

NATIVIDAD PONDOC, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FIFTH DIVISION, CAGAYAN DE ORO CITY) AND EMILIO PONDOC, RESPONDENTS.

G.R. No. 116347. October 03, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The novel issue that confronts us in this case is whether the Fifth Division of the National Labor Relations Commission (NLRC) can validly defeat a final judgment of the labor arbiter in favor of the complainant in a labor case by: (a) entertaining a petition for injunction and damages, and an appeal from the Labor Arbiter's denial of a claim for set-off based on an alleged indebtedness of the laborer and order of execution of the final judgment; and, (b) thereafter, by receiving evidence and adjudging recovery on such indebtedness and authorizing it to offset the Labor Arbiter's final award.

The petitioner takes the negative view. In its Manifestation and Motion in Lieu of Comment,[1] the Office of the Solicitor General joins her in her plea, hence we required the NLRC to file its own comment.

We resolved to give due course to the petition after the filing by the NLRC and the private respondent of their separate comments.

Petitioner Natividad Pondoc was the legitimate wife of Andres Pondoc. After her death on 5 December 1994, she was substituted by Hipolito Pondoc, her only legitimate son.[2]

The Office of the Solicitor General summarized the factual antecedents of this case in its Manifestation and Motion in Lieu of Comment:

Private respondent Eulalio Pondoc is the owner-proprietor of Melleonor General Merchandise and hardware Supply located at Poblacion, Sindangan, Zamboanga del Norte. Respondent is engaged, among others, in the business of buying and selling copra, rice, corn, "binangkal," junk iron and empty bottles. He has in his employ more than twenty (20) regular workers (Records, pp. 9-11).

Records disclose that Andres Pondoc was employed by Eulalio Pondoc as a laborer from October 1990 up to December 1991, receiving a wage rate of P20.00 per day. He was required to work twelve (12) hours a day from 7:00 AM to 8:00 PM, Monday to Sunday. Despite working on his rest days and holidays, he was not paid his premium pay as required by law (Ibid).

Consequently, on May 14, 1992, Natividad Pondoc, on behalf of her husband, filed a complaint for salary differential, overtime pay, 13th month pay, holiday pay and other money claims before the Sub-Regional Arbitration Branch No. 9 of the NLRC, docketed as Sub-RAB Case No. 09-05-10102-92 (Records, p. 1).

In his position paper, private respondent questioned, among others, the existence of [an] employer-employee relationship between them. He further averred that Melleonor General Merchandise and Hardware Supply is a fictitious establishment (Records, pp. 64-68).

On June 17, 1993, labor Arbiter Esteban Abecia rendered a Decision finding the existence of [an] employer-employee relationship between the parties. The dispositive portion of the Decision reads: WHEREFORE, judgment is hereby rendered: (a) ordering respondent Eulalio Pondoc to pay complainant the following claims:

- (1) Salary differential for reason of underpayment P35,776.00;
- (2) Regular holiday and premium pay for holiday services 902.00;
- (3) Premium pay for rest day services 3,840.00;
- (4) 13th month pay 3,600.00

or the total amount of FOURTY-FOUR [sic] THOUSAND AND ONE HUNDRED EIGHTEEN PESOS (P44,118.00).

Other claims are denied for lack of merit.

SO ORDERED (Records, pp. 323-324).

On his last day to perfect an appeal, private respondent filed a manifestation before the Labor Arbiter praying that his liabilities be set-off against petitioner's alleged indebtedness to him (Records, pp. 325-327). The Labor Arbiter denied, however, the compensation, and instead, issued a writ of execution as prayed for by petitioner (Records, p. 328).

Before the execution order could be implemented, however, private respondent was able to obtain a restraining order from the NLRC, where he filed a Petition for "Injunction and Damages," docketed as NLRC Case No. ICM-000065.

On February 28, 1994, public respondent NLRC allowed compensation between petitioner's monetary award and her alleged indebtedness to private respondent. It disposed:

WHEREFORE, the appealed order is hereby vacated and set aside. A new one is entered declaring the setting-off of complainant's indebtedness which allegedly amounted to P41,051.35 against the complainant's monetary award in the amount of P44,118.00. The additional amount of P5,000.00 which complainant allegedly got from respondent on 10 July 1993 could not be credited in view of appellant's failure to submit evidence to prove that complainant was really paid P5,000.00.

Accordingly, respondent Eulalio Pondoc is hereby directed to pay complainant Natividad Pondoc the amount of P3,066.65.

The Temporary restraining order issued herein is hereby made permanent.

SO ORDERED (Annex "D" of Petition).[3]

Her motion for reconsideration of the judgment having been denied by the NLRC, the petitioner instituted this special civil action for certiorari under Rule 65 of the Rules of Court wherein she prays this Court annul the challenged decision of the NLRC, Fifth Division (Cagayan de Oro City), in NLRC Case No. IC No. M-000065, and direct the enforcement of the writ of execution in NLRC Case No. SRAB-09-05-10102-92, on the ground that the NLRC, Fifth Division, acted without or in excess of jurisdiction or with grave abuse of discretion when it proceeded to determine the alleged indebtedness of the petitioner and set-off the same against the liabilities of the private respondent. The petitioner asserts that the decision of the labor Arbiter in NLRC Case No. SRAB-09-05-10102-92 was already final and executory when the private respondent tried to defeat the judgment

by asserting an alleged indebtedness of Andres Pondoc as a set-off, a claim not pleaded before the Labor Arbiter at any time before judgment, hence deemed waived. Moreover, the indebtedness "did not evolve out [sic] employer-employee relationship, hence, purely civil in aspect."

The Office of the solicitor General agreed with the petitioner and stressed further that the asserted indebtedness was never proven to have arisen out of or in connection with the employer-employee relationship between the private respondent and the late Andres Pondoc, or to have any causal connection thereto. Accordingly, both the Labor Arbiter and the NLRC did not have jurisdiction over the private respondent's claim.

As expected, the private respondent and the NLRC prayed for the dismissal of this case.

We rule for the petitioner.

The proceedings before the NLRC were fatally flawed.

In the first place, the NLRC should not have entertained the private respondent's separate or independent petition for "Injunction and Damages" (NLRC IC No. M-000065). It was obvious that the petition was a scheme to defeat or obstruct the enforcement of the judgment in NLRC Case No. SRAB-09-05-10102-92 where, in fact, a writ of execution had been issued. Article 218(e) of the Labor Code does not provide blanket authority to the NLRC or any of its divisions to issue writs of injunction, while Rule XI of the New Rules of Procedure of the NLRC makes injunction only an Ancillary remedy in ordinary labor disputes such as the one brought by the petitioner in NLRC Case No. SRAB-09-05-10102-92. This is clear from Section 1 of the said Rule which pertinently provides as follows:

Section 1. Injunction in Ordinary Labor Disputed. -- A preliminary injunction or a restraining order may be granted by the Commission through its divisions pursuant to the provisions of paragraph (e) of Article 218 of the Labor Code, as amended, when it is established on the bases of the sworn allegations in the petition that the acts complained of, involving or arising from any labor dispute before the Commission, which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.

x x x

The foregoing ancillary power may be exercised by the Labor Arbiters only as an incident to the cases pending before them in order to preserve the rights of the parties during the pendency of the case, but excluding labor disputes involving strike or lockout. (emphasis supplied)

Hence, a petition or motion for preliminary injunction should have been filed in the appeal interposed by the private respondent, i.e., in NLRC Case No. SRAB-09-05-10102-92. This matter, however, became academic when the NLRC consolidated the two cases as shown by the captions in its challenged decision of 28 February 1994 and resolution of 6 May 1994.

Secondly, the appeal of the private respondent in NLRC Case No. SRAB-09-05-10102-92 was not from the decision therein, but from the order of the Labor Arbiter denying the set-off insisted upon by the private respondent and directing the execution of the judgment. Therefore, the private respondent admitted the final and executory character of the judgment.

The Labor Arbiter, in denying the set-off, reasoned "[I]t could have been considered if it was presented before the decision of this case." [4] While this is correct, there are stronger reasons why the set-off should, indeed, be denied. As correctly contended by the Office of the Solicitor General, there is a complete want of evidence that the indebtedness asserted by the private respondent against Andres Pondoc arose out of or was incurred in connection with the employer-employee relationship between them. The Labor Arbiter did not then have

jurisdiction over the claim as under paragraph (a) of Article 217 of the Labor Code, Labor Arbiters have exclusive and original jurisdiction only in the following cases:

1. Unfair labor practice cases;
2. Termination disputes;
3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;
4. Claim for actual, moral, exemplary and other forms of damages arising from employer-employee relations;
5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims, arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (P5,000.00) regardless of whether accompanies with a claim for reinstatement.

On the other hand, under paragraph (b) thereof, the NLRC has exclusive appellate jurisdiction over all cases decided by the Labor Arbiters. This simply means that the NLRC does not have original jurisdiction over the cases enumerated in paragraph (a) and that if a claim does not fall within the exclusive original jurisdiction of the labor Arbiter, the NLRC cannot have appellate jurisdiction thereon.

The conclusion then is inevitable that the NLRC was without jurisdiction, either original or appellate, to receive evidence on the alleged indebtedness, render judgment thereon, and direct that its award be set-off against the final judgment of the Labor Arbiter.

Finally, even assuming arguendo that the claim for the alleged indebtedness fell within the exclusive original jurisdiction of the Labor Arbiter, it was deemed waived for not having been pleaded as an affirmative defense or barred for not having been set up as a counterclaim before the Labor Arbiter at any appropriate time prior to the rendition of the decision in NLRC Case No. SRAB-09-05-10102-92. Under the rules of Court, which is applicable in a suppletory character in labor cases before the Labor Arbiters or the NLRC pursuant to Section 3, Rule 1 of the New Rules of Procedure of the NLRC, defenses which are not raised either in a motion to dismiss or in the answer are deemed waived^[5] and counterclaims not set up in the answer are barred.^[6] Set-off or compensation is one of the modes of extinguishing obligations^[7] and extinguishment is an affirmative defense and a ground for a motion to dismiss.^[8]

We do not then hesitate to rule that the NLRC acted without jurisdiction or with grave abuse of discretion in entertaining an independent action for injunction and damages (NLRC IC No. M-000065), in receiving evidence and rendering judgment on the alleged indebtedness of Andres Pondoc, and in ordering such judgment to offset the final award of the Labor Arbiter in NLRC Case No. SRAB-09-05-10102-92.

WHEREFORE, the instant petition is GRANTED and the challenged decision of 28 February 1994 and resolution of 6 May 1994 of the National labor Relations Commission in NLRC Case No. IC No. M-000065 and NLRC Case No. SRAB-09-05-10102-92 are ANNULLED and SET ASIDE. The judgment of the Labor Arbiter in NLRC Case No. SRAB-09-05-10102-92 should forthwith be enforced without any further delay, the award therein bearing interest at the rate of twelve percentum (12%) per annum from the finality of such judgment until it shall have been fully paid.

Costs against the private respondent.

SO ORDERED.

Narvasa, C.J., (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Rollo, 95-104.

[2] Rollo, 75-77; 89.

[3] Rollo, 97-98.

[4] Order of 26 July 1993; Rollo, 23.

[5] Section 2, Rule 9, Rules of Court.

[6] Section 4, Id., Id.

[7] Article 1231 (5), Civil Code.

[8] Section 1 (h), Rule 16, Rules of Court.

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