

**PHILIPPINE AIRLINES, INCORPORATED, FRANCISCO X. YNGENTE IV,
PAG-ASA C. RAMOS, JESUS FEDERICO V. VIRAY, RICARDO D.
ABUYUAN, PETITIONERS, VS. BERNARDIN J. ZAMORA, RESPONDENT.**

G.R. No. 166996. September 03, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, as amended, which seeks to set aside the 13 August 2004 Decision[1] and 1 February 2005 Amended Decision[2] of the Court of Appeals in CA-G.R. SP No. 68795 entitled, "Bernardin J. Zamora v. National Labor Relations Commission, et al." In the assailed decisions, the Court of Appeals annulled and set aside the 27 April 2001[3] Resolution and 31 October 2001[4] Decision of the Third Division of the National Labor Relations Commission (NLRC) in CA No. 013358-97, (a) ordering the Labor Arbiter to forthwith issue a Writ of Execution stating that "(1) 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"[5]; and b) suspending the proceedings of the case in view of the ongoing rehabilitation of Philippine Airlines, Inc. (PAL) and accordingly referring the particular case to the permanent rehabilitation receiver.

This case stemmed from a labor Complaint[6] filed by respondent Bernardin J. Zamora (Zamora) against petitioners Philippine Airlines, Incorporated (PAL) and Francisco X. Yngente IV (Yngente), Assistant Vice-President, PAL Cargo Sales and Services; Pag-asa C. Ramos (Ramos), Manager, PAL Payroll and Timekeeping Department; Jesus Federico V. Viray (Viray), Operations Director for International Cargo, PAL Import Division; Ricardo D. Abuyuan (Abuyuan), Supervisor for International Cargo, PAL Import Division; and Gerardo V. Ignacio (Ignacio), Manager, PAL Import Operations Division, for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees. The complaint was docketed as NLRC NCR Case No. 00-03-01672-96.

From the records of the case, the following have been alleged:

On 9 February 1981, Zamora started his employment at PAL as a Cargo Representative at its International Cargo Operations-Import Operations Division (ICO-IOD). He alleged that sometime in December 1993, Abuyuan, Supervisor of the IOD, instructed him to alter some entries in the Customs Boatnote to conceal smuggling and pilferage activities; and that when he (Zamora) refused to follow said order, Abuyuan filed an administrative case against the former based on false or concocted charges of insubordination and neglect of customers.

On 6 November 1995, Zamora received a Memorandum directing him to report to PAL's Domestic Cargo Operations starting 13 November 1995. Zamora refused to obey the transfer order for the following reasons: (1) that there was no valid and legal reason for his transfer; (2) that the transfer was in violation of the provision of the Collective Bargaining Agreement (CBA) existing at that time between PAL and its employees, which states

that no employee shall be transferred without just and proper cause; and (3) that the transfer did not comply with the 15-day prior notice rule likewise embodied in the CBA.

Thereafter, Zamora came into possession of a telex message originating from Honolulu, Hawaii, addressed to Abuyuan with a handwritten notation by Ignacio, Manager, IOD, instructing him to "intercept" a particular cargo. Using the communication as evidence, Zamora wrote PAL management and exposed the supposed illegal activities at the IOD; and requested that an investigation be done to shed light on the matter.

Acting on the exposé, the management of PAL invited Zamora to several conferences to substantiate the serious allegations. Zamora claimed that during the conferences, he was directed to continue reporting to ICO-IOD and observe the activities therein. Starting 15 December 1995, however, his salaries were withheld for no apparent reason.

Quite the opposite, PAL, et al., countered that Zamora's dismissal was for cause anchored on the following facts: that sometime in December 1993, he was administratively charged with Insubordination and Neglect of Customers for his (Zamora) refusal to amend a Customs Boatnote and Inbound Handling Report that was based on an erroneous CPM message; that in October 1995, Zamora had an altercation with Abuyuan, which almost resulted in a fistfight; that he was made to explain his side of the incident but his explanation was considered unsatisfactory; and that Zamora was temporarily transferred to the Domestic Cargo Operations (DCO) in order to diffuse the tension between him and his supervisor, Abuyuan. Zamora, however, refused to heed said order and insisted on reporting to the IOD instead. PAL, et al., also alleged that Zamora similarly ignored the instruction to explain in writing his continued absence from the DCO.

On 22 February 1996, PAL notified Zamora of the administrative charge against him for Absence Without Official Leave (AWOL). Subsequently, he was advised of the termination of his employment due to insubordination, neglect of customer, disrespect for authority and absence without official leave.

On 12 March 1996, Zamora filed a complaint against PAL and Yngente[7] before the NLRC for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees. Subsequently, Ramos, Viray, Abuyuan and Ignacio were also made respondents thereto.

On 28 September 1998, the Labor Arbiter[8] rendered a Decision[9] dismissing Zamora's complaint for lack of merit.

In dismissing the complaint, the Labor Arbiter considered Zamora's transfer as an exercise of PAL's management prerogative; and that his refusal to report to the DCO was a clear case of insubordination to and disregard of management directive. Zamora expectedly appealed the foregoing decision to the NLRC.

On 26 July 1999, the NLRC (1) reversed[10] the aforequoted decision and ordered Zamora's immediate reinstatement to his former position, but (2) denied the latter's prayer for damages and attorney's fees. The Commission held that PAL, Yngente, Ramos, Viray, Abuyuan and Ignacio (PAL, et al.) "failed to substantiate that complainant's (respondent Zamora) transfer was for a just and proper cause." [11]

Zamora filed a Motion for Partial Reconsideration[12] of the above-quoted decision, but was denied[13] for lack of merit.

What occurred thereafter was an exchange of a barrage of pleadings.[14]

Meanwhile, on 16 September 1999 and 25 November 1999, the NLRC denied Zamora's partial motion for reconsideration and PAL, et al.'s motion for reconsideration of its 26 July 1999 decision, respectively.

Aggrieved, PAL, et al., filed a Petition for Certiorari[15] before the Court of Appeals on 11 December 1999. The

petition was docketed as CA- G.R. SP No. 56428.[16]

In the interim, Zamora moved anew for the execution of the part of the 26 July 1999 NLRC Decision ordering his reinstatement and payment of monetary benefits.[17] And later, he again filed another pleading, this time before the Labor Arbiter asking that PAL, et al., be held in contempt of the Commission for the airline's refusal to physically reinstate him to his former position, or, at the very least, in the payroll, considering that the order of reinstatement was immediately executory in nature. PAL, et al., opposed the motion.[18]

On 8 January 2001, the Labor Arbiter[19] held that PAL, et al., were guilty of indirect contempt for failing to reinstate Zamora as directed.

PAL, et al., appealed the above-mentioned Order to the NLRC and included therein a prayer for the suspension of the proceedings since the airline, at that time, was undergoing rehabilitation.[20]

In a Resolution[21] dated 27 April 2001, the NLRC (1) partially reversed the 8 January 2001 Labor Arbiter Order by setting aside the finding of indirect contempt; but affirmed the portion which ordered the issuance of the writ of execution. More importantly, it partially amended its 26 July 1999 Decision by ordering the payment of separation pay in lieu of reinstatement.

Both parties moved for the partial reconsideration thereof.

On 31 October 2001, the NLRC denied Zamora's motion for partial reconsideration but granted that of PAL by suspending the proceedings of the case in view of the airline's ongoing rehabilitation.

On 28 January 2002, the parties went up again to the Court of Appeals but this time upon Zamora's initiative. The case was docketed as CA-G.R. SP No. 68795. Zamora assailed the 27 April 2001 and 31 October 2001 Resolution and Decision, respectively, of the NLRC.

In the intervening time, in CA-G.R. SP No. 56428, the Court of Appeals affirmed the 26 July 1999 NLRC Decision. Said case was then elevated to this Court's Second Division, docketed as G.R. No. 164267, and is currently still pending resolution.

On 13 August 2004, the appellate court promulgated its Decision in the later petition (CA-G.R. SP No. 68795) granting Zamora's petition. It annulled and set aside the 27 April 2001 Resolution and 31 October 2001 Decision of the NLRC, and, accordingly, affirmed the 26 July 1999 NLRC Decision. However, on 1 February 2005, it amended its earlier decision by deleting the order of reinstatement and, in lieu thereof, the payment of separation pay was directed. It also held that the monetary claims of Zamora be presented to the PAL Rehabilitation Receiver subject to the rules on preference of credit. In modifying its earlier decision, it took into account Zamora's subsequent imprisonment after being convicted of the crime of murder.

While the case was pending, the heirs of Zamora manifested to the appellate court that on 9 January 2005, Zamora died of cardio-pulmonary arrest at the Ospital ng Maynila.[22]

Dissatisfied, PAL, et al., filed the present petition for review on certiorari under Rule 45 of the Rules of Court, as amended.[23]

On 6 February 2007, this Court resolved[24] to suspend the proceedings of the instant petition in view of the ongoing rehabilitation of PAL. However, on 28 September 2007, PAL successfully exited rehabilitation by virtue of the Securities and Exchange Commission finding of the airline's "firm commitment to settle its outstanding obligations as well as the fact that its operations and its financial condition have been normalized and stabilized in conformity with the Amended and Restated Rehabilitation Plan x x x." [25]

Considering the above, there is no more legal impediment for this Court to settle the instant petition.

Be that as it may, the issues of the present petition being intimately intertwined with those presented in G.R. No. 164267 pending before the Second Division, we are disinclined from resolving this petition alone. That there is identity of parties as well as identity of rights asserted, and that any judgment that may be rendered in one case may amount to res judicata in the other, are apparent at the outset; both cases trace their origin to just one set of facts. The pendency of these two cases in two different divisions of this Court and the possibility of conflicting decisions being rendered by either division are factors that will not serve the orderly administration of justice.

The issues in G.R. No. 164267 touches upon the propriety of the finding of illegality of Zamora's dismissal; while the present case questions the propriety, inter alia, of the order directing payment of separation pay, in lieu of reinstatement, in view of the death of the employee. Eventually, the question whether or not Zamora was lawfully dismissed from service will be revisited. Inasmuch as the correctness of the termination of Zamora's employment is the root of all the issues raised in both petitions, as it has been raised, it would be more practical and convenient to submit all the incidents and their consequences to the ponente of G.R. No. 164247. The merging of the two petitions will result in a complete, comprehensive and consistent determination of the related issues, incidents and consequences affecting all the parties thereto. Therefore, the consolidation of the two cases becomes mandatory. The coming together of the issues of both cases would promote their more expeditious and less expensive determination, as well as the orderly administration of justice than if they were to remain in the two branches of the same court.

Lest it be forgotten, the rationale for consolidation is to have all cases, which are intimately related, acted upon by one branch of the court to avoid the possibility of conflicting decisions being rendered. Such an outcome will not serve the orderly administration of justice.[26]

WHEREFORE, premises considered, the present petition for review on certiorari, G.R. No. 166996, is hereby ordered consolidated with G.R. No. 164267. No costs.

SO ORDERED.

Ynares-Santiago, (Chirperson), Carpio, Austri-Martinez, and Velasco, Jr., JJ., concur.

[1] Penned by Court of Appeals Associate Justice Eliezer R. de Los Santos with Associate Justices Delilah Vidallon-Magtolis and Arturo D. Brion concurring; rollo, pp. 78-89.

[2] Id. at 92-94.

[3] Penned by NLRC Commissioner Ireneo B. Bernardo with Commissioners Lourdes C. Javier and Tito F. Genilo concurring; id. at 168-173.

[4] Id. at 174-176.

[5] Id. at 173.

[6] CA rollo, p. 41.

[7] Assistant Vice-President for Cargo Sales and Services of petitioner PAL.

[8] Hon. Voltaire A. Balitaan.

[9] Rollo, pp. 97-105.

[10] Id. at 200.

[11] NLRC Decision dated 26 July 1999; id. at 179-202.

[12] Id. at 203-209.

[13] Id. at 211-212.

[14] On 1 September 1999, claiming the 26 July 1999 NLRC Decision to have become final and executory, Zamora, through counsel, wrote PAL demanding the execution thereof; on 5 October 1999, PAL, et al., filed a Motion to Furnish Respondents a Copy of the NLRC Decision Promulgated on July 26, 1999; on 18 October 1999, Zamora responded by filing two pleadings before the NLRC: (1) an Opposition (to Respondents-Appellees' Motion to Furnish Respondents a Copy of the NLRC Decision Promulgated on July 26, 1999); and (2) a Motion for Partial Entry of Judgment (of the 26 July 1999 NLRC Decision). In the Opposition, Zamora opposed the motion on the ground that the record of the NLRC indicates that a copy of the 26 July 1999 NLRC Decision was sent, via registered mail, to petitioners' counsel on 11 August 1999, although the same remained unclaimed for a time and later on was returned to sender. Zamora averred further that as of 16 August 1999, or five days later, service upon petitioners was deemed completed per the ruling of this Court in *Magno v. Court of Appeals*; in response, PAL, et al. filed: (1) an Opposition (to Complainant's Motion for Partial Entry of Judgment), as well as (2) a Motion for Reconsideration of the 26 July 1999 NLRC Decision; on 8 November 1999, Zamora filed a Reply to PAL, et al.'s Opposition; on 18 November 1999, Zamora filed another pleading, this time in response to the Motion for Reconsideration, moving to have the motion expunged from the record of the case on the argument that the 26 July 1999 NLRC Decision had long become final and executory; refusing to be bested, PAL, et al. filed a Comment on Zamora's 18 November 1999 Opposition To And Motion To Expunge.

[15] CA rollo, pp. 117-143.

[16] On 8 January 2001, the Court of Appeals dismissed the petition; it is now before the Second Division of this Court for review, docketed as G.R. No. 164267.

[17] CA rollo, pp. 144-149.

[18] Id. at 157-160.

[19] Hon. Joselito Cruz Villarosa.

[20] Per the Securities and Exchange Commission's (SEC's) 16 August 1999 Order, the SEC directed the appointment of a permanent rehabilitation receiver for PAL. Said rehabilitation case was docketed as SEC Case No. 06-98-6004, entitled "In the Matter of the Petition for the Approval of Rehabilitation Plan and for Appointment of a Rehabilitation Receiver."

[21] Rollo, pp. 168-173.

[22] Manifestation and Motion, CA rollo, pp. 574-575.

[23] Petition for Review on Certiorari, p. 9; rollo, p. 58.

[24] Rollo, pp. 860-881.

[25] SEC Order dated 28 September 2007 in SEC Case No. 06-986004; rollo, pp. 903-908.

[26] *Benguet Corp., Inc. v. Court of Appeals*, G.R. No. L-80902, 31 August 1988, 165 SCRA 265, 271.

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