

EGYPT AIR LOCAL EMPLOYEES ASSOCIATION NTUAI-TRANSPHIL-TUPAS, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, ARBITER ARTURO V. COSUCO, EGYPT AIR, INC., AND AERO ASIA, INC....

G.R. No. 98933. March 01, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

EGYPT AIR LOCAL EMPLOYEES ASSOCIATION NTUAI-TRANSPHIL--TUPAS comes to Us on a petition for certiorari[1] alleging that respondent NATIONAL LABOR RELATIONS COMMISSION acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution of 3 April 1991 remanding to the Regional Arbitration Branch of origin for execution and enforcement the Order of 31 October 1989 of respondent Labor Arbiter Arturo V. Cosuco, who upon motion of respondent EGYPT AIR, INC., reconsidered his Order of 18 September 1989.

It appears that on 16 June 1988, petitioner filed with the Labor Arbiter a complaint for unfair labor practice. While negotiations were going on for a possible collective bargaining agreement between petitioner association and respondent Egypt Air, Inc. (EGYPT AIR for brevity), the latter contracted out to the other respondent herein, the General Sales Agency of Aero Asia, Inc. (AERO ASIA for brevity), the job positions held by the union members of petitioner.

On 18 September 1989, respondent Labor Arbiter Arturo V. Cosuco rendered a decision finding respondent EGYPT AIR guilty of unfair labor practice and ordering the reinstatement of complainants, members of petitioner herein, to their former positions without loss of seniority rights and with full backwages from the time they were terminated up to their actual reinstatement, at the same time directing the computation by the Chief Research and Information Unit of NLRC of the monetary award due them plus 10% attorney's fees chargeable against respondent.[2]

Respondent EGYPT AIR received copy of the decision on 23 October 1989. On 30 October 1989, said respondent filed a manifestation and motion with Labor Arbiter Cosuco praying that, without prejudice to its right to appeal from the decision of the Labor Arbiter, the decision be corrected insofar as it ordered the reinstatement of the members of petitioner association to their former positions on the ground of closure by respondent EGYPT AIR of its Philippine Branch offices and cessation of its operations, and that the conduct of its entire airline domestic business operations was subsequently taken over by AERO ASIA pursuant to a general sales agreement; consequently, the former positions of complainants therein have since been inexistent. Respondent EGYPT AIR further contended that their reinstatement to their former positions is no longer possible under the circumstances, and prayed that the decision be modified by ordering instead the payment of separation pay and other benefits to the complainants in lieu of reinstatement and backwages.

On 28 October 1989, after receiving copy of the decision of the Labor Arbiter on 18 October 1989, petitioner filed

its appeal with respondent NLRC.

On 31 October 1989, Labor Arbiter Cosuco granted the manifestation and motion of respondent EGYPT AIR and ordered the payment to complainants of their separation pay equivalent to one (1) month's pay for every year of service computed up to December 1988, similar to those given to employees who withdrew from the case and tendered their resignations, and other accrued benefits in lieu of reinstatement, plus backwages up to 18 September 1989.[3]

EGYPT AIR then appealed the decision of the Labor Arbiter of 18 September 1989 with respondent NLRC, although the appeal was not supported by cash or surety bond required under R.A. 6715.

On 17 November 1989, EGYPT AIR filed a "Supplemental Partial Appeal" from the 31 October 1989 Order of the Labor Arbiter praying that the award of backwages be set aside and that the separation pay be computed up to 5 September 1988 only since the closure of respondent EGYPT AIR's domestic branch offices took effect 6 September 1989.

On 19 January 1990, Labor Arbiter Cosuco again modified his Order of 31 October 1988 by setting aside the award of backwages and ordering EGYPT AIR to pay separation pay only up to 5 September 1988.

On 17 April 1990, petitioner filed a motion for execution of the original decision of 18 September 1989 of the Labor Arbiter alleging that while EGYPT AIR was able to file its appeal within the reglementary period, the appeal nevertheless was not perfected for failure to put up an appeal bond.

On 1 June 1990, Labor Arbiter Ernesto S. Dinopol, who took over the case from Labor Arbiter Cosuco, ordered the issuance of a writ of execution of the Order of 19 January 1990 of Labor Arbiter Cosuco, instead of his Order of 18 September 1989.

On 11 October 1990, petitioner appealed the 1 June 1990 Order of Labor Arbiter Dinopol to respondent NLRC which on 3 April 1991 issued a Resolution stating in part -

"Under these factual backdrop it is quite evident that the legal act of Labor Arbiter Cosuco that has ultimately become final and executory because the complainant admittedly did not appeal therefrom, and the appeal filed by respondent although timely was not valid for failure to post the necessary cash or surety bond, is his amendatory Order dated 31 October 1989.

"It could not be the Arbiter's Decision, dated 18 September, 1989, for even before both parties could perfect their appeal therefrom, it was amended and rendered inoperative insofar as the dispositive portion thereof is concerned, by the timely promulgation of the Arbiter's Order, dated 31 October 1989.

"Nor could it be the Arbiter's Order dated 19 January 1990, as ruled by Arbiter Dinopol. For even before it was promulgated on 19 January 1990, the Arbiter's Order dated 31 October 1989 sought to be amended by it was already final and executory, hence, the Arbiter had already lost jurisdiction over the case.

"Therefore, contrary to Labor Arbiter Dinopol's finding (in his Order dated 01 June 1990), it is the amendatory order of 31 October 1989, not of 19 January 1990, of Labor Arbiter Cosuco that has become final and executory and for which a writ of execution may be issued for its enforcement.

"WHEREFORE x x x let this case be remanded to the regional arbitration branch of origin for execution and enforcement of Labor Arbiter Cosuco's order dated 31 October 1989.[4]

Hence, this petition raising the issue of whether NLRC acted with grave abuse of discretion in disregarding the 18 September 1989 decision of Labor Arbiter Cosuco and considering his 31 October 1989 order as final and executory.

Petitioner contends that the Order of 31 October 1989 of Labor Arbiter Cosuco granting the manifestation and motion of EGYPT AIR to correct the original decision of 18 September 1989 of Labor Arbiter Cosuco is null and void, hence, cannot be considered as final and executory. The motion to correct the decision of the Labor Arbiter is, in effect, a motion for reconsideration which should therefore be treated as an appeal over which only respondent NLRC has jurisdiction to resolve.

We find merit in the cause of petitioner association. Section 16, Rule VII, of the Revised Rules of the National Labor Relations Commission promulgated 5 November 1986 provides that "[n]o motions for reconsideration of any order or decision of a Labor Arbiter shall be given due course." Moreover, under Art. 223 of the Labor Code, "[d]ecisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders x x x" The same provision on appeal of the aggrieved party from the decision of the Labor Arbiter to the NLRC is also embodied in its Revised Rules governing the arbitration proceedings before the Labor Arbiters and the respondent Commission.

The foregoing legal provisions clearly signify that the only remedy which the losing party can avail of from the decision of the Labor Arbiter is to appeal to NLRC, as no motion for reconsideration under the law may be entertained by the Labor Arbiter. Whenever a motion for reconsideration of the decision of the Labor Arbiter is filed, it will be properly treated or considered as an appeal.[5]

The records show that copy of the decision of 18 September 1989 of Labor Arbiter Cosuco was received by EGYPT AIR on 23 October 1989.

On 30 October 1989, before the reglementary period of ten (10) days to file appeal expired, EGYPT AIR filed a manifestation and motion to correct the decision of Labor Arbiter Cosuco. But the manifestation and motion was, in effect, a motion for reconsideration of the decision of the Labor Arbiter.[6] Although admittedly filed on time, the manifestation and motion should not have been given due course by the Labor Arbiter as he already lost his legal authority to act on the same. Hence, the Order of 31 October 1989 of Labor Arbiter Cosuco reconsidering or modifying his decision of 18 September 1989 being contrary to law is null and void.

Interestingly, We note that aside from filing a motion for reconsideration of the decision of Labor Arbiter Cosuco, respondent EGYPT AIR also appealed the decision to NLRC, which appeal however was not perfected for failure to file an appeal bond required in Art. 223 of the Labor Code thus -

"x x x In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from."

Considering the nullity of the Order of 31 October 1989 of Labor Arbiter Cosuco granting the manifestation and motion of EGYPT AIR, and the non-perfection of its appeal to NLRC, the decision of 18 September 1989 of Labor Arbiter Cosuco therefore became final and executory, in which case, it can no longer be altered, and what remains to be done is the purely ministerial enforcement or execution of the judgment.[7] Once the judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[8]

In fine, respondent NLRC gravely abused its discretion when it considered as final and executory the Order of 31 October 1989 of Labor Arbiter Cosuco which granted the manifestation and motion of EGYPT AIR despite the lack of authority of the Labor Arbiter to grant the same in view of Sec. 16, Rule VII, of the Revised Rules of the National Labor Relations Commission, and Art. 223 of the Labor Code, as amended.

WHEREFORE, the petition for certiorari is GRANTED. The assailed decision of 3 April 1991 of respondent National Labor Relations Commission is SET ASIDE, and the immediate execution of the 18 September 1989 decision of Labor Arbiter Arturo V. Cosuco, which We find to be supported by law and the evidence, is hereby directed.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Under Rule 65 of the Rules of Court.

[2] P. 18, Rollo.

[3] P. 34, Rollo.

[4] P. 50, Rollo.

[5] Sec.16, Revised Rules of the NLRC; See *Insular Life Insurance Co., Ltd. v. NLRC*, No. 74191, 21 December 1987, 156 SCRA 740.

[6] *Paramount Vinyl Products Corporation v. NLRC*, G.R. No. 81200, 17 October 1990, 190 SCRA 525.

[7] *Christian Literature Crusade v. NLRC*, G.R. No. 79106, 10 April 1989, 171 SCRA 712.

[8] *Alba Patio de Makati v. NLRC*, G.R. No. 85393, 5 September 1991, 201 SCRA 355.

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