

**DIMDI CENTER, INC. AND/OR ARTHUR C. UY, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION (EIGHTH DIVISION)
AND RUDY U. TUBILAG, RESPONDENTS.**

Ponente: SINGH, J.

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SINGH, J.:

On July 7, 2014, petitioner filed before this Court a Petition for Certiorari with Prayer for a Temporary Restraining Order[1] under Rule 65 of the Rules of Court assailing the Resolutions dated December 27, 2013[2] and April 30, 2014[3] of the National Labor Relations Commission (Eighth Division – Cagayan de Oro City) in NLRC-MAC-06-013065-2013 (RAB-X-03-00092-2012) (RAB-X-03-00106-2012).

In compliance with this Court's November 17, 2014 Resolution,[4] private respondent filed his Comment/Objection to the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI) on December 22, 2014,[5] and petitioner filed a Reply thereto on January 5, 2015.[6]

With the filing of the Comment and Reply, the parties are hereby REQUIRED to submit simultaneous memoranda in amplification of their respective positions within fifteen (15) days from receipt of notice. Upon lapse of such period, the petition shall be deemed submitted for decision, with or without such memoranda.

As to the prayer for the issuance of a TRO and/or WPI, the same is DENIED.

Under Article 223 of the Labor Code, “the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or at the option of the employer, merely reinstated in the payroll.”[7] The “order of reinstatement issued by the LA is self-executory, i.e., the dismissed employee need not even apply for and the LA need not even issue a writ of execution to trigger the employer’s duty to reinstate the dismissed employee. Unless the appellate tribunal issues a restraining order, the LA is duty bound to implement the order of reinstatement and the employer has no option but to comply with it.”[8]

Petitioner alleged that it “seek[s] to restrain [is] the execution of a wrong or erroneous Resolution (Decision) pertaining to the reinstatement of respondent Tubilag and with backwages computed from the time of his dismissal up to his reinstatement, or the finality of assailed Resolution (Decision), as the same is made without valid basis in fact, in law and in jurisprudence.”[9]

Petitioner is thus indirectly asking this Court to restrain the implementation of the order of reinstatement and payment of backwages since it was allegedly erroneously issued by the NLRC. Petitioner wants this Court to grant its application for the issuance of a TRO and/or WPI which will have the effect of granting the main prayer of the petition and leave this Court with nothing further to resolve.

It has been held that “judges dealing with applications for the injunctive relief ought to be wary of improvidently or unwarrantedly issuing TROs or writs of injunction that tend to dispose of the merits without or before trial.

Granting an application for the relief in disregard of that tendency is judicially impermissible, for it is never the function of a TRO or preliminary injunction to determine the merits of a case, or to decide controverted facts. It is well worth remembering that the writ of preliminary injunction should issue only to prevent the threatened continuous and irremediable injury to the applicant before the claim can be justly and thoroughly studied and adjudicated.”[10]

Finally, the reinstatement of private respondent will not render this Court's resolution on the petition moot and academic since “even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.”[11]

WHEREFORE, the prayer for the issuance of a Temporary Retraining Order and/or Writ of Preliminary Injunction is DENIED. The parties are REQUIRED to submit simultaneous memoranda in amplification of their respective positions within fifteen (15) days from receipt of notice. Upon lapse of the period given, the petition shall be deemed submitted for decision, with or without such memoranda.

SO ORDERED.

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

[1] Rollo, pp. 2-38.

[2] Rollo, pp. 43-56.

[3] Rollo, pp. 75-77.

[4] Rollo, p. 255.

[5] Rollo, pp. 256-260.

[6] Rollo, pp. 261-263.

[7] Wenphil Corporation v. Abing, G.R. No. 207983, April 7, 2014.

[8] Bergonio, Jr., et al. v. South East Asian Airlines, G.R. No. 195227, April 21, 2014.

[9] Rollo, p. 37.

[10] Nerwin Industries Corporation v. PNOC-Energy Development Corporation, G.R. No. 167057, April 11, 2012.

[11] Pfizer, Inc. v. Velasco, G.R. No. 177467, March 9, 2011, citing Garcia v. PAL, G.R. No. 164856, January 20, 2009.

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