

## CONSOLIDATED DISTILLERS OF THE FAR EAST, INC., PETITIONER, VS. ROGEL N. ZARAGOZA, RESPONDENT.

*G.R. No. 229302. June 20, 2018*

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### CAGUIOA, J:

Petitioner Consolidated Distillers of the Far East, Inc. (Condis) filed a Petition for Review on Certiorari[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated March 17, 2016 and Resolution[3] dated January 10, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 135538. The CA affirmed with modification the Decision[4] dated January 13, 2014 of the National Labor Relations Commission (NLRC), Sixth Division, which declared as null and void the Labor Arbiter (LA)'s Resolution[5] dated August 3, 2013.

#### Facts

The present case is an offshoot of the petition entitled Consolidated Distillers of the Far East, Inc. v. Rogel N. Zaragoza and docketed as G.R. No. 196038 (Illegal Dismissal Case). The First Division of the Court denied the petition in a Resolution[6] dated June 22, 2011, which became final and executory on March 30, 2012.[7]

In G.R. No. 196038, the Court affirmed the CA decision in favor of respondent therein Rogel Zaragoza (Rogel) which had affirmed the NLRC's and LA's findings that Condis had illegally dismissed Rogel, and ordered his reinstatement and payment of his backwages.

After the finality of the resolution of the Court in G.R. No. 196038 on March 30, 2012, Rogel moved for the issuance of an alias writ of execution against Condis for his reinstatement, and the payment of full backwages, accrued salaries and allowances as of December 3, 2012, less the P454,986.98 that was already released to him by the LA pending appeal (Execution Proceedings).[8] Condis opposed the motion and argued that its execution of the Asset Purchase Agreement with Emperador Distillers, Inc. (EDI) was a supervening event that made it impossible to reinstate Rogel to his former position.[9] In a Resolution dated August 3, 2013, the LA ruled in favor of Rogel and directed Condis to pay P2,135,256.45 representing the backwages/reinstatement salaries, including allowances, from December 3, 2007, the date of Rogel's illegal dismissal, up to August 3, 2013, the date of the LA resolution.[10]

Condis filed a petition for extraordinary remedy with the NLRC, which granted the petition and declared the LA's Resolution null and void in a Decision dated January 13, 2014.[11] The NLRC ruled that the reinstatement was indeed rendered impossible because of the Asset Purchase Agreement, but that backwages should be computed only until the finality of the Court's Resolution in the Illegal Dismissal Case (i.e., G.R. No. 196038) on March 30, 2012.[12]

Rogel filed a petition for certiorari under Rule 65 with the CA. In a Decision dated March 17, 2016, the CA affirmed the NLRC but with modification that the backwages should be computed from the date of illegal dismissal until the finality of the decision of the CA, and separation pay computed from the date of employment until finality of the CA Decision. The dispositive portion states:

WHEREFORE, the instant petition for certiorari is hereby DISMISSED. The January 13, 2014 Decision and February 28, 2014 Resolution of the National Labor Relations Commission, Sixth Division in LER Case No. 10-280-13 are AFFIRMED with MODIFICATIONS. As modified, private respondent Consolidated Distillers of the Far East, Inc. is ORDERED to pay petitioner Rogel N. Zaragoza the following amounts: backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the date he was illegally dismissed until finality of this Decision and separation pay computed from the first day of employment on April 18, 1994 until the finality of this Decision at the rate of one (1) month salary for every year of service.

The sum of P454,986.98 previously received by Rogel N. Zaragoza by virtue of the release order of the Labor Arbiter must be deducted from the foregoing awards.

SO ORDERED.[13]

Condis moved for reconsideration but this was denied in the CA's Resolution dated January 10, 2017. Hence, this Petition.

#### Issues

Condis raises the following issues:

##### I.

The Honorable Court of Appeals committed reversible error in ruling that Petitioner did not raise new issues in its Partial Motion for Reconsideration.

- The Honorable Court of Appeals committed reversible error in applying the doctrines laid down in *Bani Rural Bank vs. De Guzman*, to this instant case;

- The factual findings of the Honorable Court of Appeals are binding to this Honorable Court as illustrated in the case of *Salcedo vs. People*. This being the case, the question of whether or not there exists a supervening event, which prohibited Respondent's reinstatement is already settled. Thus, the Honorable Court of Appeals committed reversible error in reckoning the period of back wages and separation pay until finality of the decision of this case and not until the time, the supervening event and legal impossibility to reinstate arose in this case, in accordance with the latest ruling in *Olympia Housing Inc. Case*; and

- In awarding Zaragoza backwages and separation pay beyond the occurrence of the supervening event, which gave rise to the impossibility of reinstatement, the Honorable Court of Appeals committed reversible error by not considering that these would be confiscatory, and would result in unjust enrichment, not to mention that Zaragoza will be placed in a better position vis a vis the other employees of CONDIS who were separated as a result of the supervening event, which gave rise to the legal impossibility of reinstatement.

##### II.

The Honorable Court of Appeals committed reversible error in not resolving the issue regarding the award of Zaragoza's allowances, which were based on evidence which were only presented during execution proceedings, and which are clearly ad hoc in nature.[14] (Emphasis omitted)

#### The Court's Ruling

The Petition is partly granted.

#### Computation of backwages and separation pay

To recall, the Decision in G.R. No. 196038 became final and executory on March 30, 2012. As modified, the Decision awarded backwages and directed Condis to reinstate Rogel. It was only during the Execution

Proceedings that the NLRC, in reversing the LA, directed the payment of separation pay in lieu of reinstatement. Condis does not question the propriety of the award of separation pay in lieu of reinstatement by the NLRC during the Execution Proceedings. It only takes issue with the NLRC's and CA's computation of the backwages and separation pay.[15] Condis argues that it should only be liable for backwages and separation pay until the year 2007. It claims that the execution of the Asset Purchase Agreement and the termination of the subsequent Service Agreement with EDI was the reason for its failure to reinstate Rogel.[16] It claims that the foregoing were supervening events that made Rogel's position inexistent as of 2007 and that there is no position to which Rogel could be reinstated into.[17] Condis further claims that the CA erred when it applied *Bani Rural Bank, Inc. v. De Guzman*[18] (*Bani*) instead of *Olympia Housing, Inc. v. Lapastora*[19] (*Olympia Housing*).

The Court disagrees.

The Court agrees with the CA that Condis is liable for backwages and separation pay until the finality of the decision awarding separation pay as ruled in *Bani*.

In *Bani*, the decision there finding that the employee was illegally dismissed and directing his reinstatement had also already attained finality. During the execution proceedings, since the employees manifested that they no longer wanted to be reinstated, the LA directed that separation pay be given to them in lieu of reinstatement. On appeal, the NLRC affirmed the payment of separation pay but modified the basis of the computation. This also became final and executory.

The LA then recomputed the award and ruled that backwages should only be paid until the date that the employees manifested that they no longer wanted to be reinstated. The NLRC and the CA, however, both ruled that the backwages should be counted until the finality of the NLRC decision awarding separation pay. The Supreme Court held therein that when there is a supervening event that renders reinstatement impossible, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay,[20] thus:

x x x when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case), backwages is computed from the time of dismissal until the finality of the decision ordering separation pay.[21]

The reason for this, as the Court explained in *Bani*, is that "[w]hen there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other." [22]

Here, the award of separation pay in lieu of reinstatement, which Condis does not question, was made subsequent to the finality of the Decision in the *Illegal Dismissal Case* (G.R. No. 196038). Condis cannot therefore evade its liability to Rogel for backwages and separation pay computed until the finality of this Decision which affirms the order granting separation pay. As the Court further held in *Bani*:

The above computation of backwages, when separation pay is ordered, has been the Court's consistent ruling. In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, we explained that the finality of the decision becomes the reckoning point because in allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[23]

Further, Condis cannot find support in *Olympia Housing*, as this case, in fact, holds against its position. In *Olympia Housing*, the Court considered that the employer therein was able to prove in a separate labor case that it

had closed its business and followed all statutory requirements arising from the closure of its business, i.e., notice to the Department of Labor and Employment (DOLE), notice to the employees, and financial statements substantiating its claim that it was operating at a loss. Given this, the Court therein ruled that the employer is liable for backwages and separation pay only until the date of the closure of the business of the employer, even if this was prior to the LA's decision finding illegal dismissal, thus:

The CA correctly ruled that the principle of stare decisis finds no relevance in the present case. To begin with, there is no doctrine of law that is similarly applicable in both the present case and in *Ocampo v. OHI*. While both are illegal dismissal cases, they are based on completely different sets of facts and involved distinct issues. In the instant case, Lapastora cries illegal dismissal after he was arbitrarily placed on a floating status on mere suspicion that he was involved in theft incidents within the company premises without being given the opportunity to explain his side or any formal investigation of his participation. On the other hand, in *Ocampo v. OHI*, the petitioners therein questioned the validity of OHI's closure of business and the eventual termination of all the employees. Thus, the NLRC ruled upon both cases differently.

Nonetheless, the Court finds the recognition of the validity of OHI's cessation of business in the Decision dated November 22, 2002 of the NLRC, which was affirmed by the CA and this Court, a supervening event which inevitably alters the judgment award in favor of Lapastora. The NLRC noted that OHI complied with all the statutory requirements, including the filing of a notice of closure with the DOLE and furnishing written notices of termination to all employees effective 30 days from receipt. OHI likewise presented financial statements substantiating its claim that it is operating at a loss and that the closure of business is necessary to avert further losses. The action of the OHI, the NLRC held, is a valid exercise of management prerogative.

Thus, while the finding of illegal dismissal in favor of Lapastora subsists, his reinstatement was rendered a legal impossibility with OHI's closure of business. In *Galindez v. Rural Bank of Llanera, Inc.*, the Court noted: Reinstatement presupposes that the previous position from which one had been removed still exists or there is an unfilled position more or less of similar nature as the one previously occupied by the employee. Admittedly, no such position is available. Reinstatement therefore becomes a legal impossibility. The law cannot exact compliance with what is impossible.

Considering the impossibility of Lapastora's reinstatement, the payment of separation pay, in lieu thereof, is proper. The amount of separation pay to be given to Lapastora must be computed from March 1995, the time he commenced employment with OHI, until the time when the company ceased operations in October 2000. As a twin relief, Lapastora is likewise entitled to the payment of backwages, computed from the time he was unjustly dismissed, or from February 24, 2000 until October 1, 2000 when his reinstatement was rendered impossible without fault on his part.[24]

For *Olympia Housing* to apply, the employer must prove the closure of its business in full and complete compliance with all statutory requirements prior to the date of the finality of the award of backwages and separation pay.

Here, *Condis* failed to show that in 2007 it had closed its business and that it had complied with all the statutory requirements for the closure. All it alleged was the execution of the Asset Purchase Agreement and the termination of the Service Agreement with EDI -but this does not mean, nor was it argued to mean, that *Condis* had closed its business. In fact, *Condis* failed to submit any document which showed that in 2007, it had notified the DOLE or its employees of the closure of its business and the reason for its closure. It also failed to show that *Rogel* was affected by this purported closure of its business. There is therefore no basis for it to claim that *Olympia Housing* is authority for its liability to pay backwages and separation pay to only up to 2007.

Allowances not included

As stated above, the LA's Decision awarding backwages became final and executory on March 30, 2012. The dispositive portion of the LA Decision pertaining to backwages reads as follows:

x x x x

b.

ordering respondents to pay complainant, jointly and severally, full backwages, computed from the date of his unlawful dismissal up to the time of actual reinstatement, which as of the date of this decision amount to Php362,692.25[.][25]

The amount of P362,692.25 is broken down as follows:

BACKWAGES: 12/03/07-03/03/09 = 15 months

a. Basic: P20,500.00 x 15 months

307,500.00

b. 13[th] Month Pay: P307,500.00/12

25,625.00

c. VL/SL: (15 days VL, 15 days SL per year

P788.46 x 2.5 days/month x 15 months)

29,567.25[26]

The LA, however, in its Resolution dated August 3, 2013 granting Rogel's Motion for Issuance of Alias Writ of Execution, added the following amounts which were not in the LA's Decision:

BACKWAGES FROM ILLEGAL SUSPENSION:

20,500.00

11/05/07- 12/02/07

HOTEL/LODGING ALLOWANCE: 11/05/07- 8/3/13

- P6,779.90 x 69 months

467,813.10

MEAL ALLOWANCE: 11/05/07-8/3/13: P4,111.33

283,681.77

MONTHLY INCENTIVE OF P2,000.00: 11/05/07-08/03/13

138,000.00[27]

The foregoing amounts should not be included in computing Rogel's backwages and separation pay given that the decision of the LA awarding backwages had already become final and executory; thus triggering the rule on immutability of judgment. As the Court held in Bani:

As a rule, "a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. Any attempt on the part of the x x x entities charged with the execution of a final judgment to insert, change or add matters not clearly contemplated in the dispositive portion violates the rule on immutability of judgments." x x x[28]

From the Decision of the LA that became final and executory on March 30, 2012 (G.R. No. 196038), the computation of the backwages of Rogel is composed of his basic pay, 13[th] month pay, and monetized vacation and sick leaves. Having attained finality, the LA, during execution proceedings, cannot add the hotel and meal allowances and the monthly incentive to the computation. To be sure, Rogel had an opportunity to present evidence on these during the Illegal Dismissal Case and he should have presented them there. Having failed to do so, he cannot claim, and the LA or even the Court cannot add, these items, which were not contemplated in the dispositive portion of the LA's March 3, 2009 Decision. The CA therefore erred in affirming the LA's computation of backwages and separation pay.

Finally, consistent with the Court's ruling in Bani, Condis is likewise liable to pay legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction. The inclusion of interest is not barred by the principle of immutability of judgment as it is compensatory interest arising from the final judgment.[29]

WHEREFORE, premises considered, the Petition for Review is hereby PARTLY GRANTED. The Decision of the Court of Appeals dated March 17, 2016 and Resolution dated January 10, 2017 are hereby AFFIRMED with MODIFICATIONS. As modified, petitioner Consolidated Distillers of the Far East, Inc. is ORDERED to pay respondent Rogel N. Zaragoza the following amounts as computed in the Labor Arbiter's Decision dated March 3, 2009:

- (a) backwages from the date he was illegally dismissed on November 20, 2007 until the finality of this Decision; and
- (b) separation pay computed from April 18, 1994, the first day of Rogel's employment, until the finality of this Decision, at the rate of one (1) month salary for every year of service.

The sum of P454,986.98 previously received by Rogel N. Zaragoza by virtue of the release order of the Labor Arbiter must be deducted from the foregoing awards.

Further, petitioner Consolidated Distillers of the Far East, Inc. is ORDERED to pay respondent Rogel N. Zaragoza legal interest of six percent (6%) per annum of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.

The Labor Arbiter is hereby ORDERED to make another recomputation according to the above directives.

**SO ORDERED.**

Carpio, Senior Associate Justice, (Chairperson), Peralta, Perlas-Bernabe, and Reyes, Jr., JJ., concur.

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[1] Rollo, pp. 3-34.

[2] Id. at 36-52. Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda concurring.

[3] Id. at 82-84.

[4] Id. at 464-483. Penned by Commissioner Nieves E. Vivar-De Castro, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra concurring.

[5] Id. at 124-130. Penned by Labor Arbiter Jesus Orlando M. Quiñones.

[6] Id. at 355.

[7] Id. at 357.

[8] Id. at 39.

[9] See id. at 38 and 39.

[10] Id. at 41, 130.

[11] Id. at 41, 482.

[12] Id. at 42.

[13] Id. at 51-52.

[14] Id. at 16-17.

[15] See id. at 30-31.

[16] See id. at 7.

[17] Id. at 18.

[18] 721 Phil. 84 (2013).

[19] 778 Phil. 189 (2016).

[20] Bani Rural Bank, Inc. v. De Guzman, supra note 18, at 102.

[21] Id.

[22] Id. at 103.

[23] Id. at 102.

[24] Olympia Housing, Inc. v. Lapastora, supra note 19, at 204-206.

[25] Rollo, p. 140.

[26] Id. at 142.

[27] Id. at 130.

[28] Bani Rural Bank, Inc. v. De Guzman, supra note 18, at 97.

[29] Id. at 104-105.

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