RURAL BANK OF ALAMINOS EMPLOYEES UNION (RBAEU) AND ISMAEL TAMAYO, SR., PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, THIRD DIVISION, EXEC. LABOR ARBITER JOSE B. BOLISAY A...

G.R. Nos. 100342-44. October 29, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before The Court is a Petition for Certiorari under Rule 65 of the Revised Rules of Court to nullify and set aside the Resolution of the National Labor Relations Commission, dated January 31, 1991, and the subsequent Resolution of March 26, 1991 denying petitioner's motion for reconsideration, for being tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The assailed Resolutions set aside the consolidated decision of Labor Arbiter Ricardo N. Olairez and remanded the cases to the Regional Arbitration Branch of origin for further proceedings.

The Petition stems from three cases originally instituted before Sub-Regional Arbitration Branch No. 1 of the National Labor Relations Commission in Dagupan City. The first case, NLRC Case No. 01-03-7-0049-89, was commenced by the herein petitioner, Ismael Tamayo, Sr., against Rural Bank of Alaminos, Inc. (RBAI) for illegal dismissal and damages. The second case, docketed as NLRC Case No.01-04-7-0059-89, was filed by the herein private respondent, Rural Bank of Alaminos, Inc., against the Rural Bank of Alaminos Employees Union for unfair labor practice, declaration of illegality of strike and damages. While the third case, docketed as NLRC Case No. 01-06-0097-89, was filed by the Employees Union against the Bank, charging the latter with unfair labor practice and damages.

As gathered by the respondent National Labor Relations Commission, the facts of the controversy litigated upon are as follows:

> With the appointment of one Benefredo Quinto to the position of internal auditor, which position he had held since January 1, 1976, Ismael P. Tamayo, Sr., who had been with Rural Bank of Alaminos, Inc. (RBAI for brevity) since it started operations in September of 1956, feeling shortchanged, filed on June 3, 1988 a complaint aginst RBAI for illegal dismissal.
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> In an effort to buy peace, that is, to settle the case amicably, RBAI agreed on a compromise agreement dated July 13, 1988 to reinstate Ismael P. Tamayo, Sr. to the position of internal auditor.
>
> Claiming that his services were not actually needed, RBAI terminated effective January 1, 1989 Ismael P. Tamayo, Sr.'s services. This led to the filing on March 27, 1989 of a complaint for illegal dismissal by Ismael P. Tamayo, Sr. against Rural Bank of Alaminos, Inc. docketed as NLRC Case No. SUB-RAB-01-03-7-0049-89.
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> Subsequent to its certification on December 12, 1989 as the sole bargaining agent of the employees of RBAI, the Rural Bank of Alaminos Employees Union (hereinafter called the Union) submitted sometime in February

1989 proposals with respect to salary/wage increases.

RBAI's counter-proposals not (sic) acceptable to it, the Union, which had earlier filed a notice of strike on March 3, 1989, went on strike on April 3, 1989.

Its position being that the strike staged by the Union is illegal and in violation of Article 248 (e) of the Labor Code, RBAI instituted a petition for the declaration of the strike as illegal and for actual damages it incurred by way of loss of earnings to the tune of P30,000.00 per day. This petition was docketed as NLRC CASE NO. SUB-RAB-01-04-7-0059-89.

The Union, assailing the alleged constructive dismissal of its members brought about or resulting from the strike, lodged against RBAI a complaint for unfair labor practice with prayer for moral and exemplary damages. This complaint has been docketed as NLRC CASE NO. SUB-RAB-01-06-7-0097-89.

The identity of the parties led the Labor Arbiter, Ricardo N. Olairez, to consolidate the three (3) aforementioned cases.

On December 14, 1989, Labor Arbiter Ricardo N. Olairez rendered a consolidated decision.

With respect to Ismael P. Tamayo's complaint for illegal dismissal against RBAI, the Labor Arbiter held that complainant, whose nature of work, that of internal auditor, was usually necessary and desirable in the business engaged in by the respondent, was a regular employee whose summary discharge from the service effective January 1, 1989, was illegal.

The dismissal being illegal, complainant should have ordinarily been reinstated to his former position. However, the Labor Arbiter, finding the complainant to have reached the retirable age, opted instead to award the latter the following amounts, to wit: P63,442.56 representing full backwages/benefits; P29,822.80 as retirement pay; and P9,326.53 as attorney's fees, or a grand total of P102, 591.89 plus one (1) percent interest per month until actually paid.

Regarding the bank's petition, NLRC Case No. SUB-RAB-01-04-7-0059-89, the Labor Arbiter disposed of the same by holding that the strike staged by the Union was legal and not in violation of any provision of the Labor Code. Hence, the dismissal of the petition.

In the third case, NLRC CASE NO. SUB-RAB-01-06-0097-89, the Labor Arbiter held the bank accountable for the full backwages and other benefits due the Union members who he found to have been constructively dismissed during the strike.

Moreover, the Labor Arbiter, on the Union's claim for damages of not less than P200,000.00, ruled that the award of P10,000.00 moral damages and P5,000.00 exemplary damages to each of the union member is in order.

The Labor Arbiter disposed thus:

"WHEREFORE, with all the foregoing considerations, judgment is hereby rendered as follows:

1. In the first case, we find complainant Ismael Tamayo, Sr. illegally and unjustly dismissed and we hereby order the respondent Rural Bank of Alaminos, Inc. to pay him as follows:

P 63,442.56 - Total full backwages/benefits

29,822.80 - Retirement pay

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P 93,265.36

9,326.53 - 10% Attorney's fees

P102,591.89 - Total award as of December 31, 1989

> plus one (1) percent interest per month until the award is actually paid.
>
> 2. In the second case, we find the strike legal and the Union having violated no provision of the Labor Code, the complaint of the Rural Bank of Alaminos, Inc. is hereby dismissed for lack of merit.
>
> 3. In the third case, we find the respondent Rural Bank of Alaminos, Inc. guilty of unfair labor practice, whose act is tantamount to an illegal lockout amounting to a constructive dismissal of the Union members, and we hereby order the bank to pay them their full backwages and other benefits for the nine (9) months period from April to December 1989 with the computations to include the wage increase under R.A. 6727 effective July 1, 1989.
>
> The Bank is hereby ordered to re-open and accept/reinstate the striking union members without loss of seniority rights and the union members are likewise ordered to return to work and may now claim their respective 13th month pay for 1989. In case they are not immediately reinstated, their full backwages shall not exceed a maximum of three (3) years.
>
> The respondent bank is further ordered to pay the Union members P10,000.00 as moral damages and P5,000.00 as exemplary damages to each of the Union members, plus attorney's fees and litigation expenses of ten (10) percent of the total awards.
>
> The order of reinstatement or return to work is immediately executory, hence the Bank is commanded to reopen its banking business immediately.
>
> SO ORDERED"

Dissatisfied with the disposition of the Labor Arbiter, the Rural Bank of Alaminos, Inc. appealed to the National Labor Relations Commission, which promulgated, on January 31, 1991 its assailed Resolution setting aside the ruling of the Labor Arbiter and ordering the remand of all the three cases to wit:

> "xxx In the broader interest of justice, We deem it best to remand all the afore-numbered cases to Regional Arbitration Branch of origin for further proceedings.
>
> WHEREFORE, premises considered, all the aforenumbered cases are hereby remanded to the Regional Arbitration Branch of origin for further proceedings.
>
> SO ORDERED."

The reversal by the respondent Commission of the Labor Arbiter's original Resolution prompted petitioners to bring the present petition imputing grave abuse of discretion amounting to lack of or excess jurisdiction to the respondent Commission, particularly describing the errors under attack:

> A. Case No. 0059-89:
>
> Whether or not the respondent NLRC Third Division committed grave abuse of discretion and exceeded its jurisdiction amounting to lack of jurisdiction in remanding the case for further proceedings, in spite of its finding which affirmed the ruling of the Labor Arbiter that the strike is legal and where the complaint is for a declaration of illegality of the strike.
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> B. Case No. 0097-89:

> Whether or not the respondent NLRC Third Division committed grave abuse of discretion and exceeded its jurisdiction amounting to lack of jurisdiction in remanding the case for further proceedings, despite the fact that the private respondent failed to appeal the Labor Arbiter's finding that the respondent is guilty of unfair labor practice thus the said issue not raised on appeal had become final.
>
> Whether or not the respondent NLRC Third Division committed grave abuse of discretion and exceeded its jurisdiction amounting to lack of jurisdiction in remanding the case for further proceedings for the reason that it could not resolve the issues squarely because it was at a loss as to the exact number of the bank's employees, but which is contrary to the record of the case, as evidenced by the list of employees in private respondent's Annex "A".
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> C. Case No. 0049-89:
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> Whether or not respondent NLRC Third Division committed grave abuse of discretion amounting to lack of jurisdiction where it ruled that private respondent was denied the right to cross-examine petitioner Ismael Tamayo, in spite of the express mandate of Article 221 of the Labor Code and the 90-day Rule under Executive Order No. 109 (1-23-89)
>
> D. In all three cases:
>
> Whether or not the right of petitioners to speedy disposition of labor justice has been violated in the remand of the cases for further proceedings and consequently, whether a writ of prohibition shall lie.

Whether or not respondent NLRC Third Division committed grave abuse of discretion amounting to lack of jurisdiction when it denied the motion for reconsideration for being filed out of time, despite the fact that neither petitioner Ismael Tamayo, Sr. nor his deceased counsel was furnished with a copy of the resolution, and likewise the copy for the petitioner union was served to a stranger who is not an employee of the law office of petitioner's counsel.

Respondent NLRC ordered the remand of all the three cases to the Labor Arbiter for further proceedings: opining that with respect to NLRC Case No. 0049-89, respondent Bank should have been given an opportunity to cross-examine the petitioner, Ismael Tamayo, Sr., as to the veracity of the allegations contained in his unverified position paper, the lack or absence of which amounted to a denial of due process. As regards, Case No. 097-89, the NLRC held that the finding by the Labor Arbiter of an illegal lock-out was not substantiated by evidence, as it was found out that no proof was ever adduced by the Union to show that the bank refused them employment during the pendency of the strike, thus necessitating the remand of the case to the Labor Arbiter for reception of evidence. So also, the NLRC ruled that a complete disposition of the case could not be had since there was nothing in the record which indicates the number of employees constructively dismissed by the respondent Bank.

Before delving into the merits of the case, it should be remembered that in the decision in the case of St. Martin Funeral Homes vs. National Labor Relations Commission, G.R. No.130866, promulgated on September 16, 1998, this Court pronounced that petitions for certiorari relating to NLRC decisions must be filed directly with the Court of Appeals, and labor cases pending before this Court should be referred to the appellate court for proper disposition. However, in cases where the Memoranda of both parties have been filed with this Court prior to the promulgation of the St. Martin decision, the Court generally opts to take the case itself for its final disposition.

With respect to the first assigned error, petitioners contend that it was an error for NLRC to remand Case No. 0059-89 to the Labor Arbiter as the issue of legality of subject strike has been resolved in favor of the Union by the Arbiter and the Commission.

There is merit in petitioners' contention. NLRC Case No. 0059-89 was filed by the respondent Bank against the Union, for declaration of illegality of the strike, unfair labor practice and damages. In the proceedings below, the

Labor Arbiter found that the strike conducted by the Union was legal and complied with all the requirements of law. Such finding was, in fact, affirmed by the NLRC in the following Resolution, to wit:

> "xxx It appears that the Union filed its notice of strike on March 3, 1989 and that it commenced its strike thirty (30) days thereafter, or on April 3, 1989.
>
> Obviously, the Union had duly observed the mandatory cooling-off period such that the strike it eventually undertook complied with what is required by the Labor Code. Hence, Our finding that the strike is legal."

It is well-settled that when findings of fact by the labor arbiter are sufficiently supported by the evidence on record, the same must be accorded due respect by this Court.[1] More so when such findings by the Labor Arbiter are affirmed by the NLRC on appeal. Since the NLRC found the strike conducted by the Union legal, the Court finds no justifiable reason for the Commission to remand Case No. 0059-89 to the Labor Arbiter for further proceedings. The allegation of unfair labor practice and the claim for damages proceed from and are consequences of the strike, the findings of which are based on the legality or illegality thereof. The strike thus being adjudged as legal, the charges of unfair labor practice and damages are thereby negated and bereft of any basis. Therefore, the NLRC gravely abused its discretion when it ordered the remand of NLRC Case No. 0059-89 to the Labor Arbiter for further proceedings.

Anent the second assigned error which pertains to NLRC Case No. 0097-89, the case instituted by the Union against the respondent Bank for unfair labor practice with damages, the Court believes, and so holds, that the remand of said case was in order.

NLRC Case No. 0097-89 charged RBAI with unfair labor practice and the Labor Arbiter concluded that the Bank employed all available means to further delay the resolution of the dispute, thus creating a scenario of an illegal lock-out.

A "lock-out" means the temporary refusal of an employer to furnish work as a result of an industrial or labor dispute.[2] As correctly found by the NLRC, in the case under consideration evidence of illegal lock-out is wanting such that there can be no conclusive determination by the NLRC as to the charge. Petitioners failed to present sufficient proof to support the allegation of illegal lock-out. No evidence was adduced by the Union to show that the Bank really refused them employment during the pendency of the strike. As to the allegation that the Bank was interfering with and restraining the employees in the exercise of their right to self-organization, suffice it to state that filing a petition for cancellation of the Union's registration is not per se an act of unfair labor practice. It must be shown by substantial evidence that the filing of the petition for cancellation of union registration by the employer was aimed to oppress the Union. Consequently, the NLRC was right in ordering the remand of Case No.0097-89 for further proceedings.

Anent the observation of NLRC that it was at a loss as to the exact number of employees who were constructively dismissed by the Bank, such claim is belied by the records clearly indicating that in its Complaint in NLRC Case. 0059-89, petitioner Union did attach a letter addressed to the respondent Bank containing a list of the bank's employees together with their length of service and monthly basic salary.[3] Respondent avers that since the said list was presented in evidence in Case No. 0059-89, the same could not be considered as evidence in Case No. 0097-89 because these two cases are separate and distinct from each other.

The contention is untenable. It must be recalled that Case No. 0097-89 was filed in the nature of a countercharge to Case No. 0059-89 by the petitioner Union against respondent Bank. Besides, all the three cases were consolidated before the Labor Arbiter because of the identity of the parties. Thus, the list, although introduced in Case No. 0059-89, could likewise be properly considered as evidence in Case No. 0097-89. As held by this Court, proceedings before a labor arbiter are non-litigious in nature in which, subject to the requirements of due process,

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the technicalities of law and procedure and the rules obtaining in courts of law do not strictly apply.[4]

Petitioners' stance that the finding of unfair labor practice already became final as the issue was not raised on appeal, is untenable. The first, fourth and fifth issues raised by the Bank in its Appeal Memorandum filed with the NLRC on December 24, 1989 theorized that:

> "1. The Labor Arbiter gravely abused his discretion in holding that appellant violated its duty to bargain collectively.

xxx xxx xxx

> 4. The Labor Arbiter gravely abused his discretion in holding that appellant is guilty of illegal lock-out.
>
> 5. The Labor Arbiter gravely abused his discretion in holding that appellant illegally dismissed its employees.

xxx xxx xxx."[5]

Although the issue was not collectively appealed as unfair labor practice, the first, fourth and fifth issues relate to acts which by themselves constitute unfair labor practice.

As regards the third assigned error, petitioners maintain that the NLRC acted with grave abuse of discretion in remanding NLRC Case No. 0049-89 for further proceedings because the Labor Arbiter denied respondent Bank's right to cross-examine petitioner Ismael Tamayo, Sr. Respondent NLRC, on the other hand, ruled that the Labor Arbiter should have granted respondent Bank the right to cross-examine the said petitioner on the veracity of the allegations in his unverified position paper, and it was grave abuse of discretion not to allow respondent Bank to cross-examine petitioner Tamayo.

In a long line of cases, this Court has held that the holding of a trial is discretionary on the part of the Labor Arbiter, and it cannot be demanded as a matter of right by the parties[6] The absence of a formal hearing or trial before the Labor Arbiter is no cause for a party to impute grave abuse of discretion.[7] The submission of position papers and memoranda in labor cases satisfies the requirements of due process, and a decision rendered on the basis of the position papers which were found to be sufficient, meets the requirements of a fair and open hearing.[8] Thus, in the case under scrutiny, the Labor Arbiter did not act with grave abuse his discretion in not conducting a formal hearing or trial and in basing his decision solely on the position papers submitted by the parties. The fact that the position paper submitted by petitioner Tamayo was not verified is of no moment. Succinct and clear is the ruling of this Court that the lack of a verification of a position paper is only a formal and not a jurisdictional defect.[9] It is not fatal and could be easily corrected by requiring an oath.[10]

Petitioner Tamayo faults respondent NLRC for denying his motion for reconsideration for the reason that it was filed out of time. He contends that neither he nor his deceased former counsel, Atty. de Vera was furnished a copy of the NLRC's resolution.

Petitioner's allegation is not meritorious. It is axiomatic that notice to counsel is notice to parties and when a party is represented by counsel, notices should be made upon the counsel of record at his given address, to which notices of all kinds emanating from the court should be sent.[11] In the appeal before the respondent Commission, it was Atty. Teofilo Humilde who entered appearance in behalf of the Union and petitioner Tamayo. It was thus reasonable for the NLRC to send a copy of the NLRC Resolution to the said lawyer. Since the said resolution was received by counsel on February 26, 1991 and the motion for reconsideration was filed only on March 13, 1991, the denial by the NLRC was in order, the ten-day period for filing a motion for reconsideration having lapsed.

WHEREFORE, the petition is partly GRANTED in that the Order of the NLRC remanding NLRC Cases No. 0049-89 and No.0059-89 to the Labor Arbiter is SET ASIDE but, the Order remanding NLRC Case No. 0097-89

to said Labor Arbiter for further proceedings, is UPHELD. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] CDCP Tollways Operation Employees and Workers Union vs. National Labor Relations Commission, 211 SCRA 58, 63

[2] Article 212, (p) Labor Code of the Philippines

[3] Rollo, pp. 27-28, 34

[4] Shoemart, Inc. vs. National Labor Relations Commission, 225 SCRA 311

[5] Rollo, p.118

[6] Pacific Timber Export Corp vs. NLRC, 224 SCRA 860; Commando Security Agency vs. NLRC, 211 SCRA 645; National Federation of Labor vs. NLRC, 283 SCRA 275; Llora Motors, Inc. vs. Hon. Franklin Drilon, G.R. No. 82895, November 7, 1989, 179 SCRA 175

[7] PMI Colleges vs. NLRC, 277 SCRA 462

[8] St. Mary's College (Tagum, Davao) vs. NLRC, 181 SCRA 62

[9] Pampanga Sugar Develoment Co., Inc. vs. NLRC, 272 SCRA 737, G and P Manpower Services vs. NLRC, 208 SCRA 166

[10] Murillo vs. Sun Valley Realty, Inc, G.R. No. 67272, June 30, 1988, 163 SCRA 271

[11] UERM Employees Union - FFW vs. Ministry of Labor, G.R. No. 75838, Aug. 31, l989; 177 SCRA 165 NIA Consult, Inc. v. NLRC, 266 SCRA l7

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