

FIRST DIVISION

[G.R. No. 118432, May 23, 1997]

**CONRADO COSICO, JR., PETITIONER, VS. NATIONAL LABOR
RELATIONS COMMISSION, EVA AIRWAYS CORPORATION, LEWIS
CHANG, AND ALLEN SOONG, RESPONDENTS.**

D E C I S I O N

KAPUNAN, J.:

Through this special civil action for certiorari, petitioner seeks the reversal and nullification of the August 31, 1994 and the December 15, 1994 resolutions of respondent National Labor Relations Commission (NLRC) in NLRC NCR-CA Case No. 005304-93 for having been issued with grave abuse of discretion.

The relevant antecedents are as follows:

Petitioner Conrado Cosico, Jr. was hired by respondent Eva Airways Corporation (Eva Air) through its General Sales Agent, Don Tim Air Service, Inc., on April 4, 1992 as Assistant Station Manager for the Manila office for a mutually agreed monthly salary of P30,000.00.

As Assistant Station Manager, petitioner was tasked, among others, to supervise the construction of respondent Eva Air's office in a space reserved for the purpose at the Ninoy Aquino International Airport (NAIA) and to see to it that respondent Eva Air's target of flying at least sixty (60) passengers per flight be realized in order to maintain the company's overhead operations.

After five (5) months of operation, a performance audit of respondent Eva Air's Manila office was undertaken and the same yielded the finding that the airline had only an average of twenty-five (25) passengers per flight, way below its targeted passenger load. After evaluating the situation further, respondent Eva Air decided to implement measures to make the Manila office cost-efficient. It was decided that the position of Assistant Station Manager be abolished.

On September 24, 1992, petitioner was advised of respondent Eva Air's decision in a letter which reads in full:

Mr. Conrado Cosico Our Ref: PSN-81030

Asst. Station Manager Date: Sep. 24, 1992

Through: Mr. Allen Soong

EVA Taipei Representative

RE: ABOLITION OF POSITION - ASST. STATION MANAGER

We have been reviewing the developments and performance of our Philippine station. Our reviews of the past four and one third months show that passenger & cargo loads are below the target given by our office.

In view of this, it is Management's decision to abolish the position of the Asst. Station Manager and also keep the position of Station Manager vacant. In the meantime, the EVA TAIPEI REP in Manila is given charge of the operation of the Manila Station. He will handle the day to day activities and operations of the Airline.

You are therefore given notice that your position is hereby abolish (sic) and your services terminated on account thereof 15 days upon receipt of this notice. Please effect the necessary turnover within the said 15 days period.

Thank you and we hope you will understand the position taken by the company.

Very truly yours,

(Sgd.)

Lewis Chang

Deputy Senior Vice President

Personnel Division^[1]

Respondent Eva Air, likewise, offered to pay the petitioner separation pay equivalent to one (1) month salary and proportionate 13th month pay for his six (6) months and eleven (11) days service to the company.

Petitioner rejected the offer and instead filed a complaint for illegal dismissal, underpayment of wages and moral and exemplary damages against respondents Eva Air and its officers, Lewis Chang and Allen Soong. The case was docketed as NLRC NCR Case No. 00-10-05891-92.

On June 9, 1993, Labor Arbiter Ernesto Dinopal rendered a decision, the dispositive portion of which reads:

WHEREFORE, decision is hereby rendered declaring the dismissal of complainant CONRADO COSICO, JR. by respondents EVA AIRWAYS CORPORATION and LEWIS CHANG as illegal and without justifiable cause and ordering them to reinstate complainant Cosico, Jr. to his former position without loss of seniority rights and other privileges and pay him, jointly and severally, the following sums:

Backwages from October 9, 1992 up to the date of reinstatement, either

actually or by payroll, which if computed as of June 9, 1993 amounts to (P30,000.00 x 8 months).P 240,000.00

Thirteenth Month Pay-----30,000.00

Moral Damages-----1,000,000.00

Exemplary Damages-----1,000,000.00

10% attorney's fees-----227,000.00

TOTAL-----P2,497,000.00

Respondent ALLEN SOONG is declared free from any liability it appearing that he had no active participation in complainant's illegal dismissal.

SO ORDERED.^[2]

Respondents Eva Air and Lewis Chang elevated their case to respondent NLRC where they filed their appeal memorandum and posted a surety bond in the amount of Two Hundred Seventy Thousand Pesos (P270,000.00). Petitioner filed a motion to dismiss the appeal on the ground that the supersedeas bond posted by private respondents was insufficient as it did not cover the award of moral and exemplary damages as well as attorney's fees.

Respondent NLRC denied the motion and instead gave due course to the appeal. On August 31, 1994, it issued a resolution setting aside the decision of the labor arbiter, disposing thusly:

WHEREFORE, in view of the foregoing premises, the Appeal is hereby given due course and the decision of Labor Arbiter, Ernesto Dinopol dated June 09, 1993, is hereby set aside. However, respondents are ordered to pay complainant full separation benefits equivalents (sic) to one (1) month for every year of service and thirteenth month pay for 1992.

SO ORDERED.^[3]

Petitioner moved to reconsider the resolution but the same was denied on December 15, 1994 in a resolution which reads:

After due consideration of the Motion for Reconsideration filed by complainant on September 16, 1994, from the Resolution of August 31, 1994, the Commission (Second Division) RESOLVED to deny the same for lack of merit.^[4]

Hence, this petition predicated on the following grounds for consideration, to wit:

I

THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT GAVE PRIVATE

RESPONDENTS' APPEAL DUE COURSE NOTWITHSTANDING THE FACT THAT RESPONDENTS' APPEAL WAS NOT DULY PERFECTED FOR FAILURE TO POST THE CORRECT SUPERSEDEAS BOND IN AN AMOUNT EQUIVALENT TO THE MONETARY AWARD.

II

THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT SET ASIDE THE DECISION OF LABOR ARBITER EERNESTO (sic) DINOPOL AND INSTEAD RULED THAT COMPLAINANT WAS NOT ILLEGALLY DISMISSED.

III

THE NLRC GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT THE POSITION OF THE PETITIONER WAS DULY ABOLISHED.

IV

THE NLRC GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONER IS NOT ENTITLED TO DAMAGE (Sic).^[5]

The petition is devoid of merit.

Inceptively, petitioner asseverates that respondent NLRC gravely abused its discretion in giving due course to the appeal of private respondents albeit the latter's failure to post the correct supersedeas bond which is supposed to be equivalent to the monetary award in the judgment.

Article 223 of the Labor Code, as amended by Republic Act No. 6715 (Herrera-Veloso Law), provides:

ART. 223. Appeal.— Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. xxx

xxx

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

xxx

For the proper guidance of lawyers and litigants and pursuant to the provisions of Article 218^[6] of the Labor Code, the NLRC adopted and promulgated its New Rules of Procedure on August 31, 1990. The Rules were published in the Manila Bulletin and the Philippine Daily Inquirer on September 24, 1990 and became effective fifteen (15) days thereafter. Section 6, Rule VI of the said Rules reads:

Section 6. Bond. — In case the decision of a Labor Arbiter involves a monetary award, an appeal by the employer shall be perfected only upon