

**EX-BATAAN VETERANS SECURITY AGENCY, INC. AND/OR
LEONARDO CASTRO, JR., PETITIONERS, VS. THE NATIONAL LABOR
RELATIONS COMMISSION (1ST DIVISION), HON. GEOBEL A.
BARTOLABAC, FRANCIS...**

G.R. No. 121428. November 29, 1995

Ponente: MELO, J.

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MELO, J.:

Before us is a petition for certiorari seeking the annulment of the decision dated June 5, 1995 of respondent National Labor Relations Commission (NLRC) and the order dated October 27, 1994 issued by respondent Labor Arbiter Geobel A. Bartolabac.

The issue posed by the petition is whether the dispositive portion of a decision of a Labor Arbiter of the National Labor Relations Commission (the decision dated July 31, 1992 rendered in consolidated cases NLRC NCR No. 00--08-03268-88 and NLRC NCR No. 00-08-3402-88) awarding backwages and attorney's fees to, and ordering the reinstatement of, private respondents herein and which has become final and executory, may be amended and expanded by a later order of another Labor Arbiter (the order dated October 27, 1994 which is sought to be annulled in the present petition) by granting separation pay to private respondents in lieu of reinstatement even as the original decision dated July 31, 1992 did not award separation pay to private respondents.

The facts of the case as gleaned from the record are as follows:

On August 8 and 11, 1988, private respondents filed complaints thence docketed as NLRC NCR Case No. 00-08-03268-88 and NLRC NCR Case No. 00--08-3402-88 (which were later consolidated) against petitioners herein for illegal dismissal, praying for reinstatement with backwages and attorney's fees.

The parties submitted their respective position papers and documentary evidence, and after hearing, Labor Arbiter Cresencio J. Ramos, on July 31, 1992 rendered a decision (Annex A, Petition), the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering respondents Ex-Bataan Veteran Security Agency Inc. and/or Leonardo Castro, to pay to each of the 12 complainants backwages for three (3) years computed from the latest salary of complainants, as follows:

Backwages

1.

Norberto Barba

P79,200.00

2.

Gilbert Enduma

79,200.00

3.

Joel Formal

57,600.00

4.

Bernardo Tolentino

79,200.00

5.

Felix Palles

57,600.00

6.

Francisco Badocdoc

79,200.00

7.

Rogelio Quintana

79,200.00

8.

Salvino Cadalin

79,200.00

9.

Edgardo Doroja

79,200.00

10.

Hector Gallano

79,200.00

11.

Juito Richdermoso

79,200.00

12.

Jose dela Pena Balingit

57,600.00

P885,600.00

Refund for illegal deduction

6,709.20

P892,307.20

Attorney's fees of 10%

89,230.92

P981,540.12

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To refund to complainants the amount illegally deducted from the salary of complainants representing AFP Mutual Fund, at P559.10 each or a total of P6,709.20.

To reinstate complainants immediately to their previous position without loss of seniority rights and privileges.

Respondents is (sic) also ordered to pay complainants, attorney's fees equivalent to ten (10) percent of the total award within ten (10) days from receipt of this decision, in the amount of P89,230.92.

All other claims are dismissed for lack of merit.

(pp. 32-33, Rollo.)

Petitioners interposed an appeal from said decision before respondent NLRC. Pending the appeal, the Labor Arbiter issued a writ of execution dated October 7, 1992 for the immediate reinstatement of private respondents.

On October 15, 1992, Sheriff Ramon Nonato Dayao submitted his Sheriffs Return/Report, stating, among other things, that on October 12, 1982, he received a copy of a certification issued and signed by Mr. Leonardo O. Castro, Sr., President of petitioner Ex-Bataan Veterans Security Agency, Inc., that the complainants (private respondents herein) were reinstated to their previous positions (Records, pp. 608), [p. 6 of decision of respondent NLRC promulgated June 5, 1995, p. 48, Rollo].

On May 12, 1993, respondent NLRC issued a resolution (Annex B, Petition), affirming the decision in NLRC cases NCR No. 00-08-03268-88 and 00--08-03402-88.

Consequently, petitioners filed on July 28, 1993 before this Court a petition for certiorari docketed as G.R. No. 110984, praying that the decision dated July 31, 1992, as well as the resolution dated May 12, 1993 in the aforementioned cases be set aside as null and void and that the complaint be dismissed.

In the meantime, on October 8, 1993, the complainants in Cases No. 00-08--03268-88 and No. 00-08-3402-88 (private respondents herein) received all the monetary awards in satisfaction of the decision dated July 31, 1992 (p. 6, decision of June 5, 1995 of NLRC, Annex C, Petition). This finding of fact of respondent NLRC is categorically confirmed by private respondents in their comment in the instant case, to wit:

There is no dispute that the original decision of then Labor Arbiter, Cresencio Ramos, ordering the respondents (now petitioners) to pay each of the 12 complainants back wages for three (3) years computed from the latest

salary of complainants x x x to reinstate complainants plus attorney's fees all in the total amount of NINE HUNDRED EIGHTY ONE THOUSAND FIVE HUNDRED FORTY PESOS (P981,540.000 which already executed. (sic)

(p. 91, Rollo.)

On February 21, 1994, the First Division of this Court dismissed the petition for certiorari filed in G.R. No. 110984, and judgment was accordingly entered on April 4, 1994. By virtue of said dismissal, necessarily the decision dated July 31, 1992 became final and executory.

Subsequently, private respondents filed a motion for reinstatement and for payment of their withheld wages from October 15, 1994 up to the time they are actually reinstated and, if reinstatement is not feasible, for separation pay.

On October 27, 1994, Labor Arbiter Geobel A. Bartolabac, one of the public respondent herein, issued an Order (Annex D, Petition), the order sought to be annulled herein, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, respondent is hereby ordered to pay complainants the following:

a) Separation pay at one-half (1/2) month for salary for every year of service for each complainant from 1987 to 1994 or $P145 \times 15 \text{ day} \times 7 = P15,225.00$

b) Withheld wages at one-half (1/2) month salary from October 12, 1992 to 12 October 1994 for each complainant.

$10/2/92-12/15/93 = 14.10 \text{ mos.}$

$P118 \times 15 \text{ days} \times 14.10 \text{ mos.}$

$= P24,957.00$

$12/16/93-3/31/94 = 3.5 \text{ mos.}$

$P135 \times 15 \text{ days} \times 3.5 \text{ mos.}$

$7,087.50$

$4/1/94-10/12/94 = 6.40 \text{ mos.}$

$P145 \times 15 \text{ days} \times 6.40 \text{ mos.}$

$13,920.00$

$P45,964.50$

$P61,189.50$

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(p. 63, Rollo.)

Petitioners filed a motion for reconsideration of said order with opposition to the issuance of an alias writ of execution, later twice supplemented.

On June 5, 1995, respondent NLRC, treating the motions for reconsideration as an appeal, issued the questioned decision (Annex C, Petition), the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the appealed Order of the Labor Arbiter dated October 27, 1994 is hereby MODIFIED, deleting the award, ordering the respondent to pay the complainants the withheld wages at one-half (1/2) month salary from October 12, 1992 to October 12, 1994 amounting to P45,964.50 for each complainant.

According to petitioners they filed on July 3, 1995, a motion for a partial reconsideration of the afore-mentioned decision so as to set aside the award of separation pay.

Hence, the present petition.

Are private respondents, the question is posed, entitled to separation pay although such was not decreed in the decision of July 31, 1992?

The findings of fact of the NLRC are accorded great respect and should not needlessly be disturbed on appeal. Absent any showing that said factual findings are not supported by the evidence on record, they are not correctable by certiorari (*Diola vs. National Labor Relations Commission*, 222 SCRA 860 [1993]). Findings of fact by administrative agencies such as the NLRC are generally accorded not only respect, but even finality (*Philippine School of Business Administration vs. National Labor Relations Commission*, 223 SCRA 305 [1993] *Garcia vs. Manila Times*, 224 SCRA 399 [1993]).

It must be stressed at this juncture that respondent NLRC found that private respondents were actually reinstated by petitioners, to wit:

The records show that the complainants after their payroll reinstatement were actually reinstated and reported for work with respondent Ex-Bataan Veterans Security Agency on October 12, 1992. This fact was supported by the Sheriffs Return/Report dated October 12, 1992 by Mr. Leonardo Castro, President of respondent Ex-Bataan Veterans Security Agency, Inc.

Likewise, upon the actual reinstatement of complainants on October 12, 1992 with the conformity of the group leader, Mr. Francisco Badocdoc, they were all advised to secure security guard licenses, insurance policies and complete uniform prior to their re-assignment or posting. Complainants did not comply with the said requirements for reasons of their own and did not report for work anymore. The complainants did not demand anew for their reinstatement after October 12, 1992 and because the complainants did not report for work after October 12, 1992, they were considered to have waived their right to reinstatement.

Moreover, since the complainants did not render service with the respondent security agency during the period from October 12, 1992 to October 12, 1994, they are not entitled to salary or wages under the principle of no work - no pay.

In his assailed decision, the Labor Arbiter ruled and We quote:

"Upon careful perusal, the evidence shows that complainants were holder of valid licenses and were fully covered by insurance.

Hence, the remaining issue to be considered is whether or not it is correct for the security agency to hold that complainants were at fault, as they failed to provide their own uniform for them to be reinstated physically.

Generally, security guards are granted uniform allowance which are over and above the basic salaries of employees. In fact, PADPAO rates show a separate rate for uniform allowance which is directly given to security guards aside from the basic salary.

Ordinarily, the security agency initially provides in advance the uniform of the guards. Hence, unless there is a contrary agreement, the guard thereafter received his monthly salary sans the amount allotted for uniform allowance. Strictly, therefore, the security agency shoulders in advance the uniforms of guards.

In the case at bar, complainants have already received their backwages and remuneration for their payroll reinstatement. Thus, there is no reason why they could not spare the agency from spending in advance for their uniforms.

Viewed under these circumstances we, therefore, hold that the blame should not be placed entirely on one party. It is in this respect that we believe that equity and fairness would be better served that complainant should receive only one-half (1/2) month salary of the withheld wages from October 1992 to October 1994.

Accordingly, we are not impressed by respondent's contention that complainant have waived their right to reinstatement by the mere failure to advance the expenses for their uniform."

Based on above findings of the Labor Arbiter, it is presumed that the complainants did not report for work because the respondent Ex-Bataan Veterans Security Agency failed to provide the complainants with their uniforms.

We agree with the respondent Ex-Bataan Veterans Security Agency that it is not obliged to give and provide the uniform of its security guards. As correctly pointed out, Section 4 of the Revised Rules and Regulations governing the organizations and operations of private detective, watchmen, and security guard agencies expressly provides:

All licensed guards shall provide themselves with one (1) set of the prescribed uniform once a year unless their employers provide it free.

As earlier maintained by respondent Security Agency, this policy of providing free uniform does not exist in the respondent security agency. Hence, the security guards themselves should buy their own uniforms.

As clearly pointed out by the Labor Arbiter that since the complainants have already received their backwages and remuneration for their payroll reinstatement, there is no reason why the complainants could not spare the agency from spending in advance for their uniforms. Yet despite these findings of the Labor Arbiter, he still blamed and faulted the respondent Ex-Bataan Veterans Security Agency for the failure of the complainants to buy their own uniforms.

We find this conclusion of the Labor Arbiter to be erroneous. The blame for failure to buy their uniforms should be entirely on the complainants themselves.

(pp. 51-55, Rollo)

Based on the above findings, and even as it found that the failure of private respondents to report for work constituted a waiver of the right to actual reinstatement, the NLRC still concluded, rather rashly, it may be said:

However, we agree with the Labor Arbiter as regards the grant of separation pay to the complainants in lieu of reinstatement, thus we quote:

Nevertheless, we deem it proper to grant complainants' prayer to be paid their separation pay in lieu of reinstatement but only at one-half (1/2) month salary for every year of service, on the following grounds:

- a) as a matter of right, complainants cannot demand for separation pay, as the respondent is willing to reinstate them;
- b) but, somehow, the atmosphere of harmonious relationship may not reasonably be expected then on that it

would be for the interest of both parties that the employer-employee relationship be severed.

The award of separation is to be computed from the start of employment up to the time of termination including the period of imputed service.

(pp. 56-57, Rollo)

The foregoing findings of fact — not the conclusions — of respondent NLRC, being supported by substantial evidence, and not contrary to the evidence on record, must be respected and accepted by this Court. These very findings, however, cannot justify and warrant NLRC's conclusion that private respondents are entitled to separation pay.

A reading of the dispositive portion of the decision dated July 31, 1992 (Annex A, Petition), discloses that nowhere in said dispositive portion of the decision is there an award of separation pay to private respondents. A writ of execution should conform to the dispositive portion of the decision to be executed, and the execution is void if it is in excess of and beyond the original judgment or award (*Buan vs. Court of Appeals*, 235 SCRA 424 [1994]), for it is a settled general principle that a writ of execution must conform strictly with every essential particular of the judgment promulgated (*Government Service Insurance Systems vs. Court of Appeals*, 218 SCRA 233 [1993]). Therefore, the award of separation pay to private respondents, not having been decreed in the dispositive portion of the decision of July 31, 1992, is null and void.

It is to be noted that private respondents were in fact reinstated, but their failure to actually enter into the performance of their duties is imputable to their own fault. They failed to provide their own uniform. Petitioners are not bound to give uniforms to private respondents. There is absolutely no showing whatsoever on record that there is an agreement or contract between petitioners and private respondents providing that the former shall furnish the latter with uniforms. Section 4 of Rule VI of the Revised Rules and Regulations Governing the Organization and Operation of Private Detective, Watchman and Security Guard Agencies Throughout The Philippines reads as follows:

SEC. 4. Provision for uniform. All employers of private security guards shall provide for at least one (1) set of the prescribed uniform free to their respective guards for every year of service with them. Simultaneously, all licensed guards shall provide themselves with one (1) set of the prescribed uniform once a year unless their employers provide it free.

In view of the foregoing findings, there is no further need to inquire into the other issue posed by petitioners that respondent NLRC failed to act on their motion for reconsideration.

WHEREFORE, the petition is granted, and the award of separation pay to private respondents is hereby declared null and void.

SO ORDERED.

Feliciano, (Chairman), Romero, Vitug, and Panganiban, JJ., concur.

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