

C. ALCANTARA & SONS, INC., PETITIONER, VS. COURT OF APPEALS, LABOR ARBITER ANTONIO M. VILLANUEVA, LABOR ARBITER ARTURO L. GAMOLO, SHERIFF OF NLRC RAB-XI-DAVAO CITY, NAGKAHIUSANG...

G.R. No. 155109. March 14, 2012

Ponente: PERALTA, J.

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PERALTA, J.:

For resolution are the (1) Motion for Partial Reconsideration[1] filed by C. Alcantara & Sons, Inc. (CASI) and (2) Motion for Reconsideration[2] filed by Nagkahiusang Mamumuo sa Alsons-SPFL (the Union) and the Union officers[3] and their striking members[4] of the Court's Decision[5] dated September 29, 2010. In a Resolution[6] dated December 13, 2010, the parties were required to submit their respective Comments. After several motions for extension, the parties submitted the required comments. Hence, this resolution.

For a proper perspective, we state briefly the facts of the case.

The negotiation between CASI and the Union on the economic provisions of the Collective Bargaining Agreement (CBA) ended in a deadlock prompting the Union to stage a strike,[7] but the strike was later declared by the Labor Arbiter (LA) to be illegal having been staged in violation of the CBA's no strike-no lockout provision.[8] Consequently, the Union officers were deemed to have forfeited their employment with the company and made them liable for actual damages plus interest and attorney's fees, while the Union members were ordered to be reinstated without backwages there being no proof that they actually committed illegal acts during the strike.[9]

Notwithstanding the provision of the Labor Code mandating that the reinstatement aspect of the decision be immediately executory, the LA refused to reinstate the dismissed Union members. On November 8, 1999, the NLRC affirmed the LA decision insofar as it declared the strike illegal and ordered the Union officers dismissed from employment and liable for damages but modified the same by considering the Union members to have been validly dismissed from employment for committing prohibited and illegal acts.[10]

On petition for certiorari, the Court of Appeals (CA) annulled the NLRC decision and reinstated that of the LA. Aggrieved, CASI, the Union and the Union officers and members elevated the matter to this Court. The cases were docketed as G.R. Nos. 155109 and 155135.[11]

During the pendency of the cases, the affected Union members (who were ordered reinstated) filed with the LA a motion for reinstatement pending appeal and the computation of their backwages. Instead of reinstating the Union members, the LA awarded separation pay and other benefits.[12] On appeal, the NLRC denied the Union members' claim for separation pay, accrued wages and other benefits.[13] When elevated to the CA, the appellate court held that reinstatement pending appeal applies only to illegal dismissal cases under Article 223 of the Labor Code and not to cases under Article 263.[14] Hence, the petition by the Union and its officers and members in

G.R. No. 179220.

G.R. Nos. 155109, 155135, and 179220 were consolidated. On September 29, 2010, the Court rendered a decision the dispositive portion of which reads:

WHEREFORE, the Court DENIES the petition of the Nagkahiusang Mamumuo sa Alsons-SPFL and its officers and members in G.R. No. 155135 for lack of merit, and REVERSES and SETS ASIDE the decision of the Court of Appeals in CA-G.R. SP 59604 dated March 20, 2002. The Court, on the other hand, GRANTS the petition of C. Alcantara & Sons, Inc. in G.R. 155109 and REINSTATES the decision of the National Labor Relations Commission in NLRC CA M-004996-99 dated November 8, 1999.

Further, the Court PARTIALLY GRANTS the petition of the Nagkahiusang Mamumuo sa Alsons-SPFL and their dismissed members in G.R. No. 179220 and ORDERS C. Alcantara & Sons, Inc. to pay the terminated Union members backwages for four (4) months and nine (9) days and separation pays equivalent to one-half month salary for every year of service to the company up to the date of their termination, with interest of 12% per annum from the time this decision becomes final and executory until such backwages and separation pays are paid. The Court DENIES all other claims.

SO ORDERED.[15]

The Court agreed with the CA on the illegality of the strike as well as the termination of the Union officers, but disagreed with the CA insofar as it affirmed the reinstatement of the Union members. The Court, instead, sustained the dismissal not only of the Union officers but also the Union members who, during the illegal strike, committed prohibited acts by threatening, coercing, and intimidating non-striking employees, officers, suppliers and customers; obstructing the free ingress to and egress from the company premises; and resisting and defying the implementation of the writ of preliminary injunction issued against the strikers.[16]

The Court further held that the terminated Union members, who were ordered reinstated by the LA, should have been immediately reinstated due to the immediate executory nature of the reinstatement aspect of the LA decision. In view, however, of CASI's failure to reinstate the dismissed employees, the Court ordered CASI to pay the terminated Union members their accrued backwages from the date of the LA decision until the eventual reversal by the NLRC of the order of reinstatement.[17] In addition to the accrued backwages, the Court awarded separation pay as a form of financial assistance to the Union members equivalent to one-half month salary for every year of service to the company up to the date of their termination.[18]

Not satisfied, CASI filed a Motion for Partial Reconsideration of the above decision based on the following grounds:

I.

IT IS RESPECTFULLY SUBMITTED THAT A PRECEDENT SETTING RULING OF THIS HONORABLE COURT IN *ESCARIO V. NLRC* [G.R. No. 160302, 27 SEPTEMBER 2010] – PARTICULARLY ON THE PROPER APPLICATION OF ARTICLES 264 AND 279 OF THE LABOR CODE – SUPPORTS THE AFFIRMATION AND NOT THE REVERSAL OF THE FINDINGS OF THE COURT OF APPEALS [“CA”], AND NEGATES THE ENTITLEMENT TO ACCRUED WAGES OF THE UNION MEMBERS WHO COMMITTED ILLEGAL ACTS DURING THE ILLEGAL STRIKE, NOTWITHSTANDING THAT THE LABOR ARBITER AWARDED THE SAME.

II.

IT IS RESPECTFULLY SUBMITTED THAT THIS HONORABLE COURT ERRED WHEN IT RESOLVED TO GRANT SEPARATION PAY TO THE UNION MEMBERS WHO COMMITTED ILLEGAL ACTS DURING THE ILLEGAL STRIKE CONSIDERING THAT JURISPRUDENCE CITED TO JUSTIFY THE

GRANT OF SEPARATION PAY DO NOT APPLY TO THE PRESENT CASE AS IT APPLIES ONLY TO DISMISSALS FOR A JUST CAUSE.[19]

The Union, its officers and members likewise filed their separate motion for reconsideration assailing the Court's conclusions that: (1) the strike is illegal; (2) that the officers of the Union and its appointed shop stewards automatically forfeited their employment status when they participated in the strike; (3) that the Union members committed illegal acts during the strike and are deemed to have lost their employment status; and (4) that CASI is entitled to actual damages and attorney's fees.[20] They also fault the Court in not finding that: (1) CASI and its officers are guilty of acts of unfair labor practice or violation of Article 248 of the Labor Code; (2) the lockout declared by the company is illegal; (3) CASI and its officers committed acts of discrimination; (4) CASI and its officers violated Article 254 of the Labor Code; and (5) CASI and its officers are liable for actual, moral, and exemplary damages to the Union, its officers and members.[21]

Simply stated, CASI only questions the propriety of the award of backwages and separation pay, while the Union, its officers and members seek the reversal of the Court's conclusions on the illegality of the strike, the validity of the termination of the Union officers and members, and the award of actual damages and attorney's fees as well as the denial of their counterclaims against CASI.

After a careful review of the records of the case, we find it necessary to reconsider the Court's September 29, 2010 decision, but only as to the award of separation pay.

The LA, the NLRC, the CA and the Court are one in saying that the strike staged by the Union, participated in by the Union officers and members, is illegal being in violation of the no strike-no lockout provision of the CBA which enjoined both the Union and the company from resorting to the use of economic weapons available to them under the law and to instead take recourse to voluntary arbitration in settling their disputes.[22] We, therefore, find no reason to depart from such conclusion.

Article 264 (a) of the Labor Code lays down the liabilities of the Union officers and members participating in illegal strikes and/or committing illegal acts, to wit:

ART. 264. PROHIBITED ACTIVITIES

(a) x x x

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any Union officer who knowingly participates in an illegal strike and any worker or Union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

Thus, the above-quoted provision sanctions the dismissal of a Union officer who knowingly participates in an illegal strike or who knowingly participates in the commission of illegal acts during a lawful strike.[23] In this case, the Union officers were in clear breach of the above provision of law when they knowingly participated in the illegal strike.[24]

As to the Union members, the same provision of law provides that a member is liable when he knowingly participates in the commission of illegal acts during a strike. We find no reason to reverse the conclusion of the Court that CASI presented substantial evidence to show that the striking Union members committed the following prohibited acts:

- They threatened, coerced, and intimidated non-striking employees, officers, suppliers and customers;

- They obstructed the free ingress to and egress from the company premises; and
- They resisted and defied the implementation of the writ of preliminary injunction issued against the strikers.[25]

The commission of the above prohibited acts by the striking Union members warrants their dismissal from employment.

As clearly narrated earlier, the LA found the strike illegal and sustained the dismissal of the Union officers, but ordered the reinstatement of the striking Union members for lack of evidence showing that they committed illegal acts during the illegal strike. This decision, however, was later reversed by the NLRC. Pursuant to Article 223[26] of the Labor Code and well-established jurisprudence,[27] the decision of the LA reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, pending appeal.[28] 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 employee, merely reinstated in the payroll.[29] 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.[30] If the employer fails to exercise the option of re-admitting the employee to work or to reinstate him in the payroll, the employer must pay the employee's salaries during the period between the LA's order of reinstatement pending appeal and the resolution of the higher court overturning that of the LA.[31] In this case, CASI is liable to pay the striking Union members their accrued wages for four months and nine days, which is the period from the notice of the LA's order of reinstatement until the reversal thereof by the NLRC.[32]

Citing *Escario v. National Labor Relations Commission (Third Division)*,[33] CASI claims that the award of the four-month accrued salaries to the Union members is not sanctioned by jurisprudence. In *Escario*, the Court categorically stated that the strikers were not entitled to their wages during the period of the strike (even if the strike might be legal), because they performed no work during the strike. The Court further held that it was neither fair nor just that the dismissed employees should litigate against their employer on the latter's time.[34] In this case, however, the four-month accrued salaries awarded to the Union members are not the backwages referred to in *Escario*. To be sure, the awards were not given as their salaries during the period of the strike. Rather, they constitute the employer's liability to the employees for its failure to exercise the option of actual reinstatement or payroll reinstatement following the LA's decision to reinstate the Union members as mandated by Article 223 of the Labor Code adequately discussed earlier. In other words, such monetary award refers to the Union members' accrued salaries by reason of the reinstatement order of the LA which is self-executory pursuant to Article 223.[35] We, therefore, sustain the award of the four-month accrued salaries.

Finally, as regards the separation pay as a form of financial assistance awarded by the Court, we find it necessary to reconsider the same and delete the award pursuant to prevailing jurisprudence.

Separation pay may be given as a form of financial assistance when a worker is dismissed in cases such as the installation of labor-saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of the establishment, or in case the employee was found to have been suffering from a disease such that his continued employment is prohibited by law.[36] It is a statutory right defined as the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.[37] It is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.[38] As a general rule, when just causes for terminating the services of an employee exist, the employee is not entitled to separation pay because lawbreakers should not benefit from their illegal acts.[39] The rule, however, is subject to exceptions.[40] The Court, in *Philippine Long Distance Telephone Co. v. NLRC*,[41] laid down the guidelines

when separation pay in the form of financial assistance may be allowed, to wit:

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed x x x.[42]

We had the occasion to resolve the same issue in *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*.^[43] Following the declaration that the strike staged by the Union members is illegal, the Union officers and members were considered validly dismissed from employment for committing illegal acts during the illegal strike. The Court affirmed the CA's conclusion that the commission of illegal acts during the illegal strike constituted serious misconduct.^[44] Hence, the award of separation pay to the Union officials and members was not sustained.^[45]

Indeed, we applied social justice and equity considerations in several cases to justify the award of financial assistance. In *Piñero v. National Labor Relations Commission*,^[46] the Court declared the strike to be illegal for failure to comply with the procedural requirements. We, likewise, sustained the dismissal of the Union president for participating in said illegal strike. Considering, however, that his infraction is not so reprehensible and unscrupulous as to warrant complete disregard of his long years of service, and considering further that he has no previous derogatory records, we granted financial assistance to support him in the twilight of his life after long years of service.^[47] The same compassion was also applied in *Aparente, Sr. v. NLRC*^[48] where the employee was declared to have been validly terminated from service after having been found guilty of driving without a valid driver's license, which is a clear violation of the company's rules and regulations.^[49] We, likewise, awarded financial assistance in *Salavarria v. Letran College*^[50] to the legally dismissed teacher for violation of school policy because such infraction neither amounted to serious misconduct nor reflected that of a morally depraved person.

However, in a number of cases cited in *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,^[51] we refrained from awarding separation pay or financial assistance to Union officers and members who were separated from service due to their participation in or commission of illegal acts during the strike.^[52] In *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA)*,^[53] the strike was found to be illegal because of procedural infirmities and for defiance of the Secretary of Labor's assumption order. Hence, we upheld the Union officers' dismissal without granting financial assistance. In *Sukhotai Cuisine and Restaurant v. Court of Appeals*,^[54] and *Manila Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*,^[55] the Union officers and members who participated in and committed illegal acts during the illegal strike were deemed to have lost their employment status and were not awarded financial assistance.

In *Telefunken Semiconductors Employees Union v. Court of Appeals*,^[56] the Court held that the strikers' open and willful defiance of the assumption order of the Secretary of Labor constitute serious misconduct and reflective of their moral character, hence, granting of financial assistance to them cannot be justified. In *Chua v. National Labor Relations Commission*,^[57] we disallowed the award of financial assistance to the dismissed employees for their participation in the unlawful and violent strike which resulted in multiple deaths and extensive property

damage because it constitutes serious misconduct on their part.

Here, not only did the Court declare the strike illegal, rather, it also found the Union officers to have knowingly participated in the illegal strike. Worse, the Union members committed prohibited acts during the strike. Thus, as we concluded in *Toyota, Telefunken, Chua* and the other cases cited above, we delete the award of separation pay as a form of financial assistance.

WHEREFORE, premises considered, the motion for reconsideration of the Union, its officers and members are DENIED for lack of merit, while the motion for partial reconsideration filed by C. Alcantara & Sons, Inc. is PARTLY GRANTED. The Decision of the Court dated September 29, 2010 is hereby PARTLY RECONSIDERED by deleting the award of separation pay.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr., Mendoza, and Reyes, JJ., concur.

[1] Rollo (G.R. No. 155109), pp. 1485-1499.

[2] Id. at 1501-1651.

[3] The officers of the Union are the following: Felixberto Irag, Joshua Barredo, Edilberto Demetria, Romulo Lungay, Bonerme Maturan, Eduardo Campuso, Gilberto Gabronino, Cirilo Mino, Roberto Abonado, Fructoso Cabahog, Alfredo Tropico, Hector Estuita, Eduardo Capuyan, Alejandro Harder, Jaime Montederamos, Reynaldo Limpajan, Ernesto Cuario, Edgar Monday, Herminio Robillo, Matroil delos Santos, Raul Cantiga, Rudy Anadon, Bonifacio Salvador, Florente Seno, Warlito Monte, Pedro Esquiedo, Danilo Mejos, Bartolome Castellanes, Saturnino Cagas, Eduardo Larena, Ermelando Basadre, Elpidio Libranza, Teddy Suelo, Tranquilino Orallo, Manolito Sabellano, Primitivo Garcia, Jose Amoylin, Carlos Baldos, Carmelito Tobias and Juanito Aldepolla.

[4] These are Ludivicio Abad, Ricardo Alto, Feliciano Amper, Roberto Andrade, Julio Anino, Pedro Aquino, Romeo Araneta, Constancio Arnaiz, Justino Ascano, Ernesto Bains, Jesus Beritan, Diosdado Bongabong, Carilito Cal, Rolando Capuyan, Aurelio Carin, Angelito Castañeda, Leonaro Casurra, Filemon Cesar, Romeo Comprado, Ramon Constantino, Roy Constantino, Samuel dela Llana, Rosaldo Dagondon, Bonifacio Dinagudos, Jose Eboran, Francisco Empuerto, Nestor Endaya, Ernesto Estilo, Vicente Fabroa, Ramon Fernando, Samson Fulgueras, Sulpecio Gagni, Fervie Galvez, Eduardo Genelsa, Tito Guades, Armando Gucila, Ernesto Hotoy, Wencislao Inghug, Epifanio Jarabay, Alexander Judilla, Alfredo Lesula, Benito Magpusao, Eddie Mansanades, Arguilao Mantica, Silverio Maranian, Ricardo Maturan, Antonio Melargo, Arsenio Melicor, Lauro Montenegro, Leo Mora, Ronaldo Naboya, Mario Namoc, Gerwino Natividad, Juanito Nisnisan, Primo Oplimo, Edgardo Ordiz, Patrocino Ortega, Mario Patan, Jesus Patoc, Manuel Piape, Alberto Pielago, Nicasio Plaza, Fausto Quibod, Procopio Ramos, Rosendo Sajol, Patricio Solomon, Mario Salvaleon, Bonifacio Sigue, Jaime Sucuahi, Alex Tauto-an, Claudio Tirol, Jose Tolero, Alfredo Toralba, Eusebio Tumulak, Hermes Villacarlos, Saturnino Yagon and Edilberto Yambao.

[5] Rollo (G.R. No. 155109), pp. 1467-1484.

[6] Id. at 1654-1655.

[7] Id. at 1473.

[8] The LA decision was rendered on June 29, 1999; id. at 1474.

[9] Rollo (G.R. No. 155109), p. 1474.

[10] Id. at 1475.

[11] Id.

[12] Id.

[13] Id. at 1475-1476.

[14] Id. at 1476.

[15] Id. at 1482-1483.

[16] Id. at 1478-1479.

[17] Id. at 1480-1481.

[18] Id. at 1481-1482.

[19] Id. at 1486.

[20] Id. at 1511-1513.

[21] Id. at 1513-1515.

[22] Id. at 1477.

[23] Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 207.

[24] Id.

[25] Rollo (G.R. No. 155109), p. 1479.

[26] Article 223 – Appeal — x x x

In any event, 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. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

x x x.

[27] Islriz Trading/Victor Hugo Lu v. Capada, G.R. No. 168501, January 31, 2011, 641 SCRA 9; Garcia v. Philippine Airlines, Inc., G.R. No. 164856, January 20, 2009, 576 SCRA 479.

[28] Garcia v. Philippine Airlines, Inc., *supra*, at 489.

[29] Id.

[30] Id. at 493.

[31] Islriz Trading/Victor Hugo Lu v. Capada, *supra* note 27, at 24; College of Immaculate Conception v. National Labor Relations Commission, G.R. No.167563, March 22, 2010, 616 SCRA 299, 309; Garcia v. Philippine Airlines, Inc., *supra* note 27, at 493.

[32] Rollo (G.R. No. 155109), p. 1481.

[33] G.R. No. 160302, September 27, 2010, 631 SCRA 261.

[34] Id. at 274.

[35] Islriz Trading/Victor Hugo Lu v. Capada, supra note 27, at 16.

[36] Gold City Integrated Port Service, Inc. v. NLRC, 315 Phil. 698, 711 (1995).

[37] Id. at 712 .

[38] Id.

[39] Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission, supra note 23, at 219.

[40] Id. at 220.

[41] 247 Phil. 641 (1988).

[42] Id. at 649.

[43] Supra note 23.

[44] Id.

[45] Id. at 227.

[46] 480 Phil. 534 (2004).

[47] Id. at 543-544.

[48] 387 Phil. 96 (2000).

[49] Id.

[50] G.R. No. 110396, September 25, 1998, 296 SCRA 184.

[51] Supra note 23.

[52] Id. at 225.

[53] G.R. Nos. 160058 & 160094, June 22, 2007, 525 SCRA 361.

[54] G.R. No. 150437, July 17, 2006, 495 SCRA 336.

[55] G.R. No. 158075, June 30, 2006, 494 SCRA 195.

[56] 401 Phil. 776 (2000).

[57] G.R. No. 105775, February 8, 1993, 218 SCRA 545.

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