. 10. Deductions from the wages of the employees may be made by the employer in any of the following cases:

- (a) When the deductions are authorized by law, including deductions for the insurance premiums advanced by the employer in behalf of the employee as well as union dues where the right to check-off has been recognized by the employer or authorized in writing by the individual employee himself;
- (b) When the deductions are with the written authorization of the employees for payment to a third person and the employer agrees to do so, provided that the latter does not receive any pecuniary benefit, directly or indirectly, from the transaction. (underscoring supplied)

Undeniably, the present situation does not fall in any of the exceptions mentioned above notwithstanding the employment contract signed by Zamora with PGAI.

Moreover, the cases of *Almario v. PAL*,^[18] and *Elegir v. PAL*^[19] cited by petitioners are not on all fours with the case at bar. In the case of *Almario*, Philippine Air Lines (PAL) filed a civil suit before the regular court for the recovery of the training cost of its pilot. In *Elegir*, on the other hand, PAL deducted the retirement pay of the pilot who retired before PAL could recoup his training cost. In both instances, the controlling factor considered by the Supreme Court was the CBA between the pilot's union, ALPAP, and PAL allowing the reimbursement of the training cost which similar CBA is absent in the case at bar. Moreover, due to the peculiarities of both cases, the invocation of Article 113 of the Labor Code cannot be found because no salaries were ever deducted from the concerned pilots.

As to the fifth, sixth and seventh assigned errors, We do not find cogent reason to disturb the award of moral and exemplary damages and attorney's fees. Indeed, this Court concurs with the findings of the public respondent that despite the proscription set by the Labor Code, PGAI still went ahead and unabashedly deducted the salaries of Zamora. This connotes bad faith on the part PGAI which is defined as a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.^[20] On this score, the award of moral and exemplary damages are warranted following Articles 21, 2219 and 2229 of the New Civil Code.^[21]

The award of attorney's fees, likewise is guaranteed because circumstances show that Zamora was forced to file a complaint against the petitioners when they refused to heed his demand for reimbursement of his salaries. Under Article 2208 of the Civil Code, attorney's fees can be recovered "when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest." As Zamora was compelled to litigate to satisfy his claim, he is entitled to attorney's fees of ten percent (10%) of the total award.^[22]

On the amount given as attorney's fees, the computation of the public respondent, however, is incorrect. The sum

of the total reimbursement (P37,729.84), moral damages (P10,000.00) and exemplary damages (P10,000.00) only amounts to Fifty Seven Thousand Seven Hundred Twenty Nine and 84/100 Pesos (P57,729.84). Ten percent of said amount results to Five Thousand Seven Hundred Seventy Two and 98/100 Pesos (P5,772.98). Verily, this amount should reflect the correct award of attorney's fees.

Finally, this Court takes heed that petitioner Betito should not be made jointly and severally liable with PGAI. Pertinent to this issue is Section 31 of the Corporation Code which provides:

“Section 31 of the Corporation Code provides:

Liability of directors, trustees or officers. -- Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. x x x”

Clearly, there was no showing that Betito willingly and knowingly voted for or assented to patently unlawful acts of the corporation, or that Betito was guilty of gross negligence or bad faith.

With the above discussion the application for Temporary Restraining Order and/or Preliminary Injunction are denied for want of merit.

WHEREFORE, premises considered, the instant Petition for Certiorari is **PARTIALLY GRANTED** such that the assailed Decision and Resolution of the National Labor Relations Commission Fourth Division dated 28 February 2013 and 15 July 2013 respectively are hereby **MODIFIED** as follows:

- a) the attorney's fees is reduced to P5,772.98; and
- b) petitioner Angeles “Ellis” V. Betito is absolved of any liability.

The rest of the assailed Decision and Resolution are affirmed. Finally, the application for Temporary Restraining Order and/or Preliminary Injunction are **DENIED** for want of merit.

SO ORDERED.

Carandang, (Chairperson) and Sorongon, JJ., concur.

[1] Rollo, p. 3.

[2] Rollo, p. 69.

[3] Rollo, p. 72.

[4] Rollo, p. 94.

[5] Rollo, p. 95

[6] Rollo, p. 106.

[7] Rollo, p. 59.

[8] Rollo, pp. 46-47.

[9] Rollo, p. 52.

[10] People's Broadcasting v. The Sec. of the Department Labor and Employment, etc., G.R. No. 179652, 08 May

2009.

[11] Phil. Employ Services and Resources, Inc. v. Paramio, G.R. No. 144786, 15 April 2004.

[12] 2011 NLRC Rules of Procedure, Rule VII, Section 7.

[13] Sps. Lim v. Court of Appeals, G.R. No. 192615, 30 January 2013.

[14] Chinese Young Men's Christian Association of The Philippine Islands v. Remington Steel Corporation, G.R. No. 159422, 28 March 2008.

[15] Rollo, p. 16.

[16] Millenium Erectors Corporation v. Magallanes, G.R. No. 184362, 15 November 2010.

[17] See Niña Jewelry Manufacturing Of Metal Arts, Inc. v. Montecillo, G.R. No. 188169, 28 November 2011.

[18] G.R. No. 170928, 11 September 2007.

[19] G.R. No. 181995, 16 July 2012.

[20] Lambert Pawnbrokers and Jewelry Corporation v. Binamira, G.R. No. 170464, 12 July 2010.

[21] Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Art. 2219. Moral damages may be recovered in the following and analogous cases:

xxx.

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[22] ART. 111 of the Labor Code. Attorney's fees. - (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

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