

SECOND DIVISION

[G.R. No. 117105, March 02, 1999]

**TIMES TRANSIT CREDIT COOP. INC., PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION AND MARGARITA
CARIÑO, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This special civil action for *certiorari* seeks to set aside the Decision^[1] of the National Labor Relations Commission (NLRC) promulgated on June 28, 1994, and its Resolution dated August 16, 1994, which denied petitioner's motion for reconsideration.

Petitioner is a duly registered cooperative of the employees of Times Transportation Incorporated, while private respondent Margarita Cariño was employed as clerk by petitioner from July 10, 1985 until June 16, 1990 when her services was terminated.

On June 5, 1990, in the course of his inspection, Mr. Charlie Las Marias, a labor inspector, interviewed private respondent about the operations of Times Cooperative canteen. After the interview, private respondent signed the labor inspection reports and the application for registration provided by the labor official. She likewise received papers intended for petitioner which she, however, delivered to petitioner's governing board only on June 13, 1990. Admittedly, private respondent acted without authority from petitioner. Thus, on June 16, 1990, private respondent was dismissed from the service on the ground of serious misconduct.

Feeling aggrieved, private respondent filed a complaint for illegal dismissal, underpayment of wages, non-payment of wages and thirteenth month pay. But, in the meantime, she sought employment at the University of Northern Philippines Multi-Purpose Cooperative, Inc. (UNP Cooperative hereafter). She started working there on January 1, 1991.

On September 30, 1992, the labor arbiter issued the following verdict:

"PREMISES CONSIDERED, judgment is hereby rendered:

- (1) Declaring the complainant's dismissal as illegal;
- (2) Ordering respondent Times Transit Credit Cooperative, Inc. (TTCCI) to pay complainant's backwages amounting to P53,900.00 (covering the period from June 16, 1990 to September 30, 1992);
- (3) Ordering that instead of reinstatement, the respondent should pay her separation pay amounting to P13,720.00; and 13th

month differential pay amounting to P4,325.81;

- (4) Dismissing her claims for underpayment of salaries, non-payment of rest day premiums, as well as her claim for moral damages for lack of merit."^[2]

On June 9, 1993, the NLRC affirmed the aforequoted decision of the labor arbiter. Subsequently, petitioner moved for reconsideration of public respondent's resolution arguing that the income earned by private respondent from UNP Cooperative during the pendency of the action for illegal dismissal should be deducted from the total amount of backwages and other benefits awarded. On September 10, 1993, petitioner's motion for reconsideration was denied for having failed to establish the amount private respondent earned elsewhere during the pendency of the case by not presenting the payrolls and other evidence to prove the amount of income earned. Public respondent likewise invoked the established rule of fixing backwages without qualification and deduction or earnings elsewhere.

Subsequently, petitioner filed with the NLRC a "Motion for Clarification and for Recomputation" dated September 29, 1993, praying that it be allowed to present evidence as to the amount received by private respondent during her employment with UNP Cooperative, or that the records be remanded to the labor arbiter for the reception of evidence for the above purpose and recomputation of the monetary award due private respondent. On October 28, 1993, public respondent denied the motion for clarification and recomputation on the ground that it was tantamount to a second motion for reconsideration which is not allowed under the NLRC Rules. Consequently, an entry of judgment was issued on February 16, 1994, and the records of the case were remanded to the arbitration branch of origin.

Remaining hopeful, petitioner, during the pre-execution conference on April 6, 1994, filed before Executive Labor Arbiter Norma Olegario, a motion praying, *inter alia*, to require private respondent to declare the income she received from UNP cooperative from January 1, 1991 up to September 30, 1992, and that said amount be deducted from the monetary awards. It stressed that the pre-execution proceedings is the appropriate time to make such deduction.

In an Order dated April 18, 1994, Executive Labor Arbiter Olegario denied petitioner's motion holding that she does not possess the power to affirm, reverse, modify or in any manner alter the decision of NLRC. Not satisfied, petitioner again appealed to public respondent praying for the reversal of the aforesaid order and reiterated the reliefs earlier prayed for in its motion.

In a Decision dated June 28, 1994, public respondent affirmed the labor arbiter's order. The decision reads:

"We need not emphasize that the Decision had become final and executory upon the issuance of Entry of Judgment. Moreover, the respondent did not raise the issue to the Supreme Court. It has been held that:

‘A final and executory judgment can no longer be altered. x x x The judgment 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