

SPECIAL EIGHTH DIVISION

[CA-G.R. SP No. 115758, May 09, 2014]

**BISIG NG MANGGAGAWA SA CONCRETE AGGREGATES, INC.,
FLARE, AND, FOR AND IN BEHALF OF ALL OF ITS OFFICERS AND
MEMBERS INVOLVED IN THE 4/6/92 STRIKE, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION)
AND CONCRETE AGGREGATES CORP., RESPONDENTS.**

D E C I S I O N

INTING, S.B., J.:

of the National Labor Relations Commission (NLRC) in NLRC NCR CC No. 000039-92 and NLRC NCR CASE No. 00-05-02652-92, which adopted as its own decision the April 14, 1997 Report of Labor Arbiter Daisy Barcelona.

Petitioner assails and seeks to annul the July 30, 1997 *Decision*^[1] and the May 11, 2010 *Resolution*^[2]

THE FACTS

Petitioner (BIMCAI) is the labor union operating in respondent company, Congregate Aggregates Corporation (CAC).

The labor conflict between the two parties found its inception on September 4, 1991 when BIMCAI filed a notice of strike for unfair labor practice allegedly on account of CAC's violation of the CBA, acts of discrimination, hiring of per trip drivers in lieu of regular drivers and forcibly placing regular employees to go on leave and in their stead, casual employees took their place.

The tension between the parties heightened when on December 17, 1991, BIMCAI President Ramon Banas, Jr. prevented five (5) transit mixer drivers from delivering ready-mixed concrete to Pampanga. He was thereafter required to explain his act of allegedly utilizing his moral ascendancy and influence as union president in directing the transit mixer drivers to disobey the orders of CAC's authorized personnel, Mr. Claro Bagalso, for them to proceed to San Fernando, Pampanga for trial pouring upon the request of Foundation Specialist for its project at the Resettlement area for Pinatubo Victims at Floridablanca, Pampanga. On December 18, 1991, Mr. Banas explained and admitted that he indeed advised the transit mixer drivers not to proceed to San Fernando, Pampanga unless the company issues written instruction. For this reason, he was placed on preventive suspension effective December 19, 1991 and was eventually terminated on January 15, 1992.

Meanwhile, prior to the Banas' termination, BIMCAI filed another notice of strike on January 13, 1992 reiterating the issues stated in its September 4, 1991 notice of strike but this time it included as well union busting and dismissal of union officers, docketed under NCMB-NCR-NS-01-028-92.

Subsequently, a strike vote was taken on February 9, 1992, under the supervision of National Conciliation and Mediation Board representatives. 212 employees of the 357 votes cast voted in favor of the strike while the remaining 143 voted against. Noting that the grounds raised in the notice of strike are not strikeable issues and are suited for preventive mediation, the NCMB directed the parties to submit their issues to conciliation proceedings. As such, conciliation proceedings began on February 26, 1992.

However, despite the ongoing conciliation proceedings, BIMCAI again filed a notice of strike on March 8, 1992.

Finally, BIMCAI staged the controversial April 6, 1992 strike. BIMCAI struck and picketed at the premises of the CAC's four (4) plants located in Bagumbayan and Longos in Quezon City, Angono and Antipolo in Rizal, San Fernando, Pampanga, and San Pedro, Laguna. On the same date, CAC wrote the DOLE Secretary to assume jurisdiction over the strike.

On April 14, 1992, on the ground of failure to comply with the requirements of a valid strike and committing prohibited activities and illegal acts during the strike, CAC filed its petition to declare the strike of April 6, 1992 illegal before the NLRC.

BIMCAI again filed a notice of strike on April 21, 1992. On April 24, 1992, it filed its petition for injunction to enjoin CAC from enlisting the aid of the police and military officers to escort the scabs in entering the "struck establishment".

While conferences were held before the NCMB, the strike continued. Again, CAC wrote the DOLE Secretary regarding the status of the labor dispute. In its letter, CAC reported that although 500 workers returned to work, some of the striking workers have not returned as they were restrained by BIMCAI officers.

Acting on CAC's letter, the DOLE Secretary assumed the dispute and certified the same to the NLRC for compulsory arbitration. In an Order dated June 18, 1992, the DOLE Secretary ordered all those who participated in the strike to return to work under the same terms and conditions existing prior to the work stoppage, except the union officers and those with pending cases.

Hence, pursuant to the June 18, 1992 Order, on March 13, 1995, the NLRC ordered the reinstatement of all workers of CAC (except the union officers whose culpability depends on the illegality or legality of the strike) and payment of backwages and other benefits from the time they presented themselves for work until they are actually reinstated.

On June 17, 1996, a Writ of Execution was issued directing the Sheriff to effect the reinstatement of thirty-seven (37) employees. CAC moved for the quashal of said writ which was granted by the NLRC in its per curiam Order dated October 3, 1996. This Order set aside the NLRC's earlier Order dated March 13, 1995 which directed the reinstatement of one hundred fifty-four (154) employees contained in the Report of Labor Arbiter Cristeta D. Tamayo, dated September 30, 1996. These 154 employees are respondents in CAC's petition to declare the strike illegal docketed as NLRC NCR CASE NO. 00-05-02652-92. The writ of execution, dated June 17, 1996, was likewise ordered suspended pending consideration of the question of whether or not subject employees are covered by the return-to-work order of the DOLE Secretary considering that the thirty-seven (37) workers sought to be reinstated were among the one hundred fifty four (154) listed respondents in the illegal strike

case and, by express mandate of the DOLE Secretary, are therefore excluded from the return-to-work order.

While the union bats for the reinstatement of 37 workers, the Tamayo Report of September 30, 1996 clarified that only twenty-eight (28) were included in the list of respondents in the illegal strike case.

In the same per curiam Order of October 3, 1996, BIMCAI was required to comment on the Tamayo Report and to appear for oral arguments set on October 21, 1996. It likewise directed Labor Arbiter Daisy Barcelona to handle the cases and to take over from Labor Arbiter Cristeta D. Tamayo.

On February 5, 1997, a hearing was held. However, BIMCAI refused to participate and walked out of the court room together with its counsel. BIMCAI was questioning the authority of the NCMB to hear the case.

Despite the walk out, the Labor Arbiter pushed through with the proceedings. CAC presented four (4) witnesses, namely, Jovencio Layug, Rudy Balasadas, Paquito Santos and Eduardo Raymundo, together with their respective affidavits. Generally, the affidavits state how the April 6, 1992 strike took place and contained the names of those who participated in said strike. BIMCAI did not submit any evidence, comment or pleading to address the issues raised. Hence, the case was submitted for resolution.

RULING OF THE LABOR ARBITER

Labor Arbiter Barcelona was faced with resolving the twin issues of: 1) whether or not the thirty-seven (37) unreinstated workers pursuant to the June 18, 1992 Order of the Acting DOLE Secretary should be reinstated; 2) whether or not the April 6, 1992 strike was illegal and if so, who among the respondent workers are to be declared to have lost their employment status.

In her April 14, 1997 Report, Labor Arbiter Barcelona found the April 6, 1992 strike illegal and declared the 15 BIMCAI officers and striking union members to have lost their employment, and directed CAC to reinstate only 9 of the 37 workers who were earlier ordered to be reinstated by the June 17, 1996 writ of execution.

RULING OF THE NLRC

The NLRC adopted Labor Arbiter Barcelona's Report in its now assailed Decision dated July 30, 1997.

Both parties moved for the reconsideration of the NLRC's decision. BIMCAI prayed for the voiding of the order dismissing the 15 union officers and the remaining 28 union members and to reinstate the latter. CAC, for its part, maintained that the 9 employees ordered to be reinstated were involved in the illegal strike and committed prohibited acts, hence, lost their employment status.

In its Resolution dated May 11, 2010, the NLRC denied both parties' motion for reconsideration.

Aggrieved, BIMCAI has come to Us praying for a reversal of the assailed NLRC Decision and Resolution by declaring the April 6, 1992 strike legal, the dismissal of the union officers and members illegal and by ordering their reinstatement, and for award of moral damages and attorney's fees.

THE ISSUES

BIMCAI raises the following issues:^[3]

I. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER OF DUE PROCESS OF LAW WITH RESPECT TO THE AFFIDAVITS OF PRIVATE RESPONDENT'S 05 FEBRUARY 1997 WITNESSES;

II. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT RELIED EXTENSIVELY TO (SIC) THE AFFIDAVITS OF PRIVATE RESPONDENT'S FEBRUARY 1997 WITNESSES FILED FIVE (5) YEARS LATER AND DISREGARDING ITS OTHER WITNESSES' AFFIDAVITS, PLEADINGS, EVIDENCES, AND OPEN COURT TESTIMONIES;

III. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT THE PETITIONER'S STRIKE WAS ILLEGAL;

IV. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER'S OFFICERS AND MEMBERS COMMITTED ILLEGAL ACTS;

V. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION IN DECLARING THE LOSS OF EMPLOYMENT OF PETITIONER'S OFFICERS AND MEMBERS;

VI. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S CLAIM TO DECLARE THE DISMISSAL (SIC) RICARDO MANALANG, RODRIGO LAQUIHON AND OSCAR BARCELLANO AND THE UNION OFFICERS AND MEMBERS IN PRIVATE RESPONDENT'S SAN FERNANDO, PAMPANGA (SIC), AND ALL ITS OFFICERS TO BE ILLEGAL;

VII. WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN IT DID NOT RULE ON PETITIONER'S COMPULSORY COUNTER-CLAIM FOR DAMAGES.

In sum, the issues to be resolved are the following:

- 1) Observance of due process of law;
- 2) Legality of the April 6, 1992 strike;
- 3) Legality of the dismissal of the union officers and members;
- 4) Award of Moral Damages

THIS COURT'S RULING

First, the observance of due process of law.

Basically, BIMCAI is questioning the judgment of the Labor Arbiter. It alleged that the Labor Arbiter solely based her report on the affidavits of CAC's four (4) witnesses without regard to other pleadings earlier submitted and events that transpired between BIMCAI and CAC from 1991 up to the time of the controversial