

CONRADO COSICO, JR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, EVA AIRWAYS CORPORATION, LEWIS CHANG, AND ALLEN SOONG, RESPONDENTS.

G.R. No. 118432. May 23, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Through this special civil action for certiorari, petitioner seeks the reversal and nullification of the August 31, 1994 and the December 15, 1994 resolutions of respondent National Labor Relations Commission (NLRC) in NLRC NCR-CA Case No. 005304-93 for having been issued with grave abuse of discretion.

The relevant antecedents are as follows:

Petitioner Conrado Cosico, Jr. was hired by respondent Eva Airways Corporation (Eva Air) through its General Sales Agent, Don Tim Air Service, Inc., on April 4, 1992 as Assistant Station Manager for the Manila office for a mutually agreed monthly salary of P30,000.00.

As Assistant Station Manager, petitioner was tasked, among others, to supervise the construction of respondent Eva Air's office in a space reserved for the purpose at the Ninoy Aquino International Airport (NAIA) and to see to it that respondent Eva Air's target of flying at least sixty (60) passengers per flight be realized in order to maintain the company's overhead operations.

After five (5) months of operation, a performance audit of respondent Eva Air's Manila office was undertaken and the same yielded the finding that the airline had only an average of twenty-five (25) passengers per flight, way below its targeted passenger load. After evaluating the situation further, respondent Eva Air decided to implement measures to make the Manila office cost-efficient. It was decided that the position of Assistant Station Manager be abolished.

On September 24, 1992, petitioner was advised of respondent Eva Air's decision in a letter which reads in full:

Mr. Conrado Cosico Our Ref: PSN-81030

Asst. Station Manager Date: Sep. 24, 1992

Through: Mr. Allen Soong

EVA Taipei Representative

RE: ABOLITION OF POSITION - ASST. STATION MANAGER

We have been reviewing the developments and performance of our Philippine station. Our reviews of the past four and one third months show that passenger & cargo loads are below the target given by our office.

In view of this, it is Management's decision to abolish the position of the Asst. Station Manager and also keep the position of Station Manager vacant. In the meantime, the EVA TAIPEI REP in Manila is given charge of

the operation of the Manila Station. He will handle the day to day activities and operations of the Airline.

You are therefore given notice that your position is hereby abolish (sic) and your services terminated on account thereof 15 days upon receipt of this notice. Please effect the necessary turnover within the said 15 days period.

Thank you and we hope you will understand the position taken by the company.

Very truly yours,

(Sgd.)

Lewis Chang

Deputy Senior Vice President

Personnel Division[1]

Respondent Eva Air, likewise, offered to pay the petitioner separation pay equivalent to one (1) month salary and proportionate 13th month pay for his six (6) months and eleven (11) days service to the company.

Petitioner rejected the offer and instead filed a complaint for illegal dismissal, underpayment of wages and moral and exemplary damages against respondents Eva Air and its officers, Lewis Chang and Allen Soong. The case was docketed as NLRC NCR Case No. 00-10-05891-92.

On June 9, 1993, Labor Arbiter Ernesto Dinopal rendered a decision, the dispositive portion of which reads:

WHEREFORE, decision is hereby rendered declaring the dismissal of complainant CONRADO COSICO, JR. by respondents EVA AIRWAYS CORPORATION and LEWIS CHANG as illegal and without justifiable cause and ordering them to reinstate complainant Cosico, Jr. to his former position without loss of seniority rights and other privileges and pay him, jointly and severally, the following sums:

Backwages from October 9, 1992 up to the date of reinstatement, either actually or by payroll, which if computed as of June 9, 1993 amounts to (P30,000.00 x 8 months). P 240,000.00

Thirteenth Month Pay-----30,000.00

Moral Damages-----1,000,000.00

Exemplary Damages-----1,000,000.00

10% attorney's fees-----227,000.00

TOTAL-----P2,497,000.00

Respondent ALLEN SOONG is declared free from any liability it appearing that he had no active participation in complainant's illegal dismissal.

SO ORDERED.[2]

Respondents Eva Air and Lewis Chang elevated their case to respondent NLRC where they filed their appeal memorandum and posted a surety bond in the amount of Two Hundred Seventy Thousand Pesos (P270,000.00). Petitioner filed a motion to dismiss the appeal on the ground that the supersedeas bond posted by private respondents was insufficient as it did not cover the award of moral and exemplary damages as well as attorney's fees.

Respondent NLRC denied the motion and instead gave due course to the appeal. On August 31, 1994, it issued a resolution setting aside the decision of the labor arbiter, disposing thusly:

WHEREFORE, in view of the foregoing premises, the Appeal is hereby given due course and the decision of Labor Arbiter, Ernesto Dinopol dated June 09, 1993, is hereby set aside. However, respondents are ordered to pay complainant full separation benefits equivalents (sic) to one (1) month for every year of service and thirteenth month pay for 1992.

SO ORDERED.[3]

Petitioner moved to reconsider the resolution but the same was denied on December 15, 1994 in a resolution which reads:

After due consideration of the Motion for Reconsideration filed by complainant on September 16, 1994, from the Resolution of August 31, 1994, the Commission (Second Division) RESOLVED to deny the same for lack of merit.[4]

Hence, this petition predicated on the following grounds for consideration, to wit:

I

THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT GAVE PRIVATE RESPONDENTS' APPEAL DUE COURSE NOTWITHSTANDING THE FACT THAT RESPONDENTS' APPEAL WAS NOT DULY PERFECTED FOR FAILURE TO POST THE CORRECT SUPERSEDEAS BOND IN AN AMOUNT EQUIVALENT TO THE MONETARY AWARD.

II

THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT SET ASIDE THE DECISION OF LABOR ARBITER EERNESTO (sic) DINOPOL AND INSTEAD RULED THAT COMPLAINANT WAS NOT ILLEGALLY DISMISSED.

III

THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT THE POSITION OF THE PETITIONER WAS DULY ABOLISHED.

IV

THE NLRC GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONER IS NOT ENTITLED TO DAMAGE (Sic).[5]

The petition is devoid of merit.

Inceptively, petitioner asseverates that respondent NLRC gravely abused its discretion in giving due course to the appeal of private respondents albeit the latter's failure to post the correct supersedeas bond which is supposed to be equivalent to the monetary award in the judgment.

Article 223 of the Labor Code, as amended by Republic Act No. 6715 (Herrera-Veloso Law), provides:

ART. 223. Appeal.— Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. xxx

xxx

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

xxx

For the proper guidance of lawyers and litigants and pursuant to the provisions of Article 218[6] of the Labor Code, the NLRC adopted and promulgated its New Rules of Procedure on August 31, 1990. The Rules were published in the Manila Bulletin and the Philippine Daily Inquirer on September 24, 1990 and became effective fifteen (15) days thereafter. Section 6, Rule VI of the said Rules reads:

Section 6. Bond. — In case the decision of a Labor Arbiter involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award.

The Commission, may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. However, an appeal is deemed perfected upon posting of the bond equivalent to the monetary award exclusive of moral and exemplary damages as well as attorney's fees.

Nothing herein however, shall be construed as extending the period of appeal. (Underscoring ours.)

Said provision was amended on May 21, 1991 per Resolution No. 5-01-91 which became effective ten (10) days after its publication in the Philippine Daily Inquirer and the Philippine Star on June 2, 1991. It was again amended on November 7, 1991 in Resolution No. 11-01-91 which became effective ten (10) days after its publication in the Manila Bulletin and the Philippine Star on January 5, 1992. The amended provision reads:

Section 6. Bond. — In case the decision of a Labor Arbiter involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award.

The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond. (However, an appeal is deemed perfected upon the posting of the bond equivalent to the monetary award exclusive of moral and exemplary damages as well as attorney's fees. [Deleted, effective on Jan. 14, 1992])

Nothing herein however, shall be construed as extending the period of appeal.

On November 5, 1993, said provision was further amended by Resolution No. 11-01-93 which became effective ten (10) days after its publication in the Philippine Star and the Manila Times on November 20, 1993. The latest amended provision reads:

Section 6. Bond. — In case the decision of a Labor Arbiter POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.

The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond.

(As amended by Nov. 5, 1993) (Underscoring ours.)

As can be seen from the foregoing pertinent provisions, the phrase "exclusive of moral and exemplary damages and attorney's fees" with reference to the computation of the cash or surety bond to be posted by an employer who wishes to appeal was originally contained in the new Rules. It was later deleted sometime in 1991 and 1992, then restored on November 20, 1993.

The successive changes in the Rules only mirror the fact that respondent NLRC in the performance of its rule-making power had considered seriously and judiciously the ramifications of the law and came out ultimately with the correct rule excluding from the monetary award moral and exemplary damages, as well as attorney's fees, for purposes of computing the amount of the appeal bond.

It may be noted that while respondent NLRC in its Resolution No. 11-01-91 dated November 7, 1991 deleted the phrase "exclusive of moral and exemplary damages as well as attorney's fees" in the determination of the amount of the bond, it provided a safeguard against the imposition of excessive bonds by providing that "(T)he Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond."

Moreover, the latest amendment is more in consonance with the right of appeal given to the employer, which is actually a statutory right. An unreasonable and excessive amount of bond would be oppressive and unjust and would have the effect of depriving a party of his right to appeal. It is a well-settled rule in statutory construction that:

xxx (S)tatutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. INTERPRETATIO TALIS IN AMBIGUIS SEMPER FRIENDA EST, UT EVITATUR INCONVENIENS ET ABSURDUM. Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. x x x.[7]

In the case at bar, the backwages and thirteenth month pay awarded to petitioner amounted only to P270,000.00, but the moral and exemplary damages, plus 10% attorney's fees, totalled P2,497,000.00. In other words, the moral and exemplary damages and attorney's fees are almost ten (10) times greater than the basic monetary judgment. Private respondents posted a supersedeas bond of P270,000.00, obviously, on the honest belief that the amount was sufficient. At the very least, therefore, there was substantial compliance with the requirement of appeal bond. For to rule otherwise would negate the interest of justice and deviate from the mandate of the Labor Code that the rules of procedure should be liberally construed, thus:

SECTION 2. CONSTRUCTION . — These Rules shall be liberally construed to carry out the objectives of the Constitution and the Labor Code of the Philippines and to assist the parties in obtaining a just, expeditious and inexpensive settlement of labor disputes.

In *Ruga v. NLRC*,[8] we held:

Fundamental considerations of substantial justice persuade Us to decide the instant case on the merits rather than to dismiss it on a mere technicality. In so doing, we exercise the prerogative accorded to this Court enunciated in *Firestone Filipinas Employees Association, et al. v. Firestone Tire and Rubber Co. of the Philippines, Inc.*, 61 SCRA 340 (1974), thus 'the well-settled doctrine is that in labor cases before this Tribunal, no undue sympathy is to be accorded to any claim of a procedural misstep, the idea being that its power be exercised according to justice and equity and substantial merits of the controversy.'

Since private respondents filed a bond which they honestly believed sufficient for purposes of their appeal, respondent NLRC should have called their attention that the bond was inadequate, which it did not.

In *YBL (Your Bus Line) v. NLRC*,[9] we had occasion to rule that:

The Court finds that while Article 223 of the Labor Code, as amended by Republic Act No. 6715, requiring a cash or surety bond in the amount equivalent to the monetary award in the judgment appealed from for the appeal to be perfected, may be considered a jurisdictional requirement, nevertheless, adhering to the principle that substantial justice is better served by allowing the appeal on the merits threshed out by the NLRC, the Court finds and so holds that the foregoing requirement of the law should be given a liberal interpretation.

In *Star Angel Handicraft v. NLRC*,^[10] we likewise declared that the provisions of the Labor Code on requiring a bond on appeals involving monetary awards must be given liberal interpretation in line with the desired objective of resolving controversies on the merits.^[11]

Consequently, respondent NLRC conformably took cognizance of the appeal filed by private respondents.

We turn then to the issue of petitioner's separation from employment.

Petitioner claims that the position he was occupying was not duly abolished, hence, his employment was illegally terminated.

We do not agree. It is a management prerogative to abolish a position which it deems no longer necessary and this Court, absent any findings of malice and arbitrariness on the part of management, will not efface such privilege if only to protect the person holding that office.^[12] In the present case, the position of Assistant Station Manager was deemed a superfluity as the functions of the said office could be performed by trained personnel already in the company's employ. Moreover, the abolition of the position was seen as a cost-effective measure to cut operational expenses so as not to incur further losses already suffered by the company's Manila office on account of low passenger yield. Certainly, the position was not abolished because the petitioner was the occupant thereof but because the functions of the position had become redundant and unnecessary. Verily, therefore, the deletion of the petitioner's position should be accepted and validated as a valid exercise of management prerogative.

We quote with favor public respondent's ratiocination on the point:

Complainant Conrado Cosico, Jr., occupied a managerial position prior to the abolition of his position and as such had a limited tenure of office because the company has the prerogative to abolish managerial and confidential positions or create new ones as the necessity for them requires (*BONDOC VS. PEOPLES'S (sic) BANK AND TRUST COMPANY*, L-43835, MARCH 31, 1981, 103 SCRA 599). A managerial position must be distinguished from the case of ordinary rank and file employees whose termination on the basis of this same grounds requires a higher proof of involvement in the events in question. Unfortunately, the Labor Arbiter applied the rule for rank and file employees in this particular case.

The Supreme Court, in the case of *CAFFCO INTERNATIONAL LIMITED VS. OFFICE OF THE MINISTER — MINISTRY OF LABOR AND EMPLOYMENT AND CAFFCO EMPLOYEES UNION ADLO*, G.R. NO. 76966, AUG. 7, 1992 had the occasion to differentiate between redundancy and retrenchment in that:

When an employer decides to reduce the number of its personnel in order to prevent further losses, he is exercising his right to retrench employees to prevent losses in his business operations. On the other hand, where for purposes of economy, a company decides to reorganize its departments by imposing on employees of one department the duties performed by the employees of the other department, thus rendering unnecessary the job of the latter, the service of the employees whose functions are not being performed by the others may be validly terminated on the ground of redundancy.

We therefore, find and so hold that respondent company's action was justified in exercising its management prerogative in abolishing the position of complainant without any abuse of discretion resulting in a malicious and arbitrary manner constituting bad faith.^[13]

Given the preceding factual and legal milieu, petitioner's claim for moral and exemplary damages falls to naught. Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[14] Since none of the circumstances warranting the grant of moral and exemplary damages obtains here, the same cannot be awarded.

WHEREFORE, the petition for certiorari is hereby DISMISSED, and the challenged resolutions of respondent National Labor Relations Commission are hereby AFFIRMED.
SO ORDERED.

Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.
Padilla, J., on leave.

[1] Rollo, p. 50.

[2] Id., at 154.

[3] Id., at 225.

[4] Id., at 244.

[5] Rollo, pp. 10, 14, 18 and 23.

[6] ART. 218. Powers of the Commission. — The Commission shall have the power and authority:

(a) To promulgate rules and regulations governing the hearing and disposition of cases before it and its regional branches, as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Code;

xxx

[7] Commissioner of Internal Revenue v. TMX Sales, Inc., 205 SCRA 184 (188) [1992].

[8] 181 SCRA 266, 272 [1990].

[9] 190 SCRA 160 [1990].

[10] 236 SCRA 580 [1994].

[11] Id., at 585.

[12] Great Pacific Life Assurance Corporation v. NLRC, 188 SCRA 139 [1990].

[13] See Note 1, supra, pp. 223-224.

[14] Zamboanga City Electric Cooperative, Inc. v. Buat, 243 SCRA 47 [1995]; Spartan Security and Detective Agency, Inc. v. National Labor Relations Commission, 213 SCRA 528 [1992].

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