

PHILIPPINE AIRLINES, INC., PETITIONER, VS. HEIRS OF BERNARDIN J. ZAMORA, RESPONDENTS.

G.R. No. 164267. March 31, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before this Court are two petitions, now consolidated. The first petition, docketed as G.R. No. 164267, filed by Philippine Airlines, Inc., assails the Decision[1] dated April 27, 2004 and the Resolution[2] dated June 29, 2004, of the Court of Appeals in CA-G.R. SP No. 56428.

The second petition, docketed as G.R. No. 166996, filed by Philippine Airlines, Inc., Francisco X. Yngente IV, Pag-asa C. Ramos, Jesus Federico V. Viray, and Ricardo D. Abuyuan, assails the Decision[3] dated August 13, 2004 and the Amended Decision[4] dated February 1, 2005, of the Court of Appeals in CA-G.R. SP No. 68795.

The records reveal the following antecedent proceedings:[5]

Bernardin J. Zamora was a cargo representative assigned at the International Cargo Operations-Import Operations Division (ICO-IOD) of petitioner Philippine Airlines, Inc. (PAL). He alleged that sometime in December 1993, his immediate supervisor, petitioner Ricardo D. Abuyuan, instructed him to alter some entries in the Customs Boatnote and Inbound Handling Report to conceal Abuyuan's smuggling and pilferage activities. When he refused to follow this order, Abuyuan concocted charges of insubordination and neglect of customers against him.

On November 6, 1995, Zamora received a Memorandum informing him of his temporary transfer to the Domestic Cargo Operations (DCO) effective November 13, 1995. Zamora refused to follow the directive because: first, there was no valid and legal reason for his transfer; second, the transfer violated the collective bargaining agreement between the management and the employees union that no employee shall be transferred without just and proper cause; and third, the transfer did not comply with the 15-day prior notice rule.

Meantime, Zamora wrote to the management requesting that an investigation be conducted on the smuggling and pilferage activities. He disclosed that he has a telex from Honolulu addressed to Abuyuan to prove Abuyuan's illegal activities. As a result, the management invited Zamora to several conferences to substantiate his allegations. Zamora claimed that during these conferences, he was instructed to continue reporting to the ICO-IOD to observe the activities therein. Even so, his salaries were withheld starting December 15, 1995.

For its part, PAL claimed that sometime in October 1995, Zamora had an altercation with Abuyuan to the point of a fistfight. The management requested Zamora to explain in writing the incident. It found his explanation unsatisfactory.

To diffuse the tension between the parties, the management decided to temporarily transfer Zamora to the DCO. It issued several directives informing Zamora of his transfer. However, Zamora refused to receive these and continued reporting to the ICO-IOD. Consequently, he was reported absent at the DCO since November 13, 1995. His salaries were subsequently withheld. He also ignored the management's directive requiring him to explain in

writing his continued absence.

Meanwhile, the management acted on Zamora's letter exposing the smuggling and pilferage activities. Despite several notices, however, Zamora failed to appear during the conferences.

On February 22, 1996, the management served Zamora a Notice of Administrative Charge for Absence Without Official Leave (AWOL). Then on January 30, 1998, he was informed of his termination due to Insubordination/Neglect of Customer, Disrespect to Authority, and AWOL.

On March 12, 1996, Zamora filed a complaint[6] for illegal dismissal, unfair labor practice, non-payment of wages, and damages.

On September 28, 1998, the Labor Arbiter dismissed the complaint for lack of merit. The Labor Arbiter ruled that Zamora's transfer was temporary and intended only to diffuse the tension between Zamora and Abuyuan. The Labor Arbiter also said that the 15-day prior notice did not apply to Zamora since it is required only in transfers involving change of domicile. Furthermore, Zamora's refusal to report to the DCO was a clear case of insubordination and utter disregard of the management's directive. Thus, the Labor Arbiter ordered Zamora to report to his new assignment at the DCO.

On July 26, 1999, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter's decision and declared Zamora's transfer illegal. It ruled that there was no valid and legal reason for the transfer other than Zamora's report of the smuggling and pilferage activities. The NLRC disposed as follows:

WHEREFORE, in the light of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated September 28, 1998 is hereby ordered SET ASIDE and a new one is hereby entered declaring complainant's transfer at the Domestic Cargo Operations on November 13, 1996 illegal.

Moreover, respondents are hereby ordered to immediately reinstate complainant Bernardin J. Zamora to his former position as Cargo Representative at the Import Operations Division of respondent PAL without loss of seniority rights and other privileges and to pay him back salaries and backwages beginning December 15, 1995 until his actual reinstatement, inclusive of allowances and other benefits and increases thereto.

All other reliefs herein sought and prayed for are hereby DENIED for lack of merit.

SO ORDERED.[7]

Thereafter, Zamora's counsel demanded from PAL execution of the NLRC decision with respect to his reinstatement and various monetary benefits on the ground that it has become final and executory.[8]

PAL filed a motion to be furnished with a copy of the NLRC decision. Zamora opposed the motion alleging that the record of the NLRC indicated that copies of the NLRC decision were sent via registered mail on August 11, 1999 to PAL and its counsel, but the same remained unclaimed for a time and were later on returned to sender. He added that as of August 16, 1999, or five days later, service upon PAL of copies of the NLRC decision was deemed completed. Zamora also filed a motion for partial entry of judgment with respect to his reinstatement and various monetary benefits.

PAL opposed the motion for partial entry of judgment and moved for reconsideration of the NLRC decision. Zamora opposed the motion and moved to have it expunged from the record of the case on the ground that the NLRC decision had long become final and executory.

The NLRC denied reconsideration of its decision. Undeterred, PAL filed a petition for certiorari docketed as CA-G.R. SP No. 56428 before the Court of Appeals.

Meanwhile, Zamora filed anew a motion for partial execution reiterating his prayer for the execution of the NLRC decision with respect to his reinstatement and various monetary benefits. Later, he filed a motion for contempt before the Labor Arbiter praying that PAL be declared in contempt for refusing to physically reinstate him to his former position or in the payroll. PAL opposed the motion.

On January 8, 2001, the Labor Arbiter issued an Order^[9] citing PAL for indirect contempt for its failure to comply with the directive contained in the NLRC decision and ordering the issuance of a writ of execution. The dispositive portion of the Order provides:

WHEREFORE, finding the motion to be well taken and in order, the same is granted and respondents are hereby cited for indirect contempt for their failure to comply with the order of the Hon. Commission. They are directed anew to reinstate complainant immediately to his former position as Cargo Representative, physically or in the payroll, and fined an amount of P100.00 per day from 16 August 1999 until compliance.

Further, let a writ of execution be issued.

SO ORDERED.

PAL appealed to the NLRC praying for the reversal of the Order and the suspension of the proceedings due to PAL's rehabilitation.

On April 27, 2001, the NLRC issued a Resolution^[10] setting aside the Order of the Labor Arbiter and ordering the issuance of a writ of execution implementing, albeit with modification, the Labor Arbiter's decision. The NLRC relied on the copy of the structural organization of PAL's Cargo Services Sub-Department showing that as of June 30, 2000, the ICO-IOD had already been abolished. Instead of ordering Zamora's reinstatement, it awarded separation pay equivalent to one month's salary for every year of service, i.e., from February 9, 1981 to June 30, 2000. It also computed the award of backwages from December 15, 1995 until June 30, 2000. The fallo of the Resolution reads:

WHEREFORE, the Order appealed from is hereby SET ASIDE.

The Labor Arbiter is hereby advised to forthwith issue a Writ of Execution which, due to a supervening event, the abolition of PAL's Import Operations Division – must vary the terms of the final judgment to the extent that: (1) the complainant must be awarded, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service from February 9, 1981 to June 30, 2000; and (2) the award of backwages must be computed from December 15, 1995 to June 30, 2000.

SO ORDERED.

Both parties moved for reconsideration. Zamora disputed the finding that the ICO-IOD had already been abolished as of June 30, 2000. On the other hand, PAL argued that the NLRC erred in ordering the issuance of a writ of execution considering that it was undergoing rehabilitation.

On October 31, 2001, the NLRC disposed of the motions in this wise:

WHEREFORE, complainant's Motion for Partial Reconsideration is DENIED for lack of merit. Respondent's Partial Motion for Reconsideration is GRANTED. The instant case is hereby referred to the permanent rehabilitation receiver and the proceedings hereon are deemed SUSPENDED while respondent Philippine Airlines, Inc. is under rehabilitation receivership.

SO ORDERED.^[11]

Zamora questioned the NLRC resolutions before the Court of Appeals via a petition for certiorari docketed as CA-G.R. SP No. 68795.

On April 27, 2004, the appellate court resolved CA-G.R. SP No. 56428 and affirmed the NLRC Decision dated July 26, 1999 declaring Zamora's transfer at the DCO illegal and ordering his immediate reinstatement and payment of various monetary benefits. It disposed thus:

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.[12]

On June 29, 2004, the appellate court denied reconsideration.

On August 13, 2004, the appellate court resolved CA-G.R. SP No. 68795 and set aside the NLRC Resolution dated April 27, 2001 which awarded Zamora separation pay in lieu of reinstatement due to the abolition of the ICO-IOD. The appellate court ruled that the NLRC gravely abused its discretion when it varied the terms of its decision by suspending the proceedings and referring the case to PAL's rehabilitation receiver instead of ordering Zamora's reinstatement. The appellate court also rejected PAL's evidence which supposedly showed that Zamora's former position had already been abolished.

PAL moved for reconsideration and manifested that Zamora has been detained in jail for the crime of murder since October 2, 2000. On February 1, 2005, the appellate court amended its decision and recalled its order of reinstatement in view of Zamora's incarceration. The Court of Appeals dispositive portion of the amended decision reads:

WHEREFORE, this Court's August 13, 2004 decision is hereby AMENDED, the dispositive portion to read as follows:

"WHEREFORE, in view of the foregoing, the petition is GRANTED. The NLRC resolution dated April 27, 2001 is MODIFIED. Considering that petitioner is a detention prisoner making reinstatement impossible, PAL is hereby ordered to pay petitioner Zamora his separation pay, in lieu of reinstatement, to be computed at one month salary for every year of service from February 9, 1981 and backwages to be computed from December 15, 1995, both up to October 1, 2000, the date of his incarceration.

"SO ORDERED."

Considering that PAL is still under receivership, the monetary claims of petitioner Zamora must be presented to the PAL Rehabilitation Receiver, subject to the rules on preference of credits.

SO ORDERED.[13]

From the Court of Appeals' decision in CA-G.R. SP No. 56428, PAL filed a petition with this Court docketed as G.R. No. 164267 raising the following procedural and substantive issues.

THE PROCEDURAL ISSUES:

I.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE 26 JULY 1999 NLRC DECISION BECAME FINAL AND EXECUTORY BASED SOLELY ON THE CERTIFICATIONS ISSUED BY THE DEPUTY EXECUTIVE CLERK OF THE NLRC.

II.

WHETHER OR NOT THE NLRC MAY TAKE COGNIZANCE OF A SEASONABLY FILED MOTION FOR RECONSIDERATION FROM A DECISION A COPY OF WHICH WAS PREVIOUSLY STAMPED "MOVED" AND "RETURN TO SENDER" BUT WAS THEREAFTER OFFICIALLY SERVED AND OFFICIALLY RECEIVED BY THE PARTY SEEKING RECONSIDERATION.

III.

MAY A COUNSEL FOR JUSTIFIABLE REASON DEFER THE FILING OF A NOTICE OF CHANGE OF ADDRESS.

THE SUBSTANTIVE ISSUES[:]

I.

MAY AN EMPLOYER BE REQUIRED TO STATE IN WRITING THE REASON FOR TRANSFERRING AN EMPLOYEE DESPITE THE ABSENCE OF SUCH REQUIREMENT IN THE CBA.

II.

MAY AN EMPLOYER BE REQUIRED TO OBSERVE A 15-DAY PRIOR NOTICE BEFORE EFFECTING AN EMPLOYEE TRANSFER NOTWITHSTANDING THE FACT THAT UNDER THE CBA SAID NOTICE IS REQUIRED ONLY IN CASE THE TRANSFER INVOLVES A CHANGE IN DOMICILE.

III.

MAY AN EMPLOYER SEEKING TO TRANSFER AN EMPLOYEE FOR THE PURPOSE OF DIFFUSING ESCALATING HOSTILITY BETWEEN AN EMPLOYEE AND HIS SUPERVISOR BE REQUIRED TO WAIT FOR FIFTEEN (15) DAYS BEFORE EFFECTING THE EMPLOYEE TRANSFER.

IV.

MAY A COURT VALIDLY ORDER THE REINSTATEMENT OF AN EMPLOYEE AS WELL AS GRANT MONETARY AWARD NOTWITHSTANDING THE ABSENCE OF FACTUAL FINDING AS TO THE LEGALITY OR ILLEGALITY OF THE DISMISSAL IN THE DECISION ITSELF[.14]

On the other hand, from the Court of Appeals' amended decision in CA-G.R. SP No. 68795, PAL, et al., filed a petition, which this Court docketed as G.R. No. 166996, raising the following issues:

I.

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN DECLARING ILLEGAL THE DISMISSAL OF RESPONDENT ZAMORA AND THE DECISION OF THE NLRC DATED JULY 26, 1999 FINAL AND EXECUTORY. IN SO DOING, THE COURT OF APPEALS PREMATURELY RULED ON THE MERITS OF THE CASE.

II.

THE COURT OF APPEALS COMMITTED A PALPABLE ERROR IN ORDERING PAL TO PAY RESPONDENT ZAMORA HIS "SEPARATION PAY, IN LIEU OF REINSTATEMENT, TO BE COMPUTED AT ONE MONTH SALARY FOR EVERY YEAR OF SERVICE FROM FEBRUARY 9, 1981 AND BACKWAGES TO BE COMPUTED FROM DECEMBER 15, 1995, BOTH UP TO OCTOBER 12 (sic), 2000, THE DATE OF HIS INCARCERATION."

III.

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN ORDERING THAT RESPONDENT ZAMORA'S MONETARY CLAIM BE PRESENTED TO THE PAL REHABILITATION RECEIVER, SUBJECT TO THE RULES ON PREFERENCE OF CREDITS.[15]

In our Resolutions dated February 6, 2007 and November 23, 2007, we suspended the proceedings in G.R. No. 166996 and G.R. No. 164267, respectively, and directed PAL to submit a status report on its then on-going

rehabilitation. Pursuant to our directive, PAL submitted a Manifestation and Compliance,[16] informing us that the Securities and Exchange Commission granted its request to exit from the rehabilitation proceedings on September 28, 2007.[17] In view of this development, we shall now resolve the instant consolidated petitions.

Simply, the issues are: (1) Did the Decision dated July 26, 1999 of the NLRC become final and executory? (2) Was PAL's motion for reconsideration of the Labor Arbiter's decision seasonably filed? (3) Was Zamora's transfer legal? (4) Was Zamora's dismissal legal? (5) Should PAL pay Zamora separation pay in lieu of reinstatement due to his incarceration? and (6) Should Zamora present his monetary claim to PAL's rehabilitation receiver?

The consolidated petitions have no merit.

Anent the first and second issues, PAL contends that other than the Certification[18] issued by the NLRC Deputy Executive Clerk, there was no evidence that service of the NLRC decision via registered mail was deemed completed as of August 16, 1999, or five days after the first notice on August 11, 1999. It adds that a certification from the postmaster was the best evidence to prove completeness of the service by mail.

PAL also avers that when it received a copy of the NLRC resolution denying Zamora's motion for partial reconsideration of the NLRC decision, it immediately filed a motion to be furnished with a copy of the NLRC decision. Acting on the motion, the NLRC furnished it with a copy of the NLRC decision which it received on October 26, 1999. Since it filed its motion for reconsideration on October 29, 1999, PAL argues that its motion was seasonably filed and the NLRC decision did not become final and executory.

Zamora counters that the Certification issued by the NLRC Deputy Executive Clerk was reinforced by the stamped markings and notation[19] on the face and dorsal sides of the envelopes containing the NLRC decision. He adds that at the time service of the NLRC decision via registered mail was made, PAL moved to a new office address without filing any notice of change of address with the NLRC. Thus, PAL's failure to receive the NLRC decision was due to its own fault.

Zamora also maintains that since PAL only had 10 days from August 16, 1999 to file its motion for reconsideration, the motion filed on October 29, 1999 was late.

The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.[20]

In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee and thus returned to sender, after first notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED." Still, we must rule that service upon PAL and the other petitioners was complete.

First, the NLRC Deputy Executive Clerk issued a Certification that the envelopes containing the NLRC decision addressed to Mr. Jose Pepiton Garcia and Atty. Bienvenido T. Jamoralin, Jr. were returned to the NLRC with the notation "RTS" and "MOVED." Yet, they and the other petitioners, including PAL, have not filed any notice of change of address at any time prior to the issuance of the NLRC decision up to the date when the Certification

was issued on January 24, 2000.

Second, the non-receipt by PAL and the other petitioners of the copies of the NLRC decision was due to their own failure to immediately file a notice of change of address with the NLRC, which they expressly admitted. It is settled that where a party appears by attorney in an action or proceeding in a court of record, all notices or orders required to be given therein must be given to the attorney of record. Accordingly, notices to counsel should be properly sent to his address of record, and, unless the counsel files a notice of change of address, his official address remains to be that of his address of record.[21]

PAL's argument that its chaotic situation due to its rehabilitation rendered the filing of a notice of change of address impractical does not merit consideration. Since moving out from its office at Allied Bank Center, where the NLRC decision was sent, PAL occupied four different office addresses. Yet these office addresses could be found in the same building, the PAL Center Building in Makati City. PAL merely moved from one floor to another. To our mind, it would have been more prudent had PAL informed the NLRC that it has moved from one floor to another rather than allowed its old address at Allied Bank Center to remain as its official address. To rule in favor of PAL considering the circumstances in the instant case would negate the purpose of the rules on completeness of service and the notice of change of address, which is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure.[22]

Resultantly, service of the NLRC decision via registered mail was deemed completed as of August 16, 1999, or five days after the first notice on August 11, 1999. As such, PAL only had 10 days from August 16, 1999 to file its motion for reconsideration. Its motion filed on October 29, 1999 was therefore late. Hence the NLRC decision became final and executory.

With this conclusion, it is no longer necessary to dwell on the other issues raised.

One final note. In CA-G.R. SP No. 68795, PAL conceded that Zamora's reinstatement is no longer possible due to his detention in jail for the crime of murder since October 2, 2000. As such, we defer to the order of the Court of Appeals which mandated the payment of separation pay instead.

WHEREFORE, the consolidated petitions are DENIED. The Amended Decision dated February 1, 2005 of the Court of Appeals in CA-G.R. SP No. 68795 is hereby AFFIRMED. The Decision dated April 27, 2004 in CA-G.R. SP No. 56428 is AFFIRMED with the modification that the order for immediate reinstatement is deleted.

Costs against the petitioners.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., concur.

[*] Rollo (G.R. No. 164267), pp. 691-692. Bernardin J. Zamora died on January 9, 2005 due to cardio pulmonary arrest and was substituted by his wife, Marlyn T. Zamora, and children, Moshe Dayan T. Zamora and Jessamyn T. Zamora.

[1] Id. at 11-24. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Sergio L. Pestaño and Vicente Q. Roxas concurring.

[2] Id. at 34-35. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Edgardo P. Cruz and Vicente Q. Roxas concurring.

[3] Rollo (G.R. No. 166996), pp. 78-89. Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Delilah Vidallon-Magtolis and Arturo D. Brion (now a member of this Court) concurring.

[4] Id. at 92-94.

[5] See *Philippine Airlines, Inc. v. Heirs of Bernardin J. Zamora*, G.R. No. 164267, November 23, 2007, 538 SCRA 456; *Philippine Airlines, Incorporated v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584.

[6] Rollo (G.R. No. 164267), pp. 184-185.

[7] Id. at 168-169.

[8] Rollo (G.R. No. 166996), pp. 213-214.

[9] Id. at 378-380.

[10] Id. at 168-173.

[11] Id. at 176.

[12] Rollo (G.R. No. 164267), p. 23.

[13] Rollo (G.R. No. 166996), pp. 93-94.

[14] Rollo (G.R. No. 164267), pp. 716-717.

[15] Rollo (G.R. No. 166996), p. 58.

[16] Dated December 19, 2007, Rollo (G.R. No. 164267), pp. 831-832; Dated October 19, 2007, Rollo (G.R. No. 166996), pp. 901-902.

[17] Rollo (G.R. No. 164267), pp. 833-838; Rollo (G.R. No. 166996), pp. 903-908.

[18] Id. at 638.

[19] Id. at 639-640.

[20] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 321-322; *Santos v. Court of Appeals*, G.R. No. 128061, September 3, 1998, 295 SCRA 147, 153-154.

[21] *National Power Corporation v. Tac-an*, G.R. No. 155172, February 14, 2003, 397 SCRA 477, 483. See *Philemploy Services and Resources, Inc. v. Rodriguez*, *supra* at 325.

[22] *Aguilar v. Court of Appeals*, G.R. No. 120972, July 19, 1999, 310 SCRA 393, 402; *NIAConsult, Inc. v. National Labor Relations Commission*, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22.

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