

## THIRD DIVISION

[ G. R. No. 166996, February 06, 2007 ]

**PHILIPPINE AIRLINES, INCORPORATED, FRANCISCO X. YNGENTE IV, PAG-ASA C. RAMOS, JESUS FEDERICO V. VIRAY, RICARDO D. ABUYUAN, PETITIONERS, VS. BERNARDIN J. ZAMORA, RESPONDENT.**

### R E S O L U T I O N

**CHICO-NAZARIO, J.:**

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, seeks to set aside the 13 August 2004 Decision<sup>[1]</sup> and 1 February 2005 Amended Decision<sup>[2]</sup> of the Court of Appeals in CA G.R. SP No. 68795 entitled "*Bernardin J. Zamora v. National Labor Relations Commission, et al.*" In the assailed decisions, the Court of Appeals annulled and set aside the 27 April 2001 Resolution<sup>[3]</sup> and 31 October 2001 Decision<sup>[4]</sup> of the Third Division of the National Labor Relations Commission (NLRC) in CA No. 013358-97, a) ordering the Labor Arbiter to forthwith issue a Writ of Execution stating that "(1) complainant must be awarded, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service from February 9, 1981 to June 30, 2000; and (2) the award of backwages must be computed from December 15, 1995 to June 30, 2000;"<sup>[5]</sup> and b) suspending the proceedings of the case in view of the ongoing rehabilitation of petitioner Philippine Airlines, Inc. (PAL) and accordingly referring the particular case to the permanent rehabilitation receiver.

This case stemmed from a labor *Complaint*<sup>[6]</sup> filed by herein respondent Bernardin J. Zamora (Zamora) against herein petitioners PAL and Francisco X. Yngente IV, *Assistant Vice-President*, PAL Cargo Sales and Services, for *illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees*. The complaint was docketed as NLRC NCR Case No. 00-03-01672-96. Later on, on respondent Zamora's motion, Pag-asa C. Ramos, Manager, PAL Payroll and Timekeeping Department, Jesus Federico V. Viray, *Operations Director for International Cargo*, PAL Import Division, Ricardo D. Abuyuan, *Supervisor for International Cargo*, PAL Import Division, and Gerardo V. Ignacio, Manager, PAL Import Operations Division, were included as party-respondents in the labor case.

As culled from the records of the case, the facts are as follows:

Respondent Zamora had been in the employ of petitioner PAL since 9 February 1981 when the former was hired as a Cargo Representative at petitioner PAL's Import Operations Division.

On 13 November 1995, respondent Zamora was dismissed from service for having been found by petitioner PAL's management to be liable for insubordination, neglect

of customer, disrespect for authority and absence without official leave.

On 12 March 1996, respondent Zamora filed a complaint against petitioners PAL and Francisco X. Yngente IV<sup>[7]</sup> before the NLRC for illegal dismissal, unfair labor practice, non-payment of wages, damages and attorney's fees.

On 28 September 1998, the labor arbiter<sup>[8]</sup> rendered a *Decision*<sup>[9]</sup> dismissing respondent Zamora's complaint for lack of merit, the dispositive portion of which reads:

WHEREFORE, consistent with the foregoing tenor, judgment is hereby entered dismissing the charges of illegal dismissal for lack of merit. Complainant is, however, ordered to report to his new assignment at respondent PAL's Domestic Cargo and for respondent PAL to accept him back to work under the same terms and conditions of employment prior to the dispute as soon as it resumes operations or, for respondent PAL to pay him his appropriate separation pay in the event it finally closed shop.

The rest of the claims is (sic) likewise dismissed for lack of merit.

In dismissing the complaint, the labor arbiter considered respondent Zamora's transfer as an exercise of petitioner PAL's management prerogative.

On appeal, the NLRC, on 26 July 1999, set aside<sup>[10]</sup> the aforequoted decision and ordered the immediate reinstatement of respondent Zamora to the latter's former position. According to the NLRC, petitioners PAL, *et al.* "failed to substantiate that complainant's (respondent Zamora) transfer was for a just and proper cause."<sup>[11]</sup> Finding that said order was prompted not by legitimate reasons and, thus, went beyond the exercise of management prerogative, the NLRC declared the transfer a form of harassment, intimidation and undue discrimination. It went on further to ratiocinate that:

x x x What appears to be simply an order of transfer is actually an attempt to strifle (sic) complainant's (respondent Zamora) efforts to avert illegal activities at his original work assignment. For why would the individual respondents pick on complainant only after he wrote to the company President, unless there is a veiled attempt to weaken his chance to have a full investigation conducted on an anomaly immediately after he had started to spill out the beans, so to speak.

The decretal part of the subject decision provides:

WHEREFORE, in light of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated September 28, 1998 is hereby ordered SET ASIDE and a new one is hereby entered declaring complainant's transfer at the Domestic Cargo Operations on November 13, 1996 illegal.

Moreover, respondents are hereby ordered to immediately reinstate complainant Bernardin J. Zamora to his former position as Cargo Representative at the Import Operations Division of respondent PAL without loss of seniority rights and other privileges and to pay him back

salaries and backwages beginning December 15, 1995 until his actual reinstatement, inclusive of allowances and other benefits and increases thereto.

All other reliefs herein sought and prayed for are hereby DENIED for lack of merit.<sup>[12]</sup>

Respondent Zamora filed a *Motion for Partial Reconsideration*<sup>[13]</sup> of the abovequoted decision in so far as it denied his claim for damages and attorney's fees.

On 16 September 1999, the NLRC issued a *Resolution*<sup>[14]</sup> dismissing the aforesaid motion.

Claiming that the 26 July 1999 Decision of the NLRC respecting his reinstatement and the payment of his backwages and other monetary benefits have become final and executory, respondent Zamora, through counsel, wrote<sup>[15]</sup> petitioner PAL demanding the execution thereof.

What transpired next, as revealed by the record of the instant petition, was an exchange of a barrage of pleadings.

Petitioners PAL, et al., filed a "*Motion to Furnish Respondents a Copy of the NLRC Decision Promulgated on July 26, 1999*"<sup>[16]</sup> dated 5 October 1999.

On 18 October 1999, respondent Zamora filed two pleadings before the NLRC. Firstly, he filed an *Opposition (to Respondents-Appellees' Motion to Furnish Respondents a Copy of the NLRC Decision Promulgated on July 26, 1999)*. He opposed the motion on the ground that the record of the NLRC with regard to the subject case indicates that copies of the 26 July 1999 Decision were sent, via registered mail, to petitioners PAL, et al. and their counsel's address of record on 11 August 1999 and that the same remained unclaimed for a time and later on were returned to sender. As of 16 August 1999, or five days later, service upon them of the copies of said Decision was deemed completed per the pronouncement of the Supreme Court in the case of *Magno v. Court of Appeals*.<sup>[17]</sup> Then respondent Zamora filed a *Motion for Partial Entry of Judgment*<sup>[18]</sup> of the 26 July 1999 Decision respecting his reinstatement to his former position as well as the payment of various monetary benefits allegedly due him.

Thereafter, petitioners PAL, et al. filed an *Opposition*<sup>[19]</sup> (to Complainant's Motion for Partial Entry of Judgment) as well as a *Motion for Reconsideration*<sup>[20]</sup> of the 26 July 1999 Decision of the NLRC.

On 8 November 1999, respondent Zamora filed a *Reply*<sup>[21]</sup> to the aforementioned *Opposition*. Ten days later, or on 18 November 1999, he then opposed the *Motion for Reconsideration* of petitioners PAL, et al., and moved to have the latter expunged from the record of the case on the argument that the 26 July 1999 NLRC Decision had long become final and executory.<sup>[22]</sup>

Not to be outdone, petitioners PAL, et al. filed a *Comment*<sup>[23]</sup> to respondent Zamora's 18 November 1999 *Opposition To And Motion To Expunge*.

Subsequently, the NLRC resolved to deny the *Motion for Reconsideration* of petitioners PAL, et al. in a *Resolution*<sup>[24]</sup> dated 25 November 1999.

Aggrieved by the ruling of the NLRC in its 26 July 1999 Decision and 25 November 1999 Resolution, petitioners PAL, et al. filed a *Petition for Certiorari*<sup>[25]</sup> before the Court of Appeals on 11 December 1999. Said case was docketed as CA G.R. SP No. 56428.<sup>[26]</sup>

On 5 January 2000, respondent Zamora filed anew a *Motion for Partial Execution*<sup>[27]</sup> dated 3 January 2000 reiterating his earlier prayer for the execution of the 26 July 1999 NLRC Decision with regard to his reinstatement to his former position and the payment of monetary benefits allegedly due him. A few months thereafter, or on 5 July 2000, respondent Zamora filed a *Motion for Contempt*<sup>[28]</sup> dated 3 July 2000, before the office of the labor arbiter, praying that petitioners PAL, et al. be declared in contempt of the Honorable Commission for their refusal to physically reinstate respondent Zamora to his former position or in the payroll as embodied in the 26 July 1999 NLRC Decision despite the immediately executory nature of that part of the decision. Petitioners PAL, et al. opposed the motion.<sup>[29]</sup>

On 8 January 2001, the labor arbiter<sup>[30]</sup> issued an *Order*<sup>[31]</sup> citing petitioners PAL, et al. for indirect contempt for their failure to comply with the directive contained in the 26 July 1999 NLRC Decision. In finding them guilty of indirect contempt, the labor arbiter declared that "an order of reinstatement, being self-executory, does not require a writ of execution for its enforcement." Likewise embodied in the order of the labor arbiter was a pronouncement for the issuance of a writ of execution. The dispositive of the subject *Order* states that:

WHEREFORE, finding the motion to be well taken and in order, the same is granted and respondents are hereby cited for indirect contempt for their failure to comply with the order of the Hon. Commission. They are directed anew to reinstate complainant immediately to his former position as Cargo Representative, physically or in the payroll, and fined an amount of P100.00 per day from 16 August 1999 until compliance.

Further, let a writ of execution be issued.

Undaunted, petitioners PAL, et al. appealed the abovementioned 8 January 2001 *Order* of the labor arbiter before the NLRC. In their appeal,<sup>[32]</sup> they prayed for the reversal of said Order as well as for the suspension of the proceedings in the subject case considering that petitioner PAL, was, at that time, undergoing rehabilitation per 16 August 1999 Order<sup>[33]</sup> of the Securities and Exchange Commission (SEC) appointing a permanent rehabilitation receiver for petitioner PAL in SEC Case No. 06-98-6004 entitled "*In the Matter of the Petition for the Approval of Rehabilitation Plan and for Appointment of a Rehabilitation Receiver.*"

Respondent Zamora reciprocated by filing a *Motion To Expunge*<sup>[34]</sup> dated 5 April 2001.

In a *Resolution*<sup>[35]</sup> dated 27 April 2001, the NLRC resolved to set aside the 8

*January 2001* Order of the labor arbiter and, significantly, to issue a Writ of Execution implementing, albeit with modification, its *26 July 1999 Decision*. The *fallo* of the *27 April 2001 Resolution* reads:

WHEREFORE, the Order appealed from is hereby SET ASIDE.

The Labor Arbiter is hereby advised to forthwith issue a Writ of Execution which, due to a supervening event, the abolition of PAL's Import Operations Division - must vary the terms of the final judgment to the extent that: (1) the complainant must be awarded, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service from February 9, 1981 to June 30, 2000; and (2) the award of backwages must be computed from December 15, 1995 to June 30, 2000.

In setting aside the challenged *Order* of the labor arbiter, the NLRC gave premium to the copy<sup>[36]</sup> of the structural organization of petitioner PAL's Cargo Services Sub-Department showing that as of 30 June 2000, the Import Operations Division, to which respondent Zamora's previous position actually belonged, had already been abolished. It opined that:

x x x As it is common knowledge that respondent PAL implemented a massive retrenchment program in 1998-1999, and since it is only the complainant who stands to lose if the instant case were to be allowed to drag any longer, this Commission finds that the technical rules of evidence applicable in the ordinary courts of law must be set aside, and the respondent's contention that the complainant's former position no longer exists may be considered to be meritorious.<sup>[37]</sup>

The commission then proceeded to award respondent Zamora, in lieu of reinstatement to the latter's former position, separation pay equivalent to one month's salary for every year of service, that is, from 9 February 1981 to 30 June 2000.<sup>[38]</sup> Its award was based on:

Section 4 (d), Rule VI of the Implementing rules of the Labor Code provides that 'where (the employee's) former position no longer exists at the time of reinstatement for reasons not attributable to the fault of the employer, the employee shall be entitled to separation pay equivalent to at least one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year. x x x.<sup>[39]</sup>

The NLRC concluded that the award to respondent Zamora of backwages must likewise be computed from 15 December 1995 until 20 June 2000.

Displeased with the preceding resolution, both parties moved for the reconsideration of the same. In his motion, respondent Zamora disputed the NLRC's finding that the Import Operations Division had already been abolished as far back as 30 June 2000. On the other hand, petitioners PAL, *et al.* argued that it was patent error for the NLRC to order the issuance of a Writ of Execution considering the fact that petitioner PAL was then presently undergoing rehabilitation or under the stewardship of a SEC duly approved receiver.