# SMART COMMUNICATIONS, INC., NAPOLEON L. NAZARENO, AND RICARDO P. ISLA, PETITIONERS, VS. JOSE LENI Z. SOLIDUM, RESPONDENT.

*G.R. No. 204646. April 15, 2015*

Ponente: CARPIO, J.

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**CARPIO, J.:**

The Case

This is a petition[1] for review on certiorari under Rule 45 of the Rules of Court. Petitioners Smart Communications, Inc. (Smart), Napoleon L. Nazareno and Ricardo P. Isla (Isla) challenge the Court of Appeals' 3 July 2012 Amended Decision[2] and 23 November 2012 Resolution[3] in CA-G.R. SP No. 115794, affirming the National Labor Relations Commission's (NLRC) 30 July 2010 Resolution.[4]

The Facts

On 26 April 2004, Smart hired respondent Jose Leni Z. Solidum (Solidum) as Department Head for Smart Buddy Activation. Smart Buddy Activation is under the Product Marketing Group which is headed by Isla. On 21 September 2005, Isla gave Solidum a memorandum[5] informing him of alleged acts of dishonesty, directing him to explain why his employment should not be terminated, and placing him under preventive suspension without pay for 30 days. On 28 September 2005, Solidum submitted his written explanation[6] in response to the 21 September 2005 notice.

On 22 October 2005, Isla gave Solidum a memorandum[7] dated 21 October 2005 informing him of a modified set of alleged acts of dishonesty, directing him to explain why his employment should not be terminated, extending his preventive suspension by 10 days, and inviting him to the administrative investigation scheduled on 26 October 2005.

On 11 November 2005, Isla gave Solidum a memorandum[8] dated 9 November 2005 terminating his employment "for fraud or willful breach of trust, falsification, misrepresentation, conflict of interest, serious misconduct and dishonesty-related offenses."[9]

Solidum filed against Smart a complaint[10] for illegal dismissal, illegal suspension, non-payment of salaries, actual, moral and exemplary damages, and attorney's fees.

In his 3 July 2006 Decision,[11] the Labor Arbiter found that Solidum's preventive suspension and dismissal were illegal and that he was entitled to full back wages, moral and exemplary damages, and attorney's fees. The dispositive portion of the Decision stated:

> WHEREFORE, premises all considered, judgment is hereby rendered in favor of complainant and against respondents, as follows:
>
> 1. Declaring the 20-day extended preventive suspension of complainant from October 22, 2005 to November

10, 2005 illegal and tantamount to constructive dismissal, and ordering respondents to jointly and severally pay complainant his corresponding salaries, benefits, privileges, allowances and other incentives/bonuses during the period from October 22 to November 10, 2005, in the amount of P236,061.94;

2. Ordering respondents to jointly and severally pay the complainant's unpaid salaries, benefits, privileges, allowances, and other benefits/bonuses during the 30-day preventive suspension, in the amount of P365,896.00;

3. Declaring the dismissal of complainant effective November 11, 2005 as illegal, and ordering respondents to reinstate the complainant to his former position, immediately upon receipt of this decision, either physically or in the payroll, at the option of the former, and failure to exercise their option within ten (10) days hereof, shall place the complainant on payroll reinstatement, with payment of accrued salaries, allowances, benefits/incentives and bonuses;

4. Ordering respondents to jointly and severally pay complainant his full backwages, inclusive of all benefits bonuses, privileges, incentives, allowances or their money equivalents, from date of dismissal on November 11, 2005 until actual reinstatement, partially computed as follows:

a.

Backwages and benefits

- P2,903,561.79

b.

Quarterly performance bonus

- P935,640.00

c.

Monthly Gas allowance

- P90,693.00

d.

Monthly Rice allowance

- P9,000.00

e.

Monthly driver's allowance

- P68,175.00

f.

13th month pay (pro-rata)

- P265,569.68

g.

Unpaid accumulated leaves

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- P472,123.87

h.

Smart incentive entitlement

- P7,370,250.00[;]

5. Ordering respondents to jointly and severally pay complainant for the foregone opportunity of pursuing studies in the United Kingdom under the British Chevening Scholarship Award, in the sum of 20,189.00 British pounds or Peso 1,982,727.37[; and]

6. Ordering respondents to jointly and severally pay complainant moral damages in the amount of P2 million, exemplary damages in the amount of P2 million, and attorney's fees equivalent to 10% of the judgment award.

SO ORDERED.[12]

On 25 July 2006, Smart appealed to the NLRC. On 13 November 2006, the Labor Arbiter issued a writ of execution ordering the sheriff to collect from petitioners P1,440,667.93, representing Solidum's accrued salaries, allowances, benefits, incentives and bonuses from 21 July to 20 October 2006. On 15 August and 25 October 2007, 11 February, 28 April, 23 July and 11 November 2008, and 22 January 2009, the Labor Arbiter issued seven other alias writs of execution ordering the sheriff to collect from petitioners Solidum's accrued salaries, allowances, benefits, incentives and bonuses.

In its 26 January 2009 Resolution,[13] the NLRC reversed the Labor Arbiter's 3 July 2006 Decision and dismissed for lack of merit Solidum's complaint. Solidum filed a motion[14] for reconsideration dated 9 February 2009.

On 4 May 2009, Solidum filed with the Labor Arbiter an ex-parte motion[15] praying that an alias writ of execution be issued directing the sheriff to collect from petitioners P1,440,667.93, representing Solidum's accrued salaries, allowances, benefits, incentives and bonuses from 21 January to 20 April 2009.

In its 29 May 2009 Decision,[16] the NLRC denied for lack of merit Solidum's 9 February 2009 motion for reconsideration.

The Labor Arbiter's Ruling

In his 29 July 2009 Order,[17] the Labor Arbiter denied for lack of merit Solidum's ex-parte motion praying that an alias writ of execution be issued directing the sheriff to collect from petitioners P1,440,667.93, representing Solidum's accrued salaries, allowances, benefits, incentives and bonuses from 21 January to 20 April 2009. The Labor Arbiter held that:

> In the instant case, the NLRC promulgated its Decision dated January 26, 2009 reversing this Office's Decision dated July 03, 2006. Also, the NLRC in its Decision dated May 29, 2009 denied the complainant's motion for reconsideration of its Decision dated January 26, 2009. This Office is mindful of the fact that the NLRC is tasked with the review of decisions promulgated by this Office, as such, it is a higher tribunal as contemplated by law.
>
> Verily, the recent decision of the NLRC reversing the Decision of this Office prevents any future issuance of any writ of execution on the reinstatement aspect in line with Gracia, et al. vs. Philippine Airlines, Inc. and International Container Terminal Services vs. NLRC.[18]

Solidum appealed to the NLRC.

The NLRC's Ruling

In its 31 May 2010 Decision,[19] the NLRC reversed the Labor Arbiter's 29 July 2009 Order. The NLRC held that:

> In the case at bar, records show that respondents appealed from the Labor Arbiter's Decision to the Commission on July 25, 2006. The Commission resolved respondents' appeal on January 26, 2009, reversing the Decision of the Labor Arbiter dated July 3, 2006. Notably, there is no showing in the records that respondents reinstated complainant to his former position. Hence, pursuant to Article 223 of the Labor Code, as amended, relative to the reinstatement aspect of the Labor Arbiter's Decision, respondents are obligated to pay complainant's salaries and benefits, computed from July 13, 2006, when respondents received a copy of the Labor Arbiter's Decision which, among others, ordered the reinstatement of complainant, up to the date of finality of the Commission's resolution reversing the Labor Arbiter's Decision, which, for this purpose, is reckoned on May 29, 2009, when the Commission denied complainant's Motion for Reconsideration.
>
> Indeed, common sense dictates that complainant's entitlement to reinstatement salaries/wages and benefits, emanating from the Labor Arbiter's order of reinstatement, presupposes that said order of reinstatement is still enforceable. Here, the Labor Arbiter's order of reinstatement dated July 3, 2006 was no longer enforceable as of May 29, 2009 when the Commission's resolution reversing the Labor Arbiter's order of reinstatement is deemed to have become final as hereinabove discussed. Patently then, complainant is no longer entitled to reinstatement salaries/wages and benefits after May 29, 2009.
>
> Significantly, the Order of the Labor Arbiter being appealed from by complainant, denied the latter's motion for issuance of alias writ of execution for the collection of his reinstatement salaries and benefits for the period covering January 21, 2009 to April 20, 2009. The Labor Arbiter thus committed serious error in denying complainant's motion with respect to his reinstatement salaries and benefits as he is entitled to the same for the period starting July 13, 2006 to May 29, 2009.[20]

Solidum filed a motion[21] for partial reconsideration. Petitioners filed a motion[22] for reconsideration. In its 30 July 2010 Resolution, the NLRC granted Solidum's motion for partial reconsideration and denied for lack of merit petitioners' motion for reconsideration. The NLRC held that:

> Our Entry of Judgment dated June 01, 2010 clearly states that the Decision promulgated by this Commission on May 29, 2009 had become final and executory on August 10, 2009. Thus, We so hold that the date of finality of Our Decision reversing the Labor Arbiter's Decision dated July 3, 2006 is August 10, 2009, and the computation of complainant's reinstatement or accrued salaries/wages and other benefits should be up to August 10, 2009.
>
> Anent respondents' Motion for Reconsideration, We find the same unmeritorious.[23]

Petitoners appealed to the Court of Appeals.

In his alias writ[24] of execution dated 22 October 2010, the Labor Arbiter ordered the sheriff to collect from petitioners P1,440,667.93, representing Solidum's accrued salaries, allowances, benefits, incentives and bonuses from 21 January to 20 April 2009.

The Court of Appeals' Ruling

In its 25 January 2011 Decision,[25] the Court of Appeals granted petitioners' petition for certiorari, prohibition and mandamus with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order and set aside the NLRC's 31 May 2010 Decision and 30 July 2010 Resolution. The Court of Appeals held that:

> The order of the Labor Arbiter denying Private Respondent's ex-parte motion for issuance of Alias Writ of Execution is not a final order as there was something else to be done, namely, the resolution of his Complaint for Illegal Dismissal against Petitioners on the merits. The subject Order of the Labor Arbiter did not put an end to the issues of illegal suspension and illegal dismissal, and, thus, partakes the nature of an interlocutory

> order. It is jurisprudential that an interlocutory order is not appealable until after the rendition of the judgment on the merits for a contrary rule would delay the administration of justice and unduly burden the courts. Being interlocutory in nature, the subject Order could not have been validly appealed.
>
> Moreover, as correctly argued by the Petitioners, an appeal from an interlocutory order is a prohibited pleading under Section 4 of the 2005 Revised Rules of Procedure of the NLRC. Consequently, the Labor Arbiter's order being interlocutory and unappealable, Public Respondent NLRC has no jurisdiction to rule on the appeal except to dismiss the same. The assailed Decision and the Resolution, rendered in excess of the Public Respondent NLRC's jurisdiction, are therefore null.
>
> Besides and more importantly, records show that the Decision, dated May 29, 2009, of the NLRC in the Illegal Dismissal Case which effectively denied Private Respondent's Complaint for Illegal Dismissal against Petitioners already attained finality on June 1, 2010. Indeed, an Entry of Judgment was accordingly made. Clearly, Private Respondent can neither pray nor cause this Court to grant his Ex-parte Motion for Issuance of Writ of Execution to reinstate him since his dismissal by Petitioners was finally ruled to be legal; hence, the denial of his complaint for lack of merit. Ruling on Private Respondent's Ex-parte motion shall also have an effect of reviewing a final judgment which the law and the court abhor. It bears to stress that when a final judgment becomes executory, it thereby becomes immutable and unalterable.[26]

Solidum filed a motion[27] for reconsideration.

In his alias writ[28] of execution dated 18 May 2011, the Labor Arbiter ordered the sheriff to collect from petitioners P1,440,667.93, representing Solidum's accrued salaries, allowances, benefits, incentives and bonuses from 21 April to 20 July 2009. Petitioners filed with the Court of Appeals a motion[29] to order Solidum to return P2,881,335.86, representing the total amount under the 22 October 2010 and 18 May 2011 alias writs of execution.

In its 3 July 2012 Amended Decision, the Court of Appeals partly granted Solidum's motion for reconsideration and denied petitioners' motion to order the return of P2,881,335.86. The Court of Appeals held that:

> [T]here was a wrong appreciation of fact relative to the date of finality of judgment. The true date when the May 29, 2009 NLRC decision became final and executory was on August 10, 2009 and not on June 1, 2010. (Rollo, page 1895) Conformably with the foregoing, the involved portion of our ruling which is the subject of the discussion at hand is hereby modified by changing the stated date therein from June 1, 2010 to August 10, 2009.
>
> x x x x x x x x x
>
> On the last issue for consideration — refund of monetary award, We find necessary to quote the following pronouncement of the High Court:
>
> x x x x x x x x x
>
> The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, 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. (Juanito A. Garcia vs. Philippine Airlines, Inc., G.R. No. 164856, January 20, 2009)
>
> In view thereof, no refund will thus be permitted by this Court.[30]

Petitioners filed a motion[31] for partial reconsideration with motion to order the return of P2,881,335.86. In its 23 November 2012 Resolution, the Court of Appeals held that:

> The move to reconsider the January 26, 2009 decision of the NLRC was denied on May 29, 2009. Thereafter,


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> an Entry of Judgment was issued which provides in particular the following: "this is to certify that on May 29, 2009, a DECISION was rendered x x x and that the same has, pursuant to Rules of the Commission, became [sic] final and executory on Aug. 10, 2009". (Rollo, p. 1895) It appears therefore that the situation contemplated in the last paragraph of the Section 14 had been the case here. In view of this, We find no cogent reason to reverse our earlier ruling that August 10, 2009 is the true date of finality of subject decision.
>
> x x x x x x x x x
>
> In the light, however, of our earlier discussion on the true date of finality of judgment, we cannot order the return of the amounts released by way of the 8th and 9th Alias Writ of Execution. The wages, allowances, incentives/benefits and bonuses received through the said writs covered the period from January 21, 2009 to July 20, 2009, thus, the latter is not required to reimburse the same due to the fact that one is entitled to such amounts until the day that the reinstatement order was reversed with finality (which in this case falls on August 10, 2009). (See Juanito A. Garcia vs. Philippine Airlines, Inc. G.R. No. 164856, January 20, 2009)[32]

Hence, the present petition.

The Issues

Petitioners raised as issues that the Court of Appeals erred in ruling that (1) the NLRC's 29 May 2009 Decision became final and executory on 10 August 2009, and (2) Solidum was entitled to P2,881,335.86, representing the total amount under the 22 October 2010 and 18 May 2011 alias writs of execution.

The Court's Ruling

The petition is unmeritorious.

The NLRC's 29 May 2009 Decision became final and executory on 10 August 2009 as shown on the entry of judgment.[33] The entry of judgment states:

> This is to certify that on May 29, 2009, a DECISION was rendered in the above-entitled case, the dispositive portion of which reads as follows:
> "WHERFORE, premises considered, complainant's motion for reconsideration, as well as respondents' motion for injunction are hereby both DENIED for lack of merit. Accordingly, Our January 26, 2009 Resolution is hereby REITERATED.
>
> SO ORDERED."

and that the same has pursuant to the Rules of the Commission, become final and executory on Aug. 10, 2009 and is hereby recorded in the Book of Entries of Judgments.

Quezon City, Philippines, June 01, 2010.[34] (Boldfacing supplied)

Moreover, the certification[35] issued by the NLRC states that the NLRC's 29 May 2009 Decision became final and executory on 10 August 2009:

> This is to certify that the Decision in NLRC Case No. 00-11-09564-05/NLRC CA No. 049875-06, entitled: Jose Leni Z. Solidum vs. Smart Communications, Inc., Napoleon L. Nazareno, and/or Ricky P. Isla, was promulgated on 29 May 2009; the same was mailed on 11 June 2009 and in the absence of return cards, the decision had become final and executory on 10 August 2009, (after sixty (60) calendar days from the date of mailing), and had been recorded in the Book of Entries of Judgment, pursuant to Rule VII Section 14 of the 2005 Revised Rules of Procedure of the NLRC which provides: "The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from

> date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties.[36] (Boldfacing supplied)

Since the NLRC's 29 May 2009 Decision became final and executory on 10 August 2009, Solidum is entitled to P2,881,335.86, representing his accrued salaries, allowances, benefits, incentives and bonuses for the period 21 January to 20 July 2009.

In Bago v. NLRC,[37] the Court held that employees are entitled to their accrued salaries, allowances, benefits, incentives and bonuses until the NLRC's reversal of the labor arbiter's order of reinstatement becomes final and executory, as shown on the entry of judgment. The Court held that:

> Finally, on Arlyn's claim that respondents "unilaterally withheld her payroll reinstatement" after the NLRC reversed on September 27, 2004 the Labor Arbiter's decision, Article 223, paragraph 6 of the Labor Code provides that the decision of the NLRC on appeals from decisions of the Labor Arbiter "shall become final and executory after ten (10) calendar days from receipt thereof by the parties." The 2002 New Rules of Procedure of the NLRC provided:
> RULE VII
>
> x x x x x x x x x
>
> SECTION 14. FINALITY OF DECISION OF THE COMMISSION AND ENTRY OF JUDGMENT. — (a) Finality of the Decisions, Resolutions or Orders of the Commission. Except as provided in Rule XI, Section 9, the decisions, resolutions or orders of the Commission/Division shall become executory after ten (10) calendar days from receipt of the same.
>
> (b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this section, the decision/resolution/order shall, as far as practicable, be entered in a book of entries of judgment.
>
> (c) Allowance for Delay of Mail in the Issuance of Entries of Judgment. — In issuing entries of judgment, the Executive Clerk of Court or the Deputy Executive Clerk, in the absence of a return card or certification from the post office concerned, shall determine the finality of the decision by making allowance for delay of mail, computed sixty (60) calendar days from the date of mailing of the decision, resolution or order.

That the Court of Appeals may take cognizance of and resolve a petition for certiorari for the nullification of the decisions of the NLRC on jurisdictional and due process considerations does not affect the statutory finality of the NLRC Decision. The 2002 New Rules of Procedure of the NLRC so provided:

> RULE VIII
>
> x x x x x x x x x
>
> SECTION 6. EFFECT OF FILING OF PETITION FOR CERTIORARI ON EXECUTION. — A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court.

In the case at bar, Arlyn received the September 27, 2004 NLRC decision on October 25, 2004, and the January 31, 2005 NLRC Resolution denying her Motion for Reconsideration on February 23, 2005. There is no showing that the Court of Appeals issued a temporary restraining order to enjoin the execution of the NLRC decision, as affirmed by its Resolution of January 31, 2005.

If above-quoted paragraph (a) of Section 14 of Rule VII of the 2002 NLRC New Rules of Procedure were followed, the decision of the NLRC would have become final and executory on March 7, 2005, ten (10) calendar days from February 25, 2005. The NLRC, however, issued on June 16, 2005 a Notice of Entry of Judgment

stating that the NLRC Resolution of January 31, 2005 became final and executory on April 16, 2005, apparently following the above-quoted last paragraph of Section 14 of Rule VII. No objection having been raised by any of the parties to the declaration in the Notice of Entry of Judgment of the date of finality of the NLRC January 31, 2005 Resolution, Arlyn's payroll reinstatement ended on April 16, 2005. x x x

WHEREFORE, the petition is, in light of the foregoing discussions, DENIED and the questioned decision of the court a quo is AFFIRMED with MODIFICATION in that respondent Standard Insurance, Co., Inc. is ordered to pay the salaries due petitioner, Arlyn Bago, from the time her payroll reinstatement was withheld after the promulgation on September 27, 2004 of the decision of the National Labor Relations Commission until April 16, 2005 when it became final and executory.[38] (Boldfacing supplied)

WHEREFORE, the petition is DENIED. The Court of Appeals' 3 July 2012 Amended Decision and 23 November 2012 Resolution in CA-G.R. SP No. 115794 are AFFIRMED.

**SO ORDERED.**

Del Castillo, Perez,[**] Mendoza, and Leonen, JJ., concur.

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[*] Also referred to in the Records as Ricky P. Isla.

[**] Designated acting member per Special Order No. 1977 dated 15 April 2015.

[1] Rollo, pp. 10-41.

[2] Id. at 44-54. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon A. Cruz concurring.

[3] Id. at 56-61.

[4] Id. at 752-756. Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Gregorio O. Bilog and Pablo C. Espiritu, Jr. concurring.

[5] Id. at 64-66.

[6] Id. at 67-73.

[7] Id. at 79-82.

[8] Id. at 85-91.

[9] Id. at 91.

[10] Id. at 92-93.

[11] Id. at 94-154. Penned by Labor Arbiter Felipe P. Pati.

[12] Id. at 152-154.

[13] Id. at 244-265. Penned by Commissioner Romeo L. Go, with Presiding Commissioner Gerardo C. Nograles concurring and Commissioner Perlita B. Velasco inhibiting.

[14] Id. at 266-474.

[15] Id. at 521-523.


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[16] Id. at 510-520.

[17] Id. at 524-528.

[18] Id. at 527.

[19] Id. at 726-733.

[20] Id. at 731-732.

[21] Id. at 734-737.

[22] Id. at 739-751.

[23] Id. at 754.

[24] Id. at 928-933. Penned by Labor Arbiter Aliman D. Mangandog.

[25] Id. at 875-886. Penned by Associate Justice Noel G. Tijam, with Associate Justices Marlene Gonzales-Sison and Danton Q. Bueser concurring.

[26] Id. at 884-885.

[27] Id. at 887-905.

[28] Id. at 934-941. Penned by Labor Arbiter Aliman D. Mangandog.

[29] Id. at 922-927.

[30] Id. at 47-53.

[31] Id. at 946-965.

[32] Id. at 58-59.

[33] Id. at 1940. Penned by Acting Executive Clerk of Court IV Flocerfida T. Trinidad.

[34] Id.

[35] Id. at 1941. Penned by Labor Arbiter and Acting Executive Clerk of Court IV Elenita F. Cruz.

[36] Id.

[37] 549 Phil. 414 (2007).

[38] Id. at 427-430.

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