

## THIRD DIVISION

[ G.R. No. 100342-44, October 29, 1999 ]

**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 AND RURAL BANK OF ALAMINOS,  
INC., RESPONDENTS.**

### D E C I S I O N

**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. Olarez 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 against RBAI for illegal dismissal.

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.

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. Olarez, to consolidate the three (3) aforementioned cases.

On December 14, 1989, Labor Arbiter Ricardo N. Olarez 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 retireable 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

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 aforementioned 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.

**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”.

**C. Case No. 0049-89:**

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)